

MAYOR & COUNCIL AGENDA COVER SHEET

MEETING DATE:

November 16, 2009

CALL TO PODIUM:

Harold Belton
Cheryl O'Donnell Guth, Esq.

RESPONSIBLE STAFF:

Harold Belton, Director
Finance and Administration

AGENDA ITEM:

(please check one)

<input type="checkbox"/>	Presentation
<input type="checkbox"/>	Proclamation/Certificate
<input type="checkbox"/>	Appointment
<input checked="" type="checkbox"/>	Public Hearing
<input type="checkbox"/>	Historic District
<input type="checkbox"/>	Consent Item
<input type="checkbox"/>	Ordinance
<input type="checkbox"/>	Resolution
<input type="checkbox"/>	Policy Discussion
<input type="checkbox"/>	Work Session Discussion Item
<input type="checkbox"/>	Other:

PUBLIC HEARING HISTORY:

(Please complete this section if agenda item is a public hearing)

Introduced	
Advertised	10/28/2009
Hearing Date	11/16/2009
Record Held Open	11/16/2009
Policy Discussion	11/16/2009

TITLE:

Public Hearing to Authorize the Issuance and Sale of Economic Development Revenue Bonds of the City of Gaithersburg for Asbury Atlantic, Inc., (formally known as Asbury Methodist Village Inc. and Asbury-Solomons, Inc.)

SUPPORTING BACKGROUND:

On October 26, 2009, Asbury Atlantic, Inc (formally known as Asbury Methodist Village, Inc. and Asbury-Solomons, Inc.) ("Asbury") formally requested that the City of Gaithersburg, in accordance with the Maryland Economic Development Revenue Bond Act, Md. Ann. Code (1957), Art. 41, sections 14-101 through 14-109, issue and sell bonds as its limited obligations and not upon its full faith and credit or pledge of its taxing power, and to loan the proceeds of the sale of such bonds to Asbury. The transaction would involve conduit debt only. The City of Gaithersburg incurs no liability as a result of transaction, and Asbury fully indemnifies the City for the life of the bonds.

The City previously issued bonds for Asbury Methodist Village, Inc. in 1990, 1993, 1997, 2004 and 2006 to finance its continuing care retirement facility in the City. The present bond issue is sought in order to refinance series 2006B and 2006C bonds and to fund the construction of forty-three (43) low density residential units to be located on the City of Gaithersburg campus.

Counsel from McGuire Woods who drafted the documents and a representative from Asbury are available to answer questions from the Mayor and Council.

Attached:
Exhibit 1: Letter of Request
Exhibit 2: Advertisement

DESIRED OUTCOME:

Hear Presentation, Conduct Public Hearing, Vote to Close Record as of November 16, 2009.

**CITY OF GAITHERSBURG
NOTICE OF PUBLIC HEARING REGARDING PROPOSED ISSUANCE OF
ECONOMIC DEVELOPMENT REVENUE BONDS
(ASBURY MARYLAND OBLIGATED GROUP)**

The Mayor and City Council of the City of Gaithersburg will hold a public hearing on:

**Monday, November 16, 2009
at 7:30 p.m.**

or as soon as possible thereafter as it may be heard at the Council Chambers of City Hall, 31 South Summit Avenue, Gaithersburg, Maryland on a Resolution to Authorize the Issuance and Sale of Economic Development Revenue Bonds of the City of Gaithersburg as follows:

Bonds and Use of Proceeds:

One or more issues of bonds consisting of one or more series of economic development revenue bonds of the City in the aggregate maximum principal amount not to exceed \$50,000,000 (the "Bonds"), the proceeds of which will be used to (1) refund the outstanding principal amount of the City's Variable Rate Demand Economic Development Refunding Revenue Bonds (Asbury Maryland Obligated Group), Series 2006B (the "Series 2006B Bonds"), (2) refund the outstanding principal amount of the City's Variable Rate Demand Economic Development Refunding Revenue Bonds (Asbury Maryland Obligated Group), Taxable Series 2006C (the "Series 2006C Bonds," and together with the Series 2006B Bonds, the "Refunded Bonds"), (3) fund a debt service reserve fund and capitalized interest for the Bonds, and (4) pay certain costs of issuance and other related costs. The payment of the Bonds will be secured by revenues of the Corporations (as defined herein) and will not constitute a pledge of the faith and credit or taxing power of the City or any other public body.

Facilities and Location:

The Series 2006B Bonds were issued to refinance all or a portion of the costs of the acquisition and improvement by Asbury Atlantic, Inc., a Maryland not-for-profit corporation and formerly known as Asbury Methodist Village, Inc. ("Asbury Atlantic"), of a continuing care retirement facility known as "Asbury Methodist Village," located on an approximately 130-acre campus located at 201 Russell Avenue, Gaithersburg, Montgomery County, Maryland 20877 and consisting of (1) 741 independent living apartments contained in six buildings, (2) 74 independent living villas, (3) 133 assisted living units contained in a single building, (4) 285 comprehensive care beds contained in a single building, (5) the James F. Rosborough Jr. Cultural Arts and Wellness Center, (6) administrative, dining, recreation and other support facilities, (7) furniture, fixtures and equipment for such facilities and (8) related improvements, including walkways, driveways, roads, parking facilities, storage buildings, landscaping and utilities (collectively, the "Gaithersburg Facilities").

The Series 2006C Bonds were issued to refinance all or a portion of the costs of the acquisition and improvement by Asbury-Solomons, Inc., a Maryland not-for-profit corporation ("Asbury-Solomons," and together with Asbury Atlantic, the "Corporations") of a continuing care retirement facility known as "Asbury-Solomons Island," located on approximately 58 acres of land at 11000 Asbury Circle, Solomons, Calvert County, Maryland 20688 and consisting of (1) 228 independent living apartments, (2) 24 assisted living suites containing 30 beds, (3) 72 independent living cottages, (4) a community center, (5) a healthcare center containing 48 skilled and intermediate care nursing beds, (6) administrative, dining, recreation and other support facilities, (7) furniture, fixtures and equipment for such facilities and (8) related improvements, including walkways, driveways, roads, parking facilities, storage buildings, landscaping and utilities (collectively, the "Asbury-Solomons Facilities," and together with the Gaithersburg Facilities, the "Facilities").

Owner and User:

The Gaithersburg Facilities are owned by Asbury Atlantic. The Asbury-Solomons Facilities are owned by Asbury-Solomons. Each Corporation is a Maryland nonstock corporation and a 501(c)(3) organization within the meaning of Section 150(a)(4) of the Internal Revenue Code of 1986, as amended. The Facilities are used by the Corporations for tax-exempt purposes in their activities as an owner and operator of a continuing care retirement community for senior citizens.

A reasonable opportunity will be provided for interested individuals to express their views, both orally and in writing, on the proposed Bonds and the Facilities at this hearing.

Further information may be obtained from the City Manager's Office at City Hall during normal business hours, Monday through Friday, 8:00 a.m. to 5:00 p.m. To testify or submit written comments, call the City Manager's Office at (301) 258-6310.

Angel L. Jones
City Manager

**CITY OF GAITHERSBURG
NOTICE OF PUBLIC HEARING REGARDING
PROPOSED ISSUANCE OF
ECONOMIC DEVELOPMENT REVENUE BONDS
(ASBURY MARYLAND OBLIGATED GROUP – SHORT TERM
CONSTRUCTION LOAN)**

The Mayor and City Council of the City of Gaithersburg will hold a public hearing on:

**Monday, November 16, 2009
at 7:30 p.m.**

or as soon as possible thereafter as it may be heard at the Council Chambers of City Hall, 31 South Summit Avenue, Gaithersburg, Maryland on a Resolution to Authorize the Issuance and Sale of Economic Development Revenue Bonds of the City of Gaithersburg as follows:

Bonds and Use of Proceeds:

One or more issues of bonds consisting of one or more series of economic development revenue bonds of the City in the aggregate maximum principal amount not to exceed \$25,000,000 (the "Bonds"), the proceeds of which will be used to (1) provide construction financing for all or a portion of the costs of constructing and improving 43 low density residential units to be located on the Asbury Methodist Village campus as further described below (the "Facilities"), (2) fund a debt service reserve fund and capitalized interest for the Bonds, and (3) pay certain costs of issuance and other related costs. The payment of the Bonds will be secured by revenues of Asbury Atlantic, Inc. and Asbury-Solomons, Inc. (the "Corporations") and will not constitute a pledge of the faith and credit or taxing power of the City or any other public body.

Facilities and Location:

The Facilities will be a combination of single and duplex units similar to the villas that currently exist on the Asbury campus and will be staged in two phases, with Phase I consisting of 23 units and Phase II consisting of 20 units. The Facilities will be located on approximately 20 acres at the northeast area of the Asbury Methodist Village campus, 201 Russell Avenue, Gaithersburg, Montgomery County, Maryland 20877.

Owner and User:

The Facilities will be owned by Asbury Atlantic, Inc. Each of the Corporations is a Maryland nonstock corporation and a 501(c)(3) organization within the meaning of Section 150(a)(4) of the Internal Revenue Code of 1986, as amended. The Facilities are used by Asbury Atlantic, Inc. for tax-exempt purposes in its activities as an owner and operator of a continuing care retirement community for senior citizens known as "Asbury Methodist Village".

A reasonable opportunity will be provided for interested individuals to express their views, both orally and in writing, on the proposed Bonds and the Facilities at this hearing.

Further information may be obtained from the City Manager's Office at City Hall during normal business hours, Monday through Friday, 8:00 a.m. to 5:00 p.m. To testify or submit written comments, call the City Manager's Office at (301) 258-6310.

Angel L. Jones
City Manager

1691934

(10-28-09)

RESOLUTION NO. _____

RESOLUTION OF THE MAYOR AND CITY COUNCIL
AUTHORIZING THE ISSUANCE AND SALE OF ECONOMIC
DEVELOPMENT REVENUE BONDS OF THE CITY OF GAITHERSBURG
FOR ASBURY ATLANTIC, INC. AND ASBURY~SOLOMONS, INC.

Whereas, Sections 12-101 through 12-118, inclusive, of the Economic Development Article of the Annotated Code of Maryland, being the Maryland Economic Development Revenue Bond Act (the "Act"), empowers any public body (as defined in the Act) to issue and sell bonds (as defined in the Act), as its limited obligations and not upon its faith and credit or pledge of its taxing power, at any time and from time to time, and to loan the proceeds of the sale of such bonds to one or more facility users (as defined in the Act) to finance or refinance any costs of the acquisition or improvement (as defined in the Act) of a facility or facilities (as defined in the Act) for one or more facility users (as defined in the Act); and

Whereas, the Act states the declared legislative purpose of the General Assembly of Maryland to be to (1) relieve conditions of unemployment in the State of Maryland (the "State"); (2) encourage the increase of industry and commerce and a balanced economy in the State; (3) assist in the retention of existing industry and commerce in, and the attraction of new industry and commerce to, the State through, among other things, the development of ports, the control or abatement of environmental pollution and the use and disposal of waste; (4) promote economic development; (5) protect natural resources and encourage resource recovery; and (6) promote the health, welfare and safety of the residents of the State; and

Whereas, the City of Gaithersburg (the "City") has received a letter from Asbury Atlantic, Inc., a Maryland nonstock corporation and formerly known as Asbury Methodist Village, Inc. ("Asbury Atlantic"), and Asbury~Solomons, Inc., a Maryland nonstock corporation ("Asbury~Solomons"), each a facility applicant and facility user as defined in the Act (collectively, the "Facility Applicants"), dated October 26, 2009, a copy of which is attached hereto as Exhibit A and made a part hereof (the "Letter of Intent"), requesting the City to issue and sell its bonds pursuant to the Act and to loan the proceeds of the sale thereof to the Facility Applicants for the purpose of (i) refunding the outstanding principal amount of the City's Variable Rate Demand Economic Development Refunding Revenue Bonds (Asbury Maryland Obligated Group), Series 2006B (the "Series 2006B Bonds"), (ii) refunding the outstanding principal amount of the City's Variable Rate Demand Economic Development Refunding Revenue Bonds (Asbury Maryland Obligated Group), Taxable Series 2006C (the "Series 2006C Bonds," and together with the Series 2006B Bonds, the "Refunded Bonds"), (iii) providing construction financing for all or a portion of the costs of constructing and improving 43 low density residential units to be located at the northeast area of Asbury Atlantic's Gaithersburg campus on approximately 20 acres (the "New Facilities"), (iv) funding a debt service reserve fund and capitalized interest for the Bonds (as defined herein), and (v) paying certain costs of issuance and other related costs. The Facility Applicants acknowledge in the Letter of Intent that the City reserves certain rights concerning the issuance of the Bonds as provided in Section 5 of this Resolution; and

Whereas, the Refunded Bonds were issued to refinance all or a portion of the costs of the acquisition and improvement by the Facility Applicants of certain continuing care retirement

facilities known as (1) “Asbury Methodist Village,” a continuing care retirement community located on an approximately 130-acre campus located at 201 Russell Avenue, Gaithersburg, Montgomery County, Maryland 20877 and consisting of (i) 741 independent living apartments contained in six buildings, (ii) 74 independent living villas, (iii) 133 assisted living units contained in a single building, (iv) 285 comprehensive care beds contained in a single building, (v) the James F. Rosborough Jr. Cultural Arts and Wellness Center, (vi) administrative, dining, recreation and other support facilities, (vii) furniture, fixtures and equipment for such facilities and (viii) related improvements, including walkways, driveways, roads, parking facilities, storage buildings, landscaping and utilities (collectively, the “Existing Gaithersburg Facilities”) and (2) “Asbury~Solomons Island,” a continuing care retirement community located on approximately 58 acres of land at 11000 Asbury Circle, Solomons, Calvert County, Maryland 20688 and consisting of (i) 228 independent living apartments, (ii) 24 assisted living suites containing 30 beds, (iii) 72 independent living cottages, (iv) a community center, (v) a healthcare center containing 48 skilled and intermediate care nursing beds, (vi) administrative, dining, recreation and other support facilities, (vii) furniture, fixtures and equipment for such facilities and (viii) related improvements, including walkways, driveways, roads, parking facilities, storage buildings, landscaping and utilities (collectively, the “Asbury~Solomons Facilities,” and together with the New Facilities and the Existing Gaithersburg Facilities, the “Facilities”); and

Whereas, a public hearing concerning the issuance of such Bonds and the location and nature of the Facilities has been held following reasonable public notice (within the meaning of Section 147(f) of the Internal Revenue Code of 1986, as amended (the “Code”)); and

Whereas, the City, based upon the findings and determinations and subject to the reservation of certain rights as hereinafter set forth, has determined to issue and sell, in addition to any bonds authorized to be issued by any other act of the City, its bonds (within the meaning of the Act), at one time or from time to time, in an aggregate principal amount not to exceed Seventy-Five Million Dollars (\$75,000,000), hereinafter designated “City of Gaithersburg Economic Development Revenue Bonds (Asbury Maryland Obligated Group)” (the “Bonds”), and to loan the proceeds of the Bonds (the “Loan”) to the Facility Applicants on the terms and conditions as hereinafter provided in order to refinance, in whole or in part, the costs of the acquisition and improvement of the Existing Gaithersburg Facilities and the Asbury~Solomons Facilities and to provide construction financing for all or a portion of the costs of the construction and improvement of the New Facilities, in order to encourage economic development and to protect the health, welfare and safety of the citizens of the State, the County and the City.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and City Council of the City of Gaithersburg, that:

Section 1: Acting pursuant to the Act, it is hereby found and determined as follows:

(a) As evidenced by the Letter of Intent, a “letter of intent” within the meaning of the Act, the issuance of the Bonds pursuant to the Act by the City, a “public body” within the meaning of the Act, in order to loan the proceeds to the Facility Applicants, each a “facility applicant” and a “facility user” within the meaning of the Act, for the sole and exclusive purpose of financing and refinancing the “improvement,” within the meaning of the Act, of the Facilities, “facilities” within the meaning of the Act, for use by the Facility Applicants, will facilitate the financing and refinancing of the Facilities by the Facility Applicants.

(b) The accomplishment of the transactions contemplated and authorized by this Resolution, including the financing and refinancing of all or a portion of the costs of the acquisition, construction and improvement of the Facilities, will promote the declared legislative purposes of the Act by (i) creating and sustaining jobs and employment, thereby relieving conditions of unemployment in the City, the County and the State; (ii) encouraging the increase of industry and commerce and a balanced economy in the City, the County and the State; (iii) assisting in the retention of existing industry and commerce in the City, the County and the State; (iv) promoting economic development; and (v) promoting the health, welfare and safety of the residents of the City, the County and the State.

(c) The Bonds and the interest thereon are not debts or charges against the general credit or taxing powers of the City within the meaning of any constitutional or charter provision or statutory limitation and may not give rise to any pecuniary liability of the City. The Bonds and the interest thereon shall be limited obligations of the City, payable by the City solely from the revenues derived from Loan repayments (both principal and interest) made to the City by the Facility Applicants on account of the Loan and from any other moneys made available to the City for such purpose. No such moneys will be commingled with the City's funds or will be subject to the absolute control of the City, but will be subject only to such limited supervision and checks as are deemed necessary or desirable by the City to insure that the proceeds of the Bonds are used to accomplish the public purposes of the Act and this Resolution. The transactions authorized hereby do not constitute any physical public betterment or improvement or the acquisition of property for public use or the purchase of equipment for public use.

(d) The City Manager of the City (the "City Manager") is the chief executive officer of the City within the meaning of the Act and shall undertake on behalf of the City certain responsibilities described in the Act and hereinafter specified.

(e) The Bonds may be sold at either private (negotiated) sale or at public sale, and at, above or below par, in any event in such manner and upon such terms as the City Manager, in his/her sole and absolute discretion, deems to be in the best interests of the City.

(f) All or a portion of the Bonds may be issued as "qualified 501(c)(3) bonds" within the meaning of Section 145 of the Code.

Section 2: This Resolution is intended to be, and shall constitute, evidence of the present intent of the City to issue and deliver the Bonds authorized hereby in accordance with the terms and provisions hereof. Notwithstanding the foregoing, nothing in this Resolution shall be deemed to constitute (a) an undertaking by the City to expend any of its funds (other than the proceeds from the sale of the Bonds, revenues derived from the Loan repayments made to the City on account of the Loan, and any other moneys made available to the City for such purpose) to effect the transactions described herein or (b) an assurance by the City as to the availability of one or more ready, willing and able purchasers for the Bonds or as to the availability of one or more purchasers of the Bonds to whom the Bonds may lawfully be sold under, among others, applicable federal and state securities and legal investment laws.

Section 3: As described in the Letter of Intent, the City will not incur any liability, direct or indirect, or any cost, direct or indirect, in connection with the issuance and sale of the Bonds and the making of the Loan; accordingly, the Facility Applicants shall pay all costs incurred by or on behalf of the City in connection with the issuance and sale of the Bonds, the making of the Loan, including the administration thereof, including (without limitation) all costs

incurred in connection with the development of the appropriate legal documents necessary to effectuate the proposed financing and refinancing, including (without limitation) the fees of bond counsel, all costs in connection with publication of notices of any public hearings to be held in connection therewith, and compensation to any other person (other than full-time employees of the City) performing services by or on behalf of the City in connection with the transactions contemplated by this Resolution, whether or not the proposed financing and refinancing is consummated.

Section 4: In addition to any bonds authorized to be issued by any other act of the City, the issuance, sale and delivery by the City of the Bonds, at one time or from time to time, and in one or more series, in an aggregate principal amount not to exceed Seventy-Five Million Dollars (\$75,000,000), are hereby authorized, subject to the provisions of the Act and this Resolution. The City will lend or otherwise make available the proceeds of the Bonds to the Facility Applicants, as permitted by the Act, pursuant to the terms and provisions of a loan agreement to be entered into between the City and the Facility Applicants (the “Loan Agreement”), to be used by the Facility Applicants for the sole and exclusive purpose of refunding the Refunded Bonds, providing construction financing for all or a portion of the costs of the construction and improvement by Asbury Atlantic of the New Facilities, funding a debt service reserve fund and capitalized interest account for the Bonds and paying certain costs of issuance of the Bonds and other related costs to the extent permitted by the Act and the Code. The Bonds and the interest thereon shall be limited obligations of the City, repayable by the City solely from the revenue derived from Loan repayments (principal and interest) made to the City by the Facility Applicants and from any other moneys made available to the City for such purpose. The maximum principal amount of Bonds which may be issued, sold and delivered pursuant to this Resolution is Seventy-Five Million Dollars (\$75,000,000), unless such amount shall be increased by a resolution supplemental hereto.

Section 5: The City reserves the right, in its sole and absolute discretion, to take any actions which it may deem necessary in order to ensure that the City (a) complies with all federal and State laws, whether proposed or enacted, which may apply to or restrict the issuance of its economic development revenue bonds, and (b) issues such bonds to finance or refinance facilities which the City determines, in its sole and absolute discretion, will provide the greatest benefit to the City. Specifically, the City reserves the right to choose to issue its economic development revenue bonds to finance or refinance facilities other than the Facilities, and to issue or not to issue such bonds at such times and in the order of priority which the City Manager, in his/her sole and absolute discretion, may determine.

Section 6: The Bonds shall each be designated “City of Gaithersburg Economic Development Revenue Bonds (Asbury Maryland Obligated Group).” The Bonds may be further identified by the year of issue and/or such other appropriate designations as the City Manager may approve.

The Bonds shall mature on such date or dates as may be approved by the City Manager; provided that the Bonds shall mature not later than 30 years from their date of issuance.

Each of the Bonds shall be executed in the name of the City and on its behalf by the manual or facsimile signature of the Mayor of the City. The seal of the City or a facsimile thereof shall be affixed to each of the Bonds, and attested by the manual or facsimile signature of the City Manager. If deemed appropriate by the City Manager, each of the Bonds may also be

authenticated by the manual or facsimile signature of a trustee, registrar or paying agent. At least one of such signatures on each Bond shall be a manual signature.

Section 7: If deemed advisable by the City Manager, the City will enter into a trust agreement (the "Trust Agreement") for the protection of the holders of the Bonds with a bank having trust powers or a trust company (the "Trustee") to be approved by the City Manager and, pursuant to the Trust Agreement, the City will assign to the Trustee (among other things) (a) all of the City's right, title and interest in and to and remedies under the Loan Agreement, including (without limitation) any and all collateral referred to therein, excepting only the right of the City to indemnification by the Facility Applicants, taxes paid by the Facility Applicants to the City and to payments to the City for the City's administrative fees or expenses, if any, (b) the receipts and revenues of the City from the Loan, (c) certain monies which may be at any time or from time to time on deposit with the Trustee and (d) all of the City's right, title and interest in and to and remedies under such documents as the City Manager shall deem necessary or expedient to effectuate the issuance, sale and delivery of the Bonds.

Section 8: In connection with the transactions described herein, the City Manager is hereby authorized and empowered, by executive order or otherwise:

(a) To accept the Letter of Intent, in order to further evidence the present intent of the City to participate in the financing and refinancing of the Facilities;

(b) To approve the form and provisions of, execute and deliver the Bonds, the Loan Agreement and the Trust Agreement;

(c) To approve the form and provisions of any Preliminary Official Statement, final Official Statement or other offering document with respect to the Bonds;

(d) If necessary, to appoint a trustee or trustees, a bond registrar and paying agent or agents for the Bonds;

(e) To provide for the direct payment by the Facility Applicants of all costs, fees and expenses incurred by or on behalf of the City in connection with the issuance, sale and delivery of the Bonds, including (without limitation) costs of printing (if any) and issuing the Bonds, legal expenses (including the fees of bond counsel) and compensation to any person (other than full-time employees of the City) performing services by or on behalf of the City in connection therewith; and

(f) To specify, prescribe, determine, provide for, approve, execute and deliver (where applicable) such other matters, details, forms, documents, or procedures, including (without limitation) bond purchase agreements, deeds of trust, assignments and financing statements, and such other documents as are necessary or appropriate to effectuate the authorization, sale, security, issuance, delivery or payment of or for the Bonds and the making of the Loan.

Section 9: The terms, provisions, form and substance of any and all documents and instruments to be executed or entered into by or for the benefit of the City in connection with the transactions authorized by this Resolution, including all customary closing certificates and documents, shall also be subject to the approval of the City Attorney or the City Attorney's designee prior to the execution and delivery thereof by the appropriate official of the City.

Section 10: In satisfaction of the requirements of Section 147(f) of the Code, the City hereby approves the Bonds and the financing and refinancing of the Facilities.

Section 11: The members of the City Council, the Mayor, the City Attorney, and the Director of Finance of the City, for and on behalf of the City, are hereby authorized and empowered to do all things, execute all instruments, and otherwise take all such action as the City Manager may determine by executive order or otherwise to be necessary, proper or expedient to carry out the authority conferred by this Resolution, including (without limitation) the execution of a certificate and/or agreement pursuant to Section 148 of the Code and the U.S. Treasury Regulations prescribed thereunder, subject to the limitations set forth in the Act and this Resolution.

Section 12: Unless previously exercised, the authority to issue the Bonds contained in this Resolution shall expire on the date which is one (1) year from the effective date of this Resolution, unless such authority shall have been extended by a resolution supplemental hereto.

Section 13: In accordance with the Act, this Resolution takes effect immediately upon its adoption.

Adopted by the Mayor and City Council this 16th day of November, 2009.

SIDNEY KATZ, MAYOR
President of the Council

THIS IS TO CERTIFY that the foregoing Resolution was adopted by the Mayor and City Council, in public meeting assembled, on the 16th day of November, 2009.

Angel L. Jones, City Manager

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McGuireWoods LLP
7 Saint Paul Street
Suite 1000
Baltimore, MD 21202-1671
Phone: 410.659.4400
Fax: 410.659.4599
www.mcguirewoods.com

McGUIREWOODS

October 29, 2009

RECEIVED
NOV 02 2009
City of Gaithersburg
Finance & Administration

Mr. Harold W. Belton
Director of Finance and Administration
City of Gaithersburg
31 South Summit Avenue
Gaithersburg, Maryland 20877

Re: City of Gaithersburg Economic Development
Revenue Bonds (Asbury Maryland Obligated Group) Series 2009

Dear Harold:

Per your request, enclosed is the original signed letter of intent from Asbury regarding the proposed bonds. Please call me if you have any questions.

Sincerely,



Cheryl O'Donnell Guth

COG:clj
Enclosure

\\10117098.1



October 26, 2009

Ms. Angel L. Jones
City Manager
City of Gaithersburg
31 South Summit Avenue
Gaithersburg, Maryland 20877

Re: Proposed City of Gaithersburg Economic Development Revenue Bonds
(Asbury Maryland Obligated Group)

Dear Ms. Jones:

Asbury Atlantic, Inc., a Maryland nonstock corporation and formerly known as Asbury Methodist Village, Inc. ("Asbury Atlantic"), and Asbury~Solomons, Inc., a Maryland nonstock corporation ("Asbury~Solomons") (collectively, the "Facility Applicants") respectfully request that the City of Gaithersburg (the "City") authorize, issue and sell pursuant to and in accordance with the Maryland Economic Development Revenue Bond Act, Sections 12-101 to 12-118, inclusive, of the Economic Development Article of the Annotated Code of Maryland (the "Act"), its economic development revenue bonds in one or more series in an aggregate principal amount not to exceed Seventy-Five Million Dollars (\$75,000,000) (the "Bonds"), consisting of (1) not to exceed Fifty Million Dollars (\$50,000,000) aggregate principal amount of Bonds for the purpose of (i) refunding the outstanding principal amount of the City's Variable Rate Demand Economic Development Refunding Revenue Bonds (Asbury Maryland Obligated Group), Series 2006B (the "Series 2006B Bonds"), (ii) refunding the outstanding principal amount of the City's Variable Rate Demand Economic Development Refunding Revenue Bonds (Asbury Maryland Obligated Group), Taxable Series 2006C (the "Series 2006C Bonds," and together with the Series 2006B Bonds, the "Refunded Bonds"), (iii) funding a debt service reserve fund and capitalized interest for such Bonds, and (iv) paying certain costs of issuance and other related costs; and (2) not to exceed Twenty-Five Million Dollars (\$25,000,000) aggregate principal amount of Bonds for the purpose of (i) providing construction financing for all or a portion of the costs of constructing and improving 43 low density residential units to be located at the northeast area of Asbury Atlantic's Gaithersburg campus on approximately 20 acres (the "New Facilities"), (ii) funding a debt service reserve fund and capitalized interest for such Bonds, and (iii) paying certain costs of issuance and other related costs. It is intended that this letter, if accepted by the City, shall constitute a "letter of intent" as contemplated by Section 12-101(f) of the Act.



Asbury Atlantic, Inc. 20030 Century Boulevard, Suite 300 Germantown, Maryland 20874

301.250.2100 fax 301.250.2113 www.asbury.org

The Series 2006B Bonds were issued to refinance all or a portion of the costs of the acquisition and improvement (as defined in the Act) by Asbury Atlantic of a continuing care retirement facility known as "Asbury Methodist Village," located on an approximately 130-acre campus located at 201 Russell Avenue, Gaithersburg, Montgomery County, Maryland 20877 and consisting of (1) 741 independent living apartments contained in six buildings, (2) 74 independent living villas, (3) 133 assisted living units contained in a single building, (4) 285 comprehensive care beds contained in a single building, (5) the James F. Rosborough Jr. Cultural Arts and Wellness Center, (6) administrative, dining, recreation and other support facilities, (7) furniture, fixtures and equipment for such facilities and (8) related improvements, including walkways, driveways, roads, parking facilities, storage buildings, landscaping and utilities (collectively, the "Existing Gaithersburg Facilities").

The Series 2006C Bonds were issued to refinance all or a portion of the costs of the acquisition and improvement by Asbury~Solomons of a continuing care retirement facility known as "Asbury-Solomons Island," located on approximately 58 acres of land at 11000 Asbury Circle, Solomons, Calvert County, Maryland 20688 and consisting of (1) 228 independent living apartments, (2) 24 assisted living suites containing 30 beds, (3) 72 independent living cottages, (4) a community center, (5) a healthcare center containing 48 skilled and intermediate care nursing beds, (6) administrative, dining, recreation and other support facilities, (7) furniture, fixtures and equipment for such facilities and (8) related improvements, including walkways, driveways, roads, parking facilities, storage buildings, landscaping and utilities (collectively, the "Asbury~Solomons Facilities," and together with the New Facilities and the Existing Gaithersburg Facilities, the "Facilities"). Each of the Facilities constitutes a "facility" as defined in the Act.

The New Facilities will be a combination of single and duplex units similar to the villas that currently exist on the Gaithersburg campus. The New Facilities will be staged in two phases, with 23 units being constructed and occupied in Phase I, and 20 units to be constructed and occupied in Phase II.

The Facility Applicants propose that the City lend the proceeds of the Bonds to the Facility Applicants pursuant to the terms and provisions of a loan agreement to be entered into by and between the City and the Facility Applicants (the "Loan Agreement") for the purpose of refinancing the costs of acquiring and improving the Facilities by refunding the Refunded Bonds, financing a portion of the costs of constructing and improving the New Facilities, funding a debt service reserve fund and capitalized interest account for the Bonds and financing a portion of the costs of issuance of the Bonds and other related costs. The Bonds shall be repayable by the City solely from the revenues derived from payments made to the City pursuant to the terms and provisions of the Loan Agreement, as amended from time to time, and from such other monies as may be made available by the Facility Applicants to the City for such purpose. The Loan Agreement, as amended from time to time, will require that (1) the proceeds of the Bonds be used solely to refund the Refunded Bonds and finance the costs of constructing and improving the New Facilities and (2) the Facility Applicants make payments which will be sufficient to enable the City to pay the principal of, premium, if any, and interest on the Bonds, and all

expenses incurred by the City and fees due to the City in connection with the issuance of the Bonds and the making and administration of the loan, as the same become due and payable.

Each Facility Applicant has been determined by the Internal Revenue Service to be an exempt organization under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended. The Facility Applicants are affiliated corporations and the administrative headquarters for the Facility Applicants is located at Asbury Methodist Village in the City.

The Facility Applicants hereby acknowledge that the City reserves the right, in its sole and absolute discretion, to take any actions which the City may deem necessary in order to ensure that the City (a) complies with all federal and state laws, whether proposed or enacted, which may restrict the issuance of its economic development revenue bonds, and (b) issues such bonds that finance or refinance facilities which the City determines, in its sole and absolute discretion, will provide the greatest benefit to the City. Specifically, the City reserves the right to choose to issue its economic development revenue bonds for facilities other than the Facilities, and to issue or not to issue such bonds and the Bonds in the order of priority which the City Manager, in her sole and absolute discretion, may determine.

It is expressly agreed and understood that (a) the City will not incur any liability, direct or indirect, or any cost, direct or indirect, in connection with the issuance and sale of the Bonds or the making of the loan, and (b) the Facility Applicants shall pay all costs incurred by or on behalf of the City in connection with the proposed financing and refinancing, including the administration thereof, the fees of bond counsel, all costs incurred in connection with publication of notices of any public hearings to be held in connection therewith, and compensation to any other person (other than full-time employees of the City) performing services by or on behalf of the City in connection with the transactions contemplated by this Letter of Intent, whether or not the proposed financing and refinancing is consummated.

It is further understood and agreed by the undersigned that the proposal contained herein is subject to (a) the approval and appropriate action by the Mayor and City Council of the City and the City Manager of the City, and (b) the approval of the detailed provisions of all documents pertaining to the financing and refinancing as yet to be developed. The acceptance of this Letter of Intent by the City shall evidence the present intent by the City to authorize, sell, issue and deliver the Bonds and to authorize the loan for the purposes described herein; provided, however, the City cannot guaranty or assure the undersigned that the Bonds will actually be sold on terms acceptable to the Facility Applicants or any other interested parties, that the Facility Applicants will obtain purchasers of the Bonds qualified to purchase the Bonds under applicable federal and state securities law, that the Facility Applicants will have the ability to make payments sufficient to enable the City to repay the Bonds, or that the proposed transaction will be consummated.


The Facility Applicants understand that the Bonds are and shall remain payable solely and only from moneys derived from payments to the City by the Facility Applicants and that the

Ms. Angel L. Jones
October 26, 2009
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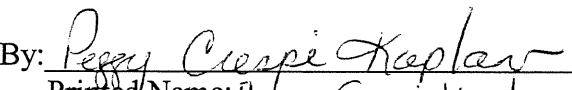
Bonds and the interest or premium thereon are not debts or charges against the general credit or taxing power of the City, within the meaning of any constitutional or charter provision or statutory limitation, and may not give rise to any pecuniary liability of the City. Nothing contained in this Letter of Intent shall be deemed to constitute an undertaking by the City to expend any of its funds to effect any or all of the transactions contemplated by this Letter of Intent.

Very truly yours,

ASBURY ATLANTIC, INC.

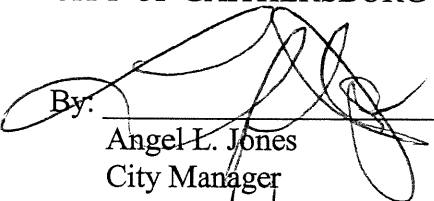
By: 
Printed Name: Doug LEIDIG
Title: PRESIDENT

ASBURY~SOLOMONS, INC.

By: 
Printed Name: Peggy Crespi Kaplan
Title: Secretary

ACCEPTED:

CITY OF GAITHERSBURG

By: 
Angel L. Jones
City Manager
Date: 11/1/09

cc: Cheryl O'Donnell Guth, Esquire

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