

ORDINANCE #1028

ORDINANCE OF THE BOROUGH OF OCEANPORT, IN THE COUNTY OF MONMOUTH, NEW JERSEY APPROVING AN APPLICATION FOR A LONG TERM TAX EXEMPTION AND AUTHORIZING THE EXECUTION OF A FINANCIAL AGREEMENT WITH KKF UNIVERSITY ENTERPRISES URBAN RENEWAL, LLC

WHEREAS, by Resolution No. 2020-125 adopted on May 7, 2020, the Borough Council of the Borough designated that certain properties located in the Borough within the former Fort Monmouth, including but not limited to Block 110.09, Lots 1 and 2, as a non-condemnation area in need of redevelopment (the "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 "Redevelopment Law"); and

WHEREAS, on May 20, 2020, the Fort Monmouth Economic Revitalization Authority ("FMERA") consented to the Borough's designation of the Redevelopment Area as an area in need of redevelopment in accordance with N.J.S.A. 52:27I-26(o) and N.J.A.C. 19:31C-3.25(a)(5); and

WHEREAS, on May 21, 2020, pursuant to Ordinance No. 1024, the Borough Council of the Borough adopted a redevelopment plan for that portion of Redevelopment Area identified as the "Squier Hall Parcel", entitled, "Amendment No. 13 to the Fort Monmouth Reuse and Redevelopment Plan", prepared by Phillips Preiss Grygiel Leheny Hughes LLC (the "Redevelopment Plan"); and

WHEREAS, on June 17, 2020, FMERA consented to the Borough's adoption of the Redevelopment Plan for the Squier Hall Parcel in accordance with N.J.A.C. 19:31C-3.25(b)(6); and

WHEREAS, the Entity is the owner of certain property identified as a portion of Block 110.09, Lot 1 on the official Tax Maps of the Borough and commonly known as the Squier Hall Parcel within the former Fort Monmouth; and

WHEREAS, said portion of Block 110.09, Lot 1 is as more particularly depicted in that certain metes and bounds description attached hereto as Exhibit A and hereby made a part hereof (the "Property"); and

WHEREAS, the Entity will redevelop the Property which redevelopment shall include the adaptive re-use and renovation of approximately 43,000 square feet of the Squier Hall Building, the demolition of all other buildings and ancillary structures on the Property, including buildings designated as Building #288 and #145, and the construction and installation of associated site improvements, utilities, landscaping and other improvements (collectively, the "Project"); and

WHEREAS, in accordance with the Long Term Tax Exemption Law, N.J.S.A. 40A:20-1 et seq. (the "Exemption Law"), the Entity filed an application with the Borough for approval of a long term tax exemption (the "Long Term Tax Exemption") for the Project (the "Application"), a copy of which is on file with the Borough Clerk, seeking a tax exemption in connection with the Project, in exchange for which the Entity proposes to make payments to the Township in lieu of taxes; and

WHEREAS, the Entity also submitted to the Mayor a form of financial agreement referenced in the Application, establishing the rights, responsibilities and obligations of the Entity; and

WHEREAS, the Mayor submitted the Application and the financial agreement attached hereto as Exhibit A (the "Financial Agreement") to the Borough Council of the Borough with his recommendation for approval, a copy of which recommendation is on file with the Borough Clerk; and

WHEREAS, the Borough Council of the Borough has determined that the Project represents an undertaking permitted by the Exemption Law,

NOW, THEREFORE, BE IT ORDAINED BY THE BOROUGH COUNCIL OF THE BOROUGH OF OCEANPORT, NEW JERSEY AS FOLLOWS:

Section 1. The recitals to this ordinance are incorporated as if set forth in full herein.

Section 2. The Application for tax exemption and Financial Agreement are hereby approved.

Section 3. The Mayor is hereby authorized to execute the Financial Agreement substantially in the form attached hereto as Exhibit A, subject to modification or revision as deemed necessary and appropriate after consultation with counsel.

Section 4. The Clerk of the Borough is hereby authorized and directed, upon execution of the Financial Agreement by the Mayor, to attest to the signature of the Mayor and to affix the corporate seal of the Borough upon such document.

Section 5. The Borough Clerk shall file certified copies of this ordinance and the Financial Agreement with the Tax Assessor of the Borough in accordance with Section 12 of the Exemption Law.

Section 6. In accordance with P.L. 2015, c. 247, within ten (10) calendar days following the later of the effective date of this ordinance or the execution of the Financial Agreement by the Entity, the Borough Clerk also shall transmit a certified copy of this ordinance and the Financial Agreement to the chief financial officer of Monmouth County and to the Monmouth County Counsel for informational purposes.

Section 7. The Mayor and Borough Clerk are hereby authorized to take such action and to execute such other documents, on behalf of the Borough, in consultation with Borough counsel, as is necessary to effectuate the terms of the Financial Agreement.

Section 8. If any part(s) of this ordinance shall be deemed invalid, such part(s) shall be severed and the invalidity thereby shall not affect the remaining parts of this ordinance.

Section 9. This ordinance shall take effect in accordance with applicable law.

APPROVED ON FIRST READING

DATED: July 16, 2020


JEANNE SMITH
Clerk of the Borough of Oceanport

ADOPTED ON SECOND READING

DATED: September 3, 2020


JEANNE SMITH
Clerk of the Borough of Oceanport

APPROVAL BY THE MAYOR ON THIS 5th DAY OF 2020


JOHN F. COFFEY, II
Mayor

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

by and between

BOROUGH OF OCEANPORT

and

KKF UNIVERSITY ENTERPRISES URBAN RENEWAL, LLC

Dated: September 3, 2020

THIS FINANCIAL AGREEMENT is made this 3rd day of September, 2020 (hereinafter this "Agreement" or "Financial Agreement") by and between **KKF UNIVERSITY ENTERPRISES URBAN RENEWAL, LLC** (the "Entity") a New Jersey limited liability company and an urban renewal entity qualified to do business under the provisions of the Long Term Tax Exemption Law of 1992, N.J.S.A. 40A:20-1 *et seq.*, as amended and supplemented (the "Exemption Law"), with offices at 40 Monmouth Park Highway, P.O. Box 70, West Long Branch, New Jersey 07764; and the **BOROUGH OF OCEANPORT**, County of Monmouth, State of New Jersey, having an address at 315 E. Main Street, Oceanport, New Jersey 07757 (the "Borough"; and together with the Entity, the "Parties" or "Party").

W I T N E S S E T H:

WHEREAS, by Resolution No. 2020-125 adopted on May 7, 2020, the Borough Council of the Borough designated that certain properties located in the Borough within the former Fort Monmouth, including but not limited to Block 110.09, Lots 1 and 2, as a non-condemnation area in need of redevelopment (the "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 "Redevelopment Law"); and

WHEREAS, on May 20, 2020, the Fort Monmouth Economic Revitalization Authority ("FMERA") consented to the Borough's designation of the Redevelopment Area as an area in need of redevelopment in accordance with N.J.S.A. 52:27I-26(o) and N.J.A.C. 19:31C-3.25(a)(5); and

WHEREAS, on May 21, 2020, pursuant to Ordinance No. 1024, the Borough Council of the Borough adopted a redevelopment plan for that portion of Redevelopment Area identified as the hereinafter defined Squier Hall Parcel, entitled, "Amendment No. 13 to the Fort Monmouth Reuse and Redevelopment Plan", prepared by Phillips Preiss Grygiel Leheny Hughes LLC (the "Redevelopment Plan"); and

WHEREAS, on June 17, 2020, FMERA consented to the Borough's adoption of the Redevelopment Plan for the Squier Hall Parcel in accordance with N.J.A.C. 19:31C-3.25(b)(6); and

WHEREAS, the Entity is the owner of certain property identified as a portion of Block 110.09, Lot 1 on the official Tax Maps of the Borough and commonly known as the Squier Hall Parcel within the former Fort Monmouth; and

WHEREAS, said portion of Block 110.09, Lot 1 is as more particularly depicted in that certain metes and bounds description attached hereto as **Exhibit A** and hereby made a part hereof (the "Property"); and

WHEREAS, the Entity will redevelop the Property which redevelopment shall include the adaptive re-use and renovation of approximately 43,000 square feet of the Squier Hall Building, the demolition of all other buildings and ancillary structures on the Property, including buildings designated as Building #288 and #145, the construction and installation of associated

site improvements, utilities, landscaping and other improvements and the use of the hereinafter defined Improvements by New Jersey City University as its Monmouth County Campus (collectively, the "Project"); and

WHEREAS, in accordance with the Exemption Law, the Entity filed an application with the Borough for approval of a long term tax exemption (the "Long Term Tax Exemption") for the Project (the "Application"), a copy of which is on file with the Borough Clerk and which is incorporated herein by reference; and

WHEREAS, on July 1, 2020, the Mayor recommended to the Governing Body that the Application be approved, provided that all legal prerequisites are met; and

WHEREAS, on September 3, 2020, by Ordinance No. 1028 (the "Ordinance"), the Governing Body approved the Application, subject to the terms and conditions of this Financial Agreement and authorized the execution of this Financial Agreement; and

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

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

A. Benefits of Project v. Costs.

i. The development and construction of the Project will be beneficial to the overall community; will help revitalize the Property; will improve the quality of life for the community; will serve as a catalyst for further private investment in areas surrounding the Property and will enhance the economic development of the Borough.

ii. It is anticipated that the development of the Project will create approximately fifty-eight (58) part-time and full-time construction jobs over the duration of the construction of the Project and approximately seventy (70) part-time and full-time jobs in connection with the operation of the Project.

iii. Pursuant to this Financial Agreement, the Project is projected to generate revenue for the Borough in the first year of approximately \$234,386 (less the applicable Land Tax credit), well in excess of the municipal revenue previously generated by the Property (\$0). The benefits to the Borough accruing as a result of the Project, including the generation of jobs and the generation of municipal revenues, will substantially outweigh any incremental costs to the Borough resulting from the Long Term Tax Exemption granted herein.

B. Importance of Long Term Tax Exemption.

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

i. The relative stability and predictability of the Annual Service Charge (as defined herein) 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 Property and will have a positive impact on the surrounding area and community.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties to this Agreement mutually covenant and agree as follows:

ARTICLE I - GENERAL PROVISIONS

Section 1.1 Governing Law

This Financial Agreement shall be governed by the provisions of the Exemption Law, the Ordinance, and all other Applicable Laws (as defined herein). It is expressly understood and agreed that the Borough has relied upon the facts, data, and representations contained in the Application in granting the Long Term Tax Exemption and the Application is hereby incorporated into this Financial Agreement by reference.

Section 1.2 General Definitions and Construction

The recitals and exhibits to this Agreement are hereby incorporated by reference herein as if set forth at length. Unless specifically provided otherwise or the context otherwise requires, when used in this Agreement, the following terms and phrases shall have the following respective meanings:

- a. **Affiliate** – With respect to any person or entity, any other person or entity directly or indirectly Controlling or Controlled by, or under direct common Control with, such person or entity.
- b. **Agreement or Financial Agreement** – Shall have the meaning specified in the preamble hereof.
- c. **Allowable Net Profit (also referred to as "ANP")** – The amount arrived at by applying the Allowable Profit Rate to the Total Project Cost pursuant to the provisions of N.J.S.A. 40A:20-3.
- d. **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 improvements within Monmouth County. The provisions of N.J.S.A. 40A:20-3(b) are incorporated herein by reference.

- e. **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.
- f. **Annual Gross Revenue (also referred to as the "AGR")** – Annual gross shelter rents actually collected by the Property, and other income, including income from parking, laundry and other services, and State or Federal tenant subsidies and excluding the costs of gas, electricity, fuel, water, sewer, garbage removal and other utilities.
- g. **Annual Service Charge (also referred to as the "ASC")** – The total annual amount that the Entity has agreed to pay the Borough for municipal services supplied to the Project, which sum is in lieu of any taxes on the Property and the Improvements pursuant to the Exemption Law, which amount shall be prorated in the year in which the Annual Service Charge begins and the year in which the Annual Service Charge terminates. The Annual Service Charge shall be calculated pursuant to Article IV hereof.
- h. **Applicable Law**: Shall mean any and all federal, State and local laws, rules, regulations, rulings, court orders, statutes and ordinances applicable to the Project and the Long Term Tax Exemption.
- i. **Application** – Shall have the meaning specified in the recitals of this Financial Agreement.
- j. **ASC Commencement Date** – The first day of the month immediately following the Substantial Completion of the Project.
- k. **Borough** – Shall have the meaning specified in the preamble of this Financial Agreement.
- l. **Certificate of Occupancy** - A temporary or permanent certificate of occupancy issued by the appropriate Borough official, pursuant to N.J.S.A. 52:27D-133
- m. **Control** – As used with respect to any person or entity, shall mean possession, directly or indirectly, of the power to direct or cause the direction of the management and operation of such person or entity, whether through the ownership of voting securities or by contract or other written agreements.

- n. **Days** - Whenever the word "Days" is used to denote time, it shall mean calendar days.
- o. **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 a period equal to the term of the Long Term Tax Exemption granted by this Financial Agreement.
- p. **Default** - A breach or failure of the Borough 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. It shall also be a Default hereunder if the Entity, or any person or entity directly or indirectly controlling, or controlled by, or otherwise affiliated with, the Entity obtains any approval from the Borough, or the Borough's Planning Board or Zoning Board, in connection with the construction of improvements on the Squier Hall Parcel that are not permitted by Plan Amendment #13, dated May 14, 2019, to the Fort Monmouth Plan, or are not otherwise agreed to, in writing, by the Borough.
- q. **Effective Date** – The date that this Agreement has been executed by both Parties.
- r. **Entity** – Shall mean the entity specified in the preamble of this Financial Agreement, which is qualified and shall remain qualified as an urban renewal entity under the Exemption Law. Unless the context provides otherwise, it shall also include any permitted Transferee, which shall also be qualified as an urban renewal entity under the Exemption Law as set forth in Section 8.1 hereof.
- s. **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.
- t. **Exemption Law** - Shall have the meaning specified in the preamble of this Financial Agreement.
- u. **FMERA** - Shall have the meaning specified in the preamble of this Financial Agreement.
- v. **Fort Monmouth Plan** – Shall mean the Fort Monmouth Reuse and Redevelopment Plan, dated August 22, 2008, adopted by the Fort Monmouth Economic Revitalization Planning Authority, now known as the Fort Monmouth Economic Revitalization Authority.
- w. **Governing Body**- Shall have the meaning specified in the recitals of this Financial Agreement.

- x. **Improvements** - Shall mean any building, structure or fixture comprising the Project which is permanently affixed to the Property to be constructed and exempt under this Agreement.
- y. **Land Taxes** – Shall mean the amount of any real estate taxes levied on the Property, exclusive of any Improvements related thereto.
- z. **Long Term Tax Exemption** – Shall have the meaning specified in the recitals of this Financial Agreement.
- aa. **Minimum Annual Service Charge** – The Parties acknowledge and agree that the Minimum Annual Service Charge for purposes of this Agreement shall be \$0.
- bb. **Net Profit** - Annual Gross Revenue (AGR) less all operating and non-operating expenses and costs of the Entity, all determined in accordance with Generally Accepted Accounting Principles and the provisions of N.J.S.A 40A:20-3(c), but: (1) there shall be included in expenses: (a) all annual service charges paid pursuant to N.J.S.A. 40A:20-12; (b) all payments to the municipality of excess profits pursuant to N.J.S.A. 40A:20-15 or N.J.S.A. 40A:20-16; (c) an annual amount sufficient to amortize the Total Project Cost and all capital costs determined in accordance with generally accepted accounting principles, of any other entity whose revenue is included in the computation of excess profits, over the term of the abatement as set forth in this Financial Agreement; (d) all reasonable annual operating expenses of the Entity and any other entity whose revenue is included in the computation of Excess Profits, including the cost of all management fees, brokerage commissions, insurance premiums, all taxes or service charges paid, legal, accounting, or other professional service fees, utilities, building maintenance costs, building and office supplies, and payments into repair or maintenance reserve accounts; (e) all payments of rent including, but not limited to, ground rent by the Entity (if applicable); (f) all Debt Service; and (2) there shall not be included in expenses either depreciation or obsolescence, interest on debt, except interest which is part of Debt Service, income taxes, or salaries, bonuses or other compensation paid, directly or indirectly to directors, officers and stockholders of the Entity, or officers, partners or other persons holding any proprietary ownership interest in the Entity.
- cc. **Ordinance** – Shall have the meaning specified in the recitals of this Financial Agreement.
- dd. **Party or Parties** – Shall have the meaning specified in the preamble of this Financial Agreement.
- ee. **Payment Default** – Shall have the meaning specified in Section 5.4 of this Financial Agreement.
- ff. **Project** - Shall have the meaning specified in the recitals of this Financial Agreement.
- gg. **Property** - Shall have the meaning specified in the recitals of this Financial Agreement.

- hh. **Redevelopment Area** – Shall have the meaning specified in the recitals of this Financial Agreement.
- ii. **Redevelopment Law** - Shall have the meaning specified in the recitals of this Financial Agreement.
- jj. **Redevelopment Plan** - Shall have the meaning specified in the recitals of this Financial Agreement.
- kk. **Rental Unit** – A retail unit within the Project made available for rent to the public.
- ll. **Reserve** – Shall have the meaning defined in Section 6.2 of this Financial Agreement.
- mm. **Secured Party or Secured Parties** – Shall have the meaning defined in Section 8.3(a) of this Financial Agreement.
- nn. **Security Arrangements** – Shall have the meaning defined in Section 8.3(a) of this Financial Agreement.
- oo. **Squier Hall Parcel** – Shall have the meaning set forth in the Fort Monmouth Plan.
- pp. **State** – The State of New Jersey.
- qq. **Substantial Completion** – The determination by the Borough construction official that the improvements described in this Agreement have been completed and that the Project, is ready for the use intended.
- rr. **Tenant** – Any tenant of a Rental Unit.
- ss. **Termination Date** – The earlier to occur of (i) the thirty-fifth (35th) anniversary of the Effective Date; (ii) the thirtieth (30th) anniversary date of the ASC Commencement Date; or (iii) such other date as this Financial Agreement may terminate pursuant to the terms hereof or pursuant to Applicable Law.
- tt. **Total Project Cost (also referred to as "TPC")** - Shall be as calculated in accordance with Section 3(h) of the Exemption Law.
- uu. **Transferee** – Shall have the meaning specified in Section 8.1 of this Financial Agreement.

Section 1.3 Interpretation and Construction.

In this Agreement, unless the context otherwise requires:

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

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

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

D. Any headings preceding the texts of the several articles and sections of this Agreement, and any table of contents or marginal notes appended to copies hereof, shall be solely for convenience of reference and shall not constitute a part of this Agreement, nor shall they affect its meaning, construction or effect. All references to articles, sections or exhibits in this Agreement shall, unless indicated otherwise, refer to the articles, sections or exhibits in this Agreement.

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

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

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

ARTICLE II - PROJECT AND PROPERTY

Section 2.1. Borough's Findings

Pursuant to the Exemption Law, the Borough finds that the Long Term Tax Exemption granted pursuant to this Financial Agreement will benefit the Borough and the community by assuring the success of the rehabilitation of the Property. The development and construction of the Project will be beneficial to the overall community; will help revitalize the Property; will improve the quality of life for the community; is expected to generate approximately fifty-eight (58) part-time and full-time construction jobs over the duration of the construction of the Project and approximately seventy (70) part-time and full-time jobs in connection with the operation of the Project; will serve as a catalyst for further private investment in areas surrounding the Property and will enhance the economic development of the Borough. The benefits to the Borough accruing as a result of the Project, including the generation of jobs and the generation of municipal revenues, will substantially outweigh any incremental costs to the Borough resulting from the Long Term Tax Exemption granted herein.

The Long Term Tax Exemption is important to the Borough and the Entity because without the incentive of the Long Term Tax Exemption, it is unlikely that the Project would be undertaken. The Long Term Tax Exemption will allow the Entity to provide a high level of maintenance for the Property.

Section 2.2 Approval of Agreement

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

Section 2.3 Approval of the Entity

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

Section 2.4 Redevelopment of the Property

The Entity agrees that it will develop, construct, operate and maintain the Project in accordance with the terms of the Redevelopment Plan and the approvals granted by the Planning Board of the Borough.

Section 2.5 Entity's Relationship to Property

The Entity is the fee simple owner of the Property.

ARTICLE III – OWNERSHIP, MANAGEMENT AND CONTROL

Section 3.1 Entity's Representation

The Entity represents that it shall remain the fee title owner of the Property throughout the development and construction of same, subject to its right of transfer in accordance with Section 8.1 hereof.

Section 3.2 Required Provisions of Financial Agreement

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 incorporated herein by reference as if set forth at length, and the Entity represents and warrants as to the accuracy of the contents thereof.

Section 3.3 Fiscal Plan

The Entity represents that the Project shall be financed in accordance with the representations set forth in the Application, including the Fiscal Plan attached thereto, which is also attached hereto as Exhibit B. The Application and Fiscal Plan set forth, among other things, the estimated Total Project Cost, amortization rates on the Total Project Cost, the source of funds, the interest rates to be paid on construction financing, the source and amount of paid in capital, and the terms of any mortgage amortization.

Section 3.4 Estimated Rental Schedule

The Entity sets forth its good faith projections of the Annual Gross Revenue from the Project in the Fiscal Plan annexed to and made a part of this Financial Agreement at Exhibit B.

ARTICLE IV - TAX EXEMPTION; ANNUAL SERVICE CHARGE

Section 4.1 Term

Subject to compliance with this Agreement, this Agreement shall be in effect from the Effective Date through the Termination Date. However, in no case shall this Agreement remain in effect longer than 35 years from the Effective Date. Upon the expiration of this Agreement (i) the tax exemption for the Project shall expire and the Property and the Improvements thereon shall thereafter be assessed and taxed according to the general law applicable to other non-exempt property in the Borough and (ii) any restrictions and limitations upon the Entity shall terminate upon such Entity's rendering and the Borough's acceptance of its final accounting to the Borough, pursuant to N.J.S.A. 40A:20-13.

Section 4.2 Calculation of Annual Service Charge

In consideration of the Borough granting the Entity the Long Term Tax Exemption set forth in this Financial Agreement, the Entity shall pay to the Borough for municipal services supplied to the Project, as provided in the Exemption Law, an Annual Service Charge as follows:

(a) **Stage One:** From the ASC Commencement Date until the fifteenth anniversary of the ASC Commencement Date, the Annual Service Charge shall be an amount equal to the sum of (i) fifteen (15.0%) percent of AGR plus (ii) five (5%) percent of the then-current year's Annual Service Charge; and

(b) **Stage Two:** From the first day after the fifteenth anniversary of the ASC Commencement Date until the twentieth anniversary of the ASC Commencement Date, the Annual Service Charge shall be equal to the greater of an amount equal to the sum of (i) fifteen (15.0%) percent of AGR plus (ii) five (5%) percent of the then-current year's Annual Service Charge, or twenty (20%) percent of the amount of the taxes otherwise due on the value of the Property and the Improvements.

(c) **Stage Three:** From the first day after the twentieth anniversary of the ASC Commencement Date under the twenty-fourth anniversary of the ASC Commencement Date, the

Annual Service Charge shall be equal to the greater of an amount equal to the sum of (i) fifteen (15.0%) percent of AGR plus (ii) five (5%) percent of the then-current year's Annual Service Charge, or forty (40%) percent of the amount of the taxes otherwise due on the value of the Property and the Improvements;

(d) **Stage Four**: From the first day after the twenty-fourth anniversary of the ASC Commencement Date until the twenty-eighth anniversary of the ASC Commencement Date, the Annual Service Charge shall be equal to the greater of an amount equal to the sum of (i) fifteen (15.0%) percent of AGR plus (ii) five (5%) percent of the then-current year's Annual Service Charge, or sixty (60%) percent of the amount of the taxes otherwise due on the value of the Property and the Improvements;

(e) **Final Stage**: From the first day after the twenty-eighth anniversary of the ASC Commencement Date until the thirtieth anniversary of the ASC Commencement Date, the Annual Service Charge shall be equal to the greater of an amount equal to the sum of (i) fifteen (15.0%) percent of AGR plus (ii) five (5%) percent of the then-current year's Annual Service Charge, or eighty (80%) percent of the amount of the taxes otherwise due on the value of the Property and the Improvements.

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 Quarterly Installments

The Annual Service Charge or the Minimum Annual Service Charge, as the case may be, and Land Taxes, shall be paid in quarterly installments on those dates when *ad valorem* real estate tax payments on other properties within the Borough are due, subject to adjustment for over payment or underpayment within thirty (30) days after the close of each calendar year. If the Entity fails to so pay, the amount unpaid shall bear the highest rate of interest permitted in the case of the unpaid taxes or tax liens on the Property until paid. The Entity's failure to make the requisite payments of Annual Service Charge, Minimum Annual Service Charge or Land Taxes, in a timely manner shall constitute a Default under this Agreement and the Borough may, among its other remedies as provided in this Financial Agreement, proceed against the Project pursuant to the In Rem Tax Foreclosure Act, N.J.S.A. 54:5-1 et seq. In addition, the Borough may terminate this Agreement with respect to the Project in accordance with Section 5.4 hereof. Any Default arising out of the Entity's failure to pay the Annual Service Charge, Minimum Annual Service Charge or Land Taxes, shall not be subject to the dispute resolution remedies provided in Section 5.1.

Section 4.5 Rights and Obligations Related to Long Term Tax Exemption

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

(b) If the ASC Commencement Date occurs on a date other than the last day of a quarter, the amount of *ad valorem* real estate taxes for such period up to the ASC Commencement Date shall be based on a per diem basis for such quarter.

(c) Any lease of a Rental Unit to a Tenant shall be subject to the terms of this Financial Agreement and shall not require the consent or approval of the Borough. The Borough shall look solely to the Entity and not any Tenant with respect to the collection of the unpaid portion of the Annual Service Charge imputed to a particular unit.

Section 4.6 Remittance to County

The Borough shall remit to the County of Monmouth 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 4.7 Payment Prior to ASC Commencement Date

The Parties agree that conventional property taxes, including Land Taxes, are due from time to time in accordance with Applicable Law prior to the ASC Commencement Date.

Section 4.8 Other Municipal Services.

Nothing herein shall exempt the Entity from the payment of any applicable municipal services permitted and authorized to be charged and collected by the Borough in accordance with Applicable Law. The Entity shall timely pay for municipal services rendered to the Project and/or to the Property, if any, pursuant to the terms of the authorization proceedings authorizing same.

Section 4.9 Land Taxes

The Entity shall be obligated to make payment of Land Taxes according to the general laws applicable to all other tax ratables. Land Taxes shall be separately assessed for the Property in accordance with Applicable Law. The payment for Land Taxes shall be applied as a credit against the Annual Service Charge for the subsequent year. In any year that the Entity fails to make any Land Tax Payments when due and owing, such delinquency shall render the Entity ineligible for any land tax credits against the Annual Service Charge. The Entity is required to make payment of both the Annual Service Charge and the Land Taxes. The Entity is required to pay the full Land Taxes in any given year and no credits will be applied against the Annual Service Charge for partial payment of the Land Taxes. The Entity's failure to make the requisite Annual Service Charge payment and/or the requisite Land Taxes payment in a timely manner shall constitute a violation and breach of this Agreement. The Borough shall, among its other remedies, have the right to proceed against the Property pursuant to the Tax Sale Law and/or may declare a Default under this Agreement in accordance with Article V hereof.

Section 4.10 Administrative Fee

In addition to the Annual Service Charge, the Entity shall pay to the Borough an annual administrative fee in an amount equal to two percent (2.0%) of the Annual Service Charge. Such annual administrative fee shall be due on or before November 1 in each year following the ASC Commencement Date.

ARTICLE V - DISPUTE RESOLUTION; DEFAULT

Section 5.1 Agreement to Arbitrate

If the Borough or the Entity breaches this Financial Agreement (other than with respect to a Payment Default), or a dispute arises between the Parties regarding the terms and provisions set forth herein, then the Parties shall submit the dispute to arbitration, which shall utilize State law and the arbitration rules of the American Arbitration Association in the State, 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 demand for arbitration shall be filed in writing and shall be made within a reasonable time after a dispute or breach occurs. (Section 1.3(F) hereof shall not apply for purposes of the foregoing sentence.) The arbitrator(s) shall make written findings of fact and conclusions of law. Any arbitration award may be appealed by either party to the New Jersey Superior Court, Law Division, with respect to asserted errors of fact or law, and the outcome of such appeal may be further appealed in the State courts, and shall not be limited in any way due to the origin of the action in arbitration.

Notwithstanding the foregoing, if the Entity fails to pay the Annual Service Charge, Minimum Annual Service Charge or Land Taxes, the Borough, among its other remedies, reserves the right to proceed against the Project, pursuant to N.J.S.A. 54:5-1 to 54:5-129, and any Act supplementary or amendatory thereof, and shall not be required to submit such matters to arbitration. 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 is pertinent to this Agreement, as if the Annual Service Charge are taxes or municipal liens on land.

Section 5.2 Covenant to Make Payments

The Entity agrees that the timely payment of the Land Taxes and the Minimum Annual Service Charge or the Annual Service Charge, to the Borough, as well as continued compliance with 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 Remedies upon Default

All of the remedies provided in this Agreement, and all rights and remedies granted to the Parties by law and equity, shall be cumulative and concurrent. No termination of any provision within this Agreement shall deprive the Borough of any of its remedies in accordance with law or actions against the Entity because of its failure to pay Land Taxes, the Annual Service Charge, and/or the water and sewer charges with interest payments. The bringing of any action due to a Default under this Agreement shall not be construed as a waiver of the right to enforce any other remedy provided in this Agreement. Nothing in this Agreement shall be deemed to create personal liability on the part of any Entity for any of the provisions of this Agreement, the Borough's rights and remedies to collect any obligation due and owing hereunder to be the same as the Borough's rights and remedies with respect to collection of real estate taxes generally under Applicable Law.

Section 5.4 Notification of Breach Required

Other than with respect to the nonpayment or late payment of all or a portion of Land Taxes, the Annual Service Charge or Minimum Annual Service Charge (any of the foregoing a "Payment Default"), the Borough 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 ten (10) days of its occurrence, or fails to cure any other breach within thirty (30) Days after the actual delivery of notice by the Borough, or within any additional periods to which the Parties may agree to, in writing (with respect to defaults other than Payment Defaults, the Borough shall not unreasonably refuse to grant a reasonable extension of the cure period, not to exceed sixty (60) days after the Notice unless the Borough in its sole discretion shall agree to a longer cure period), the Borough may invalidate the Long Term Tax Exemption by providing thirty (30) Days' written notice to the Entity, which shall inform the Entity that the Long Term Tax Exemption shall terminate at the expiration of said thirty (30) Day notice period due to the breach of the terms of this Financial Agreement.

Section 5.5 Force Majeure

Neither Party shall be liable to the other for failure to perform its obligations under this Agreement due to causes that are beyond the reasonable control and not substantially due to the fault or negligence of the party seeking to excuse delay or failure of performance of an obligation hereunder by reason thereof, including, but not limited to, declarations of public emergency; acts of nature (as to weather-related events, limited to severe and unusual events or natural occurrences such as hurricanes, tornadoes, earthquakes, and floods); acts of the public enemy; acts of terrorism; acts of war; fire; epidemics; quarantine restrictions; blackouts, power failures, or energy shortages; governmental embargoes; strikes or similar labor action by equipment or material suppliers or transporters, or unavailability of necessary building materials. Notwithstanding the foregoing, the payment of Land Taxes, Annual Service Charge and Minimum Annual Service Charge are material conditions of this Agreement which shall not be excused by the occurrence of a force majeure event.

Section 5.6 Certificate of Occupancy

It is understood and agreed that it shall be the obligation of the Entity to obtain any Certificates of Occupancy required by law in a reasonably timely manner. The Borough shall reasonably cooperate in processing Entity's request(s) for the issuance of any Certificate(s) of Occupancy.

Section 5.7 Filing of Certificate of Occupancy

It shall be the responsibility of the Entity to forthwith file with both the Tax Assessor and the Tax Collector a copy of any Certificate of Occupancy issued for the Project.

Failure of the Entity to file such issued Certificate of Occupancy as required by the preceding paragraph shall not militate against any action or non-action taken by the Borough, including, if appropriate, retroactive billing with interest for any charges determined to be due, in the absence of such filing by the Entity.

ARTICLE VI - LIMITATION ON PROFITS

Section 6.1 Entity's Covenant of Limitation on Profits

During the period of tax exemption as provided herein, the Entity shall be subject to a limitation of its profits pursuant to the provisions of *N.J.S.A. 40A:20-15*. Pursuant to *N.J.S.A. 40A:20-3(c)*, this calculation is completed in accordance with generally accepted accounting principles.

Section 6.2 Permitted Reserves

The Entity shall have the right to establish a reserve against vacancies, unpaid rentals, and reasonable contingencies in an amount up to ten percent (10%) of the Annual Gross Revenues of the Entity for the prior fiscal year (hereinafter referred to as the "Reserve") and may retain such part of the Excess Net Profits as is necessary to eliminate a deficiency in that Reserve, as provided in *N.J.S.A. 40A:20-15*.

Section 6.3 Payment of Dividend and Excess Profit Charge

In accordance with *N.J.S.A. 40A:20-15*, if the Net Profits of the Entity shall exceed the Allowable Net Profits in any accounting period, then the Entity, within ninety (90) days after the end of the accounting period, shall pay such Excess Net Profits to the Borough as an additional Annual Service Charge; provided, however, that the Entity may maintain a Reserve as determined pursuant to Section 6.2.

Section 6.4 Payment of Reserve/Excess Net Profit Upon Termination, Expiration or Sale.

The Termination Date of this Agreement, or the date of sale or transfer of the Improvements, shall be considered to be the close of the fiscal year of the Entity. Within ninety

(90) days after such date, the Entity shall pay to the Borough the amount of the Reserve, if any, maintained by it pursuant to Section 6.2, and the Excess Net Profits, if any.

ARTICLE VII - TERMINATION OF AGREEMENT AND INSPECTIONS

Section 7.1 Voluntary Termination of the Financial Agreement by Entity

Pursuant to the Exemption Law, the Entity or any Transferee may at any time after the expiration of one (1) year from the ASC Commencement Date, notify the Borough in writing that, as of a certain date designated in the notice, it relinquishes its status as an urban renewal entity under the Exemption Law and that the Entity, or Transferee, has obtained the consent of the Commissioner of the Department of Community Affairs, if required by Applicable Law. As of that date, all of the obligations and requirements contained in this Financial Agreement shall terminate. Notwithstanding the foregoing, such relinquishment shall not impact the obligation of the Entity or the Transferee, as applicable, to make payment of any Land Taxes, Annual Service Charge or Minimum Annual Service Charge that has accrued up to and including the Termination Date, or the obligation of the Entity or the Transferee, as applicable, to perform the final accounting required by the Exemption Law and Section 7.2 below.

Section 7.2 Termination and Final Accounting

Within ninety (90) Days after the Termination Date, whether by affirmative action of the Entity or by virtue of the provisions of the Applicable Law or pursuant to the terms of this Financial Agreement, the Entity shall provide a final accounting and pay to the Borough the Reserve, if any, pursuant to N.J.S.A. 40A:20-15, as well as any Excess Net Profits, if any payable as of that date. For purposes of rendering a final accounting, the Termination Date of the Financial Agreement shall be deemed to be the end of the fiscal year for the Entity.

Section 7.3 Taxes After Termination Date

After the Termination Date, the Long Term Tax Exemption shall expire, and the Property and the Improvements constructed thereupon shall thereafter be assessed and conventionally taxed according to Applicable Law as other real property in the Borough.

Section 7.4 Rights of Inspection

The Entity shall permit the inspection of its property, equipment, buildings and other facilities of the Project by representatives duly authorized by the Borough and Division of Local Government Services in the Department of Community Affairs pursuant to N.J.S.A. 40A:20-9(e). The Entity shall also permit, upon written request, examination and audit of its books, contracts, records, documents and papers relating to the Project by representatives duly authorized by the Borough and Division of Local Government Services in the Department of Community Affairs pursuant to N.J.S.A. 40A:20-9(e). Such inspection shall be made upon five (5) days' prior written notice, in the presence of an officer or agent designated by the Entity. To the extent reasonably possible, the inspection will not materially interfere with construction or operation of the Project. Nothing in this section shall be construed to affect, limit or restrict the

powers of municipal, county, State or other officials from carrying out those inspections that are generally applicable outside of the Exemption Law context, including, but not limited to, inspections by fire officials, construction code officials, etc.

ARTICLE VIII - SALE OR LEASE OF PROJECT

Section 8.1 Approval of Sale of Project to Entity Formed and Eligible to Operate Under Applicable Law

The Entity shall not transfer all or any portion of the Project without the prior written approval of the Borough, except that after completion of the Project, the Entity shall be permitted to transfer all or any portion of the Project to another urban renewal entity, qualified and organized under the Exemption Law (a "Transferee"), and approved by the Borough under the conditions set forth herein. As permitted by N.J.S.A. 40A:20-10(a), it is understood and agreed that the Borough, on written application by the Entity after completion of the Project, shall consent to a sale of the Project and the transfer of this Agreement provided: (i) the transferee entity does not own or lease any other Project subject to long term tax exemption at the time of transfer; (ii) the transferee entity is formed and eligible to operate under the Exemption Law; (iii) the Entity is not then in Default of this Agreement or the Exemption Law; (iv) the Entity's obligations under this Agreement are fully assumed by the transferee entity; (v) the transferee entity agrees to abide by all terms and conditions of this Agreement including, without limitation, the filing of an application pursuant to N.J.S.A. 40A:20-8, and any other terms and conditions of the Borough in regard to the Project; (vi) the transferee entity possesses the requisite experience, qualifications, and financial capacity to operate and manage the Project; and (vii) the principal owners of the transferee entity possess the same business reputation, financial qualifications and credit worthiness as the Entity and are otherwise reputable.

Notwithstanding the above, it is expressly understood and agreed that the Entity is permitted, without the prior approval of the Borough, to effect the following transfers with respect to the Project:

- A. Encumber the Project, e.g., mortgage financing, development easements, etc., provided that any such encumbrance is subordinate to the lien of the Annual Service Charges.
- B. Transfer the ownership interest in the Entity to an Affiliate.
- C. Lease any portion of the Project to an end user, with such tenant not being required to be an entity eligible to operate under the Exemption Law.

Notwithstanding anything to the contrary contained in A. through C., above, or elsewhere in this Agreement, the Parties expressly agree and acknowledge that the Entity shall not enter into any lease, whether or not with an Affiliate or related entity, that shall operate to minimize or remove revenues properly includable in the calculation of Annual Gross Revenue.

Section 8.2 Obligations of Entity and Transferee after Conveyance

If the Entity transfers the Project to a Transferee with the consent of the Borough and the Transferee has assumed the contractual obligations of the transferor Entity with the Borough, 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 Borough any Reserve maintained by it pursuant to this Financial Agreement, as well as any Excess Net Profits payable to the Borough 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 to encumber and/or assign its fee title to the Property and/or Improvements for purposes of (i) financing the design, development and construction of the Project and (ii) permanent mortgage financing with respect to the Project.

(a) The Borough 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 Borough agrees that the Entity and or its affiliates may, subject to compliance with 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 Borough 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 Borough 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 Borough shall give written notice of such Default to the Secured Parties and the Borough agrees that, in the event such Default is not waived by the Borough 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 Borough will provide the Secured Parties a reasonable period of time to cure such Default, but in any event not less than twenty (20) days from the date of such 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) In the absence of a Default by the Entity, the Borough 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 Borough'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 the Project pursuant to Section 8.1 of this Financial Agreement, the Entity represents and covenants that the Entity will manage the Project or will contract with a third party management company. The Entity shall be free to enter into leases with Tenants for the Rental Units without the consent of the Borough.

Section 9.2 Computation of Gross Revenue

The Entity shall, for the duration of this Agreement, calculate the Annual Gross Revenue in accordance with the Exemption Law and this Financial Agreement and the computation of Annual Gross Revenue shall be shown on the Entity's Annual Audited 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 Borough, the Governing Body, the CFO of the Borough, 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 the final Certificate of Occupancy is issued for the Project, the Entity shall submit to the Mayor and Governing Body an audit of Total Project Cost certified as to actual construction costs by the Entity's architect.

Section 9.5 Disclosure Statement

On each anniversary date of the execution of this Agreement, the Entity shall submit to the Mayor and Governing Body, who shall advise those municipal officials required to be advised, a disclosure statement listing the persons having an ownership interest in the Project, and the extent of the ownership interest of each and such additional information as the Borough may request from time to time.

ARTICLE X - INDEMNIFICATION

Section 10.1 Indemnification

It is understood and agreed that in the event the Borough shall be named as a party defendant in any action brought against the Borough or the Entity by allegation of any breach, Default or a violation of any of the provisions of this Agreement and/or the provisions of the Exemption Law or any other Applicable Law, the Entity shall indemnify and hold the Borough harmless from and against all liability, losses, damages, demands, costs, claims, actions or expenses (including reasonable attorneys' fees and expenses) of every kind, character and nature arising out of or resulting from the action or inaction of the Entity and/or by reason of any breach, Default or a violation of any of the provisions of this Agreement, the provisions of the Exemption Law and/or any other Applicable Law except for any willful misconduct by the Borough or any of its officers, officials, employees or agents, and the Entity shall defend the suit at its own expense. The Borough shall be entitled to intervene in any such suit, and retain attorneys of its choosing, whether as party defendant or intervener, the cost of such attorneys to be borne by the Entity in accordance with this Section.

ARTICLE XI - MISCELLANEOUS PROVISIONS

Section 11.1 Governing Law

This Financial Agreement shall be governed by the provisions of Applicable Law including but not limited to the Exemption Law. This Agreement shall be construed and enforced in accordance with the laws of the State, without regard to or aid of any presumption or other rule requiring construction against the party drawing or causing this Agreement to be drawn since counsel for both the Entity and the Borough have combined in their review and approval of same.

Section 11.2 Oral Representation

Neither Party hereto has made any oral representation that is not contained in this Financial Agreement. This Financial Agreement and the Application, including all of the Exhibits attached and annexed hereto and thereto, constitute the entire Financial Agreement by and between the Parties.

Section 11.3 Modification

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

Section 11.4 Notices

A notice, demand or other communication required to be given under this Agreement by any Party to the other shall be in writing and shall be sufficiently given or delivered if dispatched by United States Registered or Certified Mail, postage prepaid and return receipt requested, or delivered by overnight courier or delivered personally (with receipt acknowledged) to the parties at their respective addresses set forth herein, or at such other address or addresses with respect to the parties or their counsel as any party may, from time to time, designate in writing and forward to the others as provided in this Section:

a) When sent by the Borough to the Entity:

KKF University Enterprises Urban Renewal, LLC
40 Monmouth Park Highway
P.O. Box 70
West Long Branch, New Jersey 07764
Attention: Stanley J. Koreyva, Jr.

with a copy to:

Archer & Greiner, P.C.
Riverview Plaza
10 Highway 35
Red Bank, New Jersey 07701-5902
Attn: Brian M. Nelson, Esq.

b) When sent by the Entity to the Borough:

Borough of Oceanport
315 E. Main Street
Oceanport, New Jersey 07757
Attn: Borough Clerk

with a copy to:

McManimon, Scotland & Baumann, LLC
75 Livingston Avenue, 2nd Floor
Roseland, New Jersey 07068
Attn: Matthew D. Jessup, Esq.

From time to time either Party may designate a different person or address for all the purposes of this Notice provision by giving the other Party no less than ten (10) days' notice in advance of such change of address in accordance with the provisions hereof. Notices shall be effective upon the earlier of receipt or rejection of delivery by the addressee. Any notice given by an attorney for a Party shall be effective for all purposes. In addition, if the Entity delivers formal written notice to the Borough in accordance with this Agreement, of the name and address of Entity's

mortgagee, then the Borough shall provide such mortgagee with a copy of any notice required to be sent to the Entity.

Section 11.5 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 11.6 Good Faith

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

Section 11.7 Certification

The Borough Clerk shall certify to the Tax Assessor, pursuant to N.J.S.A. 40A:20-12, that a Financial Agreement with an urban renewal entity, i.e., the Entity, for the development of the Project, has been entered into and is in effect as required by the Exemption Law. Delivery by the Borough Clerk to the Tax Assessor of a certified copy of the Ordinance and this Financial Agreement shall constitute the required certification. Upon certification as required hereunder and upon the ASC Commencement Date, the Tax Assessor shall implement the tax exemption and continue to enforce that tax exemption without further certification by the Borough Clerk until the expiration of the entitlement to tax exemption by the terms of this Financial Agreement or until the Tax Assessor has been duly notified by the Borough Clerk that the tax exemption has been terminated.

Further, within 10 calendar days following the later of the effective date of the Ordinance or the execution of the Financial Agreement by the Entity, the Borough Clerk shall transmit a certified copy of the Ordinance and the Financial Agreement to the chief financial officer of Monmouth County and to the Monmouth County Counsel for informational purposes.

Section 11.8 Estoppel Certificate

Within thirty (30) days following written request therefore by the Entity, or any mortgagee, purchaser, tenant or other party having an interest in the Project, the Borough 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 Borough's knowledge, no Default has occurred under this Agreement (nor any event which, with the passage of time and/or the giving of notice would result in the occurrence of a Default) or stating the nature of any Default, and (iii) stating any such other reasonable information as may be requested. In the event the estoppel certificate discloses a Default, it shall also state the manner in which such Default may be cured.

Section 11.9 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.

[Signature Page Follows]

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

Attest:

BOROUGH OF OCEANPORT



Jeanne Smith
Borough Clerk

By: 

Name: John F. Coffey, II

Title: Mayor

SEAL

Dated: 9/8/2020

**KKF UNIVERSITY ENTERPRISES URBAN
RENEWAL, LLC**

Dated: _____

By: _____

Name:

Title:

STATE OF)
)
COUNTY OF) SS.:

Be it remembered that on the ____ day of _____, 2020, _____ personally appeared before me, and this person acknowledged under oath, to my satisfaction that:

- (a) he is the _____ of KKF University Enterprises Urban Renewal, LLC, the general partner of the 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.

STATE OF NEW JERSEY)
)
COUNTY OF MONMOUTH)

SS.:

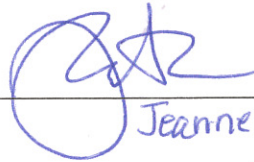
Be it remembered that on the 8th day of September, 2020, John F. Coffey, III, personally appeared before me, and this person acknowledged under oath, to my satisfaction that:

(a) he is the Mayor of the Borough of Oceanport, New Jersey, the Borough in the attached Financial Agreement;

(b) he is authorized to execute the attached Financial Agreement on behalf of the Borough;

(c) he executed the attached Financial Agreement on behalf of and as the act of the Borough; and

(d) the attached Financial Agreement was signed and made by the Borough as its duly authorized and voluntary act.



Jeanne Smith, RMC.

JEANNE SMITH
NOTARY PUBLIC OF NEW JERSEY
Comm. # 2257019
My Commission Expires 8/8/20 25

EXHIBIT A – PROPERTY DESCRIPTION

LANGAN**EXHIBIT "A"**

Technical Excellence
 Practical Experience
 Client Responsiveness

Revised: 04 December 2019
 Revised: 04 November 2019
 Revised: 20 May 2019
 Revised: 30 January 2019
 23 August 2017
 100291701

**WRITTEN DESCRIPTION
 FORT MONMOUTH PHASE ONE - SQUIER HALL
 BLOCK 110, PORTION OF LOT 1
 (ABOUT TO BE KNOWN AS BLOCK 110.09, LOT 1)
 IN THE BOROUGH OF OCEANPORT
 MONMOUTH COUNTY, NEW JERSEY**

BEGINNING at a pin and cap, identified Langan Engineering, set on the westerly line of a public roadway known as Oceanport Avenue, (60 feet wide) and the northerly line of a public roadway known as Hildreth Avenue (100 feet wide), and running; thence

- A. Along the said northerly line southerly on a curve to the right having an arc distance of 78.54 feet, a radius of 50.00 feet and a central angle of 90°00'00" and being subtended by a chord which bears South 17°23'54" West, a distance of 70.71 feet to a point of tangency; thence
 - B. Continuing along same South 62°23'54" West, a distance of 53.25 feet to a point of curvature; thence
 - C. Westerly along a curve to the right having an arc distance of 28.77 feet, a radius of 50.00 feet and a central angle of 32°57'56" and being subtended by a chord which bears South 78°52'52" East, a distance of 28.37 feet to a point of tangency, said point being the intersection of Hildreth Avenue and the northerly line of a public roadway known as Russel Avenue (60 feet wide); thence
 - D. Along said northerly line North 84°38'10" West, a distance of 626.31 feet to a point at the intersection of Russel Avenue and a public road known as Sherrill Avenue (60 feet wide); thence
 - E. Along the northerly line of said Sherrill Avenue, South 62°01'19" West, a distance of 374.52 feet to a point; thence
 - F. Continuing along same South 68°33'12" West, a distance of 1,844.78 feet to the Point of Beginning; thence
1. Along said northerly line of Sherrill Avenue, South 68°33'12" West, a distance of 119.91 feet to a pin and cap, identified Langan Engineering, set; thence
 2. Continuing along same, South 74°12'25" West, a distance of 324.62 feet to a pin and cap, identified Langan Engineering, set on a curve; thence
 3. Leaving said northerly line along a non-tangent curve to the left having an arc distance of 48.94 feet, a radius of 61.33 feet and a central angle of 45°43'37" and being subtended by a chord which bears North 06°55'28" East, a distance of 47.66 feet to an 'X' cut set at the point of tangency; thence

Written Description - Fort Monmouth Phase One- Squier Hall
Block 110, Portion of Lot 1 (About To Be Known As Block 110.09, Lot 1)
In the Borough of Oceanport, Monmouth County, New Jersey
Langan Project No.: 100741801

Revised: 04 December 2019
Revised: 04 November 2019
Revised: 20 May 2019
Revised: 30 January 2019
23 August 2017
Page 2 of 2

4. North 15°56'21" West, a distance of 386.35 feet through a pin and cap, identified Langan Engineering, set 24.40 feet from the edge of Parkers Creek; thence
5. Along Parkers Creek, North 67°09'42" East, a distance of 147.36 feet to a point; thence
6. South 84°40'29" East, a distance of 149.02 feet to a pin and cap, identified Langan Engineering, set; thence
7. North 83°04'22" East, a distance of 44.99 feet to a point; thence
8. North 67°11'12" East, a distance of 114.11 feet to a point; thence
9. North 03°41'51" West, a distance of 104.57 feet to a point; thence
10. North 63°59'48" East, a distance of 19.28 feet to a point; thence
11. South 88°15'51" East, a distance of 13.95 feet to a point; thence
12. South 58°47'53" East, a distance of 32.84 feet to a point; thence
13. North 79°30'55" East, a distance of 56.56 feet to a point, said point being 55.81 feet from a pin and cap, identified Langan Engineering, set; thence
14. South 21°26'48" East, a distance of 378.91 feet to a pin and cap, identified Langan Engineering, set on the northerly line of aforementioned Russel Avenue; thence
15. Along said northerly line, South 46°42'30" West, a distance of 149.02 feet to a pin and cap, identified Langan Engineering, set at the point of curvature; thence
16. Southerly along a curve to the right, having an arc distance of 57.19 feet, a radius of 150.00 feet and a central angle of 21°50'42" and being subtended by a chord which bears South 57°37'51" West, a distance of 56.84 feet to the point of BEGINNING.

Encompassing an area of 249,751 Sq. Ft. or 5.733 acres.

This description is prepared in accordance with a plan entitled, "Boundary Survey, Fort Monmouth, Squier Hall, Borough of Oceanport, Monmouth County, New Jersey" prepared by Langan Engineering and Environmental Services, Parsippany, New Jersey, Job No. 100741801, dated October 29, 2018 and last revised December 4, 2019, Drawing No. VB101.

David R. Avery
Professional Land Surveyor
New Jersey License No. 24GS03964600

NJ Certificate of Authorization No. 24GA27896400
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EXHIBIT B – FISCAL PLAN AND ESTIMATED RENTAL SCHEDULE

EXHIBIT 13

PROJECT PRO FORMA

**Adaptive Reuse of Squier Hall, a designated Historic Building on the
Campus of the former Fort Monmouth Army Base, as the
Monmouth County Campus of New Jersey City University**

**283 Sherrill Avenue, Block 110.09, Lot 1,
Oceanport, New Jersey 07750**

Exhibit 13 is a composite exhibit consisting of three (3) pages. The first page is a Summary of Total Development Costs, which indicates an overall expense of \$22,442,660.00, to be financed via private equity (\$8,977,064.00) and a traditional bank construction loan (\$13,465,596.00). The Total Development Costs are comprised of all construction costs (including pre-redevelopment expenses, such as demolition costs and the expense of an emergency roof replacement), all land acquisition costs, all soft costs, including architectural and engineering fees, and all financing costs.

The second page of the composite Exhibit 13 sets forth the formulaic Fixed Rent calculation for two periods of time, to wit: (1) during the first five years of the Lease; and (2) from year six of the Lease and all years thereafter. Complete details regarding the computation of Fixed Rent are set forth in Section 4.1 of the Development and Lease Agreement and the Section 2 of the Second Amendment to the Development and Lease Agreement, as well as in new Exhibit 4.1.(b) of the Second Amendment.

The third page of the composite Exhibit 13 is a Pro Forma Rent Schedule (including gross rent payments, triple net lease impositions, debt service payments, management fees, and net cash or net annual revenue, which reflects a return on equity of slightly less than 6.0% during years one through five and slightly more than 8.5% thereafter, a return on equity that is significantly less than typical returns on equity for rental investments.

Squire's Hall
Development Cost Summary

Total Equity Loan

Land	\$	650,000	\$	650,000	Monmouth County and Sewer Extension Fees
Hard Costs					
DeSano Soft Costs	\$	2,213,548	\$	-	Includes GR, GC Construction Fee and Insurance
DeSano Hard Costs	\$	13,434,612	\$	-	Includes Demo, Site and Building
Total DeSano	\$	15,648,160	\$	2,182,564	Per Contract with DeSano Contracting
Contingency	\$	480,000	\$	480,000	3% of Fixed Price Contract
Total Hard Costs	\$	16,128,160	\$	2,662,564	\$ 13,465,596

Soft Costs					Actual to date plus \$50,000
Legal (Approvals & Lease)	\$	965,000	\$	965,000	Signed Agreement
Architectural	\$	854,000	\$	854,000	Best estimate
Engineering	\$	475,000	\$	475,000	Consultants
Other Professional fees	\$	50,000	\$	50,000	Approximates 1% of hard costs
Permits (Site/Building)/Applications	\$	150,000	\$	150,000	Fees to town and county
Escrow Fees	\$	50,000	\$	50,000	Best estimate
Ownership Costs & GR	\$	50,000	\$	50,000	Best estimate
Ownership Insurance (BR & Umb)	\$	70,000	\$	70,000	Fee to NJCU representative
Construction Fee (CTC Fee)	\$	269,700	\$	269,700	Fee to PRC as owner/developer
Development Fee (PRC)	\$	1,024,000	\$	1,024,000	Grid Realty
Commission	\$	723,100	\$	723,100	
Total Soft Costs	\$	4,680,800	\$	4,680,800	

Closing Costs					Prime + 1%
Capitalized Interest Fund (9/1/21)	\$	806,400	\$	806,400	3/4 point
Origination fees	\$	117,300	\$	117,300	Best estimate
Title Ins., Survey, Appraisal, etc.	\$	60,000	\$	60,000	
Total Issuance Costs	\$	983,700	\$	983,700	

Total Development Budget	\$	22,442,660	\$	8,977,064	\$ 13,465,596
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Equity/Debt Structure					
Equity - 40%	\$	8,977,064	Equity - 35%	\$	7,854,931
Debt - 60%	\$	13,465,596	Debt - 65%	\$	14,587,729
Total Sources	\$	22,442,660	Total Sources	\$	22,442,660

Squire's Hall
Fixed Rent Calculation

Total Development Cost: \$22,442,660
Equity @ 35%: \$7,854,931
Debt @ 65%: \$14,587,729

Term of Mortgage: 35 years, 5 years Interest Only
Mortgage Interest Rate: 4.25%

Years 1-5

Monthly Mortgage Payment Years 1-5: \$51,665
Monthly Fixed Rent:
Debt Component: \$51,665
Equity Component: \$78,549
Total Monthly Fixed Rent: \$130,214
Annual Fixed Rent: \$1,562,570

Years 6+

Monthly Mortgage Payment Year 6+: \$71,763
Monthly Fixed Rent:
Debt Component: \$71,763
Equity Component: \$78,549
Total Monthly Fixed Rent: \$150,312
Annual Fixed Rent: \$1,803,746

Squire's Hall Rent
Pro forma Rent

	Year 1	Year 2	Year 3	Year 4	Year 5	Years 6 - 35
Annual rent from Cost of Construction (a)	\$ 1,562,570	\$ 1,562,570	\$ 1,562,570	\$ 1,562,570	\$ 1,562,570	\$ 1,803,746
PILOT payments (b)	\$ 245,323	\$ 245,323	\$ 245,323	\$ 245,323	\$ 245,323	\$ 283,188
Property and Casualty Insurance	\$ 86,500	\$ 86,500	\$ 86,500	\$ 86,500	\$ 86,500	\$ 86,500
Total Rent and Impositions	\$ 1,894,393	\$ 1,894,393	\$ 1,894,393	\$ 1,894,393	\$ 1,894,393	\$ 2,173,434
Less:						
Management Fees ©	\$ (75,776)	\$ (75,776)	\$ (75,776)	\$ (75,776)	\$ (75,776)	\$ (86,937)
PILOT payments (b)	\$ (245,323)	\$ (245,323)	\$ (245,323)	\$ (245,323)	\$ (245,323)	\$ (283,188)
Property and Casualty Insurance	\$ (86,500)	\$ (86,500)	\$ (86,500)	\$ (86,500)	\$ (86,500)	\$ (86,500)
Debt Service Payment	\$ (949,125)	\$ (949,125)	\$ (949,125)	\$ (949,125)	\$ (949,125)	\$ (949,125)
Net Cash	\$ 537,670	\$ 537,670	\$ 537,670	\$ 537,670	\$ 537,670	\$ 767,684

(a) Annual costs based on an Interest Rate of 4.25%

(b) Payment is based on 15.7% of annual rent

© Payment is based on 4% of revenues

EXHIBIT 14

PROJECT FINANCING PLAN

**Adaptive Reuse of Squier Hall, a designated Historic Building on the
Campus of the former Fort Monmouth Army Base, as the
Monmouth County Campus of New Jersey City University**

**283 Sherrill Avenue, Block 110.09, Lot 1,
Oceanport, New Jersey 07750**

The estimated annual gross revenues (rent receipts) and anticipated annual services charges (PILOT charges) that will be generated by the Project are set forth in Exhibit 13 of this Long-Term Tax Abatement Application. Also set forth in the *pro forma* Rent Schedule (Exhibit 13) are the limited impositions (payable by the Tenant under the provisions of the triple net Lease) and limited expenses or costs of operations that produce anticipated net cash or net revenues.

The anticipated Total Project Costs or Total Development Costs are also contained in Exhibit 13. The total figure set forth (\$22,442,660.00) is different than the Estimated Construction Costs reflected in Exhibit 11, because Exhibit 11 does not include land acquisition costs, soft costs (except for architectural and engineering fees), financing costs, or pre-redevelopment expenses, such as demolition costs and the expense of an emergency roof replacement. However, all of those costs are disclosed in Exhibit 13 and referred to here, because they are germane for the purpose of providing a complete picture of development expenditures and the components involved in the calculation of formulaic rent, which also forms a part of Exhibit 13.

Initial efforts to finance the Project were pursued by the means of the issuance of taxable conduit revenue bonds through and with the Wisconsin-based Public Finance Authority. However, the combined effects of: (1) a reduction in the bond rating of New Jersey City University; (2) the inability to secure bond insurance for the prospective bond issue; and (3) the prevailing COVID-19 economic environment and related business dynamics necessitated the consideration of alternative Project financial planning. As a consequence, construction of the Project will be financed through the use of private equity capital and traditional institutional (bank) construction financing. The construction loan will be replaced by a transition to a mini-perm or permanent mortgage loan from a traditional lender (most likely, the same institution as the lender of the construction loan).

EXHIBIT 15

PRIVATE FINANCING COMMITMENTS

**Adaptive Reuse of Squier Hall, a designated Historic Building on the
Campus of the former Fort Monmouth Army Base, as the
Monmouth County Campus of New Jersey City University**

**283 Sherrill Avenue, Block 110.09, Lot 1,
Oceanport, New Jersey 07750**

Initial efforts to finance the Project were pursued by the means of the issuance of taxable conduit revenue bonds through and with the Wisconsin-based Public Finance Authority. However, the combined effects of: (1) a reduction in the bond rating of New Jersey City University; (2) the inability to secure bond insurance for the prospective bond issue; and (3) the prevailing COVID-19 economic environment and related business dynamics necessitated the consideration of alternative Project financial planning.

The Applicant/Owner/Redeveloper has applied for and has received a verbal commitment from OceanFirst Bank, headquartered in Toms River, New Jersey. A written commitment is expected by June 19, 2020. The salient terms of the loan are as follows: (1) a maximum construction period of eighteen (18) months, followed by a permanent mortgage loan; the overall term of which, including the construction period, shall not exceed ten (10) years; (2) an interest rate of prime plus one (1%) percent during construction; (3) the interest rate for the permanent mortgage will be based upon an index, with a floor of 3.75%; and (4) during the construction phase, only interest shall be payable, and, during the permanent phase, principal shall be amortized based upon a 25-year repayment schedule. It is anticipated that the OceanFirst loan will be closed by the end of July, 2020.