

**FIRST AMENDMENT TO
AGREEMENT PAYMENT IN LIEU OF TAXES**

(Elmwood Square)

This FIRST AMENDMENT TO AGREEMENT FOR PAYMENT IN LIEU OF TAXES (the "Amendment") is made as of the 16th day of October, 2019, by and among the CITY OF BUFFALO (the "City"), the COUNTY OF ERIE (the "County"), and ELMWOOD SQUARE PRESERVATION, L.P., a New York limited partnership (the "Taxpayer") having an address at 60 Columbus Circle, 18th Floor, New York, New York 10023.

WHEREAS, on July 20, 2004 the City authorized and approved a PILOT Agreement between the County, City and Taxpayer;

WHEREAS, on November 1, 2004 the County authorized and approved a PILOT Agreement between the County, City and Taxpayer;

WHEREAS, the City, the County and the Taxpayer entered into a Agreement For Payment In Lieu of Taxes dated the 1st day of November, 2004 for the making of certain payments by the Taxpayer in lieu of real property taxes for the property known as Elmwood Square Apartments (the "Project") in the City of Buffalo, County of Erie and State of New York;

WHEREAS, the Taxpayer is a party to that certain Mortgage secured by the Project, said Mortgage being dated as of the 18th day of November, 2004 and recorded in the land records of Erie County, New York in Book 13199, Page 4940 (as amended or assigned, the "First Mortgage");

WHEREAS, under Section 3(b) of the PILOT Agreement, the PILOT Agreement has a term of 15 years and is scheduled to expire on November 18, 2019 (the "Expiration Date");

WHEREAS, in connection with the pre-payment of the First Mortgage, a re-financing of the Project and proposed repairs at the Project, the Taxpayer now wishes to extend the term of the PILOT Agreement;

WHEREAS, in connection with the aforementioned, the parties desire to amend the PILOT Agreement on the terms and conditions hereinafter set forth.

NOW, THEREFORE, for good and valuable mutual consideration, the receipt of which is hereby acknowledged, the parties hereto agree:

1. **PILOT Agreement Period:** The PILOT Agreement Period is extended by an additional fifteen (15) years for a total PILOT Agreement Period of thirty (30) years from the Commencement Date.
2. **Exhibit A:** "Exhibit A" as referenced in Section 4(a) of the PILOT Agreement is hereby amended and replaced such that Section 4(a) shall now refer to "Amended Exhibit A" which is attached hereto.

3. **Capitalized Terms:** All initial capitalized terms used in this Amendment and not defined herein shall have the meaning set forth in the PILOT Agreement.
4. **Full Force and Effect:** Except as set forth above, all other provisions of the Agreement remain in full force and effect and the parties hereto reaffirm their obligations under the PILOT Agreement.
5. **Counterparts:** This Amendment may be executed multiple counterparts which, taken together, shall constitute one and the same Amendment.
6. **Pay Equity** The Taxpayer shall comply with Erie County Executive Order 13 (2014) and agrees to complete the Certificate collectively attached hereto as Schedule "A" and made a part hereof. The Taxpayer shall make such records available, upon request, to the County's Division of Equal Employment Opportunity for review. The County shall have the right, upon reasonable notice and at reasonable times, to inspect the books and records of the Taxpayer, its offices and facilities, for the purpose of verifying information supplied in the Erie County Equal Pay Certification and for any other purpose reasonably related to conforming the Agency's compliance with Erie County Executive Order 13 (2014). Notwithstanding the termination provisions contained herein, violation of the provisions of Executive Order 13 (2014), may constitute grounds for the immediate termination of this Agreement and may constitute grounds for determining that the Taxpayer is not qualified to participate in future County contracts.

[Remainder of page intentionally left blank and signatures on following page]

IN WITNESS WHEREOF, the City, County, and Taxpayer have duly executed this Agreement as of the day and year first above written.

COUNTY OF ERIE

M. Whyte 10/16/19
Mark C. Poloncarz, County Executive
Maria R. Whyte
Deputy County Executive

Approved as to content
for Erie County:

ELECTRONICALLY SIGNED

Thomas Hersey, Commissioner
Department of Planning & Economic Development

Approved as to form for
Erie County:

ELECTRONICALLY SIGNED

Kristen M. Walder, Esq.

CITY OF BUFFALO

Byron W. Brown
Byron W. Brown, Mayor

Approved as to content for
the City of Buffalo:

Jason L. Shell
Jason Shell, Commissioner
Assessment and Taxation

Approved as to form for the
City of Buffalo:

John Hoffman ASST CORP.
COUNSEL FOR
Timothy A. Ball, Esq.

FOR THE TAXPAYER:

ELMWOOD SQUARE PRESERVATION, L.P.

By: Elmwood Square Preservation, LLC

By: _____
Name: Matthew Finkle
Title: Vice President

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Maria R. Whyte
Deputy County Executive

Approved as to content
for Erie County:

Thomas Hersey, Commissioner
Department of Planning & Economic Development

Approved as to form for
Erie County:

Kristen M. Walder, Esq.

CITY OF BUFFALO

Byron W. Brown, Mayor

Approved as to content for
the City of Buffalo:

Jason C. Shell, Commissioner
Assessment and Taxation

Approved as to form for the
City of Buffalo:

Timothy A. Ball, Esq.

FOR THE TAXPAYER:

ELMWOOD SQUARE PRESERVATION, L.P.

By: Elmwood Square Preservation, LLC

By: _____
Name: Matthew Finkle
Title: Vice President

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Maria R. Whyte
Deputy County Executive

Approved as to content
for Erie County:

Thomas Hersey, Commissioner
Department of Planning & Economic Development

Approved as to form for
Erie County:

Kristen M. Walder, Esq.

CITY OF BUFFALO

Byron W. Brown, Mayor

Approved as to content for
the City of Buffalo:

Martin Kennedy, Commissioner
Assessment and Taxation

Approved as to form for the
City of Buffalo:

Timothy A. Ball, Esq.

FOR THE TAXPAYER:

ELMWOOD SQUARE PRESERVATION, L.P.

By: Elmwood Square Preservation, LLC

By: _____

Name: Matthew Finkle

Title: Vice President

Amended Exhibit A
Annual PILOT Payments

| Fiscal Year | Total PILOT | City of Buffalo | Erie County |
|-------------|----------------|--------------------|-------------|
| | | 75 % | 25% |
| Year 1 | \$64,656.69 | \$48,492.52 | \$16,164.17 |
| Year 2 | \$66,596.90 | \$49,947.68 | \$16,649.23 |
| Year 3 | \$68,594.28 | \$51,445.71 | \$17,148.57 |
| Year 4 | \$70,652.11 | \$52,989.08 | \$17,663.03 |
| Year 5 | \$72,771.67 | \$54,578.75 | \$18,192.92 |
| Year 6 | \$74,954.82 | \$56,216.12 | \$18,738.71 |
| Year 7 | \$77,203.47 | \$57,902.60 | \$19,300.87 |
| Year 8 | \$79,519.57 | \$59,639.68 | \$19,879.89 |
| Year 9 | \$81,905.16 | \$61,428.87 | \$20,476.29 |
| Year 10 | \$84,362.31 | \$63,271.74 | \$21,090.58 |
| Year 11 | \$86,893.18 | \$65,169.89 | \$21,723.30 |
| Year 12 | \$89,499.98 | \$67,124.98 | \$22,374.99 |
| Year 13 | \$92,184.98 | \$69,138.73 | \$23,046.24 |
| Year 14 | \$94,950.53 | \$71,212.90 | \$23,737.63 |
| Year 15 | \$97,799.04 | \$73,349.28 | \$24,449.76 |
| Year 16 | \$100,733.02 | \$75,549.76 | \$25,183.25 |
| Year 17 | \$103,755.01 | \$77,816.25 | \$25,938.75 |
| Year 18 | \$106,867.66 | \$80,150.74 | \$26,716.91 |
| Year 19 | \$110,073.69 | \$82,555.26 | \$27,518.42 |
| Year 20 | \$113,375.90 | \$85,031.92 | \$28,343.97 |
| Year 21 | \$116,777.17 | \$87,582.88 | \$29,194.29 |
| Year 22 | \$120,280.49 | \$90,210.37 | \$30,070.12 |
| Year 23 | \$123,888.90 | \$92,916.68 | \$30,972.23 |
| Year 24 | \$127,605.57 | \$95,704.18 | \$31,901.39 |
| Year 25 | \$131,433.74 | \$98,575.30 | \$32,858.43 |
| Year 26 | \$135,376.75 | \$101,532.56 | \$33,844.19 |
| Year 27 | \$139,438.05 | \$104,578.54 | \$34,859.51 |
| Year 28 | \$143,621.19 | \$107,715.89 | \$35,905.30 |
| Year 29 | \$147,929.83 | \$110,947.37 | \$36,982.46 |
| Year 30 | \$152,367.72 | \$114,275.79 | \$38,091.93 |

LEGAL DESCRIPTION OF THE PROPERTY

Parcel I

All that tract or parcel of land situate in the City of Buffalo, County of Erie, State of New York, being part of Lot 57, Township 11, Range 8 of the Holland Land Company's Survey and being more particularly described as follows:

Commencing at a stone monument at the intersection of the southerly right of way line of West Utica Street (66' wide) and the westerly right of way line of Delaware Avenue (99' wide); thence westerly along said southerly line of West Utica Street, a distance of 1522.50' to the west line of property owned now or formerly by Lawrence E. Piselli. Said point being the point of beginning.

Thence (1) Southerly along the west line of said Piselli property making an included angle of $90^{\circ}00'00''$, a distance of 100.00' to the line of other property owned now or formerly by Elmwood-Utica Houses, Inc.;

Thence (2) Westerly along line of said other property of Elmwood-Utica Houses, Inc. making an included angle of $90^{\circ}00'00''$, a distance of 30.00' to a point;

Thence (3) Northerly along line of said other property of Elmwood-Utica Houses, Inc. making an included angle of $90^{\circ}00'00''$, a distance of 100' to said south line of West Utica Street;

Thence (4) Easterly along said south line of West Utica Street and making an included angle of $90^{\circ}00'00''$, a distance of 30.00' to the point of beginning.

Parcel II

All that tract or parcel of land situate in the City of Buffalo, County of Erie, State of New York, being part of Lot 57, Township 11, Range 8 of the Holland Land Company's Survey and being more particularly described as follows:

Commencing at the intersection of the easterly right of way line of Elmwood Avenue (80' wide) and the southerly right of way line of West Utica Street (66' wide). Said point being the point of beginning.

Thence (1) Easterly along said southerly line of West Utica Street, a distance of 156.05' (156.31' Deed) to the northwest corner of other property owned now or formerly by Elmwood-Utica Houses, Inc. and being 1552.50' west of a stone monument at the intersection of the southerly right of way line of West Utica Street and the westerly right of way line of Delaware Avenue (99' wide);

Elmwood Square Preservation - Legal Description
W619489.1

Thence (2) Southerly along the west line of said other property of Elmwood-Utica Houses, Inc. making an included angle of $90^{\circ}00'00''$, a distance of 100.00' to the southwest corner of said other property of Elmwood-Utica Houses, Inc.;

Thence (3) Easterly along the south line of said other property of Elmwood-Utica Houses, Inc. and other properties fronting on West Utica Street making an included angle of $90^{\circ}00'00''$, a distance of 89.88' to the west line of property owned now or formerly by the City of Buffalo;

Thence (4) Southerly along the west line of said City of Buffalo property making an included angle of $90^{\circ}00'00''$, a distance of 99.56' (99.91' Deed) to the North line of property owned now or formerly by 487 Elmwood Inc.;

Thence (5) Westerly along the north line of said 487 Elmwood Inc. property making an included angle of $89^{\circ}56'00''$, a distance of 246.16' (246.36' Deed) to said easterly line of Elmwood Avenue and being 250.00' north of the northerly right of way line of Hodge Avenue (60' wide);

Thence (6) Northerly along said easterly line of Elmwood Avenue making an included angle of $90^{\circ}00'00''$, a distance of 199.27' (200' plus or minus Deed) to the point of beginning and making an included angle of $90^{\circ}04'00''$ with Course 1.

Tax Identification Number: 100.460-1-61

Schedule A
Erie County Equal Pay Certification

In order to comply with Executive Order 13 dated November 6, 2014, we hereby certify that we are in compliance with federal law, including the Equal Pay Act of 1963, Title VII of the Civil Rights Act of 1964, Federal Executive Order 11246 of September 24, 1965 and New York State Labor Law Section 194 (together "Equal Pay Law"). The average compensation for female employees is not consistently below the average compensation for male employees, taking into account mitigating factors. We understand that this certification is a material component of this contract. Violation of the provisions of Executive Order 13, which is attached hereto and made a part hereof, can constitute grounds for the immediate termination of this contract and may constitute grounds for determining that a bidder is not qualified to participate in future county contracts.

We have evaluated wages and benefits to ensure compliance with the Federal Equal Pay Law.

Matthew Finkle
Signature

Verification

STATE OF New York)
COUNTY OF New York) SS:

A)

Matthew Finkle, being duly sworn, states he or she is the owner of (or a partner in) Elmwood Square Preservation LP., and is making the foregoing Certification and that the statements and representations made in the Certification are true to his or her own knowledge.

B)

Matthew Finkle, being duly sworn, states that he or she is the
(Name of Corporate Officer)

Vice President, of Elmwood Square Preservation LP.
(Title of Corporate Officer) (Name of Corporation)

the enterprise making the foregoing Certification, that he or she has read the Certification and knows its contents, that the statements and representations made in the Certification are true to his or her own knowledge, and that the Certification is made at the direction of the Board of Directors of the Corporation.

Sworn to before me this 2 Day of January, 20 19

Caitlin F. McCarthy
Notary Public

Caitlin F. McCarthy
Notary Public, State of New York
Registration #01MC6377204
Qualified In Kings County
Commission Expires June 25, 2022



COUNTY OF ERIE

MARK C. POLONCARZ

County Executive

Executive Order #13 Pay Equity Certification on County Contracts

WHEREAS, federal law, including the Equal Pay Act of 1963, Title VII of the Civil Rights Act of 1964 and Federal Executive Order 11246 of September 24, 1965 (Equal Employment Opportunity) (together "Federal Equal Pay Law"), requires that men and women in the same workplace be given equal pay for equal work; and

WHEREAS, Section 194 of New York State Labor Law ("NYS Equal Pay Law") prohibits compensating men and women differently for the same work; and

WHEREAS, on average, a full-time working woman in New York State earns just 85 cents for every dollar that a man earns and the pay gap is even greater for African-American and Latina women; and

WHEREAS, females make up nearly fifty-two percent of Erie County's population; and

WHEREAS, women make up nearly half of the U.S. labor force and are a growing number of breadwinners in their families; and

WHEREAS, this pay differential shortchanges women and their families by thousands of dollars a year, and potentially hundreds of thousands of dollars over a lifetime, presenting a lifelong threat to those families' economic security and reducing their earnings through Social Security and other post retirement plans; and

WHEREAS, poverty is recognized as a leading cause of or contributing factor to many social problems, including but not limited to substance abuse, domestic violence, child abuse, improper nutrition, obesity, improper health care and criminal conduct; and

WHEREAS, the impact of pay differentials is exacerbated as workers age, causing underpaid workers to disproportionately rely upon various forms of public support in their retirement years; and

WHEREAS, pay inequity can significantly impact the County, necessitating the provision of various public subsidies for low income residents and leading to the lack of receipt of income by women residents which would be spent in our local economy; and

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WHEREAS, through the enforcement of current state and federal laws that ban unequal pay for equal work, Erie County can help ameliorate the many negative consequences of pay inequality, thereby improving the lives of those who might otherwise be underpaid, strengthening families and protecting children, and reducing the demand for public services, all positively impacting county, state and federal budgets.

NOW, THEREFORE, I MARK C. POLONCARZ, Erie County Executive, by virtue of the authority vested in me by the Erie County Charter § 302, do hereby order as follows:

1. It is ordered that on and after January 1, 2015, all Erie County offices, departments and administrative units, including but not limited to the Division of Purchase, fully implement a requirement in all bids, requests for proposals and other contract solicitations that the contractor submit an Erie County Equal Pay Certification which certifies the contractor's compliance with Federal Equal Pay Law and New York State Equal Pay Law (together, the "Equal Pay Laws"). Such certification shall be required prior to execution of the contract; and it is,
2. Further ordered that such certification shall include a representation by the contractor that it has not been the subject of an adverse finding under the Equal Pay Laws within the previous five years and shall include disclosure of any currently pending claims against the contractor; and it is,
3. Further ordered that violation of any provision of the Equal Pay Laws during the effective period of such a contract or the filing of a false or misleading Erie County Equal Pay Certificate may constitute grounds for immediate termination of such a contract; and it is,
4. Further ordered that violation of any provision of the Equal Pay Laws during the effective period of such a contract or the filing of a false or misleading Erie County Equal Pay Certificate may constitute grounds for determining a bidder or responder is not qualified to participate in future County contracts; and it is,
5. Further ordered that the Law Department prepare an Erie County Equal Pay Certification for use by Erie County offices, departments and administrative units and assure compliance with this Executive Order in the contract approval process; and it is,
6. Further ordered that the County Division of Equal Employment Opportunity ("EEO") establish a procedure for compliance monitoring and periodic auditing of certification records; and it is,

GIVEN, under my hand and the Privy Seal of the County of Erie in the City of Buffalo this 6th day of November, in the year two thousand fourteen.



COUNTY OF ERIE

BY: 
MARK C. POLONCARZ
ERIE COUNTY EXECUTIVE

STATE OF NEW YORK

LEGISLATURE OF ERIE COUNTY

CLERK'S OFFICE

BUFFALO, N.Y., September 26, 2019

TO WHOM IT MAY CONCERN:

I HEREBY CERTIFY, *That at the 19th Session of the Legislature of Erie County, held in the Legislative Chambers, in the City of Buffalo, on the 26th day of September, 2019 A.D., a Resolution was adopted, of which the following is a true copy:*

WHEREAS, the Elmwood Square Apartments Project consists of 138 existing units of affordable housing in the City of Buffalo located at 505 Elmwood Avenue; and

WHEREAS, the Erie County Legislature adopted a policy on Payment in Lieu of Taxes (PILOT) on December 16, 1999, and the PILOT is consistent with said policy; and

WHEREAS, in order to make the Project economically feasible for Elmwood Square Preservation, L.P. to continue to operate the housing project it is necessary to extend tax relief from the County of Erie and the City of Buffalo.

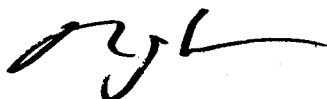
NOW, THEREFORE, BE IT

RESOLVED, that the County Executive is hereby authorized to execute a Payment in Lieu of Taxes (PILOT) Extension Agreement with Elmwood Square Preservation, L.P., the City of Buffalo, and any other organizations necessary to conclude this PILOT Agreement; and be it further

RESOLVED, that said Agreement shall include an annual PILOT in the amount of taxes due as set forth on Schedule A attached hereto; and be it further

RESOLVED, that certified copies of this resolution shall be forwarded to the County Executive; the Director of the Division of Budget and Management; the Director of Real Property Tax Services; the Commissioner of the Department of Environment and Planning; the County Comptroller; and the County Attorney.

ATTEST



ROBERT M. GRABER

Clerk of the Legislature of Erie County

STATE OF NEW YORK

LEGISLATURE OF ERIE COUNTY

CLERK'S OFFICE

BUFFALO, N.Y., September 26, 2019

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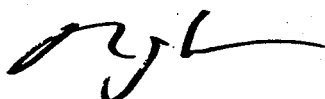
AMENDED SCHEDULE A ELMWOOD SQUARE APARTMENTS PILOT EXTENSION

| Fiscal Year | Total PILOT | City of | Erie County |
|-------------|--------------|--------------|-------------|
| | | 75 % | 25% |
| Year 1 | \$64,656.69 | \$48,492.52 | \$16,164.17 |
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| Year 30 | \$152,367.72 | \$114,275.79 | \$38,091.93 |

REFERENCE:

COMM. 18E-22 (2019)

ATTEST



ROBERT M. GRABER

Clerk of the Legislature of Erie County