161 /20.09

FINANCIAL AGREEMENT FOR
LONG TERM TAX EXEMPTION

for

SHORE GATE VILLAGE GRAND
ONE SHORE GATE AVENUE
SOUTH AMBOY, NEW JERSEY

by and between

THE CITY OF SOUTH AMBOY

and

SOUTH AMBOY URBAN RENEWAL CORPORATION

DATED: May 14 , 1997

# FINANCIAL AGREEMENT FOR LONG TERM TAX EXEMPTION

THIS FINANCIAL AGREEMENT (hereinafter "Agreement") made this 14th day of May, 1997, between **SOUTH AMBOY URBAN RENEWAL CORPORATION**, a corporation organized under the laws of the State of New Jersey, qualified to do business under the provisions of the New Jersey Long Term Tax Exemption Law, N.J.S.A. 40A:20-1 et seq. ("Exemption Law"), having its principal office at P.O. Box 126, South Amboy, New Jersey 08879 (hereinafter designated as the "Entity"), and **THE CITY OF SOUTH AMBOY**, a municipal corporation of the State of New Jersey, having offices at South Broadway, South Amboy, New Jersey 08879 (hereinafter designated as the "City")

W I T N E S S E T H:

WHEREAS, on the basis of a preliminary investigation and recommendation of the Planning Board of the City pursuant to the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq., the Board of Commissioners of the City determined that certain property known as waterfront property and more particularly described as Block 161, Lots 20.09, and all riparian rights attached or associated with these parcels should be classified as a redevelopment area in accordance with N.J.S.A. 40A:12A-5 ("Redevelopment Area"); and

WHEREAS, at the direction of the Board of Commissioners, the Planning Board prepared and recommended adoption of a proposed redevelopment plan entitled the Southern Redevelopment Plan; and

WHEREAS, the Board of Commissioners enacted an Ordinance approving the proposed redevelopment plan as the redevelopment plan of the City of South Amboy for the Redevelopment Area ("Redevelopment Plan"), on June 11, 1996, the Board of Commissioners passed Ordinance No. 09-96 amending the Redevelopment Plan with regard to density and, on April 23, 1997, the Board of Commissioners passed Ordinance No. _____ changing the redevelopment authority to the South Amboy Housing Authority ("Housing Authority") for the project which is the subject of this Agreement; and

WHEREAS, the Redevelopment Plan calls for the Redevelopment Area to be developed as a mixed residential community consisting of approximately 300 units of single-family and/or senior housing, a 24-acre public open space, ancillary community and recreational facilities, a small restaurant/marina, and associated uses including roadways, parking facilities, walkways, parks and other recreational amenities (collectively, the "Improvements"); and

WHEREAS, the Entity has acquired or will acquire title to the lands within the Redevelopment Area, specifically Block 161, Lot 20.09 (the "Project Area") and the Housing Authority, with approval of the Board of Commissioners, has designated the Entity as the redeveloper of the Project Area and has entered into a Redevelopment Agreement with the Entity, setting forth the terms and conditions by which the Entity will construct thereon 114 units of senior housing (the "Project") on the Project Area (hereinafter referred to as "Redevelopment Agreement"); and

WHEREAS, the Public Offering Statement ("POS") for the Project has been approved by the New Jersey Department of Community Affairs and the Project has been assigned registration number 03305; and

WHEREAS, the Entity has applied to the Board of Commissioners for tax exemption pursuant to the Exemption Law with respect to the Project; and

WHEREAS, by Resolution adopted May 14, 1997, the Board of Commissioners granted the tax exemption requested by the Entity, subject to the terms and conditions of this Agreement, and the parties desire to set forth in detail their mutual rights and obligations with respect to the tax exemption applicable to the Project.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein, and for other good and valuable consideration, the parties to this Agreement mutually covenant and agree as follows:

1. City's Findings. Pursuant to N.J.S.A. 40A:20-11, the City finds that the tax exemption granted in this Agreement will benefit the City and its inhabitants by furthering the redevelopment of the waterfront, which has remained

unused and vacant for many years, and that the benefits of development will substantially outweigh the costs, if any, associated with the tax exemption. The tax exemption to be granted under this Agreement is important to the City. Without the incentive of the tax exemption granted under this Agreement, it is unlikely that the Project would be undertaken. The tax exemption is also expected to influence the locational decisions of potential occupants of the Project.

2. Redevelopment of the Property. Consistent with the terms and conditions set forth in a Redevelopment Agreement, the Entity agrees to undertake a Project comprising the redevelopment of the Project Area in accordance with the Redevelopment Plan. The Project will consist of 114 senior housing condominium units and one commercial unit, as described in the Public Offering Statement approved by the Department of Community Affairs and attached hereto as Exhibit "A" (the "Project Improvements"). The Entity is acquiring the land within the Project Area by deed from the City. The Entity agrees to plan, develop and construct the Project as a housing development with appurtenant recreational uses, in accordance with N.J.S.A. 40A:20-4. For purposes of this Agreement only, and notwithstanding anything contained in the Redevelopment Agreement, the Project shall be undertaken in units, each unit consisting of a single condominium dwelling unit, with the exception of the one commercial unit. Subject to the terms of the Redevelopment Agreement and the Entity's compliance with all applicable local, State

and federal law, the City approves the Project for the purposes of implementing this Agreement.

3. Tax Exemption. All improvements in the Project constructed or acquired by the Entity shall be exempt from taxation in accordance with the provisions of the Exemption Law and in the manner provided by this Agreement, for a period of thirty (30) years from the date of completion of any unit of the Project. In accordance with N.J.S.A. 40A:20-9, this Agreement requires full performance within thirty (30) years from the date of completion of the Project.

4. Annual Service Charge.

a. In consideration of the aforesaid exemption from taxation on improvements, the Entity shall make payments to the City of an Annual Service Charge ("ASC") for municipal services supplied to the Project. The ASC shall be equal to fifteen percent (15%) of the Project's annual gross revenues, as defined in N.J.S.A. 40A:20-14(a) and (b) and in Section 11(b) of this Agreement, it being understood that the proceeds of a sale or refinancing of the Project or any portion thereof, including the sale of any condominium unit to a bona fide purchaser pursuant to N.J.S.A. 40A:20-14(b), do not constitute annual gross revenues.

b. Pursuant to N.J.S.A. 40A:20-12, the ASC shall be paid in quarterly installments on those dates when real estate tax payments are due, subject to adjustment for overpayment or underpayment within forty-five (45) days after the close of each calendar year.

c. The ASC shall accrue from the first day of the month following the substantial completion of any unit of the Project. "Substantial completion" means the issuance of any valid certificate of occupancy for any unit of the Project by the City's construction officer under the provisions of the New Jersey Uniform Construction Code. The Entity shall be responsible for promptly filing copies of any certificate of occupancy with the tax assessor and the tax collector of the City. Failure of the Entity to file any certificate of occupancy, once issued, shall not affect any action or nonaction taken by the City's assessor in the absence of such filing by the Entity.

d. The ASC for the first year and last year of the tax exemption shall be calculated on a pro rata basis, based respectively on the number of days remaining in the calendar year or the number of days having elapsed in the calendar year, divided by 365. For the first year, the exemption shall be in effect from the commencement of the exemption to the close of the first calendar year. For the year ending the tax exemption, the exemption shall be in effect from the first day of the year to the termination of the exemption.

e. Unless the provisions of Subsection (f) of this section shall apply, the schedule of ASC payments over the term of this Agreement shall be as follows:

| Stage | ASC |
|---|---|
| Years 1 - 10 | Initial ASC |
| Years 11 - 15 | The greater of Initial ASC or 20% of the taxes otherwise due on the value of land and improvements |
| Years 16 - 20 | The greater of Initial ASC or 40% of the taxes otherwise due on the value of land and improvements |
| Years 21 - 25 | The greater of Initial ASC or 60% of the taxes otherwise due on the value of land and improvements |
| Years 26 - 30 | The greater of Initial ASC or 80% of the taxes otherwise due on the value of land and improvements |

f. The minimum annual service charge ("Minimum ASC") shall be equal to the amount of the total taxes levied against all real property in the Project Area in the last full tax year in which the area was subject to taxation. The Minimum ASC for the Project Area will be determined by the Assessor. The Minimum ASC shall not be reduced through any tax appeal on land and/or buildings during the period that this Agreement remains in effect. The Minimum ASC shall be paid in each year in which the ASC shown on the schedule set forth in the preceding paragraph would be less than the Minimum ASC.

g. The Entity shall receive a credit against the ASC for the amount, without interest, of real estate taxes on land within the Project Area paid by the Entity in the last four preceding quarterly installments. For each quarterly payment of ASC in a given tax year, the land tax credit shall be equal to one-fourth of the total taxes on land paid in the previous tax year. The Entity shall receive no credit for land taxes not paid in full within thirty (30) days of the date on which they become due and owing. The Entity expressly agrees that the present assessment on the land is not more than its current fair market value and that, while this Agreement remains in effect, the Entity shall not seek to reduce the current assessment on the land by means of a tax appeal.

h. The Entity may, at its discretion, rent any unsold condominium unit under its control and continue to pay the ASC to the City as set forth in this Section 4.

5. <u>Dispute Resolution.</u>

a. If either party breaches this Agreement, or a dispute arises between the parties regarding the terms and provisions set forth herein, then either party may apply to the Superior Court of New Jersey, by an appropriate proceeding, to settle and resolve said dispute in such fashion as will tend to accomplish the purposes of the Exemption Law and this Agreement. By mutual agreement, or if the Superior Court declines jurisdiction, the parties shall submit the dispute to the

American Arbitration Association, to be resolved in accordance with its rules and regulations in such fashion as to accomplish the purposes of the Exemption Law and this Agreement. The costs of arbitration shall be borne equally by the parties.

b. If the Entity shall default under its obligation to pay the ASC, the City, in addition to its other remedies, may proceed against the land and premises within the Project Area in the manner provided by N.J.S.A. 54:5-1 et seq. and any act supplementary or amendatory thereof. The term "taxes" in N.J.S.A. 54:5-1 et seq., when used directly or impliedly to mean taxes or municipal liens on land, shall include the ASC.

c. The parties agree that the Entity's timely payment to the municipality of land taxes, interest, and ASC, as well as its continued compliance with local, State, and federal law, are material conditions of this Agreement. The Entity's failure to make any of the aforesaid payments in timely fashion shall constitute both a breach of this Agreement and a delinquency under N.J.S.A. 54:5-19. The Entity shall lack standing to dispute any required payment of land taxes or ASC unless the full amount of the payment is made pending resolution of the dispute.

6. Default and Cure.

a. The Entity shall be in default under this Agreement if it fails (i) to perform in accordance with the terms of this Agreement or (ii) to perform any obligation imposed upon it by applicable local, State, or federal law with respect to the Project or the Project Area, and such failure is not cured within any applicable time period or any extension thereof to which the parties may agree in writing.

b. The City shall notify the Entity in writing of any default under this Agreement. If the Entity fails to cure any default within forty-five (45) days from the mailing or delivery of such notice, or within any additional period to which the parties may agree in writing, the City may cancel this Agreement upon thirty (30) days final written notice to the Entity. The City shall not unreasonably refuse to grant a reasonable extension of the cure period. If the parties agree that the default is not reasonably capable of cure within forty-five (45) days from the mailing or delivery of notice, the parties shall agree in writing to extend the cure period for an appropriate period. The City need not give written notice of defaults with respect to the payment of required land taxes, interest, and ASC.

c. The City's remedies upon default shall be cumulative and concurrent. No determination under this Agreement shall deprive the City of its right to proceed against the Entity for the nonpayment of land taxes, interest, or ASC, including any arrearages that would accrue in the absence of such determination.

7. Termination of Agreement.

a. Pursuant to N.J.S.A. 40A:20-13, the Entity may, at any time after the expiration of one (1) year from the completion date of the Project, relinquish its status as an urban renewal entity, as defined in the Exemption Law, N.J.S.A. 40A:20-3(g). Notice of such election shall be given to the City in writing and shall state (a) the date designated for the relinquishment of its status as an urban renewal entity under the Exemption Law and (b) that the Commissioner of Community Affairs has consented to the relinquishment. As of that date, the tax exemption and service charges contemplated by this Agreement shall terminate. Pursuant to N.J.S.A. 40A:20-13, the date of termination of tax exemption, whether by relinquishment by the Entity, or by other terms of this Agreement, shall be deemed to be the close of the Entity's fiscal year following the date designated in such notice ("Effective Date of Termination"). Notwithstanding the provisions of N.J.S.A. 40A:20-13, pursuant to the terms of the Master Deed and POS for the Project, the Entity has waived its right to voluntarily relinquish its status as an urban renewal entity except under the conditions recited in the Master Deed and the POS.

b. At all times prior to the expiration or other termination of this Agreement, the Entity shall remain bound by the provisions of the Exemption Law. Upon termination of the exemption, the Project and the Project Improvements shall be assessed and subject to full taxation.

8. Annual Audit. Within ninety (90) days after the close of its fiscal year, while this Agreement continues in effect and so long as the Entity maintains ownership of any portion of the Condominium, the Entity shall submit to the Mayor and the governing body of the City and to the Director of the Division of Local Government Services in the Department of Community Affairs its financial report for the preceding fiscal year, which statement shall be prepared and certified by a certified public accountant.

9. Right of Inspection. The Entity shall, upon reasonable request, permit inspection of its property, equipment, buildings, and other facilities. It also shall permit, upon reasonable request, examination of its books, contracts, records, documents, and papers by duly authorized representatives of the City or the State. Such examination shall be made during reasonable business hours, in the presence of an officer or agent of the Entity. The parties agree that 48 hours' notice shall constitute a reasonable request for Inspection.

10. Sale of Project.

a. The City will consent to a sale of the Project by the Entity to another urban renewal entity organized under the Exemption Law if the transferee entity owns no other project subject to the Exemption Law at the time of the transfer and if one transferee entity assumes all of the Entity's obligations under this Agreement. Upon assumption by the transferee entity of the Entity's obligations under this Agreement, the tax exemption granted under this Agreement shall continue to inure to the transferee entity.

b. If the Entity transfers the Project to another urban renewal entity pursuant to the preceding paragraph, and the transferee entity has assumed all of the Entity's contractual obligations under this Agreement, then the Entity shall be discharged from any further obligation under this Agreement and shall be qualified to undertake another project pursuant to the Exemption Law.

c. Except as provided in Subsections (a) and (b) of this Section and except for sales of condominium units, the Entity shall not voluntarily transfer more than ten percent (10%) of the ownership of the Project, nor shall the Entity voluntarily transfer any portion of the Project undertaken pursuant to this Agreement until it has first removed both itself and the Project from the restrictions of the Exemption Law, as provided in Section 7 of this Agreement, and has obtained the consent of the Commissioner of Community Affairs.

d. When the Entity files the Master Deed creating the condominium pursuant to N.J.S.A. 46:8B-l et seq., each condominium unit, whether owned by the Entity or a successor unit purchaser, shall continue to be subject to the provisions of this Agreement, and the tax exemption granted prior to the recording of the master deed shall be unaffected by the recording of the master deed or any subsequent deed conveying the condominium unit and its appurtenant interest in the common elements. After the conveyance of any unit to a unit purchaser, any default by the Entity pursuant to Section 6(a) of this Agreement shall not operate to terminate the tax exemption of the conveyed unit, or the unit owner's obligation to pay ASC.

e. The conveyance of a condominium unit to a bona fide unit purchaser grantee shall not require consent or approval of the City, and the grantee shall acquire title to the unit subject to the requirement for payment of the unit ASC and other provisions of this Agreement. The exemption from taxation as to the condominium dwelling unit shall continue unaffected by the transfer.

f. The Entity shall file annually with the municipal governing body a statement disclosing (a) the persons having an ownership interest in the unsold portion of the Project, and (b) the extent of the ownership interest of each such person.

11. Entity's Covenants and Representations.

a. Use, Management and Operation of the Project. The Project will be managed and operated by the Board of Trustees of the Shore Gate Village Condominium Association, Inc.

b. Computation of Gross Revenue. In accordance with N.J.S.A. 40A:20-14(a), "annual gross revenue" derived from a condominium dwelling unit shall be the amount equal to the annual aggregate constant payments to principal and interest on a purchase money mortgage encumbering the condominium dwelling unit. This amount shall be based on a principal amount equal to (i) for units unsold by the Entity, the initial value of the unit with its appurtenant interest in the common elements as stated in the master deed, the initial value to be determined by the assessor, or (ii) for units held by unit purchasers, the most recent true consideration paid for a deed to the unit in a bona fide arm's length transaction, but not less than the initial assessed valuation of the units assessed at 100% of true value, plus the total amount of annual common expenses charged to the unit pursuant to the bylaws of the condominium association for the initial year of ownership by the unit purchaser. The interest rate used to calculate the constant payments to principal and interest shall be the prevailing lawful interest rate for mortgage financing on comparable properties within the City as of the date of the recording of the master deed (as to unsold units held by the Entity) or the unit deed (as to units held by unit purchasers), for a term of thirty (30) years. Any gain realized by the Entity on the sale of any condominium unit, whether or not taxable under federal or State law, is excluded from the calculation of gross revenue as set forth in N.J.S.A. 40A:20-3 and in Section 4(a) of this Agreement.

c. Financial Plan. The Entity has represented and it is anticipated that the Entity will finance the acquisition of the land and construction of the Project Improvements entirely through a tax exempt bond issued by the South Amboy Housing Authority.

d. Initial Sales Prices. It is anticipated that the initial sales prices of condominium units, and the respective annual condominium assessment for the first year of ownership. The collective sales prices for the units will total approximately $12,300,000 as set forth in Exhibit "B" attached hereto, and a copy of the individual unit sales prices with the respective tax service charges will be provided at the time a Certificate of Occupancy is issued for the Project.

12. Governing Law and Conflicts. This Agreement shall be governed by the provisions of the Exemption Law and the laws of the State of New Jersey. The parties agree that in the event of a conflict between this Agreement and the Application, the language contained in this Agreement shall govern and prevail.

13. Oral Representations. Neither party hereto has made any oral representation that is not contained in this Agreement. This Agreement and the Application constitute the entire agreement between the parties.

14. Modification. There shall be no modification of this Agreement except by written instrument executed by both parties.

15. Notices. Unless prior to giving any notice required under this Agreement, either party shall have notified the other to the contrary, all notices shall be sent by certified mail, return receipt requested, addressed as follows:

a. When sent by the City to the Entity:

South Amboy Urban Renewal Corporation
Box 214, 10 Dewey Avenue
Gorham, New York 14461

Attention: Christopher N. Iversen, President

Copy to Kevin R. McAuliffe, Esq.
Green & Seifter, Attorneys, P.C.
900 One Lincoln Center
Syracuse, New York 13202

b. When sent by the Entity to the City:

City of South Amboy
140 North Broadway
South Amboy, New Jersey 08879

With a copy to:

John R. Lanza, Esq.
Thatcher & Lanza
P. O. Box 2520
Flemington, New Jersey 08822

Unit owners shall be entitled only to such notices as they would receive from the City's tax assessor and tax collector if their respective units were subject to normal taxation.

16. Indemnification. If the City is named as a party defendant in any action brought against the Entity by reason of any breach, default, or violation of any provision of this Agreement and/or the Exemption Law, but not including any taxpayer actions brought against the City or the Entity because of the execution of

this Agreement, the Entity shall indemnify and hold the City harmless, and the Entity agrees to defend the suit at its own expense. The City maintains the right to intervene as a party to any such action against the Entity, to which intervention the Entity consents, the reasonable expense of the City's intervention to be borne by the Entity.

17. Severability. If any term, covenant or condition of this Agreement shall be judicially declared to be invalid or unenforceable, the remainder of this Agreement and 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.

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

ATTEST:

SOUTH AMBOY URBAN RENEWAL CORPORATION

By: Christopher N. Iversen
Christopher N. Iversen, President

ATTEST:

CITY OF SOUTH AMBOY

By:
John O'Leary, Mayor

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