

**FINANCIAL AGREEMENT FOR
LONG TERM TAX EXEMPTION**

by and between

THE TOWNSHIP OF WEST ORANGE, NEW JERSEY

and

18 CENTRAL AVENUE URBAN RENEWAL, LLC

THIS FINANCIAL AGREEMENT is made this ____ day of May, 2021 (hereinafter this "Agreement" or "Financial Agreement"), between **18 CENTRAL AVENUE URBAN RENEWAL, LLC**, (hereinafter referred to as the "Entity") a New Jersey limited liability company having its principal office at One Parker Plaza, Fort Lee, New Jersey 07024; and the **THE TOWNSHIP OF WEST ORANGE**, a public body corporate and politic of the State of New Jersey with an address at 66 Main Street, West Orange, New Jersey 07052 (the "Township"; and together with the Entity, the "Parties" or "Party").

WITNESSETH:

WHEREAS, on October 26, 2016, the Township Council of the Township of West Orange (the "Council"), pursuant to and in accordance with the requirements of the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq., (the "Redevelopment Law"), designated as an area in need of redevelopment certain property identified as Block 9, Lots 11.01, 11.02, 11.03, 32, & 36 and Block 7, Lot 22 on the official tax map of the Township (the "Redevelopment Area"); and

WHEREAS, the Redevelopment Area includes the properties identified as Block 9, Lot 36 and Block 7, Lot 22 on the tax maps of the Township known as 18 Central Avenue (the "Selecto-Flash Property") currently owned by the Township following the issuance of a final judgment dated December 7, 2016 in an In Rem Tax Foreclosure; and

WHEREAS, pursuant to N.J.S.A. 40A:12A-7, the Township Council, in accordance with the applicable provisions and requirements of the Redevelopment Law, passed Ordinance 2499-16 adopting a Redevelopment Plan for the Redevelopment Area (as may be amended and supplemented from time to time, the "Redevelopment Plan"); and

WHEREAS, on March 7, 2017, the Township Council adopted Resolution 74-17 which authorized the designation of the Entity as the interim redeveloper of the Redevelopment Area and the execution of an Interim Redevelopment Agreement with the Redeveloper (the "Interim Agreement"); and

WHEREAS, as the interim redeveloper, the Entity was provided a right to purchase the Selecto-Flash Property for a purchase price of \$1.5 million; and

WHEREAS, in addition to the designation of the Entity as the interim redeveloper for the Redevelopment Area, the Interim Agreement also provided that the Entity would fund and perform demolition of the existing structure on the Selecto-Flash Property; and

WHEREAS, on September 4, 2018, the Township Council adopted Resolution 192-18 which authorized the execution of a First Amendment to Interim Agreement between Township and the Entity (the "First Interim Agreement Amendment"); and

WHEREAS, the First Interim Agreement Amendment provided for the assignment of the Agreement of Sale for the purchase of the property identified as Block 9, Lot 32 on the official tax

maps of the Township known as 8-10 Central Avenue or 4-10 Central Avenue (the "Biddleman Property") to allow the Township to purchase the Biddleman Property and for the Entity to fund the purchase to be credited towards the purchase price of the Selecto-Flash Property; and

WHEREAS, on December 11, 2018, the Township Council adopted Resolution 270-18 which authorized the execution of a Second Amendment to Interim Agreement between Township and the Redeveloper (the "Second Interim Agreement Amendment"); and

WHEREAS, the Second Interim Agreement Amendment provided that the Entity would fund 25% of that portion of the Remedial Action Workplan for the Selecto-Flash property representing the removal of the underground storage tanks from the Selecto-Flash Property as a credit to the purchase price for the Selecto-Flash Property; and

WHEREAS, on March 23, 2021, in order to implement the Redevelopment Plan, the Township Council adopted Resolution 51-21 which designated the Entity as the Redeveloper for the Selecto Flash Property and the Biddleman Property (jointly hereinafter the "Properties") and authorized the execution of a Redevelopment Agreement (the "Redevelopment Agreement"); and

WHEREAS, the Redevelopment Agreement sets forth the terms and conditions by which the Entity will redevelop the Properties with a five-story 94 residential unit project including 1,223 square feet of amenity space, 3,533 square feet of commercial space, parking and related infrastructure as set forth in detail in the Redevelopment Agreement (collectively, the "Project"); and

WHEREAS, in order to ensure the financial feasibility of the Project, the Entity has requested from the Township a long-term tax exemption and financial agreement pursuant to the Long-Term Tax Exemption Law, N.J.S.A. 40A:20-1 et seq., (the "Exemption Law") and provided to the Township a Long Term Tax Abatement Application (the "Application"), copy of which is annexed hereto as Exhibit A, including: (i) the detailed representations and covenants as to the manner in which it proposes to use, manage or operate the project; and (ii) projections, pro formas, and/or budgets; and

WHEREAS, the Township has 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 the Project would not be feasible without such assistance as set forth in detail in Section 2.1 below; and

WHEREAS by Ordinance _____ (the "Ordinance") adopted by the Township Council on _____, 2021, a copy of which is annexed hereto as Exhibit B, the Council approved the execution of this Financial Agreement; and

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

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:

ARTICLE I- GENERAL PROVISIONS

Section 1.1 Governing Law

This 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 Township expressly relies upon the facts, data, and representations provided by the Entity to the Township contained within the Application (which is attached hereto) in granting this tax exemption. The recitals and Exhibits to this Agreement are hereby incorporated by reference herein as if set forth at length.

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 specified in Section 4.8 hereof.
- 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 applying the Allowable Profit Rate pursuant to the Exemption Law.
- 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 Essex County.
- v. **Annual Gross Revenue** (also referred to as the “AGR”) – Annual gross revenue of the Entity, which shall include but not be limited to all rents and other receipts paid to the Entity, from whatever source derived. AGR shall specifically exclude: insurance claim payments, tax refunds, Interest Income and Commerical Leasehold Improvement Income. The Entity has considered whether there are any insurance, operating, and maintenance expenses to be paid by a tenant of the Project which are ordinarily paid by a landlord and has concluded that there are none contemplated

at this time. Any gain realized by the Entity on the sale of the Project or any portion thereof, whether or not taxable under federal or State law, shall not be included in computing AGR.

- vi. **Annual Service Charge** (also referred to as the “ASC”) – The total annual amount that the Entity has agreed to pay the Township 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.
- vii. **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.
- 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 recitals of this Financial Agreement.
- x. **ASC Commencement Date** – The date that a Certificate of Occupancy has been issued with respect to the Project.
- xi. **Biddleman Property** - Shall have the meaning specified in the recitals of this Financial Agreement.
- xii. **Certificate of Occupancy** - A temporary or permanent certificate of occupancy issued by the appropriate Township official, pursuant to N.J.S.A. 52:27D-133, authorizing the occupancy of a building or any portion thereof.
- xiii. **Commercial Leasehold Improvements** – Shall mean customized modifications made by the Entity to a leased space for the benefit of a commercial tenant. Alterations to the exterior and/or common spaces of the building, or modifications that benefit other tenants in the building shall not be considered Commercial Leasehold Improvements.
- xiv. **Commercial Leasehold Improvement Income** – Shall mean the repayment for Commercial Leasehold Improvements. Rental concessions negotiated between a commercial tenant and the Entity shall not be considered Commercial Leasehold Improvement Income and the AGR shall not be reduced by such concessions.
- xv. **Council** - Shall have the meaning specified in the recitals of this Financial

Agreement.

- xvi. **Days** - Whenever the word “Days” is used to denote time, it shall mean calendar days.
- xvii. **Debt Service** – The amount required to make annual payments of principal and interest or the equivalent thereof on any construction mortgage, permanent mortgage or other financing including returns on institutional equity financing and market rate related party debt for the Project for the Exemption Term.
- xviii. **Default** - A breach or failure of the Township 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.
- xix. **Effective Date** – The date that this Agreement has been executed by both Parties.
- xx. **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 Transferee, which shall also be qualified as an urban renewal entity under the Exemption Law as set forth in Section 8.1 hereof.
- xxi. **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.
- xxii. **Exemption Law** - Shall have the meaning specified in the recitals of this Financial Agreement.
- xxiii. **Exemption Term** – The period beginning on the ASC Commencement Date and ending on the Termination Date.
- xxiv. **Existing Improvements** – Shall have the meaning specified in Section 4.9 of this Financial Agreement.
- xxv. **Existing Member** - Shall mean the Persons owning membership interests in the Entity as of the date of this Agreement, as set forth in Exhibit B annexed hereto.
- xxvi. **First Interim Agreement Amendment** - Shall have the meaning specified in the recitals of this Financial Agreement.
- xxvii. **Improvements** - Shall mean any building, structure or fixture permanently affixed to the Properties to be constructed and exempt under this Agreement.
- xxviii. **Interest Income** – Shall mean income earned on an intercompany loan between

the Existing Members and the Entity, to the extent such income is earned in connection with a loan related to the ownership, operation and management of the Project.

- xxix. **Interim Agreement** - Shall have the meaning specified in the recitals of this Financial Agreement.
- xxx. **Land** - The land, but not the Improvements, identified on the official tax map of the Township of West Orange as: (i) Block 9, Lot 36 and Block 7, Lot 22, and (ii) Block 9, Lot 32 identified in the Township tax records respectively as: (i) 18 Central Avenue, West Orange, NJ 07068; and (ii) 8-10 Central Avenue or 4-10 Central Avenue, West Orange, NJ 07068, and more particularly described by the metes and bounds description set forth within **Exhibit C** of this Agreement.
- xxxi. **Land Taxes** – Shall mean the amount of real estate taxes assessed on the value of Land.
- xxxii. **Long-Term Tax Exemption** – The long-term tax exemption granted in accordance with the Exemption Law pursuant to this Financial Agreement.
- xxxiii. **Minimum Annual Service Charge** – The amount of the total taxes levied against all real property in the area covered by the Project in the last full tax year in which the area was subject to taxation. The Parties acknowledge and agree that the total taxes levied against all real property in the area covered by the Project in the last full tax year in which the area was subject to taxation was \$74,574.31.
- xxxiv. **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 the Exemption Law.
- xxxv. **Ordinance** – Shall have the meaning specified in the recitals of this Financial Agreement.
- xxxvi. **Party or Parties** – Shall have the meaning specified in the preamble of this Financial Agreement.
- xxxvii. **Payment Default** – Shall have the meaning specified in the Section 5.3 of this Financial Agreement.
- xxxviii. **Project** - Shall have the meaning specified in the recitals of this Financial Agreement.
- xxxix. **Properties** – Shall have the meaning specified in the recitals of this Financial Agreement.
- xl. **Redevelopment Area** – Shall have the meaning specified in the recitals of this

Financial Agreement.

- xli. **Redevelopment Agreement** - Shall have the meaning specified in the recitals of this Financial Agreement.
- xlii. **Redevelopment Law** – Shall have the meaning defined in the recitals of this Financial Agreement.
- xliii. **Redevelopment Plan** – Shall have the meaning defined in the recitals of this Financial Agreement.
- xliv. **Rental Units** – A unit of space within the Project designed to be used as a residence or commercial space and made available for rent to the public.
- xlv. **Second Interim Agreement Amendment** - Shall have the meaning specified in the recitals of this Financial Agreement.
- xlvi. **Secured Party or Secured Parties** – Shall have the meaning defined in Section 8.3(a) of this Financial Agreement.
- xlvii. **Security Arrangements** – Shall have the meaning defined in Section 8.3(a) of this Financial Agreement.
- xlviii. **Selecto-Flash Property** - Shall have the meaning specified in the recitals of this Financial Agreement.
- xlix. **Termination Date** – The earlier to occur of (i) the thirtieth (30th) anniversary date of the ASC Commencement Date; or (ii) such other date as this Financial Agreement may terminate pursuant to the terms hereof or pursuant to Applicable Law.
- 1. **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.
- li. **Township** – Shall have the meaning specified in the preamble of this Financial Agreement.
- lii. **Transfer** – Shall have the meaning specified in Section 8.1 of this Financial Agreement.
- liii. **Transferee** – Shall have the meaning specified in Section 8.1 of this Financial Agreement.

ARTICLE II - PROJECT AND PROPERTIES

Section 2.1. Township’s Findings

(a) **Benefits of Project v. Costs.**

i. The development and construction of the Project as set forth in the Redevelopment Agreement and Redevelopment Plan will be beneficial to the overall community; will achieve the goals and objectives of the Redevelopment Plan; will help revitalize the Properties; will improve the quality of life for the community; will serve as a catalyst for further private investment in areas surrounding the Properties and will enhance the economic development of the Township.

ii. It is anticipated that the development of the Project will create approximately 237 construction jobs over the duration of the construction of the Project, as well as approximately 3 full-time permanent jobs in connection with the Project.

iii. In 2015, last full tax year, prior the Township's acquisition, the Selecto-Flash Property, including the previous improvements therein generated \$55,672.70 in total real estate taxes to all government units. In 2017, last full tax year, prior the Township's acquisition, the Biddleman Property, including the previous improvements therein generated \$18,901.61 in total real estate taxes to all government units. Thus, in total, in the last full tax year for each property, the Properties, including the previous improvements thereon, generated \$74,574.31 in total real estate taxes to all government units. Pursuant to this Financial Agreement, the Project is projected to generate revenue for the Township in excess of the municipal revenue generated by ad valorem taxes in the last full tax year for each property. The Township has determined that the benefits to the Township accruing as a result of the Project, including the revitalization of the Redevelopment Area, and the generation of jobs as described above, will substantially outweigh any costs to the Township resulting from the Long-Term Tax Exemption granted herein.

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

The Township's approval of the Long-Term Tax Exemption set forth herein is essential to the success of this Project because:

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

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

Section 2.2 Approval of Agreement

The Township hereby approves a Long-Term Tax Exemption for the Project, which is to be constructed and maintained on the Properties 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 Township 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 Properties

The Entity represents that it will develop and construct the Project in accordance with the terms of the Redevelopment Agreement and the Redevelopment Plan.

Section 2.5 Entity's Relationship to Properties

The Township is the owner of the Properties as of the effective date of this Agreement. Pursuant to Sections 4.04 and 4.05 of the Redevelopment Agreement, the Township shall transfer title to the Properties to the Entity consistent with the timeframes and requirements set forth therein.

ARTICLE III – OWNERSHIP, MANAGEMENT AND CONTROL

Section 3.1 Entity's Representations, Warranties and Covenants

(a) The Entity represents that it shall remain the fee title owner of the Properties 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.

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

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 during the Exemption Term.

Section 4.2 Calculation of Annual Service Charge

In consideration of the Township granting the Entity the exemption set forth in Section 4.1 of this Financial Agreement, during the Exemption Term, the Entity shall pay to the Township for municipal services supplied to the Project, as provided in the Exemption Law, an Annual Service Charge which shall be equal to the greater of the following:

- (i) For years 1 through 15 of the Exemption Term, 10% of AGR or the Minimum Annual Service Charge pursuant to Section 4.3 of this Agreement;

- (ii) For years 16 through 27 of the Exemption Term, 11% of AGR or the Minimum Annual Service Charge pursuant to Section 4.3 of this Agreement; and
- (iii) For years 28 through the Termination Date, 11.5% of AGR or the Minimum Annual Service Charge pursuant to Section 4.3 of this Agreement.

Section 4.3 Minimum Annual Service Charge

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

Section 4.4 Land Tax Exemption and Duration.

The Properties shall be exempt from Land Taxes from the Annual Service Charge Start Date through the expiration or Termination date in accordance with N.J.S.A. 40A:20-12; provided however, that if such exemption of Land Taxes 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) Land Taxes are assessed on the Properties; and

(b) the Entity, or its Transferee, 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. Subject to the foregoing, the Entity is obligated to make timely Land Tax Payments in order to be entitled to a Land Tax credit against the Annual Service Charge for the subsequent year. 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 Properties pursuant to the In Rem Tax Foreclosure Act, and/or to declare a Default.

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 Township 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 the Township 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 Township.

(b) If the ASC Commencement Date occurs on a date other than the last day of a quarter, the amount of the ASC for such period shall be based on the per diem assessment for such quarter.

Section 4.7 Remittance to County

The Township shall remit to the County of Essex 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 Administrative Fee

The Entity shall also pay to the Township no later than December 31 of each year an administrative fee (the "Administrative Fee") in an amount equal to two percent of the Annual Service Charge due for that year, which is permitted by N.J.S.A. 40A:20-9. The amount of the Administrative Fee will be set forth in the annual invoice issued by the Township based upon the estimated ASC for that year, and will be subject to adjustment for under or over payment in the same manner as the ASC upon receipt of the audited financial statement for the applicable year.

Section 4.9 Payments During Construction

The parties agree that conventional property taxes are due from time to time in accordance with Applicable Law prior to the ASC Commencement Date. During construction, the Entity shall pay Land Taxes and conventional taxes on the existing improvements on the Properties (the "Existing Improvements").

Section 4.10 Assessment Issues.

Notwithstanding anything else contained herein, the Entity reserves all rights pursuant to Applicable Law with respect to the Township's determination of the value of the Properties and Improvements, including the right to challenge the annual assessments of the value of the Properties and Improvements through an appropriate proceeding.

ARTICLE V- DISPUTE RESOLUTION

Section 5.1 Agreement to Arbitrate

If the Township 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 an arbitrator selected by mutual agreement by the Parties and located 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. Notwithstanding anything to the contrary set forth in this Agreement, and in accordance with Section 4.6(a), above, the Township shall be entitled to collect any overdue payments of Annual Service Charge in the same manner as it collects overdue

payments of generally applicable real estate taxes and shall not be required to submit such matters to arbitration.

Section 5.2 Covenant to Make Payments

The Entity agrees that the timely payment of the Administrative Fee, the Annual Service Charge (or the Minimum Annual Service Charge, as the case may be) and if applicable, Land Taxes, to the Township, 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

Other than with respect to the nonpayment or late payment of all or a portion of the Administrative Fee, Annual Service Charge (or Minimum Annual Service Charge, as the case may be) and if applicable, Land Taxes (any of the foregoing a "Payment Default"), the Township shall notify the Entity in writing of any breach relating to the terms of this Financial Agreement. If the Entity fails to cure a Payment Default within thirty (30) days of its occurrence, or a breach identified within thirty (30) Days after the actual delivery of such notice by the Township, or within any additional periods to which the Parties may agree to, in writing, the Township 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. With respect to defaults other than Payment Defaults, the Township shall not unreasonably refuse to grant a reasonable extension of the cure period, not to exceed ninety (90) days after the Notice unless the Township in its sole discretion shall agree to a longer cure period.

Section 5.4 Township's Remedies Upon Default

The Township's remedies upon its declaration of default shall be cumulative and concurrent. No determination under this Financial Agreement shall deprive the Township of its right to proceed against the Entity for the nonpayment of all or a portion of the applicable Land Taxes, Administrative Fee, Annual Service Charge, or Minimum 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 the Administrative Fee, 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 Exemption Term, the Entity's profits shall be limited, according to the provisions of the Exemption Law and the definitions set forth therein. In accordance with Section 15 of the Exemption Law, for any period, taken as one accounting period, commencing on the ASC Commencement Date, and terminating at the end of the last full fiscal year of the Exemption Term, in which the Entity's Net Profits exceed the Allowable Net Profit, the Excess Net Profits shall be paid to the Township as an additional Annual Service Charge within One Hundred Twenty (120) Days of the close of the Entity's fiscal year.

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 Township 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 Administrative Fee, Land Taxes, Annual Service Charge, or Minimum Annual Service Charge that has accrued up to and including the date of Termination, 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 Township 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 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 Properties and the Improvements constructed thereupon shall thereafter be assessed and conventionally taxed

according to Applicable Law as other real property in the Township.

Section 7.4 Rights of Inspection

Pursuant to a written request, the Entity shall authorize the Township 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, it is understood and agreed that the Township, upon written application by the Entity, will consent to a sale of the Project to another urban renewal entity, qualified and organized under the Exemption Law (hereinafter referred to as a "Transferee"), provided that: (a) in the event that the Project shall not have been completed, the Transferee shall have demonstrated to the reasonable satisfaction of the Township that such Transferee possesses the experience and capitalization to complete the Project; (b) such Transferee owns no other project subject to the Exemption Law at the time of the transfer, (c) the Entity is not then in Default of this Agreement or Applicable Law, and (d) the Transferee assumes the Entity's obligations under this Financial Agreement, and further provided however that any such Transfer shall comply with the provisions of Article 3 of the Redevelopment Agreement, to the extent that such provisions apply at the time of Transfer. 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.

A Transfer under this Section 8.1 shall not include the leasing of any Rental Units to any third-party end user.

Section 8.2 Obligations of Entity and Transferee After Conveyance

If the Entity Transfers the Project to a Transferee 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 Township any Excess Net Profits payable to the Township pursuant to this Financial Agreement and the Exemption Law.

Section 8.3 Collateral Assignment

It is expressly understood and agreed that the Entity has the right, to the extent permitted by the Exemption Law and the Redevelopment Agreement, to encumber and/or assign the fee title

to the Properties and/or Improvements for purposes of (i) financing the design, development and construction of the Project and (ii) permanent mortgage financing.

(a) The Township 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 Township agrees that the Entity and or its affiliates may, subject to compliance with Article 7 of the Redevelopment Agreement (if still in effect), and the Exemption Law, assign, pledge, hypothecate or otherwise transfer its rights under this Agreement and/or its interest in the Project to one or more secured parties or any agents therefore (each, a “**Secured Party**” and collectively, the “**Secured Parties**”) as security for obligations of the Entity, and/or its affiliates, incurred in connection with such secured financing (collectively, the “**Security Arrangements**”). The Entity shall give the Township 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 Township 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 Township shall give written notice of such Default to the Secured Parties and the Township agrees that, in the event such Default is not waived by the Township 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 Township will provide the Secured Parties not less than fifteen (15) days from the date of such written notice to the Secured Parties with regard to a Payment Default by the Entity, and ninety (90) days from the date the Entity was required to cure any other Default.

(c) To the extent permitted by the Exemption Law, and subject to compliance with Article 3 and Article 7 of the Redevelopment Agreement (if still in effect), in the absence of a Default by the Entity, the Township 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 Township’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.

ARTICLE IX- ENTITY’S COVENANTS AND REPRESENTATIONS

Section 9.1 Management and Operation

Subject to its right to Transfer pursuant to Section 8.1 of this Financial Agreement, the Entity represents and covenants that it will own and operate the Project.

Section 9.2 Computation of Gross Revenue

The Entity shall 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 Township, the Township Council and the New Jersey Division of Local Government Services within the New Jersey Department of Community Affairs, its Annual Audited Statement for the preceding fiscal or calendar year in accordance with the Exemption Law. The report shall clearly identify and calculate the Net Profit for the Entity during the previous fiscal year. The Entity assumes all costs associated with preparation of the Annual Audited Statements. Except to the extent required by Applicable Law, all financial information provided hereunder shall remain confidential and not subject to public disclosure.

Section 9.4 Total Project Cost Audit

Within ninety (90) days after a final Certificate of Occupancy is issued for the Project, the Entity shall submit to the Mayor and Council, 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 Projections, 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

All notices required hereunder shall be sent by certified mail, return receipt requested, or by recognized overnight courier, with proof of delivery, or by facsimile transmission or an email transmission (with a hard copy and a transmission confirmation sent by a recognized overnight national carrier service for next business day delivery) addressed as follows:

a) When sent by the Township to the Entity:

Joseph Alpert
c/o The Alpert Group, LLC
1 Parker Plaza
Fort Lee, New Jersey 07024
jalpert884@aol.com

With a copy to:

William C. Sullivan, Jr., Esq.
Scarinci Hollenbeck
1100 Valley Brook Avenue
P.O. Box 790
Lyndhurst, NJ 07071
wsullivan@sh-law.com

b) When sent by the Entity to the Township:

Township of West Orange
66 Main Street
West Orange, New Jersey 07052
ATTN: Mayor Robert D. Parisi

With a copy to:

Richard D. Trenk, Esq., Township Attorney
Trenk Isabel P.C.
7290 W. Mt. Pleasant Avenue,
Suite 2350
Livingston, New Jersey 07039

And to:

Karen J. Carnevale
Office of the Township Clerk
Township of West Orange
66 Main Street
West Orange, New Jersey 07052

In addition, if the Entity delivers formal written notice to the Township in accordance with this Agreement, of the name and address of Entity's mortgagee, then the Township shall provide such mortgagee with a copy of any notice required to be sent to the Entity. Any notice given by an attorney for a party shall be effective for all purposes.

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 Township agree to act in good faith in all of their dealings with each other.

Section 10.7 Certification

The Township Clerk shall certify to the Township Tax Assessor, pursuant to the Exemption Law, that this Financial Agreement entered into by the Township and the Entity has been entered into and is in effect pursuant to the Exemption Law. The delivery by the Township Clerk to the Township Tax Assessor of a certified copy of the Ordinance shall constitute the required certification. Upon the delivery of the certification as required hereunder, the Township Tax Assessor shall implement the Long-Term Tax Exemption and continue to enforce the Long Term Tax Exemption without further certification by the Township Clerk until the Termination Date. Further, within ten (10) days of the execution of this Financial Agreement, the Township Clerk shall provide a copy of the Financial Agreement and the Ordinance authorizing the same to the Essex County Counsel and the Essex County Chief Financial Officer for informational purposes in accordance with P.L. 2015, c. 247, Section 1, as codified in N.J.S.A. 40A:20-12

Section 10.8 Exhibits

This Financial Agreement in its proposed form appears as an attachment to the Application at **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 Essex County Clerk by the Entity, and same may be discharged by the Entity or the Township upon the Termination Date.

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 therefor by the Entity, or any mortgagee 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 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.

[Signature Page Follows]

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

18 CENTRAL AVENUE URBAN RENEWAL, LLC,
a New Jersey limited liability company and urban renewal entity

Dated: 5/18/21

By: _____

Name: Joseph Alpert
Title: Owner

ACKNOWLEDGEMENT

STATE OF New Jersey)
COUNTY OF Bergen)

SS.:

Be it remembered that on the 18th day of May, 2021, Joe Alpert personally appeared before me, and this person acknowledged under oath, to my satisfaction that:

- (a) he is the Owner of the 18 Central Avenue 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.

Notary _____

Joyce E. Atkinson

JOYCE E. ATKINSON
Notary Public
New Jersey

My Commission Expires March 22, 2022
License #: 2418921

TOWNSHIP OF WEST ORANGE

Dated: _____

By: _____
Robert D. Parisi, Mayor

APPROVED AS TO FORM AND LEGALITY

Richard D. Trenk, Esq., Municipal Attorney

ATTEST:

Karen J. Carnevale, RMC
Municipal Clerk

EXHIBIT A – TO FINANCIAL AGREEMENT
LONG TERM TAX ABATEMENT APPLICATION

EXHIBIT B – TO FINANCIAL AGREEMENT
ORDINANCE

EXHIBIT C – TO FINANCIAL AGREEMENT
PROPERTY DESCRIPTION