

**Mayor** ~ Tammy Dana-Bashian  
**Mayor Pro Tem** – Martha Brown  
**Deputy Mayor Pro Tem** ~ Debby Bobbitt  
**City Council** ~  
 Robert Blake Margolis  
 Brownie Sherrill  
 Matt Grubisich  
 Pamela Bell  
**City Manager** ~ Brian Funderburk



**City of Rowlett**  
 4000 Main Street  
 Rowlett, TX 75088  
 Phone ~ 972.412.6100  
 Fax ~ 972.412.6118  
 www.rowlett.com

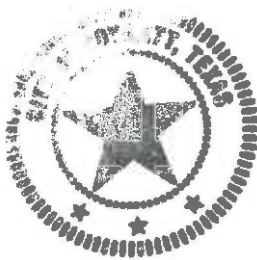
*A unique community where families  
 enjoy life and feel at home*

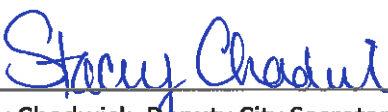
**CERTIFIED COPY OF RECORD**

STATE OF TEXAS §  
 §  
 COUNTIES OF DALLAS AND ROCKWALL §  
 §  
 CITY OF ROWLETT §

I, the undersigned, Deputy City Secretary of the City of Rowlett, Texas, a governmental subdivision of the State of Texas, in the performance of the functions of my office, hereby certify that the following copy of Resolution No. RES-145-17 was approved by the Rowlett City Council on December 19, 2017 and is a true and correct copy of same, and that I am the lawful possessor and have legal custody of said record.

WITNESS my hand and seal of said City of Rowlett, Texas, at my office in said City, Counties and State aforesaid, this the 4<sup>th</sup> day of January, 2018.



  
 \_\_\_\_\_  
 Stacey Chadwick, Deputy City Secretary  
 City of Rowlett, Texas





# City of Rowlett

## Official Copy

Resolution: RES-145-17

4000 Main Street  
Rowlett, TX 75088  
www.rowlett.com

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**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ROWLETT, TEXAS, APPROVING AN AGREEMENT FOR PAYMENTS IN LIEU OF AD VALOREM TAXES WITH TX LAKEVIEW SENIORS, LP, FOR THE SAVANNAH AT LAKEVIEW PROJECT LOCATED AT 5314 CHIESA ROAD AND 7500 LAKEVIEW PARKWAY; AUTHORIZING THE MAYOR TO ENTER INTO AND EXECUTE THE AGREEMENT ON THE CITY'S BEHALF; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the Rowlett Housing Finance Corporation has proposed a project in partnership with certain developers to design, build and operate an affordable housing community for senior citizens, entitled Savannah at Lakeview (the "Project"); and

**WHEREAS**, the Project is structured whereby the Rowlett Housing Authority's legal status will enable the Project to be classified as exempt from ad valorem taxes, even though the City will nevertheless be obliged to provide and furnish a full range of municipal services; and,

**WHEREAS**, the Payment In Lieu of Taxes (PILOT) agreement approved by this Resolution will require the Project to remit payments to the City in an amount equivalent to the ad valorem taxes that would otherwise be due, and such arrangement is in the best interest of the citizens of the City and the public health, safety and general welfare.

**NOW THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ROWLETT, TEXAS:**

**SECTION 1:** That the City Council of the City of Rowlett does hereby accept and approve the Payment In Lieu of Taxes ("PILOT") Agreement by and between the City and TX Lakeview Seniors, LP, a true and correct copy of which is attached hereto as Exhibit "A," and does further authorize the Mayor to execute the Agreement on the City's behalf.

**SECTION 2:** That this resolution shall become effective immediately upon its passage.

At a meeting of the City Council on December 19, 2017 this Resolution be adopted. The motion carried by the following vote:

**Ayes: 6** Mayor Dana-Bashian, Deputy Mayor Pro Tem Bobbitt, Councilmember Margolis, Councilmember Sherrill, Councilmember Grubisich and Councilmember Bell.

**Noes: 1** Mayor Pro Tem Brown


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Approved by Tommy Dasa-Bashua  
Mayor

Date December 19, 2017

Approved to form by [Signature]  
City Attorney

Date December 19, 2017

 Approved by Laura Hallmark  
City Secretary

Date December 19, 2017

STATE OF TEXAS       )  
                                  )  
COUNTY OF DALLAS    )

**AGREEMENT FOR PAYMENT  
IN LIEU OF AD VALOREM TAXES**

**THIS AGREEMENT** for Payment in Lieu of Ad Valorem Taxes (the “Agreement”), is dated as of December 20, 2017, by and between the City of Rowlett, Texas (the “City”) and TX Lakeview Seniors, LP, a Texas limited partnership (the “Partnership”).

**RECITALS:**

A. The sole member of Savannah at Lakeview GP, LLC, the Partnership's general partner (the “General Partner”), is Rowlett Housing Finance Corporation, a Texas non-profit corporation, (the “HFC”), a public, nonprofit housing finance corporation duly and validly organized under the laws of the State of Texas, and operating pursuant to Chapter 394 of the Texas Local Government Code.

B. The HFC is sponsoring the construction of a residential development in Rowlett, Texas (the “Project”), which is being developed to provide affordable housing for qualified senior citizens in furtherance of the HFC's public purpose, and the HFC or an affiliate will own the land upon which the Project will be located (the “Land”). The Land is depicted and described in attached Exhibit ‘A’.

C. Construction of the Project is being financed, in part, through the low-income housing tax credit program (the “Tax Credit Program”) administered by the Texas Department of Housing and Community Affairs (“TDHCA”). The Tax Credit Program utilizes a variety of mandates to ensure that housing complexes participating in the program are maintained as affordable for the long-term. TDHCA requires that the owner of each tax credit property file in the real property records of the county in which these types of developments are located a restrictive covenant agreement. This agreement specifies that tenants will be qualified based on age and only if their incomes do not exceed certain levels (based upon family size), and restricts the amount of rent that can be charged to the tenants (based upon tenant income and unit size). Under the Tax Credit Program, the restrictive covenant agreement will be in place for thirty (30) years.

D. The HFC is a political subdivision of the State of Texas and under the Texas Constitution property owned by the HFC is exempt from taxation if the property is used for public purposes as provided in Section 11.11 of the Texas Tax Code. It is contemplated that the Project will qualify for tax exempt status under Section 11.11(a) of the Tax Code.

E. The Partnership has requested City to approve and support construction and development of the Project.

F. The City furnishes and will furnish improvements, services, and facilities for the Project, and the Partnership and HFC, in lieu of paying taxes or special assessments, agree to reimburse in payments to the City an amount not greater than the estimated cost to the City for the improvements, services, or facilities.

G. City is willing to approve and support the Project and to provide full municipal services subject, however, to the obligation to make payments to the City in lieu of ad valorem taxes.

## **AGREEMENT**

**NOW, THEREFORE**, in consideration of the mutual covenants herein contained, Partnership and City agree as follows:

1. Payment in Lieu of Taxes. (a) At the closing of the transaction (the "Closing") in which the Land is acquired by the HFC or its affiliate and in which Partnership enters into the ground lease and admits a tax credit investor into Partnership as a limited partner, Partnership shall pay to City the sum of \$101,032.49 (the "Initial Payment"). Following completion of construction of the Project and a lease-up period, commencing on the next ensuing October 1 and continuing on October 1 of each succeeding year thereafter, Partnership shall pay to City annual payments in lieu of taxes (each a "Pilot Payment") in the full amount of the ad valorem tax amount that would otherwise be assessed and imposed by the City, subject to the right of protest described in Section 3 of this Agreement, were the Project not exempt from ad valorem taxation. The ad valorem tax amount described herein shall be inclusive of taxes assessed and imposed on real property as well as furniture, fixtures, equipment and business personal property, and is limited only to the taxes that would otherwise be assessed and imposed by the City and no other taxing jurisdiction.

(b) Pilot Payments shall be payable for a period of fifteen (15) years (the "Initial Term"), said 15-year period to commence on the date of Closing, unless terminated as provided in Section 4 of this Agreement. Upon the expiration of the Initial Term, and so long as the Project retains ad valorem tax exempt status, the Pilot Payments shall continue to be remitted annually in the amount described in the foregoing subsection (a) of this Section, subject to the right of protest in Section 3.

(c) All Pilot Payments shall be made, if at all, out of Net Cash from Operations (as defined in that certain Amended and Restated Limited Partnership of the Partnership dated December 22, 2017 (the "Partnership Agreement")) according to the priority of payment set forth in Section 6.1 of the Partnership Agreement. If there is not sufficient Net Cash from Operations to make any required annual Pilot Payment in any year, then such annual Pilot Payment shall be deferred, accrue without interest (subject in all cases to Section 1(d) below) and be paid out of subsequent distributions of the Partnership's Net Cash from Operations, if available, until all deferred Pilot Payments have been paid in full. Partnership shall maintain adequate books and records at the Project and shall make such books and records, including its audited financial statements, available to the City for inspection, at the City's expense, during normal business hours to enable confirmation of Net Cash from Operations and to verify compliance with the requirements of this provision.

(d) All Pilot Payments, other than the Initial Payment, shall be due and payable on October 1 of each year and shall become past due and delinquent if not paid by February 1 of the following year, notwithstanding a pending mediation or appraisal under subpart (e) of this Section. Each past due and delinquent Pilot Payment shall accrue penalties, interest, fees and collection costs at the same rates, in the same amounts, and in accordance with the same dates as ad valorem taxes; provided, however, that deferred amounts arising from insufficient Net Cash from Operations shall be exempt from penalties, interest, fees and costs.

(e) In the event that the parties are unable to reach an agreement as to the Pilot Payment for any year in the Initial Term or thereafter, the parties shall select a neutral mediator and the parties shall participate in good faith to mediate the dispute. In the event that the appraised value is not established by the appraisal district such that the Pilot Payment cannot be calculated, the parties shall agree upon a neutral appraiser who shall be compensated equally by each party to conduct a fair market value appraisal of the Project. The Pilot Payment for each year of this Agreement shall be the product of the appraised fair market multiplied by the then-current ad valorem tax rate.

(f) The parties stipulate and agree that the Pilot Payments made pursuant to this Agreement are in lieu of ad valorem taxes only, and are not in lieu of the charges and fees for other services provided by the City to the Project that are typically payable by other service users in the City apart from taxes, including but not limited to permit fees, utilities, and solid waste collection charges.

2. Term of the Agreement. The term of this Agreement shall be for an indefinite period of time expiring on the Project's loss of the ad valorem tax exemption under the Texas Tax Code (the "Exemption"). Consequently, the annual Pilot Payment shall only be due and payable as long as and during the time period the Exemption applies to the Project. At such time as the Project is no longer entitled to the Exemption, this Agreement shall cease and automatically terminate, and be of no further force and effect. No refunds of all or part of any previously-paid Pilot Payments shall be due.

3. Right to Protest. Notwithstanding anything contained herein to the contrary, Partnership retains, and City shall not attempt to restrict, the right of Partnership to protest any assessed taxable value of the Project in the same manner it could have done had the Project not been entitled to the Exemption following the Initial Term.

4. Termination of Tax Exempt Status. The Partnership may terminate or lose the Exemption at any time, and if it does so, this Agreement and Partnership's obligations hereunder, including payment of the Pilot Payments, shall immediately terminate and be of no force or effect. If and to the extent that the Project loses ad valorem tax exempt status partially or completely, the Pilot Payment due for the year in which the exempt status is lost shall be reduced or prorated accordingly. If Partnership shall transfer, sell, convey, lease or dispose of the Project or any interest therein, the agreement and the documents evidencing such transfer, sale, conveyance, lease or disposal must incorporate and preserve all rights granted to City under this Agreement to the extent that the Project remains subject to an exemption from ad valorem property taxes after such transfer, sale, conveyance, lease or disposal. Further, such transferee shall be liable for all unpaid

or deferred Pilot Payments required herein. City shall be notified of any such transfer, sale, conveyance, lease or disposal, of any of the Property at least thirty (30) days prior to such transfer.

5. Covenants Running with the Land. The provisions of this Agreement shall be deemed covenants running with the land, and this Agreement shall be recorded in Dallas County records as a deed restriction that shall survive transfers of ownership of the Project, subject to the limitations described in Section 4 hereof. Upon any foreclosure or other transfer of ownership in the Project, any successor shall be bound by the terms of this Agreement.

6. Applicable Law. This Agreement shall be construed under, governed and enforced in accordance with the laws of the State of Texas. Venue for any dispute arising out of the terms of this Agreement shall be in Dallas County, Texas.

7. Defenses and Immunities. Nothing herein shall be deemed a waiver or release of any defenses or immunities held by any party, all such defenses and immunities being expressly retained. There are no third-party beneficiaries to this Agreement and nothing herein shall be construed to confer or grant any right or interest to any person not a party hereto.

8. Notice. Any notice required under this Agreement shall be sent as follows:

City: City of Rowlett, Texas  
4000 Main Street  
Rowlett, Texas 75088  
Attention: City Manager

With a copy to: David M. Berman  
Nichols, Jackson, Dillard,  
Hager & Smith, LLP  
1800 Ross Tower  
500 Akard Street  
Dallas, Texas 75201

Partnership: Savannah at Lakeview GP, LLC  
c/o Rowlett Housing Finance Corporation  
4000 Main Street  
Rowlett, Texas 75088  
Attn: Rick Sheffield

With a copy to: 42EP IBC Rowlett Lakeview Fund, LP  
2660 Eastchase Lane, Suite 100  
Montgomery, AL 36117  
Attn: E. Michael Haynes, Jr.  
Fax: (334) 260-2533  
Email: m.haynes@42equity.com

9. Parties Bound. This Agreement shall be binding upon and inure to the benefit of the parties hereto, and their respective heirs, executors, administrators, legal representatives, successors and assigns where permitted by this Agreement. Each signatory to this Agreement represents and warrants that he/she has lawful authority to execute this Agreement on behalf of the Party for whom signed, and that he/she has lawful authority to bind the Party.

10. Legal Construction. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

11. Prior Agreements Superseded. This Agreement constitutes the sole and only agreement of the parties hereto and supersedes any prior understandings or written or oral agreements between the parties respecting the within subject matter, save and except those agreements entered into contemporaneously herewith or as are referred to herein.

12. Attorneys' Fees and Legal Expenses. Should either party hereto institute any action or proceeding in court to enforce any provision hereof or for damages by reason of any alleged breach of any provision of this Agreement or for any other judicial remedy, the prevailing party shall be entitled to receive from the losing party all actual and reasonable attorneys' fees and all court costs in connection with said proceeding.

13. Counterparts and Facsimiles. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. In addition, this Agreement may be executed by facsimile signatures and such signatures shall be deemed an original.

14. Modification. This Agreement may not be modified or amended except by a written instrument signed by the parties hereto and referring specifically to this Agreement.

15. Other Instruments. Each party shall, upon the request of the other party, execute, acknowledge and deliver any and all instruments reasonably necessary or appropriate to carry into effect the intention of the parties as expressed in this Agreement.

16. Rule of Construction. The parties acknowledge that each party and its counsel have reviewed and revised this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any amendments or exhibits hereto.

EXECUTED this the 20<sup>th</sup> day of December, 2017.

*[Signatures on following page]*



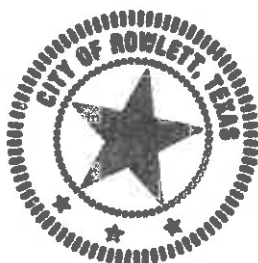
**THE CITY OF ROWLETT, TEXAS**

By: *Tammy Dana-Bashian*  
Tammy Dana-Bashian, Mayor

**ATTEST:**

*Laura Hallmark*  
Laura Hallmark, City Secretary

**TX LAKEVIEW SENIORS, LP**  
a Texas Limited Partnership



By: Savannah at Lakeview GP, LLC  
a Texas Limited Liability Company, its General  
Partner

By: *[Signature]*  
Its President

ACKNOWLEDGMENTS

STATE OF TEXAS §  
COUNTY OF DALLAS §

BEFORE ME, the undersigned authority, on this day personally appeared Rick Sheffield, President, known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of said Savannah at Lakeview GP, LLC, a Texas limited liability company, the general partner of TX Lakeview Seniors, LP, a Texas Limited Partnership, that he executed the same as the act of such entity for the purpose and consideration therein expressed, and in the capacity therein stated.

Given under my hand and seal of office, this 20<sup>th</sup> day of December, 2017.



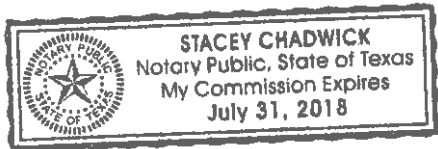
Stacey Chadwick  
Notary Public, State of Texas

My commission expires: 07-31-18

STATE OF TEXAS §  
COUNTY OF DALLAS §

BEFORE ME, the undersigned authority, on this day personally appeared Tammy Dana-Bashian, Mayor, City of Rowlett, Texas, known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of said City of Rowlett, Texas, a Texas municipal corporation, that she executed the same as the act of such entity for the purpose and consideration therein expressed, and in the capacity therein stated.

Given under my hand and seal of office, this 20<sup>th</sup> day of December, 2017.



Stacey Chadwick  
Notary Public, State of Texas

My commission expires: 07-31-18