188-2023 Response,
Item 2

THIS AGREEMENT AND THE ORDINANCE APPROVING SAME SECURE OBLIGATIONS TO THE BOROUGH OF EATONTOWN AS ISSUER OF BONDS OR OTHER OBLIGATIONS ISSUED IN ACCORDANCE WITH THE PROVISIONS OF THE "REDEVELOPMENT AREA BOND FINANCING LAW" AND THE LIEN HEREOF IN FAVOR OF THE ISSUER OF SUCH BONDS OR OTHER OBLIGATIONS IS A MUNICIPAL LIEN SUPERIOR TO ALL OTHER NON-MUNICIPAL LIENS HEREAFTER RECORDED.

Record and Return to:

____
James G. Fearon, Esq.

AGREEMENT

THIS FINANCIAL AGREEMENT is made this ____ day of [•], 2023 (hereinafter this "**Agreement**" or "**Financial Agreement**"), between **MONMOUTH V [•] URBAN RENEWAL, LLC** (hereinafter referred to as the "**Entity**") a New Jersey limited liability company authorized to transact business in the State of New Jersey, having its principal office at, c/o Kushner, 767 Fifth Avenue, Floor 50, New York, New York 10153; and the **BOROUGH OF EATONTOWN**, a municipal corporation of the State of New Jersey with an address at 47 Broad Street, Eatontown, New Jersey 07724 (the "**Borough**"; and together with the Entity, the "**Parties**" or "**Party**").

RECITALS:

A. The Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq., as amended and supplemented (the "**Redevelopment Law**"), provides a process for municipalities to participate in the redevelopment and improvement of areas designated by the municipality as being in need of redevelopment.

B. The Borough Council of the Borough (the "**Borough Council**") is responsible for implementing redevelopment plans and carrying out redevelopment projects pursuant to the Redevelopment Law.

C. On [__], 2021, the Borough's Mayor (the "**Mayor**") and Borough Council adopted Resolution No. 70-2021 directing the Borough Planning Board (the "**Planning Board**") to undertake a preliminary investigation in order to make recommendations as to whether certain parcels of property, including Block 2201, Lots 1.01, 1.02, 2, 3, 4, & 5, and Block 2202, Lot 1, as shown on the official tax maps of the Borough (the "**Study Parcels**"), may be designated as a "non-condemnation area in need of redevelopment" pursuant to the Redevelopment Law.

D. The Planning Board commissioned preliminary investigation studies by the Borough's consulting engineering firm, Leon S. Avakian Inc. (the "**Planner**"), to determine whether the Study Area may be designated as a non-condemnation area in need of redevelopment pursuant to the Redevelopment Law.

E. The Planner prepared a report entitled "*Area in Need of Redevelopment Investigation Report*", dated [__], 202__, which concluded that the Study Parcels met the statutory criteria in the Redevelopment Law for designation as a non-condemnation area in need of redevelopment.

F. On December 6, 2021, the Planning Board held a public hearing on the preliminary investigation of the Study Parcels and adopted a resolution accepting the conclusions of the Planner and recommending to the Borough Council that the Study Parcels be designated as a non-condemnation area in need of redevelopment pursuant to the Redevelopment Law.

G. On December 8, 2021, following the preliminary investigation conducted by the Planning Board, including the public hearing, the Borough Council adopted Resolution No. 208-2021 designating the Study Parcels as a non-condemnation area in need of redevelopment in accordance with the Redevelopment Law (the "**Redevelopment Area**").

H. The Planner prepared a redevelopment plan for the Redevelopment Area entitled, "*Monmouth Mall Redevelopment Plan,*" dated [___] (as amended, the "**Redevelopment Plan**").

I. On [____], 2023, the Borough Council introduced, and on April 26, 2023, the Borough Council adopted, Ordinance No. 5-2023 adopting the Redevelopment Plan, as amended by Ordinance No. ___-2023 adopted on [___], 2023.

J. An Affiliate of the Entity, Monmouth Square NJ LLC (the "**Redeveloper**") approached the Borough with an interest in being designated as the redeveloper of that portion of the Redevelopment Area known as Block 2201, Lots 1.01, 1.02, 2, 3, 4, and 5 (collectively, the "**Redevelopment Project Site**").

K. On [___], 2023, the Borough Council determined it was in the best interests of the Borough to designate the Redeveloper as redeveloper of the Redevelopment Project Site and adopted Resolution No. [•], approving a redevelopment agreement, designating the Redeveloper as "redeveloper" of the Redevelopment Project Site and authorizing the Mayor to execute a redevelopment agreement on behalf of the Borough.

L. On [•], 2023, the Borough and the Redeveloper entered into a redevelopment agreement for the Redevelopment Project Site (the "**Redevelopment Agreement**"), pursuant to which the Redeveloper has proposed to develop, design, finance, permit, demolish certain existing improvements on the Redevelopment Project Site, undertake site preparation, construct, implement, and cohesively redevelop the Redevelopment Project Site with a project comprised of a mixture of complimentary residential, retail, commercial, and medical office uses including (i) up to approximately one thousand (1,000) non-age restricted residential rental units, with twelve and one-half (12.5%) percent of the actual number of units built to be set aside for very low-, low-, and moderate-income households in furtherance of the Borough's Settlement Agreement with Fair Share Housing Center, dated December 17, 2018, (ii) approximately 900,000 square feet of total commercial and retail space, and (iii) public spaces, strategically placed parking, and a safe and efficient circulation system (collectively, the "**Redevelopment Project**").

M. The hereinafter defined URE Affiliates have filed the hereinafter defined Application for a long term tax exemption pursuant to the Exemption Law applicable to a portion of the Redevelopment Project Site, specifically Block 2201, Lots 1.01, portion of 1.02, 2, and 5 (the "**Property**"), which Property excludes (i) Block 2201, Lots 3 and 4, owned by Macy's East, Inc., and (ii) that portion of Block 2201, Lot 1.02 on which medical office building uses are and will be constructed and operated.

N. The Property is anticipated to be developed in four (4) components (each, a "**Component**" and collectively, the "**Components**"), all of which are essential to achieving the overall development of the Property in a comprehensive manner that accomplishes the goals and objectives of the Redevelopment Plan.

O. The Components shall consist of the following, all as further descried in the Redevelopment Agreement: (i) the "**Retail Component**" upon which, Monmouth V Urban Renewal, LLC (the "**Retail URE Affiliate**") shall undertake the following work in connection with the following three (3) subcomponents: (1) [renovation of approximately 324,325 square feet of existing retail space] (the "**General Retail Subcomponent Project**"), (2) [an update to the façade of an existing approximately 264,601 square foot retail space] (the "**Boscov's Subcomponent Project**"), and (3) construction of approximately 40,000 square feet of grocery space and approximately 30,942 square feet retail space (the "**Whole Foods Subcomponent Project**"), which scope of work applicable to the Retail Component shall also include, without limitation, the demolition of approximately six hundred thousand (600,000) square feet of existing retail space, new vehicular roadways with a new surface parking lot along with the re-paving and re-striping of existing lots, refreshed tenant facades, a new interior food hall and new outparcel pad buildings, and the construction of the hereinafter defined Paseo (collectively, the "**Retail Component Project**"); (ii) the "**Phase 1 Residential Component**," upon which Monmouth V R1 Urban Renewal, LLC (the "**Phase 1 Residential URE Affiliate**") shall construct or cause to be constructed [approximately 332 residential rental units in four (4) buildings] (the "**Phase 1 Residential Component Project**"); (iii) the "**Phase 2 Residential Component**," upon which Monmouth V R2 Urban Renewal, LLC (the "**Phase 2 Residential URE Affiliate**") shall construct or cause to be constructed [approximately 332 residential rental units in four (4) buildings] (the **Phase 2 Residential Component Project**"); and (iv) the "**Phase 3 Residential Component**," upon which Monmouth V R3 Urban Renewal LLC (the "**Phase 3 Residential URE Affiliate**", and together with the Retail URE Affiliate, the Phase 1 Residential URE Affiliate, and the Phase 2 Residential URE Affiliate, collectively, the "**URE Affiliates**") shall construct or cause to be constructed [approximately 336 residential rental units in two (2) buildings] (the "**Phase 3 Residential Component Project**", and together with the Retail Component Project, the Phase 1 Residential Component Project, and the Phase 2 Residential Component Project, collectively, the "**Component Projects**" and individually a "**Component Project**").

P. It is anticipated that the Property shall be consolidated and subdivided such that the General Retail Subcomponent Project, the Boscov's Subcomponent Project, the Whole Foods Subcomponent Project, the Phase 1 Residential Component Project, the Phase 2 Residential

Component Project, and the Phase 3 Residential Component Project will each be located on its own lot or lots (each, a "**Component Project Site**").

Q. Attached hereto as **Exhibit A** is a site plan identifying the anticipated locations of each Component Project and each Component Project Site upon completion of the consolidation and subdivision of the Property, together with a description of the Property.

R. The Borough Council has determined that the Redevelopment Project as a whole is of substantial benefit to the Borough and will best effectuate the redevelopment and improvement of the Redevelopment Area; achieve the goals and objectives set forth in the Redevelopment Plan; will help revitalize and/or repurpose underutilized land; will invigorate the Redevelopment Project Site and surrounding community; will create approximately three hundred fifty (350) construction jobs and three hundred (300) new permanent jobs in connection with the operation of the Redevelopment Project, to patronize existing businesses, retail and restaurants located in the area; is projected to produce approximately $161 million in revenue to the Borough over the thirty (30) years, including approximately $153 million net of debt service due on the Bonds; will improve the quality of life for the community; and will enhance the economic development of the Borough. In addition, the Redeveloper has agreed, pursuant to the terms of the Redevelopment Agreement, to deed restrict 12.5% of the rental units actually built (approximately one hundred twenty-five (125) units, which count may vary depending on actual number of residential units built) of the Redevelopment Project for very-low, low-, and moderate-income households in furtherance of the Borough's Settlement Agreement with Fair Share Housing Center, dated December 17, 2018. For the non-residential development within the Redevelopment Project, the Redeveloper shall adhere to the applicable requirements of Article [__] of the Borough's Code, entitled ["Affordable Housing Development Fee and Trust Fund,"] as may be amended.

S. As of the date hereof, the Redevelopment Agreement has been partially assigned to, and assumed by, (i) the Retail URE Affiliate with respect to certain rights and obligations set forth therein pertaining to the Retail Component Project; (ii) the Phase 1 Residential URE Affiliate with respect to certain rights and obligations set forth therein pertaining to the Phase 1 Residential Component Project; (iii) the Phase 2 Residential URE Affiliate with respect to certain rights and obligations set forth therein pertaining to the Phase 2 Residential Component Project; and (iv) the Phase 3 URE Affiliate with respect to certain rights and obligations set forth therein pertaining to the Phase 3 Residential Component Project (the "**Project**")[1].

T. Pursuant to and in accordance with the provisions of the Long Term Tax Exemption Law, N.J.S.A. 40A:20-1 et seq. (the "**Exemption Law**") and the New Jersey Redevelopment Area Bond Financing Law, N.J.S.A. 40A:12A-64 et seq. (the "**RAB Law**" and, together with the Redevelopment Law and the Exemption Law, the "**Acts**"), the Borough is authorized to provide for and accept, in lieu of real property taxes, an annual service charge paid by the Entity to the Borough.

U. In order to improve the feasibility of the Redevelopment Project, on August 4, 2023, the Entity, along with other URE Affiliates, submitted an application to the Borough for a

[1] Defined term will be moved to applicable project per Agreement.

single, comprehensive long term tax exemption pursuant to the Exemption Law for the Component Projects (as set forth on file in the office of the Borough Clerk, the "**Application**").

V. On August [•], 2023, the Mayor transmitted the Application to the Borough Council together with his recommendation that the Application be approved by the Borough Council.

W. On August [•], 2023, the Borough Council adopted Resolution [•] approving the Application.

X. On [•], 2023, the Borough Council adopted Ordinance [•] (the "**Ordinance**"), approving a single, comprehensive long term tax exemption for each of the Component Projects and authorizing the execution of financial agreements for each Component Project, including this Financial Agreement memorializing the terms of a long term tax exemption for the Property, as identified on **Exhibit A** (as same may hereafter be updated in accordance with Section 16.14 of this Financial Agreement).

Y. Pursuant to the RAB Law, specifically N.J.S.A. 40A:12A-68, the Annual Service Charge (as such term is defined herein) shall, upon the recordation of this Financial Agreement and the Ordinance, constitute a municipal lien on the Property and the Project within the meaning of Applicable Law.

Z. Pursuant to and in accordance with the provisions of the RAB Law, specifically N.J.S.A. 40A:12A-65 and -67(a), the Borough may issue bonds in order to finance a portion of the costs of the Redevelopment Project (the "**Bonds**") in accordance with the terms and provisions of an "Indenture of Trust" (the "**Trust Indenture**"), to be executed by and between the Borough and the trustee named therein (the "**Trustee**") prior to or simultaneous with the issuance of the Bonds.

AA. Pursuant to the terms of this Financial Agreement and the Pledge Agreement (as defined herein), the Pledged Annual Service Charge (as defined herein) shall be pledged to the payment of the principal of, redemption premium, if any, and interest on the Bonds.

BB. The Borough and the Entity have reached agreement with respect to, among other things, the terms and conditions relating to the Annual Service Charge and desire to execute this Financial Agreement.

CC. The Entity has represented, and the Borough has determined, that the tax exemption provided to the Component Projects, including the tax exemption provided to the Project pursuant to this Financial Agreement, will be a significant inducement for the Entity to proceed with the Redevelopment Project and that based on information set forth in the Application, the Redevelopment Project would not be feasible without such assistance.

DD. Pursuant to 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 granted hereunder and payment of the Annual Service Charge (as defined herein) by the Entity.

EE. The Borough Council has reviewed the Application and has made the following findings:

1. **Benefits of Project v. Costs.**

i. The development and construction of the Redevelopment Project as set forth in the Redevelopment Agreement and Redevelopment Plan will be beneficial to the overall community; will best effectuate the redevelopment and improvement of the Redevelopment Area; achieve the goals and objectives set forth in the Redevelopment Plan; will help revitalize and/or repurpose underutilized land; will invigorate the Redevelopment Project Site and surrounding community; will create approximately three hundred fifty (350) construction jobs and three hundred (300) new permanent jobs in connection with the operation of the Redevelopment Project, to patronize existing businesses, retail and restaurants located in the area; is projected to produce approximately $161 million in revenue to the Borough over the duration of the thirty (30) years, including approximately $153 million net of debt service due on the Bonds; will improve the quality of life for the community; and will enhance the economic development of the Borough. In addition, the Redeveloper has agreed, pursuant to the terms of the Redevelopment Agreement, to deed restrict 12.5% of the rental units actually built (approximately one hundred twenty-five (125) units, which count may vary depending on actual number of residential units built) of the Redevelopment Project for very-low, low-, and moderate-income households in furtherance of the Borough's Settlement Agreement with Fair Share Housing Center, dated December 17, 2018. For the non-residential development within the Redevelopment Project, the Redeveloper shall adhere to the applicable requirements of Article [__] of the Borough's Code, entitled ["Affordable Housing Development Fee and Trust Fund,"] as may be amended.

2. **Importance of Long Term Tax Exemption.**

The Borough Council's approval of the long term tax exemption set forth herein and in the Ordinance is essential to the success of the Redevelopment Project because:

i. It permits the private investment of approximately $525 million into the Borough.

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

iii. The relative stability and predictability of the Annual Service Charge will allow the Entity to provide a high level of maintenance for the Project 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 Parties to this Financial Agreement mutually covenant and agree as follows:

ARTICLE I- GENERAL PROVISIONS

Section 1.01. Governing Law.

THIS FINANCIAL AGREEMENT SHALL BE GOVERNED BY THE LAWS OF THIS STATE, INCLUDING THE PROVISIONS OF THE EXEMPTION LAW, THE REDEVELOPMENT LAW, AND THE RAB LAW, AS SUCH LAWS ARE NOW EXISTING OR AS THEY MAY BE AMENDED IN THE FUTURE, AND ALL OTHER APPLICABLE LAWS NOW OR HEREAFTER EXISTING. IT IS HEREBY EXPRESSLY ACKNOWLEDGED, UNDERSTOOD AND AGREED THAT UPON THE RECORDATION OF THE ORDINANCE AND THIS FINANCIAL AGREEMENT, THE PROPERTY, AND ANY IMPROVEMENT RELATED THERETO, SHALL BE SUBJECT TO AND GOVERNED BY THE TERMS OF THIS FINANCIAL AGREEMENT AND THE OWNER, WHETHER IN FEE SIMPLE OR OTHERWISE, OF THE PROPERTY (THE "OWNER"), AND ANY IMPROVEMENT RELATED THERETO, SHALL BE BOUND BY THE TERMS HEREOF.

IT IS EXPRESSLY UNDERSTOOD AND AGREED THAT THE BOROUGH EXPRESSLY RELIES UPON THE FACTS, DATA, AND REPRESENTATIONS CONTAINED IN THE APPLICATION IN GRANTING THIS TAX EXEMPTION.

Section 1.02 General Definitions.

The recitals and Exhibits to this Financial 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 Financial Agreement, the following terms and phrases shall have the following respective meanings:

i. **Acts** – Shall be as defined in Recital [ ].

ii. **Administrative Fee** – Shall have the meaning specified in Section 16.06 hereof.

iii. **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.

iv. **Agreement or Financial Agreement** – Shall have the meaning specified in the preamble hereof.

v. **Allowable Net Profit (also referred to as "ANP")** – The amount arrived at by applying the Allowable Profit Rate pursuant to the Exemption Law.

vi. **Allowable Profit Rate (also referred to as "APR")** – The allowable profit rate as defined in N.J.S.A. 40A:20-3(b).

vii. **Annual Gross Revenue (also referred to as "AGR")** – Annual gross revenue of the Entity as defined as Gross Revenue in N.J.S.A. 40A:20-3(a). Annual Gross Revenue shall exclude, without limitation, the proceeds of any condemnation or casualty awards, insurance proceeds, any gain realized by the Entity on the sale, transfer or other assignment or assumption of the Project or portion thereof, [reimbursement of expenses by any tenant under any lease or rental agreement, including, without limitation, reimbursement for payment of Annual Service Charges and Land Tax payments,][2] proceeds of any financing or refinancing, any reimbursement by the Entity or Affiliate of the Entity for site development costs reasonably allocable to an Affiliate, or proceeds from any disposition of a partner or a partner's interest in the Entity or any successor entity.

viii. **Annual Service Charge (also referred to as "ASC")** – The total annual amount that the Entity has agreed to pay for services supplied to the Project, which sum is in lieu of any taxes on the Improvements pursuant to the Exemption Law. The Annual Service Charge consists of the Pledged Annual Service Charges and the Unpledged Annual Service Charge. The Annual Service Charge shall be calculated and paid pursuant to Article IV hereof.

ix. **Applicable Law** – Any and all federal, state and local laws, rules, regulations, rulings, court orders, statutes and ordinances applicable to the Redevelopment Project, the Redevelopment Area, the long term tax exemption, the Annual Service Charge, or the Bonds.

x. **Application** – Shall be as defined in Recital [ ].

xi. **ASC Commencement Date** – [With respect to each building within the Project, the date that such building is first eligible for a Certificate of Occupancy, on which date the Entity shall commence payment of the Annual Service Charge applicable to such building as more fully set forth herein.][3] [The date upon which all of the following have occurred: demolition of approximately six hundred thousand (600,000) square feet of existing retail space and Certificates of Occupancy and/or Certificates of Approval are in effect for no less than 50% of the Retail Component, on which date the Entity shall commence payment of the Annual Service Charge as more fully set forth herein.] [4]

xii. **Auditor's Report** – 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.

xiii. **Bonds** – Shall be as defined in Recital [ ].

---

[2] Applicable only to Retail Component.
[3] Applies to Residential Components.
[4] Applicable to Retail Component.

xiv. **Borough** – Shall have the meaning specified in the preamble of this Financial Agreement.

xv. **Borough Council** – Shall be as defined in Recital [ ].

xvi. **Borough Planner** – Shall be as defined in Recital [ ].

xvii. **Boscov's Subcomponent Project** – Shall be as defined in Recital [ ].

xviii. **Certificate of Approval** – A certificate issued by the Borough approving the core, shell, and required life safety features for the core and shell of a retail space as set forth in the applicable provisions of the Uniform Construction Code.

xix. **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.

xx. **Commencement of Construction** – With respect to the Project, the undertaking of actual physical construction or rehabilitation of the Project, including demolition, site preparation, construction of Improvements or construction or upgrading of infrastructure.

xxi. **Completion Date** – Shall mean the date on which the Borough issues the Certificate of Completion (as defined in the Redevelopment Agreement) for the Project.

xxii. **Component or Components** – Shall be as defined in Recital [ ].

xxiii. **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 management policies, decisions and operations of such person or entity, whether through the ownership of an interest in such person or entity, or by contract or other written agreement. The entity or individual(s) with the right to direct or cause the direction of the management and operation of the managing member of the Entity shall be deemed to have Control of the Entity.

xxiv. **County** – Shall mean the County of Monmouth, New Jersey.

xxv. **County Share** – Five percent (5%) of the Unpledged Annual Service Charge collected by the Borough, which the Borough shall remit to the County in accordance with N.J.S.A. 40A:20-12(b)(2)(e).

xxvi. **Days** – Whenever the word "Days" is used to denote time, it shall mean calendar days.

xxvii. **Debt Service Charges** – Debt service, reserves, and administrative expenses related to the Bonds, including Trustee fees in an annual amount not to exceed $3,000 per year, as further described in the Trust Indenture.

xxviii. **Default** – Shall have the meaning specified in Section 15.01 of this Financial Agreement.

xxix. **Effective Date** – The date that this Agreement has been executed and delivered by both Parties.

xxx. **Entity** – The entity specified in the preamble of this Financial Agreement, which shall be qualified as an urban renewal entity under the Exemption Law. Unless the context provides otherwise, it shall also include any permitted Transferee, which shall also be qualified as an urban renewal entity under the Exemption Law, as set forth in Section 9.01 hereof.

xxxi. **Event of Default** – Shall have the meaning specified in Section 15.01 of this Financial Agreement.

xxxii. **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.

xxxiii. **Exemption Law** – Shall be as defined in Recital [ ].

xxxiv. **Exhibit(s)** – Any exhibit attached hereto, which shall be deemed to be a part of this Financial Agreement, as if fully set forth in the text hereof.

xxxv. **Financial Plan** – That certain financial plan of the Entity for undertaking the Project, attached hereto as **Exhibit B**.

xxxvi. **General Retail Subcomponent Project** – Shall be as defined in Recital [ ].

xxxvii. **Improvements** – Any building, structure, improvement, addition, or fixture permanently affixed to the Property, existing or to be constructed including, without limitation, any such improvements installed by a tenant.

xxxviii. **Land** – Shall mean the Property.

xxxix. **Land Taxes** – The amount of real estate taxes levied on the Property, exclusive of any Improvements related thereto.

xl. **Mayor** – Shall be as defined in Recital [ ].

xli. **Minimum Annual Service Charge** – The Pledged Annual Service Charge plus [__] (___%)[5] percent of the amount of the total taxes levied against the Redevelopment Project Site in the last full tax year in which the Redevelopment Project Site was subject to taxation, which shall mean approximately $1,080,000[6]. The Minimum Annual Service Charge shall be prorated in the year in which the ASC Commencement Date occurs and the year in which the Termination Date occurs, each based on the actual number of Days, assuming a 365-day year.

xlii. **Net Profit** – Annual Gross Revenue (AGR) of the Entity less all operating and non-operating expenses of the Entity, all determined in accordance with Generally Accepted Accounting Principles and the provisions of the Exemption Law.

xliii. **Ordinance** – Shall have the meaning specified in Section 1.01 of this Financial Agreement.

xliv. **Owner** – Shall have the meaning specified in Section 15.01 of this Financial Agreement.

xlv. **Party or Parties** – Shall have the meaning specified in the preamble of this Financial Agreement.

xlvi. **Paseo** - A new pedestrian plaza and walkway, including new hardscape, landscape, lighting, seating and gathering areas.

xlvii. **Payment Default** – Shall have the meaning specified in Section 15.01 of this Financial Agreement.

xlviii. **Permitted Action** – Shall have the meaning specified in Section 15.03 of this Financial Agreement.

xlix. **Phase 1 Residential Component** – Shall be as defined in Recital [ ].

l. **Phase 1 Residential Component Project** – Shall be as defined in Recital [ ].

li. **Phase 2 Residential Component** – Shall be as defined in Recital [ ].

lii. **Phase 2 Residential Component Project** – Shall be as defined in Recital [ ].

liii. **Phase 3 Residential Component** – Shall be as defined in Recital [ ].

liv. **Phase 3 Residential Component Project** – Shall be as defined in Recital [ ].

lv. **Planner** – Shall be as defined in Recital [ ].

---

[5] Number will vary by Component/Subcomponent.

[6] Amount to be based on allocation of post tax appeal settlement payment amounts for 2023 applicable to Redevelopment Project Site.

lvi. **Planning Board** – Shall be as defined in Recital [ ].

lvii. **Pledge Agreement** – That certain Pledge Agreement to be dated the date of issuance of the Bonds, entered into by and between the Borough and the Trustee.

lviii. **Pledged Annual Service Charge** – Shall mean that portion of the Annual Service Charge that shall be due and payable by the Entity that is pledged to pay Debt Service Charges on the Bonds, which amount shall be the lesser of the amounts set forth on **Exhibit C** attached hereto or the Debt Service Charges related to the Bonds as determined at the time of issuance.

lix. **Project** – Shall be as defined in Recital [ ].

lx. **Property** – Shall be as defined in Recital [ ].

lxi. **Site** – Shall be as defined in Recital [ ].

lxii. **RAB Law** – Shall be as defined in Recital [ ].

lxiii. **Redeveloper** – Shall be as defined in Recital [ ].

lxiv. **Redevelopment Agreement** – Shall be as defined in Recital [ ].

lxv. **Redevelopment Area** – Shall be as defined in Recital [ ].

lxvi. **Redevelopment Law** – Shall be as defined in Recital [ ].

lxvii. **Redevelopment Plan** – Shall be as defined in Recital [ ].

lxviii. **Redevelopment Project** – Shall be as defined in Recital [ ].

lxix. **Redevelopment Project**

lxx. **Secured Party** and **Secured Parties** – Shall have the meaning specified in Section 9.03(a) of this Financial Agreement.

lxxi. **Security Arrangements** – Shall have the meaning specified in Section 9.03(a) of this Financial Agreement.

lxxii. **State** – Shall mean the State of New Jersey.

lxxiii. **Study Area** – Shall be as defined in Recital [ ].

lxxiv. **Study Parcels** – Shall be as defined in Recital [ ].

lxxv. **Termination Date** – Shall mean the earlier to occur of (i) the [thirty-fifth (35^{th})][7] [fortieth (40^{th})][8] [forty-fifth (45^{th})][9] anniversary of the Effective Date; (ii) the thirtieth (30^{th}) 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.

lxxvi. **Total Project Cost (also referred to as "TPC")** – The total cost of developing the Project, as calculated in accordance with N.J.S.A. 40A:20-3(h); provided, however, that TPC shall exclude any site development costs incurred by the Entity but reimbursed, or scheduled to be reimbursed, by an Affiliate of the Entity, provided that any such site development costs reimbursed or scheduled to be reimbursed are included in the Total Project Cost of such Affiliate of the Entity.

lxxvii. **Transferee** – Shall have the meaning specified in Section 9.01(b) of this Financial Agreement.

lxxviii. **Trust Indenture** – Shall be as defined in Recital [ ].

lxxix. **Trustee** – Shall be as defined in Recital [ ].

lxxx. **Unpledged Annual Service Charge** – The amount calculated pursuant to Section 4.4 hereof, which is the total amount that the Entity has agreed to pay for services supplied to the Project and is in lieu of any taxes on the [Land and][10] Improvements pursuant to the Exemption Law.

lxxxi. **Whole Foods Subcomponent Project** – Shall be as defined in Recital [ ].

SECTION 1.03. Interpretation and Construction. In this Financial Agreement, unless the context otherwise requires:

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

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

---

[7] For Retail and Phase 1 Residential.
[8] For Phase 2 Residential.
[9] For Phase 3 Residential.
[10] Applicable to Residential Financial Agreements.

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

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

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

(f) Subject to the notice, cure, and remedy requirements and provisions set forth in Article XV hereof, all other notices to be given hereunder and responses thereto shall be given, unless a certain number of days is specified, in writing and within a reasonable time, which shall not be less than fifteen (15) Days nor more than thirty (30) Days, unless the context dictates otherwise.

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

(h) The Recitals are incorporated into and made a part of this Financial Agreement.

ARTICLE II
APPROVALS

SECTION 2.01. Borough Approval of Tax Exemption. The Borough hereby grants its approval for a tax exemption, effective from and after the ASC Commencement Date, for [the Land][11] and the Improvements to be constructed, operated, and maintained in accordance with the terms and conditions set forth herein and in the Redevelopment Agreement, and the provisions of the Exemption Law and other Applicable Law.

SECTION 2.02. Approval of Entity. The Entity represents that its certificate of formation and/or amendments thereto, as attached to the Application, contains all requisite provisions of law, has been reviewed and approved by the Commissioner of the Department of Community Affairs and has been filed with, as appropriate, the Department of Treasury, all in accordance with N.J.S.A. 40A:20-5.

SECTION 2.03. Construction of the Project. The Entity represents, covenants and warrants that it will construct, operate and maintain the Project, or cause the Project to be constructed, operated, and maintained in accordance with the Redevelopment Agreement, the Redevelopment Plan and Applicable Law, the use of which is more specifically described in the Application; provided, however, that any changes to the description of the Project required by or approved by governmental agencies approving the Project, including, without limitation, the

[11] Applicable to Residential Components only.

Planning Board, shall not require any further official action of the Borough and the description of Project herein shall be deemed to be automatically updated to reflect any such changes. The Entity shall be the owner of the Property prior to the ASC Commencement Date.

SECTION 2.04. Financial Plan. The Entity represents that, as of the date hereof, it anticipates that the Project will be financed in accordance with the Financial Plan attached hereto as **Exhibit B**, provided however that, for the avoidance of doubt, the Entity may finance the Project in any manner it determines to be necessarily, desirable, or convenient. The Financial Plan sets forth estimated Total Project Cost, amortization rate on 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, as anticipated as of the date hereof.

ARTICLE III
DURATION OF AGREEMENT

SECTION 3.01. Term. This Agreement, including (from and after the ASC Commencement Date) the obligation to pay the Annual Service Charge required under Article IV hereof and the tax exemption granted and referred to in Section 2.01 hereof, shall remain in full force and effect for a term commencing on the Effective Date and ending on the Termination Date. Upon the Termination Date, the tax exemption shall expire, and the [Land and][12] Improvements shall thereafter be assessed and taxed according to the general law applicable to other non-exempt property located within the Borough. Upon the Termination Date, all restrictions and limitations upon the Entity shall terminate upon the Entity's rendering and the Borough's acceptance of its final accounting, pursuant to N.J.S.A. 40A:20-13.

SECTION 3.02. No Voluntary Termination. **The Entity may not terminate this Financial Agreement during any time period during which Bonds are outstanding. The Entity further expressly acknowledges, understands, and agrees that in accordance with the RAB Law, specifically N.J.S.A. 40A:12A-66(a), the relinquishment provisions set forth in the Exemption Law, specifically N.J.S.A. 40A:20-9(g) and -13, shall not be applicable in accordance with, pursuant to, and under this Financial Agreement. The Entity further expressly rejects, refuses, relinquishes, surrenders, and otherwise waives any and all rights of relinquishment of its status as an urban renewal entity under the Acts and this Financial Agreement that it may have otherwise been entitled to in accordance with any Applicable Law, including without limitation, N.J.S.A. 40A:20-9(g) and -13.**

SECTION 3.03. Date of Termination. Upon any termination of the tax exemption described in Section 2.01 hereof, the Termination Date shall be deemed to coincide with the end of the fiscal year of the Entity.

ARTICLE IV
ANNUAL SERVICE CHARGE

SECTION 4.01. Payment of Annual Service Charge. In consideration of the exemption from taxation for the Improvements, the Entity agrees that payment of the Annual

[12] Applicable to Residential Components.

Service Charge shall be due and payable to the Borough 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, commencing to accrue as of the ASC Commencement Date, in the amount set forth in Section 4.02. The Borough shall issue bills to the Entity regarding payment of the Annual Service Charge at the same times that it issues bills for other properties in the Borough subject to ordinary real estate taxation, provided that failure by the Borough to issue such bills to the Entity as such times shall not relieve the Entity from its obligation to make payment of the Annual Service Charge on the latter of the payment date pursuant to this Section 4.01 or within ten (10) Days of receipt of such bill(s). If the Entity fails to timely pay any installment of the Annual Service Charge, the amount past due until paid shall bear the highest rate of interest permitted under applicable State law then being assessed against other delinquent taxpayers in the case of unpaid taxes or tax liens. For purposes of convenience, for the time period commencing on the ASC Commencement Date and ending on the final day of the calendar year in which the ASC Commencement Date occurs, the Entity shall pay a quarterly Annual Service Charge of $[•][13], based upon the first year Annual Service Charge as set forth in the Financial Plan, prorated as applicable, subject to adjustment for overpayment or underpayment within thirty (30) Days after the close of such calendar year. For all subsequent calendar years, after the first calendar year in which the ASC Commencement Date occurs, during the term of the exemption, the bills to be issued by the Borough to the Entity for the amount of the Annual Service Charge shall be based upon the immediately preceding calendar year's Annual Gross Revenues, subject to adjustment for overpayment or underpayment within thirty (30) Days after the close of each such calendar year.

[**SECTION 4.02.** <u>Calculation of Annual Service Charge</u>. In consideration of the Borough granting the Entity the long term tax exemption set forth in this Financial Agreement, the Entity shall pay (i) to the Trustee for Debt Service the Pledged Annual Service Charge, and (ii) to the Borough for municipal services supplied to the Project, as provided in the Exemption Law, the Unpledged Annual Service Charge, which shall be equal to seven (7%) percent of AGR from the ASC Commencement Date until the thirtieth (30^{th}) anniversary of the ASC Commencement Date.][14]

[**SECTION 4.02.** <u>Calculation of Annual Service Charge</u>. In consideration of the Borough granting the Entity the long term tax exemption set forth in this Financial Agreement, the Entity shall pay (i) to the Trustee for Debt Service the Pledged Annual Service Charge, and (ii) to the Borough for municipal services supplied to the Project, as provided in the Exemption Law, the Unpledged Annual Service Charge, which shall be calculated as follows:

(a) <u>Stage One</u>: From the ASC Commencement Date until the day immediately preceding the sixteenth (16^{th}) anniversary of the ASC Commencement Date, the Unpledged Annual Service Charge shall be eight (8%) percent of AGR;

(b) <u>Stage Two</u>: From the sixteenth (16^{th}) anniversary of the ASC Commencement Date until the day immediately preceding the twenty-sixth (26^{th}) anniversary of the ASC

---

[13] Amount to be based on the first year Annual Service Charge as set forth in the Financial Plan.
[14] Applicable to Retail Financial Agreements.

Commencement Date, the Unpledged Annual Service Charge shall be equal to nine (9%) percent of AGR;

(c) Stage Three: From the twenty-sixth (26th) anniversary of the ASC Commencement Date until the day immediately preceding the thirty-first (31st) anniversary of the ASC Commencement Date, the Unpledged Annual Service Charge shall be equal to ten (10%) percent of AGR.][15]

SECTION 4.03. Pledged Annual Service Charge

(a) The Pledged Annual Service Charge shall comprise a portion of the Annual Service Charge. The Entity hereby agrees to pay to the Trustee the Pledged Annual Service Charge. Installments shall be paid quarterly at the same time taxes are due. The Pledged Annual Service Charge shall not exceed the Debt Service Charges related to the Bonds as determined at the time of issuance and the projected Debt Service Charges related to the Bonds are set forth on **Exhibit C** attached hereto. The Trust Indenture shall provide that the Trustee provide notice to the Borough in the event the Entity fails to make a payment of the Pledged Annual Service Charge when due.

(b) The proceeds of the Bonds shall be utilized to finance, or provide reimbursement for, a portion of the costs of the Project as set forth in the Trust Indenture.

SECTION 4.04. Unpledged Annual Service Charge. The Unpledged Annual Service Charge shall comprise a portion of the Annual Service Charge and shall equal the Annual Service Charge less the Pledged Annual Service Charge. The Entity hereby agrees to pay to the Borough the Unpledged Annual Service Charge.

SECTION 4.05. Minimum Annual Service Charge. Notwithstanding anything to the contrary in this Financial Agreement, including, without limitation, Section 4.02 hereof, the Annual Service Charge for the Project [prior to application of the land tax credit pursuant to Section 4.04 hereof][16] shall not be less than the Minimum Annual Service Charge. In the event that the calculation of the Annual Service Charge [prior to application of the land tax credit pursuant to Section 4.04 hereof][17] equals an amount that is less than the Minimum Annual Service Charge, then the Minimum Annual Service Charge shall be payable by the Entity to the Borough in lieu of such lesser Annual Service Charge.

SECTION 4.06. Land Tax and Land Tax Credit; Tax Appeals

[(a) The Entity is obligated to pay Land Taxes and in accordance with the Exemption Law, including without limitation, N.J.S.A. 40A:20-12, following the ASC Commencement Date, the Entity shall be entitled to a credit against the Unpledged Annual Service Charge equal to the amount, without interest, of the Land Taxes paid by it in the last four preceding quarterly installments.] [18]

---

[15] Applicable to Residential Financial Agreements.
[16] Applicable to Retail Financial Agreements.
[17] Applicable to Retail Financial Agreements.
[18] Applicable to Retail Financial Agreements.

[(a) The Land shall be exempt from Land Taxes from the ASC Commencement Date through the Termination Date in accordance with *N.J.S.A.* 40A:20-12, provided, however, that if such exemption of Land Taxes is invalidated by a court of competent jurisdiction, then this Agreement shall remain in full force and effect and shall be reformed to provide that: (i) Land Taxes are assessed on the Land; and (ii) the Entity, or its Transferee, shall be entitled to a credit against the Unpledged Annual Service Charge for the amount, without interest, of the Land Tax payments timely made in the last four (4) preceding quarterly installments.][19]

(b) The Entity shall have the right, at its option, to appeal the assessed value of the Property and Improvements. Any such appeal shall be filed in accordance with, and governed by, Applicable Law.

SECTION 4.07. Municipal Charges. The Entity, in addition to paying [Land Taxes and][20] Annual Service Charges, shall be responsible for paying (without any credit whatsoever hereunder) all other applicable municipal charges that may, from time to time, be lawfully assessed with regard to the Project, including, without limitation, any and all special benefit assessments, special improvement district assessments, water and sewer charges, and other municipal charges, whether presently existing or hereinafter imposed, and that the Borough may enforce such assessments and charges in any manner (including, but not limited to, foreclosure or tax sale) permitted by Applicable Law.

SECTION 4.08. Material Conditions. It is expressly agreed and understood that all payments of Land Taxes, Annual Service Charges, and any interest payments, penalties, or costs of collection due thereon, are material conditions of this Financial Agreement. If any other term, covenant, or condition of this Financial Agreement or the Application, as to any person or circumstance shall, to any extent, be determined by a court of competent jurisdiction 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 remaining term, covenant or condition of this Financial Agreement shall be valid and enforced to the fullest extent permitted by Applicable Law.

SECTION 4.09. Remittance to County. The Borough shall remit the County Share to the County of Monmouth in accordance with N.J.S.A. 40A:20-12(b)(2)(e).

SECTION 4.10. Payments During Construction. The Parties agree that conventional property taxes are due from time to time in accordance with Applicable Law prior to the ASC Commencement Date.

SECTION 4.11. Annual Service Charges and Administrative Fee as Municipal Lien. The Borough and the Entity hereby expressly acknowledge, understand, and agree that in accordance with Applicable Law, the Ordinance and this Financial Agreement, any amount due hereunder, including without limitation, the Annual Service Charge and the Administrative Fee,

---

[19] Applicable to Residential Financial Agreements.
[20] Applicable to Retail Financial Agreements.

constitutes a continuous, municipal lien on the Property and the Improvements related thereto, and that any subsequent Annual Service Charge or Administrative Fee, including any interest, penalties, or costs of collection thereof, that shall thereafter become due or accrue, shall be added and relate back to and be part of the initial municipal lien, (b) the Ordinance, this Financial Agreement, and any amounts due hereunder, including without limitation, the Annual Service Charge and Administrative Fee, shall constitute an automatic, enforceable, and perfected statutory municipal lien for all purposes, including specifically and without limitation, the Federal bankruptcy code, regardless of whether the amount of the Annual Service Charge or Administrative Fee have been determined, and (c) any applicable process, procedure or action of any court, government body or other relevant authority, including without limitation any confirmation hearing, to determine the amount of the Annual Service Charge or Administrative Fee due shall not affect the commencement or validity of the municipal lien.

SECTION 4.12. Security for Payment of Annual Service Charges. In order to secure the full and timely payment of the Annual Service Charges, the Borough reserves the right to prosecute an In Rem Tax Foreclosure action against the Property and the Improvements erected thereon.

ARTICLE V
ENTITY'S CONSENT; PLEDGE OF ANNUAL SERVICE CHARGE TO BONDS; THE BONDS

SECTION 5.01. Entity's Consent. The Entity hereby consents and agrees to the amount of the Annual Service Charge and to the liens established in this Financial Agreement, and the Entity shall not contest the validity or amount of any such Annual Service Charge or lien. The Entity's remedies shall be limited to those specifically set forth herein and as otherwise as provided by Applicable Law. Nothing in this paragraph shall prevent the Entity from contesting an error in an Annual Service Charge bill or pursuing a Permitted Action, defined hereinafter, in accordance with Section 15.03 hereof.

SECTION 5.02. Security for the Bonds.

(a) Pursuant to the RAB Law, specifically N.J.S.A. 40A:12A-67(c), and as security for the Bonds, the Pledged Annual Service Charge shall be pledged to the repayment of the Bonds, in accordance with and as further set forth in the Trust Indenture.

(b) Pursuant to the RAB Law, specifically N.J.S.A. 40A:12A-67(c), and other applicable law, the Pledged Annual Service Charge shall not be included within the general funds of the Borough. The Borough's pledge of the Pledged Annual Service Charge shall be a limited obligation of the Borough payable to the extent of payments received from the Entity and shall not constitute a general obligation of the Borough. The Borough has no obligation whatsoever to make any payments of the Annual Service Charge to the extent that the Pledged Annual Service Charge or any portion thereof is not paid by the Entity.

(c) The Unpledged Annual Service Charge shall in no event constitute a portion of the trust estate under the Trust Indenture, or otherwise constitute security for, the Bonds, and the

Trustee, if it shall receive any Unpledged Annual Service Charges, shall not set-off any such amount against any unpaid Pledged Annual Service Charge, and accordingly, the Trustee shall transmit such Unpledged Annual Service Charge promptly to the Borough.

(d) It is hereby expressly understood by the Parties that under no circumstances shall the Borough be required to (i) purchase, or otherwise fund, any tax lien, tax sale certificate, or other mechanism for the enforcement of the Pledged Annual Service Charge, the sole obligation of the Borough being to undertake the sale of the tax liens in the same manner, and at the same time, as generally applicable for unpaid taxes due and owing to the Borough, subject to all applicable laws (including bankruptcy laws) or (ii) make payment of any unpaid Pledged Annual Service Charge.

SECTION 5.03. The Bonds. The Bonds shall be issued in a par amount not to exceed [$500,000 for each of the Phase 1 Residential Component, the Phase 2 Residential Component, and the Phase 3 Residential Component][21] [$1,500,000, in one or more series, for the General Retail Subcomponent, the Boscov's Subcomponent, and the Whole Foods Subcomponent][22] to provide financial assistance to the Project. The Bonds shall comply with the criteria set forth in the resolutions, indentures or other agreements to be negotiated providing for and securing the issuance of the Bonds. The Bonds shall be non-recourse to the Borough and shall not in any way require the Borough to levy ad valorem taxes, whether to pay principal, interest, interest reserves or any other costs or expenses with respect to the Bonds. The Bonds will be issued on a taxable basis with an interest rate not to exceed five percent (5%), shall amortize over a period of thirty (30) years, and the Entity may utilize the net proceeds of the Bonds for any cost of the Project, subject to the procedures and conditions set forth in the resolutions, indentures and agreements to be negotiated with respect to the Bonds.

ARTICLE VI
BOROUGH DETERMINATIONS

SECTION 6.01. Benefits and Importance of Tax Exemption. In accordance with the Exemption Law, specifically N.J.S.A. 40A:20-11, the Borough hereby finds and determines that this Agreement is to the direct benefit of the health, welfare, and financial well-being of the Borough and its citizens because it will achieve the goals and objectives set forth in the Redevelopment Plan; will best effectuate the redevelopment and improvement of the Redevelopment Project Site; achieve the goals and objectives set forth in the Redevelopment Plan; will help revitalize and/or repurpose underutilized land; will invigorate the Redevelopment Project Site and surrounding community; will create approximately three hundred fifty (350) construction jobs and three hundred (300) new permanent jobs in connection with the operation of the Redevelopment Project,, to patronize existing businesses, retail and restaurants located in the area; is projected to produce approximately $161 million in revenue to the Borough over the thirty (30) years, including approximately $153 million net of debt service due on the Bonds; will improve the quality of life for the community; and will enhance the economic development of the Borough. In addition, the Redeveloper has agreed, pursuant to the terms of the Redevelopment Agreement, to deed restrict 12.5% of the rental units actually built (approximately one hundred twenty-five

[21] Applicable to the Residential Financial Agreements.
[22] Applicable to the Retail Financial Agreement.

(125) units, which count may vary depending on actual number of residential units built) of the Redevelopment Project for very-low, low-, and moderate-income households in furtherance of the Borough's Settlement Agreement with Fair Share Housing Center, dated December 17, 2018. For the non-residential development within the Redevelopment Project, the Redeveloper shall adhere to the applicable requirements of Article [__] of the Borough's Code, entitled ["Affordable Housing Development Fee and Trust Fund,"] as may be amended:

(a) The costs associated with the tax exemption granted herein are minor compared to the estimated total Redevelopment Project cost in excess of $161 million and the benefit created by (i) the construction of the Improvements; (ii) the construction and deed restriction (pursuant to the terms of the Redevelopment Agreement) of affordable units which will be applied to the Borough's affordable housing obligation; (iii) the comprehensive effectuation of the Redevelopment Plan; (iv) the invigoration of the Redevelopment Project Site and surrounding; (v) the creation of approximately six hundred fifty (650) jobs in connection with the construction and operation of the Redevelopment Project in the Borough; (vi) the significant Annual Service Charge [and Land Tax] revenue paid to the Borough.

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

ARTICLE VII
CERTIFICATE OF OCCUPANCY

SECTION 7.01. Certificate of Occupancy. It shall be the obligation of the Entity to obtain all Certificates of Occupancy in a reasonably timely manner after the Entity has satisfied all requirements to secure such Certificate of Occupancy.

SECTION 7.02. Filing of Certificate of Occupancy. It shall be the primary responsibility of the Entity to forthwith file with both the Tax Assessor and the Tax Collector a copy of each Certificate of Occupancy.

Notwithstanding the foregoing, the filing of any Certificate of Occupancy shall not be a prerequisite for any action taken by the Borough, including, if appropriate, retroactive billing with interest to collect any charges hereunder to be due.

ARTICLE VIII
ACCOUNTING, REPORTS, CALCULATIONS

SECTION 8.01. Accounting System. The Entity agrees to calculate its Net Profit pursuant to N.J.S.A. 40A:20-3(c).

SECTION 8.02. Periodic Reports.

(a) Total Project Cost Audit. Within ninety (90) Days after the Completion Date, the Entity shall submit to the Borough Council, the Tax Collector and the Borough Clerk, who shall advise those municipal officials required to be advised, an audit of Total Project Cost, supported by a certification of the licensed architect for the Project as required by N.J.S.A. 40A:20-3(h)(4).

(b) Auditor's Report: Within ninety (90) Days after the close of each fiscal or calendar year (depending on the Entity's accounting basis) that this Agreement shall continue in effect, commencing for the year in which the ASC Commencement Date occurs, the Entity shall submit an Auditor's Report to the Borough Council, the Tax Collector and the Borough Clerk, who shall advise those municipal officials required to be advised. The Auditor's Report shall clearly identify and calculate the Net Profit for the Entity during the previous year. The Entity assumes all costs associated with preparation of the periodic reports.

(c) Disclosure Statement: On each anniversary date of the execution of this Agreement, the Entity shall submit to the Borough 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 8.03. 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 fifteen (15) 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.

SECTION 8.04. Limitation on Profits and Reserves.

(a) 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 required to be completed in accordance with Generally Accepted Accounting Principles. In accordance with N.J.S.A. 40A:20-15, Excess Net Profits shall be calculated on an annual but cumulative basis.

(b) 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 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.

SECTION 8.05. Payment of Dividend and Excess Profit Charge. If the Net Profits of the Entity shall exceed the Allowable Net Profits for such period, then the Entity, within ninety (90) Days after the end of the accounting period established by the Exemption Law, 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 aforementioned Section 8.04. The calculation of Net Profit and Allowable Net Profit shall be made in the manner required pursuant to N.J.S.A. 40A:20-3(c) and 40A:20-15, subject to the provisions of Section 8.06 hereof.

SECTION 8.06. Calculation of Gross Revenue. The Entity shall, for the duration of this Financial Agreement, calculate the Annual Gross Revenue in accordance with the Exemption Law and this Agreement and the computation of Annual Gross Revenue shall be shown on the Entity's Auditor's Report.

ARTICLE IX
SALE OF PROJECT

SECTION 9.01. Approval of Sale of Project to Entity Formed and Eligible to Operate Under Applicable Law.

(a) Prior to the Completion Date, the Entity shall only be permitted to transfer the Project, its ownership interest in the Property or any ownership interest in the Entity in accordance with the terms set forth in the Redevelopment Agreement. After the Completion Date, the Entity shall not voluntarily transfer more than ten percent (10%) of the Project or any portion thereof, until it has first removed both itself and the Project from all restrictions imposed by this Agreement and the Exemption Law in the manner provided by the Exemption Law, except as provided in the following subsections.

(b) 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, will consent to a sale of the Property or transfer of interest in the Project, and the transfer of this Financial Agreement, provided that: (i) the transferee entity does not own or lease any other Project subject to the Exemption Law 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 hereunder or in default under the Redevelopment Agreement and/or the Exemption Law; (iv) the Entity's obligations under this Financial Agreement are fully assumed by the transferee entity; and (v) the transferee entity agrees to abide by all terms and conditions of this Financial Agreement (any such transferee, a "**Transferee**"). The Borough may charge an administrative fee of two percent (2%) of the Annual Service Charge due in the year that the transfer is requested for processing any such application for transfer by the Entity.

(c) [RESERVED][23] [The Entity may transfer the Boscov Subcomponent Project to Monmouth V B Urban Renewal, LLC (the "**Boscov's URE Affiliate**") without any further consent or action of the Borough. To the extent the Entity transfers the Boscov's Subcomponent Project to the Boscov's URE Affiliate, the Entity and the Boscov's URE Affiliate shall enter in a partial assignment and assumption of this Agreement, pursuant to which the Entity shall assign, and the Boscov's URE Affiliate shall assume, all rights and obligations under this Agreement applicable

[23] Applicable to all Financial Agreements other than the Retail Component.

to the Boscov's Subcomponent Project. If determined necessary, desirable, or convenient by the Entity with respect to the General Retail Subcomponent Project, or the Boscov's URE Affiliate with respect to the Boscov's Subcomponent Project, the Borough and the Entity or the Boscov's URE Affiliate, as applicable, shall execute the financial agreement attached hereto as **Exhibit D** with respect to the General Retail Subcomponent Project, or the financial agreement attached hereto as **Exhibit E** with respect to the Boscov's Subcomponent Project, as applicable, which the Mayor of the Borough may execute without any further official action of the Borough. In addition, the Entity may transfer the Whole Foods Subcomponent Project to Monmouth V WF Urban Renewal, LLC (the "**Whole Foods URE Affiliate**") without any further consent or action of the Borough. To the extent the Entity transfers the Whole Foods Subcomponent Project to the Whole Foods URE Affiliate, the Entity and the Whole Foods URE Affiliate shall enter in a partial assignment and assumption of this Agreement, pursuant to which the Entity shall assign, and the Whole Foods URE Affiliate shall assume, all rights and obligations under this Agreement applicable to the Whole Foods Subcomponent Project. If determined necessary, desirable, or convenient by the Entity with respect to the General Retail Subcomponent Project, or the Whole Foods URE Affiliate with respect to the Whole Foods Subcomponent Project, the Borough and the Entity or the Whole Foods URE Affiliate, as applicable, shall execute the financial agreement attached hereto as **Exhibit D** with respect to the General Retail Subcomponent Project, or the financial agreement attached hereto as **Exhibit F** with respect to the Whole Foods Subcomponent Project, as applicable, which the Mayor of the Borough may execute without any further official action of the Borough.][24]

(d) The Entity shall be permitted to transfer any ownership interest in the Entity, provided that, if the transfer is for an interest greater than ten percent (10%), such transfer shall be disclosed to the Borough Council in the next Auditor's Report or in correspondence sent to the Borough Clerk in advance of the next Auditor's Report.

(e) If the Entity transfers the Project to another urban renewal entity, and the Transferee has assumed all of the Entity's contractual obligations under this Financial Agreement, then, pursuant to N.J.S.A. 40A:20-6, the Entity shall be discharged from any further obligation under this Agreement and shall be qualified to undertake another project pursuant to the Exemption Law. The date of transfer of title of the Project to a Transferee entity shall be considered to be the close of the fiscal year of the Entity.

(f) Notwithstanding anything to the contrary contained in (a) through (d) above, or elsewhere in this Financial 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 9.02 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 Entity, pursuant to Section 9.01 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 the amount of reserve, if any,

[24] Applicable only to Retail Financial Agreement.

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 9.03 Collateral Assignment. It is expressly understood and agreed that the Entity has the right, to the extent permitted by the Exemption Law and the Redevelopment Agreement, to encumber and/or assign 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 Redevelopment Agreement (if then still in effect) and the Exemption Law, assign, pledge, hypothecate, or otherwise transfer its rights under this Financial Agreement and/or its interest in the Project to one or more secured parties or any agents therefor (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 to such Secured Parties any notice of Default or notice of intent to enforce its remedies under this Financial 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) So long as the Entity is not in Default hereunder, the Borough hereby consents to any collateral assignment by the Entity to any Secured Party or Secured Parties of its interests in this Financial Agreement and agrees 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.

(d) Notwithstanding anything to the contrary contained herein, and in addition to all other rights and remedies of Secured Parties set forth in this Financial Agreement, the provisions of N.J.S.A. 55:17-1 to -11 shall apply to this Financial Agreement to protect the interests of any Secured Party. Any assignee of this Agreement from a Secured Party ("**Successor Entity**") shall first (i) be qualified as an urban renewal entity pursuant to the Exemption Law, (ii) qualify as a "Transferee" pursuant to Section 9.01(b) hereof, and (iii) pay the administrative fee of two percent

(2%) of the Annual Service Charge due in the year that the transfer to such Successor Entity occurs.

SECTION 9.04. Severability. It is an express condition of the granting of this tax exemption that during its duration, the Entity shall not sever, disconnect, or divide the Improvements from the Property, which is basic to, embraced in, or underlying the exempted Improvements.

ARTICLE X
RESERVATION OF BOROUGH RIGHTS AND REMEDIES

SECTION 10.01. Reservation of Borough Rights and Remedies. Except as otherwise expressly set forth herein, nothing contained in this Financial Agreement or otherwise shall constitute a waiver or relinquishment by the Borough of any rights and remedies provided by Applicable Law. Unless otherwise expressly stated, nothing herein shall be deemed to limit any right of recovery that the Borough has under law, in equity, or under any provision of this Financial Agreement.

ARTICLE XI
NOTICES

SECTION 11.01. Notice. Formal notices, demands and communications between and among the Borough and the Entity shall be in writing and deemed given if dispatched to the address set forth below by overnight delivery service with packaging tracking capability and for which proof of delivery is available. Notice shall be deemed effective upon delivery. Such written notices, demands, and communications may be sent in the same manner to such other addresses as either party may from time to time designate by written notice.

All notices, demands and communications shall be sent as follows:

If to the Borough:
Borough of Eatontown
47 Broad Street
Eatontown, New Jersey 07724
Attention: Municipal Clerk

with copies to:
James G. Fearon, Esq.
Dilworth Paxon LLP
4 Paragon Way
Suite 400
Freehold, NJ 07728
Email: jfearon@dilworthlaw.com

If to the Entity:
Monmouth V [•] Urban Renewal, LLC

c/o Kushner
767 Fifth Avenue, Floor 50
New York, New York 10153
Attention: Michael Sommer, Executive Vice-President Development and Construction

With copies to:
Pearlman & Miranda, LLC
Ironside Newark
110 Edison Place, Suite 301
Newark, New Jersey 07102
Attention: Adam L. Peterson, Esq.
Email: APeterson@PearlmanMiranda.com

If the Entity delivers formal written notice to the Borough in accordance with this Financial Agreement, of the name and address of any Secured Party, then the Borough shall provide such Secured Party with a copy of any notice required to be sent to the Entity.

ARTICLE XII
COMPLIANCE BY ENTITY WITH LAW

SECTION 12.01. Statutes and Ordinances. The Entity hereby agrees at all times prior to the Termination Date to remain bound by the provisions of Applicable Law, including, but not limited to, the Exemption Law and the RAB Law. The Entity's failure to comply with such statutes or ordinances shall constitute a violation by the Entity of this Financial Agreement and breach of this Financial Agreement by the Entity, and the Entity shall be subject to the legal rights and remedies of the Borough for such breach.

ARTICLE XIII
CONSTRUCTION

SECTION 13.01. Construction. This Financial Agreement shall be construed and enforced in accordance with the laws of the State, and without regard to or aid or any presumption or other rule requiring construction against the party drawing or causing this Financial Agreement to be drawn since counsel for both the Entity and the Borough have combined in their review and approval of same.

ARTICLE XIV
INDEMNIFICATION

SECTION 14.01. Indemnification. It is understood and agreed that in the event the Borough shall be named as party defendant in any action brought against the Borough by allegation of any breach, Default or a violation of any of the provisions of this Financial Agreement or the provisions of 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 or by reason of any breach, Default, or violation of any of the provisions of this Financial Agreement or the provisions of Applicable Law, by the Entity, except for the willful misconduct by the Borough or its officers, officials, employees, or agents and the Entity shall defend the suit at its own expense. However, the Borough maintains the right to intervene as a party thereto, to which intervention the Entity hereby consents, the reasonable expense thereof to be borne by the Entity.

ARTICLE XV
DEFAULT

SECTION 15.01. Default. "**Default**" shall be 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. In addition, an "**Event of Default**" under the Redevelopment Agreement with respect to any obligations of the Entity thereunder which has or have not been cured in accordance with the terms of the Redevelopment Agreement shall constitute a Default under this Financial Agreement. A "**Payment Default**" shall be the nonpayment or late payment of all or a portion of Land Taxes, the Administrative Fee, Annual Service Charge, or Minimum Annual Service Charge.

SECTION 15.02. Cure Upon Default. Should any party be in Default of any obligation under this Financial Agreement, the other Party shall notify the defaulting Party and any Secured Party, if applicable, in writing of said Default. Said notice shall set forth with particularity the basis of said Default. Except as otherwise limited by law, the defaulting Party shall have sixty (60) Days to cure any Default, other than a Payment Default in payment of any installment of the Annual Service Charge, in which case the defaulting Party shall have thirty (30) Days to cure such Payment Default, subject to any additional time periods provided to Secured Parties to cure under this Agreement.

SECTION 15.03. Remedies for Default.

(a) In the event of any uncured Default by the Borough, the Entity may take whatever action at law or in equity as may be necessary or desirable to enforce the performance or observance of any rights under this Financial Agreement, including an action for specific performance or damages against the Entity.

(b) In the event of any uncured Default by the Entity, subject to applicable notice and cure provisions set forth herein and subject to applicable rights of Secured Partiės set forth herein, the Borough may take whatever action at law or in equity as may be necessary or desirable to enforce the performance or observance of any rights under this Financial Agreement, including an action for specific performance or damages against the Entity, or to seek termination of the exemption and this Agreement by court order. No Default hereunder by the Entity shall terminate the long term tax exemption (except as described herein) and the Entity's obligation to make Annual Service Charges, which shall continue in effect for the duration set forth in Section 3.01 hereof and subject to Section 15.06 hereinafter.

SECTION 15.04. Arbitration. 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 of New Jersey, to be resolved in accordance with its rules and regulations in such fashion as to accomplish the purposes of the Exemption Law and this Financial Agreement. The costs of arbitration shall be borne equally by the Parties involved in the arbitration. The demand for arbitration shall be filed in writing and shall be made within a reasonable time after a dispute or breach occurs. 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 if applicable, 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 15.05. Default in the Payment of Annual Service Charge.

(a) Upon any Default by the Entity in payment of any installment of the Annual Service Charge or Administrative Fee, the Borough, in addition to its other remedies, reserves the right to proceed against the Property, and any Improvements related thereto, and shall have the right to proceed to In Rem Tax Foreclosure consistent with the provisions and procedures of the In Rem Tax Foreclosure law.

(b) Whenever the word "Taxes" appears, or is applied, directly or implied, to mean taxes or municipal liens on land, such statutory provisions shall be read, as far as it is pertinent to this Financial Agreement, as if the Annual Service Charge and Administrative Fee were taxes or municipal liens on land. In either case, however, the Entity does not waive any defense it may have to contest the rights of the Borough to proceed in the above-mentioned manner.

SECTION 15.06. Remedies upon Default Cumulative; No Waiver. Subject to the provisions of Article XV and the other terms and conditions of this Financial Agreement, all of the remedies provided in this Financial Agreement to any Party, and all rights and remedies granted by law and equity shall be cumulative and concurrent, and no determination of the invalidity of any provision of this Financial Agreement shall deprive the Borough of any of its remedies or actions against the Entity because of the Entity's failure to pay Land Taxes, the Annual Service Charge, the Administrative Fee, and/or any other municipal charges and interest payments. This right shall only apply to arrearages that are due and owing at the time, and the bringing of any action for Land Taxes, Annual Service Charges, the Administrative Fee or other charges, or for breach of covenant or the resort of any other remedy herein provided for the recovery of Land Taxes, Annual Service Charges, the Administrative Fee, or other charges shall not be construed as a waiver of the right to proceed with an In Rem Tax Foreclosure action consistent with the terms and provisions of this Financial Agreement.

SECTION 15.07. Final Accounting. Within one hundred twenty (120) Days after the Termination Date, the Entity shall provide a final accounting and pay to the Borough any Excess Net Profits. For purposes of rendering a final accounting, the termination of this Financial Agreement shall be deemed to coincide with the end of the fiscal year of the Borough.

SECTION 15.08. Conventional Taxes. Upon the Termination Date, the tax exemption for the [Land and][25] Improvements shall expire, and the Property 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 XVI
MISCELLANEOUS

SECTION 16.01. Financial Agreement Controlling. In the event of a conflict between the Redevelopment Agreement and this Financial Agreement, the provisions of this Financial Agreement shall govern and prevail.

SECTION 16.02. Oral Representations. There have been no oral representations made by either of the Parties hereto which are not contained in this Financial Agreement. This Financial Agreement, the Redevelopment Agreement (as assigned to and assumed by the Entity), the Ordinance, and the Application constitute the entire agreement between the Parties and there shall be no modifications thereto other than by a written instrument executed by the Parties and delivered to each of them.

SECTION 16.03. Entire Document. All conditions in the Ordinance are incorporated in this Financial Agreement and made a part hereof.

SECTION 16.04. Good Faith. In their dealings with each other, the Parties agree that they shall act in good faith.

SECTION 16.05. Portion of Annual Service Charge Paid to County. The Borough shall remit the applicable portion of the Annual Service Charge to the County upon the receipt thereof in accordance with N.J.S.A. 40A:20-12.

SECTION 16.06. Administrative Fee. In accordance with N.J.S.A. 40A:20-9(h), the Borough shall collect from the Entity an administrative fee equal to two percent (2.00%) of the Annual Service Charge due in any year (the "**Administrative Fee**"). The Administrative Fee shall be payable by the Entity to the Borough in installments on the same date that the Annual Service Charge is due and payable.

SECTION 16.07. Financing Matters. The financial information required by the final paragraph of N.J.S.A. 40A:20-9 is set forth in the Application and is incorporated herein in full.

[25] Applicable to Residential Components.

SECTION 16.08. Amendments. This Financial Agreement may not be amended, changed, modified, or altered without the written consent of the Parties hereto.

SECTION 16.09. Certification. The Borough Clerk shall certify to the Tax Assessor that this Financial Agreement has been entered into and is in effect as required by N.J.S.A. 40A:20-12. Delivery by the Borough Clerk to the Tax Assessor of a certified copy of the Ordinance shall constitute the required certification. Upon certification as required hereunder and upon the ASC Commencement Date, the Tax Assessor shall implement the exemption and continue to enforce that exemption without further certification by the Borough Clerk until the expiration of the entitlement to exemption by the terms of this Financial Agreement or until the Tax Assessor has been duly notified by the Borough Clerk that the exemption has been terminated.

Further, upon the execution of this Financial Agreement, a certified copy of the Ordinance and the Financial Agreement shall forthwith be transmitted by the Borough Clerk to the chief financial officer of the County and to the County counsel for informational purposes.

SECTION 16.10. Counterparts. This Financial Agreement may be simultaneously executed in counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

SECTION 16.11. Severability of Invalid Provisions. If any one or more of the covenants, agreements, or provisions herein contained shall be held to be illegal or invalid in a final proceeding, then any such covenants, agreements, or provisions shall be null and void and shall be deemed separable from the remaining covenants, agreements, or provisions and shall in no way affect the validity of any of the other provisions hereof.

SECTION 16.12. Estoppel Certificate. Within fifteen (15) Days following written request therefor by the Entity, or any Secured Party, purchaser, tenant, or other party having an interest in the Project, the Borough shall issue not more than two (2) signed estoppel certificates per year 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 Financial 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 factual matter pertaining to this Financial Agreement reasonably requested.

SECTION 16.13. Recording. Subsequent to the delivery and acceptance of the final legal description for the Property pursuant to Section 16.14 of this Financial Agreement, the Borough shall cause the entire Financial Agreement and the Ordinance, or a memorandum thereof, to be filed and recorded with the Monmouth County Clerk, at the Entity's expense. The Parties acknowledge and agree that this Financial Agreement and the Ordinance, or memorandum thereof, may be recorded as part of the closing of the construction loan for the Project.

SECTION 16.14. Finalization of Legal Description of Property. The Parties acknowledge that, as of the date hereof, the legal description of the Property is not yet established. Subsequent to Planning Board approval of the subdivision of the Property from the remainder of the Redevelopment Project Site and subsequent to the perfection of such subdivision, the Entity shall deliver to the Borough the legal description for the Property as approved by the Planning Board, which legal description shall include a metes and bounds description of the Property, and, upon such delivery, such legal description shall automatically, without the need of any further official action of either Party, supersede and replace **Exhibit A** attached hereto.

EXHIBITS

EXHIBIT A – MAP OF PROPERTY WITH PROPERTY LEGAL DESCRIPTION
EXHIBIT B – FINANCIAL PLAN
EXHIBIT C – PLEDGED ANNUAL SERVICE CHARGES
[EXHIBIT D – FORM OF FINANCIAL AGREEMENT (GENERAL RETAIL SUBCOMPONENT PROJECT)
EXHIBIT E – FORM OF FINANCIAL AGREEMENT (BOSCOV'S SUBCOMPONENT PROJECT)
EXHIBIT F – FORM OF FINANCIAL AGREEMENT (WHOLE FOODS SUBCOMPONENT PROJECT)][26]

[Signature Page Follows]

[26] Applicable only to Financial Agreement applicable to General Retail, Boscov's, and Whole Foods.

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

BOROUGH OF EATONTOWN

____

ANTHONY TALERICO, JR., Mayor

ACKNOWLEDGEMENT

STATE OF NEW JERSEY)
) SS.:
COUNTY OF MONMOUTH)

Be it remembered that on the ____, day of _______________, 2023, ANTHONY TALERICO, JR. personally appeared before me, and this person acknowledged under oath, to my satisfaction that:

(a) he is the Mayor of the Borough of Eatontown 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.

____

MONMOUTH V [•] URBAN RENEWAL, LLC,
a Delaware limited liability company

By: ______________________________
Name:
Title:

ACKNOWLEDGEMENT

STATE OF ___________)
)   SS.:
COUNTY OF _________)

Be it remembered that on the ___ day of ______________, 2023, __________________ personally appeared before me, and this person acknowledged under oath, to my satisfaction that:

(a) she/he is the ____________ of Monmouth V [•] Urban Renewal LLC, the limited liability company named as Entity in the attached Financial Agreement;

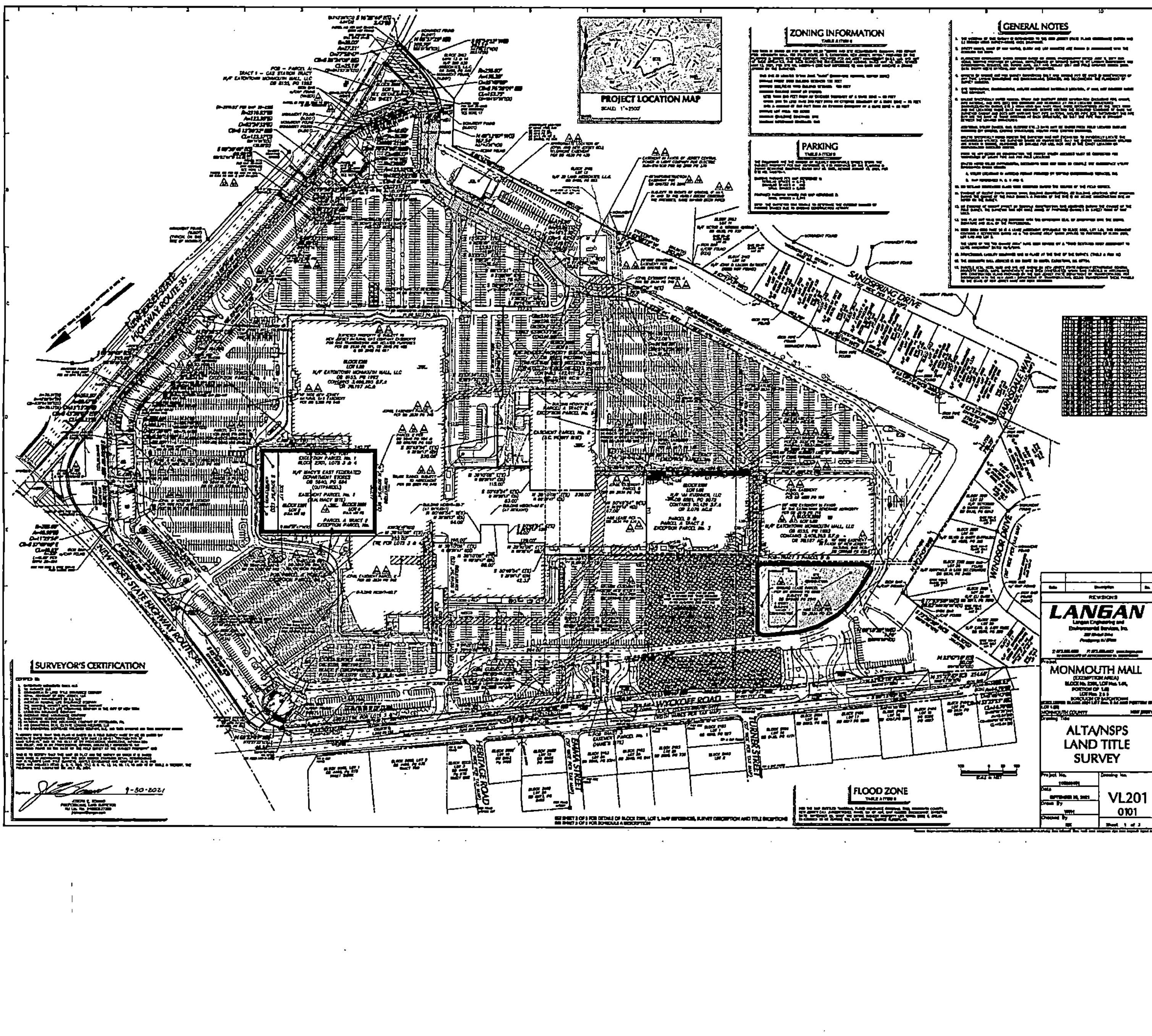
(b) she/he is authorized to execute the attached Financial Agreement on behalf of the Entity;

(c) she/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.

____

EXHIBIT A – TO FINANCIAL AGREEMENT
MAP OF PROPERTY WITH PROPERTY DESCRIPTION



PROJECT LOCATION MAP
ZONING INFORMATION
PARKING
GENERAL NOTES
SURVEYOR'S CERTIFICATION
FLOOD ZONE
NEW JERSEY STATE HIGHWAY ROUTE 35
WYCKOFF ROAD
SANDSPRING DRIVE
WINDSOR DRIVE
9-30-2021
LANGAN
MONMOUTH MALL
ALTA/NSPS
LAND TITLE
SURVEY
VL201
0101

3 August 2023
100656101

WRITTEN DESCRIPTION
BLOCK 2201, LOTS 1.01
BOROUGH OF EATONTOWN
MONMOUTH COUNTY, NEW JERSEY

All that certain tract of land and premises situated in the Borough of Eatontown, County of Monmouth and State of New Jersey, bounded and described as follows:

Commencing at an iron bar and cap found in the southerly right-of-way line of New Jersey State Highway Route 36 (width varies), said point being at the northeasterly terminus of a course leading from the southeasterly right-of-way line of Wyckoff Road (also known as County Route 547, width varies) to said southerly right-of-way line of Route 36. Said point also being the beginning point of Tract 2 of a deed from Monmouth Associates to Eatontown Monmouth Mall, LLC recorded in Deed Book 8155, page 1992; thence

A. South 60°57'51" West, a distance of 46.32 feet along said course leading from the southeasterly right-of-way line of Wyckoff Road to said southerly right-of-way line of Route 36 to an iron bar with cap found; thence

Along said southeasterly right-of-way line of Wyckoff Road the following four courses:

B. South 33°50'16" West, a distance of 842.34 feet along to an iron bar with cap found; thence

C. South 32°35'02" West, a distance of 456.99 feet to an iron bar with cap found; thence

D. South 33°50'16" West, a distance of 150.00 feet to a point; thence

E. South 37°47'31" West, a distance of 157.20 feet to a point; thence

F. Along a tie line along the division line between Block 2201, Lot 2 and Block 2201, Lot 1.02, and continuing through Block 2201, Lot 1.02, both lots being lands now or formerly Eatontown Monmouth Mall LLC set forth in Deed Book 8155, Page 1992, South 50°49'54" East, a distance of 484.46 feet to the **Point of Beginning** and running; thence

Along the dividing line between Block 2201, Lot 1.01, lands now or formerly VM Kushner, LLC set forth in Deed Book 8881, Page 5072 and Block 2201, Lot 1.02, lands now or formerly Eatontown Monmouth Mall, LLC set forth in Deed Book 8155, Page 1992, the following twenty-five courses:

1. North 39°10'06" East, a distance of 98.60 feet to a point; thence

2. South 50°49'54" East, a distance of 12.00 feet to a point; thence

3. North 39°10'06" East, a distance of 53.00 feet to a point; thence

4. North 50°49'54" West, a distance of 12.00 feet to a point; thence

5. North 39°10'06" East, a distance of 31.00 feet to a point; thence
6. South 50°49'54" East, a distance of 8.00 feet to a point; thence
7. North 39°10'06" East, a distance of 28.00 feet to a point; thence
8. South 50°49'54" East, a distance of 8.00 feet to a point; thence
9. North 39°10'06" East, a distance of 28.00 feet to a point; thence
10. South 50°49'54" East, a distance of 7.60 feet to a point; thence
11. North 39°10'06" East, a distance of 79.10 feet to a point; thence
12. South 50°49'54" East, a distance of 226.90 feet to a point; thence
13. South 39°10'06" West, a distance of 51.10 feet to a point; thence
14. South 50°49'54" East, a distance of 8.00 feet to a point; thence
15. South 39°10'06" West, a distance of 28.00 feet to a point; thence
16. South 50°49'54" East, a distance of 8.00 feet to a point; thence
17. South 39°10'06" West, a distance of 283.00 feet to a point; thence
18. North 50°49'54" West, a distance of 187.00 feet to a point; thence
19. North 39°10'06" East, a distance of 12.00 feet to a point; thence
20. North 50°49'54" West, a distance of 28.00 feet to a point; thence
21. North 39°10'06" East, a distance of 12.00 feet to a point; thence
22. North 50°49'54" West, a distance of 28.00 feet to a point; thence
23. North 39°10'06" East, a distance of 12.00 feet to a point; thence
24. North 50°49'54" West, a distance of 23.50 feet to a point; thence
25. North 39°10'06" East, a distance of 8.40 feet to the **Point of Beginning.**

Encompassing an area of 90,429 square feet or 2.076 acres of land, more or less.

The above description was prepared in accordance with a plan entitled, "Boundary & Topographic Survey, Monmouth Mall, Block 2201, Lot Nos. 1.01, 1.02, 2 & 5, Borough of Eatontown, Monmouth County, New Jersey", prepared by Langan Engineering and Environmental Services, Inc., Drawing No. VB201, dated August 1, 2023.

Joseph E. Romano
Professional Land Surveyor
New Jersey License No. 24GS03627300

3 August 2023
100656101

WRITTEN DESCRIPTION
BLOCK 2201, LOTS 1.02 & 2
BOROUGH OF EATONTOWN
MONMOUTH COUNTY, NEW JERSEY

All that certain tract of land and premises situated in the Borough of Eatontown, County of Monmouth and State of New Jersey, bounded and described as follows:

Beginning at an iron bar and cap found in the southerly right-of-way line of New Jersey State Highway Route 36 (width varies), said point being at the northeasterly terminus of a course leading from the southeasterly right-of-way line of Wyckoff Road (also known as County Route 547, width varies) to said southerly right-of-way line of Route 36. Said point also being the beginning point of Tract 2 of a deed from Monmouth Associates to Eatontown Monmouth Mall, LLC set forth in Deed Book 8155, page 1992.

From said beginning point running the following four courses along said line of New Jersey State Highway Route 36;

1. South 85°59'09" East, a distance of 376.80 feet to an iron bar and cap found; thence
2. North 87°33'21" East, a distance of 514.32 feet to a point of non-tangent curvature; thence
3. Along a non-tangent curve to the right having a radius of 205.00 feet, an arc length of 40.90 feet, a central angle of 11°25'54", a chord bearing South 57°49'46" East, and a chord length of 40.83 feet to a point of tangency; thence
4. South 52°06'49" East, a distance of 301.55 feet to a point of curvature; thence
5. Along a curve to the right leading from said line of New Jersey State Highway Route 36 to the southwesterly right-of-way line of New Jersey State Highway Route 35 (width varies), said curve having a radius of 262.00 feet, an arc length of 60.47 feet, a central angle of 13°13'25", a chord bearing South 45°30'07" East, and a chord length of 60.33 feet to a point of non-compound curvature; thence the following nine courses along said line of Route 35
6. Along a non-compound curve to the right having a radius of 240.00 feet, an arc length of 89.37 feet, a central angle of 21°20'07", a chord bearing South 20°16'53" East, and a chord length of 88.85 feet to a point of tangency; thence
7. South 09°36'49" East, a distance of 293.85 feet to a point; thence
8. North 79°36'52" East, a distance of 6.00 feet; thence
9. South 09°36'49" East, a distance of 603.08 feet to a point; thence
10. South 80°23'11" West, a distance of 28.00 feet to a point; thence
11. South 08°39'25" East, a distance of 44.95 feet to a point; thence
12. North 79°38'23" East, a distance of 28.75 feet to a point; thence
13. South 09°36'49" East, a distance of 69.98 feet to a point of non-tangent curvature; thence

14. Along a non-tangent curve to the left having a radius of 2,910.93 feet, an arc length of 122.38 feet, a central angle of 02°24'32", a chord bearing South 12°56'32" East, and a chord length of 122.37 feet to point of reverse curvature; thence the following seven course along ramps for Route 35
15. Along a curve to the right having a radius of 230.00 feet, an arc length of 133.38 feet, a central angle of 33°13'31", a chord bearing South 02°27'58" West, and a chord length of 131.51 feet to point of tangency marked by a concrete monument found; thence
16. South 19°04'44" West, a distance of 186.83 feet to a point of curvature; thence
17. Along a curve to the right having a radius of 15.00 feet, an arc length of 26.80 feet, a central angle of 102°21'45", a chord bearing South 70°15'36" West, and a chord length of 23.37 feet to iron bar found; thence
18. South 31°26'29" West, a distance of 70.00 feet to a point; thence
19. Along a non-tangent curve to the left having a radius of 250.00 feet, an arc length of 156.28 feet, a central angle of 35°49'00", a chord bearing South 76°28'01" East, and a chord length of 153.75 feet to a point of tangency; thence
20. North 85°37'29" East, a distance of 105.70 feet to a point of curvature; thence
21. Along a curve to the right having a radius of 20.00 feet, a central angle of 77°56'47", an arc length of 27.21 feet, a chord bearing South 55°24'08" East, a chord distance of 25.16 feet to a point of tangency in said line of Route 35; thence
22. Along said line of Route 35, South 16°25'44" East, a distance of 3.43 feet to a point; thence
23. South 85°34'32" West, a distance of 282.23 feet along the same and continuing along Block 3103 Lots 13 and 14, lands now or formerly 226 R35 Associates, LLC set forth in Deed Book 5496, Page 546, to a point; thence
24. North 49°13'07" West, a distance of 167.54 feet along Block 3103 Lot 12, lands now or formerly 35 Land Associates, LLC set forth in Deed Book 5496, Page 552 to an iron bar found; thence
25. South 66°43'06" West, a distance of 660.03 feet along the same to a found monument; thence
26. South 62°00'19" West, a distance of 283.89 feet along the same to an iron bar and cap found; thence
27. South 67°17'15" West, a distance of 482.76 feet along the northerly line of various lots shown on a map entitled "Final Map Section No. 1, Woodmere East", filed in the Monmouth County Clerk's Office in Case #88-21, to a monument found; thence
28. South 64°26'45" West, a distance of 290.63 feet along the same to a point; thence
29. South 65°09'15" West, a distance of 260.70 feet along the same to a point; thence
30. South 63°15'15" West, a distance of 210.31 feet along the same to a point; thence
31. North 19°12'43" West, a distance of 715.29 feet along the easterly line of lots shown on a map entitled "Final Plat of Wyckoff Estates, Section 2", filed in the Monmouth County Clerk's Office in Case #198-6 to a point; thence the following three courses along the northerly line of lots shown on said map filed in Case 198-6.
32. South 77°55'50" West, a distance of 68.82 feet to an iron bar and cap found; thence
33. North 60°18'32" West, a distance of 1.78 feet to a point; thence

34. South 73°28'30" West, a distance of 384.30 feet to a point of non-tangent curvature in the southerly right-of-way line of Wyckoff Road; thence the following nine courses along said right-of-way line of Wyckoff Road
35. Along a curve to the right having a radius of 1,085.92 feet, an arc length of 14.76 feet, a central angle of 00°46'43", a chord bearing North 32°23'55" East, and a chord length of 14.76 feet to an iron bar and cap found at a point of tangency; thence
36. North 32°47'16" East, a distance of 50.00 feet to an iron bar and cap found; thence
37. North 35°27'40" East, a distance of 214.68 feet to a point; thence
38. South 60°15'49" East, a distance of 10.00 feet to a point; thence
39. North 32°47'16" East, a distance of 544.71 feet to an iron bar and cap found; thence
40. North 37°47'31" East, a distance of 290.02 feet to a point; thence
41. North 33°50'16" East, a distance of 150.00 feet to an iron bar and cap found; thence
42. North 32°35'02" East, a distance of 456.99 feet to an iron bar and cap found; thence
43. North 33°50'16" East, a distance of 842.34 feet to an iron bar and cap found; thence
44. North 60°57'51" East, a distance of 46.32 feet to the point of beginning.

Less and excepting Block 2201, Lots 3 & 4, lands now or formerly of Macy's East Federated Department Stores set forth in Deed Book 5840, Page 594 further described as follows:

All that certain tract of land and premises situated in the Borough of Eatontown, County of Monmouth and State of New Jersey, bounded and described as follows:

Commencing at an iron bar and cap found in the southerly right-of-way line of New Jersey State Highway Route 36 (width varies), said point being at the northeasterly terminus of a course leading from the southeasterly right-of-way line of Wyckoff Road (also known as County Route 547, width varies) to said southerly right-of-way line of Route 36. Said point also being the beginning point of Tract 2 of a deed from Monmouth Associates to Eatontown Monmouth Mall, LLC recorded in Deed Book 8155, page 1992; thence

A. South 60°57'51" West, a distance of 46.32 feet along said course leading from the southeasterly right-of-way line of Wyckoff Road to said southerly right-of-way line of Route 36 to an iron bar with cap found; thence

B. South 33°50'16" West, a distance of 586.53 feet along said southeasterly right-of-way line of Wyckoff Road to a point; thence

C. Along a tie line through Block 2201, Lot 1.02, lands now or formerly of Eatontown Monmouth Mall LLC set forth in Deed Book 8155, Page 1992, South 50°49'54" East, a distance of 628.26 feet to a point; thence

D. Continuing along the same, North 39°10'06" East, a distance of 252.00 feet to the **Point of Beginning** and running; thence

Along the division line between Block 2201, Lots 3 & 4, land now or formerly Macy's East Federated Department Stores set forth in Deed Book 5840, Page 594 and Block 2201, Lot 1.02, lands now or formerly Eatontown Monmouth Mall LLC set forth in Deed Book 8155, Page 1992, the following four courses:

1. North 39°10'06" East, a distance of 340.75 feet to a point; thence
2. South 50°49'54" East, a distance of 302.17 feet to a point; thence
3. South 39°10'06" West, a distance of 340.75 feet to a point; thence
4. North 50°49'54" West, a distance of 302.17 feet to the **Point of Beginning.**

Also less and excepting Block 2201, Lot 5, lands now or formerly Penney Property Sub Holdings LLC set forth in Deed Book 9491, Page 7946, excluding lands previously conveyed by J.C. Penny Properties, Inc. (prior owner to Penney Property Sub Holdings LLC) to Monmouth Associates set forth in Deed Book 5323, page 337, further described as follows:

All that certain tract of land and premises situated in the Borough of Eatontown, County of Monmouth and State of New Jersey, bounded and described as follows:

Commencing at an iron bar and cap found in the southerly right-of-way line of New Jersey State Highway Route 36 (width varies), said point being at the northeasterly terminus of a course leading from the southeasterly right-of-way line of Wyckoff Road (also known as County Route 547, width varies) to said southerly right-of-way line of Route 36. Said point also being the beginning point of Tract 2 of a deed from Monmouth Associates to Eatontown Monmouth Mall, LLC set forth in Deed Book 8155, page 1992; thence

A. South 60°57'51" West, a distance of 46.32 feet along said course leading from the southeasterly right-of-way line of Wyckoff Road to said southerly right-of-way line of Route 36 to an iron bar with cap found; thence

Along said southeasterly right-of-way line of Wyckoff Road the following four courses:

B. South 33°50'16" West, a distance of 842.34 feet along to an iron bar with cap found; thence

C. South 32°35'02" West, a distance of 456.99 feet to an iron bar with cap found; thence

D. South 33°50'16" West, a distance of 150.00 feet to a point; thence

E. South 37°47'31" West, a distance of 155.70 feet to a point; thence

F. Along a tie line through Block 2201, Lots 1.02 and 2, lands now or formerly of Eatontown Monmouth Mall LLC set forth in Deed Book 8155, Page 1992, South 50°49'54" East, a distance of 764.60 feet to the **Point of Beginning** and running; thence

Along the division line between Block 2201, Lot 5, lands now or formerly Penney Property Sub Holdings LLC set forth in Deed Book 9491, Page 7946 and Block 2201, Lot 1.02, lands now or formerly Eatontown Monmouth Mall LLC set forth in Deed Book 8155, Page 1992, the following twenty courses:

1. North 39°10'06" East, a distance of 496.00 feet to a point; thence

2. North 50°49'54" West, a distance of 67.00 feet to a point; thence
3. North 39°10'06" East, a distance of 230.00 feet to a point; thence
4. South 50°49'54" East, a distance of 83.00 feet to a point; thence
5. North 39°10'06" East, a distance of 115.00 feet to a point; thence
6. South 50°49'54" East, a distance of 220.00 feet to a point; thence
7. South 21°17'34" East, a distance of 34.48 feet to a point; thence
8. South 50°49'54" East, a distance of 316.00 feet to a point; thence
9. South 39°10'06" West, a distance of 157.95 feet to a point; thence
10. South 50°49'54" East, a distance of 72.59 feet to a point; thence
11. South 89°07'41" East, a distance of 79.40 feet to a point; thence
12. South 53°29'33" East, a distance of 36.50 feet to a point; thence
13. South 15°21'23" East, a distance of 15.63 feet to a point of non-tangent curvature; thence
14. Along a non-tangent curve to the right having a radius of 176.00 feet, an arc length of 49.84 feet, a central angle of 16°13'30", a chord bearing South 82°45'34" West, and a chord distance of 49.67 feet to a point of tangency; thence
15. North 89°07'41" West, a distance of 39.92 feet to a point of curvature; thence
16. Along a curve to the left having a radius of 220.00 feet, an arc length of 198.53 feet, a central angle of 51°42'13", a chord bearing South 65°01'13" West, and a chord distance of 191.86 feet to a point of tangency; thence
17. South 39°10'06" West, a distance of 50.00 feet to a point of curvature; thence
18. Along a curve to the right having a radius of 156.00 feet, an arc length of 72.09 feet, a central angle of 26°28'38", a chord bearing South 52°24'25" West, and a chord distance of 71.45 feet to a point of tangency; thence
19. South 65°38'44" West, a distance of 396.55 feet to a point; thence
20. North 50°49'54" West, a distance of 423.69 feet to the **Point of Beginning.**

Also less and excepting Block 2201, Lot 1.01, lands now or formerly of VM Kushner, LLC, set forth in Deed Book 8881, Page 5072, further described as follows:

All that certain tract of land and premises situated in the Borough of Eatontown, County of Monmouth and State of New Jersey, bounded and described as follows:

Commencing at an iron bar and cap found in the southerly right-of-way line of New Jersey State Highway Route 36 (width varies), said point being at the northeasterly terminus of a course leading from the southeasterly right-of-way line of Wyckoff Road (also known as County Route 547, width varies) to said southerly right-of-way line of Route 36. Said point also being the beginning point of Tract 2 of a deed from Monmouth Associates to Eatontown Monmouth Mall, LLC recorded in Deed Book 8155, page 1992; thence

A. South 60°57'51" West, a distance of 46.32 feet along said course leading from the southeasterly right-of-way line of Wyckoff Road to said southerly right-of-way line of Route 36 to an iron bar with cap found; thence

Along said southeasterly right-of-way line of Wyckoff Road the following four courses:

B. South 33°50'16" West, a distance of 842.34 feet along to an iron bar with cap found; thence

C. South 32°35'02" West, a distance of 456.99 feet to an iron bar with cap found; thence

D. South 33°50'16" West, a distance of 150.00 feet to a point; thence

E. South 37°47'31" West, a distance of 157.20 feet to a point; thence

F. Along a tie line along the division line between Block 2201, Lot 2 and Block 2201, Lot 1.02, and continuing through Block 2201, Lot 1.02, both lots being lands now or formerly Eatontown Monmouth Mall LLC set forth in Deed Book 8155, Page 1992, South 50°49'54" East, a distance of 484.46 feet to the **Point of Beginning** and running; thence

Along the dividing line between Block 2201, Lot 1.01, lands now or formerly VM Kushner, LLC, set forth in Deed Book 8881, Page 5072 and Block 2201, Lot 1.02, lands now or formerly Eatontown Monmouth Mall LLC set forth in Deed Book 8155, Page 1992, the following twenty-five courses:

1. North 39°10'06" East, a distance of 98.60 feet to a point; thence
2. South 50°49'54" East, a distance of 12.00 feet to a point; thence
3. North 39°10'06" East, a distance of 53.00 feet to a point; thence
4. North 50°49'54" West, a distance of 12.00 feet to a point; thence
5. North 39°10'06" East, a distance of 31.00 feet to a point; thence
6. South 50°49'54" East, a distance of 8.00 feet to a point; thence
7. North 39°10'06" East, a distance of 28.00 feet to a point; thence
8. South 50°49'54" East, a distance of 8.00 feet to a point; thence

9. North 39°10'06" East, a distance of 28.00 feet to a point; thence
10. South 50°49'54" East, a distance of 7.60 feet to a point; thence
11. North 39°10'06" East, a distance of 79.10 feet to a point; thence
12. South 50°49'54" East, a distance of 226.90 feet to a point; thence
13. South 39°10'06" West, a distance of 51.10 feet to a point; thence
14. South 50°49'54" East, a distance of 8.00 feet to a point; thence
15. South 39°10'06" West, a distance of 28.00 feet to a point; thence
16. South 50°49'54" East, a distance of 8.00 feet to a point; thence
17. South 39°10'06" West, a distance of 283.00 feet to a point; thence
18. North 50°49'54" West, a distance of 187.00 feet to a point; thence
19. North 39°10'06" East, a distance of 12.00 feet to a point; thence
20. North 50°49'54" West, a distance of 28.00 feet to a point; thence
21. North 39°10'06" East, a distance of 12.00 feet to a point; thence
22. North 50°49'54" West, a distance of 28.00 feet to a point; thence
23. North 39°10'06" East, a distance of 12.00 feet to a point; thence
24. North 50°49'54" West, a distance of 23.50 feet to a point; thence
25. North 39°10'06" East, a distance of 8.40 feet to the **Point of Beginning.**

Encompassing an area of 3,838,139 square feet or 88.112 acres of land, more or less.

The above description was prepared in accordance with a plan entitled, "Boundary & Topographic Survey, Monmouth Mall, Block 2201, Lot Nos. 1.01, 1.02, 2 & 5, Borough of Eatontown, Monmouth County, New Jersey", prepared by Langan Engineering and Environmental Services, Inc., Drawing No. VB201, dated August 1, 2023.

Joseph E. Romano
Professional Land Surveyor
New Jersey License No. 24GS03627300

NJ Certificate of Authorization No. 24GA27996400
\\langan.com\data\PAR\data1\100656101\Survey Data - 100656101\Office Data\Descriptions\2023-08-03 VB201 Descriptions\100656101 Block 2201 Lot 1_02 and 2 Survey Description.docx

3 August 2023
100656101

WRITTEN DESCRIPTION
BLOCK 2201, LOT 5
BOROUGH OF EATONTOWN
MONMOUTH COUNTY, NEW JERSEY

All that certain tract of land and premises situated in the Borough of Eatontown, County of Monmouth and State of New Jersey, bounded and described as follows:

Commencing at an iron bar and cap found in the southerly right-of-way line of New Jersey State Highway Route 36 (width varies), said point being at the northeasterly terminus of a course leading from the southeasterly right-of-way line of Wyckoff Road (also known as County Route 547, width varies) to said southerly right-of-way line of Route 36. Said point also being the beginning point of Tract 2 of a deed from Monmouth Associates to Eatontown Monmouth Mall, LLC set forth in Deed Book 8155, page 1992; thence

A. South 60°57'51" West, a distance of 46.32 feet along said course leading from the southeasterly right-of-way line of Wyckoff Road to said southerly right-of-way line of Route 36 to an iron bar with cap found; thence

Along said southeasterly right-of-way line of Wyckoff Road the following four courses:

B. South 33°50'16" West, a distance of 842.34 feet along to an iron bar with cap found; thence

C. South 32°35'02" West, a distance of 456.99 feet to an iron bar with cap found; thence

D. South 33°50'16" West, a distance of 150.00 feet to a point; thence

E. South 37°47'31" West, a distance of 155.70 feet to a point; thence

F. Along a tie line through Block 2201, Lots 1.02 and 2, lands now or formerly of Eatontown Monmouth Mall LLC set forth in Deed Book 8155, Page 1992, South 50°49'54" East, a distance of 764.60 feet to the **Point of Beginning** and running; thence

Along the division line between Block 2201, Lot 5, lands now or formerly Penney Property Sub Holdings LLC set forth in Deed Book 9491, Page 7946, excluding lands previously conveyed by J.C. Penny Properties, Inc. (prior owner to Penney Property Sub Holdings LLC) to Monmouth Associates set forth in Deed Book 5323, page 337, and Block 2201, Lot 1.02, lands now or formerly Eatontown Monmouth Mall LLC set forth in Deed Book 8155, Page 1992, the following twenty courses:

1. North 39°10'06" East, a distance of 496.00 feet to a point; thence
2. North 50°49'54" West, a distance of 67.00 feet to a point; thence
3. North 39°10'06" East, a distance of 230.00 feet to a point; thence
4. South 50°49'54" East, a distance of 83.00 feet to a point; thence

5. North 39°10'06" East, a distance of 115.00 feet to a point; thence

6. South 50°49'54" East, a distance of 220.00 feet to a point; thence

7. South 21°17'34" East, a distance of 34.48 feet to a point; thence

8. South 50°49'54" East, a distance of 316.00 feet to a point; thence

9. South 39°10'06" West, a distance of 157.95 feet to a point; thence

10. South 50°49'54" East, a distance of 72.59 feet to a point; thence

11. South 89°07'41" East, a distance of 79.40 feet to a point; thence

12. South 53°29'33" East, a distance of 36.50 feet to a point; thence

13. South 15°21'23" East, a distance of 15.63 feet to a point of non-tangent curvature; thence

14. Along a non-tangent curve to the right having a radius of 176.00 feet, an arc length of 49.84 feet, a central angle of 16°13'30", a chord bearing South 82°45'34" West, and a chord distance of 49.67 feet to a point of tangency; thence

15. North 89°07'41" West, a distance of 39.92 feet to a point of curvature; thence

16. Along a curve to the left having a radius of 220.00 feet, an arc length of 198.53 feet, a central angle of 51°42'13", a chord bearing South 65°01'13" West, and a chord distance of 191.86 feet to a point of tangency; thence

17. South 39°10'06" West, a distance of 50.00 feet to a point of curvature; thence

18. Along a curve to the right having a radius of 156.00 feet, an arc length of 72.09 feet, a central angle of 26°28'38", a chord bearing South 52°24'25" West, and a chord distance of 71.45 feet to a point of tangency; thence

19. South 65°38'44" West, a distance of 396.55 feet to a point; thence

20. North 50°49'54" West, a distance of 423.69 feet to the **Point of Beginning**.

Encompassing an area of 492,411 square feet or 11.304 acres of land, more or less.

The above description was prepared in accordance with a plan entitled, "Boundary & Topographic Survey, Monmouth Mall, Block 2201, Lot Nos. 1.01, 1.02, 2 & 5, Borough of Eatontown, Monmouth County, New Jersey", prepared by Langan Engineering and Environmental Services, Inc., Drawing No. VB201, dated August 1, 2023.

Joseph E. Romano
Professional Land Surveyor
New Jersey License No. 24GS03627300

NJ Certificate of Authorization No. 24GA27996400

<u>EXHIBIT B – TO FINANCIAL AGREEMENT</u>
FINANCIAL PLAN

Fiscal Plan

[illegible]

EXHIBIT C – TO FINANCIAL AGREEMENT

PLEDGED ANNUAL SERVICE CHARGE

The estimated Pledged Annual Service Charge is set forth in the below schedule[, including the allocation of the Pledged Annual Service Charge between the General Retail Subcomponent Project, the Boscov's Subcomponent Project, and the Whole Foods Subcomponent Project].[27] The Pledged Annual Service Charge shall be adjusted periodically, if applicable, to reflect any redemption, refunding, prepayment, or other change in the Debt Service Charges requirement with respect to the Bonds. The interest rate on the Bonds shall not exceed the lesser of five percent (5%) and the maximum interest rate set forth in the Borough's application to the Local Finance Board. This **Exhibit C** shall be updated to reflect the schedule of actual Debt Service Charges attributable to the Bonds upon: (i) issuance of the Bonds and thereafter upon any redemption, refunding, prepayment, or other change in the Debt Service Charges requirement with respect to the Bonds, and (ii) the delivery of a certificate of an authorized representative of the Borough and the Entity setting forth the amount of such Debt Service Charges applicable to the Bonds. [A separate series of Bonds may be issued for each of the General Retail Subcomponent Project, the Boscov's Subcomponent Project, and the Whole Foods Subcomponent Project.][28]

Estimated Pledged Annual Service Charge[29]	
Years 1-30	

[27] Applicable only to the Financial Agreement applicable to the Retail Component.
[28] Applicable only to the Financial Agreement applicable to the Retail Component.
[29] Numbers will vary per Component/Subcomponent.