The Borough of Sayreville
Municipal Clerk's Office
167 Main Street
Sayreville, NJ 08872
Tel: 732-390-7020 • Fax: 732-390-0509

July 27, 2023

Jim Robinson
11 Borelle Square
Parlin, NJ 08859

Re: Request for Access to Public Records

Dear Mr. Robinson:

As requested pursuant to the Open Public Records Act, enclosed is the response from the Borough of Sayreville Clerk's Office.

If I can be of any further assistance, please do not hesitate to call my office.

Very truly yours,

Nicole L. Waranowicz
Deputy Municipal Clerk

NLW/jo

Long Term Tax Exemption
N.J.S.A. 40A:20-1, et seq.
(Market Rate Residential)

Re: The Borough of Sayreville, New Jersey
Sayreville Route 35-Phase 1 Redevelopment Area
Approximately 30 Acres
Block 538, Lots 9.02, 19.01, 20, 26, 26.01 and 27, and
Block 538.01, Lot 10

PREAMBLE

THIS FINANCIAL AGREEMENT ("Agreement") is made the 14th day of October, 2014 by and between **Highview Properties at Sayreville Urban Renewal LLC ("Entity")**, formed and qualified to do business under the provisions of the Long Term Tax Exemption Law of 1992, as amended and supplemented, *N.J.S.A.* 40A:20-1 *et seq.*, having its principal office at 280 Route 35 South, Red Bank, NJ 07701, and the **BOROUGH OF SAYREVILLE ("Borough")**, a Municipal Corporation of the State of New Jersey, having its principal office at 167 Main Street, Sayreville, NJ 08872.

RECITALS

WITNESSETH:

WHEREAS, the Entity is the owner, or contract purchaser, of certain property designated as Block 538, Lots 9.02, 19.01, 20, 26, 26.01 and 27, and Block 538.01, Lot 10 in the Borough of Sayreville, Middlesex County, New Jersey, and more particularly described by the Metes and Bounds Description set forth as Exhibit 1 to this Agreement; and

WHEREAS, this property is located within the boundaries of the Route 35 Redevelopment Area; and

WHEREAS, the Entity plans to construct a project that will consist of one hundred forty-eight (148) residential rental units (the "Project"), of which one hundred twenty-six (126) units shall be "market" units and the remaining twenty-two (22) units shall be affordable housing units, subject to final site plan approval; and

WHEREAS, the Entity has filed an application with the Borough for a long-term tax exemption for the Project ("Application"), commonly referred to as a payment in lieu of taxes ("PILOT") program; and

WHEREAS, on April 24, 2014, the Entity filed an application with the Sayreville Economic & Redevelopment Agency (SERA) to request a review of the Entity's Application for said PILOT and to request a recommendation from SERA to the Borough in support of the proposed PILOT; and

WHEREAS, SERA, upon reviewing the details of the proposed PILOT, agreed and recommended the same; and

WHEREAS, the Borough made the following findings:

A. The Relative Benefits of the Project, when compared to the costs, are as follows:

1. The current real estate tax generates only \$22,134.00 in property tax revenue from the redevelopment project area, whereas the Annual Service Charges as estimated, will generate revenue to the Borough of approximately \$212,870.00 annually, upon Project stabilization;

2. The Entity shall construct at its own cost and expense approximately twenty-two (22) affordable housing units to meet the obligation of the Borough pursuant to the New Jersey Fair Housing Act and related regulations;

3. The Project will help stabilize and contribute to the economic growth of existing local businesses and to the creation of new businesses in the Route 35 Redevelopment Area;

4. The Project will further the redevelopment objectives of the Route 35-Phase I Redevelopment Plan;

5. The requisite financial impact analysis, on file with the Office of the Borough Clerk, indicates that the benefits of the Project outweigh the costs to the Borough; and

B. Assessment of the Importance of the Tax Exemption in fulfilling the Project and influencing the locational decisions of probable occupants:

1. The relative stability and predictability of the Annual Service Charges will make the Project more attractive to finance the Redevelopment Project; and

2. The relative stability and predictability of the Annual Service Charges will allow the owner to stabilize its operating budget, provide a high level of maintenance to the building over the life of the Project; which will insure the likelihood of the success of the Project and insure that it will have a positive impact on the surrounding area;

WHEREAS, by the adoption of Ordinance #267-14 on August 11, 2014, the Borough Council approved the above findings and the tax exemption application and authorized the execution of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, and for other good and valuable consideration, it is mutually covenanted and agreed as follows:

ARTICLE I – GENERAL PROVISIONS

Section 1.1 Governing Law

This Agreement shall be governed by the provisions of the Long Term Tax Exemption Law, *N.J.S.A.* 40A:20-1 *et seq.*, as amended and supplemented, and Ordinance #267-14, which authorized the execution of this Agreement and is attached hereto as Exhibit 2. It being expressly understood and agreed that the Borough expressly relies upon the facts, data, and representations contained in the Application, attached hereto as Exhibit 3, in granting this tax exemption. However, where estimates or projections are provided, it is recognized by both parties that the numbers and results may be more or less, sometimes significantly so.

Section 1.2 General Definitions

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

(i) Allowable Net Profit - The amount arrived at by applying the Allowable Profit Rate to the Total Project Cost pursuant to *N.J.S.A.* 40A:20-3(c).

(ii) Allowable Profit Rate – The greater of twelve percent (12%) or the percentage per annum arrived at by adding 1.25% to the annual interest percentage rate payable on the Entity's initial permanent mortgage financing. 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 Allowable Profit Rate shall be the greater of twelve percent (12%) or the percentage per annum arrived at by adding 1.25% per annum to the interest rate on mortgage financing for and per comparable improvements in Middlesex County. The provisions of *N.J.S.A.* 40A:20-3(b) are incorporated herein by reference.

(iii) Annual Gross Revenue – Any and all revenue derived from or generated by the market rate residential aspect of the Project of whatever kind or amount, whether received as rent from any tenants or income or fees from third parties, including but not limited to fees or income paid or received for parking, laundry, health club user fees, or other services (such as lease premiums for view, fireplaces, etc.). No deductions will be allowed for operating or maintenance costs, including, but not limited to, gas, electric, water and sewer, garbage removal fees and insurance charges, whether paid for by the landlord, tenant or a third party, except for customary operating expenses of commercial tenants such as utilities, insurance and taxes (including payments in lieu of taxes) which shall be deducted from the Annual Gross Revenue based on the actual amount of such costs incurred.

(iv) Annual Service Charge – The amount 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 Improvements, pursuant to *N.J.S.A.* 40A:20-12.

(v) 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 certification of the Total Project Cost and clear computation of Net Profit. The contents of the Auditor's Report shall have been prepared in conformity with generally accepted accounting principles and shall contain at a minimum the following: a balance sheet, a statement of income, a statement of retained earnings or changes in stockholders' equity, a statement of cash flows, descriptions of accounting policies, notes to financial statements and appropriate schedules and explanatory material results of operations, cash flows and any other items required by Law. 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 AND who is NOT the Borough Auditor.

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

(vii) 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 this agreement.

(viii) Default – A breach of or the failure of the entity to perform any obligation imposed upon the Entity by the terms of this Agreement, or under the Law, beyond any applicable grace or cure periods.

(ix) Entity – The term Entity within this Agreement shall mean Highview Properties at Sayreville Urban Renewal LLC, which Entity is formed and qualified pursuant to *N.J.S.A.* 40A:20-5. It shall also include any subsequent purchasers or successors in interest of the Project, provided they are formed and operated under the Law.

(x) Improvements or Project – Any building, structure or fixture permanently affixed to the land and to be constructed and tax exempted under this Agreement.

(xi) In Rem Tax Foreclosure or Tax Foreclosure – A summary proceeding by which the Borough may enforce a lien for taxes due and owing by tax sale, under *N.J.S.A.* 54:5-129 *et seq.*

(xii) Land Taxes – The amount of taxes assessed on the value of land, on which the project is located and, if applicable, taxes on any pre-existing improvements. Land Taxes are not exempt; however, Land Taxes are applied as a credit against the Annual Service Charge.

(xiii) Land Tax Payments – Payments made on the quarterly due dates, including approved grace periods, if any, for Land Taxes as determined by the Tax Assessor and the Tax Collector.

(xiv) Law – The Long-Term Tax Exemption Law, *N.J.S.A.* 40A:20-1 *et seq.*, as amended and supplemented; Ordinance #267-14, which authorized the execution of this Agreement; and all other relevant Federal, State or Borough statutes, ordinances, resolutions, rules and regulations.

(xv) Lease Up Period – The Lease Up Period shall begin on the date of the issuance of the Certificate of Occupancy (whether permanent or temporary) for any Unit in the market rate residential aspect of the Project. During the Lease Up Period, the Entity shall pay the sum equal to the estimated Annual Service Charge, divided by the number of Units, divided by 12, for each Unit for each month after the Unit has received a Certificate of Occupancy, whether the Unit is actually occupied or generates revenue. The payment shall begin on the 1st day of the month following the issuance of the Certificate of Occupancy for that Unit. The Lease Up Period expires 30 months after the issuance of the first Certificate of Occupancy.

(xvi) Minimum Annual Service Charge – The Minimum Annual Service Charge shall be the greater of:

(1) The amount of the total taxes levied against all real property in the Project area covered by the Redevelopment Plan in the last full tax year in which the area was subject to taxation, or in the case of tax exempt property, the projected tax levy based upon the assessed value for the year in which the application is filed, which amount the parties agree is $22,134.00; or

(2) The amount paid during the Lease Up Period, as defined in Section 1.2(xv).

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 or this Agreement, would be less than the Minimum Annual Service Charge.

(xvii) Net Profit – The Gross Revenues of the Entity less all operating an non-operating expenses of the Entity, all determined in accordance with generally accepted accounting principles, 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 Borough of excess profits pursuant to *N.J.S.A.* 40A:20-16; (c) an annual amount sufficient to amortize (utilizing the straight line method-equal annual amounts) 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 this 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; (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 a proprietary ownership interest in the entity.

(xviii) Pronouns – "He" or "It" shall mean the masculine, feminine or neutral gender, the singular, as well as the plural, as context requires.

(xix) Substantial Completion – The determination by the Borough that the Project, in whole or in part, is ready for the use intended, which ordinarily shall mean the date on which the Project receives, or is eligible to receive any Certificate of Occupancy for greater than 50% of any portion of the Project.

(xx) Termination – Any act or omission which by operation of the terms of this Agreement shall cause the Entity to relinquish its tax exemption.

ARTICLE II – APPROVAL

Section 2.1 Approval of Tax Exemption

The Borough hereby grants its approval for a tax exemption for all the Improvements to be constructed and maintained in accordance with the terms and conditions of this Agreement and the provisions of the Law which Improvements shall be constructed on certain property known on the Official Tax Assessor's Map of the Borough as Block 538, Lots 9.02, 19.01, 20, 26, 26.01 and 27, and Block 538.01, Lot 10 and described by the Metes and Bounds Description in Exhibit 1 attached hereto.

Section 2.2 Approval of Entity

Approval is granted to the Entity whose Certificate of Formation is attached hereto as Exhibit 4. Entity represents that its Certificate of Formation contains all the requisite provisions of the Law; has been reviewed and approved by the Commissioner of the Department of Community Affairs; and has been filed with, as appropriate, the Office of the State Treasurer or Office of the Middlesex County Clerk, all in accordance with *N.J.S.A.* 40A:20-5.

Section 2.3 Improvements to be Constructed

Entity plans to construct a residential project that will be constructed pursuant to the preliminary and final major site plan approval attached hereto as Exhibit 6.

Section 2.4 Construction Schedule

The Entity agrees to diligently undertake to commence construction within six (6) months of obtaining site plan approval or final approval of this Agreement, including the non-appealable adoption of any ordinances required hereunder, whichever is later.

The Entity agrees to Substantially Complete the Project, defined as obtaining a Certificate of Occupancy (either temporary or permanent) for more than eighty-four (84) market residential units, within forty-two (42) months of obtaining site plan approval or final approval of this Agreement, including the non-appealable adoption of any ordinances required hereunder, whichever is later.

Section 2.5 Ownership, Management and Control

The Entity represents that it is the owner or contract purchaser of the property upon which the Project is to be constructed, and shall be the owner of the property prior to the commencement of construction. Upon construction, the Entity represents that the Improvements will be managed and controlled as follows:

The Entity represents that it shall be the owner of the property upon which the Project is to be constructed and will manage and control the Project. The Borough acknowledges that the Entity may enter into a management agreement for the Project and may pay a management fee to a separate company or individual to supervise the Project. The Borough acknowledges that the Entity may enter into future management agreements.

Section 2.6 Financial Plan

The Entity represents that the Improvements shall be financed in accordance with the Financial Plan attached hereto as Exhibit 7. The Financial Plan sets forth estimated Rents and Expenses, the source of funds, the estimated interest rates to be paid on construction and permanent financing, and the term of any mortgage amortization.

ARTICLE III – DURATION OF AGREEMENT

Section 3.1 Term

Provided there is compliance with the Law and this Agreement, it is understood and agreed by the parties hereto that this Agreement shall remain in effect for the earlier of twenty-six (26) years from the date of the adoption of Ordinance 267-14 on August 11, 2014, which approved the tax exemption, or twenty-three (23) years from the date of Substantial Completion of the Project. The tax exemption shall only be effective during the period of usefulness of the Project and shall continue in force only while the Project is owned by a corporation or association formed and operating under the Law.

ARTICLE IV – ANNUAL SERVICE CHARGE

Section 4.1 Annual Service Charge

In consideration of the tax exemption, the Entity shall make the following payments to the Borough:

(i) Borough Service Charge. An amount equal to the greater of the Minimum Annual Service Charge or an Annual Service ("ASC") equal to the sum of ten percent (10%) of the Annual Gross Revenues for the first eight (8) full year's following the issuance of the first Certificate of Occupancy; then, upon completion of eight (8) full years from the start of the ASC and for the next three (3) full years, the ASC shall be 11% of Annual Gross Revenues; then, upon completion of eleven (11) years from the date of the issuance of the first Certificate of Occupancy, the ASC shall be twelve percent (12%) of Annual Gross Revenues; then, as of April 1 in the year after completion of the fourteenth (14^{th}) year from the date of issuance of the first Certificate of Occupancy, the ASC shall be twelve percent (12%) or eighty percent (80%) of otherwise applicable taxes that would have been paid on the properties, whichever is greater. Then, upon completion of the nineteenth (19^{th}) year from the date of issuance of the first Certificate of Occupancy, the ASC shall be the greater of twelve percent (12%) of Annual Gross Revenue or eighty-five percent (85%) of the total annual property taxes that would otherwise have been paid on the properties as of April 1 in each year from the completion of the nineteenth (19^{th}) year following the issuance of the first Certificate of Occupancy through the twenty-fifth (25^{th}) year from the issuance of the first Certificate of Occupancy. Upon conclusion of the twenty-fifth (25^{th}) year from the issuance of the first Certificate of Occupancy, the Annual Service charge as to the market rate residential units shall terminate and regular property taxes shall be assessed and paid by the property owner thereafter.

A Minimum Annual Service Charge calculated under Section 1.2(xvi)(1) shall be due beginning on the effective date of this Agreement, and upon the start of the Lease Up Period. In the event the Entity fails to timely pay the Minimum Annual Service Charge or the Annual Service Charge, the amount unpaid shall bear the highest rate of interest permitted in the case of unpaid taxes or tax liens on land until paid.

Notwithstanding anything herein to the contrary, upon Substantial Completion, the Minimum Annual Service Charge shall be prorated in accordance with Section 1.2(xvi)(2) and the Lease Up Period.

The ASC shall be paid on or about November 1 in each year following the issuance of the first Certificate of Occupancy. The November 1 ASC payment shall reflect (and be a net payment of) Land Taxes.

(ii) County Service Charge. An amount equal to 5% of the Annual Service Charge shall be paid by the Borough to the County of Middlesex.

(iii) Land Taxes. The land associated with and included in the Project shall be assessed taxes using conventional procedures, employed and utilized by the municipal tax assessor. Land Taxes shall be paid quarterly and are made a part of the Annual Service Charge. The Entity is required to pay both the Annual Service Charge and land tax payments, however, the land tax payments shall be credited to the next succeeding ASC payment. The Entity is obligated to make timely land tax payments so as to be entitled to a land tax credit against the Annual Service Charge for the subsequent payment period. The Entity shall be entitled to a credit for the amount, without interest, of the land tax payments made in the last preceding quarterly installments against the Annual Service Charge, which shall be paid annually. In any quarter that the Entity fails to make any land tax payments within thirty (30) days of the due date, such delinquency shall render the Entity ineligible for any land tax payment credits against the Annual Service Charge for that quarter. No credit will be applied against the Annual Service Charge for partial payments of Land Taxes. In addition, the Borough shall have, among this remedy and other remedies, the right to proceed against the property pursuant to the In Rem Tax Foreclosure Act, *N.J.S.A.* 54:5-1 *et seq.*, and/or declare a Default and terminate this Agreement.

(iv) Staged Adjustments. The Annual Service Charge shall be adjusted in stages over the term of the tax exemption in accordance with *N.J.S.A.* 40A:20-12(b). The above ASC schedule and time periods meet or exceed the stages provided in the Law.

(v) Affordable Residential Units. The Annual Service Charge (tax exemption) applicable to the affordable units shall be ten percent (10%) of Annual Gross Revenues for a period of thirty (30) years following the issuance of the first Certificate of Occupancy applicable to the first affordable housing unit. These affordable housing units are often referred to as "COAH" units.

ARTICLE V – MATERIAL CONDITIONS

Section 5.1 Material Conditions

It is expressly agreed and understood that the timely payments of Land Taxes, Minimum Annual Service Charges, Annual Service Charges, including adjustments thereto, and any interest thereon, are Material Conditions of this Agreement.

ARTICLE VI – CERTIFICATE OF OCCUPANCY

Section 6.1 Certificate of Occupancy

It is understood and agreed that it shall be the obligation of the Entity to obtain all Certificates of Occupancy in a timely manner so as to complete construction in accordance with the proposed construction schedule. The failure to secure the Certificates of Occupancy in accordance with this Agreement shall subject the property to full taxation for the period between the date of Substantial Completion and the date the first Certificate of Occupancy is obtained.

Section 6.2 Filing of Certificate of Occupancy

It shall be the primary responsibility of the Entity to forthwith file with the Tax Assessor a copy of each Certificate of Occupancy. 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 VII – ANNUAL REPORTS

Section 7.1 Accounting System

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

Section 7.2 Periodic Reports

(i) Auditor's Report. Within ninety (90) days after the close of each fiscal or calendar year, depending on the Entity's accounting basis that the Agreement shall continue in effect, the Entity shall submit to the Mayor and Municipal Council and the New Jersey 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 include, but not be limited to: condominium unit purchase price or apartment unit rent amount(s); the terms and interest rate on any mortgage(s) associated with the purchase or construction of the Project; and such details as may relate to the financial affairs of the Entity and to its operation and performance hereunder, pursuant to the Law and this Agreement. The Report shall clearly identify and calculate the Net Profit for the Entity during the previous year.

(ii) Disclosure Statement. On the anniversary date of the execution of this Agreement, and each and every year thereafter while this agreement is in effect, the Entity shall submit to the Municipal Council, the Tax Collector and the Borough 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 and such additional information as the Borough may request from time to time.

Section 7.3 Inspection/Audit

The Entity shall permit the inspection of its property, equipment, buildings and other facilities of the Project and, if deemed appropriate or necessary, any other related entity by representatives duly authorized by the Borough and the New Jersey Division of Local Government services in the Department of Community Affairs. It shall also permit, upon request, examination and audit of its books, contracts, records, documents and papers. Such examination or audit shall be made during the reasonable hours of the business day, in the presence of an officer or agent designated by the Entity.

All costs incurred by the Borough to conduct the audit, including reasonable attorney's fees, if appropriate, shall be billed to the Entity and paid to the Borough as part of the Entity's Annual Service Charge, however, such payment shall not cause an increase in the Annual Service Charge required to be paid in Section 4.1 hereinbefore set forth. Delinquent payments shall accrue interest at the same rate as for delinquent service charges.

ARTICLE VIII – LIMITATION OF PROFITS AND RESERVES

Section 8.1 Limitation of Profits and Reserves

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.

The Entity shall have the right to establish a reserve against vacancies, unpaid rentals, and reasonable contingencies in an amount equal to five percent (5%) of the Gross Revenue of the Entity for the last full fiscal year preceding the year 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. The reserve is to be non-cumulative, it being intended that no further credits thereto shall be permitted after the reserve shall have attained the allowable level of five percent (5%) of the preceding year's Gross Revenue.

Section 8.2 Annual Payment of Excess Net Profit

In the event the Net Profits of the Entity, in any fiscal year, shall exceed the Allowable Net Profits for such period, then the Entity, within one hundred and twenty (120) days after the end of such fiscal year, shall pay such excess Net Profits to the Borough as an additional service charge; provided, however, that the Entity may maintain a reserve as determined pursuant to Section 8.1. The calculation of the Entity's excess net profits shall include those project costs directly attributable to site remediation and cleanup expenses and any other costs excluded in the calculation of the Total Project Cost even though those costs may have been deducted from the Project costs for purposes of calculating the Annual Service Charge.

Section 8.3 Payment of Reserve/Excess Net Profit Upon Termination, Expiration or Sale

The date of termination, expiration or sale 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 this section and the excess Net Profit, if any.

ARTICLE IX – ASSIGNMENT AND/OR ASSUMPTION

Section 9.1 Approval

Any sale or transfer of the Project, shall be permitted pursuant to the same terms and conditions as the Redevelopment Agreement, dated July 11, 2013, and attached hereto as Exhibit 5. It is understood and agreed that the Borough hereby consents to a sale of the Project and the transfer of this Agreement provided 1) the new entity does not own any other project subject to long term tax exemption located in the Borough, at the time of transfer; 2) a new entity is formed and deemed eligible to operate under the Law; 3) the Entity is not then in default of this Agreement or the Law; 4) the Entity's obligations under this Agreement is fully assumed by the new entity. Nothing herein shall prohibit any transfer of the ownership interest in the Entity itself provided that the transfer, if greater than 10%, is disclosed to the Borough in the annual disclosure statement or in correspondence sent to the Borough in advance of the filing of the annual disclosure statement.

ARTICLE X – COMPLIANCE

Section 10.1 Operation

During the term of this Agreement, the Project shall be maintained and operated in accordance with the provisions of the Law. Operation of the Project under this Agreement shall not only be terminable as provided by *N.J.S.A.* 40A:20-1 *et seq.*, as currently amended and supplemented, but also by Default under this Agreement.

The Entity's failure to comply with the Law shall constitute Default under this Agreement and the Borough shall, among its other remedies, have the right to terminate the tax exemption.

ARTICLE XI – DEFAULT

Section 11.1 Default

Default shall occur upon the failure of the Entity to conform to the terms of this Agreement or failure of the Entity to perform any obligation imposed by the Law, beyond any applicable notice, cure or grace period.

Section 11.2 Cure Upon Default

Should the Entity be in Default, the Borough shall send written notice to the Entity of the Default ("Default Notice"). The Default Notice shall set forth with particularity the basis of the alleged Default. The Entity shall have sixty (60) days from receipt of the Default Notice to cure any Default, and such cure shall be the sole and exclusive remedy available to the Entity. However, if, in the reasonable opinion of the Borough, the Default cannot be cured within sixty (60) days using reasonable diligence, the Borough will extend the time to cure.

Subsequent to such sixty (60) days, or any approved extension, the Borough shall have the right to terminate this Agreement in accordance with Section 12.1.

Should the Entity be in Default due to a failure to pay any charges pertaining to Material Conditions in Section 5.1, the Entity shall not be subject to the default procedural remedies as provided herein but shall allow the Borough to proceed immediately to terminate the Agreement as provided in Article XII herein.

Section 11.3 Remedies Upon Default

The Borough shall, among its other remedies, have the right to proceed against the property pursuant to the In Rem Tax Foreclosure Act, *N.J.S.A.* 54:5-1 *et seq.*, and/or may declare a Default and terminate this Agreement. Any default arising out of the Entity's failure to pay Land Taxes, the Minimum Annual Service Charge, Construction Code Fees or the Annual Service Charges shall not be subject to the default procedural remedies as provided in Article XI herein, but shall allow the Borough to proceed immediately to terminate the Agreement as provided in Article XII. All of the remedies provided in this Agreement to the Borough, and all rights and remedies granted to it by law and equity shall be cumulative and concurrent. No termination of any provision of this Agreement shall deprive the Borough of any of its remedies or actions against the Entity because of its failure to pay Land Taxes, the Minimum Annual Service Charge or the Annual Service Charge. This right shall apply to arrearages that are due and owing at the time or which, under the terms hereof, would in the future become due as if there had been no termination.

Further, the bringing of any action for Land Taxes, the Minimum Annual Service Charge, the Annual Service Charge, or for breach of covenant or the resort to any other remedy herein provided for the recovery of Land Taxes shall not be construed as a waiver of the rights to terminate the tax exemption or proceed with a tax sale or tax foreclosure action or any other specified remedy.

In the event of a Default on the part of the Entity to pay any charges set forth in Article IV, the Borough among its other remedies, reserves the right to proceed against the Entity's land and property, in the manner provided by the In Rem Foreclosure Act, and any act supplementary or amendatory thereof. Whenever the word taxes appear, or is applies, directly or impliedly 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 charges were taxes or municipal liens on land.

ARTICLE XII – TERMINATION

Section 12.1 Termination Upon Default of the Entity

In the event the Entity fails to cure or remedy the Default within the time period provided in Section 11.2, the Borough may terminate this Agreement upon thirty (30) days written notice ("Notice of Termination") to the Entity.

Section 12.2 Voluntary Termination by the Entity

The Entity may, after the expiration of one year from the Substantial Completion of the Project, notify the Borough that, as of a certain date designated in the notice, it relinquishes its status as a tax exempt Project. As of the date so set, the tax exemption, the Annual Service Charges and the profit and dividend restrictions shall terminate.

Section 12.3 Final Accounting

Within ninety (90) days after the date of termination, whether by affirmative action of the Entity or by virtue of the provisions of the Law or pursuant to the terms of this Agreement, the Entity shall provide a final accounting and pay to the Borough the reserve, if any, pursuant to the provisions of *N.J.S.A.* 40A:20-13 and 15 as well as any excess Net Profits. For purposes of rendering a final accounting, the termination of the Agreement shall be deemed to be the end of the fiscal year for the Entity.

Section 12.4 Conventional Taxes-Otherwise Applicable Taxes

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

ARTICLE XIII – DISPUTE RESOLUTION

Section 13.1 Arbitration

In the event of a breach of the within Agreement by either of the parties hereto or a dispute arising between the parties in reference to the terms and provisions as set forth herein, either party may apply to the Superior Court of New Jersey by an appropriate proceeding, to settle and resolve the dispute in such fashion as will tend to accomplish the purposes of the Law. In the event the Superior Court shall not entertain jurisdiction, then the parties shall submit the dispute to the American Arbitration Association in New Jersey to be determined in accordance with its rules and regulations in such a fashion to accomplish the purpose of the Long Term Tax Exemption Law. The cost for the Arbitration shall be borne equally by the parties. The parties agree that the Entity may not file an action in Superior Court or with the Arbitration Association unless the Entity has first paid in full all charges defined in Section 5.1 as Material Conditions.

ARTICLE XIV – WAIVER

Section 14.1 Waiver

Nothing contained in this Agreement or otherwise shall constitute a waiver or relinquishment by the Borough of any rights and remedies, including, without limitation, the right to terminate the Agreement and tax exemption for violation of any of the conditions provided herein. Nothing herein shall be deemed to limit any right of recovery of any amount which the Borough has under law, in equity, or under any provision of this Agreement.

ARTICLE XV – INDEMNIFICATION

Section 15.1 Defined

It is understood and agreed that in the event the Borough shall be named as party defendant in any action alleging any breach, default or a violation of any of the provisions of this Agreement and/or the provisions of *N.J.S.A.* 40A:20-1 *et seq*., the entity shall indemnify and hold the Borough harmless against any and all liability, loss, cost, expense (including reasonable attorneys' fees and costs, through trial and all stages of any appeal, including the cost of enforcing this indemnity) arising out of Agreement. In addition, the Entity expressly waives all statutory or common law defenses or legal principles which would defeat the purposes of this indemnification. The Entity also agrees to defend the suit at its own expense. However, the Borough maintains the right to intervene as a party thereto, to which intervention the Entity consents; the expense thereof to be borne by the Borough.

ARTICLE XVI – NOTICE

Section 16.1 Certified Mail

Any notice required hereunder to be sent by either party to the other shall be sent by certified or registered mail, return receipt requested.

Section 16.2 Sent by Borough

When sent by the Borough to the entity the notice shall be addressed to:

James Smith
Highview Properites at Sayreville Urban Renewal LLC
280 Route 35 South
Red Bank, NJ 07701

unless, prior to giving of notice, the Entity shall have notified the Borough in writing otherwise.

In addition, provided the Borough is sent a formal written notice in accordance with this Agreement, of the name and address of Entity's Mortgagee, the Borough agrees to provide such Mortgagee with a copy of any notice required to be sent to the Entity.

Section 16.3 Sent by Entity

When sent by the Entity to the Borough, it shall be addressed to:

Borough of Sayreville
Office of the Borough Clerk
167 Main Street
Sayreville, NJ 08872

with copies sent to the Corporation Counsel, the Business Administrator, and the Tax Collector unless, prior to the giving of notice, the Borough shall have notified the Entity otherwise. The notice to the Borough shall identify the Project to which it relates, i.e., the Urban Renewal Entity and the Property's Block and Lot number.

ARTICLE XVII – SEVERABILITY

Section 17.1 Severability

If any term, covenant or condition of this Agreement or the Application, except a Material Condition, shall be judicially declared to be invalid or unenforceable, the remainder of this Agreement or the application of such term, covenant or condition of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

If a Material Condition shall be judicially declared to be invalid or unenforceable and, provided the Entity is not in Default of this Agreement, the parties shall cooperate with each other to take the actions reasonably required to restore the Agreement in a manner contemplated by the parties and the Law. This shall include, but not be limited to the authorization and re-execution of this Agreement in a form reasonably drafted to effectuate the original intent of the parties and the Law. However, the Borough shall not be required to restore the Agreement if it would modify a Material Condition, the amount of the periodic adjustments or any other term of this Agreement which would result in any economic reduction or loss to the Borough.

ARTICLE XVIII – MISCELLANEOUS

Section 18.1 Construction

This Agreement shall be construed and enforced in accordance with the laws of the State of New Jersey, and 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 18.2 Conflicts

The parties agree that in the event of a conflict between the Application and the language contained in the Agreement, the Agreement shall govern and prevail. In the event of conflict between the Agreement and the Law, the Law shall govern and prevail.

Section 18.3 Oral Representations

There have been no oral representations made by either of the parties hereto which are not contained in this Agreement. This Agreement, the Ordinance authorizing the Agreement, and the Application constitute the entire Agreement between the parties and there shall be no modifications thereto other than by a written instrument approved and executed by both parties and delivered to each party.

Section 18.4 Entire Document

This Agreement and all conditions in the Ordinance of the Municipal Council approving this Agreement are incorporated in this Agreement and made a part hereof.

Section 18.5 Good Faith

In their dealings with each other, utmost good faith is required from the Entity and the Borough.

ARTICLE XIX – EXHIBITS

Section 19 Exhibits

The following Exhibits are attached hereto and incorporated herein as if set forth at length herein:

1. Metes and Bounds Description of the Project
2. Ordinance of the Borough Authorizing the Execution of this Agreement
3. PILOT Application
4. Certificate of Formation of the Entity
5. Redevelopment Agreement
6. Site Plan Approval
7. Financial Plan for the Project

IN WITNESS WHEREOF, the parties have caused these presents to be executed the day and year first above-written.

WITNESS:

HIGHVIEW HOMES, LLC

JOHN ABENE

ATTEST:

BOROUGH OF SAYREVILLE

Daniel E. Frankel,
Business Administrator

THERESA A. FARBANIEC, RMC
MUNICIPAL CLERK

METES AND BOUNDS DESCRIPTION
LOTS 9.02, 19.01, 20, 26, 26.01 AND 27 IN BLOCK 538
AND LOT 10 IN BLOCK 538.01
SITUATED IN THE BOROUGH OF SAYREVILLE
COUNTY OF MIDDLESEX, STATE OF NEW JERSEY

Beginning at a point in the most Northeasterly corner of Lot 13 in Block 538 as described in Deed Book 3502, Page 91, said point being 615.92 feet Easterly from the Easterly line of Mason Avenue (50' wide Right-of-Way) and running thence:

1. South 87 degrees 21 minutes 00 seconds East, 163.00 feet (164.00' deed) along the Southerly line of Lot 17, Lot 18 and Lot 19.03 to a point;
2. South 02 degrees 39 minutes 00 seconds West, 95.00 feet along the Westerly line of Lot 19.03 to a point;
3. South 87 degrees 21 minutes 00 seconds East, 135.90 feet along the Southerly line of Lot 19.03 to a point;
4. North 02 degrees 39 minutes 00 seconds East, 179.40 feet along the Easterly line of Lot 19.03 to a point;
5. South 87 degrees 21 minutes 00 seconds East, 212.66 feet (212.60' deed) along the Southerly line of Lot 21 and Lot 23 to a point;
6. North 02 degrees 39 minutes 00 seconds East, 35.00 feet along the Easterly line of Lot 23 to a point;
7. North 81 degrees 52 minutes 18 seconds East, 178.11 feet along the Southerly line of Lot 24 to a point;
8. North 02 degrees 39 minutes 00 seconds East, 35.00 feet along the Easterly line of Lot 24 to a point;
9. South 88 degrees 26 minutes 00 seconds East, 266.23 feet (270.00 feet deed) along the Southerly line of Lot 25 to a point in the Westerly line of Old Spye Road (variable width Right-of-Way; f.k.a. Morgan Road; f.k.a. County Road from South Amboy to Keyport; f.k.a. Ye Olde Spye Road);
10. Southeasterly, along the Westerly Right-of-Way line of Old Spye Road, following a curve to the Right, having a Radius of 553.69 feet, a Central Angle of 05 degrees 52 minutes 50 seconds, an Arc length of 56.85 feet and a Chord Bearing and Distance of South 41 degrees 28 minutes 59 seconds East, a distance of 56.82 feet to a point; thence
11. Southeasterly, along the Westerly Right-of-Way line of Old Spye Road, following a curve to the Right, having a Radius of 290.00 feet, a Central Angle of 06 degrees 50 minutes 52 seconds, an Arc length of 34.66 feet and a Chord Bearing and Distance of South 30 degrees 04 minutes 11 seconds East, a distance of 34.64 feet to a point; thence
12. South 26 degrees 38 minutes 45 seconds East, 123.23 feet along the Westerly line of Old Spye Road to a point;

13. South 35 degrees 43 minutes 11 seconds East, 46.36 feet along the Westerly line of Old Spye Road to a point;
14. South 24 degrees 52 minutes 00 seconds East, 89.43 feet along the Westerly line of Old Spye Road to a point;
15. South 57 degrees 59 minutes 00 seconds West, 129.12 feet along the common line of Lot 9.02 and Lot 9.01 to a point;
16. South 32 degrees 01 minutes 00 seconds East, 150.00 feet along the same to a point;
17. North 57 degrees 59 minutes 00 seconds East, 125.00 feet along the same to a point in the Westerly line of Old Spye Road;
18. South 32 degrees 01 minutes 00 seconds East, 215.00 feet along the Westerly line of Old Spye Road to a point;
19. South 51 degrees 03 minutes 00 seconds West, 223.48 feet along the common line of Lot 9.02 with Lot 8.01 and Lot 8.02 to a point;
20. South 38 degrees 27 minutes 00 seconds East, 215.43 feet to a point; (said line running along a possible gore or area of unclear title) to a point in or near New Back Creek;
21. North 68 degrees 41 minutes 00 seconds East, 55.95 feet along the Southerly line of Lot 1.01 to a point; (said line being in or near New Back Creek);
22. North 87 degrees 15 minutes 30 seconds East, 64.42 feet along the same to a point;
23. South 71 degrees 18 minutes 00 seconds East, 34.98 feet along the same to a point;
24. South 25 degrees 26 minutes 00 seconds East, 85.61 feet along the same; being the Southwesterly line of Lot 1.01 and Lot 4 to a point;
25. South 26 degrees 44 minutes 00 seconds East, 38.71 feet along the same; being the Southwesterly line of Lot 5 and Lot 6 to a point;
26. South 69 degrees 08 minutes 00 seconds West, 43.53 feet to a point;
27. South 38 degrees 42 minutes 00 seconds East, 397.22 feet to a point in Cheesequake Creek;
28. South 81 degrees 53 minutes 21 seconds West, 709.76 feet along a line thru Cheesequake Creek to a point in the Easterly line of Lot 13;
29. North 45 degrees 42 minutes 00 seconds West, 1411.82 feet along Easterly line of Lot 13 to a point;
30. North 02 degrees 39 minutes 00 seconds East, 312.30 feet along the same, (said line being parallel to Mason Avenue), to a point; said point being the point and place of beginning.

Containing: 29.610 Acres more or less.

EDWARD M. WEINER I
NEW JERSEY PROFESSIONAL LAND SURVEYOR
#24GS03128400
WSB ENGINEERING GROUP, P.A.
1018 SCHENCKS MILL LINE ROAD
TOMS RIVER, NJ 08753

INTRO & PASSED 1st READING 7-28-14
ADVERTISED ACCORDG. TO LAW 8-1-14
ADOPTED ON 2nd & FINAL READING 8-11-14
ADVERTISED ACCORDING TO LAW 8-14-14

ORDINANCE #267-14

AN ORDINANCE OF THE BOROUGH OF SAYREVILLE, COUNTY OF MIDDLESEX, STATE OF NEW JERSEY AUTHORIZING AND APPROVING A FINANCIAL AGREEMENT BETWEEN THE BOROUGH OF SAYREVILLE AND HIGHVIEW PROPERTIES AT SAYREVILLE URBAN RENEWAL, LLC, FOR A TWENTY FIVE YEAR PAYMENT IN LIEU OF TAXES PROGRAM FOR THE PROPERTY KNOWN AS BLOCK 538, LOTS 9.02, 19.01, 20, 26,26.01 & 27 AND BLOCK 538.01 LOT 10 ALSO KNOWN AS THE ROUTE 35-PHASE 1 RESIDENTIAL REDEVELOPMENT PROJECT PURSUANT TO THE LONG TERM TAX EXEMPTION LAW N.J.S.A. 40A:20-1et seq.

WHEREAS, on June 13, 2005 the Borough Council of the Borough of Sayreville adopted **Ordinance No. 907-05** establishing a redevelopment plan, after the appropriate and legally required referral to the Sayreville Planning Board, for the Route 35-Phase 1 Residential Redevelopment Project within the Borough Sayreville; and

WHEREAS, Highview Properties at Sayreville Urban Renewal , LLC, (the "Entity") is an urban renewal entity, formed and qualified to do business under the provisions of the Long-Term Tax Exemption Law of 1992, as amended and supplemented, N.J.S.A. 40A:20-1 et seq.; and

WHEREAS, the Entity and/or its affiliates owns or is under contract to purchase certain parcels of property known as Tax Block 538, Lots 9.02, 19.01, 20, 26, 26.01 and 27, and Block 538.01, Lot 10 as shown upon the official Tax Maps of the Borough of Sayreville such property is hereinafter referred to as the "Project Premises"; and

WHEREAS, the Project Premises is located within the Route 35-Phase 1 Residential Redevelopment Project area (Old Spye Road), as required by N.J.S.A. 40A:20-4 and N.J.S.A. 40A:12A-5(g) and redevelopment of these parcels of property is controlled by the terms and conditions of the aforementioned within the Borough Sayreville; and

WHEREAS, the Entity made application for a twenty five (25) year long term payment in lieu of tax (PILOT; or tax exemption) to enable the construction and financing of a one hundred forty eight (148) unit residential redevelopment project consisting of sixty-eight (68) two-bedroom units and eighty (80) one-bedroom units. Twenty-two (22) of the aforesaid units will be affordable age-restricted units, and together with all common areas and improvements ancillary to this principal use (the "Redevelopment Project"); and

WHEREAS, Highview Properties at Sayreville Urban Renewal , LLC, has agreed to pay an annual service charges (also known as a payment in lieu of taxes; PILOT) for the overall redevelopment project of 10% of the Annual Gross Revenues as defined in the Long Term Tax Exemption Law and described in the proposed Financial Agreement attached to the Entity's Application for Long Term Tax Exemption; said annual service charge shall also be applicable to future owners of the project premises until the PILOT terminates; and

NOW, THEREFORE BE IT ORDAINED, by the Borough Council of the Borough of Sayreville that the benefits of this important redevelopment project, after giving due consideration to the PILOT revenues (annual service charge), include the following:

1. The real estate taxes for the Project Premises generated revenue for the Borough of Sayreville for the tax year 2005, the year immediately preceding the adoption of the redevelopment plan, were twenty one thousand four hundred forty five dollars ($21,445.).

2. The Annual Service Charge as estimated will generate the approximate amount of revenue of Two Hundred Twelve Thousand Eight Hundred Seventy Dollars ($212,870) per annum to the Borough of Sayreville.;

3. This Project will stabilize and contribute to the economic growth of the Borough of Sayreville by stabilizing this redevelopment area;

4. This Redevelopment Project will further the overall redevelopment objectives of the Borough of Sayreville and the Route 35-Phase 1 Residential Redevelopment Area;

5. The Borough's impact analysis on file with the Office of the Borough Clerk, indicates that the benefits of this residential redevelopment project outweigh the costs to the Borough of Sayreville; and

BE IT FURTHER ORDAINED that the Borough of Sayreville hereby determines that the PILOT, long-term tax exemption, is critical to the development of the project and influencing the location decisions of probable adult residents for the following reasons:

-The relative stability and predictability of the PILOT, annual service charge, will make the project financially viable to the designated Redeveloper; and

-The relative stability and predictability of the PILOT annual service charge will allow both the Borough and the Entity to stabilize their operating budgets, allowing for a high level of investment in the project and required improvements over the life of the project, which will ensure the likelihood of the success of the project.

BE IT FURTHER ORDAINED, that the application of Highview Properties at Sayreville Urban Renewal , LLC, formed and qualified to do business under the provisions of the Long Term Tax Exemption Law of 1992, as amended and supplemented by N.J.S.A. 40A:20-1 et seq., on file in the office of the Borough Clerk, for Tax Block 538, Lots 9.02, 19.01, 20, 26, 26.01 and 27, and Block 538.01, Lot 10, is hereby approved and that the Mayor is hereby authorized to execute a PILOT-Long-Term Tax Exemption-Financial Agreement which shall include at a minimum the following terms and conditions:

ORDINANCE #267-14

Term: A term of twenty-six (26) years from the adoption of this Ordinance, or twenty-five (25) as stipulated in the Financial Agreement;

P.I.L.O.T.: Individual Payments In Lieu of Taxes shall be established for this Redevelopment project and shall be calculated at approximately ten (10.0%) percent of the Annual Gross Revenues; with applicable staged increases;

The Financial Agreement: shall be substantially in the form on file in the office of the Borough Clerk, subject to such negotiated modifications as the Mayor and/or the Business Administrator deems appropriate or necessary.

BE IT FURTHER ORDAINED, that all Ordinances and parts of Ordinances inconsistent herewith are hereby repealed and that this Ordinance shall take effect in the manner provided by law.

/s/ David McGill

ATTEST:

/s/ Theresa A. Farbaniec, R.M.C.
Municipal Clerk

APPROVED AS TO FORM:

/s/ Michael DuPont, Esq.
Borough Attorney

RECORD OF COUNCIL VOTES

COUNCIL MEMBER	AYES	NAYS	ABSTAIN	ABSENT
BUCHANAN	✓			
EICHER		✓		
McGILL	✓			
MELENDEZ	✓			
NOVAK	✓			
RITTENHOUSE		✓		