

## **EGG HARBOR TOWNSHIP ORDINANCE 16 -2017**

### **An ordinance authorizing long term tax exemption agreement between the Township of Egg Harbor and Eastern Pacific Development, LLC**

Egg Harbor Township Ordinance 16-2017 was introduced and passed upon first reading at a meeting of the governing body of the Township of Egg Harbor, in the County of Atlantic, State of New Jersey, held on April 5, 2017, at the Egg Harbor Township Municipal Building. It will be further considered for final passage, after public hearing thereon, at a meeting of the governing body to be held on April 19, 2017, at 5:30 P.M. at the Egg Harbor Township Municipal Building. During the week prior to and up to and including the date of such meeting, copies of the full ordinance will be available at no cost and during regular business hours, at the Clerk's office located in the Municipal Building, 3515 Bargaintown Road, Egg Harbor Township, New Jersey, for the members of the general public who shall request the same. This ordinance authorizes a PILOT (Payment In Lieu of Taxes) program for Eastern Pacific Development, LLC for their construction of 77 family rental units that are COAH certified and are part of the Township affordable housing program. The PILOT is for property located at Block 1904, Lot 1 and Block 2001, Lots 1-4. Eastern Pacific Development, LLC shall pay an annual service charge based on five percent (5%) of the annual gross revenue generated from the project.

**Dated: April 5, 2017**

**Eileen M. Tedesco, RMC**

**Township Clerk**

# Egg Harbor Township

## Ordinance No. 16

2017

### **An ordinance authorizing long term tax exemption agreement between the Township of Egg Harbor and Eastern Pacific Development, LLC**

**WHEREAS**, in compliance with the New Jersey Supreme Court's March 10, 2015 decision in In re Adoption of N.J.A.C. 5:96 and 5:97 by N.J. Council on Affordable Housing, 221 N.J. 1 (2015) ("Mount Laurel IV"), on or about July 2, 2015, the Township filed an action with the Superior Court of New Jersey ("Court") in Atlantic County, entitled In the Matter of the Application of the Township of Egg Harbor, County of Atlantic, Docket No. ATL-L-1506-15, seeking a Judgment of Compliance and Repose approving its Housing Element and Fair Share Plan ("Affordable Housing Plan"), in addition to related reliefs, including temporary immunity from all Mount Laurel lawsuits; and

**WHEREAS**, the Court granted the Township's motion for temporary immunity from all Mount Laurel lawsuits, which was subsequently extended via a series of orders, and is still in full force and effect today; and

**WHEREAS**, Eastern Pacific Development, LLC (the "Entity") proposes to construct a 77-unit 100% affordable housing development (the "Project") within the Township of Egg Harbor (the "Municipality"), which will aid the Township in complying with its affordable housing obligation, on a site described as Block 1904, Lot 1 and Block 2001, Lots 1-4, as shown on the official assessment map of the Township of Egg Harbor, Atlantic County and commonly known as 6641 Blackhorse Pike, Egg Harbor, New Jersey; and

**WHEREAS**, the New Jersey Long Term Tax Exemption Law, N.J.S.A. 40A:20-1 et seq. authorizes a municipality to enter into a Financial Agreement with an urban renewal entity undertaking development and construction of a low or moderate income housing project, granting a long term tax exemption to the project; and

**WHEREAS**, the Entity is qualified to do business under the provisions of the New Jersey Long Term Tax Exemption Law and has made application to the Township of Egg Harbor for (i) the approval of the Project; (ii) the grant of a long term tax exemption for the Project; and (iii) the execution of a Financial Agreement.

**WHEREAS**, the Entity has presented to the Township Committee a Financial Agreement, which is attached hereto as Exhibit A, and which has attached as an exhibit a revenue projection for the Project which sets forth the anticipated revenue to be received by the Entity from the operation of the Project.

**NOW, THEREFORE, BE IT ORDAINED**, by the Township Committee of the Township of Egg Harbor, County of Atlantic and State of New Jersey as follows:

1. The Township Committee authorizes the execution of the Agreement substantially in the form attached hereto as Exhibit A and made a part hereof authorizing an in lieu tax payment of five percent (5%) of the gross shelter rent of the Project.
2. The exemption from taxation on improvements to be constructed by the Entity on Block 1904, Lot 1 and Block 2001, Lots 1-4, be and is hereby approved for a period

of thirty (30) years from the date of substantial completion of the Project, but only so long as the Entity is subject to and in compliance with the terms of the Financial Agreement and the Long Term Tax Exemption Law.

3. The Committee hereby authorizes and directs the Mayor to execute, on behalf of the Township, the Agreement attached hereto as Exhibit A.
4. The Committee understands and agrees that the revenue projections set forth in exhibit to the Financial Agreement are estimates and the actual payments in lieu of taxes to be paid by the Entity to the Township shall be determined pursuant to the Agreement.
5. The Township understands that the Entity will form a limited partnership or a limited liability company in which the Entity will be the general partner or managing member, respectively, and that the Township may enter into the payment in lieu of taxes Agreement with such limited partnership or limited liability company.
6. An executed copy of the Financial Agreement authorized by this Ordinance shall be kept on file in the office of the Township Clerk for purposes of review and record.
7. The Project, when completed, shall conform with all State laws and ordinances of the Township of Egg Harbor relating to its construction and use.
8. The Entity shall pay an annual service charge based on five percent (5%) of the annual gross revenue generated from the Project as set forth in the Financial Agreement. The annual service charge rate shall be fixed for the entire term of the tax exemption, but after the initial fifteen (15) years of the term the minimum annual service charge shall be determined as otherwise set forth in the Financial Agreement. Following submission of an annual auditor's report within ninety (90) days of the end of each fiscal or calendar year, the Township and the Entity shall adjust any over payment or under payment determined for the audited period.
9. The Entity shall submit a total Project cost audit by certified public accountants within ninety (90) days following substantial completion of the project.
10. The Municipal Clerk is hereby authorized to forward a certified true copy of this Ordinance to Eastern Pacific Development, LLC, 1181 East Landis Avenue, Vineland, New Jersey 08361. The Municipal Clerk is hereby authorized to forward a certified true copy of this Ordinance, and the Financial Agreement implementing it, to both the Municipal Tax Assessor and the Director of the Division of Local Government Services.

**SECTION 2:** All ordinances and parts of Ordinances inconsistent with the provisions of this ordinance are, to the extent of such inconsistency, hereby repealed.

**SECTION 3:** Should any section, clause, sentence, phrase or provision of this Ordinance be declared unconstitutional or invalid by a court of competent jurisdiction, such decision shall not affect the remaining portions of this ordinance.

**SECTION 4.** This Ordinance shall become effective immediately upon final adoption and publication according to law.

NOTICE IS HEREBY GIVEN THAT THE FOREGOING ORDINANCE WAS INTRODUCED AT A MEETING OF THE TOWNSHIP COMMITTEE OF EGG HARBOR TOWNSHIP, IN THE COUNTY OF ATLANTIC, STATE OF NEW JERSEY, HELD APRIL 5, 2017 AND WILL BE FURTHER CONSIDERED FOR FINAL PASSAGE AFTER A PUBLIC HEARING THEREON AT A REGULAR MEETING OF SAID TOWNSHIP COMMITTEE TO BE HELD IN THE TOWNSHIP HALL, IN SAID TOWNSHIP ON APRIL 19, 2017.

Dated: April 5, 2017

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Eileen M. Tedesco, RMC  
Township Clerk

**Cross Creek at Egg Harbor  
77 units**

**CALCULATION OF ANNUAL SERVICE CHARGE**

Gross Rents	\$	632,376
Less Vacancy		(44,266)
Less Project Paid Utilities		(88,800)
		<hr/>
Gross Sheltered Rents	\$	499,310
		<hr/>
x Rate	x	5.00%
PILOT Payment	\$	<hr/> 24,965 <hr/>

**ESTIMATED FUTURE PAYMENTS**

YEAR	PILOT	2% annual escalator
1	\$24,965	
2	\$25,465	
3	\$25,974	
4	\$26,494	
5	\$27,023	
6	\$27,564	
7	\$28,115	
8	\$28,677	
9	\$29,251	
10	\$29,836	
11	\$30,433	
12	\$31,041	
13	\$31,662	
14	\$32,296	
15	\$32,941	

**Year 15 thru 30**

16	\$33,600
17	\$34,272
18	\$34,958
19	\$35,657
20	\$36,370
21	\$37,097
22	\$37,839
23	\$38,596
24	\$39,368
25	\$40,155
26	\$40,959
27	\$41,778
28	\$42,613
29	\$43,466
30	\$44,335

**FINANCIAL AGREEMENT PURSUANT TO THE LONG  
TERM TAX EXEMPTION LAW,  
N.J.S.A. 40a:20-1, et seq.  
BETWEEN THE TOWNSHIP OF EGG HARBOR (“MUNICIPALITY”) AND  
EASTERN PACIFIC DEVELOPMENT, LLC**

THIS **FINANCIAL AGREEMENT** (hereinafter, the "Agreement"), made this \_\_\_\_ day of \_\_\_\_\_, 2017, between Eastern Pacific Development, LLC, a New Jersey limited liability company with offices at 1181 East Landis Avenue, Vineland, New Jersey 08361, herein designated as the "Entity," and the Township of Egg Harbor, a municipal corporation in the County of Atlantic and the State of New Jersey, hereinafter designated as the "Municipality."

**WITNESSETH:**

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 and shall be governed by the provisions of the Long Term Tax Exemption Law as amended and supplemented, N.J.S.A. 40A:20-1, et seq., (the "Law"). The Entity shall at all times prior to the expiration or other termination of this Agreement remain bound by the provisions of the Law. Operation under this Agreement shall be terminable by the Entity in the manner provided by the Law.

2. The Municipality has granted and does hereby grant its approval for an urban renewal project consisting of seventy seven (77) 100% affordable family rental units (the “Project”), the nature, magnitude and description of which is disclosed in the Development Agreement entered into between the Entity and the Municipality, commonly known on the Official Tax Map of the Township of Egg Harbor, as Block 1904, Lot 1 and Block 2001, Lots 1-4, located at 6641 Blackhorse Pike, Egg Harbor, Atlantic County, New Jersey (hereinafter, the "Project"). The Municipality finds that the Project creates a substantial benefit to the Municipality when compared to costs, if any, associates with the tax exemption granted herein and, further, finds that such tax exemption is of significant importance in obtaining the development of the Project and in influencing the locational decisions of probable occupants of the Project.

3. Approval hereunder is granted to the Entity for the undertaking of the Project on the lands referred to above, which shall in all respects comply and conform to all applicable statutes and municipal ordinances, and the lawful regulations made pursuant thereto, governing land, building(s) and the use thereof, and which Project is more particularly described in the Developer’s Agreement entered into between the Entity and the Municipality.

4. The Project to be constructed by the Entity shall be exempt from taxation on improvements in accordance with the provisions of the Law and in the manner provided by this Agreement for a term of thirty (30) years from the completion of the entire Project but not more than thirty-five (35) years from the execution of this Agreement, and only so long as the Entity and its Project remain subject to the provisions of the law and complies with this Agreement

5. In consideration of the aforesaid exemption from taxation on improvement(s), the Entity, its successors and assigns shall make payment to the Municipality of an annual service charge of a sum equal to five percent (5%) for municipal services supplied to the Project (hereinafter, the "Annual Service Charge") of the annual gross revenue determined pursuant to N.J.S.A. 40A:20-1, et seq., calculated from the first day of the month following the substantial completion of the Project, which is broken down in attached Exhibit A. There is hereby established a schedule of Annual Service Charges to be paid over the term of the thirty (30) year exemption period which shall be in stages as follows:

(a) For the first stage of the exemption period, fifteen (15) years, commencing from the date of substantial completion of the Project, the Entity shall pay the Municipality an Annual Service Charge equal to five percent (5%) of the annual gross revenue;

(b) For the second stage of the exemption period, which shall be for years sixteen (16) through twenty (20) of the exemption period, the Entity shall pay the Municipality an Annual Service Charge equal to five percent (5%) of the annual gross revenue generated from the Project or twenty percent (20%) of the amount of taxes otherwise due on the value of the land and improvements, whichever shall be greater;

(c) For the third stage of the exemption period, which shall be for years twenty-one (21) through twenty-five (25) of the exemption period, the Entity shall pay the Municipality an Annual Service Charge equal to five percent (5%) of the annual gross revenue generated from the Project or forty percent (40%) of the amount of taxes otherwise due on the value of the land and improvements, whichever shall be greater;

(d) For the fourth stage of the exemption period, which shall be for years twenty-six (26) through twenty-eight (28) of the exemption period, the Entity shall pay the Municipality an Annual Service Charge equal to five percent (5%) of the annual gross revenue generated from the Project or sixty percent (60%) of the amount of taxes otherwise due on the value of the land and improvements, whichever shall be greater;

(e) For the final stage of the exemption period, which shall be for years twenty-nine (29) through thirty (30) of the exemption period, the Entity shall pay the Municipality an Annual Service Charge equal to five percent (5%) of the annual gross revenue generated from the Project or eighty percent (80%) of the amount of taxes otherwise due on the value of the land and improvements, whichever shall be greater.

The Annual Service Charge shall be paid to the Municipality on a quarterly basis in a manner consistent with the Municipality's tax collection schedule. Against the Annual Service Charge the Entity shall be entitled to credit for the amount, without interest, of the real estate taxes on land paid by it or by the owner of the land in the last four (4) preceding quarterly installments. Notwithstanding the provisions of this section of the Agreement, the minimum Annual Service Charge shall be the amount of the total taxes levied against all real property in the area covered by the Project in the last full tax year in which the area was subject to taxation, and the minimum



Annual Service Charge shall be paid in each year in which the Annual Service Charge calculated pursuant to this section of the Agreement would be less than the minimum Annual Service Charge.

6. The Annual Service Charge for the first year of tax exemption shall be on a pro rata basis, from the date of commencement of the exemption to the close of the calendar year, and, for the last calendar year of the tax exemption, from the first day of the calendar year to the date of termination of the exemption. Upon the termination of the exemption granted pursuant to the provision of the Law, the Project, all affected parcels, and all improvements made thereto shall be assessed and subject to taxation as are other taxable properties in the municipality. After the date of termination, all restrictions and limitations upon the Entity shall terminate and be at an end upon the Entity's rendering its final accounting to and with the municipality.

7. In the event of a breach of the 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 of New Jersey by an appropriate proceeding to settle and resolve said dispute in such fashion as will tend to accomplish the purposes of the Law or may submit the matter to the American Arbitration Association for resolution by arbitration.

8. In the event of a default on the part of the Entity pursuant to its obligation to pay the Annual Service Charge as defined in Paragraph 5 above, the Municipality may terminate the tax abatement if the default is not remedied within ninety (90) days of the due date of the Annual Service Charge or in the alternative it reserves the right to proceed against the Entity's land, premises, the subject of this Agreement, in the manner provided by N.J.S.A. 54:5-1 to 54:5-129 and any act supplementary or amendatory thereof, it being understood and agreed by the parties hereto that throughout N.J.S.A. 54:5-1 to 54:5-129 and any act supplementary or amendatory thereof, whenever the word "taxes" appears, or is applied, directly or impliedly to mean taxes or municipal liens on land, such statutory provision shall be read, as far as is pertinent to this Agreement, as if the Annual Service Charge were taxes or municipal liens on land. In any event, however, the Entity does not waive any defense it may have to contest the right of the Municipality to proceed in the above-mentioned manner by conventional or in rem tax foreclosure.

9. It is agreed between the parties that the Entity, at any time after the expiration of one (1) year from the completion of the Project, may notify the Municipal Committee of the Municipality that, as of a certain date designated in the notice, it relinquishes its status under the Law, and that the entity has obtained the consent of the Commissioner of Community Affairs to such a relinquishment. As of that date, the tax exemption, the service charges, and the profit and dividend restrictions shall terminate. The date of termination of tax exemption, whether by relinquishment by the Entity or by terms of this Agreement, shall be deemed the close of the fiscal year of the Entity. Within ninety (90) days of that date, the Entity shall pay to the Municipality the amount of reserve, if any maintained, pursuant to section 15 or 16 of the Law, as well as the excess net profits, if any, payable as of that date.

10. The Entity shall be subject, during the period of this Agreement and tax exemption under the Law, to a limitation of its profits and in addition, in the case of a corporation, of the

dividends payable by it. Whenever the net profits of the Entity for the period, taken as one accounting period, commencing on the date on which the construction of the Project is completed and terminating at the end of the last full fiscal year, shall exceed the allowable net profits for the period, the Entity shall, within ninety (90) days of the close of the fiscal year, pay the excess net profits to the Municipality as an additional service charge. From the excess profits, the Entity may maintain during the term of this Agreement a reserve against vacancies against unpaid rentals, reasonable contingencies and/or vacancies in an amount not exceeding five percent (5%) of the gross annual revenues of the Entity for the fiscal year preceding the year in which a determination is being made with respect to permitted net profits as provided in N.J.S.A. 40A:20-15.

11. Within ninety (90) days after the date of such termination, the Entity shall pay the Municipality a sum equal to the amount of the reserve, if any, maintained pursuant to N.J.S.A. 40A:20-15 and 40A:20-16, as well as the excess net profits, if any, payable as of that date.

12. The Entity shall submit annually, within ninety (90) days after the close of each of its fiscal years, its auditor's reports of income and expenses related to the Project to the Mayor and Municipal Committee of the Municipality and to the Director of Local Government Services in the Department of Community Affairs having a mailing address of CN-805, Trenton, NJ 08625-0805.

13. The Entity shall, upon request, permit inspection of the property, equipment, buildings and other facilities of the Entity by authorized representatives of the Municipality or the State. The Entity shall also permit examination and audit of its books, contracts, records, documents and papers by authorized representatives of the Municipality or the State at the Entity's expense. Such inspection or examination shall be made during the reasonable hours of the business day, in the presence of an officer or agent of the Entity.

14. After examination of the books, contracts, etc. as set forth in Paragraph 13, the Municipality, in its reasonable discretion, may, within ninety (90) days after the close of any fiscal or calendar year (depending on the Entity's accounting basis) in which this Agreement remains in effect, require the Entity to submit an auditor's report for the preceding fiscal or calendar year, certified by a certified public accountant, to the Mayor, the Municipal Committee, the Finance Director and the Clerk of the Municipality. Said auditor's report shall include, but not be limited to, such details as may be related to the Project's cost and to the financial affairs of the Entity and to its operation and performance hereunder, pursuant to the Law, as amended and supplemented, and this Agreement, and shall be prepared in a manner consistent with the current standards of the Financial Accounting Standards Board. Said auditor's report shall be submitted to the representatives of the Municipality mentioned above within 90 days of receipt by the Entity of the Municipality's request for said auditor's report.

15. The failure on the part of the Entity to make timely payment of all municipal obligations, taxes, fees and charges arising out of this Agreement or in any way arising out of the affected Project, its land and/or improvements, or failure on the part of the Entity to comply with the requirements of the aforementioned audit, or with any other substantive condition of this Agreement shall permit the Municipality to exercise such remedies as may be provided by the Law or this

Agreement provided that this Entity shall have received from the Municipality a Notice of Default and Intent to Terminate in which case the Entity shall have ninety (90) days in which to cure any default and avoid such termination. In the event of any dispute between the parties, matters in controversy shall be resolved by arbitration as provided in this Agreement.

16. Any notice required hereunder to be sent by either party to the other, shall be sent by certified mail, return receipt requested, or by a nationally recognized overnight delivery service, addressed as follows:

(a) When sent by the Municipality to the Entity it shall be addressed to: Eastern Pacific Development, LLC, 1181 East Lands Avenue, Suite 6, Vineland, NJ 08361 (attn: Hans Lampart, President) and to Louis N. Maguzzu, Esq., PO Box 812, Vineland, NJ 08362-0812, unless prior to giving such notice the Entity shall have notified the Municipality otherwise in writing.

(b) When sent by the Entity to the Municipality, it shall be addressed to (1) the Township Administrator, who is currently Peter Miller, at 3515 Bargaintown Road, Egg Harbor, New Jersey, 08234, (2) the Township's affordable housing counsel, who is currently Erik C. Nolan, Esq., Jeffrey R. Surenian & Associates, LLC, 707 Union Avenue, Suite 301, Brielle, NJ 08730 and (3) Township attorney, who is currently Marc Friedman, Esq., Schreiber & Friedman, PC, 616 West Ocean Heights Avenue, Linwood, NJ 08221, unless prior to giving such notice the Municipality shall have notified the Entity otherwise in writing.

17. It is understood and agreed that in the event the Municipality shall be named as a party defendant in any action brought against the Entity by reason of any breach, default, or a violation of any of the provisions of the within Agreement and/or the provisions of N.J.S.A. 40A:20-1, et seq., the Entity shall indemnify and hold the Municipality harmless and shall, further, defend any such action at its own expense. Notwithstanding anything in the Agreement to the contrary, the Entity's liability under this Agreement shall be limited to its interest in the Property. However, the Municipality maintains the right to intervene as a party thereto, to which intervention the Entity consents, the expense thereof to be borne by the Municipality.

18. The Entity shall have and may exercise such of the powers conferred by law on limited partnerships as shall be necessary for the operation of the business of the Entity and as shall be consistent with the provisions of the Law, and, in addition, shall have and may exercise the powers set forth in the Law, but only so long as this Agreement, together with any amendments thereto, is in effect with the Municipality pursuant to the Law.

19. The Municipality consents to a sale of the Project by the Entity to another urban renewal entity organized pursuant to the Law, their successors, assigns, all owning no other Project at the time of the transfer and that, upon assumption by the transferee urban renewal entity of the transferor's then remaining obligations under this Agreement, the tax exemption of the improvements shall continue and insure to the transferee urban renewal entity, its respective successors or assigns.

However, any change made in the ownership of the Project which, as determined by the Municipality in its reasonable discretion, would materially affect the terms of this Agreement shall render this Agreement voidable unless approved by the Municipal Committee by resolution. It is understood and agreed that the Municipality may, on written application by the Entity, consent to a sale of the Project and the transfer of the Agreement to an urban renewal corporation or association eligible to function under the law provided the Entity is not in default as respects any performance required of it hereunder and full compliance with the terms and conditions of N.J.S.A. 40A:20-1, et seq. has occurred and the Entity's obligation under this Agreement with the Municipality is assumed by the transferee.

If the Entity has, with the consent of the municipality in which the Project is located, transferred its Project to another urban renewal entity which has assumed the then remaining contractual obligations of the transferor entity with the municipality, the transferor entity shall be discharged from any further obligation under this Agreement, and shall be qualified to undertake another Project with the same or a different municipality.

The Municipality recognizes and acknowledges that the Entity is a New Jersey limited liability corporation and as such intends to sell limited partnership interests in the Entity through syndication. The Municipality specifically recognizes and consents to such syndication and sale or resale of limited partnership interests in the Entity.

20. Where approval or consent of the Municipality is sought for an assignment of the Agreement, either the Entity or its assignee shall be required to pay to the Municipality a reasonable fee for the legal services of the Municipality's Attorney, related to the review, preparation, and/or submission of papers to the Municipal Committee for its appropriate action on the request assignment.

21. The Entity shall, from the time the Annual Service Charge becomes effective, and on the same due dates as scheduled for the payment of land taxes, pay the Municipality the estimated 1/4 of the Annual Service Charge on improvements until the correct amount due from the Entity as the Annual Service Charge on improvements is determined after any review and examination by the Municipality of the Entity's books and records and for submission to the Municipality of any auditor's reports pursuant to Paragraphs 13 and 14, above.

Within 90 days after the correct amount due and from the Entity as the Annual Service Charge on Improvements has been determined by the Municipality's Finance Director and notice of same given to the Entity, the Municipality and the Entity will adjust and pay any over or under payment so made, or needed to be made.

22. All conditions in the Ordinance of the Municipal Committee approving this Agreement are hereby incorporated in this Agreement and made a part hereof.

IN WITNESS WHEREOF, the parties have caused these presents to be executed the date and year first above written.

WITNESS:

Eastern Pacific Development, LLC

\_\_\_\_\_

By: \_\_\_\_\_  
Hans Lambert

ATTEST:

Township of Egg Harbor, a Municipal Corporation

\_\_\_\_\_

By: \_\_\_\_\_  
James J. McCullough, Township Mayor

Dated: