

ORDINANCE OF THE CITY OF VINELAND, IN THE COUNTY OF CUMBERLAND, NEW JERSEY APPROVING THE EXECUTION OF A FINANCIAL AGREEMENT WITH RESPECT TO THE OAK ROAD REDEVELOPMENT AREA.

WHEREAS, the State of New Jersey (the "State") designated a certain area within the City as an "Urban Enterprise Zone" pursuant to the New Jersey Urban Enterprise Zones Act, N.J.S.A. 52:27H-60 et seq. (the "UEZ Act" and those parcels located within the designated Urban Enterprise Zone shall hereinafter be the "UEZ"); and

WHEREAS, the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq., as amended and supplemented (the "Act") authorizes municipalities to determine whether certain parcels of land in the municipality constitute areas in need of redevelopment; and

WHEREAS, the Act confers certain contract, planning and financial powers upon a redevelopment entity, as defined in Section 3 of the Act, in order to implement redevelopment plans adopted pursuant thereto; and

WHEREAS, the City of Vineland (the "City"), in the County of Cumberland, State of New Jersey, has elected to exercise these redevelopment entity powers directly, as permitted by Section 4 of the Act; and

WHEREAS, by Resolution No. 2022-479 adopted on November 7, 2022, the Vineland City Council (the "City Council") adopted the findings and recommendations made by the Planning Board of the City of Vineland memorialized in Planning Board Resolution Number 6539, Resolution of Findings and Conclusions and Decision of the Vineland Planning Board, and declared that certain area designated Block 1909, Lot 50 on the official tax map of the City (the "Redevelopment Area") as a Non-Condensation Redevelopment Area in accordance with 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, specifically, the Redevelopment Area met the criteria of (1) subsection (g) of N.J.S.A. 40A:12A-5 that the area is specifically in an Urban Enterprise Zone that was designated pursuant to the Urban Enterprise Zone Act and (2) subsection (h) in that area is targeted for growth in the State Development and Redevelopment Plan, the City Master Plan and the Landis Sewerage Authority Wastewater Management Plan and that public sewer and water are available; and

WHEREAS, on February 28, 2023, City Council passed a motion requesting the City of Vineland Planning Board (the "Planning Board") to prepare a redevelopment plan for the Oak Road Non-Condensation Redevelopment Area; and

WHEREAS, Kathleen M. Hicks, P.P., AICP prepared a redevelopment plan entitled Oak Road Redevelopment Study for Block 1909 Lot 50 which was presented to the Vineland Planning Board on March 8, 2023 (the "Redevelopment Study"), at which time the Planning Board endorsed the Redevelopment Study pursuant to Planning Board Resolution 6565 and referred same to City Council; and

WHEREAS, pursuant to N.J.S.A. 40A:12A-7, by Ordinance No. 2023-27 adopted on _____, 2023, the City Council has duly adopted the Redevelopment Study as the redevelopment plan for the Redevelopment Area under the Local Redevelopment and Housing Law (collectively, and as the same may be further amended, the "Redevelopment Plan"), which sets forth the City's plan for the redevelopment of the Redevelopment Area; and

WHEREAS, the Redevelopment Area includes an existing cellular tower that will not be part of the redevelopment of the Redevelopment Area pursuant to the Redevelopment Plan (the "Cell Tower Area"); and

WHEREAS, Eastern Pacific Development, LLC ("EPD"), the sole member of the managing member of the Entity (as defined below) entered into an agreement with Francis J. Saffiotti, Sr. (the "Prior Owner"), the then owner of the Redevelopment Area, to acquire the portion of the Redevelopment Area that will be redeveloped pursuant to the Redevelopment Plan (the "Project Area"); and

WHEREAS, in order to facilitate the conveyance of the Project Area to EPD, the Prior Owner subjected the Redevelopment Area to a condominium regime pursuant to a Master Deed made by the Prior Owner, dated October 18, 2023, and recorded with the Clerk of Cumberland

County on October 19, 2023 as instrument number 681161 whereby the Redevelopment Area was divided into two condominium units as follows; Unit A consisting of the Project Area and Unit B consisting of the Cell Tower Area; and

WHEREAS, the Prior Owner subsequently conveyed the condominium unit comprising the Project Area to EPD by deed from the Prior Owner dated October 18, 2023 and recorded with the Clerk of Cumberland County on October 19, 2023 as instrument number 681162; and

WHEREAS, EPD formed Oak Hill Farms Apartments Urban Renewal, LLC (the "Entity") to acquire, redevelop, own and operate the Project (as defined below), and the Entity has an option to purchase the condominium unit comprising the Project Area from EPD and intends to undertake the Project; and

WHEREAS, it is anticipated that the Entity will exercise such option and acquire the condominium unit comprising the Project Area simultaneously with the closing of the financing for the Project; and

WHEREAS, the City Council has, pursuant to Resolution No. 2024-_____ designated the Entity as the designated redeveloper of the Redevelopment Area under the Local Redevelopment and Housing Law; and

WHEREAS, on _____, 2024, the City and the Entity entered into a Redevelopment Agreement (as the same may be further amended, modified or supplemented from time to time, the "Redevelopment Agreement"), in order to implement the development, design, financing and construction of the condominium unit comprising the Project Area pursuant to the Redevelopment Plan; and

WHEREAS, the Redevelopment Agreement provides for, among other things, the new construction of townhome style apartment units consisting of a total of 56 units, 48 of which will be 3 bedroom units and 8 two-bedroom units with 10% of units restricted to 40% area median income, 90% of units restricted to 60% area median income and 5 units reserved for special needs persons or families (collectively, the "Project"); and

WHEREAS, it is anticipated that the Project will be subject to affordability restrictions pursuant to the Section 42 of the Internal Revenue Code, as amended, in connection with low income housing tax credits that are expected to be allocated to the Project; and

WHEREAS, the Entity has been qualified by the State of New Jersey to do business as an urban renewal entity under the provisions of the Long Term Tax Exemption Law, N.J.S.A. 40A:20-1 et seq., as amended and supplemented (the "LTTE Law"), and was created for the implementation of the Project; and

WHEREAS, pursuant to and in accordance with the provisions of the LTTE Law, the City is authorized to provide for and accept, in lieu of real property taxes, an annual service charge paid by the Entity to the City in accordance with certain applicable provisions of the Long Term Tax Exemption Law; and

WHEREAS, the Entity submitted an application to the City for approval of the Project as an urban renewal project and a financial agreement with respect to the Project, all in accordance with N.J.S.A. 40A:20-8, which application is available for inspection in the office of the Municipal Clerk (as the same may be amended and supplemented from time to time, the "Application"); and

WHEREAS, pursuant to N.J.S.A. 40A:20-8, the Mayor has reviewed the Application and, by letter, a copy of which is on file in the office of the Municipal Clerk, the Mayor has submitted the Application and a proposed form of financial agreement (in the form attached hereto as Exhibit A, the "Financial Agreement"), to the City Council with his recommendation for approval; and

WHEREAS, the City Council has reviewed the Application and the terms of the Financial Agreement, and wishes to approve the Project, the Application and the Financial Agreement; and

WHEREAS, the City has made the following findings with respect to the Project:

- A. Relative benefits of the Project when compared to the costs:
 - i. The Project provides fifty-six (56) affordable housing units, 10% of units restricted to 40% area median income, 90% of units restricted to 60% area median income and 5 units reserved for special needs persons or families.

- B. Assessment of the importance of the tax exemption in obtaining development of the Project:
- i. But for the tax exemption the Project would not be completed;
 - ii. Tax exemption will allow for completion of the Improvements; and
 - iii. The benefits of the tax exemption outweigh any costs.

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

NOW, THEREFORE, BE IT ORDAINED AND ENACTED by the City Council of the City of Vineland, in the County of Cumberland, State of New Jersey as follows:

I. GENERAL

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

II. EXECUTION OF FINANCIAL AGREEMENT AUTHORIZED

(a) The Mayor is hereby authorized and directed to execute the Financial Agreement, substantially in the form as it has been presented to the City Council, and attached hereto as Exhibit A, subject to additions, deletions, modifications, or revisions deemed necessary and appropriate in consultation with counsel to the City.

(b) The Municipal Clerk is hereby authorized and directed, upon the execution of the Financial Agreement in accordance with the terms of Section II(a) hereof, to attest to the signature of the Mayor upon such document and is hereby further authorized and directed to affix the corporate seal of the City upon such document.

(c) The Municipal Clerk shall file certified copies of this ordinance and the Financial Agreement with the Tax Assessor of the City. In accordance with P.L. 2015, c. 247, within ten calendar days following the later of the effective date of this Ordinance or the execution of the Financial Agreement by the Entity, the Municipal Clerk also shall transmit a certified copy of this Ordinance and the Financial Agreement to the chief financial officer of Cumberland County and to the Cumberland County Counsel for informational purposes.

III. SEVERABILITY

If any part of this Ordinance shall be deemed invalid, such parts shall be severed and the invalidity thereby shall not affect the remaining parts of this Ordinance.

IV. ACTION REGARDING FINANCIAL AGREEMENT

The Mayor is hereby authorized and directed to determine all matters and terms in connection with the Financial Agreement, all in consultation with the counsel to the City, and the manual or facsimile signature of the Mayor upon any documents shall be conclusive as to all such determinations. The Mayor, the City Business Administrator, the Chief Financial Officer, the Municipal Clerk and any other City official, officer or professional, including but not limited to, redevelopment counsel, bond counsel, the financial advisor and the auditor to the City, are each hereby authorized and directed to execute and deliver such documents as are necessary to facilitate the transactions contemplated hereby, and to take such actions or refrain from such actions as are necessary to facilitate the transactions contemplated hereby, in consultation with, as applicable, redevelopment counsel, bond counsel, the financial advisor and the auditor to the City, and any and all actions taken heretofore with respect to the transactions contemplated hereby are hereby ratified and confirmed.

V. AVAILABILITY OF THE ORDINANCE

A copy of this Ordinance shall be available for public inspection at the offices of the City.

VI. EFFECTIVE DATE

This Ordinance shall take effect according to applicable law.

Passed first reading:

Passed final reading:

President of Council

Approved by the Mayor:

Mayor

ATTEST:

City Clerk

FINANCIAL AGREEMENT

THIS FINANCIAL AGREEMENT (as the same may be amended, modified or supplemented from time to time, hereinafter this “**Agreement**” or “**Financial Agreement**”), made this ___ day of _____, 2024, by and between **OAK HILL FARMS APARTMENTS URBAN RENEWAL, LLC** (together with its permitted successors and assigns, the “**Entity**”), an urban renewal entity qualified to do business under the provisions of the New Jersey Long Term Tax Exemption Law, N.J.S.A. 40A:20-1 et seq., as amended and supplemented (the “**Long Term Tax Exemption Law**”), with offices at c/o Eastern Pacific Development, LLC, 925 East Landis Avenue, Suite E, Vineland, NJ 08361 and the **CITY OF VINELAND**, a municipal corporation in the County of Cumberland and the State of New Jersey (together with its permitted successors and assigns, the “**City**” and, together with the Entity, the “**Parties**” or “**Party**”).

WITNESSETH:

WHEREAS, by Resolution No. 2022-479 adopted on November 7, 2022, the Vineland City Council (the “**City Council**”) adopted the findings and recommendations made by the Planning Board of the City of Vineland memorialized in Planning Board Resolution Number 6539, Resolution of Findings and Conclusions and Decision of the Vineland Planning Board, and declared that certain area designated Block 1909, Lot 50 on the official tax map of the City (the “**Redevelopment Area**”) as a Non-Condensation Redevelopment Area in accordance with 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, specifically, the Redevelopment Area met the criteria of (1) subsection (g) of N.J.S.A. 40A:12A-5 that the area is specifically in an Urban Enterprise Zone that was designated pursuant to the Urban Enterprise Zone Act and (2) subsection (h) in that area is targeted for growth in the State Development and Redevelopment Plan, the City Master Plan and the Landis Sewerage Authority Wastewater Management Plan and that public sewer and water are available; and

WHEREAS, on February 28, 2023, City Council passed a motion requesting the City of Vineland Planning Board (the “**Planning Board**”) to prepare a redevelopment plan for the Oak Road Non-Condensation Redevelopment Area; and

WHEREAS, Kathleen M. Hicks, P.P., AICP prepared a redevelopment plan entitled Oak Road Redevelopment Study for Block 1909 Lot 50 which was presented to the Vineland Planning Board on March 8, 2023 (the “**Redevelopment Study**”), at which time the Planning Board endorsed the Redevelopment Study pursuant to Planning Board Resolution 6565 and referred same to City Council; and

WHEREAS, pursuant to N.J.S.A. 40A:12A-7, by Ordinance No. 2023-27 adopted on _____, 2023, the City Council has duly adopted the Redevelopment Study as the redevelopment plan for the Redevelopment Area under the Local Redevelopment and Housing Law (collectively, and as the same may be further amended, the “**Redevelopment Plan**”), which sets forth the City’s plan for the redevelopment of the Redevelopment Area; and

WHEREAS, the City Council has, pursuant to Resolution No. 2024-____, designated Eastern Pacific Development, LLC (“**EPD**”), the sole member of the managing member of the Entity, as the designated redeveloper of the Redevelopment Area under the Local Redevelopment and Housing Law; and

WHEREAS, the Redevelopment Area includes an existing cellular tower that will not be part of the redevelopment of the Redevelopment Area pursuant to the Redevelopment Plan (the “**Cell Tower Area**”); and

WHEREAS, EPD entered into an agreement with Francis J. Saffiotti, Sr. (the “**Prior Owner**”), the then owner of the Redevelopment Area, to acquire the portion of the Redevelopment Area that will be redeveloped pursuant to the Redevelopment Plan (the “**Project Area**”); and

WHEREAS, in order to facilitate the conveyance of the Project Area to EPD, the Prior Owner subjected the Redevelopment Area to a condominium regime pursuant to a Master Deed made by the Prior Owner, dated October 18, 2023, and recorded with the Clerk of Cumberland County on October 19, 2023 as instrument number 681161 whereby the Redevelopment Area was divided into two condominium units as follows; Unit A consisting of the Project Area and Unit B consisting of the Cell Tower Area; and

WHEREAS, the Prior Owner subsequently conveyed the condominium unit comprising the Project Area to EPD by deed from the Prior Owner dated October 18, 2023 and recorded with the Clerk of Cumberland County on October 19, 2023 as instrument number 681162; and

WHEREAS, EPD formed the Entity to acquire, redevelop, own and operate the Project (as defined below), and the Entity has an option to purchase the condominium unit comprising the Project Area from EPD and intends to undertake the Project; and

WHEREAS, it is anticipated that the Entity will exercise such option and acquire the condominium unit comprising the Project Area simultaneously with the closing of the financing for the Project;

WHEREAS, on _____, 2024, the City and the Entity entered into a Redevelopment Agreement (as the same may be further amended, modified or supplemented from time to time, the “**Redevelopment Agreement**”), in order to implement the development, design, financing and construction of the condominium unit comprising the Project Area pursuant to the Redevelopment Plan; and

WHEREAS, the Redevelopment Agreement provides for, among other things, the new construction of townhome style apartment units consisting of a total of 56 units, 48 of which will be 3 bedroom units and 8 two-bedroom units with 10% of units restricted to 40% area median income, 90% of units restricted to 60% area median income and 5 units reserved for special needs persons or families (collectively, the “**Project**”); and

WHEREAS, it is anticipated that the Project will be subject to affordability restrictions pursuant to the Section 42 of the Internal Revenue Code, as amended, in connection with low income housing tax credits that are expected to be allocated to the Project; and

WHEREAS, pursuant to and in accordance with the provisions of the Long Term Tax Exemption Law, the City is authorized to provide for and accept, in lieu of real property taxes, an annual service charge paid by the Entity to the City in accordance with certain applicable provisions of the Long Term Tax Exemption Law; and

WHEREAS, the Entity is an urban renewal entity in accordance and compliance with the Long Term Tax Exemption Law for the purpose of undertaking the development of the condominium unit comprising the Project Area pursuant to the Redevelopment Plan; and

WHEREAS, in order to improve the feasibility of the Project, the Entity submitted an application to the City requesting a long term tax exemption and financial agreement with respect to the Project pursuant to the Long Term Tax Exemption Law (as the same may be amended, the “**Application**”), which Application is on file with the Clerk of the City of Vineland (the “**City Clerk**”); and

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

WHEREAS, after review of the Application, the Mayor of the City of Vineland (“**Mayor**”) recommended that the Application be approved; and

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

WHEREAS, the Parties now desire to enter into a Financial Agreement with respect to the Project as set forth herein and pursuant to the Long Tax Exemption Law.

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

This Agreement shall be governed by the provisions of the Long Term Tax Exemption Law, as may amended and supplemented, (N.J.S.A. 40A:20-4 et seq.) and all appropriate municipal ordinances or resolutions pertaining to tax exemptions, being referred to herein as the “**Law**”. It being expressly understood and agreed that the City expressly relies upon the facts, data, and presentations contained in the Application attached hereto in granting this tax exemption.

SECTION 1.01 Recitals.

The Recitals set forth above are hereby incorporated in, and made a part of, this Agreement as if set forth at length.

SECTION 1.02 General Definitions.

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

Agreement or Financial Agreement – Shall have the meaning given to it in the Preamble,

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

Allowable Profit Rate – The allowable profit rate as defined in N.J.S.A. 40A:20-3(c).

Annual Gross Revenue – Shall have the meaning assigned to “**Gross Revenue**” in N.J.S.A. 40A:20-3.

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

Annual Service Charge Commencement Date – The Annual Service Charge Commencement Date shall be the date of Substantial Completion.

Application – The application filed by the Entity with the City for a tax exemption for the Project is attached hereto as Exhibit A.

Auditor’s Report – A complete financial statement outlining the financial status of the Project (for a period of time as indicated by context), which shall also include a clear computation of Annual Gross Revenue. The contents of the Auditor’s Report shall have been prepared in conformity with generally accepted accounting principles. The Auditor’s Report shall be certified as to its conformance with such principles by a certified public accountant who is licensed to practice that profession in the State of New Jersey.

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

City – Shall mean the City of Vineland.

City Council – Shall have the meaning given to it in the recitals.

City Share – Shall mean an amount equal to the Annual Service Charge minus the portion of the Annual Service Charge remitted to the County in accordance with Section 4.04(g).

Commercial Portion – shall mean that portion of the Project producing non-residential income, including but not limited to, commercial leases, laundry units or other services.

County – Shall mean the County of Cumberland, State of New Jersey.

Default – Shall be a breach of or the failure of the Entity to perform any obligation imposed upon the Entity by the terms of this Agreement, or under applicable law.

Default Notice – Shall have the meaning given to it in Section 14.02 of this Agreement.

Entity – The term Entity within this Agreement shall mean Oak Hill Farms Apartments Urban Renewal, LLC.

Improvements – Any building, structure or fixture permanently affixed to the Land to be constructed and/or rehabilitated and tax exempted under this Agreement, including without limitation the Project.

In Rem Tax Foreclosure – A summary proceeding by which the City may enforce the lien for taxes due and owing by a tax sale, Said foreclosure is governed by N.J.S.A. 54:5-1 et seq.

Land – The condominium unit, but not the Improvements, being known and designated as Unit A in that certain Master Deed made by the Prior Owner, dated October 18, 2023, and recorded with the Clerk of Cumberland County on October 19, 2023 as instrument number 681161, which created the Oak Road Condominium, together with a 98.4% undivided interest in the common elements of the Oak Road Condominium.

Law – As defined in the first paragraph of this Article I.

Material Conditions – As defined in Section 4.07 hereof.

Minimum Annual Service Charge – The minimum annual service charge shall be the amount of the total taxes levied against all real property within the Property in the last full tax year in which the area was subject to taxation, which the parties agree is \$_____. The Minimum Annual Service Charge shall be paid in each year in which the Annual Service Charge, calculated pursuant to N.J.S.A. 40A:20-12(b)(2) and the Financial Agreement, would be less than the Minimum Annual Service Charge.

Minimum City Share – Shall mean an amount equal to the Annual Service Charge for the first full year following the Annual Service Charge Commencement Date minus the portion of the Annual Service Charge remitted to the County in accordance with Section 4.04(g).

Ordinance – Ordinance No. 2024-___ adopted by the Council of the City on _____, 2024, attached hereto as Exhibit B, approving the subject tax exemption and authorizing the execution of this Agreement.

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

Property – The Land and Improvements thereon which are the subject of this Agreement.

Redevelopment Agreement – Shall have the meaning given to it in the recitals.

Redevelopment Plan – Shall have the meaning given to it in the recitals.

Project – Shall have the meaning given to it in the recitals.

Substantial Completion – Shall mean the date on which the Entity receives its first Certificate of Occupancy for the Project.

Taxes – Shall have the meaning given to it in Section 14.04 of this Agreement.

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

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

SECTION 1.03 Exhibits Incorporated.

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

SECTION 1.04 Interpretation and Construction. In this Financial Agreement, unless the context otherwise requires:

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

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

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

D. Any headings preceding the texts of the several Articles and Sections of this Financial Agreement, and any table of contents or marginal notes appended to copies hereof, shall be solely for convenience of reference and shall not constitute a part of this Financial Agreement, nor shall they affect its meaning, construction or effect.

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

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

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

SECTION 1.05 **Undefined Terms.** Capitalized terms used herein which are not otherwise defined herein shall have the respective meanings ascribed thereto in the Redevelopment Agreement.

SECTION 1.06 **Exemption Application.** It is expressly understood and agreed that the City expressly has relied upon the facts, data and representations contained in the Application in granting the tax exemption described in this Financial Agreement.

{End of Article I}

ARTICLE II

APPROVAL

SECTION 2.01 Approval of Tax Exemption.

Pursuant to the Ordinance, the Project to be constructed and/or renovated and maintained by the Entity on the Property shall be exempt from taxation (including any Land Taxes) as provided for herein and in the Long Term Tax Exemption Law. In accordance with N.J.S.A. 40A:20-12, the tax exemption shall constitute a single continuing exemption from local property taxation for the duration of the Term of this Financial Agreement.

SECTION 2.02 Approval of the Entity.

The Entity represents that its certificate of formation as attached hereto as Exhibit C 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 the Treasury, all in accordance with N.J.S.A. 40A:20-5.

SECTION 2.03 Improvements to be Constructed.

The Entity represents that it will construct or cause to be constructed the Project in accordance with the Redevelopment Agreement and the Redevelopment Plan, the use of which Project is more specifically described in the Application.

SECTION 2.04 Project Schedule.

The Entity agrees to diligently undertake to commence or cause the commencement of the construction and completion of the Project substantially in compliance with the provisions of the Redevelopment Agreement.

SECTION 2.05 Ownership, Management and Control.

The Entity represents that it will be the owner of the condominium unit comprising the Project Area prior to the commencement of the redevelopment of the Property. The Entity covenants that it shall cause the redevelopment of the Property in conformance with the Redevelopment Agreement, the Redevelopment Plan and the Law.

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

SECTION 2.06 Financial Plan.

The Entity represents that the Project shall be financed substantially in accordance with the Financial Plan attached hereto as Exhibit D. The Financial Plan sets forth the estimated Total Project Cost, amortization rate on Total Project Cost, the sources of funds, the interest rates to be paid on construction financing, the source and amount of paid-in capital, the terms of any mortgage

amortization, expected rent/service amounts for each Building and the terms of any executed leases.

SECTION 2.07 Benefits and Importance of Tax Exemption.

In accordance with the Law, the City hereby finds and determines that this Agreement is to the direct benefit of the health, welfare and financial well-being of the City and its citizens because it allows for the reuse of the Property into a productive, useful and job-creating property, and further:

- a. The benefits of the Project to the area greatly outweigh cost of tax exemption as the Project results in the provision of critical affordable housing for families in the community, creates development on vacant and blighted land and generally enhances the protection and services to the residents.
- b. The tax-exemption is a critical component of the obtaining of financing for the Project;
- c. Without the financing, the land would remain vacant and blighted;
- d. The tax exemption afforded under the Long term Tax Exemption Law is required to maintain affordable rents and preserve financial feasibility of the Project; and
- e. The benefits of the tax exemption outweigh any costs

Without the tax exemption granted herein, it is highly unlikely that the Project would otherwise be undertaken.

{End of Article II}

ARTICLE III

DURATION OF AGREEMENT

SECTION 3.01 Term.

It is understood and agreed by the parties that this Agreement, including the obligation to pay Annual Service Charges required under Article IV hereof and the tax exemption granted and referred to in Section 2.01 hereof, shall remain in effect for the earlier of (i) a period of thirty (30) years from the Annual Service Charge Commencement Date or (iii) termination of this Agreement by the Entity in the manner provided by the Law, as required by N.J.S.A. 40A:20-9(g). At the expiration of the term hereof or upon Termination, the tax exemption for the Project shall expire and the Improvements and Land shall thereafter be assessed and taxed according to the general law applicable to real property in the City. After expiration of the term hereof, all restrictions and limitations upon the Entity shall terminate upon the Entity's rendering and the City's acceptance of its final accounting. Notwithstanding anything herein to the contrary, the Term shall not exceed the thirty-fifth (35th) anniversary of the effective date of this Agreement.

SECTION 3.02 Termination.

The Entity may terminate this Agreement upon written notice to the City. Upon such a Termination, the Termination date of this Agreement shall be the last day of the calendar year quarter immediately preceding the calendar year quarter in which notice of such a Termination is delivered to the City. Upon the Termination date, the Project shall be assessed and subject to taxation as are other taxable properties in the municipality.

{End of Article III}

ARTICLE IV

ANNUAL SERVICE CHARGE

SECTION 4.01 Annual Service Charge Consent.

The Entity and the City hereby consent and agree to the amount of the Annual Service Charge and the Entity hereby consents and agrees to the liens established in this Financial Agreement, and the Entity shall not contest the validity or amount of any such lien; provided, however, that the foregoing shall not be construed to bar the Entity from raising the defense that (i) the Annual Service Charge then due and owing has been paid in full, (ii) the Annual Service Charge is not yet due and owing, or (iii) the Annual Service Charge is calculated in a manner other than as set forth in this Financial Agreement. Notwithstanding anything herein to the contrary, the Entity's obligation to pay the Annual Service Charge shall be absolute and unconditional and shall not be subject to any defense, set-off, recoupment or counterclaim under any circumstances, including without limitation any loss of status of the Entity as an "urban renewal entity" qualified under and as defined in the Long Term Tax Exemption Law, or any violation by the City of any provisions of this Financial Agreement, termination of the Redevelopment Agreement or failure of the Entity to complete the Project. In consideration of the tax exemption, the Entity shall make payment of the Annual Service Charge commencing from the Annual Service Charge Commencement Date and on each calendar quarter thereafter during the Term as provided in Section 4.05 herein. In the event that the Entity fails to timely pay any installment, the amount past due shall bear the same rate of interest then being assessed by the City against delinquent taxpayers in the case of unpaid real estate taxes or tax liens until paid. Notwithstanding the foregoing, the Entity shall be entitled to any grace periods given to taxpayers within the City for the payment of regular real estate taxes

SECTION 4.02 Payment of Annual Service Charge.

A. The Annual Service Charge shall be due and payable in quarterly installments as set forth in Section 4.04 below commencing on the first day of the calendar year quarter following the Annual Service Charge Commencement Date, subject, nevertheless, to adjustment as provided herein for over or underpayment within twenty (20) days after the close of each calendar year. The Annual Service Charge, if applicable, will be prorated in the year in which the Annual Service Charge is first payable and in the year in which this Financial Agreement terminates. The Annual Service Charge shall continue at all times while this Agreement remains in effect.

B. Subject to the provisions of Section 4.04, payment of the Annual Service Charge shall be made on a quarterly basis on each February 1, May 1, August 1, and November 1, commencing on the first February 1, May 1, August 1 or November 1 following the Annual Service Charge Commencement Date and based on projected Annual Gross Revenues subject, nevertheless, to adjustment for over or underpayment within thirty (30) days after the Entity submits to the City each Auditor's Report pursuant to Section 6.02(A) below.

C. In the event that the Entity, fails to timely pay any installment of the Annual Service Charge, the amount past due shall bear the rate of interest then being assessed by the City against other delinquent taxpayers in the case of unpaid property taxes until paid.

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

SECTION 4.03 Annual Gross Revenue.

The Annual Gross Revenue shall be calculated as the total of all revenues that would normally be payable to the landlord in the case where the landlord is responsible to pay all costs of operations and maintenance, including the cost of utilities, as well as to pay the full cost of the capital required to construct the Project. To the extent that the actual revenues collected by the Entity are less than such amount, due to any reason, including, without limitation, the payment of expenses by tenants that would normally be paid by the landlord, such as insurance, taxes and/or maintenance, or the existence of an intermediate entity between the Entity and any tenant, but specifically excluding reductions in revenue due to vacancies within the Project, the City may, on notice to the Entity, recalculate the amount that the revenues would have been, without such issues, and utilize the results of its recalculations in all determinations of the Annual Service Charge. In the event of a dispute between the City and the Entity, such dispute shall be subject to the arbitration provisions under Section 14.03 herein, provided the City and the Entity shall each pay one-half (1/2) of the fees (including the arbitrator's fees) in connection with the arbitration of any such dispute, provided each of the City and the Entity shall pay their own legal fees.

SECTION 4.04 Annual Service Charges.

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

- a. Pursuant to N.J.S.A. 40A:20-12, the parties agree that upon the Annual Service Charge Commencement Date, the Annual Service Charge for the Project shall be an amount equal to 6.25% of Annual Gross Revenue for the residential units and 10% of Annual Gross Revenue for the Commercial Portion, if any.
- b. In no event shall the Annual Service Charge, excluding taxes on the Land, in any year after the Annual Service Charge Commencement Date be less than the Minimum Annual Service Charge.

SECTION 4.05 Reformation of Annual Service Charge Computation.

A. In the event the exemption of the Land authorized under N.J.S.A. 40A:20-12 is invalidated by a Court of competent jurisdiction, the Parties agree that this Agreement shall remain valid and in full force and effect and shall be reformed to cure the invalid provision to provide that Land Taxes are assessed on the Land and there shall be no change to the Annual Service Charge, except the Entity shall receive a credit against the Annual Service Charge for the amount, without interest, of the real estate taxes on the Land paid by it in the last four preceding quarterly installments pursuant to N.J.S.A. 40A:20-12.

B. If the exemption of the Land authorized under N.J.S.A. 40A:20-12 is invalidated by a court of competent jurisdiction, the Entity shall be obligated to make payment of Land Taxes according to the general laws applicable to all other tax ratables and as set forth in Section 4.05(A). Unless otherwise invalidated by a court of competent jurisdiction, the Land shall be exempt from taxation hereunder as a project for the construction of housing by an urban renewal entity. The Entity hereby expressly waives any and all credits against, reductions of the Annual Service Charge that it may otherwise have been entitled to in accordance with N.J.S.A. 40A:20-12 so long as the Land is exempt from taxation hereunder.

SECTION 4.06 County Portion Paid to the County.

In accordance with the provisions of N.J.S.A. 40A:20-12, upon the payment of the Annual Service Charge, the City shall remit the County Share to the County.

SECTION 4.07 Material Conditions,

It is expressly agreed and understood that all payments of the Annual Service Charge and any interest payments, penalties or costs of collection due thereon, and payments of Land Taxes, if applicable, are material conditions of this Financial Agreement (the “**Material Conditions**”). If any other term, covenant or condition of this Financial Agreement or the Application, as to any person or circumstance shall, to any extent, 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 remaining term, covenant or condition of this Financial Agreement shall be valid and enforced to the fullest extent permitted by applicable law.

SECTION 4.08 No Reduction in Payment of the Annual Service Charge.

Neither the amounts nor dates established for payment of the Annual Service Charge, as provided in Sections 4.02 and 4.04 hereof, shall be reduced, amended or otherwise modified during the term of this Financial Agreement, except as explicitly provided herein.

SECTION 4.09 Annual Service Charge as Municipal Lien.

The City and the Entity hereby expressly acknowledge, understand and agree that the Ordinance, this Financial Agreement and any amount due hereunder, including without limitation, the Annual Service Charge, shall be a continuous, perfected municipal lien on the Property and the Project, and that any subsequent Annual Service Charge, including any interest, penalties or costs of collection thereof, that shall thereafter become due or accrue, shall be added and relate back to and be part of the initial municipal lien on the relevant portion of the Property and the Project.

SECTION 4.10 Security for Payment of Annual Service Charge.

In order to secure the full and timely payment of the Annual Service Charge, the City reserves the right to prosecute an In Rem Tax Foreclosure action against the applicable portion of the Property in accordance with applicable law, as more fully set forth in this Financial Agreement.

{End of Article IV}

ARTICLE V

CERTIFICATE OF OCCUPANCY

SECTION 5.01 Certificate of Occupancy.

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

{End of Article V}

ARTICLE VI

ANNUAL AUDITS

SECTION 6.01 Calculation of Net Profit.

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

SECTION 6.02 Periodic Reports/Notices.

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

B. Total Project Cost Audit: Within ninety (90) days after Substantial Completion of the Project, the Entity shall submit to the Mayor, City Council, the Tax Collector and the City Clerk, who shall advise those municipal officials required to be advised, an audit of Total Project Cost, certified by a certified public accountant licensed in the State, as to actual construction costs, site remediation and clean-up of Hazardous Substances, as well as any other costs contemplated in this Agreement.

C. Disclosure Statement: Within ninety (90) days after each anniversary date of the execution of this Financial Agreement, the Entity shall submit to the Mayor, City Council, the Tax Collector and the City Clerk, who shall advise those municipal officials required to be advised, a disclosure statement listing the persons having an ownership interest in the Project and the extent of the ownership interest of each (each a “**Disclosure Statement**”).

SECTION 6.03 Inspection.

Upon reasonable request in writing, and with a reasonable amount of advance notice, during normal business hours and in the presence of an officer or agent designated by the Entity if available on the date and time requested, the Entity shall permit (i) the inspection of its property, equipment, buildings and other facilities of the Project, and (ii) the examination and audit of its books, contracts, records, documents and papers, in each case by representatives duly authorized by the City and Division of Local Government Services in the Department of Community Affairs as provided in the Redevelopment Agreement, provided that such rights of inspection also shall extend to representatives in the Division of Local Government Services in the Department of Community Affairs pursuant to N.J.S.A. 40A:20-9(e), duly authorized by the City, as reasonably deemed necessary and appropriate by the City. Such inspections and examinations shall be made as provided in the Redevelopment Agreement. The inspections and examinations shall not in any manner materially interfere with construction or operation of the Project.

SECTION 6.04 Limitation on Profits and Reserves.

During the period of tax exemption as provided herein, the Entity shall be subject to a limitation of its profits or dividends pursuant to the provisions of N.J.S.A. 40A:20-15. The calculation of the Entity's excess Net Profit pursuant to the Long Term Tax Exemption Law shall include those project costs directly attributable to site remediation and cleanup expenses and exclude such other amounts as provided in this Financial Agreement and the Long Term Tax Exemption Law. Upon expiration or Termination of the tax exemption, the foregoing limitations on the profits or dividends of the Entity shall be of no further force or effect.

The Entity shall have the right in any year to establish and maintain a reserve against vacancies, unpaid rentals, and reasonable contingencies in an amount up to ten percent (10%) of the Annual Gross Revenues of the Entity for the last full fiscal year preceding the year in which the reserve is established or maintained, and may retain such part of the excess Net Profits as is necessary to eliminate a deficiency in that reserve, as provided in N.J.S.A. 40A:20-15.

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

SECTION 6.05 Payment of Dividend and Excess Profit Charge.

In the event the Net Profits of the Entity (after funding of any reserve described in Section 8.04), in any fiscal year (taken as one accounting period) after Substantial Completion, shall exceed the Allowable Net Profits for such period, then the Entity, within one hundred twenty (120) days after the end of such fiscal year, shall pay such excess Net Profits to the City as an additional Annual Service Charge. The calculation of Net Profit and Allowable Net Profit shall be made in the manner set forth in N.J.S.A. 40A:20-3(c) and 40A:20-15, with the Entity having the right to (i) include those Project costs attributable to site remediation and cleanup expenses, and (ii) exclude other costs as provided in this Agreement or N.J.S.A. 40A:20-3.

{End of Article VI}

ARTICLE VII

ASSIGNMENT AND/OR ASSUMPTION

SECTION 7.01 Transfers Generally.

Except for Permitted Transfers set forth in Section 7.02 below, the Entity shall not, without the prior written consent of the City (which may be granted or withheld in the City's sole discretion): (A) effect or permit any change, directly or indirectly, in the majority ownership or control of the Entity, (B) assign or attempt to assign this Agreement, or (C) make any total sale, lease, transfer or conveyance of the whole of its interest in the Property or the Project (collectively, a "Transfer").

SECTION 7.02 Permitted Transfers.

Notwithstanding the foregoing Section 7.01, the Entity, without violating the provisions of Section 7.01, may effectuate the following Transfers, sales or assignments, to which the City hereby consents, without the necessity of further action by the City (the "Permitted Transfers"):

A. The City hereby expressly permits and consents to the transfer of: (1) 99.99% of the ownership interest in the Entity to a tax credit investor chosen by the Entity, at its sole discretion, in furtherance of the Project's anticipated low income housing tax credit financing; (2) the tax credit investor's interest in the Entity pursuant to Section 10.01 of the First Amended and Restated Operating Agreement of the Entity (the "**Operating Agreement**"); and (3) the interest of the managing member in the Entity if the tax credit investor removes the managing member due to a default of the managing member under the Operating Agreement pursuant to Section 9.02 of the Operating Agreement, provided the tax credit investor gives to the City prior written notice of the removal and the new managing member.

B. Transfers to any Holder as security for the purpose of obtaining the financing necessary to enable the Entity to perform its obligations under the Redevelopment Agreement with respect to completing the Project and any other purpose authorized by the Redevelopment Agreement, including deeds to Holders in lieu of foreclosure or transfers at foreclosures;

C. Any mortgage or mortgages and other liens and encumbrances for the purposes of financing costs associated with the acquisition, development, construction and marketing of the Project;

D. Utility and other development easements;

E. Environmental covenants and restrictions imposed by a regulatory agency as a condition of any Governmental Approval (as such term is defined in the Redevelopment Agreement);

F. Transfers to affiliates of the Entity; provided such entity is an urban renewal entity formed pursuant to the Long Term Tax Exemption Law, Hans Lampart maintains control of such entity (which control may be indirect) and the transferee expressly assumes the obligations under the Redevelopment Agreement and this Agreement; it being the mutual intent of the Parties that

under all circumstances this Agreement shall remain in full force and effect, applicable to the entire Property, in the event of any Transfer.

The Entity shall provide thirty (30) day prior notice to the City of any Permitted Transfer to be consummated pursuant to this Section 7.02.

SECTION 7.03 Transfer to an Unaffiliated Urban Renewal Entity.

As permitted by N.J.S.A. 40A:20-10(a), notwithstanding the foregoing Section 7.01, upon written application by the Entity, the City will consent to a sale to another urban renewal entity purchasing all or a portion of the Project in fee simple and the transfer of the tax exemption in this Financial Agreement for the Project, or portion thereof (reflected in a new financial agreement incorporating all the terms of this Financial Agreement for the period remaining on the tax exemption for the Project or portion thereof (the “**Transferee Agreement**”)), provided: (A) the transferee entity is formed and eligible to operate under the Long Term Tax Exemption Law; (B) the Entity is not then in Default of this Financial Agreement or the Long Term Tax Exemption Law; (C) the Entity’s obligations under this Financial Agreement as to the Project or portion thereof being transferred are fully assumed by the transferee entity in the Transferee Agreement; (D) the transferee entity agrees to all terms and conditions of this Financial Agreement in the Transferee Agreement; (E) if applicable, the Entity or the transferee entity, upon proper application to and approval by the City, subdivides or divides by condominium regime the Property underlying that portion of the Project being transferred, which application for subdivision shall not be unreasonably withheld, conditioned or delayed; and (F) the City consents in writing to such transfer pursuant to the terms of the Redevelopment Agreement. The City shall, in good faith, in a prompt and timely manner reasonably cooperate with the Entity and the transferee entity and use its best efforts to review the written application of the Entity, review and approve the application for approval of the transferee entity pursuant to N.J.S.A. 40A:20-8, and negotiate and approve the Transferee Agreement. The then applicable Annual Service Charge for the Project or portion thereof will be paid by the transferee entity pursuant to the Transferee Agreement. In the event that any transfer contemplated in this Section 7.03 is for less than the whole of the Project, the Annual Service Charge to be paid by the Entity and the transferee entity after the transfer shall be pro-rated based on the relative assessed value of the portion of the Project being transferred compared to the portion of the Project remaining with the Entity.

SECTION 7.04 Subordination of Fee Title.

It is expressly understood and agreed that the Entity has the right, subordinate to the lien of the Annual Service Charge and to the rights of the City hereunder, to encumber and/or lease and/or assign the fee title to the Project Property and Project, and that any such encumbrance, lease or assignment shall not be deemed to be a violation of this Financial Agreement.

SECTION 7.05 Restriction on Transfer.

So long as this Financial Agreement remains in effect, any transfer of the Property (except for any Permitted Transfer or any Transfer to which the City consents under this Article VII) shall be void ab initio.

{End of Article VII}

ARTICLE VIII

CITY DETERMINATIONS AND OBLIGATIONS

SECTION 8.01 Relative Benefits.

In accordance with the Long Term Tax Exemption Law, specifically N.J.S.A. 40A:20-11(a), the City hereby finds and determines that this Financial Agreement is to the direct benefit of the health, safety, welfare and financial well-being of the City and its citizens despite the tax exemption granted hereunder.

SECTION 8.02 Importance of Tax Exemption.

In accordance with the Long Term Tax Exemption Law, specifically N.J.S.A. 40A:20-11(b), the City hereby finds and determines that this Financial Agreement is a critical incentive for the Entity to undertake the Project in the City due to the extraordinary costs associated with the development of the Property and the related infrastructure costs of the Project. The exemption contemplated hereunder provides the benefits to the City, among others, of the completion of (i) the Project providing much needed income restricted housing, (ii) needed infrastructure Improvements, (iii) certain other local and regional infrastructure improvements that otherwise would not exist, and (iv) certain aesthetic, drainage, roadway and pedestrian improvements in the City.

{End of Article VIII}

ARTICLE IX

WAIVER

SECTION 9.01 Waiver.

Except as specifically provided in this Financial Agreement including, but not limited to, Sections 3.02 and 4.05, and, except for the express waiver herein of certain rights of acceleration and certain rights to terminate the Agreement and tax exemption for violation of any of the conditions provided herein, nothing contained in this Financial Agreement or otherwise shall constitute a waiver or relinquishment by the City or the Entity of any rights and remedies provided by applicable law. Nothing herein shall be deemed to limit any right of recovery that the City or the Entity has under law, in equity, or under any provision of this Financial Agreement.

{End of Article XI}

ARTICLE X

NOTICE

SECTION 10.01 Notice.

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

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

Oak Hill Farms Apartments Urban Renewal, LLC
c/o Eastern Pacific Development, LLC
925 East Landis Avenue
Suite E
Vineland, NJ 08360
Fax: (856) 696-1200
Phone: (856) 696-0200
E-mail: hl@epacdevco.com

with a copy to:

Jeffrey S. Beenstock
Ballard Spahr LLP
700 East Gate Drive, Suite 330
Mount Laurel, New Jersey 08054
Fax: (856) 761-1020
Phone: (856) 761-3417
E-mail: beenstock@ballardspahr.com

- B. When sent to the City, it shall be addressed as follows:

Sandy Forosisky, Director of Economic Development
City of Vineland
640 E. Wood Street
P.O. Box 1508
Vineland, New Jersey 08632.1508
Fax: (856)405-4607
Phone: (856) 794-4000 ext. 4623
E-mail: sforosisky@virtelandcity.org

with copies to:

Richard Tonetta, Esq., Department of Law
City of Vineland
640 E. Wood Street
P.O. Box 1508

Vineland, New Jersey 08632-1508
Fax: (856) 405-4607
Phone: (856) 794-4000 ext. 4600
E-mail: rtonetta@vinelandcity.org

Leah Sandbank, Esq.
McManimon, Scotland & Baumann, LLC
75 Livingston Road, 2nd Floor
Roseland, New Jersey 07068
Fax: (973) 712-1431
Phone: (973) 622-1800
E-mail: lsandbank@msbnj.com

The notice to the City shall identify the subject with the block, lot and qualifier numbers on the tax map of the City of the parcel comprising the Property.

{End of Article X}

ARTICLE XI

COMPLIANCE

SECTION 11.01 Compliance.

The Entity hereby agrees at all times prior to the expiration or Termination of the tax exemption to remain bound by the provisions of this Agreement and the Law.

{End of Article XI}

ARTICLE XII

CONSTRUCTION

SECTION 12.01 Construction.

This Agreement shall be construed and enforced in accordance with the laws of the State, and without regard to or aid or any presumption or other rule requiring construction against the Party drawing or causing this Financial Agreement to be drawn since counsel for both the Entity and the City have combined in their review and approval of same.

{End of Article XII}

ARTICLE XIII

INDEMNIFICATION

SECTION 13.01 Indemnification.

A. It is hereby understood and agreed that in the event the City shall be named as a party in any action brought against the Entity (other than an action brought by the City itself) by allegation of any breach, Default or violation of any of the provisions of this Financial Agreement and/or the provisions of the Long Term Tax Exemption Law arising out of or resulting from the action or inaction of the Entity, the Entity shall indemnify and hold the City 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 such breach, Default or violation of any of the provisions of this Financial Agreement and/or the provisions of the Long Term Tax Exemption Law; provided, however that the Entity shall not be required to indemnify the City for any willful or negligent act, omission or misconduct by the City or any of its officers, officials, employees or agents. Upon the City becoming aware of any claim or loss for which indemnification is sought, the City shall promptly provide the Entity with written notice thereof and demand for indemnification. The Entity shall defend against any such claim or loss at its own expense using counsel of its choosing. The City maintains the right to intervene as a party thereto, to which intervention the Entity hereby consents, the expense thereof to be borne by the City.

B. The Entity shall indemnify and defend the City and its directors, officers, shareholders, employees, successors and assigns, (collectively, the "**Indemnified Parties**"), against, and hold the Indemnified Parties harmless from, and reimburse the Indemnified Parties for, any and all claims, demands, judgments, penalties, liabilities, costs, damages, expenses, incurred by any of the Indemnified Parties, including court costs and reasonable attorney's fees (prior to trial, at trial and on appeal), caused by, resulting from or arising out of any of the following acts or omissions committed, permitted or omitted by the Entity:

- (1) fraud or intentional or material representation by the Entity;
- (2) misappropriation of rents or security deposits received by the Entity;
- (3) intentional material physical waste of any portion of its Parcels; or
- (4) failure by the Entity to pay any valid taxes, assessments, mechanic's liens, materialmen's liens or other liens which could create liens on any portion of its Land or Project which would, or could, be superior or equal in priority to the lien or security title of this Financial Agreement.

{End of Article XIII}

ARTICLE XIV

DEFAULT; REMEDIES; TERMINATION

SECTION 14.01 Default.

“**Default**” shall mean the failure of the Entity or the City to comply with the terms of this Financial Agreement observe and perform any other obligation imposed upon the Entity or the City, as applicable, beyond any applicable notice, cure or grace period.

SECTION 14.02 Cure Upon Default.

Should either Party be in Default of any obligation under this Financial Agreement, the non-defaulting Party shall notify the defaulting Party and any mortgagee of the Entity in writing of said Default (the “**Default Notice**”). Said Default Notice shall set forth with particularity the basis of said Default. Except as otherwise limited by law, the defaulting Party shall have (i) sixty (60) days to cure any non-payment Default from the date of its receipt of the Default Notice and (ii) ten (10) business days to cure any payment Default from the date of such Default; provided, however, that if such non-payment Default is not reasonably able to be cured within such sixty (60) day period and the defaulting Party is diligently pursuing a cure, such cure period shall extend as long as the defaulting Party continues diligently to pursue such cure. No Default hereunder by the Entity shall terminate the tax exemption described herein and its obligation to make Annual Service Charge payments, which shall continue in effect for the respective durations set forth in Section 3.01 hereof, subject to Section 3.02 hereof.

SECTION 14.03 Remedies Upon Default Cumulative; No Waiver.

In the event of any uncured Default by the Entity, the City shall have the right to proceed against any portion of the Property and the Project owned by the Entity pursuant to the provisions of applicable law. Upon any Default in payment of any installment of the Annual Service Charge by the Entity, the City shall have the right to proceed to In Rem Tax Foreclosure consistent with the provisions and procedures of the Tax Sale Law.

Subject to the other terms and conditions of this Financial Agreement including Section 14.04, all of the remedies provided in this Financial Agreement to the City, and all rights and remedies granted to the City by law and equity, shall be cumulative and concurrent and no determination of the invalidity of any provision of this Financial Agreement shall deprive the City of any of its remedies or actions against the Entity because of Entity’s failure to pay Land Taxes (if applicable), 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 (if applicable), Annual Service Charge or other charges, or for breach of covenant or the resort of any other remedy herein provided for the recovery of Land Taxes (if applicable), Annual Service Charge or other charges shall not be construed as a waiver of the right to proceed with an In Rem Tax Foreclosure action consistent with the terms and provisions of this Financial Agreement.

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

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

SECTION 14.04 Remedies.

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

The City shall pursue the collection of delinquent payments of Annual Service Charge with the same diligence it employs in the collection of the City's general *ad valorem* real estate taxes, including the commencement of an In Rem Tax Foreclosure. The Parties understand and agree that the City's ordinary discretion in this regard allows it to decide not to expend resources to collect *de minimis* outstanding amounts.

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 Financial 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 City to proceed in the above-mentioned manner.

SECTION 14.05 Final Accounting.

Within ninety (90) days after the date of Termination of tax exemption, the Entity shall provide a final accounting pursuant to N.J.S.A. 40A:20-12. After Termination or expiration, restrictions and limits on the Entity shall terminate upon the Entity's rendering a final accounting.

SECTION 14.06 Conventional Taxes.

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

{End of Article XIV}

ARTICLE XV

MISCELLANEOUS

SECTION 15.01 Conflict.

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

SECTION 15.02 Oral Representations.

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

SECTION 15.03 Entire Document.

All conditions in the Ordinance are incorporated in this Financial Agreement and made a part hereof. This Agreement, the Ordinance and the Application constitute the entire agreement between the Parties as to the subject matter thereof and hereof and expressly replaces and supersedes all prior agreements, including without limitation the Original Financial Agreement with respect to the Project.

SECTION 15.04 Good Faith.

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

SECTION 15.05 Recording.

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

SECTION 15.06 Municipal Services.

The Entity shall make payments for municipal services, including water and sewer charges and any services that create a lien on a parity with or superior to the lien for the Land Taxes (but only if the Property is determined not to be exempt pursuant to the Long Term Tax Exemption Law) and the Annual Service Charge, as required by law. Nothing herein is intended to release the Entity from its obligation to make such payments.

SECTION 15.07 Financing Matters.

The financial information required by the final paragraph of N.J.S.A. 40A:20-9 are set forth in the Application, which financial information is incorporated by reference as if set forth in full herein.

SECTION 15.08 Counterparts: Electronic Signatures.

This Agreement may be simultaneously executed in counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument. Electronic or facsimile signatures shall constitute original signature for all purposes under this Financial Agreement.

SECTION 15.09 Amendments.

This Agreement may not be amended, changed, modified, altered or terminated without the written consent of the Parties.

SECTION 15.10 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 Property, has been entered into and is in effect as required by N.J.S.A. 40A:20-1, *et seq.* Delivery by the City Clerk to the Tax Assessor of a certified copy of the Ordinance adopted by the City Council approving the tax exemption described herein and this Financial Agreement shall constitute the required certification. Upon certification as required hereunder, the Tax Assessor shall implement the exemption and continue to enforce that exemption without further certification by the City 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.

Upon the adoption of this Financial Agreement, a certified copy of the Ordinance and this Financial Agreement shall forthwith be transmitted to the Director of the Division of Local Government Services by the City Clerk. Within ten (10) days of the execution of this Financial Agreement, the City Clerk shall provide a copy of the Financial Agreement and the Ordinance authorizing the same to the Cumberland County Counsel and the Cumberland 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 15.11 Administrative Fees.

No annual administrative fee shall be assessed or payable in connection with this Agreement.

SECTION 15.12 Severability.

If any terms or provision of this Financial Agreement or the application thereof shall to any extent be held to be invalid or unenforceable, the remainder of this Financial Agreement, or the application of such term or provision to circumstances other than those to which it is invalid or unenforceable, shall not be affected thereby, and each other term and provision of this Financial Agreement shall be valid and shall be enforced to the extent permitted by applicable law.

SECTION 15.13 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 (during any period in which Land Taxes are not exempt hereunder) and Annual Service Charge are Material Conditions of this Agreement which shall not be excused by the occurrence of a force majeure event.

{End of Article XV}

CITY OF VINELAND

By: _____
Anthony Fanucci, Mayor

STATE OF NEW JERSEY :
: ss
COUNTY OF CUMBERLAND :

On this, the _____ day of _____, 2024, before me, the subscriber, personally appeared Anthony Fanucci, who I am satisfied is the person who executed the foregoing instrument as the Mayor of the City of Vineland, and he acknowledged that he, in such capacity, being authorized to do so, executed the foregoing instrument as such municipal corporation's voluntary act and deed for the purposes therein contained by signing on behalf of said municipal corporation.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public

Commission Expiration: _____