

**ORDINANCE 05 - 2022**

**AN ORDINANCE OF THE BOROUGH OF MOUNT ARLINGTON, COUNTY OF MORRIS, STATE OF NEW JERSEY, APPROVING AN APPLICATION FOR A LONG-TERM TAX EXEMPTION AND AUTHORIZING THE EXECUTION OF A FINANCIAL AGREEMENT WITH THE ORCHARDS AT MOUNT ARLINGTON URBAN RENEWAL, LLC**

**WHEREAS**, the Borough of Mount Arlington, in the County of Morris, New Jersey (the “**Borough**”), a public body corporate and politic of the State of New Jersey (the “**State**”) is authorized pursuant to the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq., as amended and supplemented (the “**Redevelopment Law**”), to determine whether certain parcels of land within the Borough constitute an area in need of rehabilitation and/or an area in need of redevelopment; and

**WHEREAS**, pursuant to the Redevelopment Law, improvements to property located within an area in need of rehabilitation or redevelopment may qualify for long term tax exemptions under the Long Term Tax Exemption Law, N.J.S.A. 40A:20-1 et seq. (the “**Exemption Law**”); and

**WHEREAS**, on July 9, 2020, by Resolution #2020-109, the Borough Council of the Borough of Mount Arlington (“**Borough Council**”) in accordance with provisions of the Redevelopment Law and based upon the report and recommendation of the Mount Arlington Planning Board (the “**Planning Board**”), designated certain property identified on the official tax maps of the Borough as Block 61.02, Lots 23.08 and 23.02 (the “**Redevelopment Area**”) as an “area in need of redevelopment” under the Redevelopment Law; and

**WHEREAS**, the Borough Council designated the Borough as the redevelopment entity responsible for implementing and carrying out redevelopment plans pursuant to the Redevelopment Law; and

**WHEREAS**, pursuant to N.J.S.A. 40A:12A-7, on March 2, 2021, by Ordinance No. 02-2021, in accordance with the applicable provisions and requirements of the Redevelopment Law and based upon the report and recommendation of the Planning Board, adopted an ordinance approving and enacting the “111 & 181 Howard Boulevard Redevelopment Plan” (as may be amended and supplemented from time to time, the “**Redevelopment Plan**”) for the Redevelopment Area; and

**WHEREAS**, The Orchards at Mt. Arlington Urban Renewal, LLC (the “**Entity**”) is the owner of certain property within the Redevelopment Area identified as Block 61.02, Lot 23.08 as shown on the official Tax Map of the Borough, and commonly known as 181 Howard Boulevard, consisting of approximately 7.61 acres (the “**Property**”); and

**WHEREAS**, the Entity is a New Jersey urban renewal entity and corporation qualified to do business under the provisions of the Exemption Law with offices at 1075 Route 34, Suite G, Aberdeen, New Jersey 07747; and

**WHEREAS**, on July 6, 2021, the Borough and the Entity entered into a Redevelopment Agreement (the “**Redevelopment Agreement**”) for the Property in order to implement the development, design, financing, and construction of a mixed-use project to be renamed “Station Square” with the addition of two new luxury apartment buildings to replace a portion of the existing shopping center and former freestanding bank building, an upgrade of the remaining shopping center façade, and the expansion of the onsite parking to support the project along with landscaping, signage and other enhancements, all as fully detailed in the Redevelopment Agreement (the “**Project**”); and

**WHEREAS**, in order to enhance the economic viability of and opportunity for a successful project, the Entity submitted to the Mayor an application (the “**Application**”), which is on file with the Borough Clerk, seeking a tax exemption in connection with the Project pursuant to the Exemption Law in exchange for which the Entity proposes to make payments to the Borough of Annual Service Charges in lieu of taxes; and

**WHEREAS**, the Mayor submitted the Application and the financial agreement attached hereto as Exhibit A (the “**Financial Agreement**”) to the Borough Council with his recommendation for approval, a copy of which recommendation is on file with the Borough Clerk; and

**WHEREAS**, the Borough Council has determined that the Project represents an undertaking permitted by the Exemption Law.

**NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE BOROUGH OF MOUNT ARLINGTON, NEW JERSEY AS FOLLOWS:**

**Section 1.** The aforementioned recitals are incorporated herein as though fully set forth at length.

**Section 2.** The Application for tax exemption and the Financial Agreement are hereby approved.

**Section 3.** The Mayor is hereby authorized and directed to execute the Financial Agreement substantially in the form attached as Exhibit A together with such additions, deletions and other modifications deemed necessary upon consultation with counsel to the Borough, and prepare, amend or execute any other agreements necessary to effectuate this ordinance, subject to modification or revisions, as deemed necessary and appropriate.

**Section 4.** The Clerk of the Borough is hereby authorized and directed, upon execution of the Financial Agreement by the Mayor, to attest to the signature of the Mayor and to affix the corporate seal of the Borough upon such document.

**Section 5.** The Borough Clerk shall file certified copies of this ordinance and the Financial Agreement with the Tax Assessor of the Borough in accordance with N.J.S.A. 40A:20-12.

**Section 6.** In accordance with N.J.S.A. 40A:20-12, within ten (10) calendar days following the later of the effective date of this Ordinance or the execution of the Financial

Agreement by the Entity, the Borough Clerk also shall transmit a certified copy of this Ordinance and the Financial Agreement to the Chief Financial Officer of Union County and to the Union County Counsel for informational purposes.

**Section 7.** The Mayor and Borough Clerk are hereby authorized to take such action and to execute such other documents, on behalf of the Borough, in consultation with Borough counsel, as is necessary to effectuate the terms of the Financial Agreement.

**Section 8.** If any part(s) of this ordinance shall be deemed invalid, such part(s) shall be severed and the invalidity thereby shall not affect the remaining parts of this ordinance.

**Section 9.** This ordinance shall take effect in accordance with all applicable laws.

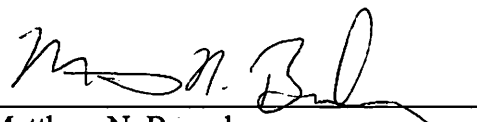
**I HEREBY CERTIFY** this to be a true and correct Ordinance of the Mayor and Borough Council of the Borough of Mount Arlington, adopted on March 1, 2022 and will be further considered after a Public Hearing held on April 5, 2022 at the Municipal Building at 7:00p.m.


INTRODUCED: March 1, 2022

ADOPTED: April 5, 2022

ATTEST:

BOROUGH OF MOUNT ARLINGTON  
COUNTY OF MORRIS  
STATE OF NEW JERSEY

  
Matthew N. Bansch  
Borough Clerk

  
Michael Stanzilis, Mayor  
Borough of Mount Arlington

**FINANCIAL AGREEMENT FOR  
LONG TERM TAX EXEMPTION  
N.J.S.A. 40A:20-1 et seq.**

by and between

**BOROUGH OF MOUNT ARLINGTON**

and

**THE ORCHARDS AT MT. ARLINGTON URBAN RENEWAL, LLC**

Dated: [ \* ], 2022

**THIS FINANCIAL AGREEMENT** is made this [ \* ] day of [ \* ], 2022 (hereinafter this “**Agreement**” or “**Financial Agreement**”) by and between **THE ORCHARDS AT MT. ARLINGTON URBAN RENEWAL, LLC** (the “**Entity**”) a New Jersey limited liability company and an urban renewal entity qualified to do business under the provisions of the Long Term Tax Exemption Law of 1992, N.J.S.A. 40A:20-1 et seq., as amended and supplemented (the “**Exemption Law**”), with offices at 1075 Route 34, Suite G, Aberdeen, New Jersey 07747; and the **BOROUGH OF MOUNT ARLINGTON**, a municipal corporation of the State of New Jersey, having an address at 419 Howard Boulevard, Mount Arlington, New Jersey 07856 (the “**Borough**”; and together with the Entity, the “**Parties**” or “**Party**”).

**WITNESSETH:**

**WHEREAS**, on July 9, 2020, by Resolution #2020-109, the Borough Council of the Borough of Mount Arlington, County of Morris, State of New Jersey (“**Borough Council**”) in accordance with provisions of the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq., as amended and supplemented (the “**Redevelopment Law**”) and based upon the report and recommendation of the Mount Arlington Planning Board (the “**Planning Board**”), designated certain property identified on the official tax maps of the Borough as Block 61.02, Lots 23.08 and 23.02 (the “**Redevelopment Area**”) as an “area in need of redevelopment” under the Redevelopment Law; and

**WHEREAS**, pursuant to N.J.S.A. 4-A:12A-7, on March 2, 2021, by Ordinance No. 02-2021, the Borough Council, in accordance with provisions and requirements of the Redevelopment Law, and based upon the report and recommendation of the Planning Board, enacted the “111 & 181 Howard Boulevard Redevelopment Plan” (as may be amended and supplemented from time to time, the “**Redevelopment Plan**”) for the Redevelopment Area; and

**WHEREAS**, the Entity is the owner of certain property within the Redevelopment Area identified as Block 61.02, Lot 23.08 as shown on the official Tax Map of the Borough, and commonly known as 181 Howard Boulevard, consisting of approximately 7.61 acres (as set forth on the property description attached hereto as Exhibit A, the “**Property**”); and

**WHEREAS**, on July 6, 2021, the Borough and the Entity entered into a Redevelopment Agreement (the “**Redevelopment Agreement**”) for the Property in order to implement the development, design, financing, and construction of a mixed-use project to be renamed “Station Square” with the addition of two new luxury apartment buildings to replace a portion of the existing shopping center and former freestanding bank building, an upgrade of the remaining shopping center façade, and the expansion of the onsite parking to support the project along with landscaping, signage and other enhancements, (as defined in Section 2.4 below, the “**Project**”); and

**WHEREAS**, in accordance with the Exemption Law, the Entity submitted an application to the Borough for the approval of a long term tax exemption for the Project (the “**Application**”), which Application is attached hereto as Exhibit B; and

**WHEREAS**, the Mayor submitted the Application and a form of financial agreement to the Borough Council with his recommendation of approval, a copy of which is on file with the Borough Clerk; and

**WHEREAS**, on [ \_\_\_\_ ], the Borough Council finally adopted an ordinance entitled, “Ordinance of the Borough of Mount Arlington, in the County of Morris, New Jersey Approving Application for a Long Term Tax Exemption and Authorizing the Execution of a Financial Agreement with Orchards at Mount Arlington Urban Renewal, LLC,” a copy of which is attached hereto as Exhibit C, which Ordinance also approved the Application (the “**Ordinance**”); and

**WHEREAS**, the Borough Council has reviewed the Application and has made the following findings:

**A. Benefits of Project v. Costs.**

i. The development and construction of the Project, as set forth in the Redevelopment Agreement and Redevelopment Plan, will be beneficial to the overall community; will provide additional quality affordable and market rate rental housing; will achieve the goals and objectives of the Redevelopment Plan; will help revitalize the Property; will improve the quality of life for the community; will serve as a catalyst for further private investment in areas surrounding the Property and will enhance the economic development of the Borough.

ii. It is anticipated that the development of the Project will create approximately two hundred and twenty-five (225) full-time equivalent construction jobs over the duration of the construction of the Project, as well as approximately eight (8) full-time permanent jobs in connection with the operation of the Project.

iii. In 2021, Block 61.02, Lot 23.08, including the improvements thereon, generated approximately \$142,220.02 in total real estate taxes to all government units, including \$43,560.00 to the Borough. Pursuant to this Financial Agreement, in addition to the provision of affordable rental housing within the Borough, the Project is projected to generate revenue for the Borough in the first year of approximately [\_\_\_\_], well in excess of the municipal revenue generated by *ad valorem* taxes in 2021. The benefits to the Borough accruing as a result of the Project, including the provision of affordable housing, the generation of jobs, the revitalization of the Redevelopment Area, and the generation of municipal revenues, will substantially outweigh any incremental costs to the Borough resulting from the Tax Exemption granted herein.

**B. Importance of Tax Exemption.**

The Borough Council’s approval of the Tax Exemption set forth herein is essential to the success of the Project because:

i. The relative stability and predictability of the Annual Service Charge (as defined below) associated with the Project will make it more attractive to financial institutions whose participation is necessary in order to finance the Project.

ii. The relative stability and predictability of the Annual Service Charge will allow the Entity to provide a high level of maintenance for the Property and will have a positive impact on the surrounding area and community.

iii. The financial benefit conferred by the Tax Exemption assists in the undertaking of public improvements associated with the Project as further described in the Redevelopment Agreement and the Redevelopment Plan.

iv. The financial benefit conferred by the Tax Exemption supports the inclusion of eleven affordable rental units on terms affordable to a mix of households with very low, low and moderate income.

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties to this Agreement mutually covenant and agree as follows:

## **ARTICLE I - GENERAL PROVISIONS**

### **Section 1.1 Governing Law**

This Financial Agreement shall be governed by the provisions of the Exemption Law, the Redevelopment Law, the Ordinance, and all other Applicable Laws, as defined below. It is expressly understood and agreed that the Borough has relied upon the facts, data, and representations contained in the Application in granting the Tax Exemption and the Application is hereby incorporated into this Financial Agreement by reference.

### **Section 1.2 General Definitions and Construction**

The recitals and exhibits to this Agreement are hereby incorporated by reference herein as if set forth at length. Unless specifically provided otherwise or the context otherwise requires, when used in this Agreement, the following terms and phrases shall have the following respective meanings:

- a. **Affiliate** – With respect to any person or entity, any other person or entity directly or indirectly Controlling or Controlled by, or under direct common Control with, such person or entity.
- b. **Affordable Housing Units** - Shall have the meaning specified in Section 2.4 hereof.
- c. **Agreement or Financial Agreement** – Shall have the meaning specified in the preamble hereof.
- d. **Allowable Net Profit** – The amount arrived at by applying the Allowable Profit Rate pursuant to the provisions of N.J.S.A. 40A:20-3.
- e. **Allowable Profit Rate** - The greater of twelve (12%) percent or the percentage per annum arrived at by adding one and one-quarter (1.25%) percent to the annual interest percentage rate payable on the Entity's initial permanent mortgage financing for the Project. If the initial permanent mortgage is insured or guaranteed by a governmental agency, the

mortgage insurance premium or similar charge, if payable on a per annum basis, shall be considered as interest for this purpose. If there is no permanent mortgage financing or if the financing is internal or undertaken by a related party, the Allowable Profit Rate shall be the greater of twelve (12%) percent or the percentage per annum arrived at by adding one and one-quarter (1.25%) percent to the prevailing per annum interest rate on mortgage financing on comparable improvements within Morris County. The provisions of N.J.S.A. 40A:20-3(b) are incorporated herein by reference.

- f. **Annual Administrative Fee** – Shall have the meaning specified in Section 4.9 hereof.
- g. **Annual Gross Revenue** (also referred to as the “AGR”) – Annual gross revenue for the Project, as determined pursuant to the Exemption Law and the terms of this Financial Agreement.
- h. **Annual Service Charge** (also referred to as the “ASC”) – The total annual amount that the Entity has agreed to pay the Borough for municipal services supplied to the Project, which sum is in lieu of any taxes on the Land and the Improvements for Building 1 Condo and Building 2 Condo, and in lieu of any taxes on the Improvements for Retail Condo pursuant to the Exemption Law, which amount shall be prorated in the year in which the Annual Service Charge begins and the year in which the Annual Service Charge terminates. The Annual Service Charge shall be calculated pursuant to Article IV hereof.
- i. **Annual Audited Statement** - A complete financial statement outlining the financial status of the Project, which shall also include a computation of Net Profit, Allowable Net Profit, and Annual Gross Revenue, prepared annually by the Entity’s certified public accountant. The contents of each Annual Audited Statement shall be prepared in conformity with Generally Accepted Accounting Principles, the Exemption Law, and this Financial Agreement.
- j. **Applicable Law**: Any and all federal, state and local laws, rules, regulations, rulings, court orders, statutes and ordinances applicable to the Project, the Redevelopment Area and the Tax Exemption.
- k. **Application** – Shall have the meaning specified in the recitals of this Financial Agreement.
- l. **ASC Commencement Date** – The first day of the month immediately following the Substantial Completion of any portion of the Project.
- m. **Borough** – Shall have the meaning specified in the preamble of this Financial Agreement.
- n. **Borough Council** – Shall have the meaning specified in the preamble of this Financial Agreement.
- o. **Building 1** – Shall have the meaning specified in Section 2.4 of this Financial Agreement.



- p. **Building 1 Condo** – Shall have the meaning specified in Section 3.1 of this Financial Agreement.
- q. **Building 2** – Shall have the meaning specified in Section 2.4 of this Financial Agreement.
- r. **Building 2 Condo** – Shall have the meaning specified in Section 3.1 of this Financial Agreement.
- s. **Certificate of Occupancy** - A temporary or permanent certificate of occupancy issued by the appropriate Borough official, pursuant to N.J.S.A. 52:27D-133.
- t. **Control** – As used with respect to any person or entity, shall mean possession, directly or indirectly, of the power to direct or cause the direction of the management and operation of such person or entity, whether through the ownership of voting securities or by contract or other written agreements.
- u. **Days** - Whenever the word “Days” is used to denote time, it shall mean calendar days.
- v. **Debt Service** – The amount required to make annual payments of principal and interest or the equivalent thereof on any construction mortgage, permanent mortgage or other financing including returns on institutional equity financing and market rate related party debt for the Project for a period equal to the term of the Tax Exemption granted by this Financial Agreement.
- w. **Default** - A breach or failure of the Borough or the Entity to perform any obligation imposed by the terms of this Financial Agreement, or under the Exemption Law, beyond any applicable grace or cure periods set forth in this Financial Agreement. In addition, a Default under the Redevelopment Agreement, which has not been cured in accordance with the terms of the Redevelopment Agreement, shall constitute a Default under this Agreement.
- x. **Effective Date** – The date that this Agreement has been executed by both Parties.
- y. **Entity** – The entity specified in the preamble of this Financial Agreement, which shall be qualified as an urban renewal entity under the Exemption Law. Unless the context provides otherwise, it shall also include any permitted Transferee, which shall also be qualified as an urban renewal entity under the Exemption Law as set forth in Section 8.1 hereof.
- z. **Excess Net Profits** – The amount of Net Profits that exceeds the Allowable Net Profits for the applicable accounting period as determined in accordance with the Exemption Law.
- aa. **Exemption Law** - Shall have the meaning specified in the preamble of this Financial Agreement.

- bb. **Improvements** - Any building, structure or fixture comprising the Project which is permanently affixed to the Property to be constructed and exempt under this Agreement.
- cc. **Land Taxes** – The amount of any real estate taxes levied on the Property, exclusive of any Improvements related thereto.
- dd. **Minimum Annual Service Charge** – The amount of the total taxes levied against the Property in the last full tax year in which the Property was subject to taxation, which amount the Parties herein agree is One Hundred Forty-Two Thousand Two Hundred Twenty Dollars (\$142,220). The Minimum Annual Service Charge shall be allocated equally between the Building 1 Condo, the Building 2 Condo and Retail Condo with each condominium unit being responsible for Forty-Seven Thousand, Four Hundred Six Dollars and Sixty-Seven Cents (\$47,406.67).
- ee. **Net Profit** - Annual Gross Revenue less all operating and non-operating expenses and costs of the Entity, all determined in accordance with Generally Accepted Accounting Principles and the provisions of N.J.S.A. 40A:20-3(c), but: (1) there shall be included in expenses: (a) all annual service charges paid pursuant to N.J.S.A. 40A:20-12; (b) all payments to the municipality of excess profits pursuant to N.J.S.A. 40A:20-15 or N.J.S.A. 40A:20-16; (c) an annual amount sufficient to amortize the Total Project Cost and all capital costs determined in accordance with generally accepted accounting principles, of any other entity whose revenue is included in the computation of excess profits, over the term of the abatement as set forth in this Financial Agreement; (d) all reasonable annual operating expenses of the Entity and any other entity whose revenue is included in the computation of Excess Profits, including the cost of all management fees, brokerage commissions, insurance premiums, all taxes or service charges paid, legal, accounting, or other professional service fees, utilities, building maintenance costs, building and office supplies, and payments into repair or maintenance reserve accounts; (e) all payments of rent including, but not limited to, ground rent by the Entity (if applicable); (f) all Debt Service; and (2) there shall not be included in expenses either depreciation or obsolescence, interest on debt, except interest which is part of Debt Service, income taxes, or salaries, bonuses or other compensation paid, directly or indirectly to directors, officers and stockholders of the Entity, or officers, partners or other persons holding any proprietary ownership interest in the Entity.
- ff. **Ordinance** – Shall have the meaning specified in the recitals of this Financial Agreement.
- gg. **Party or Parties** – Shall have the meaning specified in the preamble of this Financial Agreement.
- hh. **Payment Default** – Shall have the meaning specified in the Section 5.4 of this Financial Agreement.
- ii. **Planning Board** – Shall have the meaning specified in the preamble of this Financial Agreement.

- jj. **Project** - Shall have the meaning specified in Section 2.4 of this Financial Agreement.
- kk. **Property** - Shall have the meaning specified in the recitals of this Financial Agreement.
- ll. **Redevelopment Agreement**- Shall have the meaning specified in the recitals of this Financial Agreement.
- mm. **Redevelopment Area** – Shall have the meaning specified in the recitals of this Financial Agreement.
- nn. **Redevelopment Law** – Shall have the meaning specified in the recitals of this Financial Agreement.
- oo. **Redevelopment Plan** – Shall have the meaning specified in the recitals of this Financial Agreement.
- pp. **Rental Unit** – A residential unit within the Project made available for rent to the public.
- qq. **Reserve** – Shall have the meaning specified in Section 6.2 of this Financial Agreement.
- rr. **Retail Condo** – Shall have the meaning specified in Section 3.1 of this Financial Agreement.
- ss. **Retail Improvements** – Shall have the meaning specified in Section 2.4 of this Financial Agreement.
- tt. **Secured Party or Secured Parties** – Shall have the meaning specified in Section 8.3(a) of this Financial Agreement.
- uu. **Security Arrangements** – Shall have the meaning specified in Section 8.3(a) of this Financial Agreement.
- vv. **Substantial Completion** – The determination by the Borough construction official that the Project, in whole or in part, is ready for the use intended, which shall mean the date on which the Project receives, or is eligible to receive, any Certificate of Occupancy for any portion of the Project.
- ww. **Tax Exemption** - The exemption from conventional taxes granted herein on the Land and the Improvements for Building 1 Condo and Building 2 Condo, and on the Improvements for Retail Condo pursuant to the Exemption Law and for which a payment in lieu of taxes will be made to the Borough as set forth herein.
- xx. **Tenant** – Any tenant of a Rental Unit.

- yy. **Termination Date** – For the Building 1 Condo and Building 2 Condo, the earlier to occur of (i) the thirty-fifth (35th) anniversary of the Effective Date; (ii) the thirtieth (30th) anniversary date of the ASC Commencement Date; or (iii) such other date as this Financial Agreement may terminate pursuant to the terms hereof or pursuant to Applicable Law. For the Retail Condo, the earlier to occur of (i) the tenth (10<sup>th</sup>) anniversary of the ASC Commencement Date; and (ii) such other date as this Financial Agreement may terminate pursuant to the terms hereof or pursuant to Applicable Law.
- zz. **Total Project Cost** - Shall be as calculated in accordance with Section 3(h) of the Exemption Law.
- aaa. **Transfer** – Shall have the meaning specified in Section 8.1 of this Financial Agreement.
- bbb. **Transferee** – Shall have the meaning specified in Section 8.1 of this Financial Agreement.

### **Section 1.3 Interpretation and Construction.**

In this Agreement, unless the context otherwise requires:

A. The terms “hereby,” “hereof,” “hereto,” “herein,” “hereunder” and any similar terms, as used in this Agreement, refer to this Agreement, and the term “hereafter” means after, and the term “heretofore” means before the date of delivery of this Agreement.

B. Words importing a particular gender mean and include correlative words of every other gender and words importing the singular number mean and include the plural number and vice versa.

C. Words importing persons mean and include firms, associations, partnerships (including limited partnerships), trusts, corporations, limited liability companies and other legal entities, including public or governmental bodies, as well as natural persons.

D. Any headings preceding the texts of the several articles and sections of this Agreement, and any table of contents or marginal notes appended to copies hereof, shall be solely for convenience of reference and shall not constitute a part of this Agreement, nor shall they affect its meaning, construction or effect. All references to articles, sections or exhibits in this Agreement shall, unless indicated otherwise, refer to the articles, sections or exhibits in this Agreement.

E. Unless otherwise indicated, all approvals, consents and acceptances required to be given or made by any person or Party hereunder shall not be unreasonably withheld, conditioned, or delayed.

F. All notices to be given hereunder and responses thereto shall be given, unless a certain number of days is specified, within a reasonable time, which shall not be less than ten (10) days nor more than twenty (20) days, unless the context dictates otherwise.

G. All exhibits referred to in this Agreement and attached hereto are incorporated herein and made part hereof.

**[End of Article I]**

## **ARTICLE II - PROJECT AND PROPERTY**

### **Section 2.1. Borough's Findings**

Pursuant to the Exemption Law, the Borough finds that the Tax Exemption granted pursuant to this Financial Agreement will benefit the Borough and the community by assuring the success of the redevelopment of the Property, which exhibits the statutorily recognized redevelopment criteria. The development and construction of the Project, as set forth in the Redevelopment Agreement and Redevelopment Plan, will be beneficial to the overall community; will provide additional quality affordable and market rate rental housing; will achieve the goals and objectives of the Redevelopment Plan; will help revitalize the Property; will improve the quality of life for the community; is expected to generate two and twenty-five (225) construction jobs and eight (8) permanent jobs; will serve as a catalyst for further private investment in areas surrounding the Property and will enhance the economic development of the Borough. The benefits to the Borough accruing as a result of the Project, including the provision of affordable housing, the generation of jobs, the revitalization of the Redevelopment Area, and the generation of municipal revenues, will substantially outweigh any incremental costs to the Borough resulting from the Tax Exemption granted herein.

The Tax Exemption is important to the Borough and the Entity because without the incentive of the Tax Exemption, it is unlikely that the Project would be undertaken. The Tax Exemption will allow the Entity to provide a high level of maintenance for the Property and will support the costs of undertaking public improvements in the Redevelopment Area, as well as the inclusion of eleven affordable rental units on terms affordable to a mix of households with very low, low and moderate income, all of which is expected to attract future occupants to the Project.

### **Section 2.2 Approval of Agreement**

The Borough hereby approves a Tax Exemption for the Project, which is to be constructed, operated and maintained on the Property in accordance with the terms and conditions set forth herein, the Redevelopment Agreement, the provisions of the Exemption Law, and other Applicable Law.

### **Section 2.3 Approval of the Entity**

The Borough hereby approves of the Entity in reliance upon the Entity's representation that its certificate of formation contains all the requisite provisions of law, has been reviewed and approved by the Commissioner of the New Jersey State Department of Community Affairs, and has been filed with, as appropriate, the New Jersey State Department of Treasury, all in accordance with N.J.S.A. 40A:20-5.

### **Section 2.4 Redevelopment of the Property**

The Entity agrees that it will develop, construct, operate and maintain the Project in accordance with the terms of the Redevelopment Agreement and the Redevelopment Plan. The

final design of the Project shall be as approved by the Planning Board of the Borough, in accordance with the Redevelopment Plan.

The “**Project**” includes the development, design, financing, and construction of a mixed-use project to be renamed “Station Square” with the addition of two new luxury apartment buildings to replace a portion of the existing shopping center and former freestanding bank building, an upgrade of the remaining shopping center façade, and the expansion of the onsite parking to support the project along with landscaping, signage and other enhancements. Specifically, the Entity proposes the removal of the end of the east wing of the existing vacant retail building and the construction of a 4-story, mixed-use building (“**Building 1**”). Building 1 will contain: (i) 4,640 square feet of new retail/commercial space; (ii) the entrance, lobby, common space, fitness rooms, community lounges, bike storage rooms, and tenant storage for the residential units, (iii) seventeen (17) market-rate rental apartments, including sixteen (16) one-bedroom units and one (1) two-bedroom unit, and (iv) seven (7) rental residential units affordable to very low-, low- and/or moderate-income households that qualify as such, consisting of two (2) one-bedroom units, two (2) two-bedroom units, and three (3) three-bedroom units (the “**Affordable Housing Units**”). The Redeveloper proposes the demolition of the existing freestanding former bank building and the construction of a 5-story, multi-family residential building (“**Building 2**”). Building 2 will contain: (i) the entrance, lobby, common space, fitness rooms, community lounges, bike storage rooms, and tenant storage for the residential units, (ii) forty-three (43) market-rate rental apartments, including thirty-one (31) one-bedroom units and twelve (12) two-bedroom units, and (iii) four (4) two-bedroom Affordable Housing Units. Additional off-street parking spaces will be added to the Property in accordance with the site plan approval. The 34,694 square feet of retail/commercial space will remain in the existing retail building and the façade will be upgraded in accordance with the Redevelopment Agreement and Redevelopment Plan (the “**Retail Improvements**”). The Project shall also include outdoor amenity areas, site improvements, signage, utilities and infrastructure improvements, all in accordance with the Redevelopment Plan, Redevelopment Agreement, and any and all approvals granted by any and all other governmental agencies exercising jurisdiction over the Property.

## **Section 2.5 Entity’s Relationship to Property**

The Entity owns fee title interest to the Property.

**[End of Article II]**

## **ARTICLE III – OWNERSHIP, MANAGEMENT AND CONTROL**

### **Section 3.1 Entity's Representation**

The Entity represents that it shall remain the fee title owner of the Property throughout the development and construction of same, subject to its right of Transfer in accordance with Section 8.1 hereof and the terms of the Redevelopment Agreement.

The anticipated ownership structure of the Project is three separate units having a condominium form of ownership consisting of: 1) the 34,694 square feet of retail/commercial space that will remain in the existing retail building (the “**Retail Condo**”); 2) Building 1 (the “**Building 1 Condo**”); and 3) Building 2 (the “**Building 2 Condo**”). The common areas utilized for parking, stormwater detention facilities, ingress and egress, storage and other related infrastructure will be allocated to each of the three condo units. The project amenities, including the fitness rooms, community lounges, bike storage rooms and tenant storage will be considered limited common elements, which shall be used exclusively by the residential tenants and will therefore be allocated to the Building 1 Condo and the Building 2 Condo.

### **Section 3.2 Required Provisions of Financial Agreement**

To the extent not otherwise set forth herein, those items required by N.J.S.A. 40A:20-9 to be included in this Financial Agreement are set forth in the Application attached hereto as Exhibit B, which is incorporated herein as if set forth at length, and the Entity represents and warrants as to the accuracy of the contents thereof.

### **Section 3.3 Fiscal Plan**

The Entity represents that the Improvements shall be financed in accordance with the representations set forth in the Application, including the fiscal plan attached thereto. The Application sets forth, among other things, the estimated Total Project Cost, amortization rates on the Total Project Cost, the source of funds, the interest rates to be paid on construction financing, the source and amount of paid in capital, and the terms of any mortgage amortization.

**[End of Article III]**



## **ARTICLE IV - TAX EXEMPTION; ANNUAL SERVICE CHARGE**

### **Section 4.1 Term**

Subject to compliance with this Agreement, this Agreement shall be in effect from the Effective Date through the Termination Date. However, in no case shall this Agreement remain in effect longer than 35 years from the Effective Date. Upon the expiration of this Agreement (i) the tax exemption for the Project shall expire and the Property and the Improvements thereon shall thereafter be assessed and taxed according to the general law applicable to other non-exempt property in the Borough and (ii) any restrictions and limitations upon the Entity shall terminate upon such Entity's rendering and the Borough's acceptance of its final accounting to the Borough, pursuant to N.J.S.A. 40A:20-13.

### **Section 4.2 Calculation of Annual Service Charge**

In consideration of the Borough granting the Entity the Tax Exemption set forth in this Financial Agreement, the Entity shall pay to the Borough for municipal services supplied to the Project, as provided in the Exemption Law, an Annual Service Charge as follows:

#### **A. For Building 1 Condo and Building 2 Condo:**

- (a) **Stage One (a)**: From the ASC Commencement Date until the tenth anniversary of the ASC Commencement Date, the Annual Service Charge shall be ten percent (10%) of AGR;
- (b) **Stage One (b)**: From the first day after the tenth anniversary of the ASC Commencement Date until the fifteenth anniversary of the ASC Commencement Date, the Annual Service Charge shall be eleven percent (11%) of AGR;
- (c) **Stage Two (a)**: From the first day after the fifteenth anniversary of the ASC Commencement Date until the twentieth anniversary of the ASC Commencement Date, the Annual Service Charge shall be equal to the greater of eleven percent (11%) of AGR or twenty percent (20%) of the amount of the taxes otherwise due on the value of the Property and the Improvements;
- (d) **Stage Two (b)**: From the first day after the twentieth anniversary of the ASC Commencement Date until the twenty-first anniversary of the ASC Commencement Date, the Annual Service Charge shall be equal to the greater of twelve percent (12%) of AGR or twenty percent (20%) of the amount of the taxes otherwise due on the value of the Property and the Improvements;
- (e) **Stage Three**: From the first day after the twenty-first anniversary of the ASC Commencement Date until the twenty-seventh anniversary of the ASC Commencement Date, the Annual Service Charge shall be equal to the greater of twelve percent (12%) of AGR or forty percent (40%) of the amount of the taxes otherwise due on the value of the Property and the Improvements;

(f) **Stage Four:** From the first day after the twenty-seventh anniversary of the ASC Commencement Date until the twenty-ninth anniversary of the ASC Commencement Date, the Annual Service Charge shall be equal to the greater of twelve percent (12%) of AGR or sixty percent (60%) of the amount of the taxes otherwise due on the value of the Property and the Improvements;

(g) **Stage Five:** In the thirtieth year of this Agreement, the Annual Service Charge shall be equal to the greater of twelve percent (12%) of AGR or eighty percent (80%) of the amount of the taxes otherwise due on the value of the Property and the Improvements.

#### **B. For Retail Condo:**

(a) **Stage One:** From the ASC Commencement Date until the seventh anniversary of the ASC Commencement Date, the Annual Service Charge shall be thirteen (13%) percent of AGR;

(b) **Stage Two:** From the first day after the seventh anniversary of the ASC Commencement Date until the eighth anniversary of the ASC Commencement Date, the Annual Service Charge shall be equal to the greater of thirteen (13%) percent of AGR or twenty (20%) percent of the amount of the taxes otherwise due on the value of the Property and the Improvements;

(c) **Stage Three:** From the first day after the eighth anniversary of the ASC Commencement Date until the ninth anniversary of the ASC Commencement Date, the Annual Service Charge shall be equal to the greater of thirteen (13%) percent of AGR or forty (40%) percent of the amount of the taxes otherwise due on the value of the Property and the Improvements;

(d) **Stage Four:** From the first day after the ninth anniversary of the ASC Commencement Date until the tenth anniversary of the ASC Commencement Date, the Annual Service Charge shall be equal to the greater of thirteen (13%) percent of AGR or sixty (60%) percent of the amount of the taxes otherwise due on the value of the Property and the Improvements;

(e) **Final Stage:** In the tenth year, the Annual Service Charge shall be equal to the greater of thirteen (13%) percent of AGR or eighty (80%) percent of the amount of the taxes otherwise due on the value of the Property and the Improvements.

#### **Section 4.3 Minimum Annual Service Charge**

Notwithstanding anything to the contrary in this Financial Agreement, including, without limitation, Section 4.2 hereof, the Annual Service Charge for the Project shall not be less than the Minimum Annual Service Charge.

#### **Section 4.4 Land Tax Exemption and Duration**

The Property allocated to the Building 1 Condo and the Building 2 Condo shall be exempt from Land Taxes from the ASC Commencement Date through the Termination Date in accordance with N.J.S.A. 40A:20-12. The Property allocated to the Retail Condo shall continue to pay Land Taxes.

#### **Section 4.5 Quarterly Installments**

The Annual Service Charge and applicable Land Taxes, shall be paid in quarterly installments on those dates when ad valorem real estate tax payments on other properties within the Borough are due, subject to adjustment for over payment or underpayment within thirty (30) days after the close of each calendar year. If the Entity fails to so pay, the amount unpaid shall bear the highest rate of interest permitted in the case of the unpaid taxes or tax liens on the Property until paid. The Entity's failure to make the requisite payments of Annual Service Charge and applicable Land Taxes, in a timely manner shall constitute a Default under this Agreement and the Borough may, among its other remedies as provided in this Financial Agreement, proceed against the Project pursuant to the In Rem Tax Foreclosure Act, N.J.S.A. 54:5-1 et seq. In addition, the Borough may terminate this Agreement with respect to the Project in accordance with Section 5.3 hereof. Any Default arising out of the Entity's failure to pay the Annual Service Charge and applicable Land Taxes, shall not be subject to the dispute resolution remedies provided in Section 5.1.

#### **Section 4.6 Rights and Obligations Related to Tax Exemption**

(a) All Annual Service Charge payments made pursuant to this Financial Agreement shall be in lieu of taxes and, as set forth above, the Borough shall have the rights and remedies of tax enforcement granted to a municipality by Applicable Law, including those of in rem tax foreclosure pursuant to N.J.S.A. 54:5-1, just as if said payments constituted regular real property tax obligations on other real properties within the Borough.

(b) If the ASC Commencement Date occurs on a date other than the last day of a quarter, the amount of ad valorem real estate taxes for such period up to the ASC Commencement Date shall be based on a per diem basis for such quarter.

(c) Any lease of a Rental Unit to a Tenant shall be subject to the terms of this Financial Agreement and shall not require the consent or approval of the Borough. Upon the lease of the subject Rental Unit, the Entity, or the Tenant, if required by the terms of its lease agreement, shall be responsible for the payment of the applicable Annual Service Charge or Minimum Service Charge calculated pursuant to this Financial Agreement. Notwithstanding the foregoing, the Borough shall look solely to the Entity and not any Tenant with respect to the collection of the unpaid portion of the Annual Service Charge imputed to the Tenant. In other words, the Entity shall be responsible for the full payment of the Annual Service Charge to the Borough irrespective of whether the Tenant has or has not paid its portion of the Annual Service Charge to the Entity.

#### **Section 4.7 Remittance to County**

The Borough shall remit to the County of Morris five percent (5%) of the Annual Service Charge received each year from the Entity, pursuant to N.J.S.A. 40A:20-12(b)(2)(e).

**Section 4.8 Payment of Conventional Taxes prior to ASC Commencement Date**

The Parties agree that conventional property taxes, including Land Taxes, are due from time to time in accordance with Applicable Law prior to the ASC Commencement Date.

**Section 4.9 Administrative Fee**

In addition to the Annual Service Charge, the Entity shall pay to the Borough an annual administrative fee in an amount equal to two percent (2%) of the Annual Service Charge (the “**Annual Administrative Fee**”). The Annual Administrative Fee shall be due on or before November 1 in each year following the ASC Commencement Date.

**Section 4.10 Other Municipal Services.**

Nothing herein shall exempt the Entity from the payment of any applicable municipal services. The Entity shall timely pay for municipal services rendered to the Project or to the Property.

**[End of Article IV]**

## **ARTICLE V - DISPUTE RESOLUTION; DEFAULT**

### **Section 5.1 Agreement to Arbitrate**

If the Borough or the Entity breaches this Financial Agreement (other than with respect to a Payment Default), or a dispute arises between the Parties regarding the terms and provisions set forth herein, then the Parties shall submit the dispute to arbitration, which shall utilize State law and the arbitration rules of the American Arbitration Association in the State of New Jersey, to be resolved in accordance with its rules and regulations in such fashion as to accomplish the purposes of the Exemption Law and this Financial Agreement. The costs of arbitration shall be borne equally by the Parties involved in the arbitration. The demand for arbitration shall be filed in writing and shall be made within a reasonable time after a dispute or breach occurs. (Section 1.3(F) hereof shall not apply for purposes of the foregoing sentence.) The arbitrator(s) shall make written findings of fact and conclusions of law. Any arbitration award may be appealed by either party to the New Jersey Superior Court, Law Division, with respect to asserted errors of fact or law, and the outcome of such appeal may be further appealed in the State courts, and shall not be limited in any way due to the origin of the action in arbitration.

Notwithstanding the foregoing, if the Entity fails to pay the Annual Service Charge and applicable Land Taxes, the Borough among its other remedies, reserves the right to proceed against the Project, pursuant to N.J.S.A. 54:5-1 to 54:5-129, and any Act supplementary or amendatory thereof, and shall not be required to submit such matters to arbitration. Whenever the word "Taxes" appears or is applied, directly or implied, to mean taxes or municipal liens on land, such statutory provisions shall be read, as far as is pertinent to this Agreement, as if the Annual Service Charge are taxes or municipal liens on land.

### **Section 5.2 Covenant to Make Payments**

The Entity agrees that the timely payment of the Annual Service Charge and applicable Land Taxes to the Borough, as well as continued compliance with the Applicable Laws, are material conditions of this Financial Agreement. The failure to make any of the aforesaid payments in timely fashion shall constitute both a breach of this Financial Agreement and a tax payment delinquency under Applicable Law.

### **Section 5.3 Remedies upon Default**

All of the remedies provided in this Agreement, and all rights and remedies granted to the parties by law and equity, shall be cumulative and concurrent. No termination of any provision within this Agreement shall deprive the Borough of any of its remedies in accordance with law or actions against the Entity because of its failure to pay the Annual Service Charge, applicable Land Taxes, and/or the water and sewer charges with interest payments. The bringing of any action due to a Default under this Agreement shall not be construed as a waiver of the right to enforce any other remedy provided in this Agreement. Nothing in this Agreement shall be deemed to create personal liability on the part of any Entity for any of the provisions of this Agreement, the Borough's rights and remedies to collect any obligation due and owing hereunder to be the same

as the Borough's rights and remedies with respect to collection of real estate taxes generally under applicable law.

#### **Section 5.4 Notification of Breach Required**

Other than with respect to the nonpayment or late payment of all or a portion of Land Taxes, the Administrative Fee, or Annual Service Charge (any of the foregoing a "**Payment Default**"), the Borough shall notify the Entity in writing of any breach relating to the terms of this Financial Agreement. If the Entity fails to cure a Payment Default within ten (10) days of its occurrence, or fails to cure any other breach within thirty (30) Days after the actual delivery of notice by the Borough, or within any additional periods to which the Parties may agree to, in writing (With respect to defaults other than Payment Defaults, the Borough shall not unreasonably refuse to grant a reasonable extension of the cure period, not to exceed sixty (60) days after the Notice unless the Borough in its sole discretion shall agree to a longer cure period), the Borough may invalidate the Tax Exemption by providing thirty (30) Days' written notice to the Entity, which shall inform the Entity that the Tax Exemption shall terminate at the expiration of said thirty (30) day notice period due to the breach of the terms of this Financial Agreement. In addition, if the Redevelopment Agreement has been terminated in accordance with its terms, this Financial Agreement shall also automatically terminate.

#### **Section 5.5 Force Majeure**

Neither Party shall be liable to the other for failure to perform its obligations under this Agreement due to causes that are beyond the reasonable control and not substantially due to the fault or negligence of the party seeking to excuse delay or failure of performance of an obligation hereunder by reason thereof, including, but not limited to, declarations of public emergency; acts of nature (as to weather-related events, limited to severe and unusual events or natural occurrences such as hurricanes, tornadoes, earthquakes, and floods); acts of the public enemy; acts of terrorism; acts of war; fire; epidemics; quarantine restrictions; blackouts, power failures, or energy shortages; governmental embargoes; strikes or similar labor action by equipment or material suppliers or transporters, or unavailability of necessary building materials. Notwithstanding the foregoing, the payment of the Annual Service Charge, applicable Land Taxes and Administrative Fee are Material Conditions of this Agreement which shall not be excused by the occurrence of a force majeure event.

#### **Section 5.6 Certificate of Occupancy**

It is understood and agreed that it shall be the obligation of the Entity to obtain all Certificates of Occupancy in a reasonably timely manner. The Borough shall reasonably cooperate in processing Entity's request(s) for the issuance of any Certificate(s) of Occupancy.

### **Section 5.7 Filing of Certificate of Occupancy**

It shall be the responsibility of the Entity to forthwith file with both the Tax Assessor and the Tax Collector a copy of any Certificate of Occupancy issued for the Project.

Failure of the Entity to file such issued Certificate of Occupancy as required by the preceding paragraph shall not militate against any action or non-action taken by the Borough, including, if appropriate, retroactive billing with interest for any charges determined to be due, in the absence of such filing by the Entity.

**[End of Article V]**

## **ARTICLE VI - LIMITATION ON PROFITS**

### **Section 6.1 Entity's Covenant of Limitation on Profits**

During the period of tax exemption as provided herein, the Entity shall be subject to a limitation of its profits pursuant to the provisions of N.J.S.A. 40A:20-15. Pursuant to N.J.S.A. 40A:20-3(c), this calculation is completed in accordance with generally accepted accounting principles.

### **Section 6.2 Permitted Reserves**

The Entity shall have the right to establish a reserve against vacancies, unpaid rentals, and reasonable contingencies in an amount up to ten percent (10%) of the Annual Gross Revenues of the Entity for the prior fiscal year (hereinafter referred to as the “**Reserve**”) and may retain such part of the Excess Net Profits as is necessary to eliminate a deficiency in that Reserve, as provided in N.J.S.A. 40A:20-15.

### **Section 6.3 Payment of Dividend and Excess Profit Charge**

In accordance with N.J.S.A. 40A:20-15, if the Net Profits of the Entity shall exceed the Allowable Net Profits in any accounting period, then the Entity, within ninety (90) days after the end of the accounting period, shall pay such Excess Net Profits to the Borough as an additional Annual Service Charge; provided, however, that the Entity may maintain a Reserve as determined pursuant to Section 6.2.

### **Section 6.4 Payment of Reserve/Excess Net Profit Upon Termination, Expiration or Sale.**

The Termination Date of this Agreement, or the date of sale or transfer of the Improvements, shall be considered to be the close of the fiscal year of the Entity. Within ninety (90) days after such date, the Entity shall pay to the Borough the amount of the Reserve, if any, maintained by it pursuant to Section 6.2, and the Excess Net Profits, if any.

**[End of Article VI]**



## **ARTICLE VII - TERMINATION OF AGREEMENT AND INSPECTIONS**

### **Section 7.1 Voluntary Termination of the Financial Agreement by Entity**

Pursuant to the Exemption Law, the Entity or any Transferee may at any time after the expiration of one (1) year from the ASC Commencement Date, notify the Borough in writing that, as of a certain date designated in the notice, it relinquishes its status as an urban renewal entity under the Exemption Law and that the Entity, or Transferee, has obtained the consent of the Commissioner of the Department of Community Affairs, if required by Applicable Law. As of that date, all of the obligations and requirements contained in this Financial Agreement shall terminate. Notwithstanding the foregoing, such relinquishment shall not impact the obligation of the Entity or the Transferee, as applicable, to make payment of any Annual Service Charge, Administrative Fee, or applicable Land Taxes that has accrued up to and including the Termination Date, or the obligation of the Entity or the Transferee, as applicable, to perform the final accounting required by the Exemption Law and Section 7.2 below.

### **Section 7.2 Termination and Final Accounting**

Within ninety (90) days after the Termination Date, whether by affirmative action of the Entity or by virtue of the provisions of the Applicable Law or pursuant to the terms of this Financial Agreement, the Entity shall provide a final accounting and pay to the Borough the Reserve, if any, pursuant to N.J.S.A. 40A:20-15, as well as any Excess Net Profits, if any payable as of that date. For purposes of rendering a final accounting, the Termination Date of the Financial Agreement shall be deemed to be the end of the fiscal year for the Entity.

### **Section 7.3 Taxes After Termination Date**

After the Termination Date, the Tax Exemption shall expire, and the relevant portion of the Property and the Improvements constructed thereupon shall thereafter be assessed and conventionally taxed according to Applicable Law as other real property in the Borough.

### **Section 7.4 Rights of Inspection**

The Entity shall permit the inspection of its property, equipment, buildings and other facilities of the Project by representatives duly authorized by the Borough and Division of Local Government Services in the Department of Community Affairs pursuant to N.J.S.A. 40A:20-9(e). The Entity shall also permit, upon written request, examination and audit of its books, contracts, records, documents and papers relating to the Project by representatives duly authorized by the Borough and Division of Local Government Services in the Department of Community Affairs pursuant to N.J.S.A. 40A:20-9(e). Such inspection shall be made upon five (5) days' prior written notice, in the presence of an officer or agent designated by the Entity. To the extent reasonably possible, the inspection will not materially interfere with construction or operation of the Project. Nothing in this section shall be construed to affect, limit or restrict the powers of municipal, county, State or other officials from carrying out those inspections that are generally applicable

outside of the Exemption Law context, including, but not limited to, inspections by fire officials, construction code officials, etc.

**[End of Article VII]**

## **ARTICLE VIII - SALE OR LEASE OF PROJECT**

### **Section 8.1    Approval of Sale of Project to Entity Formed and Eligible to Operate Under Applicable Law**

The Entity shall not transfer all or any portion of the Project, including the Building 1 Condo, Building 2 Condo or Retail Condo, without the prior written approval of the Borough, except that after completion of the Project, the Entity shall be permitted to transfer all or any portion of the Project to another urban renewal entity, qualified and organized under the Exemption Law (a “**Transferee**”), and approved by the Borough under the conditions set forth herein. As permitted by N.J.S.A. 40A:20-10a, it is understood and agreed that the Borough, on written application by the Entity after completion of the Project, shall consent to a sale of the Project and the transfer of this Agreement provided: (i) the transferee entity does not own or lease any other Project subject to long term tax exemption at the time of transfer; (ii) the transferee entity is formed and eligible to operate under the Exemption Law; (iii) the Entity is not then in Default of the Redevelopment Agreement, this Agreement or the Exemption Law; (iv) the Entity’s obligations under this Agreement are fully assumed by the transferee entity; (v) the transferee entity agrees to abide by all terms and conditions of this Agreement including, without limitation, the filing of an application pursuant to N.J.S.A. 40A:20-8, and any other terms and conditions of the Borough in regard to the Project; (vi) the transferee entity possesses the requisite experience, qualifications, and financial capacity to operate and manage the Project; and (vii) the principal owners of the transferee entity possess the same business reputation, financial qualifications and credit worthiness as the Entity and are otherwise reputable. The Borough may charge a transfer fee of two percent (2%) of the Annual Service Charge due in the year that the transfer is requested for processing any such application for transfer by the Entity.

Notwithstanding the above, it is expressly understood and agreed that the Entity is permitted, without the prior approval of the Borough, to effect the following transfers with respect to the Project:

A.     Encumber the Project, e.g., mortgage financing, development easements, etc., provided that any such encumbrance is subordinate to the lien of the Annual Service Charges.

B.     Transfer the ownership interest in the Entity to a wholly owned Affiliate.

C.     Lease any portion of the Project to an end user, with such tenant not being required to be an entity eligible to operate under the Exemption Law.

Notwithstanding anything to the contrary contained in A. through C., above, or elsewhere in this Agreement, the Parties expressly agree and acknowledge that:

(i)     the Entity shall not enter into any lease, whether or not with an Affiliate or related entity, that shall operate to minimize or remove revenues properly includable in the calculation of Annual Gross Revenue; and

(ii) prior to completion of the Project, all restrictions on transfer that are set forth in the Redevelopment Agreement shall apply in accordance with the terms thereof.

## **Section 8.2 Obligations of Entity and Transferee after Conveyance**

If the Entity Transfers the Project to a Transferee with the consent of the Borough and the Transferee has assumed the contractual obligations of the transferor Entity with the Borough, pursuant to Section 8.1 hereof, then the Entity shall be absolutely discharged from any further obligations regarding the Project and shall be qualified to undertake another project pursuant to the Exemption Law. Within ninety (90) Days after the date of a Transfer, the Entity shall pay to the Borough any Reserve maintained by it pursuant to this Financial Agreement, as well as any Excess Net Profits payable to the Borough pursuant to this Financial Agreement and the Exemption Law.

## **Section 8.3 Collateral Assignment**

It is expressly understood and agreed that the Entity has the right, to the extent permitted by the Exemption Law and the Redevelopment Agreement, to encumber and/or assign its fee title to the Property and/or Improvements for purposes of (i) financing the design, development and construction of the Project and (ii) permanent mortgage financing with respect to the Project.

(a) The Borough acknowledges that the Entity and/or its affiliates intend to obtain secured financing in connection with the acquisition, development and construction of the Project. The Borough agrees that the Entity and or its affiliates may, subject to compliance with the Redevelopment Agreement (if then still in effect) and the Exemption Law, assign, pledge, hypothecate or otherwise transfer its rights under this Agreement and/or its interest in the Project to one or more secured parties or any agents therefore (each, a “**Secured Party**” and collectively, the “**Secured Parties**”) as security for obligations of the Entity, and/or its affiliates, incurred in connection with such secured financing (collectively, the “**Security Arrangements**”). The Entity shall give the Borough written notice of any such Security Arrangements, together with the name and address of the Secured Party or Secured Parties. Failure to provide such Notice waives any requirement of the Borough hereunder to provide any notice of Default or notice of intent to enforce its remedies under this Agreement.

(b) If the Entity shall Default in any of its obligations hereunder, the Borough shall give written notice of such Default to the Secured Parties and the Borough agrees that, in the event such Default is not waived by the Borough or cured by the Entity, its assignee, designee or successor, within the period provided for herein, before exercising any remedy against the Entity hereunder, the Borough will provide the Secured Parties a reasonable period of time to cure such Default, but in any event not less than twenty (20) days from the date of such notice to the Secured Parties with regard to a Payment Default by the Entity and ninety (90) days from the date the Entity was required to cure any other Default.

(c) In the absence of a Default by the Entity, the Borough agrees to consent to any collateral assignment by the Entity to any Secured Party or Secured Parties of its interests in this

Agreement and to permit each Secured Party to enforce its rights hereunder and under the applicable Security Arrangement and shall, upon request of the Secured Party, execute such documents as are typically requested by secured parties to acknowledge such consent. This provision shall not be construed to limit the Borough's right to payment from the Entity, nor shall the priority of such payments be affected by the Secured Party exercising its rights under any applicable Security Arrangement.

**[End of Article VIII]**

## **ARTICLE IX - ENTITY'S COVENANTS AND REPRESENTATIONS**

### **Section 9.1 Management and Operation**

Subject to its right to Transfer the Project pursuant to Section 8.1 of this Financial Agreement, the Entity represents and covenants that the Entity will manage the Project or will contract with a third-party management company. The Entity shall be free to enter into leases with Tenants for the Rental Units without the consent of the Borough.

### **Section 9.2 Computation of Gross Revenue**

The Entity shall, for the duration of this Agreement, calculate the Annual Gross Revenue in accordance with the Exemption Law and this Financial Agreement and the computation of Annual Gross Revenue shall be shown on the Entity's Annual Audit Statement.

### **Section 9.3 Annual Audit Report**

For so long as the Entity owns the Project and within ninety (90) days after the close of each fiscal or calendar year (depending on the Entity's accounting basis) that this Financial Agreement shall continue in effect, the Entity shall submit to the Mayor of the Borough, the Borough Council, the CFO of the Borough, and the New Jersey Division of Local Government Services within the New Jersey Department of Community Affairs, its Annual Audited Statement for the preceding fiscal or calendar year in accordance with the Exemption Law. The report shall clearly identify and calculate the Net Profit for the Entity during the previous fiscal year. The Entity assumes all costs associated with preparation of the Annual Audited Statements. Except to the extent required by Applicable Law, all financial information provided hereunder shall remain confidential and not subject to public disclosure.

### **Section 9.4 Total Project Cost Audit**

Within ninety (90) days after the final Certificate of Occupancy is issued for the Project, the Entity shall submit to the Mayor and Borough Council, an audit of Total Project Cost, certified as to actual construction costs by the Entity's architect.

### **Section 9.5 Disclosure Statement**

On each anniversary date of the execution of this Agreement, the Entity shall submit to the Mayor and Borough Council, who shall advise those municipal officials required to be advised, a disclosure statement listing the persons having an ownership interest in the Project, and the extent of the ownership interest of each and such additional information as the Borough may request from time to time.

**[End of Article IX]**

## **ARTICLE X - INDEMNIFICATION**

### **Section 10.1 Indemnification**

It is understood and agreed that in the event the Borough shall be named as a party defendant in any action brought against the Borough or the Entity by allegation of any breach, Default or a violation of any of the provisions of this Agreement and/or the provisions of the Exemption Law or any other Applicable Law, the Entity shall indemnify and hold the Borough harmless from and against all liability, losses, damages, demands, costs, claims, actions or expenses (including reasonable attorneys' fees and expenses) of every kind, character and nature arising out of or resulting from the action or inaction of the Entity and/or by reason of any breach, Default or a violation of any of the provisions of this Agreement, the provisions of the Exemption Law and/or any other Applicable Law except for any willful misconduct by the Borough or any of its officers, officials, employees or agents, and the Entity shall defend the suit at its own expense. The Borough shall be entitled to intervene in any such suit, and retain attorneys of its choosing, whether as party defendant or intervenor, the cost of such attorneys to be borne by the Entity in accordance with this Section.

**[End of Article X]**

## **ARTICLE XI - MISCELLANEOUS PROVISIONS**

### **Section 11.1 Governing Law**

This Financial Agreement shall be governed by the provisions of Applicable Law including but not limited to the Exemption Law. This Agreement shall be construed and enforced in accordance with the laws of the State of New Jersey, without regard to or aid of any presumption or other rule requiring construction against the party drawing or causing this Agreement to be drawn since counsel for both the Entity and the Borough have combined in their review and approval of same.

### **Section 11.2 Oral Representation**

Neither Party hereto has made any oral representation that is not contained in this Financial Agreement. This Financial Agreement and the Application, including all of the Exhibits attached and annexed thereto, constitute the entire Financial Agreement by and between the Parties.

### **Section 11.3 Modification; Prior Agreements Superseded**

There shall be no modification of this Financial Agreement except by virtue of a written instrument executed by and between both Parties. This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto and supersedes all negotiations or previous agreements between the Parties with respect to all or any part of the subject matter hereof.

### **Section 11.4 Notices**

A notice, demand or other communication required to be given under this Agreement by any Party to the other shall be in writing and shall be sufficiently given or delivered if dispatched by United States Registered or Certified Mail, postage prepaid and return receipt requested, or delivered by overnight courier or delivered personally (with receipt acknowledged) to the parties at their respective addresses set forth herein, or at such other address or addresses with respect to the parties or their counsel as any party may, from time to time, designate in writing and forward to the others as provided in this Section:

a) When sent by the Borough to the Entity:

James Yacenda  
Orchards at Mt. Arlington Urban Renewal, LLC  
1075 Route 34, Suite G  
Aberdeen, New Jersey 07747

With a copy to:



Barry R. Mandelbaum, Esq.  
Mandelbaum Barrett PC  
3 Becker Farm Road, Suite 105  
Roseland, New Jersey 07068

b) When sent by the Entity to the Borough:

Borough of Mount Arlington  
419 Howard Boulevard  
Mount Arlington, New Jersey 07856  
Attn: Matt Bansch, Borough Clerk

With a copy to:

Matthew D. Jessup, Esq.  
McManimon Scotland & Baumann LLC  
75 Livingston Avenue  
Roseland, New Jersey 07068

From time to time either Party may designate a different person or address for all the purposes of this Notice provision by giving the other party no less than ten (10) days' notice in advance of such change of address in accordance with the provisions hereof. Notices shall be effective upon the earlier of receipt or rejection of delivery by the addressee. Any notice given by an attorney for a party shall be effective for all purposes. In addition, if the Entity delivers formal written notice to the Borough in accordance with this Agreement, of the name and address of Entity's mortgagee, then the Borough shall provide such mortgagee with a copy of any notice required to be sent to the Entity.

#### **Section 11.5 Severability**

If any term, covenant or condition of this Financial Agreement shall be judicially declared to be invalid or unenforceable, the remainder of this Financial Agreement or the application of such term, covenant or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term, covenant or condition of this Financial Agreement shall be valid and be enforced to the fullest extent permitted by Applicable Law.

If any portion of this Financial Agreement shall be judicially declared to be invalid and unenforceable and provided that a Default has not been declared pursuant to this Financial Agreement, the Parties shall cooperate with each other to take the actions reasonably required to restore the Financial Agreement in a manner contemplated by the Parties, including, but not limited to the authorization and amendment of this Financial Agreement in a form reasonably drafted to effectuate the original intent of the Parties.

#### **Section 11.6 Good Faith**

The Entity and the Borough agree to act in good faith in all of their dealings with each other.

#### **Section 11.7 Certification**

The Borough Clerk shall certify to the Tax Assessor, pursuant to N.J.S.A. 40A:20-12, that a Financial Agreement with an urban renewal entity, i.e., the Entity, for the development of the Project, has been entered into and is in effect as required by the Exemption Law. Delivery by the Borough Clerk to the Tax Assessor of a certified copy of the Ordinance and this Financial Agreement shall constitute the required certification. Upon certification as required hereunder and upon the ASC Commencement Date, the Tax Assessor shall implement the exemption and continue to enforce that exemption without further certification by the clerk until the expiration of the entitlement to exemption by the terms of this Financial Agreement or until the Tax Assessor has been duly notified by the Borough Clerk that the exemption has been terminated.

Further, within 10 calendar days following the later of the effective date of the Ordinance or the execution of the financial agreement by the Entity, the Borough Clerk shall transmit a certified copy of the Ordinance and the Financial Agreement to the chief financial officer of Morris County and to the Morris County counsel for informational purposes.

#### **Section 11.8 Counterparts**

This Agreement may be simultaneously executed in counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

#### **Section 11.9 Estoppel Certificate**

Within thirty (30) days following written request therefore by the Entity, or any mortgagee, purchaser, tenant or other party having an interest in the Project, the Borough shall issue a signed estoppel certificate in reasonable form stating that (i) this Financial Agreement is in full force and effect, (ii) to the best of the Borough's knowledge, no Default has occurred under this Agreement (nor any event which, with the passage of time and/or the giving of notice would result in the occurrence of a Default) or stating the nature of any Default, and (iii) stating any such other reasonable information as may be requested. In the event the estoppel certificate discloses a Default, it shall also state the manner in which such Default may be cured.

**[End of Article XI]**  
*[Signature Page Follows]*

**IN WITNESS WHEREOF**, the Parties have caused this Financial Agreement to be executed the day and year first above written.

Attest:

**BOROUGH OF MOUNT ARLINGTON**

\_\_\_\_\_  
Matt Bansch, Borough Clerk

By: \_\_\_\_\_  
Michael Stanzilis, Mayor

SEAL

Dated: \_\_\_\_\_

**THE ORCHARDS AT MT. ARLINGTON  
URBAN RENEWAL, LLC**

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF NEW JERSEY    )  
  )  
COUNTY OF MORRIS        )        SS.:

Be it remembered that on the \_\_\_\_ day of \_\_\_\_\_, 2022, \_\_\_\_\_ personally appeared before me, and this person acknowledged under oath, to my satisfaction that:

(a)     he/she/they are a \_\_\_\_\_ of THE ORCHARDS AT MT. ARLINGTON URBAN RENEWAL, LLC, the limited liability company named as Entity in the attached Financial Agreement;

(b)     he is authorized to execute the attached Financial Agreement on behalf of the Entity;

(c)     he executed the attached Financial Agreement on behalf of and as the act of the Entity;  
and

(d)     the attached Financial Agreement was signed and made by the Entity as its duly authorized and voluntary act.

\_\_\_\_\_

STATE OF NEW JERSEY     )  
  )  
COUNTY OF MORRIS        )                   SS.:

Be it remembered that on the \_\_\_\_, day of \_\_\_\_\_, 2022, Michael Stanzilis personally appeared before me, and this person acknowledged under oath, to my satisfaction that:

- (a) he is the Mayor of the BOROUGH OF MOUNT ARLINGTON, New Jersey, the Borough in the attached Financial Agreement;
- (b) he is authorized to execute the attached Financial Agreement on behalf of the Borough;
- (c) he executed the attached Financial Agreement on behalf of and as the act of the Borough; and
- (d) the attached Financial Agreement was signed and made by the Borough as its duly authorized and voluntary act.

\_\_\_\_\_

**EXHIBIT A – PROPERTY DESCRIPTION**

Block 61.02, Lot 23.08 as shown on the official Tax Map of the Borough, and commonly known  
as 181 Howard Boulevard

## **EXHIBIT B – APPLICATION**

# Borough of Mount Arlington



419 Howard Boulevard, Mt Arlington, NJ 07856 | 973-398-6832 | mountarlingtonnj.org

March 1, 2022

Matthew Bansch, RMC, Borough Clerk  
Borough of Mount Arlington  
419 Howard Boulevard  
Mount Arlington, NJ 07856

**Re: Long Term Tax Exemption Application  
Orchards at Mt. Arlington Urban Renewal, LLC**

Dear Mr. Bansch:

In accordance with the requirements of the Long Term Tax Exemption Law, N.J.S.A. 40A:20-1 et seq. (the "Long Term Tax Exemption Law"), I have received the application, financial agreement and related documents submitted by Orchards at Mt. Arlington Urban Renewal, LLC (the "Applicant") for the development, design, financing and construction of a project to be renamed "Station Square" with the addition of two new luxury apartment buildings to replace a portion of the existing shopping center and former freestanding bank building, an upgrade of the remaining shopping center façade, and the expansion of the onsite parking to support the project along with landscaping, signage and other enhancements.

The Project will provide both short and long term economic development advantages to the Borough inasmuch as it will create a number of both construction and permanent jobs in the Borough and will provide affordable housing units.

I believe the Project is a desirable and beneficial improvement in the Borough and that the use of the Long Term Tax Exemption Law will assist the Borough in advancing the revitalization of the redevelopment area and will effectuate the development of underutilized property in the Borough while providing residential housing units, including affordable housing units. Further, the Project allows for the redevelopment of a site currently characterized as underutilized into a productive use that will permanently increase tax ratables within the redevelopment area. Therefore, I recommend that the Long Term Tax Exemption application be favorably considered by the Borough Council for the Applicant, provided that all legal prerequisites have been met.

Sincerely yours,

Michael Stanzilis  
Mayor