

RESOLUTION NO. 115-2013

**RESOLUTION OF THE MAYOR AND COMMITTEE OF THE TOWNSHIP OF
HARRISON, COUNTY OF GLOUCESTER, STATE OF NEW JERSEY COMMITTING
AFFORDABLE HOUSING FUNDS FOR 58 WOODSTOWN ROAD (BLOCK 52, LOT 8),
KNOWN AS THE “MULLICA WEST” PROJECT**

WHEREAS, Mullica West, Ltd. (Mullica) is the owner of certain real property located at 58 Woodstown Road, Mullica Hill, New Jersey 08062, designated as Lot 8 in Block 52 as shown on the Harrison Township Tax Map (the property or subject property); and

WHEREAS, the subject property is improved with a seven building, 168-unit apartment complex and associated site improvements, known as the Mullica West Apartments or Mullica West; and

WHEREAS, Mullica West was developed and constructed over thirty years ago pursuant to a loan obtained from the Farmers Home Administration of the United States Department of Agriculture (“FmHA”) under Section 515 of the Housing Act of 1949, 42 U.S.C. ' 1485, a program adopted to further the Federal Government’s interest in providing rental housing for low and moderate income persons; and

WHEREAS, under the terms of the FmHA loan, Mullica was and is required to preserve the property for the use and occupancy of low and moderate income tenants for the life of the loan; and

WHEREAS, by the mid-1980s, Congress became concerned that increasing numbers of loans made pursuant to §§515 and 521 of the Housing Act of 1949 were being prepaid, thereby decreasing the amount of available housing for low-to-moderate income occupants, and as such, it passed the Emergency Low Income Housing and Preservation Act of 1987 (ELIHPA) and the Housing and Community Development Act of 1992 (HCDA), imposing restrictions and procedural requirements on a developer / property owner before prepayment of any §515 or §521 mortgage could be accepted by FmHA; and

WHEREAS, in or about 1990, Mullica notified FmHA of its intent to prepay its FmHA loan early, and on March 14, 1991, the FmHA informed Mullica that it had demonstrated the ability to pay its loan in full, and as a result, the FmHA offered Mullica an incentive loan package to continue the affordability restrictions for a twenty year period; and

WHEREAS, Mullica accepted FmHA’s incentive loan package, and on June 19, 1991 entered into a 45-year, FmHA incentive equity loan, the terms of which provided that Mullica agreed to use the housing for the purpose of housing very low-, low- and moderate-income people eligible for occupancy as provided in FmHA regulations for a period of twenty years beginning on the date of the loan, the result of which obligated Mullica to maintain the subject property’s apartment units for very low, low and moderate income renters until June 18, 2011; and

WHEREAS, in or about 2007, the Township, recognizing that the affordability controls on Mullica West were due to expire in 2011, began discussions with Mullica regarding the potential for extending the affordability controls so as to preserve the units for affordable housing purposes; and

WHEREAS, the Township staff and professionals began to examine the potential ability to extend the expiring controls by providing to Mullica an incentive subsidy from the Township's affordable housing funds, providing tax relief, or utilizing other methods to extend the affordability controls; and

WHEREAS, the Harrison Township Planning Board (now the Harrison Township Joint Land Use Board) identified the property as a site suitable for addressing a portion of the Township's fair share obligation, as the terms of the FmHA loan provides for the release of all affordability controls upon Mullica's payoff of the loan; and

WHEREAS, the Planning Board tasked its counsel with monitoring a challenge brought by Mullica against the federal government regarding the FmHA loan agreement; and

WHEREAS, by decision in Tamerlane, Ltd., et al. v. U.S., 550 F.3d 1135 (C.A.Fed. 2008), the court held that the transactions underpinning Mullica's acceptance of the 1991 incentive loan triggered a breach of the original FmHA loan agreement by the federal government, but upheld the lower court's dismissal of the action on statute of limitations grounds, and of particular relevance to the Township regarding questions raised about the existing affordability controls, the court in Tamerlane held that the twenty-year use restriction of the incentive loan obligated Mullica to maintain the apartments as affordable housing units until 2011, and thereafter they would be subject to the terms of the original loan agreement, thereby clarifying that the incentive loan's affordability controls would expire on June 11, 2011, and would be subject to release anytime thereafter on Mullica's payoff of its FmHA loan; and

WHEREAS, based upon the Township's efforts, the clarity regarding the affordability restrictions from the Tamerlane decision, and Mullica's willingness to continue discussions with the Township regarding extending the affordability controls, the Mullica West project was included as a project for an extension of expiring controls in the Township's Housing Plan Element and Fair Share Plan, adopted by the Planning Board on November 20, 2008, and submitted to the New Jersey Council on Affordable Housing ("COAH") as part of the Township's COAH petition for third round substantive certification on December 31, 2008; and

WHEREAS, following the filing of the Township's petition for third round substantive certification, Mullica advised the Township of its desire to sell Mullica West upon the expiration of the affordability controls, but indicated its willingness to continue to work with the Township if a purchaser could be found that would be interested in purchasing Mullica West and preserving the units for affordable housing purposes; and

WHEREAS, in accordance with the requirements of its FmHA loan, in or about 2011, Mullica served notice on its residents that the affordability controls would be expiring on June 18, 2011, and of its intention to release the controls, thereby converting the apartments to market rate units; and

WHEREAS, while continuing discussions with the Township regarding the potential sale of the complex, Mullica has continued the process set forth by FmHA / United States Department of Agriculture (“USDA”) – Rural Development, for prepayment of its loans, which would enable Mullica to release the affordability restrictions and operate or sell the subject property at market-rate for non-restricted housing or other purposes; and

WHEREAS, Mullica has secured an appraisal in connection with its FmHA / USDA – Rural Development application for prepayment, which has valued the subject property as restricted for affordable housing purposes, and as unrestricted; and

WHEREAS, pursuant to the § 515 Loan Agreement and servicing requirements, prior to pre-payment of the FmHA loan, the property must be offered for sale to a non-profit corporation, which represents one of the last chances to preserve the property for affordable housing purposes because if a suitable non-profit is not found or is unable to purchase the property, the FmHA loan may immediately thereafter be prepaid by the property owner and the affordable housing restrictions released; and

WHEREAS, United Cerebral Palsy of Northern, Central and Southern, NJ, Inc. (“UCP”) is a not-for-profit organization that provides an array of services to people with disabilities and their families throughout the State of New Jersey, and Rukenstein & Associates, LLC (“RA”) is a professional planning and grants consulting firm specializing in developing affordable housing opportunities in the State of New Jersey; and

WHEREAS, UCP as the Sponsor, and RA as the developer (jointly “UCP/RA”), have entered into a contract with Mullica to purchase Mullica West for the purposes of rehabilitating and preserving Mullica West for affordable housing purposes; and

WHEREAS, UCP/RA are actively working with FmHA / USDA Rural Development and the New Jersey Housing & Mortgage Finance Agency (“NJHMFA”) to secure final funding for the acquisition, preservation and rehabilitation of Mullica West; and

WHEREAS, UCP/RA also propose to construct in a future “Phase II” 24 additional affordable housing units and a 2,500 square foot community building, which if/when completed, will result in a total of 192 units of multi-family affordable housing; and

WHEREAS, the Township has actively worked with Mullica, UCP/RA and the USDA-Rural Development to facilitate this opportunity; and

WHEREAS, the Township supports, endorses and wishes to assist UCP/RA in this project, as this project will result in the preservation, upgrade and rehabilitation of 168 multi-family units whose affordability controls under FmHA have already expired and will be released

if UCP/RA is not able to purchase the subject property from Mullica, and will also result in the construction of 24 new affordable housing units, a community building and the modernization and enhancement of the subject property and Mullica West complex; and

WHEREAS, the project furthers the intent and purposes of the Mount Laurel Doctrine, So. Burlington County NAACP v. Twp. of Mount Laurel, 67 N.J. 151, *appeal dismissed and cert. denied*, 423 U.S. 808 (1975) (“Mount Laurel I”) and So. Burlington County NAACP v. Twp. of Mount Laurel, 92 N.J. 158 (1983) (“Mount Laurel II”), the New Jersey Fair Housing Act, N.J.S.A. 42:27D-301 *et seq.*, and §515 of the Housing Act of 1949, 42 U.S.C. ' 1485, by restricting for affordable housing purposes 168 dwelling units whose existing affordability controls are otherwise about to be released, and providing 24 proposed new multi-family rental units; and

WHEREAS, the project meets the requirements of COAH’s third round rules, N.J.A.C. 5:97-6.15, as all of the housing units will comply with N.J.A.C. 5:97-9 and the Uniform Housing Affordability Controls, N.J.A.C. 5:80-26.1 *et seq.* (“UHAC”), the subject property meets the site suitability criteria set forth in N.J.A.C. 5:97-3.13, the units shall meet all local building codes, UCP/RA has demonstrated to the Township the projected sources of funding, and the units will not be restricted to youth(s) under 18 years of age; and

WHEREAS, although the existing 168-units of Mullica West may not, by right, qualify under COAH’s Third Round Rules as an extension of expiring controls, N.J.A.C. 5:97-6.14, because they do not meet the technical criteria for prior cycle or post-1986 credits as set forth in N.J.A.C. 5:97-6.14(a)1, preservation of the existing units does meet both the intent of the rule and all of the other criteria necessary to qualify for credit, and as such, preservation of Mullica West was included in the Township’s COAH petition for substantive certification, along with a request for any waiver(s) necessary for inclusion of the units within the Township’s affordable housing plan; and

WHEREAS, UCP/RA is actively pursuing all approvals necessary for commencement of this project, and on May 16, 2013, UCP/RA received preliminary approval from the Joint Land Use Board of the Township of Harrison for the project; and

WHEREAS, UCP/RA and the Township intend to enter into an Agreement for Payment In Lieu of Taxes pursuant to Section 37 of the New Jersey Housing and Mortgage Finance Agency Law of 1983 (N.J.S.A. 55:14K-1 *et seq.*); and

WHEREAS, the USDA has consistently rated Mullica West as high performing, and it supports this project and the preservation of 168 units for affordable housing purposes in furtherance of the goals of §515 of the Housing Act of 1949; and

WHEREAS, UCP/RA are in the process of completing their application submission to NJHMFA for tax credit funding; and

WHEREAS, UCP/RA also seeks a municipal contribution from the Township to assist with funding the project; and

WHEREAS, N.J.A.C. 5:97-8.7(a) specifies that a municipality may use affordable housing funds for the construction of new affordable housing units, related development costs and for infrastructure directly serving affordable housing developments, for a rehabilitation program, for the acquisition and/or improvement of land to be used for affordable housing, for maintenance and repair of affordable housing units, and for any other activity as specified in an approved spending plan; and

WHEREAS, on March 30, 2011, the Township received approval from COAH of its Spending Plan, which includes approval for a rehabilitation program, land acquisition, construction and engineering / planning costs, and affordability assistance programs; and

WHEREAS, by Resolution 107-2012, the Township established and funded the Affordable Housing Construction and Infrastructure Funding Initiative, the purposes of which are to provide funding to acquire land and provide construction and infrastructure funding assistance for the creation of new affordable housing units in accordance with COAH's rule; and

WHEREAS, the Township does wish to commit and expend such funds to assist UCP/RA acquire, preserve, upgrade and expand Mullica West, thereby fostering the very purposes for which the funds were collected and the Initiative established; and

WHEREAS, the funding commitment requested by UCP/RA of \$1,110,000 for the acquisition, preservation and upgrade of the existing Mullica West complex ("Phase I"), reflecting a per-unit contribution of \$6,607/unit, and \$240,000 for the construction of 24 new affordable housing units ("Phase II"), reflecting a per-unit contribution of \$10,000/unit, will enable UCP/RA to maximize crediting eligibility for HMFA funding applications and provide necessary funding for UCP/RA to complete the project; and

WHEREAS, the Township supports both phases of the planned project, which will: (a) result in the acquisition, preservation, and upgrade of the existing Mullica West affordable housing units; and (b) if / when Phase II is constructed, will result in 24 new affordable housing units in the Township, resulting in a minimum of 168 COAH-credited units and up to a potential of 192 total credited units; and

WHEREAS, UCP/RA has represented to the Township that it will ensure that each of the affordable units in the project will be affordable to the region's low and moderate income households and will be creditworthy units and will remain creditworthy units to enable the Township to utilize such units towards satisfaction of its Mount Laurel obligations; and

WHEREAS, the Township has determined that the project, in compliance with the requirements of COAH and the implementation of the required affordability controls will also assist the Township in satisfying its affordable housing obligations.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and Committee of the Township of Harrison, County of Gloucester and State of New Jersey, as follows:

1. The Township hereby commits the sum of One Million One Hundred Ten Thousand Dollars (\$1,110,000.00) for the acquisition, preservation, upgrade and rehabilitation of the 168-unit Mullica West project.
2. The Township makes an additional commitment in the amount of Two Hundred Forty Thousand Dollars (\$240,000.00) for the future "Phase II" construction of 24 new affordable housing units at Mullica West.
3. The commitments set forth herein are independent commitments for each of the two planned phases of the Mullica West project, and are not dependent or contingent upon the other phase proceeding.

ADOPTED at a regular meeting of the Mayor and Township Committee of the Township of Harrison, County of Gloucester, State of New Jersey held on May 20, 2013.

TOWNSHIP OF HARRISON

BY: _____
LOUIS F. MANZO, Mayor

ATTEST:

DIANE L. MALLOY, Municipal Clerk

ROLL CALL VOTE				
COMMITTEE MEMBER	AYES	NAYS	ABSTAIN	ABSENT
Manzo				
Clowney				
Diggons				
Heim				
Shearer				

CERTIFICATION

I hereby certify that the above resolution is a true copy of a resolution adopted by the Township Committee of the Township of Harrison, County of Gloucester, State of New Jersey, at a meeting held by the same on May 20, 2013 in the Harrison Township Municipal Building, 114 Bridgeton Pike, Mullica Hill, New Jersey 08062.

DIANE L. MALLOY
 Clerk