County Share - means five percent (5%) of the Annual Service Charge received by the Township, which shall be payable to the County in accordance with the provisions of *N.J.S.A.* 40A:20-12.

Debt Service: as defined in *N.J.S.A.* 40A:20-3(m), the amount required to make annual payments of principal and interest or the equivalent thereof on any construction mortgage, permanent mortgage or other financing, including returns on institution equity financing and market rate related party debt for a project for a period equal to the term of the tax exemption granted by the Financial Agreement.

Default - means the failure of a Party to perform any obligation imposed by the terms of this Agreement following the expiration of any applicable grace, notice or cure period established under this Agreement.

Disclosure Statement - as defined in Section 8.02(b) hereof.

Exhibit(s) - means 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.

Facility - shall mean the Project to be constructed on the Property by Redeveloper as part of the Project, in accordance with the Redevelopment Plan, the Plans and Specifications, the Governmental Approvals and Applicable Laws.

Financial Plan - as defined in Section 2.06 hereof.

Improvements - means any building, structure or fixture permanently affixed to the Property, which, as of the date of this Agreement, would be fixed as real property under *N.J.S.A.* 54:4-1.

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

Issuer - means the Township of West Orange.

Land Taxes - mean the amount of taxes assessed on the value of the underlying Property upon which the Project is located if the Land is not exempt.

Material Conditions - as defined in Section 4.04.

Minimum Annual Service Charge – means the amount of the total real estate taxes levied against the Property in the last full tax year in which the Property was subject to taxation.

Net Profit - means the aggregate Annual Gross Revenue of the Entity pertaining to the Project for the applicable period, 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 Debt Service and an amount sufficient to amortize the Total Project Cost on a straight line basis over the Term as well as all other expenses permitted under the provisions of *N.J.S.A.* 40A:20-3(c).

Project - means the Project as described in the recitals to this Agreement.

State - means the State of New Jersey.

Substantial Completion - means 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 applicable portion, may be occupied or utilized for its intended use. The issuance of a temporary Certificate of Occupancy shall be conclusive proof that the Project, or applicable portion, has reached Substantial Completion.

Tax Assessor - means the Township tax assessor.

Tax Collector - means the Township tax collector.

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

Termination - means the expiration of the term of this Agreement, voluntary termination by the Entity in accordance with the provisions of Section 3.02 hereof, or any action or omission, including Default, which by operation of the terms of this Financial Agreement shall cause the Entity to relinquish its tax exemption.

Total Project Cost - includes the costs of: i) the acquisition of the Property; ii) architectural, engineering, surveying and legal fees payable in connection with the planning, construction and financing of the Project; iii) actual construction costs, including only the cost of labor and materials in the construction of the buildings and structures, as certified by a qualified architect or engineer; and iv) site preparation expenses, including environmental remediation and insurance, interest, financing costs, real property taxes and other like expenses incurred prior to the date of Completion of the Improvements.

"Year" under this Agreement shall mean a twelve (12) month period commencing on the Annual Service Charge Start Date (or an anniversary thereof) and ending on the day before the following anniversary of the Annual Service Charge Start Date.

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 Financial Agreement, refer to this Financial Agreement, and the term "hereafter" means after, and the term "heretofore" means before the date of delivery of this Financial Agreement.

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

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

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

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

(f) A11 notices to be given hereunder and responses thereto shall be given, unless a certain number of days is specified, within a reasonable time, which shall not be less than ten (10) days nor more than twenty (20) days, unless the context dictates otherwise.

(g) 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 2. APPROVAL

2.01 Approval of Tax Exemption - Pursuant to the Ordinance, the Township has approved and hereby grants a tax exemption from real estate taxes for the Improvements and the Project to be constructed and maintained by the Entity on the Property shall be exempt from taxation as provided for herein and in the Long Term Tax Exemption Law. In accordance with *N.J.S.A.* 40A:20-12, the tax exemption shall constitute a single continuing exemption from local property taxation for the duration of this Agreement.

2.02 Approval 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 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.

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

2.04 Construction Schedule - The Entity agrees to make commercially reasonable efforts to commence construction and complete the Project in accordance with the requirements of the Redevelopment Agreement.

2.05 Ownership, Management and Control - The Entity represents that it is the contract purchaser of the Property upon which the Project is to be constructed and which is the subject of this Agreement.

2.06 Financial Plan - The Entity represents that the Improvements shall be financed substantially in accordance with the Financial Plan included in the Application (the "**Financial Plan**"), subject to changes based on market conditions

ARTICLE 3. DURATION OF AGREEMENT

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 remain in effect for the earlier of: (i) thirty-five (35) years from the date of execution of this Agreement; (ii) thirty (30) years from the issuance of the first Certificate of Occupancy for the Improvements constructed by Redeveloper as part of the Project; or (iii) the date of Early Termination. The tax exemption shall continue in force only while the Project is owned by a corporation, association or other entity formed and operating under the Long Term Tax Exemption Law. At the expiration of the term hereof or upon Termination, the tax exemption for the Project shall expire and the Improvements shall thereafter be assessed and taxed according to the general law applicable to other non-exempt property in the Township. After expiration of the term hereof, all restrictions and limitations upon the Entity shall terminate on the date of Termination, subject to the Entity's obligation to render and the Township's acceptance of its final accounting, pursuant to *N.J.S.A*. 40A:20-13.

3.02 Voluntary Termination by Entity – The Entity may at any time after the expiration of one year from the completion of the Project notify the Township that as of a certain date designated in the notice, it relinquishes its status under the Long Term Tax Exemption Law, and this Agreement shall terminate as of the date set forth in the Notice.

3.03 Date of Termination - Upon any Termination of the tax exemption approved in Section 2.01 hereof, the date of such Termination shall be deemed to be the end of the fiscal year of the Entity for the purposes of this Agreement.

ARTICLE 4. ANNUAL SERVICE CHARGE

4.01 Annual Service Charge - In consideration of the tax exemption granted by the Ordinance and hereby, and in lieu of real estate taxes on the Improvements and the Land, the Entity shall make payment of the Annual Service Charge or Minimum Annual Service Charge, as applicable, in an amount equal to the greater of (i) the Minimum Annual Service Charge, (ii) the Applicable Percentage of Annual Gross Revenue, or (iii) the amount required under Section 4.06. As used herein, the "**Applicable Percentage**" shall mean ten and one-half (10.5%) percent per annum for years one (1) through ten (10); eleven and one-half (11.5%) percent per annum for years eleven (11) through twenty (20); and twelve and one-half (12.5%) percent per annum for years twenty-one (21) through thirty (30). The Annual Service Charge or Minimum Annual Service Charge shall be prorated in the year of the Annual Service Charge Start Date, or an applicable anniversary occurs and also in the year this Agreement terminates.

4.02 Quarterly Installments - After the Annual Service Charge Start Date, the Entity agrees that payment of the Annual Service Charge shall be paid to the Township on a quarterly basis on the Annual Service Charge Payment Dates. In the event that Entity fails to timely pay any installment, the amount past due shall bear the rate of interest permitted under applicable State law and then being assessed by the Township against other delinquent taxpayers in the case of unpaid taxes or tax liens until paid.

4.03 Annual Service Charge - On the Annual Service Charge Start Date, the Entity shall pay the Annual Service Charge to the Township or its designee. For the first two (2) years, the Annual Service Charge paid by the Entity shall be the Minimum Annual Service Charge and any additional amounts due on the Annual Service Charges based on the Annual Audits required in Article 7 for the first two years shall be paid to the Township by the Entity within sixty (60) days of completion of the Annual Audit for the prior year.

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, as well as the amount of the Annual Service Charges and the exemption from real estate taxes 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.

4.05 Annual Service Charges as Municipal Lien - The Township and the Entity hereby expressly acknowledge, understand and agree that in accordance with Applicable Law, upon the recordation of the Ordinance and this Agreement: (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 Property and the Project, and that any subsequent Annual Service Charge, including any interest, penalties or costs of collection thereof, that shall thereafter become due or accrue, shall be added and relate back to and be part of the initial municipal lien on the Property and the Project, (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 on the Property and the Project, including specifically and without limitation, the federal bankruptcy code, 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.

4.06 Staged Adjustments. The Annual Service Charge shall be adjusted in stages over the term of the Tax Exemption in accordance with N.J.S.A. 40A:20-12(b) as follows:

i. Stage One: From the Annual Service Charge Start Date until the last day of the fifteenth (15^{th}) Year, the Annual Service Charge shall be in an amount equal to the greater of the amount determined under Section 4.01.

ii. Stage Two: Beginning on the 1st day of the sixteenth (16^{th}) Year until the last day of the twentieth (20^{th}) Year, the Annual Service Charge shall be in an amount equal to the greater of the amount determined under Section 4.01 or twenty (20%) percent of the amount of taxes otherwise due on the value of the Property and Improvements.

iii Stage Three: Beginning on the 1st day of the twenty-first (21^{st}) Year until the last day of the twenty-sixth (26^{th}) Year, the Annual Service Charge shall be in an amount equal to the greater of the amount determined under Section 4.01 or forty (40%) percent of the amount of taxes otherwise due on the value of the Property and Improvements.

iv Stage Four: Beginning on the 1st day of the twenty-seventh (27^{th}) year until the last day of the twenty-ninth (29^{th}) year, an amount equal to the greater of the amount determined under Section 4.01 or sixty (60%) of the amount of taxes otherwise due on the value of the Property and Improvements.

v. Stage Five: Beginning on the 1st day of the thirtieth (30^{th}) year until the last day of the thirtieth (30^{th}) year, an amount equal to the greater of the amount determined under Section 4.01 or eighty (80%) percent of the amount of taxes otherwise due on the value of the Property and Improvements.

For the avoidance of doubt, Redeveloper shall have the right, at its option, to appeal the assessment of the Property and Improvements. Any such appeal shall be filed in accordance with, and governed by, the applicable laws and regulations that govern tax appeals generally. Any such challenge shall be brought within the time permitted for the filing of tax appeals under Applicable Law. Notwithstanding the foregoing, if for any reason it should be determined that the tax court lacks jurisdiction, then the assessment may be contested pursuant to the dispute resolution provisions of this Agreement, and if an appeal was initially filed in a timely manner with the tax court, shall be deemed to have been timely filed.

4.07 Land Taxes –

(a) Land Exempt - It is the intent of the parties that the Land be exempt from taxation pursuant to the terms of this Agreement as permitted by *N.J.S.A.* 40A:20-12. If the Land is permitted to be exempt pursuant to *N.J.S.A.* 40A:20-12, the Entity is only required to pay the Annual Service Charge.

(b) Appeal of Land Value Assessment - Nothing contained in this Agreement shall limit or alter the right of the Entity to appeal the assessment of the land portion only of the Property in accordance with the provisions set forth at *N.J.S.A.* 54:3-21.

(c) No Added Assessment during Construction - The Township agrees that it shall not impose an added assessment, omitted added assessment or similar assessment on the value of the Improvements to be made by the Entity from the date the Entity acquired the Property to the date of Completion of the Project.

4.08 County Share Paid to the County - In accordance with the provisions of *N.J.S.A.* 40A:20- 12, upon receipt of the Annual Service Charge or Minimum Annual Service Charge, the Township shall remit the County Share to the County.

4.09 Administrative Fee – In addition to the Annual Service Charge, the Entity shall pay to the Township an annual administrative fee in the amount of ½ percent of the Annual Service Charge, as authorized by *N.J.S.A.* 40A:20-9.

ARTICLE 5. DISPUTE RESOLUTION

5.01 Dispute Resolution - In the event of any Default not cured within the Cure Period (as hereinafter defined) or any extension thereof, a breach of this Agreement by either of the parties hereto, or a dispute arising between the parties with respect to the terms and provisions of this Agreement; either party may apply to the Superior Court of New Jersey, Law Division, Essex County by an appropriate proceeding to settle and resolve said dispute in such fashion as will tend to accomplish the purposes of the Law. In the event the Superior Court shall not entertain jurisdiction, then the Parties shall submit the dispute to the American Arbitration Association in the State of New Jersey to be determined in accordance with its rules and regulations in such a fashion to accomplish the purpose of the Exemption Law and this Financial Agreement. The fee of the arbitrator shall be borne equally by the parties.

5.02 Remedies - In the event of a Default on the part of the Entity to pay the Annual Service Charge, the Township shall have the rights and remedies set forth in Article 13 of this Agreement. Whenever the word "Taxes" appears, or is implied directly or indirectly 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 were taxes or municipal liens on land.

ARTICLE 6. CERTIFICATE OF OCCUPANCY

6.01 Certificate of Occupancy - It is understood and agreed that it shall be the obligation of the Entity to obtain and the Township to issue all Certificates of Occupancy in a reasonably timely manner.

6.02 Filing of Certificate of Occupancy - The Entity shall file or cause to be filed with both the Tax Assessor and the Tax Collector a copy of the Certificate of Occupancy promptly upon receipt thereof by the Entity.

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

ARTICLE 7. ANNUAL AUDITS

7.01 Accounting System - The Entity agrees to maintain a system of accounting and internal controls established and administered in accordance with generally accepted accounting principles, the provisions of this Financial Agreement and the Exemption Law while this

Agreement is in effect, and the Entity agrees to calculate its "Net Profit" pursuant to N.J.S.A. 40A:20-3(c), N.J.S.A. 40A:20-15 and this Agreement.

7.02 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 its Auditor's Report by a certified public accountant for the preceding fiscal or calendar year (i) to the Clerk of the Township (or any other representative of the Township as may be designated in a notice to the Entity), who shall advise those municipal officials required to be advised, and (ii) to the Director of the Division of Local Government Services in the Department of Community Affairs, as required under N.J.S.A. 40A:20-9(d). Said Auditor's Report shall include, but not be limited to, for the fiscal or calendar year covered by such Auditor's Report, Gross Revenues of the Entity, and such information as is required by this Agreement.

(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 (each a "**Disclosure Statement**"), and the extent of the ownership interest of each and such additional information as the Township may request from time to time.

7.03 Inspection - The Entity shall permit the inspection of its property, equipment, buildings and other facilities of the Project and, if deemed appropriate or necessary, by representatives duly authorized by the Township, and the New Jersey 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 seven (7) business days' prior written notice during the Entity's regular business hours, 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.

7.04 Limitation on Profits and Reserves - During the period of tax exemption as provided herein, the Entity shall be subject to a limitation of its profits pursuant to the provisions of *N.J.S.A.* 40A:20-15. This calculation shall be completed in accordance with N.J.S.A. 40A:20- 3(c). Pursuant to N.J.S.A. 40A:20-15, the net profit shall be calculated for the period, taken as one accounting period, commencing on the date on which the Project is completed, and terminating at the end of the last full fiscal year.

Pursuant to *N.J.S.A.* 40A:20-15, the Entity shall have the right to establish a reserve against vacancies, unpaid rentals, and reasonable contingencies in an amount up to 10% percent of the 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. The reserve is to be noncumulative.

7.05 Payment of Dividend and Excess Profit Charge - In the event the Net Profits of the Entity during the Term of this Agreement shall exceed the Allowable Net Profits for such period, then the Entity, within ninety (90) days after the termination of this Agreement shall pay such excess Net Profits to the Township as an additional service charge.

ARTICLE 8. ASSIGNMENT AND/OR ASSUMPTION

8.01 Approval of Sale of Project to an Entity Formed and Eligible to Operate Under Law

(a) As permitted by *N.J.S.A.* 40A:20-10(c), upon written request by the Entity after completion of the Project, the Township will consent to a sale to another urban renewal entity purchasing all or a portion of the Project in fee simple and the transfer of the tax exemption in this Agreement for the Project, or portion thereof, which consent shall not be unreasonably withheld, provided: (1) the transferee entity is formed and eligible to operate under the Long Term Tax Exemption Law; (2) the Entity is not then in Default of this Agreement or the Long Term Tax Exemption Law; (3) the Entity's obligations under this Agreement as to the Project or portion thereof being transferred are fully assumed by the transferee entity in writing; and (4) the transferee entity agrees to all terms and conditions of this Agreement in the Transferee Agreement. The Township shall, in good faith, in a prompt and timely manner reasonably cooperate with the Entity and the transferee entity and use its best efforts to review the written application of the Entity, and approve the application for approval of the transferee entity pursuant to *N.J.S.A.* 40A:20-8.

(b) The Township may levy an administrative fee of one percent (1%) of the Annual Service Charge for the processing of a request to transfer as set forth above, if the proposed transferee entity is not affiliated with the Entity. No administrative fee shall be charged for the processing requests to transfer to affiliates of the Entity.

8.02 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 Township Council by Ordinance, convey, mortgage or transfer, all or part of the Project so as to sever, disconnect, or divide the Improvements from the Property which is basic to, embraced in, or underlying the exempted Improvements.

8.03 Subordination of Fee Title - It is expressly understood and agreed that the Entity has the right, subordinate to the lien of the Annual Service Charge, to encumber and/or assign the fee title to the Property and/or the Project for purposes of (i) financing and/or refinancing the design, development and construction of, and/or capital improvements and/or repairs to, the Project and (ii) permanent mortgage financing or other secured financing, and such encumbrance, lease or assignment shall not be deemed to be a violation of this Agreement.

8.04 Collateral Assignment -

(a) The Township acknowledges that the Entity and/or its affiliates intend to obtain secured financing in connection with the acquisition, development and construction of the Project, and thereafter obtain permanent mortgage financing or re-financing. The Township agrees that, subject (until issuance of Certificate of Completion for the Project) to the terms and conditions of the Redevelopment Agreement, the Entity and or its affiliates may 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 therefore (each, a "**Secured Party**" and collectively, the "**Secured Parties**") as security for obligations of the Entity, and/or its affiliates, incurred in connection with such secured financing (collectively, the "**Security Arrangements**"). The Entity shall give the Township 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 Township hereunder to provide any Notice of Default or Notice of intent to enforce its remedies under this Financial Agreement.

(b) Without limiting the generality of Article 13 hereof, if the Entity shall Default in any of its obligations hereunder, the Township shall give Notice of such Default to the Secured Parties and the Township agrees that, in the event such Default is not waived by the Township 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 Township will provide the Secured Parties a reasonable period of time to cure such Default, but in any event not less than fifteen (15) days from the date of such notice to the Secured Parties with regard to a failure of the Entity to pay the Annual Service Charge and ninety (90) days from the date the Entity was required to cure any other Default.

(c) 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 N.J.S.A. 55:17-11, inclusive, shall apply to this Financial Agreement to protect the interests of any Secured Party.

ARTICLE 9. WAIVER

9.01 Waiver - Except as specifically provided in this Agreement to the contrary, 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. 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 10. NOTICE

10.01 Notice - Formal notices, demands and communications between the Township and Entity shall be 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. Notice is deemed effective upon delivery or refusal to accept 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 66 Main Street West Orange, New Jersey 07052
with copies to:	Richard D. Trenk, Esq. McManimon, Scotland & Baumann, LLC

75 Livingston Avenue, Suite 201
Roseland, New Jersey 07068

If to Entity: Jonathan Schwartz
Green Essex Partners Urban Renewal, LLC
c/o BNE Real Estate Group
16 Microlab Road, Suite A
Livingston, New Jersey 07039

With copies to: Francis X. Regan, Esq.
DeCotiis, FitzPatrick, Cole & Giblin, LLP
500 Frank W. Burr Boulevard, Ste. 31
Teaneck, New Jersey 07666

ARTICLE 11. CONSTRUCTION

11.01 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 Agreement to be drawn since counsel for both the Entity and the Township have combined in their review and approval of same.

ARTICLE 12. INDEMNIFICATION

12.01 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 or Entity by allegation of any breach, Default or a violation by the Entity 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 any breach, Default or a violation by the Entity 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 any gross misconduct or willful act of the Township or any of its officers, officials, employees or agents, and the Entity shall defend the suit at its own expense and shall select counsel to defend the suit. However, the Township maintains the right to intervene as a party thereto, to which intervention the Entity hereby consents, the expense thereof to be borne by the Township. 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 13. DEFAULT

13.01 Default - Default by the Entity shall be failure of the Entity to comply with the terms of this Agreement or the Long Term Exemption Law. Default by the Township shall be the failure of the Township to comply with the terms of this Agreement or the Long Term Exemption Law.

13.02 Cure Upon Default - Should either Party be in Default, notice must be provided in writing of said Default, stating with specificity the basis of said Default. The defaulting party shall have ninety (90) days to cure any Default, provided such Default is capable of cure within ninety (90) days. If the Default is not capable of cure within ninety (90) days, a reasonable period of time to cure such Default will be given (the "**Cure Period**"). Subsequent to the expiration of the Cure Period, a final notice of Default will be issued requiring the defaulting party to cure the Default within twenty (20) days (the "**Final Notice Period**"). If the Default is not cured after the Final Notice Period, the Township shall have the right to proceed against the Property pursuant to In Rem Tax foreclosure. In such event, however; the Entity does not waive any defense it may have to contest the right of the Township to proceed in the above-mentioned manner by conventional or In Rem Tax Foreclosure just as it would have if the Entity were subject to municipal taxes. The Party noticing the default may, after the Final Notice Period, file an action seeking any remedies available. In addition, after notice and expiration of the Final Notice Period, if the Default for which notice was given remains uncured, the party noticing the default may terminate this Agreement.

13.03 Remedies Upon Default Cumulative; No Waiver - In the event of any uncured Default, the Township shall have the right to proceed against the Property pursuant to applicable provisions of the Law, including, with respect to a Default in payment of any installment of the Annual Service Charge, the right to proceed to In Rem Tax Foreclosure consistent with the Tax Sale Law and the Long Term Tax Exemption Law. 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 duration set forth in Section 3.01 hereof and subject to Section 13.04 hereinafter.

Subject to the provisions of Section 5.01 hereof and the other terms and conditions of this Agreement, all of the remedies provided in this Agreement to the Township, 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 its remedies or actions against the Entity because of Entity's failure to pay the Annual Service Charge and/or any applicable water and sewer charges and interest payments. This right shall only apply to arrearages that are due and owing at the time, and the bringing of any action for 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.

13.04 Termination Upon Default of the Entity - In the event the Entity fails to cure or remedy the Default within the time period provided in Section 13.02, the Township may terminate this Agreement upon thirty (30) days, prior written notice to the Entity.

13.05 Final Accounting - Within ninety (90) days after the date of Termination, the Entity shall provide a final accounting and pay to the Township the reserve, if any, pursuant to the provisions of *N.J.S.A.* 40A:20-13 and 15 as well as any excess Net Profits. For purposes of rendering a final accounting the date of Termination of the Agreement shall be deemed to be the end of the fiscal year for the Entity.

13.06 Conventional Taxes - Upon Termination or expiration of this Agreement, the tax exemption for the Project 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 Township.

ARTICLE 14. MISCELLANEOUS

14.01 Conflict - The parties agree that in the event of a conflict between the Application and this Agreement, the language in this Agreement shall govern and prevail.

14.02 Oral Representations - There have been no oral representations made by either of the parties hereto which are not contained in this Agreement.

14.03 Entire Document - All conditions in the Ordinance are incorporated in this Agreement and made a part hereof. This Financial 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 hereto and delivered to each of them.

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

14.05 Recording - Upon the execution and delivery of this Agreement, the entire Agreement, including the Ordinance, shall be filed and recorded with the office of the Essex County Clerk 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 as a municipal lien upon and a covenant running with the Property, including the Improvements related thereto.

14.06 Discharge - Upon the expiration of this Agreement in accordance with Section 3.01 hereof, or the early termination of this Agreement by the Entity in compliance with Section 3.02 hereof, the Township shall execute, upon the request of the Entity, a discharge of this Agreement in the form set forth as Exhibit 5 attached hereto. Upon execution of the discharge, the Entity may record same, at its sole cost and expense.

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

14.08 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.

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

14.10 Certification The Township Clerk shall certify to the Tax Assessor, pursuant to *N.J.S.A.* 40A:20-1 2, that a financial agreement with an urban renewal entity, i.e., the Entity, for the development of the Property, has been entered into and is in effect as required by *N.J.S.A.* 40A:20- 1 et seq. Delivery by the Township Clerk to the Tax Assessor of a certified copy of the Ordinance adopted by the Governing Body approving the tax exemption described herein and this Financial Agreement 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 Financial Agreement or until the Tax Assessor has been duly notified by the clerk that the exemption has been terminated.

Further, upon the adoption of this Financial Agreement, a certified copy of the Ordinance adopted by the Governing Body approving the tax exemption described herein and this Financial Agreement shall forthwith be transmitted to the Director of the Division of Local Government Services by the Township Clerk.

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

Witness or Attest:	
______________________________	**GREEN ESSEX PARTNERS URBAN RENEWAL LLC** **By:** ______________________________ Name: ______________________ Title: ______________________
______________________________	**TOWNSHIP OF WEST ORANGE** **By:** ______________________________ Name: ______________________ Title: ______________________

STATE OF NEW JERSEY,

SS:

COUNTY OF ESSEX

I CERTIFY that on ________________, 20____, ______________________personally came before me and stated to my satisfaction that this person (or if more than one, each person):

(a) was the maker of the attached instrument;

(b) was authorized and did execute this instrument as__________________ of the Township of West Orange; and

(c) executed the instrument as the act of the Township of West Orange.

____

Notary Public

STATE OF NEW JERSEY,

SS:

COUNTY OF ESSEX

I CERTIFY that on ________________, 20____, ______________________personally came before me and stated to my satisfaction that this person (or if more than one, each person):

(a) was the maker of the attached instrument;

(b) was authorized and did execute this instrument as______________________ of **GREEN ESSEX PARTNERS URBAN RENEWAL LLC**; and

(c) executed the instrument as the act of **GREEN ESSEX PARTNERS URBAN RENEWAL LLC**.

____

Notary Public

EXHIBIT 1

Ordinance

EXHIBIT 2

Application for Long Term Tax Exemption

EXHIBIT 3

Entity Certificate of Formation

EXHIBIT 4

The Financial Plan for the Undertaking of the Project

EXHIBIT 5

Form of Discharge of Financial Agreement

Record and return to:

Discharge of Financial Agreement

That certain Financial Agreement dated ____________________, 20_____, made by and between the Township of West Orange and **GREEN ESSEX PARTNERS URBAN RENEWAL LLC** (the "Financial Agreement") was recorded in the office of the County Clerk in and for the County of Essex in the State of New Jersey, at Book _______________, , Page _________ on , 2018.

1) The Financial Agreement has been satisfied and discharged. It may now be discharged of record. This means that the Financial Agreement is null and void.

2) I sign and certify to this discharge of the Financial Agreement on , 20_

Witnessed or Attested by:

_____________________________ _________________________(Seal)

_____________________________ _________________________(Seal)

STATE OF NEW JERSEY,

SS:

COUNTY OF ESSEX

I CERTIFY that on _________________, 20__ ____________________personally came before me and stated to my satisfaction that this person (or if more than one, each person):

(a) was the maker of the attached instrument;

(b) was authorized and did execute this instrument as _____________________of the Township of West Orange; and

(c) executed the instrument as the act of the Township of West Orange.

____

Notary Public

STATE OF NEW JERSEY,

SS:

COUNTY OF ESSEX

I CERTIFY that on __________________, 20___ _______________________personally came before me and stated to my satisfaction that this person (or if more than one, each person):

(a) was the maker of the attached instrument;

(b) was authorized and did execute this instrument as ___________________________of **GREEN ESSEX PARTNERS URBAN RENEWAL LLC**; and

(c) executed the instrument as the act of **GREEN ESSEX PARTNERS URBAN RENEWAL LLC**.

____

Notary Public

EXHIBIT 3

Certificate of Formation of Entity

CGN

FILED
OCT 3 2019
STATE TREASURER

0600459786

CERTIFICATE OF AMENDMENT
OF
CERTIFICATE OF FORMATION
OF
GREEN ESSEX PARTNERS LLC

This Certificate of Amendment of Certificate of Formation is made by an authorized person in accordance with the New Jersey Revised Uniform Limited Liability Company Act (N.J.S.A. 42:2C-1 et seq.).

1. The name of the limited liability company is **GREEN ESSEX PARTNERS LLC**. The entity identification number is 0600459786.

2. The Certificate of Formation of the Company was filed on May 6, 2019, and is hereby amended and restated as follows:

"1. The name of the limited liability company is:

GREEN ESSEX PARTNERS URBAN RENEWAL LLC

(referred to below as the "**Company**")

2. The address of the Company's initial registered office in New Jersey is c/o BNE Real Estate Group, 16 Microlab Road, Suite A, Livingston, New Jersey 07039. The Company's initial registered agent at that address is Larry Pantirer.

3. The term of the Company shall be perpetual.

4. The purpose for which the Company is organized shall be to operate under P.L.1991, c.431 (C.40A:20-1 et seq.), and to initiate and conduct projects for the redevelopment of a redevelopment area in the Township of West Orange (the "**Municipality**") pursuant to a redevelopment plan, or projects necessary, useful, or convenient for the relocation of residents displaced or to be displaced by the redevelopment of all or part of one or more redevelopment areas, or low and moderate income housing projects, and, when authorized by financial agreement with the Municipality, to acquire, plan, develop, construct, alter, maintain, or operate housing, senior citizen housing, business, industrial, commercial, administrative, community, health, recreational, educational or welfare projects, or any combination of two or more of these types of improvement in a single project, under such conditions as to use, ownership, management and control as regulated pursuant to P.L.1991, c.431 (C.40A:20-1 et seq.).

5. So long as the Company is obligated under the Financial Agreement with the Municipality made pursuant to P.L.1991, c.431 (C.40A:20-1 et seq.), it shall engage in no business other than the ownership, operation and management of the project.

6. The Company declares that (a) it has been organized to serve a public purpose; (b) its operations shall be directed toward: (i) the redevelopment of redevelopment areas, the facilitation of the relocation of residents displaced or to be displaced by redevelopment, or the conduct of low and moderate income housing projects; (ii) the acquisition, management and operation of a project, redevelopment relocation housing project, or low and moderate income housing project under P.L.1991, c.431 (C.40A:20-1 et seq.); and (c) it shall be subject to regulation by the Municipality, and to a limitation or prohibition, as appropriate, on profits or dividends for so long as it remains the owner of a project subject to P.L.1991, c.431 (C.40A:20-1 et seq.).

7. The Company shall not voluntarily transfer more than ten (10%) percent of its ownership in the project or any portion thereof undertaken by it under P.L.1991, c.431 (C.40A:20-1 et seq.), until: (i) the Company has first removed both itself and the project from all restrictions of P.L.1991, c.431 (C.40A:20-1 et seq.) in the manner required by P.L.1991, c.431 (C.40A:20-1 et seq.); and (ii) if the project includes housing units, the Company has obtained the consent of the Commissioner of Community Affairs to such transfer, with the exception of transfer to another urban renewal entity, as approved by the Municipality, which other urban renewal entity shall assume all contractual obligations of the transferor entity under the Financial Agreement with the Municipality.

8. The Company shall file annually with the municipal governing body a disclosure of the persons having an ownership interest in the project, and of the extent of the ownership interest of each.

9. Nothing herein shall prohibit any transfer of the ownership interest in the Company itself provided that the transfer, if greater than 10%, is disclosed to the municipal governing body in the annual disclosure statement or in correspondence sent to the Municipality in advance of the annual disclosure statement referred to above.

10. The Company is subject to the provisions of section 18 of P.L.1991, c.431 (C.40A:20-18) respecting the powers of the Municipality to alleviate financial difficulties of the Company or to perform actions on behalf of the Company upon a determination of financial emergency.

11. Any housing units constructed or acquired by the Company shall be managed subject to the supervision of, and rules adopted by, the Commissioner of Community Affairs.

12. This Certificate shall be effective upon its filing in the Commercial Recording Division of the office of the New Jersey Department of Treasury."

IN WITNESS WHEREOF, the undersigned duly authorized person has executed this Certificate of Amendment this 15th day of August, 2019.

Jonathan Schwartz
Authorized Person

FILED
OCT 3 2019
STATE TREASURER

State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
LOCAL PLANNING SERVICES
101 SOUTH BROAD STREET
PO BOX 813
TRENTON, NJ 08625-0813
(609) 292-3000 • FAX (609) 633-6056

PHILIP D. MURPHY
Governor

LT. GOVERNOR SHEILA Y. OLIVER
Commissioner

DEPARTMENT OF COMMUNITY AFFAIRS

TO: State Treasurer
RE: GREEN ESSEX PARTNERS URBAN RENEWAL LLC
(formerly GREEN ESSEX PARTNERS LLC)
File # 2610
An Urban Renewal Entity

This is to certify that the attached AMENDED CERTIFICATE OF FORMATION OF AN URBAN RENEWAL ENTITY has been examined and approved by the Department of Community Affairs, pursuant to the power vested in it under the "Long Term Tax Exemption Law," P.L. 1991, c.431.

Done this 20th day of September 2019 at Trenton, New Jersey.

DEPARTMENT OF COMMUNITY AFFAIRS

By: ______________________
Sean Thompson, Director
Local Planning Services

DCA CommunityAffairs

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EXHIBIT 4

Estimated Construction Schedule

Estimated project schedules if constructed in one phase

Submission of site plan application	3/1/2020
Receipt of all approvals for project	4/1/2021
Commencement of construction	6/1/2021
Completion of construction	6/1/2024

Estimated Project Schedule if the project is Phased

Submission of site plan application	3/1/2020
Receipt of all approvals for project	4/1/2021
Phase 1 Commencement of Construction (Approximately 300 units)	6/1/2021
Phase 1 Completion of Construction	9/1/2023
Phase 2 Commencement of Construction (Approximately 125 units)	1/1/2025
Phase 2 Completion of Construction	1/1/2027

EXHIBIT 5

The Financial Plan for the Undertaking of the Project

The Project will be financed through a combination of construction, permanent and/or equity financing in addition to approximately $4.5 million in non-recourse Redevelopment Area Bond financings to be issued by West Orange and to offset the costs of infrastructure and other qualifying costs.

EXHIBIT 6

Rent Projections

Exhibit 6: Rent Projections

West Orange
425 units

UNIT OVERVIEW

Unit Type	Description	No. Units	Mix	Net Unit SF	Total Net SF	Monthly Rents	Rent/SF	Total Monthly Rents	Total Annual Rents
MARKET RATE									
A1	1BR 1BA	200	47.1%	800	160,000	$2,240	$2.80	$448,000	$5,376,000
B1	2BR 2BA	161	37.9%	1,200	193,200	$2,820	$2.35	$454,020	$5,448,240
AFFORDABLE									
A1	1BR 1BA	15	3.5%	650	9,750	$715	$1.10	$10,725	$128,700
B1	2BR 1BA	34	8.0%	800	27,200	$880	$1.10	$29,920	$359,040
B1	3BR 1BA	15	3.5%	950	14,250	$1,045	$1.10	$15,675	$188,100
Totals		**425**	**100%**		**404,400**			**$958,340**	**$11,500,080**
Averages				**952**		**$2,254.92**	**$2.37**		

Parking		
Garage	500	
Surface	400	
Total Parking	**900**	*2.12x*

SF Calculation		
Net Residenti	80.2%	404,400
Circulation		100,000
TOTAL (w/out garage)		**504,400**

EXHIBIT 7

Architect's Certification of Estimated Construction Costs

BNE | REAL ESTATE GROUP

October 2nd , 2019

The Township of West Orange
66 Main Street
West Orange, NJ 07052

Re: Green Essex Partners Urban Renewal, LLC
Application for Tax Exemption
100 & 200 Executive Drive
West Orange, New Jersey

To Whom It May Concern:

As requested by Green Essex Partners Urban Renewal, LLC, I have reviewed the attached estimate of costs which includes a cost per unit estimate for the proposed development of the Project as it is described in the accompanying application for a long-term tax exemption. The budget includes all anticipated costs associated with design and construction of the project, together with all anticipated applicable contingencies.

I feel that to the best of my professional knowledge that the costs listed in the attached estimate are reasonably accurate and are in line with recent design and construction cost data.

If you require any additional information, please call.

Very truly yours,

Charles Thomas, Jr.

Charles Thomas, Jr. PE
New Jersey Professional Engineer Lic. No. 39244
cthomas@BNErealestate.com

cc:

Jonathan Schwartz

Executive Drive Redevelopment
West Orange, NJ

TOTAL PROJECT COST-ESTIMATE
Total Project Cost Pursuant to N.J.S.A. 40A:20-3(h)

"Total project unit cost" or "total project cost", commonly referred to as "TPC", means the aggregate of the following items as related to the total project, if the project is not undertaken in units, all of which may be limited by, and approved as part of the financial agreement under the Long-Term Tax Exemption law, N.J.S.A. 40A:20-3(h), as amended.

	Total	**Per Unit**
1-Cost of land (and initial property acquisition) by the URE.	$24,250,000	$57,058
2-Architect, engineer and attorney fees incurred in connection with the planning and construction of the project.	$2,735,000	$6,435
3-Surveying and testing charges incurred in connection with the planning and construction of the project.	0	
4a-Actual construction costs which the Entity shall cause, within ninety days of project completion, to be certified by an independent and qualified architect or engineer.	$78,346,500	$184,344
4b-Actual construction costs paid as a result of City required off-site improvements which the Entity shall cause, within ninety days of project completion, to be certified by an independent and qualified architect or engineer.	$2,500,000	$5,882
5-Insurance, interest and financing during construction.	$7,060,000	$16,611
6-Cost of obtaining initial permanent financing.	$300,000	$705
7-Commissions and other expenses.	$2,500,000	$5,882
8-Real estate taxes and assessments paid during the construction period.	$1,750,000	$4,170
Project Cost Without Redeveloper's Overhead	$117,691,500	
Redeveloper's Overhead (5%, in statutory stages)	$5,884,575	$13,846
Total Project Cost with Redeveloper's Overhead	$125,326,075	$294,884

Note: The above is subject to market conditions and a final accounting of environmental remediation costs. The above includes the cost of the parking structure.

EXHIBIT 8

Total Pledged and Unpledged Calculation

Year		Minimum Unpledged		Pledged		Total
1	$	450,000	$	258,750	$	708,750
2	$	750,000	$	288,750	$	1,038,750
3	$	850,000	$	327,025	$	1,177,025
4	$	877,000	$	323,000	$	1,200,000
5	$	876,025	$	323,975	$	1,200,000
6	$	875,338	$	324,663	$	1,200,000
7	$	874,938	$	325,063	$	1,200,000
8	$	874,825	$	325,175	$	1,200,000
9	$	875,000	$	325,000	$	1,200,000
10	$	875,463	$	324,538	$	1,200,000
11	$	876,213	$	323,788	$	1,200,000
12	$	872,250	$	327,750	$	1,200,000
13	$	873,863	$	326,138	$	1,200,000
14	$	875,763	$	324,238	$	1,200,000
15	$	872,950	$	327,050	$	1,200,000
16	$	875,713	$	324,288	$	1,200,000
17	$	873,763	$	326,238	$	1,200,000
18	$	872,388	$	327,613	$	1,200,000
19	$	876,588	$	323,413	$	1,200,000
20	$	876,075	$	323,925	$	1,200,000
21	$	876,138	$	323,863	$	1,200,000
22	$	871,775	$	328,225	$	1,200,000
23	$	873,275	$	326,725	$	1,200,000
24	$	875,350	$	324,650	$	1,200,000
25	$	873,000	$	327,000	$	1,200,000
26	$	876,513	$	323,488	$	1,200,000
27	$	875,600	$	324,400	$	1,200,000
28	$	875,550	$	324,450	$	1,200,000
29	$	876,363	$	323,638	$	1,200,000
30	$	888,038	$	311,963	$	1,200,000
	$	25,685,750	$	9,638,775	$	35,324,525

The Minimum Unpledged shall be less any reductions resulting from a land tax credit paid pursuant to Section 4.08.