

# ORDINANCE OF THE TOWNSHIP OF IRVINGTON, NJ

DEC 13 2016

No. **MC 3592**

Effective Date **JAN 03 2017**

Dated

APPROVED AS TO FORM AND LEGALITY ON THE BASIS OF FACTS SET FORTH BY

*[Signature]*  
Legislative Research Officer

COUNCIL MEMBER **LYONS**

*presents the following Ordinance*

SECONDED

**BURGESS**

## ORDINANCE OF THE TOWNSHIP OF IRVINGTON, COUNTY OF ESSEX, NEW JERSEY APPROVING AN APPLICATION FOR A LONG TERM TAX EXEMPTION AND AUTHORIZING THE EXECUTION OF A FINANCIAL AGREEMENT WITH 18<sup>th</sup> AVENUE URBAN RENEWAL, LLC

**WHEREAS**, the Municipal Council (the "**Township Council**") of the Township of Irvington (the "**Township**"), 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.* (the "**Redevelopment Law**"), to determine whether certain parcels of land within the Township constitute an area in need of rehabilitation and/or an area in need of redevelopment; and

**WHEREAS**, the Township Council designated parcels located in the Township's Urban Enterprise Zone (the "**UEZ**") as an area in need of rehabilitation (the "**UEZ Rehabilitation Area**") by Resolution UEZ 07-0227-5; and

**WHEREAS**, the Redevelopment Law authorizes municipalities to adopt a redevelopment plan for an area designated as an "area in need of rehabilitation" pursuant to which redevelopment projects are to be undertaken; and

**WHEREAS**, in accordance with the provisions of *N.J.S.A. 40A:12A-7* the Township Council adopted a Redevelopment Plan for the UEZ Rehabilitation Area by Ordinance No. 3351 in accordance with the requirements of *N.J.S.A. 40A:12A-7*; and

**WHEREAS**, to realize the redevelopment of the UEZ Rehabilitation Area, the Township Council determined to exercise the powers of redevelopment and serve as the "Redevelopment Entity" responsible for carrying out redevelopment projects in the UEZ Rehabilitation Area in accordance with the Redevelopment Plan pursuant to *N.J.S.A. 40A:12A-4(c)*; and

**WHEREAS**, 18th Avenue Urban Renewal, LLC (the "**Entity**") is the owner of certain property located within the UEZ Rehabilitation Area, designated as Block 64, Lots 2 and 3 on the tax map of the Township and commonly known as 829 18<sup>th</sup> Avenue and 235-241 Munn Avenue, Irvington, NJ (the "**Property**"); and

**WHEREAS**, the Entity proposes to finance, design and rehabilitate the existing vacant structures on the Property (the "**Project**"); and

**WHEREAS**, the renovations will include: (i) upgrade and replacement of outdated electrical systems; (ii) new plumbing lines and fixtures; (iii) new heating and hot water units, (iv) new kitchens and bathrooms in individual units; (v) complete renovation of all common areas, including flooring, entrances, lighting hallways, and stairways; and (vi) an exterior renovation which will include new windows and roof repair; and

**WHEREAS**, the Entity is a single purpose urban renewal entity created pursuant to the Long Term Tax Exemption Law, *N.J.S.A. 40A:20-1 et seq.* (the "**Exemption Law**") for the development, operation and maintenance of the Project; and

**WHEREAS**, Section 40A:12A-5(g) of the Redevelopment Law states that in a municipality in which an enterprise zone has been designated pursuant to the requirements of the *New Jersey Urban Enterprise Zone Act*, *N.J.S.A. 52:27H-60 et seq.*, "the execution of the actions prescribed in that act . . . shall be considered sufficient for the determination that the area is in need of redevelopment . . . for the purpose of granting tax exemptions within the urban enterprise zone district"; and

**WHEREAS**, in accordance with Section 5(g) of the Redevelopment Law, the Township Council, by resolution dated December 13, 2011, designated the UEZ Rehabilitation Area as an area in need of redevelopment solely for the purpose of granting tax exemptions pursuant to the Exemption Law; and

**WHEREAS**, in order to improve the feasibility of the Project, the Entity submitted an application (the "**Application**"), requesting a long term tax exemption and a financial agreement (the "**Financial Agreement**") with respect to the Project pursuant to the Exemption Law, which Application is on file with the Municipal Clerk; and

**WHEREAS**, the Entity has represented to the Township that the Project would not be feasible in its intended scope but for the provision of financial assistance by the Township; and

ADMINISTRATOR ☒ ASSESSOR ☒ BLDG ☐ CFO ☐ COLLECTOR ☐ COURT ☐ ENGINEER ☐ FIRE ☐ HEALTH ☐ HOUSING ☐ INIC ☐  
JUDGE ☐ LEGAL ☐ LIBR ☐ LICEN ☐ MAYOR ☐ OCDP ☐ PARKS ☐ PAYROLL ☐ PUBLIC SAFETY ☐ DIR ☐ PUBLIC WORKS ☐ PURCHASING ☐  
SEC~PB/ZBA ☐ TRAFFIC ☐ ZONING~OFF ☐ DLGS ☒ GNCD ☐ OTHER(S): *Redev. Council*

WHEREAS, pursuant to N.J.S.A. 40A:20-8, the Mayor has reviewed the Exemption Application and has submitted the Exemption Application and Financial Agreement to the Township Council with his recommendation for approval, subject to the condition that the Entity pay, in lieu of tax payments on the Project, an annual service charge; and

WHEREAS, the Township Council determined that the assistance provided to the Project pursuant to this Agreement will be a significant inducement for the Entity to proceed with the Project and that based on information set forth in the Application, the Project would not be feasible without such assistance.

NOW, THEREFORE BE IT ORDAINED by the Municipal Council of the Township of Irvington that:

1. The aforementioned recitals are incorporated herein as though fully set forth at length.
2. The Application, which is on file with the Township Clerk and has been recommended for approval to the Municipal Council by the Mayor, is hereby accepted and approved.
3. The Mayor is hereby authorized to execute the Financial Agreement, substantially in the form attached hereto as Exhibit A subject to such modifications or revisions deemed necessary and appropriate in consultation with counsel.
4. The Clerk of the Township is hereby authorized and directed upon the execution of the Financial Agreement in accordance with the terms of the agreement, to attest the signature of the Mayor upon such document and is hereby further authorized and directed thereupon to affix the corporate seal of the Township upon such document.
5. The Township Clerk shall file certified copies of this ordinance and the Financial Agreement with the Tax Assessor of the Township and the Director of the Division of the Local Government Services within the Department of Community Affairs in accordance with Section 12 of the *Long Term Tax Exemption Law, N.J.S.A. 40A:20-1 et seq.*
6. If any part of this Ordinance shall be deemed invalid, such parts shall be severed and the invalidity thereby shall not affect the remaining parts of this Ordinance.
7. A copy of this Ordinance shall be available for public inspection at the offices of the Township

### RECORD OF COUNCIL VOTE

X = Indicates Vote    N.V. = No Vote    A.B. = Absent    X.O.R. = Indicates Vote to Override Veto

COUNCIL MEMBER	YES	NO	N.V.	A.B.	COUNCIL MEMBER	YES	NO	N.V.	A.B.
BURGESS 1ST VICE PRESIDENT	X				INMAN		X		
COX	X				JONES, 2ND VICE PRESIDENT				X
FREDERIC	X				LYONS, PRESIDENT	X			
DR. HUDLEY				X					

Ordinance on First Reading Date NOV 22 2016

Council Adopted on Second Reading Date DEC 13 2016

MAYOR [Signature] Date 12/14/16 Approved X Rejected \_\_\_\_\_

Reconsidered by Council - Override Yes \_\_\_\_\_ No \_\_\_\_\_ Date of Override \_\_\_\_\_

COUNCIL PRESIDENT [Signature] MUNICIPAL CLERK [Signature]

I hereby certify that the foregoing is a true copy of a Resolution duly adopted by the Municipal Council. In witness whereof I have hereunto set my hand and the Corporate Seal of the Township of Irvington.

MUNICIPAL CLERK [Signature] DATE 12/14/16

ADMINISTRATOR ☐ ASSESSOR ☐ BLDG ☐ CFO ☐ COLLECTOR ☐ COURT ☐ ENGINEER ☐ FIRE~CF ☐ HEALTH ☐ HOUSING ☐ INIC ☐  
 JUDGE ☐ LEGAL ☐ LIBR ☐ LICEN ☐ MAYOR ☐ OCDP ☐ PARKS ☐ PAYROLL ☐ PUBLIC SAFETY~DIR ☐ PUBLIC WORKS ☐ PURCHASING ☐  
 SEC~PB/ZBA ☐ TRAFFIC ☐ ZONING~OFF ☐ DLGS ☐ GNCD ☐ OTHER(S): \_\_\_\_\_



**TOWNSHIP OF IRVINGTON**  
**OFFICE OF THE TOWNSHIP CLERK**  
MUNICIPAL BUILDING  
CIVIC SQUARE  
IRVINGTON, NEW JERSEY 07111  
Tel: (973) 399-6664  
Fax: (973) 416-6417  
[www.irvington.net](http://www.irvington.net)

Harold E. Wiener, R.M.C., C.M.C., M.M.C.  
Municipal Clerk

December 14, 2016

Timothy Cunningham, Director  
Division of Local Government Services  
101 South Broad Street  
Post Office Box 803  
Trenton, N.J. 08625-0803

Dear Director Cunningham:

Pursuant to N.J.S.A. 40A:20-12, enclosed herewith please find a certified copy of an ordinance authorizing a long term tax exemption which was duly adopted by the Municipal Council of the Township of Irvington on December 13, 2016.

Very truly yours,

Harold E. Wiener  
Municipal Clerk

enclosure (1)

cc: Joan Durkin, Administrator  
Essex County Tax Board

**FINANCIAL AGREEMENT**

THIS FINANCIAL AGREEMENT (hereinafter "Agreement" or "Financial Agreement"), is made as of the \_\_\_\_ day of \_\_\_\_\_, 2016, by and between 18<sup>TH</sup> AVENUE URBAN RENEWAL, LLC, a New Jersey limited liability company qualified to do business as an urban renewal entity under the provisions of the *Long Term Tax Exemption Law, N.J.S.A. 40A:20-1 et seq.*, as same may be amended and supplemented, (the "Exemption Law") with offices at 15 Sherman Blvd., Edison, New Jersey 08820 (hereinafter the "Entity") and the TOWNSHIP OF IRVINGTON, a municipal corporation in the County of Essex and the State of New Jersey, with offices located at 1 Civic Square, Irvington, New Jersey 07111 (hereinafter the "Township"; and together with the Entity, the "Parties" or, separately, each a "Party").

**WITNESSETH:**

WHEREAS, the Entity is the owner of certain property commonly known as 829 18<sup>th</sup> Avenue and 235-241 Munn Avenue, Irvington, NJ, and designated as Block 64, Lots 2 and 3 on the tax map of the Township (the "Property"); and

WHEREAS, the Entity proposes to finance, design and completely rehabilitate the existing vacant structures on the Property so as to provide secure, reasonably priced housing (the "Project"); and

WHEREAS, the Entity is a single purpose urban renewal entity created pursuant to the Exemption Law for the development, operation and maintenance of the Project; and

WHEREAS, in order to improve the feasibility of the Project, the Entity submitted an application (the "Application"), requesting a long term tax exemption and a financial agreement (the "Financial Agreement") with respect to the Project pursuant to the Exemption Law, which Application is on file with the Municipal Clerk; and

WHEREAS, the Township determined that the assistance provided to the Project pursuant to this Agreement will be a significant inducement for the Entity to proceed with the Project and that based on information set forth in the Application, the Project would not be feasible without such assistance; and

WHEREAS, by the adoption of Ordinance \_\_\_\_\_ on \_\_\_\_\_, a copy of which is attached hereto as Exhibit B, the Municipal Council approved the tax exemption application and authorized the execution of this Agreement, and the parties hereto desire to set forth in detail their mutual rights and obligations with respect to the tax exemption applicable to this Project; and

WHEREAS, the Township and the Entity enter into this Financial Agreement to memorialize the terms and conditions by which the Entity will pay an Annual Service Charge in lieu of real property taxes on the Project's Improvements;

NOW, THEREFORE, in consideration of the mutual covenants herein contained and for other good and valuable consideration, it is mutually covenanted and agreed as follows:



## GENERAL PROVISIONS

**SECTION 1.01 Governing Law.** This Agreement shall be governed by and construed by the laws of the State (as defined herein), including (a) the Long Term Tax Exemption Law, the Local Redevelopment and Housing Law and such other State statutes as may be sources of relevant authority, (b) the Ordinance, and (c) all other Applicable Laws, without regard to conflict of law principles.

### **SECTION 1.02 General Definitions.**

Unless specifically provided otherwise or the context otherwise requires, the following terms when used in this Agreement shall mean:

Administrative Fee – The annual fee paid to the Township by the Entity, as set forth in Section 4.03 of the Agreement.

Agreement or Financial Agreement – shall have the meaning given to it in the preamble of this Agreement.

Allowable Net Profit - The amount arrived at by applying the Allowable Profit Rate to Total Project Cost pursuant to the provisions of *N.J.S.A. 40A:20-3(b)*.

Allowable Profit Rate - The greater of (a) twelve percent (12%) or (b) the percentage per annum arrived at by adding one and one-quarter percent (1¼%) to the annual interest percentage rate payable on the Entity's initial permanent mortgage financing. 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 (x) twelve percent (12%) or (y) the percentage per annum arrived at by adding one and one-quarter percent (1¼%) to the interest rate per annum that the Township determines to be the prevailing rate of mortgage financing on comparable improvements in the County. The provisions of *N.J.S.A. 40A:20-3(b)* are incorporated herein by reference.

Annual Service Charge - the amount the Entity has agreed to pay the Township pursuant to Article IV hereof for municipal services supplied to the Project, which sum is in lieu of any real estate taxes on the Improvements, all as contemplated pursuant to the Exemption Law, which amount, if applicable, shall be pro-rated in the year in which the Annual Service Charge begins and the year in which the Annual Service Charge terminates.

Annual Service Charge Commencement Date – the date of the Substantial Completion of the Project.

Applicable Law – All Federal, State and local laws, ordinances, approvals, rules, regulations and requirements applicable thereto including, but not limited to, the Local Redevelopment and Housing Law and the Long Term Tax Exemption Law, as applicable, relevant construction codes including construction codes governing access for persons with

disabilities, and such zoning, sanitary, pollution and other environmental safety ordinances, laws and such rules and regulations thereunder, including all applicable environmental laws, and applicable federal and State labor standards.

Application - the application filed by the Entity with the Township for a tax exemption for the Project, attached hereto as Exhibit A.

Auditor's Report - A complete financial statement outlining the financial status of the Project (for a period of time as indicated by context), which shall also include a certification of Total Project Cost and clear computation of Net Profit as provided in *N.J.S.A. 40A:20-3(c)*. The contents of the Auditor's Report shall have been prepared in conformity with generally accepted accounting principles. The Auditor's Report shall be certified as to its conformance with such principles by a certified public accountant who is licensed to practice that profession in the State of New Jersey.

Certificate of Occupancy - shall mean the document, whether temporary or permanent, issued by the Township authorizing occupancy of a building, in whole or in part, pursuant to *N.J.S.A. 52:27D-133*.

Council - shall mean the Municipal Council of the Township of Irvington.

County - shall mean the County of Essex, State of New Jersey.

Default - shall be a breach of or the failure of the Entity to perform any obligation imposed upon the Entity by the terms of this Agreement, beyond any applicable grace or cure periods set forth in this Agreement.

Default Notice - shall have the meaning given to it in Section 14.02 of this Agreement.

Disclosure Statement - shall have the meaning given to it in Section 7.02(c) of this Agreement.

Effective Date - the date upon which the last Party executes this Agreement.

Entity - shall mean the urban renewal entity specified in the preamble of this Agreement. Unless the context provides otherwise, it shall also include any transferee, as set forth in Section 8.01 of this Agreement.

Exemption Law - shall have the meaning given to it in the preamble of this Agreement.

Financial Plan - the financial plan prepared pursuant to *N.J.S.A. 40A:20-8(e)* attached to the Application.

Gross Revenue - the Annual Gross Revenue of the Entity as defined in *N.J.S.A. 40A:20-3(a)* and shall include the total of all revenues that would normally be payable to a landlord by a tenant in the case where the landlord is responsible to pay all costs of operations and

maintenance as well as to pay the full cost of the capital required to construct the Project. To the extent that the actual revenues collected by the Entity are less than such amount, the Township shall have the right, at its sole discretion, to recalculate the amount that the revenues would have been and to utilize the results of the recalculations in all determinations of Annual Service Charges.

Improvements - any building, structure or fixture permanently affixed to the Land to be constructed and/or rehabilitated and tax exempted under this Agreement.

In Rem Tax Foreclosure - A summary proceeding by which the Township may enforce the lien for taxes due and owing by a tax sale in accordance with the provisions of the In Rem Tax Foreclosure Act and Tax Sale Law.

In Rem Tax Foreclosure Act - *N.J.S.A. 54:5-104.29 et seq.*, as may be amended or supplemented from time to time.

Land - the underlying land, but not the Improvements, designated as Block 64, Lots 2 and 3 on the Township tax maps.

Land Taxes - the taxes assessed on the value of the Land, exclusive of the value of any Improvements related thereto, of the Property in accordance with generally applicable law.

Land Tax Payments - Payments made on the quarterly due dates, including approved grace periods, if any, for Land Taxes as determined by the Tax Assessor and the Tax Collector.

Material Conditions - shall have the meaning given to it in Section 4.06 of this Agreement.

Mayor - the mayor of the Township

Minimum Annual Service Charge - the minimum annual service charge shall be the amount of the total taxes levied against the Project in the last full tax year immediately prior to the commencement of the annual service charges paid pursuant to this Financial Agreement. The Minimum Annual Service Charge shall be paid in each year in which the Annual Service Charge, calculated pursuant to *N.J.S.A. 40A:20-12(2)* and this Agreement, would be less than the Minimum Annual Service Charge.

Minimum Township Share - shall mean an amount equal to the Annual Service Charge for the first full year following the Annual Service Charge Commencement Date minus (i) the credit for the Entity's Land Taxes provided for in Section 4.05 and (ii) the portion of the Annual Service Charge remitted to the County in accordance with Section 4.04(g).

Minority - shall mean a person who is a citizen or lawful permanent resident of the United States and who is either one or a combination of: (i) African American (a person having origins in any of the black racial groups of Africa), (ii) Alaskan Native and/or American Indian (a person having origins in any of the original peoples of North America), (iii) Asian American (a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, Hawaii or the Pacific Islands), (iv) Hispanic (a person of Mexican, Puerto Rican,

Cuban, Central or South American, or other Spanish culture or origin, regardless of race), or (v) Female (a person of the female gender).

Minority Business Enterprise – shall mean a sole proprietorship where the sole proprietor is a minority person; or a business corporation where fifty-one (51%) percent of the interest in such corporation is beneficially owned by minority persons and minority persons occupy the majority of management and board positions and control all decisions concerning the entity; or a partnership where fifty-one (51%) percent of the partnership interest in such partnership is beneficially owned by minority persons and minority persons occupy the majority of management and partnership positions and control all decisions concerning the entity; and which is certified as a bona fide minority business enterprise by a certifying agency designated by the Township.

Net Profit – The Annual Gross Revenue of the Entity pertaining to the Property, less all operating and non-operating expenses of the Entity, all determined in accordance with generally accepted accounting principles and the provisions of *N.J.S.A. 40A:20-3(c)*, which includes, but is not limited to, an annual amount sufficient to amortize (utilizing the straight line method-equal annual amounts) the Total Project Cost over the term of the abatement granted pursuant to this Agreement as well as all other expenses permitted under the provisions of *N.J.S.A. 40A:20-3(c)*.

Notice of Termination – As defined in Section 14.04.

Ordinance – Ordinance No. [        ] adopted by the Council on [        ], attached hereto, adopting the subject tax exemption.

Party or Parties – shall have the meaning given to it in the preamble of this Agreement.

Project – shall have the meaning given to it in the recitals of this Agreement.

Property – shall have the meaning given to it in the recitals of this Agreement, and shall include both the Land and Improvements thereon.

Small Business Enterprise – shall mean a business entity that is certified as a *bona fide* small business enterprise by a certifying agency designated by the Township.

State – The State of New Jersey

Substantial Completion - The determination by the Township that the Project is ready for the use intended, which ordinarily shall mean the date on which such Project receives, or is eligible to receive a Certificate of Occupancy for the Project.

Tax Assessor – The Township tax assessor.

Tax Collector – The Township tax collector.

Tax Sale Law – *N.J.S.A. 54:5-1 et seq.*



Taxes - shall have the meaning given to it in Section 14.04 of this Agreement.

Termination - Expiration of the term of this Agreement in accordance with Section 3.01 or any action or omission which by operation of the terms of this Financial Agreement shall cause the Entity to relinquish or forfeit the tax exemption granted pursuant to this Agreement.

Township – shall have the meaning given to it in the preamble of this Agreement.

Township Clerk - the municipal clerk of the Township

Township Share – shall mean an amount equal to the Annual Service Charge minus (i) the credit for the Entity's Land Taxes provided for in Section 4.04 and (ii) the portion of the Annual Service Charge remitted to the County in accordance with Section 4.04(g).

Women's Business Enterprise – shall mean a sole proprietorship where the sole proprietor is a woman; a business corporation where fifty-one (51%) percent of the interest in such corporation is beneficially owned by women and women occupy the majority of management and board positions and control all decisions concerning the entity; or a partnership where fifty-one (51%) percent of the partnership interest in such partnership is beneficially owned by women and women occupy the majority of management and partnership positions and control all decisions concerning the entity; and which is certified as a bona fide women's business enterprise by a certifying agency designated by the Township.

## ARTICLE I

### INTERPRETATION AND CONSTRUCTION

**SECTION 1.03** 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.

(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.

(h) All references to Sections, Articles or Exhibits shall, unless indicated otherwise, refer to the Sections, Articles or Exhibits in this Agreement.

(i) It is expressly understood and agreed that the Township expressly has relied upon the facts, data and representations contained in the Exemption Application in granting the tax exemption described in this Agreement.

**{End of Article I}**

## ARTICLE II

### APPROVAL

#### **SECTION 2.01 Approval of Tax Exemption**

Pursuant to the Ordinance, the Improvements to be rehabilitated and maintained by the Entity on the Land designated on the Township tax maps as Block 64, Lots 2 and 3 shall be exempt from taxation as provided for herein and in the Long Term Tax Exemption Law. In accordance with N.J.S.A. 40A:20-12, the tax exemption shall constitute a single continuing exemption from local property taxation for the duration of this Agreement.

#### **SECTION 2.02 Approval of the Entity**

The Entity represents that its certificate of formation, attached hereto as Exhibit D, contains all the requisite provisions of law, has been reviewed and approved by the Commissioner of the New Jersey Department of Community Affairs, and has been filed with, as appropriate, the Secretary of State, all in accordance with N.J.S.A. 40A:20-5.

#### **SECTION 2.03 Improvements to be Constructed**

The Entity represents that it shall construct or cause to be constructed the Project in accordance with the approved site plan, the use of which Project is more specifically described in the Application.

#### **SECTION 2.04 Construction Schedule**

The Entity agrees to diligently undertake the commencement or cause the commencement of the construction and completion of the Project substantially in accordance with the approved site plan.

#### **SECTION 2.05 Ownership, Management and Control**

The Entity represents that it owns the Property. The Entity covenants that it shall cause the redevelopment of the Property in conformance with the approved site plan, the Redevelopment Plan and all Applicable Laws.

The Entity covenants, warrants and represents that the Property and the Project shall be used, managed and operated for the purposes set forth in the Application, and in accordance with the Redevelopment Plan and all Applicable Laws.

#### **SECTION 2.06 Project Financing Plan**

The Entity represents that the Improvements shall be financed substantially in accordance with the representations set forth in the Financial Plan. The Application and Financial Plan, made a part hereof, set forth the estimated Total Project Cost, amortization rate on Total Project Cost,

the source of funds, the interest rates to be paid on construction financing, the source and amount of paid-in capital, the terms of any mortgage amortization, and rental schedules and lease terms, as applicable, in accordance with the Exemption Law.

#### **SECTION 2.07 Findings**

In accordance with the Exemption Law, the Township hereby finds and determines that this Agreement is to the direct benefit of the health, welfare and financial well-being of the Township and its citizens because it allows for the rehabilitation of the Property, and further:

- (a) Relative Benefits of the Project: The Township recognizes the benefit created by the construction of the Improvements, the jobs to be created during the construction period and the permanent jobs to be created through the operation of the Improvements, as further set forth in the Application.
- (b) Assessment of the Importance of the Tax Exemption in Obtaining Development of the Project and Influencing the Locational Decisions of Probable Occupants: Without the exemption, the Entity would not be able to finance and undertake the Project in a manner that will allow it to maintain the affordability controls required for the Project. As a result, without the tax exemption the Entity would not be able to undertake the Project.

#### **SECTION 2.08 Community Initiatives, Non-Discrimination and Affirmative Action**

The Entity must comply with the requirements of all statutes, laws and regulations regarding non-discrimination and affirmative action in the employment of workers, including New Jersey P.L. 1975, c. 127 (N.J.A.C. 17:27), and shall further comply with the requirements set forth in Exhibit C.

**{End of Article II}**



### **ARTICLE III**

#### **DURATION OF AGREEMENT**

##### **SECTION 3.01 Term**

This Agreement shall become operative on the Effective Date. The Parties understand and agree that this Agreement, including the obligation to pay the Annual Service Charge required under Article IV and the tax exemption granted and referred to in Section 2.01, shall remain in effect until the earlier of (i) thirty-five (35) years from Effective Date or (ii) thirty years (30) from the Annual Service Charge Commencement Date for the Project. At the expiration of the term hereof or upon Termination, the tax exemption for the Project shall expire and the Property shall thereafter be assessed and taxed according to the general law applicable to other non-exempt property in the Township. After expiration of the term hereof, all restrictions and limitations upon the Entity shall terminate upon the Entity's rendering and the Township's acceptance of its final accounting, pursuant to N.J.S.A. 40A:20-12.

##### **SECTION 3.02 Date of Termination**

Upon any Termination of the tax exemption, as described in Section 3.01, the date of such Termination shall be deemed to be the last day of the fiscal year of the Entity.

##### **SECTION 3.03 Voluntary Termination by Entity**

The Entity may at any time after the expiration of one year from the completion of the Project notify the Township that as of a certain date designated in the notice, it relinquishes its status under the Long Term Tax Exemption Law and that the Entity has obtained the consent of the Commissioner of the Department of Community Affairs. Upon Termination of the Agreement, all restrictions and limitations upon the Entity shall terminate upon the Entity's rendering and the Township's acceptance of its final accounting, pursuant to *N.J.S.A. 40A:20-12*.

**{End of Article III}**

## ARTICLE IV

### ANNUAL SERVICE CHARGE

#### **SECTION 4.01**      Consent of Entity to Annual Service Charge

The Entity hereby consents and agrees to the amount of the Annual Service Charge and to the liens described in this Agreement, and the Entity shall not contest the validity or amount of any such lawfully imposed lien. Notwithstanding anything herein to the contrary, the Entity's obligation to pay the Annual Service Charge shall be absolute and unconditional and shall not be subject to any defense, set-off, recoupment or counterclaim under any circumstances, including without limitation any loss of the status of the Entity as an urban renewal entity qualified under and as defined in the Exemption Law, or any violation by the Township of any provisions of this Agreement. The Entity's remedies shall be limited to those specifically set forth herein and otherwise provided by Applicable Law.

#### **SECTION 4.02**      Payment of Annual Service Charge

(a) In consideration of the tax exemption, the Entity shall make payment of the Annual Service Charge commencing on the Annual Service Charge Commencement Date.

(b) Payment of the Annual Service Charge shall be made to the Township on a quarterly basis in accordance with the Township's property tax collection schedule, February 1<sup>st</sup>, May 1<sup>st</sup>, August 1<sup>st</sup>, and November 1<sup>st</sup>, subject, nevertheless, to adjustment for over or underpayment within ninety (90) days after the close of each calendar year. The obligation to pay the Annual Service Charge shall continue until the Termination of the Agreement.

(c) In the event that the Entity fails to timely pay the Annual Service Charge or any installment thereof, the amount past due shall bear interest at the highest rate of interest permitted under the State law in the case of unpaid taxes or tax liens on the Property and Land until paid.

(d) In accordance with the Exemption Law, specifically *N.J.S.A. 40A:20-12*, in the event of any change in the tax-exemption status as provided herein during any tax year, including but not limited to any Termination, the procedure for the apportionment of any taxes and/or Annual Service Charge, as the case may be, shall be the same as in the case of other changes in tax exemption status to any other property located within the Township during the tax year, in accordance with Applicable Law.

#### **SECTION 4.03**      Administrative Fee

The Entity shall pay annually an administrative fee to the Township in addition to the Annual Service Charge. The Administrative Fee shall be computed as two percent (2%) of the Annual Service Charge required pursuant to Section 4.01. This fee shall be payable and due on or before February 1<sup>st</sup> of each year for the Administrative Fee accrued in the prior calendar year, and collected in the same manner as the Annual Service Charge. In the event the Entity fails to pay the Administrative Fee when due and owing, the amount unpaid shall bear the highest rate of

interest permitted under applicable New Jersey law in the case of unpaid taxes or tax liens until paid.

#### **SECTION 4.04      Annual Service Charge Schedule**

The Annual Service Charge throughout the term of this Agreement shall be as follows:

(a) Pursuant to *N.J.S.A. 40A:20-12*, the Parties agree that upon the Annual Service Charge Commencement Date, the Annual Service Charge for the Project shall be an amount equal to the greater of: (i) \_\_\_\_\_ (%) percent of the Gross Revenue for the Project, or (ii) the Minimum Annual Service Charge.

(b) Commencing in the \_\_\_\_\_ ( ) year after the Annual Service Charge Commencement Date and continuing for a period of \_\_\_\_\_ ( ) years (years \_\_ through \_\_ inclusive), the Annual Service Charge shall be (i) the amount stated in Section 4.04(a) or (ii) twenty (20%) percent of the amount of taxes otherwise due to the Township on the value of the Improvements, whichever shall be greater.

(c) Commencing in the \_\_\_\_\_ ( ) year after the Annual Service Charge Commencement Date and continuing for a period of \_\_\_\_\_ ( ) years (years \_\_ through \_\_ inclusive), the adjusted Annual Service Charge shall be (i) the amount stated in Section 4.04(a) or (ii) forty (40%) percent of the amount of taxes otherwise due to the Township on the value of the Improvements, whichever shall be greater.

(d) Commencing in the \_\_\_\_\_ ( ) year after the Annual Service Charge Commencement Date and continuing for a period of \_\_\_\_\_ ( ) years (years \_\_ and \_\_ inclusive), the Annual Service Charge shall be (i) the amount stated in Section 4.04(a) or (ii) sixty (60%) percent of the amount of taxes otherwise due to the Township on the value of the Improvements, whichever shall be greater.

(e) Commencing in the \_\_\_\_\_ ( ) year after the Annual Service Charge Commencement Date and continuing for a period of \_\_\_\_\_ ( ) years (years \_\_ and \_\_ inclusive), the Annual Service Charge shall be (i) the amount stated in Section 4.04(a) or (ii) eighty (80%) percent of the amount of taxes otherwise due to the Township on the value of the Improvements, whichever shall be greater.

- (f)
- i. Notwithstanding anything contained herein, at all times the Township Share shall be an amount equal to or greater than the Minimum Township Share. In any year the Annual Service Charge, as increased pursuant to Sections 4.04(a)-(e) above, yields a Township Share in an amount less than the Minimum Township Share, the Annual Service Charge shall be additionally increased by an amount necessary to cause the Township Share to be equal to the Minimum Township Share. Any such additional increase to the Annual Service Charge shall be deemed in compliance *N.J.S.A. 40A:20-12(b)(1)*, as an amount not less than 10% of Annual Gross Revenue.

- ii. Notwithstanding the provisions of the Exemption Law or any provision of the Agreement to the contrary, including Section 4.04 herein, the Annual Service Charge shall never be reduced below the Minimum Annual Service Charge through any tax appeal on the Land and/or Improvements or any other legal proceeding regarding the Project during the period that this Agreement is in force and effect.

(g) From the Annual Service Charge paid by the Entity and received by the Township, the Township shall annually remit not less than five (5%) percent of the payment received to the County in accordance with the provisions of N.J.S.A. 40A:20-12.

#### **SECTION 4.05      Land Taxes, Credits and Other Charges**

(a) THE ENTITY HEREBY EXPRESSLY ACKNOWLEDGES, UNDERSTANDS AND AGREES THAT THE TAX EXEMPTION PROVIDED FOR HEREIN SHALL ONLY APPLY TO IMPROVEMENTS AND THAT LAND TAXES SHALL BE SEPARATELY ASSESSED BY THE TOWNSHIP ON THE PROPERTY IN ACCORDANCE WITH APPLICABLE LAW.

(b) The Entity is required to pay both the Annual Service Charge and to pay all Land Taxes. The Entity shall be entitled to credit for the amount, without interest, of the Land Taxes paid in the last four preceding quarterly installments against the Annual Service Charge. The Entity is obligated to pay timely Land Taxes in order to be entitled to a credit for Land Taxes against the Annual Service Charge for the subsequent year.

(c) The Entity hereby expressly acknowledges, understands, and agrees that, in addition to Annual Service Charges, it shall be responsible for the payment (without any credit whatsoever hereunder) of all other applicable municipal charges that may, from time to time, be lawfully assessed upon its property, including, without limitation, any and all special benefit assessments, water and sewer charges, and other municipal charges, whether presently existing or hereinafter imposed, and that the Township may enforce such assessments and charges in any manner (including, but not limited to, foreclosure or tax sale) permitted by applicable law.

#### **SECTION 4.06      Material Conditions**

It is expressly agreed and understood that payment of Annual Service Charges and any interest payments, penalties or costs of collection due thereon, are material conditions of this Agreement (“**Material Conditions**”). If any other term, covenant or condition of this Agreement or the Application, as to any person or circumstance shall, to any extent, be determined to be invalid or unenforceable by virtue of a non-appealable order of a court of competent jurisdiction, the remainder of this 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 remaining term, covenant or condition of this Agreement shall be valid and enforced to the fullest extent permitted by law.



**SECTION 4.07**      No Reduction in Payment of the Annual Service Charge

Neither the amounts nor dates established for payment of the Annual Service Charge, as provided in Section 4.04 hereof shall be reduced, amended or otherwise modified during the term of this Agreement.

**SECTION 4.08**      Annual Service Charge as Municipal Lien

The Entity hereby expressly acknowledges, understands and agrees, and the Township acknowledges, without making any representation, warranty or covenant, that (i) the Annual Service Charge shall constitute an automatic, enforceable and perfected statutory municipal lien for all purposes, including specifically and without limitation, the Federal bankruptcy code, regardless of whether the amount of the Annual Service Charge has been determined, and (ii) any applicable process, procedure or action of any court, government body or other relevant authority, including without limitation any confirmation hearing, to determine the amount of the Annual Service Charge due shall not affect the commencement or validity of the municipal lien.

**{End of Article IV}**

**ARTICLE V**

**RESERVED**

**{End of Article V}**

## ARTICLE VI

### CERTIFICATE OF OCCUPANCY

#### **SECTION 6.01** Certificate of Occupancy

It is understood and agreed that it shall be the obligation of the Entity to take such actions as are necessary under Applicable Laws to obtain all required Certificates of Occupancy in a reasonably timely manner. The Township shall, in good faith, reasonably cooperate with the Entity and use its best efforts to support and expedite the review, comment and approval of any application of the Entity seeking a Certificate of Occupancy.

#### **SECTION 6.02** Filing of Certificate of Occupancy

The Entity shall file or cause to be filed with both the Tax Assessor and the Tax Collector a copy of the Certificate of Occupancy promptly upon receipt thereof by the Entity. Failure of the Entity to file or cause to be filed such issued Certificate of Occupancy as required by the preceding paragraph shall not militate against any action or non-action by the Township, 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 VI}**

## ARTICLE VII

### REPORTS AND AUDITS

#### SECTION 7.01 Calculation of Net Profit.

For the purposes of this Agreement, the Entity agrees to calculate its "Net Profit" pursuant to N.J.S.A. 40A:20-3(c).

#### SECTION 7.02 Periodic Reports/Notices

(a) Auditor's Report: Within ninety (90) days after the close of each fiscal or calendar year that this Agreement shall continue in effect, according to the Entity's accounting basis, the Entity shall submit to the Mayor, Township Council, the Tax Collector and the Township Clerk, who shall advise those municipal officials required to be advised, and the Division of Local Government Services in the New Jersey Department of Community Affairs, its Auditor's Report for the preceding fiscal or calendar year. The Auditor's Report shall clearly identify and calculate the Net Profit for the Entity during the previous year. The Entity assumes all costs associated with preparation of the periodic reports. The Auditor's Report must include a calculation of the Gross Revenue as defined in this Financial Agreement.

(b) Total Project Cost Audit: Within ninety (90) days after the Substantial Completion of the Project, the Entity shall submit to the Mayor, the Council, the Tax Collector and the Municipal Clerk, who shall advise those municipal officials required to be advised, an audit of Total Project Cost, certified as to actual construction costs by the Entity's architect.

(c) Disclosure Statement: On each anniversary date of the execution of this Agreement, the Entity shall submit to the Mayor, Township Council, the Tax Collector and the Township Clerk, 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 Township may reasonably request from time to time regarding such ownership interest in the Project (each a "**Disclosure Statement**").

(d) Accounting System: The Entity agrees to maintain a system of accounting and internal controls established and administered in accordance with generally accepted accounting principles.



### **SECTION 7.03 Inspection**

Upon reasonable request in writing, during normal business hours, the Entity shall permit (A) the inspection of its property, equipment, buildings and other facilities of the Project, and (B) the examination and audit of its books, contracts, records, documents and papers, in each case by representatives duly authorized by the Township and Division of Local Government Services in the New Jersey Department of Community Affairs as provided in the Redevelopment Agreement, provided that such rights of inspection also shall extend to representatives in the Division of Local Government Services in the New Jersey Department of Community Affairs pursuant to N.J.S.A. 40A:20-9(e), duly authorized by the Township, as reasonably deemed necessary and appropriate by the Township. The inspections and examinations shall not in any manner materially interfere with construction or operation of the Project. All costs incurred by the Township to conduct such inspections and/or audits, including reasonable attorneys' fees if appropriate, shall be billed to the Entity and paid to the Township as an additional part of the Entity's Annual Service Charge.

### **SECTION 7.04 Limitation on Profits and Reserves**

During the period of tax exemption as provided herein, the Entity shall be subject to a limitation of its profits or dividends pursuant to the provisions of N.J.S.A. 40A:20-15 and N.J.S.A. 40A:20-3(c). Upon expiration or Termination of the tax exemption, the foregoing limitations on the profits or dividends of the Entity shall be of no further force or effect.

The Entity shall have the right in any year to establish and maintain 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 last full fiscal year preceding the year in which the reserve is established or maintained, 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.

There is expressly excluded from calculation of "Gross Revenue" and from "Net Profit" as set forth in N.J.S.A. 40A:20-3 for the purpose of determining compliance with N.J.S.A. 40A:20-15 or N.J.S.A. 40A:20-16, the amount of any sale, including any gain realized thereby, by the Entity on the sale of all or any portion of the Project, including a Unit, whether or not taxable under federal or State law.

### **SECTION 7.05 Prohibition Against Use of Master Leases or Related Techniques**

The Entity agrees that the intent of this Agreement is to account for all revenue arising from the Project as if it accrues to the benefit of the Entity. The Entity shall therefore have no right to enter into any lease, contract or other agreement the effect of which is to interpose another person, corporation or other entity between the Entity and the end users of the Project for the purpose of reducing the amount of revenue accounted for as benefiting the Entity.

To the extent that the Township, in its sole discretion, determines that such an arrangement has been put in place, the Township shall have the right to recast the financial statements of the Entity so as to account for the Gross Revenue that would have accrued to the Entity had the arrangement not been in existence, and to require the Entity to make payments of the Annual Service Charge based on such recast financial statements.

Notwithstanding the foregoing, the Entity shall be permitted to enter into a lease for the operation and maintenance of the Project. The Entity agrees however, that any such agreements shall include provisions which shall have the effect of requiring the same amount to be payable to the Township pursuant to this Agreement as if no other agreements had been entered into by the Entity. Failure to include such provisions within any such additional agreement shall be grounds for Termination of this Agreement.

**SECTION 7.06 Payment of Dividend and Excess Profit Charge**

In the event the Net Profits of the Entity (after funding of any reserve described in Section 7.04), in any fiscal year, shall exceed the Allowable Net Profits for such period, then the Entity, within one hundred twenty (120) days after the end of such fiscal year, shall pay such excess Net Profits to the Township as an additional Annual Service Charge. The calculation of Net Profit and Allowable Net Profit shall be made in the manner required pursuant to N.J.S.A. 40A:20-3(c) and 40A:20-15.

The Parties agree that any excess Net Profit shall be treated by the Township as additional Annual Service Charge subject to the provisions of this Agreement.

**{End of Article VII}**

## ARTICLE VIII

### ASSIGNMENT AND/OR ASSUMPTION

#### SECTION 8.01 Approval

(a) As permitted by N.J.S.A. 40A:20-10, it is understood and agreed that the Township, on written application by the Entity, after Substantial Completion, will consent to a sale of the Project and the transfer of this Agreement provided: 1) the transferee entity does not own any other Project subject to long term tax exemption at the time of transfer; 2) the transferee entity is formed and eligible to operate under the Exemption Law; 3) the Entity is not then in Default of this Agreement or the Exemption Law; 4) the Entity's obligations under this Agreement are fully assumed by the transferee entity; 5) 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 Township in regard to the Project; and 6) the principal owners of the transferee entity possess the same business reputation, financial qualifications and credit worthiness as the Entity and are otherwise reputable.

(b) Where the consent or approval of the Township is sought for an assignment of the Agreement, the Township may levy an administrative fee of two percent (2%) of the then applicable Annual Service Charge for the review, preparation, and/or submission of documents to the Council for action on the requested assignment.

(c) If the Entity transfers the Project to another urban renewal entity, and the transferee entity has assumed all of the Entity's contractual obligations under this Agreement, then, pursuant to *N.J.S.A. 40A:20-6*, the Entity shall be discharged from any further obligation under this Agreement and shall be qualified to undertake another project pursuant to the Exemption Law. The date of transfer of title of the Project to a purchasing entity shall be considered to be the close of the fiscal year of the Entity. Within ninety (90) days after the date of the transfer of title, the Entity shall pay to the Township the amount of the reserve, if any, maintained by it, as well as the excess Net Profit, if any, pursuant to *N.J.S.A. 40A:20-15*.

(d) A Declaration of Restriction on Transfer will be recorded against the Property in the office of the Essex County Register simultaneously with the recordation of this Agreement on or after the Effective Date.

#### SECTION 8.02 Operation of Project

The Project shall be operated in accordance with the provisions of the Exemption Law, as may be amended and supplemented. Failure to operate the Project pursuant to the terms of this Financial Agreement and the provisions of *N.J.S.A. 40A:20-1 et seq.*, shall be cause for termination.

### **SECTION 8.03 Subordination of Fee Title**

It is expressly understood and agreed that the Entity has the right, subordinate to the lien of the Annual Service Charges and to the rights of the Township hereunder, to encumber and/or assign the fee title to the Land and/or Improvements for the sole purpose of obtaining financing for use in the construction or operation of the Project, and that any such encumbrance or assignment shall not be deemed to be a violation of this Agreement. This section shall not prohibit the encumbrance of a mortgage lien on the Property, it being expressly understood that a mortgage lien takes subject to the municipal lien created by the Annual Service Charge under the Exemption Law.

### **SECTION 8.04 Prohibition against Severing of Improvements From Land**

The Entity hereby agrees at all times prior to the expiration or Termination of this Agreement to remain bound by the provisions of *N.J.S.A. 40A:20-1 et seq.*, as amended and supplemented. It is an express condition of the granting of this tax exemption that during its duration, the Entity shall not, without the prior consent of the Municipal Council, by Ordinance, convey, mortgage or transfer, all or part of the Project so as to sever, disconnect, or divide the Improvements from the Lands which are basic to, embraced in, or underlying the exempted Improvements.

**{End of Article VIII}**



**ARTICLE IX**

**WAIVER**

**SECTION 9.01 No Waiver**

Nothing contained in this Financial Agreement or otherwise shall constitute a waiver or relinquishment by the Township or the Entity of any rights and remedies provided by the law. Nothing herein shall be deemed to limit any right of recovery that the Township or the Entity has under law, in equity, or under any provision of this Financial Agreement.

**{End of Article IX}**

**ARTICLE X**

**NOTICE**

**SECTION 10.01 Notice**

Any notice required hereunder to be sent by any party to another party shall be sent to all other parties hereto simultaneously by certified or registered mail, return receipt requested, or by courier or overnight delivery service, as follows:

When sent to the Entity it shall be addressed as follows:

NAME  
ADDRESS  
CITY, STATE ZIP  
PHONE  
EMAIL

With copies to:

NAME  
ADDRESS  
CITY, STATE ZIP  
PHONE  
EMAIL

When sent to the Township it shall be addressed to:

Township of Irvington  
Attn: Musa A. Malik, Esq., Business Administrator  
1 Civic Square  
Irvington, New Jersey 07111

With copies to:

Township of Irvington  
Attn: Ramon E. Rivera, Esq., Township Attorney  
1 Civic Square  
Irvington, New Jersey 07111

Township of Irvington  
Attn: Genia C. Philip, Esq., Director  
Dept. of Economic Development & Grants Oversight  
1 Civic Square, Room 102  
Irvington, New Jersey 07111

and

McManimon, Scotland & Baumann, LLC  
Attn: Glenn Scotland, Esq.  
75 Livingston Avenue, Second Floor  
Roseland, New Jersey 07068

The foregoing addresses may be changed or supplemented by written notice given as above provided. Notice to the Township shall identify the subject with the block and lot numbers, and any other qualifying designation as may apply, of the tax parcels comprising the Property. Any such notice sent by certified mail shall be deemed to have been received by the addressee on the third (3<sup>rd</sup>) business day after posting in the United States mail or, if transmitted by messenger or a priority delivery service, on the first (1<sup>st</sup>) business day after transmittal provided the sender has evidence of delivery. Counsel for a Party may give notice to the other Party with the same effect as if given by the Party.

**{End of Article X}**

**ARTICLE XI**

**COMPLIANCE**

**SECTION 11.01 Statutes and Ordinances**

The Entity hereby agrees at all times prior to the expiration or Termination of the tax exemption to remain bound by the provisions of Federal and State law and any lawful ordinances and resolutions of the Township, including, but not limited to, the Long Term Tax Exemption Law. The Entity's failure to substantially comply with such statutes or ordinances and the continuation of such noncompliance beyond any applicable notice, grace or cure period provided therein or herein, shall constitute a breach of this Agreement.

**{End of Article XI}**

**ARTICLE XII**

**CONSTRUCTION**

**SECTION 12.01 Construction**

This Agreement shall be construed and enforced in accordance with the laws of the State, and without regard to or aid or 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 Township have combined in their review and approval of same.

**{End of Article XII}**



## ARTICLE XIII

### INDEMNIFICATION

#### **SECTION 13.01 Indemnification**

It is understood and agreed that in the event the Township shall be named as a party in any action brought against the Township or the Entity by allegation of any breach, Default or violation of any of the provisions of this Agreement and/or the provisions of the Exemption Law or by allegation and materially arising from or relating to the Project under any other Applicable Laws, the Entity shall indemnify and hold the Township 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 violation of any of the provisions of this Agreement, the provisions of the Exemption Law and/or any other Applicable Laws; provided, however, that the Entity shall not be required to indemnify the Township for any willful or negligent act, omission or misconduct by the Township or any of its officers, officials, employees or agents. Upon the Township becoming aware of any claim or loss for which indemnification is sought, the Township shall promptly provide the Entity with written notice thereof and demand for indemnification. The Entity shall defend against any such claim or loss at its own expense. The Township maintains the right to intervene as a party thereto, to which intervention the Entity hereby consents, the reasonable expense thereof to be borne by the Entity.

**{End of Article XIII}**

## ARTICLE XIV

### DEFAULT; REMEDIES; TERMINATION

#### **SECTION 14.01**      Default

Default shall be failure of the Entity to make payment of the Annual Service Charge when due hereunder or to otherwise fail to conform to the terms of this Agreement and any failure of the Entity to substantially observe and perform any other obligation imposed upon the Entity by Applicable Laws beyond any applicable notice, cure or grace period.

#### **SECTION 14.02**      Cure Upon Default

Should the Entity be in Default of any obligation under this Agreement, the Township shall notify the Entity and any mortgagee of the Entity, in writing of said Default (the “**Default Notice**”). Said Default Notice shall set forth with particularity the basis of said Default. Except as otherwise limited by law, the Entity shall have sixty (60) days to cure any Default (other than a Default in payment of any installment of the Annual Service Charge) from the date of its receipt of the Default Notice; provided, however, that if such Default is not reasonably able to be cured within such sixty (60) day period and the Entity is diligently pursuing a cure, such cure period shall extend as long as the Entity continues diligently to pursue such cure, but in any event, not more than one hundred twenty (120) days from the date of Entity’s receipt of the Default Notice.

#### **SECTION 14.03**      Remedies Upon Default Cumulative; No Waiver

In the event of any uncured Default, the Township shall have the right to proceed against the Project, and/or the Property pursuant to the provisions of Applicable Laws. Upon any Default in payment of any installment of the Annual Service Charge, the Township shall have the right to proceed to In Rem Tax Foreclosure consistent with the provisions and procedures of the Tax Sale Law.

Subject to the other terms and conditions of this Agreement including Section 14.04, all of the remedies provided in this Agreement to the Township, and all rights and remedies granted to the Township by law and equity, shall be cumulative and concurrent and no determination of the invalidity of any provision of this Agreement shall deprive the Township of any of its remedies or actions against the Entity for Entity’s failure to pay Land Taxes, the Annual Service Charge and/or any applicable water and sewer charges and interest payments. This right shall only apply to arrearages that are due and owing at the time, and the bringing of any action for Land Taxes, Annual Service Charge or other charges, or for breach of covenant or the resort of any other remedy herein provided for the recovery of Land Taxes, Annual Service Charge or other charges shall not be construed as a waiver of the right to proceed with an In Rem Tax Foreclosure action consistent with the terms and provisions of this Agreement.

In the event of a Default under this Agreement by either of the Parties or a dispute arising between the Parties in reference to the terms and provisions as set forth herein, then the Parties

shall submit the dispute to the American Arbitration Association in the State, to be determined in accordance with its rules and regulations in such a fashion to accomplish the purpose of said laws. Costs for said arbitration shall be paid by each Party equally, to be reimbursed in full by the non-prevailing Party to the prevailing Party.

#### **SECTION 14.04     Remedies**

The Township's customary tax payment enforcement proceedings shall apply to the collection of any delinquent payment of the Annual Service Charge. In the event of a Default on the part of the Entity to pay any installment of the Annual Service Charge required by Article IV above, and the continuance of such Default after expiration of any notice, grace or cure periods under Applicable Laws, the Township, in addition to its other remedies, reserves the right to proceed against the Entity's Land and Improvements, in the manner provided by Applicable Laws, including the Tax Sale Law, and any act supplementary or amendatory thereof, provided that it is understood and agreed that the Township shall look solely to the estate and property of the Entity in the Project (including the rental income and insurance proceeds therefrom) for the satisfaction of the Township's remedies for the collection of a judgment or other judicial process requiring the payment of money by the Entity in the event of any Default or breach by the Entity with respect to any of the terms, covenants and conditions of this Agreement to be observed or performed by the Entity, and any other obligation of the Entity created by, under or as a result of this Agreement, and no other property or assets of the Entity, or of their partners, beneficiaries, shareholders, officers, directors, members, managers, tenants, principals, agents or attorneys (as the case may be) (in any of their capacities) shall be subject to service, levy, execution or other enforcement procedures for the satisfaction of the Township's remedies. In no event shall the Township name the Entity's partners, members, shareholder's, officers, directors, managers, beneficiaries, tenants, shareholders, principals, agents or attorneys (in any of their capacities) to any suit or other proceeding to which the Township and/or Entity are a party arising out of or relating to this Agreement.

The Township shall pursue the collection of delinquent payments of Annual Service Charge with the same diligence it employs in the collection of the Township's general *ad valorem* real estate taxes, including the commencement of an In Rem Tax Foreclosure. 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 it is pertinent to this Agreement, as if the Annual Service Charge were taxes or municipal liens on land. In either case, however, the Entity does not waive any defense it may have to contest the rights of the Township to proceed in the above-mentioned manner.

#### **SECTION 14.05     Termination upon Default of the Entity**

In the event the Entity fails to cure or remedy the Default, including without limitation a Default as described in Section 14.01, within the time period provided in Section 14.02, the Township may terminate this Agreement upon thirty (30) days written notice to the Entity ("**Notice of Termination**").

**SECTION 14.06**     Final Accounting

Within ninety (90) days after the date of Termination of tax exemption, the Entity shall provide a final accounting and pay to the Township the reserve, if any, pursuant to the provisions of N.J.S.A. 40A:20-13 and 15 as well as any excess Net Profits. For purposes of rendering a final accounting, the date of Termination of this Agreement shall be deemed to be the last day of the fiscal year of the Entity in which the Termination occurred.

**SECTION 14.07**     Conventional Taxes

Upon Termination or expiration of this Agreement, the tax exemption for the Project shall expire and the Land and the Improvements thereon shall thereafter be assessed and conventionally taxed according to the general law applicable to other nonexempt taxable property in the Township.

**{End of Article XIV}**

## ARTICLE XV

### MISCELLANEOUS

#### **SECTION 15.01**     Conflict

The Parties agree that in the event of a conflict between the Application and this Financial Agreement, the language in this Agreement shall govern and prevail.

#### **SECTION 15.02**     Oral Representations

There have been no oral representations made by either of the Parties which are not contained in this Agreement.

#### **SECTION 15.03**     Entire Document

All conditions in the Ordinance are incorporated in this Agreement and made a part hereof. This Agreement, the Ordinance and the Exemption Application constitute the entire agreement between the Parties as to the subject matter thereof and hereof.

#### **SECTION 15.04**     Good Faith

In their dealings with each other, the Parties agree that they shall act in good faith.

#### **SECTION 15.05**     Recording

Upon the execution and delivery of this Agreement, the entire Agreement, including the Ordinance, shall be filed and recorded with the office of the Essex County Register by the Entity, at the Entity's expense, such that this Agreement and the Ordinance shall be reflected upon the land records of the County as a perfected statutory municipal lien upon and a covenant running with each and every parcel of the Property including the Improvements related thereto.

#### **SECTION 15.06**     Municipal Services

The Entity shall make payments for municipal services, including, without limitation, water and sewer charges and any services that create a lien on a parity with or superior to the lien for the Land Taxes, if applicable, and the Annual Service Charge, as required by law. Nothing herein is intended to release the Entity from its obligation to make such payments.

#### **SECTION 15.07**     Waste and Refuse Disposal

The Entity shall comply with the Township Mandatory Recycling Ordinance to ensure that used corrugated cardboard, glass bottles and jars, food and beverage cans, newspapers and magazines and other recyclables deemed mandatory by the Township are separated from waste and refuse emanating from the Project for the purpose of recycling.



#### **SECTION 15.08**      Force Majeure

Neither Party shall be liable to the other for failure to perform its obligations under this Agreement due to fire, flood, strikes, or other industrial disturbances, accidents, war, riot, insurrection, or other causes beyond the reasonable control of the Parties that have a material impact upon such Party's ability to perform its obligations hereunder.

#### **SECTION 15.09**      Counterparts; Electronic Signatures

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. Electronic or facsimile signatures shall constitute original signature for all purposes under this Agreement.

#### **SECTION 15.10**      Amendments

This Agreement may not be amended, changed, modified, altered or terminated, other than as may be set forth herein, without the written consent of the Parties hereto.

#### **SECTION 15.11**      Certification

The Township clerk shall certify to the Tax Assessor, that a Financial Agreement for the development of the Property has been entered into and is in effect as required by *N.J.S.A. 40A:20-1 et seq.* Delivery by the Township clerk to the Tax Assessor of a certified copy of the Ordinance adopted by the Township Council approving the tax exemption described herein and this Agreement shall constitute the required certification. Upon certification as required hereunder, the Tax Assessor shall implement the exemption and continue to enforce that exemption without further certification by the Township Clerk until the expiration of the entitlement to exemption by the terms of this Agreement or until the Tax Assessor has been duly notified by the Township Clerk that the exemption has been terminated.

Further, upon the execution of this Agreement, a certified copy of the Ordinance and this Agreement shall forthwith be transmitted to the Director of the Division of Local Government Services, New Jersey Department of Community Affairs, by the Township Clerk.

#### **SECTION 15.12**      Severability

If any terms or provision of this Agreement or the application thereof shall to any extent be held to be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to circumstances other than those to which it is invalid or unenforceable, shall not be affected thereby, and each other term and provision of this Agreement shall be valid and shall be enforced to the extent permitted by Applicable Laws. Further, provided that a Default has not been declared under this Agreement, the Parties shall cooperate to take the actions reasonably required to restore the Agreement in a manner contemplated by the Parties, including, but not limited to, the authorization and amendment of this Agreement in a form reasonably drafted to effectuate the original intent of the Parties. Notwithstanding the foregoing, if the long term tax exemption is declared invalid or unenforceable or if the benefit thereof is

materially and adversely affected by judicial action, this Agreement shall be deemed null and void.

**SECTION 15.13**     Estoppel Certificate

Within thirty (30) days following written request therefor by the Entity, or any mortgagee, purchaser, tenant or other party having an interest in the Project, the Township 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 Township's knowledge, no Default has occurred under this Financial Agreement (nor any event which, with the passage of time and 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 XV}**

**IN WITNESS WHEREOF**, the parties have caused these presents to be executed as of the day and year first above written.

**18<sup>th</sup> AVENUE URBAN RENEWAL, LLC,**  
**a New Jersey limited liability company**

By: \_\_\_\_\_

**TOWNSHIP OF IRVINGTON**

By: \_\_\_\_\_

Mayor

STATE OF NEW JERSEY :  
: ss  
COUNTY OF ESSEX :

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2016, by 18<sup>th</sup> Avenue Urban Renewal, LLC, a New Jersey limited liability company, by \_\_\_\_\_, members, on behalf of the company.

\_\_\_\_\_  
Notary Public

Commission Expiration: \_\_\_\_\_

STATE OF NEW JERSEY :  
: ss  
COUNTY OF ESSEX :

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2016, by the TOWNSHIP OF IRVINGTON, a municipal corporation of the County of Essex and State of New Jersey, by \_\_\_\_\_, its Mayor, on behalf of the Township.

\_\_\_\_\_  
Notary Public

Commission Expiration: \_\_\_\_\_



**Exhibit A**  
**Exemption Application**

**Exhibit B**

**Ordinance**

## **Exhibit C**

### **Community Initiatives**

#### Equal Employment Opportunity

The Entity agrees that during construction of the Project:

(i) The Entity will not discriminate against any employee of the Entity or applicant for employment because of race, color, religion, sex, or national origin. The Entity will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation and selection for training, including apprenticeship. The Entity agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause and any such notices provided by the Township that are consistent therewith.

(ii) The Entity will, in all solicitations or advertisements for employees placed by or on behalf of the Entity, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.

(iii) The Entity shall use good faith and commercially reasonable efforts to include qualified and certified Minority Business Enterprises, Women's Business Enterprises, and Small Business Enterprises as subcontractors and suppliers to the Project wherever possible.

(iv) The obligations contained in this Section shall be binding on all contractors and subcontractors to the extent that any work on the Project is done by any contractor or subcontractor, and any contract entered into by the Entity shall so provide.

#### First Source Employment

The Entity agrees to employ, and shall require in each of its contracts with contractors that they and their subcontractors must employ, residents of the Township in the construction of the Project, and in the operation and maintenance of the Project following Completion of Construction for so long as this Financial Agreement remains in effect with respect to the Project. Thirty (30%) percent of billable construction laborer, administrative and clerical hours associated with the Project shall be provided by Township residents or by employees of Minority Business Enterprises and Women's Business Enterprises, consistent with market wages. The Township shall designate a Township official to oversee and monitor the Entity's compliance with these First Source Employment requirements and affirmative action requirements, at no cost to the Entity. The Entity will engage in and cooperate with efforts to recruit Township residents for all

employment opportunities in connection with the Project, including participation in Township job fairs and utilization of a central employment registry, if the Township maintains such a registry. The Entity agrees to meet periodically with the Township's designee at the designee's request, to discuss the status of the Entity's employment efforts and compliance with the requirements of this Section 2.07. All contracts entered into by the Entity for the construction of the Project shall contain appropriate language to effectuate this provision and the Entity covenants to enforce its contracts with its contractors and subcontractors, if such parties are not in compliance with the requirements of this Exhibit.

#### Affirmative Action

The Entity during the construction of the Project covenants that it will comply with and shall provide in its contracts with its contractors and subcontractors, the following:

(i) The Entity shall use good faith and commercially reasonable efforts to undertake a program of local preference to facilitate entering into contracts with and/or purchasing good and services from local merchants and businesses located within the Township, including preferences for local retail and restaurant businesses;

(ii) Where applicable, the Entity shall at all times conform to the laws, regulations, policies of the State, the Federal government, and other governmental bodies with respect to affirmative action and equal employment opportunities requirements, and particularly those which are imposed as a condition to receipt of any government sponsored funding for the Project, notwithstanding any other provision of this Agreement to the contrary.

(iii) The Entity shall use good faith and commercially reasonable efforts to undertake a program of preference to facilitate entering into contracts with and/or purchasing goods and services from Minority Business Enterprises, Women's Businesses Enterprises, and Small Business Enterprises at a rate of 20%.

#### (a) Reporting and Enforcement.

(i) The Entity shall submit monthly reports regarding compliance with this Section as the Township may reasonably require.

(ii) Reports submitted by the Entity shall include names, addresses, ethnic origin of those who apply and are interviewed for employment including those denied employment. Reports should also include businesses hired, recruitment efforts including advertisements and letters to community groups advising them of employment and business opportunities.

(iii) The Entity covenants to enforce its contracts with its contractors and subcontractors if such parties are not in compliance with this Section.

(iv) The penalties for non-compliance with this Exhibit shall be as set forth in the Code of the Township.



**Exhibit D**

**Certificate of Formation**