

Financial Agreement

By and Between

The Township of West Orange

and

West Orange Senior Housing, LLC

FINANCIAL AGREEMENT

THIS FINANCIAL AGREEMENT (hereinafter “**Agreement**” or “**Financial Agreement**”), made this _____ day of _____, 2019, by and between **West Orange Senior Housing, LLC** (the “**Entity**”), a limited liability company of the State of New Jersey, as a housing sponsor under the New Jersey Housing and Mortgage Finance Agency Law of 1983, N.J.S.A. 55:14K-1 et seq. (the “**HMFA Law**”), with offices at One Parker Plaza, Fort Lee, New Jersey 07024, along with its permitted successors and/or assigns, and **THE TOWNSHIP OF WEST ORANGE**, a municipal corporation in the County of Essex and the State of New Jersey (the “**Township**”, and together with the Entity, the “**Parties**”).

WITNESSETH:

WHEREAS, the Entity has requested a tax exemption pursuant to the HMFA Law in connection with the construction of a 65-unit, age-restricted, affordable housing project, including 61 one-bedroom units, 3 two-bedroom units, and 1 two-bedroom superintendent’s unit, 7,500 square feet of space to be used by the Township for a public purpose, to be located in a four-story elevator building, on-site parking and all related improvements located on a portion of real property identified on the Township’s tax map as Block 68, Lot 1 (collectively, the “**Project**”) in accordance with that certain Redevelopment Agreement by and between the Township and the Entity dated July 17, 2019 (the “**Redevelopment Agreement**”); and

WHEREAS, the Township has adopted a resolution approving a tax exemption for the Project and authorizing this Financial Agreement and wishes to enter into this Financial Agreement in order to memorialize the terms and conditions applicable to this tax exemption,

NOW, THEREFORE, in consideration of the mutual covenants herein contained and for other good and valuable consideration, the legal sufficiency of which is hereby acknowledged by the Parties, it is mutually covenanted and agreed as follows:

ARTICLE I **GENERAL PROVISIONS**

1.01 Governing Law. This Financial Agreement shall be governed by the provisions of (a) the HMFA Law, (b) the resolution authorizing this Financial Agreement, and (c) all other relevant Federal, State or Township statutes, ordinances, resolutions, rules and/or regulations.

1.02 General Definitions. Unless specifically provided otherwise or the context otherwise requires, the following terms when used in this Agreement shall have the following meanings:

Agency Mortgage – The mortgage on the Property in favor of the HMFA pursuant to the HMFA Law.

Annual Gross Revenue – The total annual gross rents and other income of the Entity from the Project.

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 taxes on the Land and the Improvements, which amount 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 Start Date – The Annual Service Charge Start Date shall be the date that Substantial Completion has been achieved.

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, among other things, a certification of Annual Gross Revenue for the Project and the Annual Service Charge due to the Township for each year that this Agreement is in effect.

Certificate of Occupancy – New 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.

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, or under the Law, beyond any applicable grace or cure periods.

Default Notice – Shall be as defined in Section 12.02.

Effective Date – The date of this Agreement.

Entity - Shall have the meaning as set forth in the recitals hereof.

Ground Lease – Shall be as defined in the Redevelopment Agreement.

HMFA – The New Jersey Housing and Mortgage Finance Agency.

HMFA Law – Shall have the meaning as set forth in the recitals hereof.

Improvements - Shall mean the existing building on the Land and any and all other improvements to be constructed on, in or under the Land in accordance with the terms hereof.

In Rem Tax Foreclosure - A summary proceeding by which the Township may enforce the lien for taxes due and owing by a tax sale, which shall be governed by the Tax Sale Law.

Land – The land, but not the Improvements, comprising the Property.

Law – The term shall refer to the HMFA Law, the resolution pursuant to which the Township Council approved this Agreement, and all other relevant Federal, State or Township statutes, ordinances, resolutions, rules and/or regulations applicable to this Agreement.

Notice of Termination – Shall be as defined in Section 12.05.

Parties – Shall have the meaning as set forth in the recitals hereof.

Project – Shall have the meaning as set forth in the recitals hereof.

Pronouns – He or it shall mean the masculine, feminine or neuter gender, the singular, as well as the plural, as context requires.

Property – Shall mean a portion of the property identified on the Township’s tax map as Block 68, Lot 1 as shown on Exhibit A attached hereto and as specifically delineated in that certain Ground Lease to be executed by the Parties.

State – The State of New Jersey.

Substantial Completion – The determination by the Township that the Project has been substantially completed, which shall mean the date on which such Project receives, or is eligible to receive, a Certificate of Occupancy.

Tax Sale Law – Shall mean N.J.S.A. 54:5-1 et seq., as amended or supplemented from time to time.

Termination - Any action or omission which by operation of the terms of this Financial Agreement shall cause the Entity to relinquish its tax exemption.

Township – Shall have the meaning as set forth in the recitals hereof.

1.03 Recitals Incorporated. The recitals are incorporated herein and made a part hereof.

ARTICLE II **APPROVALS**

2.01 Township Approval of Tax Exemption. The Land and the Improvements comprising the Project shall be exempt from taxation as provided for herein and under the HMFA Law. Such tax exemption shall constitute a single continuing exemption from local property taxation for the term described below. The Entity hereby expressly covenants, warrants and represents that the Property, including any Improvements related thereto, shall be used, managed and operated for the purpose of implementing the Project and in accordance with the Law.

ARTICLE III

DURATION OF AGREEMENT

3.01 Term. It is expressly understood and agreed by the Parties that this Financial Agreement shall become effective on the Effective Date and shall remain in effect until the earlier of: (i) Thirty-five (35) years from the Effective Date, (ii) Thirty (30) years from the Annual Service Charge Start Date, (iii) the Entity's voluntary termination of this Agreement, or (iv) the continuance of a Default as set forth within Article XII of this Agreement beyond the applicable notice and cure periods set forth therein; provided, however, that the exemption from taxation and the Entity's obligation to make payments in lieu of taxes shall not extend beyond the date on which the Agency Mortgage is paid in full. Upon the expiration of the tax exemption provided for herein, all restrictions and limitations of this Financial Agreement imposed upon the Entity and the Property shall terminate and the Property shall thereafter be assessed and taxed according to the general law applicable to other non-exempt property in the Township; provided, however, that any and all related remedies available to the Township shall survive the termination of this Agreement.

ARTICLE IV

ANNUAL SERVICE CHARGE

4.01 Commencement of Annual Service Charge. In consideration of the tax exemption, the Entity shall make payment of the Annual Service Charge in accordance herewith following the Annual Service Charge Start Date. In the event that the Entity fails to timely pay any installment, the amount past due shall bear the highest rate of interest permitted under applicable New Jersey law and then being assessed by the Township against other delinquent taxpayers in the case of unpaid taxes or tax liens on the land until paid.

4.02 Payment of Annual Service Charge. The Annual Service Charge shall begin to accrue on the first day of the month following the Annual Service Charge Start Date. The Annual Service Charge will be prorated in the year in which the Annual Service Charge Start Date begins and terminates. The Annual Service Charge shall continue for a period of thirty (30) years from the Annual Service Charge Start Date for the Project in accordance with the terms contained herein.

4.03 Annual Gross Revenue. Annual Gross Revenue shall be calculated as the total annual gross rents and other income of the Entity from the Project.

4.04 Calculation of Annual Service Charges. The Annual Service Charge shall be equal to 6.28% of the Annual Gross Revenue.

4.05 Land Taxes. The Land shall be exempt from taxation as of the Annual Service Charge Start Date in accordance with the HMFA Law, provided however, that if such exemption of the Land is invalidated by a court of competent jurisdiction, then this Agreement shall remain in full force and effect and shall be reformed to provide that:

(a) Conventional taxes are assessed against the Land;

(b) the Entity shall be entitled to a credit against the Annual Service Charge for the amount, without interest, of the Land tax payments timely made in the last four (4) preceding quarterly installments; and

(c) In any year that the Entity fails to make any Land tax payments if and when due and owing, such delinquency shall render the Entity ineligible for any Land tax payment credits against the Annual Service Charge for that year. No credit will be applied against the Annual Service Charge for partial payments of Land taxes. In addition, the Township shall have, among this remedy and other remedies, the right to proceed against the Property pursuant to the Tax Sale Law and/or to declare a Default.

4.06 Annual Service Charge Installments. Payment of the Annual Service Charge shall be paid to the Township on a quarterly basis on February 1, May 1, August 1, and November 1 after the Annual Service Charge Start Date, subject, nevertheless, to adjustment for over or underpayment within thirty (30) days after the close of each calendar year. In the event that the Entity fails to timely pay any installment, the amount past due shall bear the rate of interest permitted under applicable New Jersey law and then being assessed by the Township against other delinquent taxpayers in the case of unpaid taxes or tax liens on the land until paid.

4.07 Payments After Recordation of Agency Mortgage. In accordance with N.J.S.A. 55:14K-37, from the date of recording the Agency Mortgage on the Project to the date of Substantial Completion of the Project, the annual amount payable to the Township as taxes or as payments in lieu of taxes in respect of the Property shall not be in excess of the amount of taxes on the Property for the year preceding the recording of the Agency Mortgage.

ARTICLE V

ADDITIONAL PROJECT COVENANTS

5.01 Construction of Improvements; Schedule. The Entity will construct the Project. The Entity agrees to diligently undertake to commence construction and complete the Project in accordance with the timeline set forth in Section 4.06 of the Redevelopment Agreement. Failure to commence or complete construction in accordance with that schedule shall be grounds for Termination of this Agreement.

5.02 Ownership, Management and Control. The Entity represents that on or before the commencement of construction of any portion of the Project as set forth herein, it shall enter into a Ground Lease (as defined in the Redevelopment Agreement) with the Township as set forth in the Redevelopment Agreement.

5.03 Project Financing. The Entity represents that the Improvements shall be financed using a combination of a NJHMFA Permanent Mortgage, Federal Low Income Housing Tax Credits, and a construction loan from a conventional lender.

ARTICLE VI
CERTIFICATE OF OCCUPANCY/CERTIFICATE OF COMPLETION

6.01 Certificate of Occupancy; Certificate of Completion. It is understood and agreed by the parties that it shall be the obligation of the Entity to make all good faith efforts to obtain the Certificates of Occupancy for the Property and the Improvements related thereto in a timely manner.

6.02 Filing of Certificate of Occupancy or Certificate of Completion. It shall be the primary responsibility of the Entity to forthwith file with both the Tax Assessor and the Tax Collector a copy of the Certificate of Occupancy issued for the Project. Failure of the Entity to file such issued Certificate of Occupancy as required by the preceding paragraph shall not militate against any action or non-action, taken by the Township, including, if appropriate, retroactive billing with interest for any charges determined to be due, in the absence of such filing by the Entity.

ARTICLE VII
REPORTS AND AUDITS

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

7.02 Annual Audit. Within one hundred twenty (120) days after the close of each fiscal or calendar year following issuance of the Certificate of Occupancy, depending on the Entity's accounting basis, during the Term 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 certified Auditor's Report of the operation of the Project setting forth the Annual Gross Revenue of the Project. The Entity shall assume all costs associated with the preparation and submission of the Auditor's Report.

ARTICLE VIII
SALE AND/OR ASSIGNMENT PROVISIONS

8.01 Approval. The Township, on written application by the Entity, will consent to a sale of the Project and the transfer of this Agreement provided that (a) in the event that the Project or relevant portion thereof has not been completed, the transferee Entity shall have demonstrated to the reasonable satisfaction of the Township that it possesses the experience and capitalization necessary to complete the Project, which determination shall not be unreasonably withheld; (b) the transferee entity qualifies under the HMFA Law and assumes the Agency Mortgage; (c) the Entity is not then in Default of this Agreement or the Law; (d) the Entity's obligations under this Agreement are fully assumed by the transferee entity; (e) the transferee entity agrees to abide by all terms and conditions of this Agreement including, without

limitation: and (f) 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) The parties hereto acknowledge that the Entity shall transfer a portion of its membership interest to one or more tax credit investors in connection with the financing of the Project. The Township agrees that its consent is not required for this transfer.

ARTICLE IX **WAIVER**

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 Law except for the express waiver herein of certain rights of acceleration and certain rights to terminate this Financial Agreement and tax exemption for violation of any of the conditions provided herein. 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.

ARTICLE X **NOTICE**

10.01 Notice. Formal notices, demands and communications between and among the Township and the Entity shall be in writing and deemed given if dispatched to the address set forth below by registered or certified mail, postage prepaid, return receipt requested, or by a commercial overnight delivery service with packaging tracking capability and for which proof of delivery is available. In that case such notice is deemed effective upon delivery. Such written notices, demands and communications may be sent in the same manner to such other addresses as either party may from time to time designate by written notice.

Copies of all notices, demands and communications shall be sent as follows:

If to the Township:

Township of West Orange
Municipal Building
66 Main Street
West Orange, New Jersey 07052-5313
Attn: John K. Sayers, Township Administrator

with a copy to:

Richard Trenk, Esq.
McManimon, Scotland & Baumann, LLC

75 Livingston Avenue
Roseland, New Jersey 07068

If to the Entity:

West Orange Senior Housing, LLC
1 Parker Plaza
Fort Lee, New Jersey 07024
Attn: Joseph Alpert

With a copy to:

David J. Ritter, Esq.
Brach Eichler, LLP
101 Eisenhower Parkway
Roseland, New Jersey 07068

ARTICLE XI
DEFENSE/INDEMNIFICATION

11.01 Indemnification. It is understood and agreed that in the event the Township shall be named as party defendant in any action brought against the Township by allegation of any breach, Default or a violation of any of the provisions of this Agreement and/or the provisions of Applicable Law, the Entity, provided that it is still the fee title owner of all or any portion of the Land, or any Improvements related thereto, 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 a violation of any of the provisions of this Agreement and/or the provisions of Applicable Law, except for the willful misconduct by the Township or its officers, officials, employees or agents and the Entity shall defend the suit at its own expense. However, 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. To the extent practical and ethically permissible, the Entity's attorneys shall jointly defend and represent the interest of the Township and the Entity as to all claims indemnified in connection with this Agreement.

ARTICLE XII
DEFAULT

12.01 Default. Default shall be any failure of the Entity to conform to the terms of this Agreement or the Redevelopment Agreement, and/or any failure of the Entity to perform any obligation imposed upon the Entity by statute, ordinance or lawful regulation beyond any applicable notice, cure or grace period.

12.02 Cure Upon Default. Should the Entity be in Default of any obligation under this Agreement or the Redevelopment Agreement, the Township shall notify the Entity and any mortgagee of the Entity in writing of said Default (“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, for which the cure period shall be ten (10) days) from the date of its receipt of the Default Notice. In the event of any uncured Default, the Township shall have the right to proceed against the Property pursuant to applicable provisions of the Law and the Financial Agreement. 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 In Rem Tax Foreclosure law.

12.03 Remedies. In the event of any dispute between the parties, other than a dispute arising from the failure of the Entity to timely pay any portion of the Annual Service Charge or any other financial obligation required by this Agreement, the parties shall submit the dispute for arbitration to a third party neutral to be selected by mutual consent of the parties. 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, the Township in addition to its other remedies, reserves the right to proceed against the Entity’s land and premises, in the manner provided by law, including the Tax Sale Law, and any act supplementary or amendatory thereof. 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.

12.04 Remedies Upon Default Cumulative; No Waiver. Subject to the other terms and conditions of this Agreement, all of the remedies provided in this Agreement to the Township, and all rights and remedies granted to it 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 because of 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 Charges 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 Charges or other charges shall not be construed as a waiver of the right to proceed with In Rem Tax Foreclosure proceedings consistent with the terms and provisions of this Agreement.

12.05 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 12.01, within the time period provided in Section 12.02, the Township may terminate this Agreement upon thirty (30) days written notice to the Entity (“Notice of Termination”).

12.06 Final Accounting. Within one hundred twenty (120) days after the date of Termination, the Entity shall provide a final accounting to the Township. For purposes of

rendering a final accounting, the Termination of the Agreement shall be deemed to be the end of the fiscal year for the Entity.

12.07 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.

ARTICLE XIII MISCELLANEOUS

13.01 Financial Agreement Controlling. Except as provided in Section 5.01 hereof, the Parties agree that in the event of a conflict between the Redevelopment Agreement and this Financial Agreement, the provisions of this Financial Agreement shall govern and prevail.

13.02 Oral Representations. There have been no oral representations made by either of the parties hereto which are not contained in this Financial Agreement. This Financial Agreement and the Resolution of the Township authorizing this Agreement constitute the entire agreement between the parties regarding the tax exemption for the Property and there shall be no modifications thereto other than by a written instrument executed by the parties hereto and delivered to each of them.

13.03 Entire Document. All conditions in the Resolution of the Township Council approving this Agreement are incorporated in this Agreement and made a part hereof.

13.04 Construction. This Financial Agreement shall be construed and enforced in accordance with the laws of the State of New Jersey, 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 had the opportunity to review and approve the Financial Agreement.

13.05 Municipal Services. The Entity shall make payments for municipal services, including water and sewer charges and any services that create a lien on parity with or superior to the lien for the Land Taxes and Annual Service Charges, as required by law. Nothing herein is intended to release Entity from its obligation to make such payments.

13.06 Delivery to Tax Assessor. Upon the full execution of this Financial Agreement, the Clerk of the Township shall deliver to the Tax Assessor a certified copy of the Resolution along with an executed copy of this Financial Agreement. Upon such delivery, the Tax Assessor shall implement the tax exemption granted as of the Effective Date and certain requirements will be effective as provided herein and shall continue to enforce the tax exemption, without further certification by the Township Clerk, until the expiration of the tax exemption in accordance with the terms hereof.

13.07 Severability of Invalid Provisions. If any one or more of the covenants, agreements or provisions herein contained shall be held to be illegal or invalid in a final proceeding, then any such covenants, agreements or provisions shall be null and void and shall be deemed separable from the remaining covenants, agreements or provisions and shall in no way affect the validity of any of the other provisions hereof.

13.08 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.

13.09 Amendments. This Agreement may not be amended, changed, modified, altered or terminated without the written consent of the parties hereto

[Signature Pages to Follow]

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

ATTEST:

TOWNSHIP OF WEST ORANGE

Karen Carnevale
Township Clerk

By: _____
Hon. Robert D. Parisi, Mayor

WEST ORANGE SENIOR HOUSING, LLC

By: _____
Joseph Alpert, Owner

STATE OF NEW JERSEY :
: SS
COUNTY OF ESSEX :

BE IT REMEMBERED, that on this ____ day of _____, 2019 before me, the subscriber, a Notary Public of New Jersey, personally appeared ROBERT D. PARISI, who, being by me duly sworn on his or her oath, deposes and makes proof to my satisfaction that he is the MAYOR of the **TOWNSHIP OF WEST ORANGE, NEW JERSEY**, the entity named in the within Instrument; that the execution, as well as the making of this Instrument, have been duly authorized by the Township of West Orange and said Instrument was signed and delivered by said MAYOR as and for the voluntary act and deed of said entity.

Notary Public of New Jersey

STATE OF NEW JERSEY :
: SS
COUNTY OF ESSEX :

BE IT REMEMBERED, that on this ____ day of _____, 2019 before me, the subscriber, a Notary Public of New Jersey, personally appeared JOSEPH ALPERT who, being by me duly sworn on his or her oath, deposes and makes proof to my satisfaction that he is a PRINCIPAL of **WEST ORANGE SENIOR HOUSING, LLC**, the Entity named in the within Instrument; that the execution, as well as the making of this Instrument, having been duly authorized by the Entity, and said Instrument was signed and delivered by said PRINCIPAL as and for the voluntary act and deed of said Entity.

Notary Public of New Jersey

EXHIBIT A
Property Description Map

46 Mt. Pleasant Ave. Redevelopment Study
February 6, 2019



Figure 1- Study Area Map