

PAYMENT IN LIEU OF TAX AGREEMENT

THIS AGREEMENT for payments in lieu of taxes is made as of the ___ day of November, 2015, by and among the **TOWN OF WEST SENECA** (the "Town"), **EBENEZER SQUARE HOUSING DEVELOPMENT FUND COMPANY, INC.**, a New York not-for-profit corporation ("HDFC") and **EBENEZER SQUARE, L.P.**, a New York State Limited Partnership ("Taxpayer") for the making of certain payments in lieu of real property taxes by the Taxpayer on behalf of HDFC ("PILOT Agreement").

WITNESSETH:

WHEREAS, the HDFC holds fee simple title to the property and Taxpayer will be the beneficial owner of a residential building to be constructed consisting of 100 residential units for rent to low-income individuals and/or families located at 2400 Seneca Street, SBL 133.35-1-30.22 in the Town of West Seneca, County of Erie and State of New York, with it being anticipated that 75 units will be targeted towards special needs tenants; and

WHEREAS, the development of these units located at 2400 Seneca Street (the "Project") is of vital public interest to the Town.

NOW THEREFORE, in consideration of the covenants and agreements contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties covenant and agree as follows:

1. Tax Exemption. The parties agree that HDFC qualifies for real property tax exemption for the Project in accord with provisions of Article XI of the New York Private Housing Finance Law.

2. Obligation of the Taxpayer to Make Payments in Lieu of Taxes. The Town will require and the Taxpayer for itself and HDFC shall make payments in lieu of real property taxes to the appropriate taxing authorities pursuant to the real estate tax policies of the Town, subject to the terms of this PILOT Agreement.

3. Requirements of HDFC and Taxpayer

(a) The development will be carried forward and completed in accord with the provisions of Article XI of the New York Private Housing Finance Law.

(b) The development will be carried out in compliance with the reasonable requirements of the Planning and/or Town Boards of the Town of West Seneca including but not

limited to any special requirements which the Planning and/or Town Boards may impose regarding drainage, landscaping, utilities, traffic flow, and compliance with environmental and related laws and regulations.

(c) The PILOT period is to commence on with the first tax fiscal year following the Commencement Date, as hereinafter defined, and be concurrent with the Project's use as affordable housing, but shall not exceed thirty (30) years.

4. Taxing Authorities and Amounts

(a) Until the commencement of the Town's next taxable status date following completion of the Project described herein as evidenced by the issuance of the certificate of occupancy/compliance (the "Commencement Date"), the Taxpayer shall make full payment in lieu of taxes to the Town of West Seneca (the "Town"), the County of Erie (the "County") and the West Seneca Central School District (the "School District").

(b) Commencing with the first fiscal year following the Commencement Date and continuing through the thirtieth tax fiscal year following the Commencement Date the Taxpayer shall make annual payments in lieu of general real estate taxes on the land and buildings constituting the Project (PILOT) in the amount of three percent (3%) of the total rents received from tenants in the Project with a 3% annual rental escalation in satisfaction of all property taxes, a copy of the projected rental payment schedule with annual escalation is attached as Schedule A attached hereto.

(c) On or before January 15 of the first calendar year following the Commencement Date, the Taxpayer shall provide the Town with a complete listing of total rents received and provide the Town with a projection for the following year as to what the total rents are anticipated to be, which projections shall be subject to review by the Town, together with the proposed PILOT payment for the first calendar year following the Commencement Date.

(d) Thereafter commencing on January 15 of the second year following the Commencement Date and on January 15 of each subsequent year up to an including the twenty-ninth year following the Commencement Date, the Taxpayer shall provide the Town with a complete listing of total rents received, which numbers shall be subject to review by the Town together with the proposed PILOT payment for each year, which numbers shall be subject to review by the Town

(e) The Taxpayer shall pay the PILOT payment shall be paid to the Town on or before February 15th of each year and the PILOT payment shall be allocated and distributed proportionately by the Town Board of the Town of West Seneca among the Town, the County and the School District based upon the applicable tax rates for the year prior to the receipt of the PILOT payment within 30 days following receipt of the PILOT payment. The Taxpayer will be responsible for paying all special district assessments and other assessments applicable to the Project as required by law.

5. Defaults in Payment in Lieu of Taxes. In the event the Taxpayer fails to make any PILOT payment when due, the amount or amounts not so paid shall be a lien on the Project in the same manner that delinquent real property taxes would be and continue as an obligation to the Taxpayer until fully paid. In addition, the Taxpayer shall pay the appropriate taxing authority's or authorities' interest and penalties on the unpaid amount or amounts accruing at the same times and at the same interest rates as if such payments were delinquent real property taxes. In addition to any other remedies available to them for the collection of delinquent real property taxes, including, without limitation, in rem proceedings, the Town, County and School District may exercise any other remedies available, and such remedies shall be cumulative and the exercise of any remedy shall not be an election of remedies under law.

6. Effect of Fulfillment of the Requirement. Once having paid the amounts required by this PILOT Agreement when due, the Taxpayer and HDFC shall not be required to pay any real property taxes for which such payments in lieu of taxes have been made, except special district assessments and other special assessments applicable to the Project as required by law.

7. Events of Default and Termination of Tax Exemption.

(a) An event of default ("Event of Default") shall be defined as (1) failure of the Taxpayer or HDFC to make any payment required under this PILOT Agreement when due, (2) the Taxpayer's failure to provide any notice required by this PILOT Agreement to the Town, or (3) HDFC's failure to qualify, or continue to qualify, for a real property tax exemption for the Project in accordance with the provisions of Article XI of the New York Private Housing Finance Law.

(b) Upon the occurrence of an Event of Default as defined pursuant to Section 7(a) above, the Taxpayer or HDFC shall have ten (10) business days after the receipt of Notice from the Town or County regarding such default to cure such default.

(c) In the event the Taxpayer or HDFC has not cured such default or defaults within the time period set forth in this PILOT Agreement, then the exemption from real property taxes described herein shall be deemed to have been terminated as of the taxable status date of the Town's immediately preceding fiscal year.

(d) Upon a termination of the exemption from real property taxes set forth in Section 7(c) above, the Taxpayer and HDFC shall be liable for real property taxes on a pro-rata basis from and after the Town's taxable status date immediately preceding the Event of Default and the statutory lien applicable to such real property taxes shall be deemed in effect as of the lien date normally applicable to such year's real property taxes.

(e) Any such termination of the real property tax exemption applicable to the Project shall not void the liability of the Taxpayer and HDFC for any unpaid payments in lieu of taxes required by this PILOT Agreement prior to such termination.

8. Waiver. No failure on the part of the Town to exercise, and no delay on the part of the Town in exercising, any right, power or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of such right, power or remedy by the Town or County preclude any other or further exercise thereof or the exercise of any other right, power or remedy.

9. Modification. Neither this PILOT Agreement nor any provision hereof may be amended, modified, waived, discharged, or terminated, except by an instrument in writing duly executed and agreed to by the parties hereto.

10. Counterparts. This PILOT Agreement may be executed in several counterparts, each of which shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the Town and the Taxpayer have duly executed this PILOT agreement as of the day and year first above written.

TOWN OF WEST SENECA

**EBENEZER SQUARE HOUSING
DEVELOPMENT FUND COMPANY, INC.**

BY: _____
Name: _____
Title: _____

BY: _____
Mark H. Fuller
President

EBENEZER SQUARE, L.P.

BY: Ebenezer Square Housing Development
Fund Company, Inc., its General Partner

BY: _____
Mark H. Fuller
President

SCHEDULE A

Ebenezer Square Housing Development Fund Company, Inc. PILOT Payments

<u>Year</u>	<u>Payment Amount</u>
1	\$14,244.00
2	14,672.00
3	15,112.00
4	15,565.00
5	16,032.00
6	16,513.00
7	17,008.00
8	17,519.00
9	18,044.00
10	18,586.00
11	19,143.00
12	19,717.00
13	20,309.00
14	20,918.00
15	21,546.00
16	22,192.00
17	22,858.00
18	23,544.00
19	24,250.00
20	24,977.00
21	25,727.00
22	26,499.00
23	27,294.00
24	28,112.00
25	28,956.00
26	29,824.00
27	30,719.00
28	31,641.00
29	32,590.00
30	33,568.00