

City of Providence

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

CHAPTER 2003-57

No. 677

AN ORDINANCE

TO ADOPT THE PAYMENT IN LIEU OF
TAXES AGREEMENT BY AND BETWEEN
THE CITY OF PROVIDENCE AND
TOCKWOTTON HOME

Approved October 7, 2003

Be it ordained by the City of Providence:

WHEREAS, Tockwotton Home is a 501(c)(3) non-profit corporation organized under the laws of Rhode Island, by legislative charter, in 1857 ("Tockwotton");

WHEREAS, Tockwotton is exempt from federal and state income taxation pursuant to I.R.C. §501(c)(3) and property taxation by state legislative charter:

WHEREAS, Tockwotton owns properties located at 75 East Street in Providence, Rhode Island as further described as Plat 17, Lot 110, as recorded in the Land Evidence Records at City Hall, Providence Rhode Island (the "Property");

WHEREAS, in 1864 Tockwotton constructed a brick building upon the Property in order to provide quality care to its residents which building has been expanded over time, and is furnished with personal property for its operations (collectively the improvements and furnishings now existing or hereinafter built or furnished on and/or to the Property shall be referred to as the "Facilities");

WHEREAS, the City, since 1994 has issued annual tax assessments to Tockwotton regarding the Property and the Facilities;

WHEREAS, Tockwotton has annually appealed the assessment to the Board of Tax Assessment Review for the City of Providence and has filed Complaint in the Superior Court seeking a declaratory judgment asserting that any and all attempts by the City to levy or collect taxes on the Property or the Facilities are unlawful and a nullity; and

No.

CHAPTER
AN ORDINANCE

IN CITY COUNCIL
APR 3, 2003
FIRST READING
REFERRED TO COMMITTEE ON
FINANCE

CLERK

THE COMMITTEE ON

Finance
Recommends

Be Continued
Adam M. Steen
7-23-03

CLERK

THE COMMITTEE ON
FINANCE

Approves Passage of
The Within Ordinance, as Amended

Adam M. Steen

8-28-03

CLERK

Councilman Segal, By Request

WHEREAS, the parties seek to settle and permanently resolve this dispute by establishing an annual PILOT Payment and agreeing that the Property and Facilities are tax exempt.

NOW THEREFORE BE IT ORDAINED, BY THE CITY OF PROVIDENCE:

SECTION 1. The City Council of the City of Providence hereby adopts the Payment in Lieu of Taxes Agreement in the form substantially as attached hereto as Exhibit A (the "Agreement") as being in the best interest of the City and its citizens.

SECTION 2. The City Council agrees to support legislation in the form substantially attached to the Agreement as Exhibit "1", in order to finalize the intent of the Agreement.

SECTION 2. This Ordinance shall take effect immediately upon passage.

IN CITY COUNCIL
SEP 18 2003
FIRST READING
READ AND PASSED

Michael R. Clement CLERK

IN CITY
COUNCIL
OCT 2 2003
FINAL READING
READ AND PASSED

Michael R. Clement PRESIDENT
Michael R. Clement CLERK

APPROVED

[Signature]

MAYOR

10/7/03

EXHIBIT A

PAYMENT IN LIEU OF TAXES AGREEMENT

THIS PAYMENT IN LIEU OF TAXES AGREEMENT ("PILOT" or "AGREEMENT") is made and entered into as of the ____ day of _____, 2003 ("Execution Date") by and among the City of Providence, a municipal corporation organized and existing under the laws of the State of Rhode Island (the "City") and Tockwotton Home, a non-profit corporation organized under the laws of the State of Rhode Island and formerly known as the Home for Aged Women ("Tockwotton") (hereinafter the City and Tockwotton are each individually referred to as a "Party" and, collectively, as the "Parties"). This Agreement is intended to settle any and all disputes regarding the validity of any past tax assessment by the City upon any and all real or personal property of Tockwotton as well as establish annual payments in lieu of taxes ("PILOT Payments") to be paid to the City by Tockwotton in connection with the Property and Facilities (as defined herein).

RECITALS

WHEREAS, Tockwotton is a non-profit corporation organized under the laws of Rhode Island, by legislative charter, in 1857, as the "Home for Aged Women";

WHEREAS, Tockwotton is exempt from federal and state income taxation pursuant to I.R.C. § 501(c)(3) and property taxation by state legislative charter ("Corporate Charter of Tockwotton");

WHEREAS, Tockwotton owns property located at 75 East Street in Providence, Rhode Island as further described as Plat 17, Lots 17, 110, 111, and 113 as recorded in Land Evidence Records at City Hall, Providence, Rhode Island (the "Property");

WHEREAS, in 1864, Tockwotton constructed a brick building upon the Property in order to provide quality care to its residents which building has been expanded over time and is furnished with personal property for its operations (the improvements and furnishings now existing or hereinafter build or furnished on and/or to the Property shall be referred to hereinafter as the "Facilities").

WHEREAS, the City since 1994 has issued annual tax assessments to Tockwotton regarding the Property and the Facilities;

WHEREAS, Tockwotton has challenged any and all assessments and has filed a Complaint in the Superior Court seeking a declaratory judgment asserting that any and all attempts by the City to levy or collect taxes on the Property or Facilities are unlawful and a nullity; and

WHEREAS, the Parties seek to settle and permanently resolve this dispute by: (i) allowing Tockwotton, without admitting any liability, to make a cash payment to settle any and all disputes regarding alleged liabilities in prior tax years, (ii) establishing an annual payment in lieu of taxes ("PILOT Payment"), and (iii) agreeing that the Property is tax exempt pursuant to state legislative charter.

NOW THEREFORE, in consideration of the mutual agreements, understandings and obligations set forth herein, as well as other good and valuable consideration, the sufficiency of which is hereby acknowledged, the City and Tockwotton hereby agree as follows:

1. Term. The term of this Agreement shall be for a period commencing on the Execution Date and continuing in perpetuity thereafter. However, the Agreement may be terminated, with respect to the Property and the Facilities by either Party in the event that:

(a) Tockwotton disposes of the Property and/or Facilities, provided, however, that the City hereby agrees and recognizes that any property or facilities acquired or built by Tockwotton within the City after the Execution Date shall be included in the definition of "Property" and "Facility" under all the terms and conditions of this Agreement, as limited by Section 2 below, (b) Tockwotton loses its 501(c)(3) status, (c) Tockwotton leases the Property or Facilities to a non-501(c)(3) entity, or (d) there is a change in state law affecting the tax exempt status of the real and personal property of non profit entities that are similarly situated to Tockwotton, i.e. located within the City of Providence and provide health care, nursing, and other services to the elderly. In the event that Corrective Legislation, as described in Section 5 below, is not enacted in a form acceptable to Tockwotton, by January 1, 2005, Tockwotton, at its sole discretion, shall have the right to terminate this Agreement.

2. Payment of Taxes.

(a) Tockwotton hereby agrees that during the term of this Agreement Tockwotton shall make an annual PILOT Payment in the amount of Twenty Thousand Dollars (\$20,000.00) in lieu of real property and personal property taxes and assessments of every kind and nature which would now or hereafter otherwise be levied upon the Property or Facilities and the City agrees to accept the PILOT Payments as voluntary contributions by Tockwotton for any and all ratable real and personal property up to and including an amount not to exceed the exemption from taxation as stipulated in the Corporate Charter of Tockwotton, as such charter may be amended from time to time by the General Assembly of the State of Rhode Island.

(b) The City shall send to Tockwotton annually in the month of June a statement of the PILOT Payment for the then current year. This annual statement for PILOT Payment will cover the period from January 1 through December 31 during each year of this Agreement. Payments due to the City, pursuant to the terms of this Agreement, maybe made in either a lump sum during the first quarter of the applicable tax year or in equal quarterly installments. If the quarterly payments are to be made, they shall be due on the same dates that quarterly taxes are due for all other taxpayers in the City.

(c) PILOT Payments not made by Tockwotton on or before the due date shall be subject to interest and penalties as authorized by R.I.G.L. §44-5-8. PILOT Payments hereunder shall be made by Tockwotton directly to the City Collector, referencing the PILOT Agreement.

(d) The liability for annual PILOT Payments due and owing under this Agreement shall constitute an obligation of Tockwotton and the City shall be granted a first lien on the Project Taxable Property, which lien shall be of the same priority and entitle the City to the same foreclosure remedy as the lien and foreclosure remedy provided under applicable laws and ordinances with respect to real property and personal property taxes. The City agrees to provide Tockwotton with the same notice that it provides other taxpayers prior to exercising any foreclosure remedy available under the Agreement.

3. Satisfaction of Obligations

(a) In exchange for a one-time payment of One Hundred and Twenty Thousand Dollars (\$120,000), the City covenants that Tockwotton shall have no tax liability due and owing the City for the 2002 tax year or any prior year and further agrees to abate any

and all accrued tax, penalties, and interest allegedly applicable to the Property and Facilities.

(b) The City agrees that so long as annual PILOT Payments are made by Tockwotton in accordance with the terms of this Agreement, the City shall, for each applicable year during the term of this Agreement, accept said payments in full satisfaction of: (i) any and all obligations of Tockwotton for said year under this Agreement as well as, (ii) any and all assessments as have been or might be made by the City in the applicable year.

4. Settlement of Legal Claim. Tockwotton hereby agrees to dismiss with prejudice the claim it filed in Superior Court dated December 4, 1997.

5. Corrective Legislation. The City hereby agrees to utilize best faith efforts to actively support corrective legislation in conformance with this Agreement which shall be submitted to the General Assembly in a form substantially similar to Exhibit 1 attached hereto ("Corrective Legislation").

6. Entire Agreement. This Agreement constitutes the entire agreement of the Parties hereto with respect to the subject matter hereof. This Agreement may only be modified or amended in writing and with the consent of the Parties hereto. No oral modification shall be enforceable or effective.

7. Notices. All notices, certificates, requests, demands, consents, approvals, and other communications which may or are required to be served or given hereunder (for the purpose s of this section, collectively called "Notices" shall be in writing and shall be sent by registered or certified mail, postage prepaid, return receipt requested and received or overnight delivery by a recognized public or private carrier, or by facsimile, in either

case as evidenced by a receipt or other evidence of delivery showing the date, time, and, for a facsimile, telephone number or receipt and addressed to the party to receive such

Notice as set forth below:

If to: City of Providence
Providence City Hal
25 Dorrance Street
Providence, Rhode Island
Attn: Mayor
Fax (401)

Copies to: Joseph Fernandez, City Solicitor
Law Department
275 Westminster Street
Providence, Rhode Island 02903
Fax: (401) 351-7596

and: John Gelati, Tax Assessor
Providence City Hall
25 Dorrance Street
Providence, Rhode Island

If to: Tockwotton Home
75 East Street
Providence, Rhode Island 02903
Attn: Assisted Living Administrator and Director
of Finance
Fax: (401) 421-0550

Copy to: Gary R. Pannone, Esquire
Holland & Knight, LLP
1 Financial Plaza, Suite 1800
Providence, Rhode Island 02903
Fax: (401) 553-6890

8. Applicable Law. This Agreement shall be construed under the laws of the State of Rhode Island.

9. Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original and all of which, when taken together, shall constitute one agreement. The exchange of fully executed Agreement (in counterparts or otherwise) by fax shall be sufficient to bind the Parties to the terms and conditions of this Agreement.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on
the date set forth above.

CITY OF PROVIDENCE

Witness:
Name:

By: _____
David N. Cicilline
Mayor

TOCKWOTTON HOME

Witness:
Name:

By: _____
Name: _____
Title: President, Board of Directors

Exhibit 1

Corrective Legislation

S 809, Substitute A attached

STATE OF RHODE ISLAND
COUNTY OF PROVIDENCE

In the _____ of _____ in said County on this
_____ day of _____ 2003, before me personally appeared David N.
Cicilline to me personally known, who, being by me duly sworn, did say that he is the
Mayor of the City of Providence, a municipality in the State of Rhode Island and that this
Agreement was signed by him on behalf of the City of Providence, and he acknowledged
that said Agreement was the free act and deed of said City of Providence and his free act
and deed in his capacity as said Mayor.

Notary Public: _____

My Commission Expires: _____

STATE OF RHODE ISLAND
COUNTY OF PROVIDENCE

In the _____ of _____ in said County on this
_____ day of _____, 2003, before me appeared
_____, to me personally known, who, being by me duly sworn, did say
that she is the President of the Board of Directors of Tockwotton Home and has been
duly authorized by a Resolution of the Board of Directors of the Tockwotton Home to
execute this Agreement and that this Agreement was signed by him on behalf of the
Tockwotton Home, and he acknowledged that said Agreement was the free act and deed
of said Tockwotton Home and his free act and deed in her capacity as President of the
Board of Directors.

Notary Public: _____

My Commission Expires: _____