

TOWNSHIP OF OCEAN

RESOLUTION NO. 2013-306

WHEREAS, MBI Development Company, Inc. and its assigns (hereinafter referred to as the "Sponsor") proposes to construct and operate an affordable age-restricted apartment community consisting of approximately 76 units to be known as the Town Center at Waretown Phase II (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 *et seq.*, and all applicable guidelines (the foregoing hereinafter referred to as the "HMFA Requirements") within the Township of Ocean (hereinafter referred to as the "Municipality") on a site described as Block 41, portions of Lots 27, 28, 29.03, 29.07 and 30 on the official tax map of Ocean Township, Ocean County, New Jersey and more commonly known as 501 Route 9, Waretown, NJ; 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 governing body of the Municipality hereby determines that there is a need for this housing project in the Municipality; and

WHEREAS, the Sponsor has presented to the Township Committee a revenue projection for 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 Committee of the Township of Ocean (the "Committee") that:

- (1) The Committee finds and determines that the proposed Project will meet or meets an existing housing need;
- (2) The Committee does hereby adopt the within Resolution and makes the determination and findings herein contained by virtue of, pursuant to, and in the 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; and
- (3) The Committee does hereby adopt the within 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"; and

- (4) The Committee hereby authorizes and directs the Mayor of the Township of Ocean to execute, on behalf of the municipality, the Agreement for Payments in Lieu of Taxes in substantially the form annexed hereto as Exhibit "B"; and
- (5) The Committee 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.

ATTEST:

TOWNSHIP OF OCEAN

By: _____
Name:
Title: Municipal Clerk

By: _____
Name:
Title: Mayor

CERTIFICATION

I, _____, Municipal Clerk to the Township of Ocean, hereby certify that the foregoing resolution is a true, accurate and complete copy of a resolution duly adopted by the Committee of the Township of Ocean at a meeting held on _____.

Municipal Clerk

EXHIBIT A
Revenue Projection

EXHIBIT B
Agreement for Payments In Lieu of Taxation

AGREEMENT FOR PAYMENTS IN LIEU OF TAXES

THIS AGREEMENT FOR PAYMENTS IN LIEU OF TAXES (this "Agreement") is made as of this ___ day of _____, 2013 between MBI Development Company and its permitted assigns (the "Sponsor"), a Pennsylvania Corporation, having its principal office at 725 Cuthbert Boulevard, Cherry Hill, New Jersey 08002 and its permitted assigns, and the Township of Ocean (the "Municipality"), a municipal corporation in Ocean County, New Jersey with its offices at 50 Railroad Avenue, Waretown, New Jersey 08758.

WITNESSETH:

WHEREAS, the Sponsor is the equitable owner of those certain tracts of ground located in the Township of Ocean, 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 76 units for rent to low and moderate income age-restricted households (the "Project");

WHEREAS, the Sponsor will receive 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 affordable housing obligation pursuant to the Fair Housing Act;

WHEREAS, the Municipality has determined in a Resolution of the Township Committee of Ocean Township (the "Resolution"), adopted on November 14, 2013 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 (the "Tax Exemption Commencement Date") of the Sponsor's execution of a mortgage encumbering the Property and the Project with a mortgage lien in favor of the Agency (the "Agency Mortgage"), 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 the 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").

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. 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 to the Municipality in an amount equal to 3.14% 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 3.14% of Project Revenues of the previous quarter.

(b) No later than three (3) 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 3.14% 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 and shall continue in full force and effect only if the successor entity assumes the 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. 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 MBI Development Company, Inc., 725 Cuthbert Boulevard, Cherry Hill, NJ 08002, 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, 50 Railroad Avenue, Waretown, New Jersey 08758, 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.

11. 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.

12. 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.

13. 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.

14. 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.

15. 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.

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

[SIGNATURES ON NEXT PAGE]

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

WITNESS OR ATTEST:

SPONSOR:

MBI Development Company, Inc., Pennsylvania Corporation

By: _____
M. Brad Ingerman
President

MUNICIPALITY:

TOWNSHIP OF OCEAN

Name: _____
Title: Municipal Clerk

By: _____
Name: _____
Title: Mayor

EXHIBIT A

Block 41, portions of Lots 27, 28, 29.03, 29.07 and 30 on the Official Tax Map of Ocean Township, County of Ocean, State of New Jersey

EXHIBIT B

CALCULATION OF PAYMENT IN LIEU OF TAXES

[TO BE ATTACHED]

**PROJECTED PILOT Calculation
Annual Service Charge**

	Year	1	2	3	4	5	6	7	8	9	10
Gross Potential Income		741,962	764,001	786,700	810,081	834,163	858,967	884,516	910,831	937,936	965,853
Less: Vacancy	7.00%	(51,937)	(53,480)	(55,069)	(56,706)	(58,391)	(60,128)	(61,916)	(63,758)	(65,656)	(67,610)
Effective Gross Income		690,025	710,521	731,631	753,375	775,772	798,840	822,600	847,073	872,280	898,244
Less: Common Utilities		(89,000)	(91,670)	(94,420)	(97,253)	(100,170)	(103,175)	(106,271)	(109,459)	(112,743)	(116,125)
Adjusted Income		601,025	618,851	637,211	656,123	675,601	695,664	716,329	737,614	759,538	782,119
Projected PILOT Payment @ 3.14%		\$ 18,872	\$ 19,432	\$ 20,008	\$ 20,602	\$ 21,214	\$ 21,844	\$ 22,493	\$ 23,161	\$ 23,849	\$ 24,559

PROJECTED PILOT Calculation
Annual Service Charge

	Year										
	11	12	13	14	15	16	17	18	19	20	
Gross Potential Income	994,609	1,024,227	1,054,733	1,086,155	1,118,519	1,151,854	1,186,189	1,221,554	1,257,981	1,295,500	
Less: Vacancy	(69,623)	(71,696)	(73,831)	(76,031)	(78,296)	(80,630)	(83,033)	(85,509)	(88,059)	(90,685)	
Effective Gross Income	924,986	952,531	980,902	1,010,124	1,040,222	1,071,224	1,103,156	1,136,046	1,169,922	1,204,815	
Less: Common Utilities	(119,609)	(123,197)	(126,893)	(130,700)	(134,620)	(138,659)	(142,819)	(147,103)	(151,517)	(156,062)	
Adjusted Income	805,377	829,334	854,009	879,424	905,602	932,565	960,337	988,942	1,018,406	1,048,753	
Projected PILOT Payment @ 3.14%	\$ 25,289	\$ 26,041	\$ 26,816	\$ 27,614	\$ 28,436	\$ 29,283	\$ 30,155	\$ 31,053	\$ 31,978	\$ 32,931	

**PROJECTED PILOT Calculation
Annual Service Charge**

	Year									
	21	22	23	24	25	26	27	28	29	30
Gross Potential Income	1,321,410	1,347,838	1,374,795	1,402,291	1,430,336	1,458,943	1,488,122	1,517,884	1,548,242	1,579,207
Less: Vacancy	(92,499)	(94,349)	(96,236)	(98,160)	(100,124)	(102,126)	(104,169)	(106,252)	(108,377)	(110,544)
Effective Gross Income	1,228,911	1,253,489	1,278,559	1,304,130	1,330,213	1,356,817	1,383,953	1,411,633	1,439,865	1,468,662
Less: Common Utilities	(160,744)	(165,566)	(170,533)	(175,649)	(180,919)	(186,346)	(191,937)	(197,695)	(203,626)	(209,734)
Adjusted Income	1,068,167	1,087,923	1,108,026	1,128,481	1,149,294	1,170,471	1,192,017	1,213,938	1,236,240	1,258,928
Projected PILOT Payment @ 3.14%	\$ 33,540	\$ 34,161	\$ 34,792	\$ 35,434	\$ 36,088	\$ 36,753	\$ 37,429	\$ 38,118	\$ 38,818	\$ 39,530