

O-17-45  
08/16/17

**ORDINANCE OF THE CITY OF BAYONNE, COUNTY OF HUDSON, NEW JERSEY APPROVING THE APPLICATION AND FINANCIAL AGREEMENT FOR TAX EXEMPTION WITH BAYONNE REDEVELOPERS RESIDENTIAL URBAN RENEWAL, LLC FOR THE PROPERTY KNOWN AS A PORTION OF THE HARBOR STATION SOUTH DISTRICT OF THE PENINSULA AT BAYONNE HARBOR, MORE PARTICULARLY IDENTIFIED ON THE TAX MAP OF THE CITY OF BAYONNE AS BLOCK 791 LOT 1 AND A PORTION OF BLOCK 720 LOT 1. IN THE CITY OF BAYONNE**

**WHEREAS**, BAYONNE REDEVELOPERS RESIDENTIAL URBAN RENEWAL, LLC is the owner of certain property designated as Block 791 Lot1 and a portion of Block 720, Lot 1 16 and 17 in the City of Bayonne, located within that which is commonly known as part of the Harbor Station South District of the Peninsula at Bayonne Harbor (the “**Property**”); and

**WHEREAS**, at the discretion of the City Council, the Planning Board prepares and recommended adoption of a proposed redevelopment plan; and

**WHEREAS**, the Property has been designated as an area in need of redevelopment pursuant to the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq., as amended and supplemented (the “**Local Redevelopment and Housing Law**”); and

**WHEREAS**, pursuant to Ordinance #0-16-1, on January 20, 2016, the City adopted a redevelopment plan with respect to Harbor Station South entitled “Redevelopment Plan for the Peninsula at Bayonne Harbor – Harbor Station South City of Bayonne Hudson County, New Jersey December 2015”, as amended on March 14, 2017 pursuant to Ordinance #0-17-17, adopted on April 19, 2017 (as amended, the “Redevelopment Plan”); and

**WHEREAS**, on November 28, 2016, the City and Bayonne Redevelopers, LLC (“Master Redeveloper”) entered into that certain Redevelopment and Purchase and Sale Agreement, which was approved by the Governing Body on October 19th, 2016 pursuant to Resolution No. 16-10-19-042 (the “Redevelopment Agreement”); and

**WHEREAS** the Redevelopment Agreement sets forth the terms and conditions upon which the Master Redeveloper will acquire and redevelop the portions of the Redevelopment Area known as Block 700, Lot 1, Block 720, Lot 1 and Block 791, Lot 1 as more particularly shown on that certain Final Major Subdivision Plat, prepared by Partner Engineering and Science, Inc., dated November 11, 2015 and recorded in the Office of the Hudson County Register on November 14, 2016 as Instrument No. 20161114130000210 (Receipt No. 1182894) (the “Plat”); and

**WHEREAS**, Master Redeveloper has formed Bayonne Redevelopers Residential Urban Renewal, LLC for the purpose of acquiring (either fee title or a ground lease

interest) and redeveloping Block 791, Lot 1 and a portion of Block 720, Lot 1 in accordance with the Redevelopment Plan and the Redevelopment Agreement; and

**WHEREAS**, Bayonne Redevelopers Residential Urban Renewal, LLC proposes to redevelop the Property with a multi-family residential development containing approximately 551 market rate residential units and other site improvements (collectively, the “Project”); and

**WHEREAS**, Bayonne Redevelopers Residential Urban Renewal, LLC has applied to the City Council for tax exemption pursuant to the New Jersey Long Term Tax Exemption Law, N.J.S.A. 40A:20-1 et. seq. (the “**Exemption Law**”) with respect to the Project; and

**WHEREAS**, the City Council finds that the requested tax exemptions will benefit the City and its inhabitants by furthering the development of the property, and that the benefits would substantially outweigh the costs, if any, associated with the tax exemptions; and

**WHEREAS**, the City Council further finds that the requested tax exemptions are important to the City and that without the incentive of the tax exemptions, it is unlikely that the Project will be undertaken; and

**WHEREAS**, as part of its application for a tax exemption, Bayonne Redevelopers Residential Urban Renewal, LLC has submitted a form of Financial Agreement (the “**Financial Agreement**”) providing for payments in lieu of taxes, a copy of which is attached to this Ordinance; and

**WHEREAS**, Bayonne Redevelopers Residential Urban Renewal, LLC has presented to this body certain financial information, copies of which are attached as exhibits to this Ordinance; and

**WHEREAS**, the City Council deems it to be in the best interest of the City to pass an Ordinance authorizing the City to enter into the proposed Financial Agreement with Bayonne Redevelopers Residential Urban Renewal, LLC on the terms and conditions stated in the applicable form of Financial Agreement attached to this Ordinance.

**NOW THEREFORE**, be it Ordained that the City Council of the City of Bayonne does hereby adopt the tax exemption for Bayonne Redevelopers Residential Urban Renewal, LLC as follows:

**Section 1.** The development of the Project is hereby approved for the grant of a tax exemption under the Exemption Law by virtue of, pursuant to, and in conformity with the provisions of the Exemption Law.

**Section 2.** The Mayor is hereby authorized to execute the Financial Agreement with Bayonne Redevelopers Residential Urban Renewal, LLC in substantially the form attached hereto and subject to any further review, analysis or modifications that counsel may deem appropriate.

**Section 3.** During the term of the tax exemption with respect to Bayonne Redevelopers Residential Urban Renewal, LLC there shall be paid to the City in lieu of any taxes to be paid on the improvements of the Project, an annual service charge determined as provided in the Financial Agreement.

**Section 4.** Counsel is authorized to prepare, and the Mayor is hereby authorized to execute, any additional documents that may be necessary to implement and carry out the intent of the Financial Agreement.

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

by and between

**CITY OF BAYONNE**

and

**BAYONNE REDEVELOPERS RESIDENTIAL  
URBAN RENEWAL, LLC**

Dated: \_\_\_\_\_, 2017

**THIS FINANCIAL AGREEMENT** is made this \_\_\_\_ day of \_\_\_\_\_, 2017 (hereinafter this “Agreement” or “Financial Agreement”) between **BAYONNE REDEVELOPERS RESIDENTIAL URBAN RENEWAL, LLC** (hereinafter referred to as the “Entity”) a New Jersey limited liability company having its principal office at 80 South Jefferson Road, Whippany, New Jersey 07981; and the **CITY OF BAYONNE**, a public body corporate and politic of the State of New Jersey, having its offices at 630 Avenue C, Bayonne, New Jersey 07002, in its capacity as a “redevelopment entity” pursuant to N.J.S.A. 40A:12A-4(c) (hereinafter referred to as the “City”; and together with the Entity, the “Parties” or “Party”).

**WITNESSETH:**

**WHEREAS**, the City Council (the “Governing Body”) has duly designated the property shown on **Exhibit A** annexed hereto (the “Redevelopment Area” or “Harbor Station South”) as “an area in need of redevelopment” in accordance with the Local Redevelopment and Housing Law, **N.J.S.A. 40A:12A-1 et seq.**, as amended and supplemented (the “Redevelopment Law”); and

**WHEREAS**, pursuant to Ordinance #0-16-1, on January 20, 2016, the City adopted a redevelopment plan with respect to Harbor Station South entitled “Redevelopment Plan for the Peninsula at Bayonne Harbor – Harbor Station South City of Bayonne Hudson County, New Jersey December 2015”, as amended on March 14, 2017 pursuant to Ordinance #0-17-17, adopted on April 19, 2017 (as amended, the “Redevelopment Plan”); and

**WHEREAS**, on November 28, 2016, the City and Bayonne Redevelopers LLC (“Master Redeveloper”) entered into that certain Redevelopment and Purchase and Sale Agreement, which was approved by the Governing Body on October 19th, 2016 pursuant to Resolution No. 16-10-19-042 (the “Redevelopment Agreement”); and

**WHEREAS** the Redevelopment Agreement sets forth the terms and conditions upon which the Master Redeveloper will acquire and redevelop the portions of the Redevelopment Area known as Block 700, Lot 1, Block 720, Lot 1 and Block 790, Lot 1 (Being that same area identified in parts of filing documents as Block “791” Lot 1) as more particularly shown on that certain Final Major Subdivision Plat, prepared by Partner Engineering and Science, Inc., dated November 11, 2015 and recorded in the Office of the Hudson County Register on November 14, 2016 as Instrument No. 20161114130000210 (Receipt No. 1182894) (the “Plat”); and

**WHEREAS**, Master Redeveloper has formed the Entity for the purpose of acquiring (either fee title or a ground lease interest) and redeveloping Block 790, Lot 1 (Being that same area identified in parts of filing documents as Block “791” Lot 1) shown on the Plat and the portion of Block 720, Lot 1 shown as proposed Block 780, Lot 1 on **Exhibit B** (collectively, the “Property”) in accordance with the Redevelopment Plan and the Redevelopment Agreement; and

**WHEREAS**, the Entity proposes to redevelop the Property with a multi-family residential development containing approximately 551 market rate residential units and other site improvements (collectively, the “Project”); and

**WHEREAS**, in accordance with the Long Term Tax Exemption Law, N.J.S.A. 40A:20-1 et seq. (the “Exemption Law”), the Entity filed an application with the City for approval of a long term tax exemption (the “Long Term Tax Exemption”) for the Project, which is incorporated herein by reference (the “Application”); and

**WHEREAS**, On [\_\_\_\_\_], 2017, by Ordinance No. [\_\_\_\_\_] (the “Ordinance”), a copy of which is annexed hereto as **Exhibit C**, the Governing Body authorized the execution of this Financial Agreement; and

**WHEREAS**, pursuant to this Financial Agreement, the City and the Entity desire to set forth in detail their mutual rights and obligations with respect to the Long Term Tax Exemption; and

**WHEREAS**, the Governing Body has reviewed the Application and has made the following findings:

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

i. The development and construction of the Project will be beneficial to the overall community; 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 City.

ii. It is anticipated that the development of the Project will create approximately 300 full-time equivalent construction jobs over the duration of the construction of the Project, as well as approximately 8 full-time permanent jobs in connection with the operation of the Project.

iii. In 2016, the Property did not generate any real estate taxes. Pursuant to this Financial Agreement, the Project is projected to generate revenue for the City of approximately \$1,481,449.95. The City’s authorized officers and employees have determined that the benefits to the City accruing as a result of the Project will substantially outweigh the costs to the City resulting from the Long Term Tax Exemption granted herein.

**B. Importance of Long Term Tax Exemption.**

The Governing Body’s approval of the Long Term 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 prospective tenants and 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.

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements set forth herein, and for other good and valuable consideration, 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 City has relied upon the facts, data, and representations contained in the Application in its granting of the Long Term 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:

- i. **Administrative Fee** – Shall have the meaning defined in Section 4.9 of this Financial Agreement.
- ii. **Agreement or Financial Agreement** – Shall have the meaning specified in the preamble hereof.
- iii. **Allowable Net Profit (also referred to as “ANP”)** – The amount arrived at by multiplying the Allowable Profit Rate by the Total Project Cost pursuant to the definition of Limited Dividend entity as set forth in N.J.S.A. 40A:20-3(b). For the purpose of calculating Allowable Net Profit, Total Project Cost shall include (i) those costs directly attributable to site remediation and cleanup expenses, (ii) any extraordinary costs incurred including the cost of demolishing structures, costs associated with the relocation or removal of public utilities, and the cost of clearing of title, and (iii) any other costs that are excluded in Total Project Cost for the purposes of calculating the Annual Service Charge, but that may be included in Total Project Cost for the purpose of calculating Excess Net Profits in accordance with the Exemption Law, including without limitation, as set forth in N.J.S.A. 40A:20-15 and in the definition of Total Project Cost in N.J.S.A. 40A:20-3(b).

- iv. **Allowable Profit Rate (also referred to as the “APR”)** - 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 APR 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 residential rental projects within Hudson County.
- v. **Annual Audited Statement** - Shall mean 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.
- vi. **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.
- vii. **Annual Service Charge (also referred to as the “ASC”)** – The total annual amount that the Entity has agreed to pay the City for municipal services supplied to the Project, which sum is in lieu of any taxes on the Improvements pursuant to the Exemption Law. The Annual Service Charge shall be calculated pursuant to Article IV hereof.
- viii. **Applicable Law**: Shall mean 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 Long Term Tax Exemption.
- ix. **Application** – Shall have the meaning specified in the preamble of this Financial Agreement.
- x. **ASC Commencement Date** – The date of issuance of a Certificate of Occupancy for the Project authorizing the occupancy of any space in the building or buildings comprising the Project.
- xi. **Certificate of Occupancy** - A temporary or permanent certificate of occupancy issued by the appropriate City official, pursuant to **N.J.S.A. 52:27D-133**, authorizing the occupancy of space within any building comprising the Project.
- xii. **City** – Shall have the meaning specified in the preamble of this Financial Agreement.

- xiii. **Days** - Whenever the word “Days” is used to denote time, it shall mean calendar days.
- xiv. **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.
- xv. **Default** - A breach or failure of the City 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.
- xvi. **Effective Date** – The date of this Agreement.
- xvii. **Entity** – Shall mean 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.
- xviii. **Excess Net Profits** – The amount of Net Profits that exceeds the Allowable Net Profits (ANP) for the applicable accounting period as determined in accordance with the Exemption Law.
- xix. **Excess Profits Accounting Period** - shall mean any period, but not less than one fiscal year of the Entity, in which the aggregate Net Profits of the Entity exceed aggregate Allowable Net Profits on a cumulative basis. The first Excess Profits Accounting Period shall commence on the ASC Commencement Date and terminate at the end of the fiscal year in which such aggregate Net Profits of the Entity exceed the aggregate Allowable Net Profits for the entire period, taken as one accounting period. Each subsequent Excess Profits Accounting Period shall commence on the first day of the next fiscal year of the Entity after the end of the last Excess Profits Accounting Period and shall terminate at the end of the fiscal year in which such aggregate Net Profits of the Entity exceed the aggregate Allowable Net Profits for the entire period, taken as one accounting period.
- xx. **Exemption Law** - Shall have the meaning specified in the preamble of this Financial Agreement.
- xxi. **Governing Body**- Shall have the meaning specified in the preamble of this Financial Agreement.
- xxii. **Improvements** - Shall mean any building, structure or fixture comprising the Project which is permanently affixed to the Property to be constructed and exempt under this Agreement.

- xxiii. **Land Taxes** – Shall mean the amount of real estate taxes levied on the Property, exclusive of any Improvements related thereto.
- xxiv. **Land Tax Payments** – Quarterly payments made on the due dates, including approved grace periods, if any, for the Land taxes as determined by Applicable Law.
- xxv. **Long Term Tax Exemption** – Shall have the meaning specified in the preamble of this Financial Agreement.
- xxvi. **Minimum Annual Service Charge** – The amount of the total taxes levied against the Property in the last full tax year in which the area was subject to taxation.
- xxvii. **Net Profit** - Annual Gross Revenue (AGR) 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.
- xxviii. **Ordinance** – Shall have the meaning specified in the preamble of this Financial Agreement.
- xxix. **Party or Parties** – Shall have the meaning specified in the preamble of this Financial Agreement.
- xxx. **Project** - Shall have the meaning specified in the preamble of this Financial Agreement.
- xxxi. **Redevelopment Area** – Shall have the meaning specified in the preamble of this Financial Agreement.
- xxxii. **Redevelopment Agreement**- Shall have the meaning specified in the preamble of this Financial Agreement.

xxxiii. **Redevelopment Law** – Shall have the meaning defined in the preamble of this Financial Agreement.

xxxiv. **Redevelopment Plan** – Shall have the meaning defined in the preamble of this Financial Agreement.

xxxv. **Rental Units** – Any unit of residential space within the Project.

xvi. **Reserve** – Shall have the meaning defined in Section 6.2 of this Financial Agreement.

xvii. **Secured Party or Secured Parties** – Shall have the meaning defined in Section 8.3(a) of this Financial Agreement.

xviii. **Security Arrangements** – Shall have the meaning defined in Section 8.3(a) of this Financial Agreement.

xxxix. **Tenant** – Any tenant of a Rental Unit.

**Termination Date** – The earlier to occur of (i) the thirty-fifth (35<sup>th</sup>) anniversary of the Effective Date; (ii) the thirtieth (30<sup>th</sup>) 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.

i. **Total Project Cost (also referred to as “TPC”)**- The total cost of developing the Project, as calculated in accordance with Section 3(h) of the Exemption Law.

ii. **Transfer** – Shall have the meaning specified in Section 8.1 of this Financial Agreement.

iii. **Transferee** – Shall have the meaning specified in Section 8.1 of this Financial Agreement.

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

### **Section 2.1. City’s Findings**

Pursuant to the Exemption Law, the City finds that the Long Term Tax Exemption granted pursuant to this Financial Agreement will benefit the City and the community by assuring the success of the redevelopment of the Property, which has exhibited the statutorily recognized redevelopment criteria for years. The benefits of granting the Long Term Tax Exemption will substantially outweigh the costs, if any, associated with the Long Term Tax Exemption. The Long Term Tax Exemption is important to the City, the Entity and the Tenants because without the incentive of the Long Term Tax Exemption, it is unlikely that the Project would be undertaken. The Long Term Tax Exemption is expected to attract future Tenants to the Project and it will help to offset the extraordinary costs of developing and constructing the Project. The high costs associated with the development and construction of the Project and the

real estate taxes that would otherwise be levied upon the Project would operate as a disincentive to the redevelopment of the Property, and would therefore frustrate the objectives and goals of the Redevelopment Plan and would make the Project materially less competitive in the marketplace.

## **Section 2.2 Approval of Agreement**

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

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

The City 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 Department of Community Affairs, and has been filed with, as appropriate, the Department of Treasury, all in accordance with N.J.S.A. 40A:20-5.

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

The Entity represents that it will develop and construct 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 City. The Master Redeveloper will partially assign the Redevelopment Agreement to the Entity with respect to the Property.

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

The Property is or will be ground leased or owned in fee simple by the Entity.

## **Section 2.6 Construction Schedule**

"The Entity agrees to diligently undertake to commence construction within three (3) months of receipt of Project financing from a lender, but in no event later than thirty six (36) months of the Effective Date and to diligently prosecute such construction to completion subject only to "Force Majeure" but not subject to extension beyond 36 months due to arbitration, cure or other provisions found elsewhere in this agreement. In the event the Entity does not actually commence construction within thirty six (36) months of the Effective date in accordance with plans submitted to and approved by the local construction official as provided by law, then the City may, at its sole option, terminate the Agreement upon thirty (30) days prior written notice to the Entity and after the adoption of a Resolution to that effect by the City Council.

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

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

The Entity represents that it shall remain the ground lessee or owner of record 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.

**ARTICLE IV- TAX EXEMPTION**

**Section 4.1 Duration of Tax Exemption**

The Improvements proposed for development and construction within the Project shall be exempt from taxation from the Annual Service Charge Start Date through the Termination Date. Partially constructed improvements shall be subject to partial assessments in accordance with general tax law but shall be exempt upon substantial completion in accordance with the terms of this agreement. Upon the expiration of this Agreement (i) the tax exemption for the Project shall expire and Property and the improvements thereon shall thereafter be assessed and taxed according to the general law applicable to other non-exempt property in the City and (ii) any restrictions and limitations upon the Entity shall terminate upon such Entity’s rendering of its final accounting to the City.

**Section 4.2 Calculation of Annual Service Charge**

In consideration of the City granting the Entity the exemption set forth in Section 4.1 of this Financial Agreement, the Entity shall pay to the City an Annual Service Charge as follows:

(a) **Stage One:** (i) From the ASC Commencement Date until the tenth (10<sup>th</sup>) anniversary of the ASC Commencement Date, the Annual Service Charge shall be ten percent (10%) of AGR; and (ii) from the first day after the tenth (10<sup>th</sup>) anniversary of the ASC Commencement Date until the fifteenth (15<sup>th</sup>) anniversary of the ASC Commencement Date, the Annual Service Charge shall be twelve percent (12%) of AGR;

(b) **Stage Two:** From the first day after the fifteenth (15<sup>th</sup>) anniversary of the ASC Commencement Date until the twentieth (20<sup>th</sup>) 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;

(c) **Stage Three:** From the first day after the twentieth (20<sup>th</sup>) anniversary of the ASC Commencement Date until the twenty-fifth (25<sup>th</sup>) 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;

(d) **Stage Four:** From the first day after the twenty-fifth (25<sup>th</sup>) anniversary of the ASC Commencement Date until the twenty-eighth (28<sup>th</sup>) 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;

(e) **Final Stage:** From the first day after the twenty-eighth (28<sup>th</sup>) anniversary of the ASC Commencement Date until the thirtieth (30<sup>th</sup>) anniversary of the ASC Commencement Date, the Annual Service Charge shall be equal to the greater of twelve percent (12%) of AGR or eighty (80%) percent of the amount of the taxes otherwise due on the value of the Property and the Improvements.

Notwithstanding the foregoing, if in any given year, based on the foregoing calculation, the Annual Service Charge would be less than \$1,000,000.00, then in such year, the percentage of AGR shall be increased to such percentage as is necessary in order to result in an Annual Service Charge in the amount of \$1,000,000.00.

#### **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 Credit Against Respective Annual Service Charges**

The Entity, or its Transferee, shall pay the Annual Service Charge or the Minimum Annual Service Charge in accordance with the terms of this Financial Agreement. The Entity, or its Transferee, shall be entitled to a credit against the Annual Service Charge for the amount, without interest, of the pro rata portion of the Land Tax payments made in the last four (4) preceding quarterly installments.

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

The Annual Service Charge or the Minimum Annual Service Charge, as the case may be, shall be paid in quarterly installments on those dates when ad valorem real estate tax payments on other properties within the City are due, subject to adjustment for over payment or underpayment within thirty (30) days after the close of each calendar year.

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

(a) All Annual Service Charge or Minimum Annual Service Charge payments, as the case may be, made pursuant to this Financial Agreement shall be in lieu of taxes and, as set forth above, the City 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 City.

(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 the per diem assessment for such quarter.

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

The City shall remit to the County of Hudson 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 Voluntary Remittance to School District**

The City voluntarily agrees to remit to the Bayonne Public School District five percent (5%) of the Annual Service Charge received each year from the Entity. The Entity shall have no obligation with respect to the City's voluntary remittance to the Bayonne Public School District.

#### **Section 4.9 Administrative Fee**

In addition to the Annual Service Charge, the Entity shall pay to the City an annual fee of two percent (2%) of the projected Annual Service Charge upon the ASC Commencement Date and each anniversary thereafter prior to the Termination Date (the "Administrative Fee").

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

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

If the City or the Entity breaches this Financial Agreement, or a dispute arises between the Parties regarding the terms and provisions set forth herein, then the Parties shall submit the dispute to 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 award rendered by the arbitrator(s) shall be final, and judgment may be entered upon it in accordance with Applicable Law in any court having jurisdiction.

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

The Entity agrees that the timely payment of the Land Taxes, and the Minimum Annual Service Charge or the Annual Service Charge, to the City, 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 Notification of Breach Required**

The City shall notify the Entity in writing of any breach relating to the terms of this Financial Agreement. If the Entity fails to cure a breach within thirty (30) Days after the actual delivery of such notice by the City, or within any additional periods to which the Parties may agree to, in writing, the City may move to invalidate the Long Term Tax Exemption upon thirty

(30) Days final written notice to the Entity, which shall inform the Entity that the Long Term Tax Exemption shall terminate due to the breach of the terms of this Financial Agreement. Other than with respect to the nonpayment of Land Taxes, Annual Service Charge or Minimum Annual Service Charge, the City shall not unreasonably refuse to grant a reasonable extension of the cure period, not to exceed one hundred twenty (120) days after the Notice unless the City in its sole discretion shall agree to a longer cure period.

**Section 5.4 City’s Remedies Upon Default**

The City’s remedies upon its declaration of default shall be cumulative and concurrent. No determination under this Financial Agreement shall deprive the City of its right to proceed against the Entity for the nonpayment of the applicable Land Taxes, Minimum Annual Service Charge or Annual Service Charge, as the case may be, including any arrearage that would accrue in the absence of such determination.

**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 Land Taxes, Annual Service Charge and Minimum Annual Service Charge are Material Conditions of this Agreement which shall not be excused by the occurrence of a force majeure event.

**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. In no event shall any portion of the Excess Net

Profits be retained or contributed to such Reserve if the amount of the Reserve as of the end of such fiscal year equals or exceeds ten percent (10%) of the preceding year's Annual Gross Revenues.

**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 Excess Profits Accounting Period, then the Entity, within ninety (90) days after the end of the Excess Profits Accounting Period, shall pay such Excess Net Profits to the Township 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 City the amount of the Reserve, if any, maintained by it pursuant to Section 7.01 and the Excess Net Profits, if any.

**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 City 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 Land Taxes, Annual Service Charge or Minimum Annual Service Charge 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 City 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 Long Term 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 City.

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

Pursuant to a written request, the Entity shall authorize the City or its representatives to examine the Entity's contracts, records and documents, related to the Project. Such examination shall be made during reasonable business hours, in the presence of a member or agent of the Entity. The Parties agree that Ten (10) Days written notice shall constitute a reasonable request for inspection. Notwithstanding the foregoing, the Entity may request an extension of time for such examination, up to ten (10) Days. Except to the extent required by Applicable Law, all information and documentation provided hereunder shall remain confidential and not subject to public disclosure.

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

#### **Section 8.1 Conveyance of Project**

As permitted in N.J.S.A. 40A:20-10, the City hereby consents to the Entity's request to transfer the Project to another urban renewal entity, qualified and organized under the Exemption Law (hereinafter referred to as a "Transferee"), provided such Transferee owns no other project subject to the Exemption Law at the time of the transfer, and provided that the Transferee assumes the Entity's obligations under this Financial Agreement (a "Transfer"). A Transfer under this Section 8.1 shall not include the leasing of any Rental Units to any third-party. Upon a Transferee's assumption of the Entity's obligations under this Financial Agreement, the Long Term Tax Exemption shall continue to the benefit of the Transferee and any of its Transferees.

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

If the Entity Transfers the Project to a Transferee and the Transferee has assumed the contractual obligations of the transferor Entity with the City, 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 City any Reserve maintained by it pursuant to this Financial Agreement, as well as any Excess Net Profits payable to the City 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 encumber and/or assign its ground lease or 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.

(a) The City 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 City agrees that the Entity and or its affiliates may 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 City 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 City 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 City shall give written notice of such Default to the Secured Parties and the City agrees that, in the event such Default is not waived by the City 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 City will provide the Secured Parties a reasonable period of time to cure such Default, but in any event not less than thirty (30) days from the date of such notice to the Secured Parties with regard to a failure of the Entity to pay the Annual Service Charge or Land Taxes 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 City 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 City’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.

(d) Notwithstanding anything to the contrary contained herein, and in addition to all other rights and remedies of Secured Parties set forth in this Agreement, the provisions of N.J.S.A. 55:17-1 – N.J.S.A. 55:17-11 shall apply to this Agreement to protect the interests of any Secured Party.

## **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 for the Rental Units without the consent of the City.

### **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 City 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 a final Certificate of Occupancy is issued for the Project, the Entity shall submit to the Mayor of the City an audit of Total Project Cost, certified as to actual construction costs by the Entity's architect.

## **ARTICLE X - MISCELLANEOUS PROVISIONS**

### **Section 10.1 Governing Law**

This Financial Agreement shall be governed by the provisions of Applicable Law including but not limited to the Exemption Law.

### **Section 10.2 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 10.3 Modification**

There shall be no modification of this Financial Agreement except by virtue of a written instrument executed by and between both Parties.

### **Section 10.4 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 City to the Entity:

Bayonne Redevelopers Residential Urban Renewal, LLC  
80 South Jefferson Road, Whippany, New Jersey 07981  
Attention: Joseph M. Forgione

with a copy to:

Andy S. Norin, Esq.  
Drinker Biddle & Reath LLP  
600 Campus Drive  
Florham Park, New Jersey 07932

b) When sent by the Entity to the City:

City of Bayonne  
630 Avenue C  
Bayonne, New Jersey 07002  
Attn: Mayor and City Attorney

with a copy to:

Inglesino, Webster, Wyciskala & Taylor, LLC  
600 Parsippany Road, Suite 204  
Parsippany, New Jersey 07054  
Attn: John P. Wyciskala, Esq.

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 City in accordance with this Agreement, of the name and address of Entity's mortgagee, then the City shall provide such mortgagee with a copy of any notice required to be sent to the Entity.

### **Section 10.5 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 10.6 Good Faith**

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

#### **Section 10.7 Certification**

The City 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 Long Term Tax Exemption Law. Delivery by the City 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 City 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 this Financial Agreement by the Entity, the City Clerk shall transmit a certified copy of the Ordinance and this Financial Agreement to the chief financial officer of Hudson County and to the Hudson County counsel for informational purposes.

#### **Section 10.8 Exhibits**

This Financial Agreement in its proposed form appears as an attachment to the Application for Long Term Tax Exemption as **Exhibit A**. This Financial Agreement along with each Exhibit attached and annexed hereto is incorporated into the Application.

#### **Section 10.9 Recording**

This Agreement, or a memorandum of this Agreement, may be filed and recorded with the Hudson County Register by the Entity. Promptly after the Termination Date, the parties shall execute and record an instrument discharging this Agreement of record in form reasonably satisfactory to the parties.

#### **Section 10.10 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 10.11 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 City 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 City’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.

*[Signature Page Follows]*

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

Attest:

**CITY OF BAYONNE**

\_\_\_\_\_  
City Clerk

By: \_\_\_\_\_  
James M. Davis, Mayor

SEAL

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

**BAYONNE REDEVELOPERS RESIDENTIAL  
URBAN RENEWAL, LLC**

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

By: \_\_\_\_\_  
Name: Giuseppe Forgione  
Title: Managing Member

ACKNOWLEDGEMENT

STATE OF                            )  
  )  
COUNTY OF                        )        SS.:

Be it remembered that on the \_\_\_ day of \_\_\_\_\_, 2017, Giuseppe Forgione personally appeared before me, and this person acknowledged under oath, to my satisfaction that:

- (a) he is the Managing Member of Bayonne Redevelopers Residential 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.

\_\_\_\_\_

ACKNOWLEDGEMENT

STATE OF                            )  
  )  
COUNTY OF                        )        SS.:

Be it remembered that on the \_\_\_\_\_, day of \_\_\_\_\_, 2017, James M. Davis personally appeared before me, and this person acknowledged under oath, to my satisfaction that:

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

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**EXHIBIT A – REDEVELOPMENT AREA**

**EXHIBIT B- PROPERTY**

**EXHIBIT C - ORDINANCE**