

**RESOLUTION OF THE TOWNSHIP OF WEST ORANGE, IN THE COUNTY  
OF ESSEX, AUTHORIZING A PAYMENT IN LIEU OF TAX AGREEMENT  
WITH VALLEY ROAD RESIDENTIAL, LLC**

**WHEREAS**, Valley Road Residential, LLC (hereinafter referred to as the “Sponsor”) proposes to construct a housing project known as Valley Road Residential Development that will provide 100 units of affordable family rental housing (hereinafter referred to as the “Project”) pursuant to the provisions of the New Jersey Housing and Mortgage Finance Agency Law of 1983, as amended (N.J.S.A. 55:14K-1 et seq.), the rules promulgated thereunder at N.J.A.C. 5:80-1.1 et seq. and all applicable guidelines promulgated thereunder (the foregoing hereinafter collectively referred to as the “HMFA Requirements”) within the Township of West Orange (hereinafter referred to as the “Municipality”) on a site described as Block 9, Lots 1, 7, 44, 50 and 56, as shown on the Official Assessment Map of the Township of West Orange, Essex County; and

**WHEREAS**, the Project will be subject to the HMFA Requirements and the mortgage and other loan documents executed between the Sponsor and the New Jersey Housing and Mortgage Finance Agency (hereinafter referred to as the “Agency”); and

**WHEREAS**, pursuant to the HMFA Requirements, the Municipality has determined by Resolution adopted August 20, 2013, that there is a need for this rental housing project in the Municipality; and

**WHEREAS**, the Sponsor has presented to the Municipality a revenue projection of the Project which sets forth the anticipated revenue to be received by the Sponsor from the operation of the Project as estimated by the Sponsor and the Agency, a copy of which is attached hereto and made a part hereof as Exhibit A,

**NOW, THEREFORE, BE IT RESOLVED** by the Township of West Orange in the County of Essex, New Jersey as follows:

1. The Municipality reaffirms its determination by Resolution dated August 20, 2013 that the proposed family rental project will meet or meets an existing housing need.
2. The Municipality does hereby adopt this Resolution and makes the determination and finding herein contained by virtue of, pursuant to, and in conformity with the provisions of the HMFA Requirements with the intent and purpose that the Agency shall rely thereon in making a mortgage loan to the Sponsor, which shall construct, own and operate the Project.
3. The Municipality does hereby adopt this Resolution with the further intent and purpose that from the date of execution of the Agency mortgage, the proposed Project, including both the land and improvements thereon, will be exempt from real property taxation as provided in the HMFA Requirements, provided that payments in lieu of taxes for municipal services supplied to the Project are

made to the municipality in such amounts and manner set forth in the Agreement for Payments in Lieu of Taxes attached hereto as Exhibit B.

4. The Mayor is hereby authorized and directed to execute, on behalf of the Municipality, the Agreement for Payments in Lieu of Taxes in substantially the form annexed hereto as Exhibit B.
5. The Council understands and agrees that the revenue projections set forth in Exhibit A are estimates and that the actual payments in lieu of taxes to be paid by the Sponsor to the Municipality shall be determined pursuant to the Agreement for Payments in Lieu of Taxes executed between the Sponsor and Municipality.

#### **CERTIFICATION**

I, Karen J. Carnevale, Clerk of Township of West Orange, in the County of Essex, do hereby certify that the foregoing is a true and correct copy of a resolution duly adopted by the Township Council at a regular meeting held on December 3, 2013.

IN WITNESS WHEREOF I have hereunto set my hand and affixed the seal of said Township this \_\_\_\_\_ day of \_\_\_\_\_ 2013.

\_\_\_\_\_  
Karen J. Carnevale, RMC  
Township Clerk

\_\_\_\_\_  
Susan McCartney, Council President

**Adopted: December 3, 2013**

EXHIBIT A

FINANCIAL ESTIMATE  
RELATING TO ANNUAL SERVICE CHARGES  
OF  
VALLEY ROAD RESIDENTIAL, LLC

With regard to a housing development to be constructed, known as Valley Road Residential, to be located in the Township of West Orange (Essex County), New Jersey.

|                                                                  |             |
|------------------------------------------------------------------|-------------|
| Estimated Rent Payable by Residential Tenants                    | \$1,131,828 |
| Less: Estimated Vacancy 7%                                       | \$ 79,228   |
| Estimated Project Revenues                                       | \$1,052,600 |
| Estimated Municipal Service Charge of 10% of<br>Project Revenues | \$ 105,260  |

Total Number of Residential Units: 100

## EXHIBIT B

### AGREEMENT FOR PAYMENT IN LIEU OF TAXES

THIS AGREEMENT, made this \_\_\_\_ day of \_\_\_\_\_, 2013, between Valley Road Residential, LLC, a Limited Liability Company of the State of New Jersey, having its principal office at One Parker Plaza, Fort Lee, New Jersey 07024 (hereinafter the "Sponsor") and the Township of West Orange, a municipal corporation in the County of Essex and State of New Jersey (hereinafter the "Municipality").

#### WITNESSTH:

In consideration of the mutual covenants herein contained and for other good and valuable consideration, it is mutually covenanted and agreed as follows:

1. This Agreement is made pursuant to the authority contained in Section 37 of the New Jersey Housing and Mortgage Finance Agency Law of 1983 (N.J.S.A. 55:14K-1 et seq.) (hereinafter "HMFA Law") and a Resolution of the Municipality dated December 3, 2013 (the "Resolution") and with the approval of the New Jersey Housing and Mortgage Finance Agency (hereinafter the "Agency"), as required by N.J.S.A. 55:14K-37.

2. The Sponsor proposes to construct a project consisting of 100 units of affordable rental housing (the "Project") to be situated on those parcels of land designated as Block 9, Lots 1, 7, 44, 50 and 56, as shown on the Official Assessment Map of the Township of West Orange.

3. As of the date the Sponsor executes a first mortgage upon the Project in favor of the Agency (hereinafter referred to as the "Agency Mortgage"), the land and improvements comprising the Project shall be exempt from real property 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 shall not extend beyond the date on which the Agency Mortgage is paid in full, which according to the HMFA Law, may not exceed fifty (50) years.

4. (a) The Sponsor shall make payment to the Municipality of an annual service charge in lieu of taxes in such amounts as follows:

- (1) From the date of the execution of the Agency Mortgage until the date of Substantial Completion of the Project, the Sponsor shall make payment to the Municipality in an amount equal to the amount of taxes due on the property for the year preceding the recording of the Agency Mortgage. As used herein, "Substantial Completion" means the date upon which the Municipality issues the Certificate of Occupancy for all units in the Project.
- (2) From the date of Substantial Completion of the Project and for the remaining term of the NJHMFA Mortgage, the Sponsor shall make payment to the Municipality in an amount equal to 10 percent of the Project Revenues.

(b) As used herein, "Project Revenues" means the total annual gross rental or carrying charge or other income of the Sponsor from the Project, and less vacancies if any.

(c) The amount of payment in lieu of taxes to be paid pursuant to paragraphs (a) or (b) above is calculated in Exhibit "A" attached hereto. It is expressly understood and agreed that the revenue projections provided to the Municipality as set forth in Exhibit "A" and as part of the Sponsor's application for an agreement for payments in lieu of taxes are estimates only. The actual payments in lieu of taxes to be paid by the Sponsor shall be determined pursuant to Section 5 below.

5. (a) Payments 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 Project Revenues of the previous quarter. No later than three (3) months following the end of the first fiscal year after (i) the date of Substantial Completion 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 Project Revenues and the total payments in lieu of taxes due to the Municipality calculated at 10 percent of Projected Revenues as set forth in the Audit (the "Audit Amount"). The Sponsor simultaneously shall pay the difference, if any, between (i) the Audit Amount and (ii) payments made by the Sponsor to the Municipality for the preceding fiscal year. The Municipality may accept any such payment without prejudice to its rights to challenge the amount due. In the event that the payments 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 rights and remedies of tax enforcement granted to Municipalities by law just as if said payments constituted 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 it, 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 and HMFA Law. Any such action must be commenced within one year of the receipt of the Audit by Municipality.

(c) In the event of delinquency in the aforesaid payments, the Municipality shall give notice to the Sponsor and the NJHMFA in the manner set forth in 9(a) below, prior to any legal action being taken.

6. The tax exemption provided herein shall apply only so long as the Sponsor or its successor and assigns and the Project remain subject to the provisions of the HMFA Law and Regulations made thereunder and the supervision of the Agency, but in no event longer than the term of the Agency Mortgage. In the event of (a) 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 under the HMFA Law or any other state law applicable at the time of the assignment of this Agreement and is obligated under the Agency Mortgage.

7. Upon termination of such tax exemption, whether by affirmative action of the Sponsor, its successors and assigns, or by virtue of the provisions of the HMFA Law, or any other applicable state law, the Project shall be taxed as omitted property in accordance with the law.

8. The Sponsor, its successor 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 successors or assigns.

9. Any notice or communication sent by either party to the other hereunder shall be sent by certified mail, return receipt requested, addressed as follows:

- (a) When sent by the Municipality to the Sponsor, it shall be addressed to Joseph Alpert, One Parker Plaza, Fort Lee, New Jersey, 07024 or to such other address as the Sponsor may hereafter designate in writing and a copy of said notice or communication by the Municipality to the Sponsor shall be sent by the Municipality to the New Jersey Housing and Mortgage Finance Agency, 637 South Clinton Avenue, P.O. Box 18550, Trenton, New Jersey 08650-2085.
- (b) When sent by the Sponsor to the Municipality, it shall be addressed to the Office of the Business Administrator or to such other address as the Municipality may designate in writing, and a copy of said notice or communication by the Sponsor to the Municipality shall be sent by the Sponsor to the New Jersey Housing and Mortgage Finance Agency, 637 Clinton Avenue, P.O. Box 18550, Trenton, New Jersey 08650-2085.

10. 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 terms and provisions as set forth herein, either party may apply to the Superior Court, Chancery Division, to resolve said dispute in such fashion as will accomplish the purposes of the HMFA Law.

11. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement. It shall not be necessary in making proof of this Agreement or produce or account for more than a sufficient number of counterparts to evidence the execution of this Agreement by each party hereto.

**IN WITNESS WHEREOF**, we have hereunto set our hands as of the date first written above.

ATTEST

**VALLEY ROAD RESIDENTIAL, LLC**

\_\_\_\_\_

By:\_\_\_\_\_

Joseph Alpert  
Co-Managing Member

ATTEST

**TOWNSHIP OF WEST ORANGE**

\_\_\_\_\_

By:\_\_\_\_\_