

# Egg Harbor Township

## Ordinance No. 18

2019

### **Bond Ordinance authorizing the issuance of Redevelopment Area Bonds or Notes of the Township to finance the cost of certain infrastructure improvements relating to a Redevelopment Project to be undertaken by Black Horse EHT Urban Renewal 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 of Egg Harbor, in the County of Atlantic, New Jersey (the "Township") filed a Declaratory Judgment Action with the New Jersey Superior Court in Atlantic County (hereinafter the "Court"), entitled *In the Matter of the Application of the Township of Egg Harbor, County of Atlantic*, Docket No. ATL-L-1506-15 (hereinafter "DJ Action"), seeking a Judgment of Compliance and Repose approving its Housing Element and Fair Share Plan; and

**WHEREAS**, the Township entered into a settlement agreement with Fair Share Housing Center ("FSHC") on August 16, 2017 to settle the Township's DJ Action globally, which was approved during a properly noticed Fairness Hearing held on October 17, 2017, and memorialized by an Order entered by the Court on November 27, 2017; and

**WHEREAS**, the Township's Planning Board subsequently adopted Housing Element and Fair Share Plan (hereinafter "Affordable Housing Plan"), which was also endorsed by the Township Committee, to implement the settlement with FSHC, and said Affordable Housing Plan was subsequently approved by the Court during a properly noticed Compliance Hearing held on August 28, 2018; and

**WHEREAS**, the Court entered a Judgment of Compliance and Repose Order on August 31, 2018 (hereinafter "JOR Order"), which approved the Township's Affordable Housing Plan, with conditions; and

**WHEREAS**, the Township subsequently satisfied all of the conditions of its JOR Order, which was memorialized by a second Order entered by the Court on December 31, 2018, which finalized the JOR Order; and

**WHEREAS**, the settlement agreement with FSHC, the Township's Affordable Housing Plan, and the JOR Order, all contemplate a one hundred percent (100%) affordable age-restricted motel conversion to assisted living residence project to take place on the site of the current Howard Johnson's motel located in the Township; and

**WHEREAS**, the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq. (the "Local Redevelopment and Housing Law") confers certain contract, planning and financial powers upon a redevelopment entity, as defined at Section 3 of the Act, in order to implement redevelopment plans adopted pursuant thereto; and

**WHEREAS**, the Township has elected to exercise these redevelopment entity powers directly, as permitted by Section 4 of the Local Redevelopment and Housing Law; and

**WHEREAS**, the governing body of a municipality which has adopted a redevelopment plan pursuant to the Local Redevelopment and Housing Law may enter into a financial agreement with an urban renewal entity pursuant to the Long Term Tax Exemption Law, N.J.S.A. 40A:20-1 et seq. (the “Long Term Tax Exemption Law”), for, among other reasons, the undertaking of a project set forth in a redevelopment plan; and

**WHEREAS**, the Township Committee adopted a resolution on February 21, 2018, which authorized an investigation to determine whether or not Block 2118, Lot 4 on the official tax map of the Township of Egg Harbor, County of Atlantic, State of New Jersey (the “Land”) is qualifies as an area in need of redevelopment pursuant to the New Jersey Local Redevelopment and Housing Law (N.J.S.A. 40A:12A-1, et seq.); and

**WHEREAS**, the Township Planner, Vincent J. Polistina, PE, PP, prepared a “Determination of Need Report” in March of 2018 for the Land, in which he concluded that the Land meets the criteria of the Local Redevelopment and Housing Law as an area in need of redevelopment; and

**WHEREAS**, by Resolution No. 184, adopted on April 4, 2018, the Township declared Lot 4 in Block 2118, on the official tax map of the Township, along with certain adjacent rights-of-way, to be a Non-Condemnation Area in Need of Redevelopment pursuant to the Act, and designating this area as the Farmington Redevelopment Area (the “Redevelopment Area”); and

**WHEREAS**, by Ordinance No. 28, adopted on July 18, 2018, the Township adopted a redevelopment plan for the Redevelopment Area (the “Redevelopment Plan”); and

**WHEREAS**, pursuant to the Local Redevelopment and Housing law and the Tax Exemption Law, the Township has designated Black Horse EHT Urban Renewal LLC (the “Redeveloper”) as the designated redeveloper to redevelop the Land, consisting of the renovation, construction and equipping of an approximately 160-unit (all of which will be creditworthy senior affordable units) assisted living residence for low income seniors, including, among other things, the renovation of an existing private room hotel and the new construction of additional units and kitchen, dining, administrative and resident activity areas, including an approximately 5,000 square foot adult medical day care facility (the “Redevelopment Project”); and

**WHEREAS**, the Redeveloper will be a single purpose urban renewal entity pursuant to the Long Term Tax Exemption Law created for the development, operation and maintenance of the Redevelopment Project; and

**WHEREAS**, in order to improve the feasibility of the Redevelopment Project, the Redeveloper has requested that the Township allow a long term tax exemption and financial agreement with respect to the Redevelopment Project pursuant to the Long Term Tax Exemption Law; and

**WHEREAS**, the Redevelopment Project will require, among other items, the construction of certain infrastructure improvements, relocations and modifications in and around the Redevelopment Area, including without limitation, certain intersection and other traffic improvements (collectively, the “Infrastructure Improvements”); and

**WHEREAS**, despite the Redeveloper’s investment of equity and borrowed funds, such amounts are insufficient to feasibly pay for all of the costs associated with the development and construction of the Redevelopment Project; and

**WHEREAS**, in order to defray certain eligible costs of the Redevelopment Project, specifically the Infrastructure Improvements, thereby making the Redevelopment Project viable, the Township agreed to issue general obligation bonds in one or more series in an aggregate principal amount not

to exceed \$25,000 (the "Bonds") pursuant to the Redevelopment Area Bond Financing Law, N.J.S.A. 40A:12A-64 et seq., (the "RAB Law") and/or the Local Bond Law, N.J.S.A. 40A:2-1 et seq. (the "Local Bond Law"), as applicable; and

**WHEREAS**, the Redeveloper has represented to the Township that financial assistance is necessary in order for the Redevelopment Project to be undertaken in its intended scope; and

**WHEREAS**, the Township desires to authorize the issuance of Bonds in an amount not to exceed \$25,000 to fund the Infrastructure Improvements; and

**WHEREAS**, the Township will use the proceeds of the Bonds to finance the Infrastructure Improvements described in Section 3 of this bond ordinance.

**NOW THEREFORE BE IT ORDAINED** BY THE TOWNSHIP COMMITTEE OF THE TOWNSHIP OF EGG HARBOR, IN THE COUNTY OF ATLANTIC, NEW JERSEY (not less than two thirds of all members thereof affirmatively concurring) AS FOLLOWS:

**Section 1.** The improvements and purposes described in Section 3 of this bond ordinance are hereby authorized to be undertaken by the Township as general and local improvements, as described in more detail herein. For the improvements and purposes described in Section 3, there is hereby appropriated the sum of \$25,000. Pursuant to Section 37 of the Local Redevelopment and Housing Law (N.J.S.A. 40A:12A-37c(2)), no down payment is required, notwithstanding the requirements of Section 11 of the Local Bond Law, because the improvements and purposes set forth in Section 3 constitute a "redevelopment project" under the Local Redevelopment and Housing Law.

**Section 2.** In order to finance the cost of the several improvements and purposes described in Section 3, negotiable bonds are hereby authorized to be issued pursuant to the Local Bond Law and the Local Redevelopment and Housing Law in a principal amount not to exceed \$25,000. In anticipation of the issuance of the bonds, negotiable bond anticipation notes are hereby authorized to be issued pursuant to and within the limitations prescribed by the Local Bond Law and the Local Redevelopment and Housing Law.

**Section 3.** (a) The several improvements hereby authorized and the several purposes for which the bonds are to be issued, include the construction of the Infrastructure Improvements, constituting a portion of the Redevelopment Project, which constitutes a "redevelopment project" under the Local Redevelopment and Housing Law, including all work and materials necessary therefor and incidental thereto.

(b) The estimated maximum amount of bonds or notes to be issued for the improvements and purposes is as stated in Section 2 hereof.

(c) The estimated costs of the improvements and purposes are equal to the amount of the appropriations herein made therefor.

**Section 4.** All bond anticipation notes issued hereunder shall mature at such times as may be determined by the chief financial officer; provided that no note shall mature later than one year from its date. The notes shall bear interest at such rate or rates and be in such form as may be determined by the chief financial officer. The chief financial officer shall determine all matters in connection with notes issued pursuant to this ordinance, and the chief financial officer's signature upon the notes shall be conclusive evidence as to all such determinations. All notes issued hereunder may be renewed from time to time subject to the provisions of the Local Bond Law and the Local Redevelopment and Housing Law. The chief financial officer is hereby authorized to sell part or all

of the notes from time to time at public or private sale and to deliver them to the purchasers thereof upon receipt of payment of the purchase price plus accrued interest from their dates to the date of delivery thereof. The chief financial officer is directed to report in writing to the governing body at the meeting next succeeding the date when any sale or delivery of the notes pursuant to this ordinance is made. Such report must include the amount, the description, the interest rate and the maturity schedule of the notes sold, the price obtained and the name of the purchaser.

**Section 5.** The Township hereby certifies that it has adopted a capital budget or a temporary capital budget, as applicable. The capital or temporary capital budget of the Township is hereby amended to conform with the provisions of this ordinance to the extent of any inconsistency herewith. To the extent that the purposes authorized herein are inconsistent with the adopted capital or temporary capital budget, a revised capital or temporary capital budget has been filed with the Division of Local Government Services.

**Section 6.** The following additional matters are hereby determined, declared, recited and stated:

(a) The purposes described in Section 3 of this bond ordinance are not current expenses. They are all improvements and purposes that the Township lawfully may undertake as general and local improvements, and no part of the cost thereof has been or shall be specially assessed on property specially benefitted thereby.

(b) Pursuant to N.J.S.A. 40A:12A-37(c), the obligations authorized herein shall mature in annual installments commencing not more than two (2) and ending not more than forty (40) years from the date of issuance.

(c) The Supplemental Debt Statement required by the Local Bond Law has been duly prepared and filed in the office of the Clerk, and a complete executed duplicate thereof has been filed in the office of the Director of the Division of Local Government Services in the Department of Community Affairs of the State of New Jersey. Such statement shows that the gross debt of the Township as defined in the Local Bond Law is increased by the authorization of the bonds and notes provided in this bond ordinance by \$25,000, and the obligations authorized herein will be within all debt limitations prescribed by that Law.

(d) An aggregate amount of not exceeding \$25,000 for items of expense listed in and permitted under N.J.S.A. 40A:2 20 is included in the estimated cost indicated herein for the purposes or improvements.

(e) The maximum interest rate on the bonds shall be 9% without further authorization of the Township Council, which authorization may be by resolution.

**Section 7.** The Township hereby declares the intent of the Township to issue the bonds or bond anticipation notes in the amount authorized in Section 2 of this bond ordinance and to use proceeds to pay or reimburse expenditures for the costs of the purposes described in Section 3 of this bond ordinance. This Section 7 is a declaration of intent within the meaning and for purposes of Treasury Regulations §1.150-2 or any successor provisions of federal income tax law.

**Section 8.** Any grant moneys received for the purposes described in Section 3 hereof shall be applied either to direct payment of the cost of the improvements or to payment of the obligations issued pursuant to this ordinance. The amount of obligations authorized but not issued hereunder shall be reduced to the extent that such funds are so used.

**Section 9.** The chief financial officer of the Township is hereby authorized to prepare and to update from time to time as necessary a financial disclosure document to be distributed in connection with the sale of obligations of the Township and to execute such disclosure document on behalf of the Township. The chief financial officer is further authorized to enter into the appropriate undertaking to provide secondary market disclosure on behalf of the Township pursuant to Rule 15c2-12 of the Securities and Exchange Commission (the "Rule") for the benefit of holders and beneficial owners of obligations of the Township and to amend such undertaking from time to time in connection with any change in law, or interpretation thereof, provided such undertaking is and continues to be, in the opinion of a nationally recognized bond counsel, consistent with the requirements of the Rule. In the event that the Township fails to comply with its undertaking, the Township shall not be liable for any monetary damages, and the remedy shall be limited to specific performance of the undertaking.

**Section 10.** The full faith and credit of the Township are hereby pledged to the punctual payment of the principal of and the interest on the obligations authorized by this bond ordinance. The obligations shall be direct, unlimited obligations of the Township, and the Township shall be obligated to levy ad valorem taxes upon all the taxable real property within the Township for the payment of the obligations and the interest thereon without limitation of rate or amount.

**Section 11.** This bond ordinance shall take effect 20 days after the first publication thereof after final adoption, as provided by the Local Bond 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 June 19, 2019 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 July 17, 2019.

Dated: June 19, 2019

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Eileen M. Tedesco, RMC  
Township Clerk