

RESOLUTION NO. 2016 – 140

**RESOLUTION OF THE TOWNSHIP OF LITTLE
EGG HARBOR, COUNTY OF OCEAN, STATE OF
NEW JERSEY, AUTHORIZING THE EXECUTION
OF AN AGREEMENT FOR PAYMENTS IN LIEU OF
TAXES FOR A FIFTY-SIX UNIT RESIDENTIAL
FAMILY APARTMENT COMMUNITY IN THE
TOWNSHIP OF LITTLE EGG HARBOR**

WHEREAS, Oak Lane LEH, LLC (herein after referred to as the “Sponsor”) intends to construct and operate a fifty-six (56) unit residential family apartment housing complex (hereinafter referred to as the “Project”) for rent to low and moderate income families on a site described on the municipal tax map as Block 292, Lots 10, 11 and 12.01 as shown on the Official Assessment Map of the Township of Little Egg Harbor, Ocean 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, the Township is authorized by the HMFA Law to grant an exemption for real estate taxes to housing projects that meet an existing housing need if the project’s owner agrees to pay to the Township an annual charge for municipal services supplied to the Project; and

WHEREAS, the project is part of the Township’s Preliminary Affordable Housing Plan and will help satisfy a portion of the Township’s Mt Laurel obligation; and

WHEREAS, the Township has agreed to grant an exemption to the Project for real estate taxes and the Sponsor has agreed to make payments to the Township in lieu of real estate taxes; and

WHEREAS, the Township Committee and the Sponsor desire to enter into

an Agreement to memorialize the exemption from real estate taxes and the obligation for payments in lieu thereof.

NOW, THEREFORE, BE IT RESOLVED, by the governing body of the Township of Little Egg Harbor, County of Ocean, State of New Jersey as follows:

1. That the governing body does hereby authorize the Mayor to sign and the Township Clerk to attest to the execution of a PILOT Agreement with Oak Lane LEH, LLC, which is attached hereto and incorporated herein as Schedule A.

2. That the Township Clerk is directed to send a certified copy of this Resolution to Oak Lane LEH, LLC.

Motion to Approve: Stevens Second: Kehm Roll Call:

Gormley	<u>yes</u>
Kehm	<u>yes</u>
Kobryn	<u>yes</u>
Schlick	<u>no</u>
Stevens	<u>yes</u>

CERTIFICATION

I, **DIANA K. MCCRACKEN, RMC**, Municipal Clerk of the Township of Little Egg Harbor do hereby certify that the foregoing resolution was duly adopted by the Township of Little Egg Harbor Township Committee at a meeting held on the 9th day of **June**, 2016.

Diana K. McCracken, RMC
DIANA K. MCCRACKEN, Township Clerk
Little Egg Harbor Township

AGREEMENT FOR PAYMENTS IN LIEU OF TAXES

THIS AGREEMENT FOR PAYMENTS IN LIEU OF TAXES (this "Agreement") is made as of this 9th day of June, 2016 between Oak Lane LEH, LLC and its permitted assigns (the "Sponsor"), a New Jersey limited liability company, having its principal office at 5 Powell Lane, Collingswood, NJ 08108 and its permitted assigns, and the Township of Little Egg Harbor (the "Municipality"), a municipal corporation in Ocean County, New Jersey with its offices at 655 Radio Road, Little Egg Harbor, NJ 08087.

WITNESSETH:

WHEREAS, the Sponsor is the equitable owner of those certain tracts of land located in the Township of Little Egg Harbor, Ocean County, New Jersey and more fully described in Exhibit A, attached hereto (the "Property");

WHEREAS, the Sponsor intends to construct and operate an apartment complex on the Property consisting of approximately 56 units for rent to low and moderate income families (the "Project");

WHEREAS, the Sponsor has received financing for the Project from the New Jersey Housing and Mortgage Finance Agency (the "Agency");

WHEREAS, the Municipality is authorized, pursuant to the New Jersey Housing and Mortgage Finance Agency Law of 1983, N.J.S.A. 55:14K-1 et seq. (the "HMFA Law"), to grant an exemption for real estate taxes to housing projects that meet an existing housing need if the project's owner agrees to pay to the Municipality an annual charge for municipal services supplied to the Project;

WHEREAS, the Project will help to satisfy a portion of the Municipality's "Mt. Laurel" obligation;

WHEREAS, the Municipality has determined in a Resolution of the Township Committee of the Municipality (the "Resolution"), adopted on September 10, 2015 that the Project meets an existing housing need;

WHEREAS, the Municipality has agreed to grant an exemption to the Project for real estate taxes and the Sponsor has agreed to make payments to the Municipality in lieu of real estate taxes; and

WHEREAS, the Sponsor and the Municipality desire to enter into this Agreement to memorialize the Sponsor's exemption from real property taxes and its obligation to make payments in lieu of such real property taxes.

NOW, THEREFORE, the Sponsor and the Municipality, in consideration of the mutual undertakings set forth herein and for other good and valuable consideration, the receipt and

sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, covenant and agree as follows:

1. This Agreement is made pursuant to the authority contained in Section 37 of the HMFA Law and the Resolution, and with the approval of the Agency, as required by the HMFA Law.

2. On the date which is ninety (90) days after the Substantial Completion Date (defined below) (such date being herein referred to as the "Tax Exemption Commencement Date"), the land and improvements comprising the Property and the Project shall be exempt from all ad valorem real property taxes, provided that the Sponsor shall make payments in lieu of taxes to the Municipality as provided hereinafter. The exemption of the Property and the Project from ad valorem real property taxation and the Sponsor's obligation to make payments in lieu of taxes shall apply until the earlier of (a) satisfaction and discharge of every construction and permanent mortgage encumbering the Property and/or the Project in favor of the Agency (each, an "Agency Mortgage"), or (b) the expiration of thirty (30) years from the Tax Exemption Commencement Date (such earlier event being the "Tax Exemption Expiration Date"). As used herein, "Substantial Completion Date" means the date upon which the Municipality issues a final Certificate of Occupancy for all units in the Project.

3. The land comprising the Property shall be assessed in accordance with the rules and regulations governing the taxation of vacant land in the State of New Jersey and Sponsor agrees to pay the real estate taxes arising out of such assessment from the time Sponsor takes title to the Property until the Tax Exemption Commencement Date, subject to Sponsor's statutory rights to appeal such assessment. During such period, the Sponsor shall make payment to the Municipality in an annual amount (pro-rated for any period less than one year) equal to the real property taxes levied against the Property in the calendar year prior to the Sponsor's acquisition of the Property (note, pursuant to the HMFA Law, the annual amount may not exceed the amount of taxes due on the Property for the year preceding the recording of the first Agency Mortgage). In addition, from the time of the execution of this Agreement until the Tax Exemption Commencement Date, the Municipality agrees that no assessment shall be made upon any improvements constructed in connection with the Project, whether by added/omitted assessment, revaluation, interim assessment or any other manner permitted by law.

4. (a) From the Tax Exemption Commencement Date until the Tax Exemption Expiration Date, the Sponsor shall pay to the Municipality an Annual Service Charge in lieu of taxes in an amount equal to 6.28% of Project Revenues, as defined below (the "Annual Service Charge").

(b) As used herein, "Project Revenues" means the total annual gross rental or carrying charge or other income of the Sponsor from the Project less the costs of utilities furnished by the Project, which shall include the costs of gas, electricity, heating fuel, water supplied, and sewage charges, if any. Project Revenues shall not include any subsidy contributions received from any federal or state program.

(c) The estimated amounts of the Annual Service Charge to be paid each year pursuant to this Agreement are set forth in Exhibit B attached hereto. It is expressly understood

and agreed that the revenue projections provided to the Municipality as set forth in Exhibit B 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 real estate taxes to be paid by the Sponsor shall be determined as set forth in this Agreement.

5. (a) Payments of the Annual Service Charge 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 6.28% of Project Revenues of the previous quarter.

(b) No later than four (4) months following the end of the Sponsor's fiscal year for each year that this Agreement is in effect after the Tax Exemption Commencement Date, the Sponsor shall submit to the Municipality a certified, audited financial statement of the operation of the Project (the "Audit"), setting forth (i) the Project Revenues for the previous year and (ii) the total Annual Service Charge due to the Municipality, calculated at 6.28% of Project Revenues, for the previous year (the "Audit Amount"). The Sponsor simultaneously with the submission of the Audit shall pay the difference, if any, between (i) the Audit Amount and (ii) the quarterly payments in lieu of real estate taxes made by the Sponsor to the Municipality for the preceding year. The Municipality may accept any such payment without prejudice to its right 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.

(c) All payments pursuant to this Agreement shall be in lieu of taxes and, subject to the provisions of this Agreement, the Municipality shall have all the rights and remedies of tax enforcement granted to Municipalities by law just as if such payments constituted regular tax obligations on real property within the Municipality. If, however, the Municipality disputes any Audit Amount, it may apply to the Superior Court, Chancery Division, Ocean County for an accounting of the Project Revenues in accordance with this Agreement and HMFA Law. The Municipality must commence any such action to challenge an Audit Amount within six months of the receipt of the corresponding Audit.

(d) In the event of any delinquency in the payments required under this Agreement, the Municipality shall give notice of the delinquency to the Sponsor and the Agency in the manner set forth in Section 10(a) below and allow Sponsor or Agency thirty (30) days to cure the delinquency prior to taking any legal action.

6. The tax exemption herein shall apply only so long as the Sponsor or its successors 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 after the Tax Exemption Expiration Date.

7. 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, not including the sale or transfer of any membership interest, this Agreement shall be assigned to the Sponsor's successor without the Municipality's consent, but upon prior written notice to the Municipality, and shall continue in full force and effect only if the successor entity assumes each existing Agency Mortgage and

qualifies under the HMFA Law or any successor thereto for the tax exemption provided by this Agreement. In no event may this Agreement be voluntarily terminated without notice to and consent of the Agency.

8. Upon any 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 Property and the Project shall be taxed as omitted property in accordance with the law.

9. The Sponsor, and its successors and assigns, shall, upon request, permit duly authorized representatives of the Municipality to inspect and examine (a) the Property, (b) the equipment, buildings and other facilities of the Project, and (c) all documents and papers relating to the Project. Any such inspection or examination shall be made during reasonable hours of the business day, in the presence of an officer or agent of the Sponsor, or its successors and assigns.

10. The Sponsor agrees that the Project will not be converted into a Qualified Public Community, as defined by statute, N.J.S.A. 40:67-23.2(e), so long as the Project is subject to affordability controls for rental of the 56 units to low and moderate income families.

11. The Sponsor will be responsible for the cost of the maintenance services for plowing of snow, as well as ice removal and salting, for the Project driveways. The Sponsor will also be responsible for the cost of on-site Project lighting. Also, Sponsor agrees to the Municipality's extension of its Title 39 authority over the Project.

12. The Municipality shall provide regular solid waste and recyclable material collection service, at its cost, to the Project in the same manner and similar to the same collection service Municipality provides to other multifamily developments. The Sponsor will be responsible for the cost of any additional solid waste and recyclable material collection that is beyond that amount of service normally provided by the Municipality.

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

(a) When sent by the Municipality to the Sponsor, it shall be addressed to Ingerman Development Company, LLC, 5 Powell Lane, Collingswood, New Jersey 08108, attention: M. Brad Ingerman, President, or to such other address as the Sponsor may hereafter designate in writing and a copy of such 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 Municipality, 655 Radio Road, Little Egg Harbor, NJ 08087, attention: Municipal Clerk, or to such other address as the Municipality may designate in writing and a copy of such 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 South Clinton Avenue, P.O. Box 18550, Trenton, New Jersey 08650-2085.

14. In the event of a breach of this Agreement by either party 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, Ocean County to relief in such fashion as will tend to accomplish the purposes of the HMFA Law.

15. This Agreement sets forth all of the promises, covenants, agreements, conditions and understandings between the parties with respect to the subject matter hereof, and supersedes all prior and contemporaneous agreements and understandings, inducements or conditions, express or implied, oral or written, with respect thereto.

16. If any clause, sentence, subdivision, paragraph, section or part of this Agreement be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder hereof, but shall be confined in its operation to the clause, sentence, subdivision, paragraph, section or part hereof directly involved in the controversy in which said judgment shall have been rendered.

17. This Agreement may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original and such counterparts together shall constitute one and the same instrument.

18. Subject to the terms of Agency financing, this Agreement may be assigned by the Sponsor to an affiliate of the Sponsor, provided that such affiliate develops the Project in accordance with the terms and conditions set forth in this Agreement.

19. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

WITNESS OR ATTEST:

SPONSOR:

Oak Lane LEH, LLC

By: _____

By: _____

M. Brad Ingerman
President

MUNICIPALITY:

TOWNSHIP OF LITTLE EGG HARBOR


Name: Diana K. McCracken, RMC
Title: Municipal Clerk

By: 
Name: Eugene Kobryn
Title: Mayor

EXHIBIT A

LEGAL DESCRIPTION

Block 292, Lots 10, 11 and 12.01 on the official tax map of the Township of Little Egg Harbor.
Ocean County, New Jersey

Exhibit A

EXHIBIT B

CALCULATION OF PAYMENT IN LIEU OF TAXES

[TO BE ATTACHED]

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Exhibit B