

Mr. Nolan introduced and offered for adoption of the following Resolution:

R-10-131

RESOLUTION ENTERING INTO AN AGREEMENT WITH THE MONMOUTH HOUSING ALLIANCE d/b/a AFFORDABLE HOUSING ALLIANCE FOR A PAYMENT IN LIEU OF TAXES (“PILOT”) AGREEMENT

WHEREAS, the Mayor and Council of the Borough of Highlands have found that entering into an agreement with the Monmouth Housing Alliance d/b/a Affordable Housing Alliance for a PILOT agreement is in the best interests of the community; and

WHEREAS, this agreement recognizes the existence of five (5) rental units for low to moderate income individuals with special needs; and

WHEREAS, based upon the evidence presented in the currently pending Tax Appeal, the Tax Assessor recommends that this PILOT agreement be put in place.

NOW THEREFORE BE IT RESOLVED by the Mayor and Council of the Borough of Highlands as follow:

1. The project is or will be situated on that Parcel of land known and designated as Block 58, Lot 3.01 as shown on the Official Assessment Map of the municipality of Highlands and more commonly referred to as 50 Miller Street, Highlands, New Jersey. This is a five (5) unit rental for low to moderate-income individuals with special needs.
2. As of the date the Sponsor executes this agreement concerning the Project, the land and improvements comprising the Project shall be exempt from real estate taxes, provided that the Sponsor shall make payments in lieu of taxes to the Municipality as provided hereinafter. The exemption of the project from real property taxation and the Sponsor’s obligation to make payments in lieu of taxes is not contingent on its use in satisfying the Municipalities COAH obligation pursuant to N.J.S.A. 52:27D-301 et seq. and COAH’s N.J.A.C. 5:94-1 et seq. However, if used by the Municipality pursuant to the aforesaid authority and for the aforesaid purposes shall not exceed fifty (50) years. The Sponsor shall make payment to the Municipality of an annual service charge in lieu of taxes in such amount as follows:
 - A. Sponsor shall make payment to the Municipality in an amount equal to ten (10%) percent of the annual gross operating revenue from the date of this agreement pursuant to the procedures set forth more fully below.

- B. As used herein, "Gross Operating Revenue" means the total annual gross rental or other income of the Sponsor from the Project, which shall not include the cost of gas, electricity, heating fuel for direct housing units or the cost of water and sewage as part of the operation of the Project. Gross Operating Revenue shall also not include any rental subsidy contributions received from any Federal or State program.
- C. The amount of payment in lieu of taxes to be paid shall be as a result of an annual audit as set forth in Paragraph D below but the first payment shall be based on Exhibit "A" attached hereto. It is expressly understood and agreed that the statement aforesaid represents revenue projections provided to the Municipality as part of the Sponsor's application for an agreement for payment in lieu of taxes and are estimates only. The actual payments in lieu of taxes to be paid by the Sponsor shall be determined by annual audits as set forth more fully below. Sponsor may have to provide revenue projections provided to the Municipality between audits.
- D. (a) Payment by the Sponsor shall be made on a quarterly basis in accordance with bills issued by the Tax Collector of the Municipality in the same manner and on the same dates as real estate taxes are paid to the Municipality and shall be based upon the Gross Operating Revenues of the previous quarter. No later than three (3) months following the end of the first fiscal year of operation after signing this agreement and each year thereafter, that this Agreement remains in effect, the Sponsor shall submit to the Municipality a certified, audited financial statement of the operation of the Project (the "Audit"), setting forth the Gross Operating Revenues and the total payments in lieu of taxes due to the Municipality calculated at 10 percent of Gross Operating Revenues as defined above and the Sponsor shall simultaneously pay the amount calculated either immediately based on the Audit or based on projection until the next annual Audit based on the preceding fiscal year payment. The Municipality may accept any such payment without prejudice to its right to challenge the amount due. In the event that the payment made by the Sponsor for any fiscal year shall exceed the Audit Amount for such fiscal year, the Municipality shall credit the amount of such excess to the account of the Sponsor.
- (b) All payments pursuant to this Agreement shall be in lieu of taxes and the Municipality shall have all the rights and remedies of tax enforcement granted to Municipalities by law just as if said payments continued regular tax obligations on real property within the Municipality. If, however, the Municipality disputes the total amount of the annual payment in lieu of taxes due, based upon the Audit, it

may apply to the Superior Court, Chancery Division for an accounting of the service charge due the Municipality, in accordance with this Agreement. Any such action must be commenced within one year of the receipt of the Audit by the Municipality.

(c) In the event of any delinquency in the aforesaid payment, the Municipality shall give notice to the Sponsor in the manner set forth in 2 H below, prior to any legal action being taken.

- E. The tax exemption provided herein shall apply only so long as the Sponsor or its successors and assigns and the Project remain low to moderate-income rental for special needs tenants, but in no event longer than the term identified in paragraph 2. In the event of (a) sale, transfer or conveyance of the Project by the Sponsor or (b) a change in the organizational structure of the Sponsor, this Agreement shall be assigned to the Sponsor's successor and shall continue in full force and effect so long as the successor entity qualifies as low to moderate-income tenants for special needs and any law applicable at the time of the transfer of this Agreement to the Sponsor's successor or assign.
- F. Upon any termination of such tax exemption, whether by affirmative action of the Sponsor, its successor and assigns, or by the terms of this agreement, or by virtue of the provisions of or any other applicable law, the Project shall be taxed as omitted property in accordance with the law.
- G. The Sponsor, its successors and assigns shall, upon request, permit inspection of property, equipment, Buildings and other facilities of the Project and also documents and papers by representatives duly authorized by the Municipality. Any such inspection, examination or audit shall be made during reasonable hours of the business day, in the presence of an officer or agent of the Sponsor or its successor and assigns.
- H. Any notice or communication by one party to the other hereafter shall be sent by certified mail, return receipt request addressed as follow:
 - (a) When sent by Municipality to the Sponsor, it shall be addressed to Monmouth Housing Alliance, 59 Broad Street, Eatontown, New Jersey, 07724 or to such other address as the Sponsor may hereafter designate in writing.
 - (b) When sent by the Sponsor to the Municipality, it shall be addressed to the Borough Clerk, 171 Bay Avenue, Highlands, New Jersey, 07732 or to such other address as the Municipality may designate in writing.

- I. In the event of a breach of this Agreement by either of the parties hereto or a dispute arising between the parties in reference to the listed provisions as set forth herein either party may apply in the Superior Court of New Jersey, to settle and resolve said dispute in such fashion as will tend to accomplish the purposes of the law.

Seconded by Ms. Kane and adopted on the following roll call vote:

ROLL CALL:

AYES: Mr. Nolan, Mr. O'Neil, Mr. Francy, Ms. Kane, Mayor Little

NAYES: None

ABSENT: None

ABSTAIN: None

DATE: June 16, 2010

CAROLYN CUMMINS, BOROUGH CLERK

C E R T I F I C A T I O N

I hereby certify that the foregoing is a true copy of a Resolution adopted by the Borough of Highlands on the 16th day of June, 2010.

BOROUGH CLERK/DEPUTY CLERK