

**THIS AGREEMENT AND THE ORDINANCE APPROVING THE SAME SECURES 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 OWNERS OF SUCH BONDS OR OTHER OBLIGATIONS IS A MUNICIPAL LIEN SUPERIOR TO ALL OTHER NON-MUNICIPAL LIENS HEREAFTER RECORDED**

Record and return to:

Richard D. Trenk, Esq.  
McManimon, Scotland & Baumann, LLC  
75 Livingston Avenue  
Roseland, NJ 07068

## **Agreement**

**By and Between**

**The Township of West Orange**

**and**

**Green Essex Partners Urban Renewal, LLC**

**THIS FINANCIAL AGREEMENT** (the “**Agreement**”), made this 18th day of December, 2019, by and between **GREEN ESSEX PARTNERS URBAN RENEWAL, LLC** (the “**Entity**”), a limited liability company of the State of New Jersey in accordance with the provisions of the *Long Term Tax Exemption Law of 1992*, as amended and supplemented, *N.J.S.A. 40A:20-1 et seq.* (the “**Exemption Law**”), with offices at c/o BNE Real Estate Group, 16 Microlab Road, Suite A, Livingston, New Jersey 07039, along with its permitted successors and/or assigns, and **THE TOWNSHIP OF WEST ORANGE**, a municipal corporation in the County of Essex and the State of New Jersey (the “**Township**”, and together with the Entity, the “**Parties**”).

**WITNESSETH:**

**WHEREAS**, the Mayor and Township Council (the “**Governing Body**”) of the Township, adopted Resolution 17-18 on January 9, 2018 designating, Block 155, Lots 40.02, 40.03, 41.02, 42.02, and Block 155.21, Lot 40 as an “area in need of redevelopment” (the “**Redevelopment Area**”) pursuant to the Local Redevelopment and Housing Law, *N.J.S.A. 40A:12A-1 et seq.* (the “**Redevelopment Law**”); and

**WHEREAS**, in accordance with the Redevelopment Law, the Township adopted Ordinance 2573-19 on June 11, 2019 enacting a redevelopment plan for the Redevelopment Area entitled “Essex Green-Executive Drive Redevelopment Plan” and dated May 1, 2019 (as further amended and supplemented from time to time, the “**Redevelopment Plan**”); and

**WHEREAS**, the Entity is the contract purchaser of Block 155, Lots 40.02 and 42.02, as further described in the legal description attached hereto as Exhibit 1 (the “**Property**”) and submitted a proposal to the Township to be designated by the Township as Entity for the Property; and

**WHEREAS**, the Township evaluated the Entity’s proposal and adopted Resolution 186-19 on July 16, 2019 designating the Entity as conditional Entity for the Property; and

**WHEREAS**, the Entity proposes the redevelopment of the Property including; (1) demolition of all existing improvements on the Property, (2) merge Lots 40.02 and 42.02, (3) design, develop, finance, construct, operate and maintain a residential development consisting of one 4-story building with a basement wrapped around a 4-story parking deck and three additional 4-story buildings with basements with surface parking and individual parking garages, containing up to 425 rental apartments (approximately 20 studio units, 175 one-bedroom units, and 230 two-bedroom units), including up to 64 affordable units (not less than 15 percent of the total number of units constructed) and 361 market rate units subject to Governmental Approvals, (4) amenity space including a pool, landscaped courtyard and various on grade landscaped park area, (5) construction and conveyance to the Township of a Public Dog Park as set forth in the Redevelopment Agreement (defined below), (6) construction of Library Improvements as set forth in the Redevelopment Agreement (defined below), (7) conveyance to the Township of Lot 41.02 as set forth in the Redevelopment Agreement (defined below), and (8) construction of all necessary on- and off-site Infrastructure Improvements, all as set forth in the Redevelopment Agreement (defined below) and as may be constructed in phases as set forth in the Redevelopment Agreement (the “**Project**”); and

**WHEREAS**, in order to implement the development, financing, construction, operation and management of the Project, the Parties are entering into a redevelopment agreement simultaneously with this Agreement (as may be amended and supplemented from time to time, the “**Redevelopment Agreement**”); and

**WHEREAS**, in order to enhance the economic viability of and opportunity for a successful Project, the Township will enter into this Agreement with the Entity governing payments made to the Township in lieu of real estate taxes on the Project pursuant to the Exemption Law; and

**WHEREAS**, the Project will require, among other items: (i) certain infrastructure improvements in and around the Property, including without limitation, utilities, roadways, pathways, sidewalks, and public rights of way (the “**Infrastructure**”); (ii) the construction of a public dog park for use by all residents of the Township; (iii) contributions toward construction of a Township public library, and (iv) the payment of fees and costs incurred by the Township in connection with the Project (items (i) - (iv) collectively referred to as the “**Developer Obligations**”); and

**WHEREAS**, to defray some of the costs of the Project, including without limitation, the Developer Obligations, thereby making the Project viable, the Township will issue bonds (the “**Bonds**”, as such term is more fully defined herein) in one or more series in an aggregate principal amount not to exceed \$4,500,000 (such aggregate principal amount inclusive of all bonds issued in accordance with this Agreement and any other project described under the Redevelopment Agreement) pursuant to the Redevelopment Area Bond Financing Law, *N.J.S.A. 40A:12A-64 et seq.* (the “**RAB Law**”); and

**WHEREAS**, the provisions of the Exemption Law and the RAB Law authorize the Township to accept, in lieu of real property taxes, an annual service charge paid by the Entity, as such term is defined herein, to the Township; and

**WHEREAS**, the Entity has filed an application (the “**Application**”, as further defined herein), with the Mayor of the Township for approval of a long-term tax exemption for the Improvements (as defined herein) to the extent permitted by the Exemption Law and the RAB Law; and

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

- A. Relative benefits of the Project:
  - i. The Project will provide additional high-quality housing to support the renewal and revitalization of the Redevelopment Area.
  - ii. The completion of the Infrastructure will benefit all residents of and visitors to the area.
  - iii. The Project is expected to create approximately 500 construction jobs and 20 permanent jobs.

- iv. The Project is expected to contribute to the economic growth of the existing local businesses and to the creation of new businesses in the Township, which will cater to the new residents.
  - v. The Project will generate revenue to the Township in excess of the municipal revenue currently generated by ad valorem taxes on the Property.
  - vi. The Project creates the first public dog park in the Township.
  - vii. The Project helps to fund the construction of a new Township public library.
- B. Assessment of the importance of the tax exemption in obtaining development of the Project and influencing the locational decisions of probable occupants:
- i. The tax exemption permits better use of the Property through the completion of the Infrastructure.
  - ii. The tax exemption permits productive use of the Property and eliminates obsolete structures.
  - iii. The relative stability and predictability of the tax exemption will allow stabilization of the Project operating budget, allowing a high level of maintenance to the buildings over the life of the Project, which will insure the likelihood of the success of the Project and insure that it will have a positive impact on the surrounding area.
  - iv. Without the tax exemption, the Project would not be able to be financed and constructed in a manner that will allow the implementation of high-quality housing at price points that are consistent with the current market; and
- C. Based upon all of the foregoing, the Township has determined that the benefits to the Township accruing as a result of the Project, including but not limited to the revitalization of the Redevelopment Area, the generation of jobs, the construction of a public dog park, and the creation of additional high-quality housing in the Redevelopment Area, outweigh any costs to the Township resulting from the tax exemption granted herein.

**WHEREAS**, upon consideration of the Application and the Mayor's recommendations with respect thereto pursuant to *N.J.S.A. 40A:20-8*, the Township Council on December 18, 2019 adopted Ordinance No. 2593-19 approving the Application and authorizing the execution of this Agreement (the "**Ordinance**"); and

**WHEREAS**, in order to satisfy requirements of the Exemption Law and to set forth the terms and conditions under which the Parties shall carry out their respective obligations with respect to (a) the payment of the Annual Service Charge (as defined below) by the Entity, in lieu of real property taxes, and (b) the issuance of Bonds by the Township and provision for repayment thereof through a portion of the Annual Service Charge (as defined below), the Parties have determined to execute this Agreement.

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

## ARTICLE I.

### GENERAL PROVISIONS

**Section 1.01 Governing Law** – THIS AGREEMENT SHALL BE GOVERNED BY THE LAWS OF THIS STATE, INCLUDING THE PROVISIONS OF THE EXEMPTION LAW, THE REDEVELOPMENT LAW, THE RAB LAW AND ALL OTHER APPLICABLE LAWS. IT IS HEREBY EXPRESSLY ACKNOWLEDGED, UNDERSTOOD AND AGREED THAT UPON THE RECORDATION OF THE ORDINANCE AND THIS AGREEMENT IN ACCORDANCE WITH SECTION 16.05 HEREOF, EACH AND EVERY PARCEL OF LAND, AND ANY IMPROVEMENT RELATED THERETO AS SUCH TERMS ARE DEFINED HEREIN, SHALL BE SUBJECT TO AND GOVERNED BY THE TERMS OF THE AGREEMENT.

IT IS EXPRESSLY UNDERSTOOD AND AGREED THAT THE TOWNSHIP EXPRESSLY RELIES UPON THE FACTS, DATA, AND REPRESENTATIONS CONTAINED IN THE APPLICATION, ATTACHED HERETO AS EXHIBIT 2, IN GRANTING THIS TAX EXEMPTION.

**Section 1.02 General Definitions** – The following terms shall have the meaning assigned to such term in the preambles hereof:

|                              |                                |
|------------------------------|--------------------------------|
| <u>Agreement</u>             | <u>Parties</u>                 |
| <u>Application</u>           | <u>Project</u>                 |
| <u>Bonds</u>                 | <u>Property</u>                |
| <u>Developer Obligations</u> | <u>RAB Law</u>                 |
| <u>Entity</u>                | <u>Redevelopment Agreement</u> |
| <u>Exemption Law</u>         | <u>Redevelopment Area</u>      |
| <u>Governing Body</u>        | <u>Redevelopment Law</u>       |
| <u>Infrastructure</u>        | <u>Redevelopment Plan</u>      |
| <u>Land</u>                  | <u>Township</u>                |
| <u>Ordinance</u>             |                                |

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

Administrative Fee – shall be as defined in Section 16.08 herein.

Affiliated Entity – shall mean Entity, its successors and assigns, and any other entity affiliated with the Entity.

AGR Calculation – shall be as defined in Section 4.03(a) herein.

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

Allowable Profit Rate – shall mean the greater of (a) twelve percent (12%) or (b) the percentage per annum arrived at by adding one and one-quarter percent (1¼%) to the annual interest percentage rate payable on the Affiliated Entity's initial permanent mortgage financing. If the initial permanent mortgage is insured or guaranteed by a governmental agency, the mortgage insurance premium or similar charge shall be considered as interest for this purpose. If there is no permanent mortgage financing, or if the financing is internal or undertaken by a related party, the Allowable Profit Rate shall be the greater of (i) twelve percent (12%) or (ii) the percentage per annum arrived at by adding one and one-quarter percent (1¼%) per annum to the interest rate per annum that the Township determines to be the prevailing rate of mortgage financing on comparable improvements in the County. The provisions of *N.J.S.A. 40A:20-3(b)* are incorporated herein by reference.

Annual Bond Payments – shall mean any and all payments due and payable in any given year in accordance with the terms and provisions of the Bond Agreement, including without limitation, debt service, any and all fees relating to the Bonds including any administrative fees, the replenishment of any reserves established within the Bond Agreement, the makeup of any deficiencies in any funds and accounts under the Bond Agreement, and any arbitrage rebate amounts required under the Bond Agreement.

Annual Gross Revenue (also referred to as the “AGR”) – Annual gross revenue of the Entity, which shall include but not be limited to all rents and other receipts paid to the Entity, from whatever source derived. AGR shall specifically exclude insurance claim payments, tax refunds, Interest Income and Commercial Leasehold Improvement Income. The Entity has considered whether there is any insurance, operating, and maintenance expenses to be paid by a tenant of the Project which are ordinarily paid by a landlord and has concluded that there are none contemplated at this time. Any gain realized by the Entity on the sale of the Project or any portion thereof, whether or not taxable under federal or State law, shall not be included in computing AGR.

Annual Service Charge – shall mean the payment by the Entity pursuant to Article IV herein: (a) that the Entity has agreed to pay in part for municipal services supplied to the Project, (b) that is in lieu of any taxes on the Improvements and Land pursuant to *N.J.S.A. 40A:20-12*, (c) that shall be paid on the Annual Service Charge Payment Dates as defined herein, (d) that shall be pro-rated in the year in which this Agreement begins and the year in which this Agreement terminates, and (e) a portion of which the municipality has pledged to secure the payment of the Bonds. The Annual Service Charge shall be calculated pursuant to Article IV hereof.

Annual Service Charge Payment Dates – shall mean February 1, May 1, August 1 and November 1 of each year commencing on the first such date following the Annual Service Charge Start Date and continuing in accordance with the term of this Agreement.

Annual Service Charge Start Date – shall mean the earlier of Substantial Completion or the date that the Project or any portion thereof, receives a Certificate of Occupancy, and shall be the date upon which the Annual Service Charge begins to accrue, *pro rata*.

Applicable Law – shall mean all federal, State and local laws, ordinances, approvals, rules, regulations and requirements applicable thereto including, but not limited to, the Ordinance, the Redevelopment Law, the RAB Law, the Exemption Law, relevant construction codes including construction codes governing access for people with disabilities, and such zoning, sanitary, pollution and other environmental safety ordinances, laws and such rules and regulations thereunder, including all applicable environmental laws, applicable federal and State labor standards and all applicable laws or regulations with respect to the payment of prevailing wages.

Application – shall mean the application filed by the Entity pursuant to *N.J.S.A. 40A:20-8* with the Mayor of the Township for a long-term tax exemption for the Project, attached hereto as Exhibit 2.

Auditor's Report – shall mean a complete financial statement outlining the financial status of the Project (for a period of time as indicated by context), which shall also include a certification of Total Project Cost and clear computation of Net Profit as provided in *N.J.S.A. 40A:20-3(c)(2)*. The contents of the Auditor's Report shall have been prepared in conformity with Generally Accepted Auditing Standards. The Auditor's Report shall be certified as to its conformance with such principles by a certified public accountant licensed to practice that profession in the State.

Bond Agreement – shall mean the agreement by and between the Bondholder and the Township setting forth the terms and conditions for the issuance and repayment of the Bonds.

Bond Resolution – shall mean the bond resolution(s) adopted by the Township in connection with issuance of not to exceed \$4,500,000 principal amount of redevelopment area bonds, as the same may be amended or supplemented in accordance with its terms.

Bondholder – shall mean any person who is the registered owner of any outstanding Bonds.

Bond Payment Account – shall mean any and all funds and accounts as established in accordance with, and pursuant to, the Bond Agreement.

Certificate of Occupancy – shall mean a temporary or permanent Certificate of Occupancy, as such term is defined in the New Jersey Administrative Code, as issued by the Township authorizing occupancy of a building or any unit, in whole or in part, pursuant to *N.J.S.A. 52:27D-133*.

Change in Law – shall mean the enactment, promulgation, modification or repeal of or with respect to Applicable Law, including without limitation, the Exemption Law, the RAB Law,

the Redevelopment Law or other similar statute with respect to the matters addressed by the terms of this Agreement and/or the transactions contemplated hereby.

Chief Financial Officer – shall mean the Township’s chief financial officer.

Completion, Complete or Completed – shall mean, with respect to the Project, (a) all work related to the Project in its entirety, or any phase, or any other work or actions to which such term is applied has been completed, acquired and/or installed in accordance with the Redevelopment Agreement and in compliance with Applicable Laws so that (i) the Project in its entirety, or any phase thereof, may, in all respects, be used and operated under the applicable provisions of the Redevelopment Agreement, or (ii) with respect to any other work or action to which such term is applied, that the intended purpose of such work or action has been completed; (b) all permits, licenses and approvals that are required can be issued for the Project in its entirety, or any phase, or such other work or action to which such term is applied are in full force and effect; and (c) such “completion” has been evidenced by a written notice provided by the Entity with respect to the Project, which determination is reasonably acceptable to the Township.

County – shall mean the County of Essex.

County Share – shall mean five percent (5%) of the Annual Service Charge received, which shall be paid by the Township to the County as provided at Section 16.07 herein.

Default – shall mean a breach of or the failure of any Party to perform any obligation imposed upon such Party by the terms of this Agreement, or under Applicable Law, beyond any applicable grace or cure periods.

Exhibit(s) – shall mean any exhibit attached hereto, which shall be deemed to be a part of this Agreement, as if set forth in full in the text hereof.

Exemption Term – The period beginning on the Annual Service Charge Start Date and ending on the Termination Date.

Gross Revenue – shall have the meaning applied to such term in, and shall be calculated in accordance with, the Exemption Law, specifically *N.J.S.A. 40A:20-3(a)* and Section 8.06 hereof.

Improvements – shall mean any building, structure or fixture which is permanently affixed to the Land as part of the Project and became incorporated therein, which improvements are recognized and exempted from taxation under this Agreement.

In Rem Tax Foreclosure – shall mean a summary proceeding by which the Township may enforce the lien for taxes or other municipal charges due and owing by a tax sale. Said foreclosure is governed by *N.J.S.A. 54:5-1 et seq.*

Land – shall mean the real property, but not the Improvements, known as Block 155, Lots 40.02 and 42.02, all as set forth on the tax maps of the Township, and more particularly described by the metes and bounds description set forth as Exhibit 1 to this Agreement.

Land Taxes – Shall mean the amount of real estate taxes assessed on the value of Land.

Material Conditions – shall be as defined in Section 4.04 herein.

Net Profit – shall mean the Gross Revenue of the Entity pertaining to the Project less all operating and non-operating expenses of the Entity, all determined in accordance with generally accepted accounting principles and the provisions of *N.J.S.A. 40A:20-3(c)*. Without limiting the foregoing, included in expenses shall be payments of principal and interest made by the Entity in an amount sufficient to amortize (utilizing the straight-line method-equal annual amounts) the Total Project Cost over the term of the abatement granted pursuant to this Agreement as well as all other expenses permitted under the provisions of *N.J.S.A. 40A:20-3(c)*.

Owner – shall be as defined in Section 2.05(b) herein.

Pledged Annual Service Charge – shall mean the amount for any given year as set forth in the “Pledged” column on Exhibit 8, attached hereto, which column may be automatically amended pro rata based on the par amount of each series of Bonds issued.

State – shall mean the State of New Jersey.

Substantial Completion – shall mean the date the work related to the Project, or any portion thereof, is sufficiently complete in accordance with the Redevelopment Plan and the Redevelopment Agreement so that the Project, or any portion thereof, may be occupied or utilized for the use for which it is intended. The issuance of a temporary Certificate of Occupancy shall be conclusive proof that the Project, or any portion thereof, has reached Substantial Completion.

Tax Assessor – shall mean the Township tax assessor.

Tax Collector – shall mean the Township tax collector.

Tax Sale Law – *N.J.S.A. 54:5-1 et seq.*, as the same may be amended or supplemented from time to time.

Term – shall be as defined in Section 3.01 herein.

Termination – shall mean the expiration of the term of this Agreement in accordance with Section 3.01 hereof which by operation of the terms of this Agreement shall cause the relinquishment of the tax exemption applicable to any Improvement.

Termination Date – The earlier to occur of (i) the thirty-fifth (35<sup>th</sup>) anniversary of the execution of this Agreement by both Parties; (ii) the thirtieth (30<sup>th</sup>) 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.

TOD Calculation – shall be as defined in Section 4.03(b) herein.

Total Pledged and Unpledged Calculation – shall mean the “Total” column on Exhibit 8, attached hereto.

Total Tax Levy – shall mean the total annual tax levy assessed, charged and collected by the Township, consisting of the general municipal, county and school district tax levies, and including special assessments and other special taxes.

Unit – shall mean one of the 425 residential units to be built as part of the Project.

Unpledged Annual Service Charge – shall mean the amount for any given year as set forth in the “Minimum Unpledged” column on Exhibit 8, attached hereto, which column may be automatically amended pro rata based on the Certificates of Occupancy being issued for the Project.

**Section 1.03** Interpretation and Construction – In this Agreement, unless the context otherwise requires:

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

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

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

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

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

(f) All notices to be given hereunder and responses thereto shall be given, unless a certain number of days is specified, 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) This Agreement shall become effective upon its execution and delivery by the parties hereto.

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

## ARTICLE II.

### **BASIS OF AGREEMENT**

**Section 2.01 Covenant of Tax Exemption** - The Township hereby grants its approval for a tax exemption for the Land and Improvements to be constructed and maintained in accordance with the terms and conditions of this Agreement and the provisions of Applicable Law, which Improvements shall be constructed on the Land.

**Section 2.02 Representations of Entity** - The Entity represents that its Certificate of Formation as attached hereto as Exhibit 3 contains all the requisite provisions of law, has been reviewed and approved by the Commissioner of the State Department of Community Affairs, and has been filed with, as appropriate, the State Department of Treasury, all in accordance with N.J.S.A. 40A:20-5.

**Section 2.03 Construction of the Project** - The Entity represents that it will construct the Project in accordance with the Redevelopment Agreement, the Redevelopment Plan and Applicable Law, the use of which is more specifically described in the Application attached hereto as Exhibit 2.

**Section 2.04 Construction Schedule** - The Entity agrees to diligently undertake to commence construction and complete the Project in accordance with the Estimated Construction Schedule attached hereto as Exhibit 4. To the extent the Parties mutually agree to a revision to the Estimated Construction Schedule in accordance with the Redevelopment Agreement, the Estimated Construction Schedule attached hereto as Exhibit 4 shall be deemed to be automatically amended.

**Section 2.05 Ownership, Management and Control** - (a) The Entity hereby represents that Larry Pantirer, Howard Schwartz, Alan Pines, and Jonathan Schwartz are each equal members of the Entity.

(b) The Entity hereby represents that West Orange Office Executive Park (the "Owner") is the current owner of the Property and that on or before the commencement of construction of any portion of the Project as set forth herein, it will be the fee title owner of the Land upon which that portion of the Project is to be constructed and which is the subject of this Agreement.

(c) The Township and the Entity each hereby expressly acknowledge and understand, respectively, that as of the date hereof (a) Entity is not the fee title owner of and shall acquire the Property; (b) the Land set forth in this subsection (c) is not, as of the date hereof, subject to, nor governed by, the terms of this Agreement, and (c) upon the fee title acquisition of the Land set forth in this subsection (c), by the Entity, and the recordation of this Agreement and the Ordinance upon any such Land in accordance with Section 16.05 hereof, such Land, and any improvements related thereto shall be subject to and governed by the terms of this Agreement.

**Section 2.06 Financial Plan** - The Entity represents that the Improvements shall be financed in accordance with the Financial Plan attached hereto as Exhibit 5. The 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.

**Section 2.07 Statement of Rent Projections** - The Entity represents that its good faith projections of the rent of Units in the Project are set forth in Exhibit 6 attached hereto.

### ARTICLE III.

#### DURATION OF AGREEMENT

**Section 3.01 Term** - It is understood and agreed by the Parties that this Agreement, including the obligation to pay the Annual Service Charge required under Article IV hereof and the tax exemption granted and referred to in Section 2.01 hereof, shall, with respect to the Project, remain in full force and effect for thirty (30) years from the date of issuance of a Certificate of Occupancy for the Project, but in no event, longer than thirty-five (35) years from the date of execution hereof. The Entity may construct the Project in phases thus upon the completion of any phase of the Project, the term of 30-years for payment of the Annual Service Charge for such phase shall commence. In accordance with *N.J.S.A. 40A:20-12a(2)*, the total term for all phases of the Project shall not exceed 50 years. Upon Termination, the tax exemption for the Project shall expire and the Improvements and Land shall thereafter be assessed and taxed according to the general law applicable to other non-exempt property in the Township. Upon Termination, all restrictions and limitations upon the Entity shall terminate upon the Entity's rendering and the Township's acceptance of its final accounting, pursuant to *N.J.S.A. 40A:20-13*.

**Section 3.02 No Voluntary Termination** - NEITHER THE ENTITY NOR THE TOWNSHIP MAY AT ANY TIME TERMINATE THIS AGREEMENT DURING THE PERIOD WHEN ANY BOND REMAINS "OUTSTANDING" WITHIN THE MEANING OF THE BOND AGREEMENT. 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 LONG-TERM TAX 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 AGREEMENT. THE ENTITY FURTHER EXPRESSLY REJECTS, REFUSES, RELINQUISHES, SURRENDERS, AND OTHERWISE WAIVES ANY AND ALL RIGHTS OF RELINQUISHMENT OF ITS STATUS UNDER THE REDEVELOPMENT LAW AND THIS AGREEMENT THAT IT MAY HAVE OTHERWISE BEEN ENTITLED TO IN ACCORDANCE WITH ANY APPLICABLE LAW, INCLUDING WITHOUT LIMITATION, *N.J.S.A. 40A:20-13*.

**Section 3.03 Date of Termination** - Upon any Termination of the tax exemption described in Section 2.01 hereof, the date of such Termination shall be deemed to coincide with the end of the fiscal year of the Township.

## ARTICLE IV.

### ANNUAL SERVICE CHARGE

**Section 4.01 Consent of Entity and Affiliated Entities to Annual Service Charge** – The Entity hereby consents and agrees to the amount of Annual Service Charge and to the liens established in this Agreement, and neither the Entity nor any Affiliated Entities shall contest the validity or amount of any such lien. Notwithstanding anything herein to the contrary, the Entity's obligation to pay the Annual Service Charge shall be absolute and unconditional and shall not be subject to any defense, set-off, recoupment or counterclaim. The Entity's remedies shall be limited to those specifically set forth or limited herein and otherwise provided by law.

**Section 4.02 Quarterly Installments** – The Entity agrees that payment of the Annual Service Charge shall be due and payable to the Township on the Annual Service Charge Payment Dates during the Exemption Term. In the event that the Entity fails to timely pay any installment of the Annual Service Charge, the amount past due shall bear until paid 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.

**Section 4.03 Annual Service Charge** - In consideration of the exemption from taxation for the Improvements and Land, during the Exemption Term, the Entity shall pay to the Township an Annual Service Charge calculated as the greater of the AGR Calculation, the TOD Calculation or the Unpledged Annual Service Charge, as follows:

- (a) The annual gross revenue calculation (the “**AGR Calculation**”) for any given year shall be calculated as follows:
  - i. Stage One: From the Annual Service Charge Start Date until the tenth (10<sup>th</sup>) anniversary of the Annual Service Charge Start Date, the AGR Calculation shall be 10.5% of AGR;
  - ii. Stage Two: From the first day after the tenth (10<sup>th</sup>) anniversary of the Annual Service Charge Start Date until the twentieth (20<sup>th</sup>) anniversary of the Annual Service Charge Start Date, the AGR Calculation shall be 11.5% of AGR;
  - iii. Stage Three: From the first day after the twentieth (20<sup>th</sup>) anniversary of the Annual Service Charge Start Date until the thirtieth (30<sup>th</sup>) anniversary of the Annual Service Charge Start Date, the AGR Calculation shall be 12.5% of AGR.
- (b) The taxes otherwise due calculation (the “**TOD Calculation**”) for any given year shall be calculated as follows:
  - i. Stage One: From the Annual Service Charge Start Date until the fifteenth (15<sup>th</sup>) anniversary of the Annual Service Charge Start Date, the TOD Calculation shall be 0% of the amount of the taxes otherwise due on the value of the Property and the Improvements;
  - ii. Stage Two: From the first day after the fifteenth (15<sup>th</sup>) anniversary of the Annual Service Charge Start Date until the twentieth (20<sup>th</sup>) anniversary of the

Annual Service Charge Start Date, the TOD Calculation shall be 20% of the amount of the taxes otherwise due on the value of the Property and the Improvements;

iii. Stage Three: From the first day after the twentieth (20<sup>th</sup>) anniversary of the Annual Service Charge Start Date until the twenty-sixth (26<sup>th</sup>) anniversary of the Annual Service Charge Start Date, the TOD Calculation shall be 40% of the amount of the taxes otherwise due on the value of the Property and the Improvements;

iv. Stage Four: From the first day after the twenty-sixth (26<sup>th</sup>) anniversary of the Annual Service Charge Start Date until the twenty-ninth (29<sup>th</sup>) anniversary of the Annual Service Charge Start Date, the TOD Calculation shall be 60% of the amount of the taxes otherwise due on the value of the Property and the Improvements;

v. Stage Four: From the first day after the twenty-ninth (29<sup>th</sup>) anniversary of the Annual Service Charge Start Date until the thirtieth (30<sup>th</sup>) anniversary of the Annual Service Charge Start Date, the TOD Calculation shall be 80% of the amount of the taxes otherwise due on the value of the Property and the Improvements.

(c) The Unpledged Annual Service Charge.

In the event that the Entity fails to timely pay any installment of the Annual Service Charge, the amount past due shall bear the highest rate of interest permitted under applicable State law in the case of unpaid taxes or tax liens until paid. The Annual Service Charge received shall first be allocated to payment of the Unpledged Annual Service Charge for any given year, second to payment of the Pledged Annual Service Charge, and any remainder shall be remitted to the Township, except as provided herein in the event of a partial payment. In the event of a partial payment of the Annual Service Charge, which results in a partial allocation of funds to the Pledged Annual Service Charge, the Bondholder is entitled to recoup any deficiency, with no interest accrued, out of a future payment of the Annual Service Charge where the Annual Service Charge paid exceeds the Total Pledged and Unpledged Calculation amount for any given year. The amount permitted to be recouped by the Bondholder resulting from a prior year shortfall shall be calculated as: Annual Service Charge due in the current year minus Total Pledged and Unpledged Calculation for such current year equals excess amount able to be recouped by the Bondholder in the event of a previous partial allocation to the Pledged Annual Service Charge. In no event shall the amount recouped by the Bondholder in any year exceed the Pledged Annual Service charge due and owing to that date.

**Section 4.04 Material Conditions** - It is expressly agreed and understood that all payments of Annual Service Charges and any interest payments, penalties or costs of collection due thereon, are material conditions of this Agreement. If any other term, covenant or condition of this 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 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 Agreement shall be valid and enforced to the fullest extent permitted by Applicable Law.

**Section 4.05 No Reduction in Payment of the Annual Service Charge** - Neither the amounts nor dates established for payment of the Annual Service Charge, as provided in Sections 4.02 and 4.03 hereof shall be reduced, amended or otherwise modified during the Term of this Agreement.

**Section 4.06 Service Charges as Municipal Lien** - The Township and the Entity hereby expressly acknowledge, understand and agree that in accordance with the RAB Law, specifically N.J.S.A. 40A:12A-68, and such other Applicable Law, upon the recordation of the Ordinance and this Agreement, as set forth in Section 16.05 hereof, (a) the Ordinance, this Agreement, and any amount due hereunder, including without limitation, the Annual Service Charge, shall be a continuous, municipal lien on the respective Land and the Improvements related thereto and that any subsequent Annual Service Charge, including any interest, penalties or costs of collection thereof, that shall thereafter become due or accrue, shall be added and relate back to and be part of the initial municipal lien, (b) the Ordinance, this Agreement, and any amounts due hereunder, including without limitation, the Annual Service Charge, 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 has 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 due shall not affect the commencement or validity of the municipal lien.

**Section 4.07 Security for Payment of Annual Service Charges** - In order to secure the full and timely payment of the Annual Service Charges, the Township on its own behalf or on behalf of the Bondholder reserves the right to prosecute an In-Rem Tax Foreclosure action against the Land and the Improvements erected thereon as more fully set forth in this Agreement.

If any installment of the Annual Service Charge has not been received from the Entity for application under the Bond Agreement, the Entity hereby waives any objection or right to challenge the use by the Township of the enforcement of remedies to collect the Annual Service Charge as are afforded the Township by Applicable Law, including the Tax Sale Law. The Township's remedies shall be limited solely to the collection of delinquent and unpaid amounts past due for payment, including interest, penalties and costs of collection provided for by Applicable Law, including, without limitation, the Tax Sale Law.

**Section 4.08 Land Tax Exemption and Duration** - The Property shall be exempt from Land Taxes from the Annual Service Charge Start 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:

- (a) Land Taxes are assessed on the Property; and
- (b) the Entity, or its Transferee, shall be entitled to a credit against the Annual Service Charge for the amount, without interest, of the Land Tax payments timely made in the last four (4) preceding quarterly installments. Subject to the foregoing, the Entity is obligated to make timely Land Tax Payments in order to be entitled to a Land Tax credit against the Annual Service Charge for the subsequent year. In any year that the Entity fails to make any Land Tax Payments

if and when due and owing, such delinquency shall render the Entity ineligible for any Land Tax Payment credits against the Annual Service Charge for that year. No credit will be applied against the Annual Service Charge for partial payments of Land Taxes. In addition, the Township shall have, among this remedy and other remedies, the right to proceed against the property pursuant to the In-Rem Tax Foreclosure Act, and/or to declare a Default.

## **ARTICLE V.**

### **PLEDGE OF ANNUAL SERVICE CHARGE TO REDEVELOPMENT BONDS**

**Section 5.01.** Security for the Bonds - As security for the Bonds, the Township assigns all of its right, title and interest in the Pledged Annual Service Charge received, including interest, penalties and costs of collection, to the payment of the Bond, provided however, that the Township shall only be required to apply to the Bond repayment such portion of the Pledged Annual Service Charge as is necessary to make payments due under the Bond Agreement, and in no event shall the Township be required to apply any amount in excess of the Pledged Annual Service Charge. The Entity hereby acknowledges and consents to such assignment and acknowledges that the assignment is critical to the provision of security for the Bonds.

**Section 5.02.** Use of Annual Service Charge – Flow of Funds under the Bond Agreement – Concurrently with the issuance of Bonds contemplated by this Agreement and the Redevelopment Agreement, the Township and the Bondholder shall enter into the Bond Agreement in order to establish, among other things, the terms and conditions for the application of the Annual Service Charge, payment of debt service, and the relative rights and responsibilities of the Township to the Bondholders. Upon receipt of the Annual Service Charge, the Pledged Annual Service Charge shall be transmitted to the Township, who shall apply such Pledged Annual Service Charge as provided in the Bond Agreement. The Bond Agreement shall, in accordance with this Section, provide for the application of the amounts on deposit under the Bond Agreement.

**Section 5.03.** Payment of Annual Bond Payments - Pursuant to the RAB Law, the Bond Payment Account shall not be commingled with other funds of the Township. The Township's pledge of the Pledged Annual Service Charge shall be an obligation of the Township to apply the Pledged Annual Service Charge received from the Entity (or such lesser portion thereof as required pursuant to Sections 4.03 and 5.01) to the Bonds in accordance with the Bond Agreement. Upon receipt of the Pledged Annual Service Charge, the Chief Financial Officer shall promptly apply these amounts (or such lesser portion thereof as required pursuant to Sections 4.03 and 5.01) in accordance with this Agreement and the Bond Agreement.

## ARTICLE VI.

### ISSUANCE OF BONDS

**Section 6.01** Issuance of Bonds - The Parties agree that a portion of the costs of the Project, including without limitation the Infrastructure and the Developer Obligations, shall be financed through the issuance of the Bonds by the Township. Upon compliance with the conditions set forth in the Redevelopment Agreement and the Bond Resolution, the Township shall take all necessary actions to cause the issuance of the Bonds pursuant to the Redevelopment Law, the Exemption Law and the RAB Law no more than once annually. The proceeds from the Bonds shall be applied to pay, among other things, a portion of the costs of the Project, including without limitation, the Infrastructure and the Developer Obligations, along with costs of issuance and capitalized interest on the Bonds, in accordance with the Bond Agreement.

## ARTICLE VII.

### CERTIFICATE OF OCCUPANCY

**Section 7.01** Certificate of Occupancy - It is understood and agreed that it shall be the obligation of the Entity to obtain all Certificates of Occupancy in a reasonably timely manner after the Entity has satisfied all requirements to secure such Certification 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 Township, 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) 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, the Entity shall submit to the Township Council, the Tax Collector and the Township Clerk, who shall advise those municipal officials required to be advised, and the Division of Local Government Services in the State Department of Community Affairs, its Auditor's Report for the preceding fiscal or calendar year. The 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.

(b) Disclosure Statement: on each anniversary date of the execution of this Agreement, if there has been a change in ownership or interest in the Project from the prior year's filing, the Entity shall submit to the Township Council, the Tax Collector and the Township 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 Township may request from time to time.

**Section 8.03** Inspection - The Entity shall, upon reasonable request and notice, permit inspection of its property, equipment, buildings and other facilities of the Project and, also permit examination and audit of its books, contracts, records, documents and papers with respect to the Project, by authorized officers of the Township, and Division of Local Government Services in the State Department of Community Affairs pursuant to *N.J.S.A. 40A:20-9(e)*. To the extent reasonably possible, the inspection will not materially interfere with construction or operation of the Project.

**Section 8.04** Limitation on Profits and Reserves - During the Exemption Period the Entity shall be subject to a limitation of its profits pursuant to the provisions of *N.J.S.A. 40A:20-15*. Pursuant to *N.J.S.A. 40A:20-3(c)*, this calculation is completed in accordance with generally accepted accounting principles.

**Section 8.05** Payment of Dividend and Excess Profit Charge - In the event the Net Profits of the Entity, shall exceed the Allowable Net Profits for such period, then the Entity, within one hundred and twenty (120) days after the end of the accounting period established by the Exemption Law, shall pay such excess Net Profits to the Township as an additional 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*.

**Section 8.06** Calculation of Gross Revenue and Net Profit - There is expressly excluded from calculation of Gross Revenue and from Net Profit as set forth in *N.J.S.A. 40A:20-3* for the purpose of determining compliance with *N.J.S.A. 40A:20-15* or *N.J.S.A. 40A:20-16*, any gain realized by the Entity on the sale of any Unit, whether or not taxable under federal or State law.

## ARTICLE IX.

### ASSIGNMENT AND/OR ASSUMPTION

**Section 9.01** Approval to Sale of Project by Entity Formed and Eligible to Operate Under Law - As permitted by *N.J.S.A. 40A:20-10*, it is understood and agreed that the Township, on written application by the Entity, will consent to a sale of the Project (or a portion thereof) and the transfer of this Agreement (as pertaining to a portion of the Project) to another Entity provided that (a) in the event that the Project or relevant portion thereof has not been completed, the transferee Entity shall have demonstrated to the reasonable satisfaction of the Township that it possesses the

experience and capitalization necessary to complete the Project (or relevant portion thereof), which determination shall not be unreasonably withheld; (b) the transferee Entity does not own any other Project subject to long term tax exemption at the time of transfer; (c) the transferee Entity is formed and eligible to operate under the Exemption Law; (d) the Entity is not then in Default of this Agreement or in violation of Applicable Law; (e) the Entity's obligations under this Agreement are fully assumed by the transferee Entity; (f) the transferee Entity abides by all terms and conditions of this Agreement including, without limitation, the filing of an application pursuant to *N.J.S.A. 40A:20-8*, and any other terms and conditions of the Township in regard to the Project; and (g) no Annual Service Charge is due and owing by the Entity.

**Section 9.02. AUTOMATIC ASSUMPTION** - THE PARTIES HEREBY EXPRESSLY ACKNOWLEDGE, UNDERSTAND AND AGREE THAT UPON THE CONVEYANCE, WHETHER BY SALE, GRANT, AWARD, GIFT, TRANSFER OR OTHERWISE, OF ANY PORTION OF LAND, INCLUDING ANY IMPROVEMENTS RELATED THERETO, WHETHER IN ACCORDANCE WITH AND PURSUANT TO THE TERMS HEREOF, THE TAX SALE LAW, OR OTHERWISE, SUCH PORTION OF LAND, INCLUDING ANY IMPROVEMENTS RELATED THERETO, SHALL BE SUBJECT TO, GOVERNED AND BOUND BY THE TERMS OF THIS AGREEMENT. ANY ACCEPTANCE OR CLAIM OF TITLE OR OWNERSHIP OF ANY PARCEL OR PORTION OF LAND, INCLUDING ANY IMPROVEMENTS RELATED THERETO SHALL CONSTITUTE AN ACKNOWLEDGEMENT AND ASSUMPTION, FOR ALL PURPOSES OF LAW, BY SUCH PERSON OR ENTITY ACCEPTING OR CLAIMING TITLE OR OWNERSHIP, THAT IT AND ITS RESPECTIVE PARCEL OR PORTION OF LAND, INCLUDING ANY IMPROVEMENTS RELATED THERETO SHALL BE SUBJECT TO, GOVERNED AND BOUND BY THIS AGREEMENT.

**Section 9.03 Severability** - It is an express condition of the granting of this tax exemption that during its duration, the Entity shall not, without the prior consent of the Governing Body of the Township of West Orange by ordinance, convey, mortgage or transfer, all or part of the Project so as to sever, disconnect, or divide the Improvements from the Land which is basic to, embraced in, or underlying the exempted Improvements.

**Section 9.04 Subordination of Fee Title** - It is expressly understood and agreed that the Entity has the right to encumber and/or assign the fee title to the Land and/or Improvements for the purpose solely of financing the design, development and construction of the Project and for no other purpose, and that any such encumbrance or assignment shall not be deemed to be a violation of this Agreement.

**Section 9.05 Assumption of Rights and Obligations by the Entity** - As the Entity's successor and assign, the Entity hereby accepts, recognizes and acknowledges all of the Entity's obligations and rights with respect to the Redevelopment Agreement, as relates to the Project.

## ARTICLE X.

### **RESERVATION OF RIGHTS AND REMEDIES**

**Section 10.01** Reservation of Rights and Remedies. – Except as expressly provided at Sections 3.02, 4.01, 4.08, and herein, nothing contained in this Agreement or otherwise shall constitute a waiver or relinquishment by the Township or the Entity 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 Township or the Entity has under law, in equity, or under any provision of this Agreement.

## ARTICLE XI.

### **NOTICES**

**Section 11.01** Notice - Formal notices, demands and communications between and among the Township and the Entity shall be in writing and deemed given if dispatched to the address set forth below by registered or certified mail, postage prepaid, return receipt requested, or by a commercial overnight delivery service with packaging tracking capability and for which proof of delivery is available. In that case such notice is 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.

Copies of all notices, demands and communications shall be sent as follows:

#### **If to the Township:**

Township of West Orange  
Municipal Building  
66 Main Street  
West Orange, New Jersey 07052-5313  
Attn: John K. Sayers, Township Administrator

#### **with copies to:**

Richard Trenk, Esq.  
McManimon, Scotland & Baumann, LLC  
75 Livingston Avenue  
Roseland, New Jersey 07068

#### **If to the Entity:**

Green Essex Partners Urban Renewal, LLC  
c/o BNE Real Estate Group  
16 Microlab Road, Suite A  
Livingston, New Jersey 07039

With a copy to:

Francis X. Regan, Esq.  
DeCotiis, FitzPatrick, Cole & Giblin, LLP  
500 Frank W. Burr Boulevard  
Suite 31  
Teaneck, New Jersey 07666

## ARTICLE XII.

### **COMPLIANCE BY ENTITY WITH LAW**

**Section 12.01 Statutes and Ordinances** - The Entity hereby agrees at all times prior to the expiration or other Termination of this Agreement to remain bound by the provisions of Applicable Law, including, but not limited to, the Exemption Law and the RAB Law. Any failure by the Entity to comply with such statutes or ordinances shall constitute a violation and breach of the Agreement.

## ARTICLE XIII.

### **CONSTRUCTION**

**Section 13.01 Construction** - This Agreement shall be construed and enforced in accordance with the laws of the State, and without regard to or aid or any presumption or other rule requiring construction against the party drawing or causing this Agreement to be drawn since counsel for both the Entity and the Township 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 Township shall be named as party defendant in any action brought against the Township by allegation of any breach, Default or a violation of any of the provisions of this Agreement and/or the provisions of Applicable Law, the Entity shall indemnify and hold the Township harmless from and against all liability, losses, damages, demands, costs, claims, actions or expenses (including reasonable attorneys' fees and expenses) of every kind, character and nature arising out of or resulting from the action or inaction of the Entity and/or by reason of any breach, Default or a violation of any of the provisions of this Agreement and/or the provisions of Applicable Law, including without limitation, *N.J.S.A. 40A:20-1 et seq.*, except for the willful misconduct by the Township or its officers, officials, employees or agents and the Entity shall defend the suit at its own expense. However, the Township 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.

To the extent practical and ethically permissible, the Entity's attorneys shall jointly defend and represent the interest of the Township and the Entity as to all claims indemnified in connection with this Agreement.

## **ARTICLE XV.**

### **DEFAULT**

**Section 15.01 Default** - Default shall be failure of any party to conform to the terms of this Agreement, and/or the failure of any party to perform any obligation imposed upon such party by Applicable Law beyond any applicable notice, cure or grace period. A default under this Agreement shall also constitute a default under the Redevelopment Agreement, however, a default under the Redevelopment Agreement shall not automatically constitute a default under this Agreement.

**Section 15.02 Cure Upon Default** - Should any party be in Default of any obligation under this Agreement, the other party shall notify the defaulting party and any mortgagee, if applicable and if the Township has been provided written notice of the mortgagee and its contact information, 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 Default in payment of any installment of the Annual Service Charge, in which case there shall be no cure period.

**Section 15.03 Remedies for Default** - (a) In the event of any uncured Default by the Township, 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 Agreement, including an action for specific performance.

(b) In the event of any uncured Default by the Entity, the Township 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 Agreement, including an action for specific performance. No Default hereunder by the Entity shall terminate the long-term tax exemption (except as described herein) and its obligation to make Annual Service Charges, which shall continue in effect for the Exemption Period.

**Section 15.04 Arbitration** - In the event of a breach of this Agreement by any party or a dispute arising between any parties in reference to the terms and provisions as set forth herein, then the parties shall submit the dispute to the American Arbitration Association in the State to be determined in accordance with its rules and regulations in such a fashion to accomplish the purpose of said laws. Costs for said arbitration shall be paid by the non-prevailing party.

**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, the Township, in addition to their other remedies, reserves the right to proceed against the applicable Land, and any Improvements related thereto, in the manner provided by Applicable Law 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) Consistent with the Township's pledge of the Pledged Annual Service Charge for the benefit of the holders of the Bonds as described herein, the Township hereby covenants to cooperate with the Bondholder with respect to the Township's right to exercise In Rem Tax Foreclosure described in Section 15.05(a), above, and further covenants to incorporate the following language with respect thereto in the Bond Agreement:

"The Assignor will take such action as the Assignee shall reasonably request in order that the Assignee may realize the benefits of the Assignment and receive the pledged portion of the Annual Service Charge; such actions may include, but shall not be limited to, conducting an In-Rem Tax Foreclosure action in accordance with the provisions of the Tax Sale Law."

(c) 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 Agreement, as if the Annual Service Charge were taxes or municipal liens on Land. In either case, however, the Entity does not waive any defense it may have to contest the rights of the Township 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 Agreement, all of the remedies provided in this 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 Agreement shall deprive the Township of any of their remedies or actions against the Entity because of the Entity's failure to pay the Annual Service Charge, Administrative Fee, any applicable water and sewer charges, interest payments, and/or other municipal charges. This right shall only apply to arrearages that are due and owing at the time, and the bringing of any action for Annual Service Charges or other charges, or for breach of covenant or the resort of any other remedy herein provided for the recovery of Annual Service Charges 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 Agreement.

**Section 15.07 Final Accounting** - Within one hundred and twenty (120) days after the Termination Date, the Entity shall provide a final accounting and pay to the Township any excess Net Profits. For purposes of rendering a final accounting the Termination of the Agreement shall be deemed to coincide with the end of the fiscal year of the Township.

**Section 15.08 Conventional Taxes** - Upon Termination or expiration of this Agreement, the tax exemption for the Improvements and Land shall expire and the Improvements and Land shall thereafter be assessed and conventionally taxed according to the general law applicable to other nonexempt taxable property in the Township.

## ARTICLE XVI.

### MISCELLANEOUS

**Section 16.01 Agreement Controlling** - The Parties agree that in the event of a conflict between (i) the Application and this Agreement or (ii) the Redevelopment Agreement and this Agreement, the provisions of this 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 Agreement. This Agreement, the Redevelopment Agreement, 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 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 Recording** - Upon the acquisition of fee title, by the Entity, of the Land set forth in Section 2.05(c) hereof, this Agreement and the Ordinance shall be filed and recorded with the Essex County Register by the Entity, at the Entity's expense, such that this Agreement and the Ordinance shall be reflected upon the land records of the County of Essex as a municipal lien upon and a covenant running with such Land, including any Improvements related thereto.

**Section 16.06 Municipal Services** - The Entity shall make payments for municipal services, including water and sewer charges and any services, to the extent that such water and sewer charges, and other services, are not otherwise included in the real property taxes generally assessed upon property within the Township, that create a lien on a parity with or superior to the lien for the Annual Service Charge, as required by law. These charges are not included in the Annual Service Charge and shall be billed separately. Nothing herein is intended to release the Entity from its obligation to make such payments.

**Section 16.07 Portion of Annual Service Charge Paid to County** - Pursuant to *N.J.S.A.* 40A:20-12, the Township shall remit the County Share to the County upon the receipt thereof.

**Section 16.08 Administrative Fee** - In accordance with *N.J.S.A.* 40A:20-9(h), the Township shall collect an administrative fee equal to 2% of the Annual Service Charge due in each year from the Entity.

**Section 16.09 Financing Matters** - The financial information required by the final paragraph of *N.J.S.A.* 40A:20-9 is set forth in the Application.

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

**Section 16.11 Amendments** - This Agreement may not be amended, changed, modified, altered or terminated without the written consent of the parties hereto.

**Section 16.12 Certification** - The Township Clerk shall certify to the Tax Assessor, pursuant to *N.J.S.A. 40A:20-12*, that an Agreement with the Entity for the development of the Land has been entered into and is in effect as required by *N.J.S.A. 40A:20-1 et seq.* Delivery by the Township 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 Annual Service Charge Start Date the Tax Assessor shall implement the exemption and continue to enforce that exemption without further certification by the Township Clerk until the expiration of the entitlement to exemption by the terms of this Agreement or until the Tax Assessor has been duly notified by the Township Clerk that the exemption has been terminated.

Further, within ten (10) days of the execution of this Agreement, the Township Clerk shall provide a copy of the Agreement and the Ordinance authorizing the same to the Essex County Counsel and the Essex County Chief Financial Officer for informational purposes in accordance with *N.J.S.A. 40A:20-12*

**Section 16.13 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.

## **EXHIBITS**

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

Exhibit 1 – Metes and Bounds Description of the Project

Exhibit 2 – The Application

Exhibit 3 – Certificate of Formation for Entity

Exhibit 4 – Estimated Construction Schedule

Exhibit 5 – The Financial Plan for the Undertaking of the Project

Exhibit 6 – Rent Projections

Exhibit 7 – Certification of Estimated Construction Costs

Exhibit 8 – Total Pledged and Unpledged Calculation

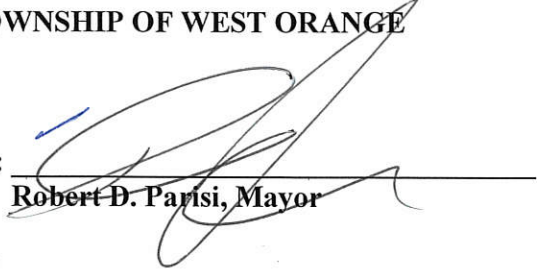
IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of the day and year first above written.

ATTEST:

TOWNSHIP OF WEST ORANGE

  
Karen Carnevale  
Township Clerk

By:

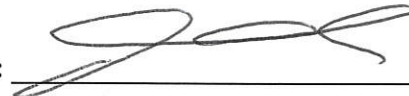
  
Robert D. Parisi, Mayor

ATTEST:

GREEN ESSEX PARTNERS URBAN RENEWAL,  
LLC

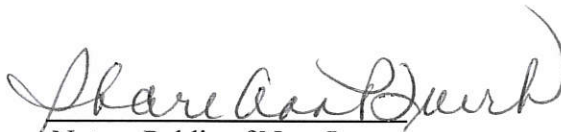
  
Samantha Scibetta

By:

  
Jonathan Schwartz

STATE OF NEW JERSEY :  
: SS  
COUNTY OF ESSEX :

BE IT REMEMBERED, that on this 13th day of March, 20\_\_ before me, the subscriber, a Notary Public of New Jersey, personally appeared ROBERT D. PARISI, who, being by me duly sworn on his or her oath, deposes and makes proof to my satisfaction that he is the MAYOR of the **TOWNSHIP OF WEST ORANGE, NEW JERSEY**, the entity named in the within Instrument; that the execution, as well as the making of this Instrument, have been duly authorized by the Township of West Orange and said Instrument was signed and delivered by said MAYOR as and for the voluntary act and deed of said entity.

  
Notary Public of New Jersey



STATE OF NEW JERSEY :  
: SS  
COUNTY OF ESSEX :

BE IT REMEMBERED, that on this 20 day of February, 2020 before me, the subscriber, a Notary Public of New Jersey, personally appeared [Jonathan Schwartz] who, being by me duly sworn on his or her oath, deposes and makes proof to my satisfaction that he is a PRINCIPAL of **GREEN ESSEX PARTNERS URBAN RENEWAL, LLC**, the Entity named in the within Instrument; that the execution, as well as the making of this Instrument, having been duly authorized by the Entity, and said Instrument was signed and delivered by said PRINCIPAL as and for the voluntary act and deed of said Entity.

  
Notary Public of New Jersey

SAMANTHA SCIBETTA  
NOTARY PUBLIC OF NEW JERSEY  
My Commission Expires 2/22/2023

EXHIBIT 1

Metes and Bounds Description of the Project