FINANCIAL AGREEMENT
BY AND BETWEEN
THE TOWNSHIP OF CLARK
AND
CLARK WALNUT DEVELOPERS URBAN RENEWAL LLC

DATED AS November 16, 2020

FINANCIAL AGREEMENT

THIS FINANCIAL AGREEMENT (hereinafter the "**Agreement**" or "**Financial Agreement**"), made this 16th day of November, 2020, by and between **CLARK WALNUT DEVELOPERS URBAN RENEWAL LLC**, an urban renewal entity qualified to do business under the provisions of the Long Term Tax Exemption Law of 1992, N.J.S.A. 40A:20-1 *et seq*., as amended and supplemented (the "**Long Term Tax Exemption Law**"), with offices at 820 Morris Turnpike, Short Hills, New Jersey 07078 (the "**Entity**") and the **TOWNSHIP OF CLARK**, a municipal corporation in the County of Union and the State of New Jersey (the "**Township**") (individually a "**Party** and collectively the "**Parties**").

WITNESSETH:

WHEREAS, the Entity is the owner of property identified on the Tax Maps of the Township as Block 155, Lots 7 and 10 (the "**Property**"), commonly known as 35 Walnut Avenue and 92 Valley Road, and more particularly described by the metes and bounds description attached hereto as ***Exhibit A***; and

WHEREAS, on April 1, 2019, the Township Council of the Township (the "**Township Council**") adopted a resolution designating the Property as a non-condemnation 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*., as amended and supplemented (the "**Local Redevelopment and Housing Law**"); and

WHEREAS, the Township Council adopted a resolution designating Clark Walnut Developers LLC as the redeveloper of the Property; and

WHEREAS, pursuant to N.J.S.A. 40A:12A-7, the Township Council duly adopted an ordinance approving a Redevelopment Plan (and as same may be further amended from time to time, the "**Redevelopment Plan**") for the Redevelopment Area; and

WHEREAS, the Township and Clark Walnut Developers, LLC entered into a Redevelopment Agreement (the "**Redevelopment Agreement**") in order to implement the development, design, financing and construction of a project including no more than 177 residential rental residential units, with 28 units affordable to very low, low and moderate income households (as further described in Section 2.01 hereof, the Redevelopment Agreement and Application) (the "**Project**"); and

WHEREAS, Clark Walnut Developers, LLC has filed an Amended Certificate of Formation converting to an Urban Renewal Entity and changing its name to Clark Walnut Developers Urban Renewal LLC; and

WHEREAS, the Entity submitted an application to the Township for the approval of an exemption for the Project pursuant to the Long Term Tax Exemption Law (the "**Application**"), which Application is attached hereto as ***Exhibit B***; and

WHEREAS, the Township Business Administrator and the Chief Financial Officer have reviewed and submitted the Application and Agreement to the Township Council with a recommendation of approval (the "**Township Administration's Recommendation**") and

WHEREAS, the Township Council adopted an ordinance entitled, "Township of Clark, Panning Board Resolution Clark Walnut Developers, LLC," a copy of which is attached hereto as ***Exhibit C*** (the "**Ordinance**"); and

WHEREAS, in order to set forth the terms and conditions under which the Parties shall carry out their respective obligations with respect to the exemption from taxation, by the Township, of the Project and with respect to payment, by the Entity, of the Annual Service Charges (defined herein), in lieu of real property taxes in connection with the Project, the Parties desire to enter into this Agreement; and

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

A. Relative Benefits of the Project: The Project will revitalize and effectuate the development of a deteriorated and underutilized area while providing new residential housing units, including 28 new affordable housing units, within the Redevelopment Area. The Project will result in estimated anticipated revenue to the Township of approximately $608,405.34 in the first year after substantial completion. The Project is consistent with the Redevelopment Plan and will contribute to the economic and smart growth of the Township. It is anticipated that the Project will create approximately fifty (50) full-time equivalent construction jobs over the duration of the construction of the Project, as well as approximately six (6) full-time permanent jobs in connection with operation of the Project.

B. Assessment of the Importance of the Tax Exemption: The Tax Exemption is important for development of the Project and influencing the locational decisions of probable occupants. Without the exemption, the Entity would not be able to finance and construct the Project in a manner that will allow it to establish rents that are consistent with the market for new multi-family rental units in the Township, and to provide affordable housing units. As a result, without the tax exemption, probable occupants of the Project would not choose to reside in the Project. Finally, the relative stability and predictability of the Annual Service Charge will assist in the long-term success and viability of the Project.

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

ARTICLE I

GENERAL PROVISIONS

SECTION 1.01 Governing Law. This Agreement shall be governed by the provisions of the Long Term Tax Exemption Law, the Local Redevelopment and Housing Law, the Ordinance, and other Applicable Laws. It is expressly understood and agreed that the Township expressly relies upon the facts, data, and representations contained in the Application in granting this tax exemption.

SECTION 1.02 General Definitions. The following terms shall have the meanings assigned to such term in the preambles hereof:

Agreement	Project
Application	Property
Entity	Redevelopment Agreement
Local Redevelopment and Housing Law	Redevelopment Area
Long Term Tax Exemption Law	Redevelopment Plan
Township Administration's Recommendation	Township
Ordinance	Township Council
Party/Parties	

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

Administrative Fee – Two percent (2%) of the Annual Service Charge.

Affiliate – With respect to any person or entity, any other person or entity directly or indirectly Controlling or Controlled by, or under direct common Control with, such person or entity.

Allowable Net Profit - The amount arrived at by applying the Allowable Profit Rate to Total Project Cost pursuant to the provisions of N.J.S.A. 40A:20-3b.

Allowable Profit Rate - 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 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 (X) twelve percent (12%) or (Y) the percentage per annum arrived at by adding one and one-quarter percent (1¼%) 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:20-3b are incorporated herein by reference.

Annual Gross Revenue – The annual gross revenue shall be defined as set forth in N.J.S.A. 40A:20-3a.

Annual Service Charge - The amount the Entity has agreed to pay the Township pursuant to Article IV for municipal services supplied to the Project, which sum is in lieu of any taxes on the Land and Improvements, as authorized under N.J.S.A. 40A:20-12, which amount shall be pro-rated in the year in which the Annual Service Charge begins and the year in which the Annual Service Charge terminates.

Annual Service Charge Start Date – The Annual Service Charge Start Date shall be the first day of the month immediately following the month in which Substantial Completion occurs.

Applicable Law – All federal, State and local laws, ordinances, approvals, rules, regulations and requirements applicable thereto including, but not limited to, the Local Redevelopment and Housing Law and the Long-Term Tax Exemption Law.

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

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

Control – As used with respect to any person or entity, shall mean possession, directly or indirectly, of the power to direct or cause the direction of the management and operation of such person or entity, whether through the ownership of voting securities or by contract or other written agreement.

County – The County of Union.

Debt Service - The amount required to make annual payments of principal and interest or the equivalent thereof on any construction mortgage, permanent mortgage or other financing including returns on institutional equity financing and market rate related party debt for a project for a period equal to the term of the tax exemption granted by this Agreement.

Default - A breach or the failure of either 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 after written notice of such failure, or a violation of the declaration of covenants executed by Redeveloper pursuant to the Redevelopment Agreement.

Default Notice – As defined in Section 14.02.

Fiscal Plan – Attached as Exhibit D to the Application.

Improvements - Any building, structure or fixture permanently affixed to the Land and to be constructed and exempt under this Agreement.

In Rem Tax Foreclosure - A summary proceeding by which the Township may enforce the lien for taxes due and owing by a tax sale in accordance with the provisions of the Tax Sale Law (defined below).

Land – The real property, but not the Improvements, known as Block 155, Lots 7 and 10 on the tax maps of the Township, and more particularly described in ***Exhibit A*** of this Agreement.

Land Taxes - The amount of taxes assessed on the value of the Land.

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

Material Conditions – As defined in Section 4.07.

Minimum Annual Service Charge – As defined in Section 4.03.

Net Profit – The Annual Gross Revenue of the Entity pertaining to the Property, 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), which includes, but is not limited to, the Debt Service and an annual amount sufficient to amortize (utilizing the straight line method-equal annual amounts) the Total Project Cost over the term of the exemption granted pursuant to this Agreement as well as all other expenses permitted under the provisions of N.J.S.A. 40A:20-3(c).

Notice of Termination – As defined in Section 14.04.

State – The State of New Jersey.

Substantial Completion – The determination by the Township construction official that the Project, in whole or in part, is ready for the use intended, which shall mean the date on which the Project receives, or is eligible to receive, any Certificate of Occupancy for any portion of the Project.

Tax Assessor – The Township tax assessor.

Tax Collector – 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.

Termination – Expiration of the term of this Agreement in accordance with Section 3.01 or any action or omission which by operation of the terms of this Agreement shall cause the Entity to relinquish the tax exemption granted pursuant to this Agreement.

Total Project Cost – The total cost of construction and/or rehabilitation of the Project through the date a Certificate(s) of Occupancy is issued for the entire Project, which categories of cost are as defined in N.J.S.A. 40A:20-3h. There shall be included in Total Project Cost the actual costs incurred to construct the Improvements which are specifically described in the Application.

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. All references to Articles, Sections or Exhibits in this Agreement shall, unless indicated otherwise, refer to the Articles Sections or Exhibits in this Agreement.

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

ARTICLE II

APPROVAL

SECTION 2.01 Approval of Tax Exemption. The Township has granted and does hereby grant its approval for a tax exemption for the Project, including the Land, to be developed and maintained in accordance with the provisions of the Long Term Tax Exemption Law on the Property.

The Project will contain 177 residential units, of which 28 shall be affordable to very low, low and moderate income households, in two Buildings, together with certain amenities and surface parking spaces, and shall otherwise be as set forth in the Redevelopment Agreement and in the Application.

SECTION 2.02 Approval of the Entity. Approval is granted to the Entity based on its representation that its Amended Certificate of Formation attached to the Application as Exhibit H 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.

SECTION 2.03 Improvements to be Constructed. The Entity represents that it will construct or cause the Project to be constructed in accordance with the Redevelopment Agreement and the Redevelopment Plan and as set forth in the Application.

SECTION 2.04 Construction Schedule. The Entity agrees to diligently undertake to commence construction and complete the Project in accordance with the Construction Schedule as set forth in the Application as Exhibit E and in the Redevelopment Agreement (the "**Construction Schedule**"), as same may be modified in accordance with the terms of the Redevelopment Agreement by agreement of the Parties. Notwithstanding the above, or anything set forth in the Redevelopment Agreement to the contrary, the Entity shall promptly commence construction in accordance with the terms of the Redevelopment Agreement and Construction Schedule and diligently prosecute such construction to completion as set forth in the Redevelopment Agreement and Construction Schedule.

SECTION 2.05 Ownership, Management and Control. The Entity represents that it owns the Property. The Entity expressly covenants, warrants and represents that upon completion, the Project, including all Land and Improvements, shall be used, managed and operated for the purposes set forth in the Application and the Redevelopment Agreement, in accordance with the Redevelopment Plan and all Applicable Laws.

SECTION 2.06 Fiscal Plan. The Entity represents that the Improvements shall be financed in accordance with the representations set forth in the Application, including the Fiscal Plan attached thereto (which is also attached hereto as ***Exhibit D***). The Application and Fiscal Plan set forth the estimated Total Project Cost, amortization rate on the 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 Township Findings. The Township made the following findings with respect to the Project:

A. Relative Benefits of the Project: The Project will revitalize and effectuate the development of a deteriorated and underutilized area while providing new residential housing units, including 28 new affordable housing units within the Redevelopment Area. The Project will result in estimated anticipated revenue to the Township of approximately $608,405.34 in the first year after substantial completion. The Project is consistent with the Redevelopment Plan and will contribute to the economic and smart growth of the Township. It is anticipated that the Project will create approximately fifty (50) full-time equivalent construction jobs over the duration of the construction of the Project, as well as approximately six (6) full-time permanent jobs in connection with operation of the Project.

B. Assessment of the Importance of the Tax Exemption: The Tax Exemption is important for development of the Project and influencing the locational decisions of probable occupants. Without the exemption, the Entity would not be able to finance and construct the Project in a manner that will allow it to establish rents that are consistent with the market for new multi-family rental units in the Township, and to provide affordable housing units. As a result, without the tax exemption, probable occupants of the Project would not choose to reside in the Project. Finally, the relative stability and predictability of the Annual Service Charge will assist in the long-term success and viability of the Project.

ARTICLE III

DURATION OF AGREEMENT

SECTION 3.01 Term. This Agreement shall become effective upon its execution and delivery by the Parties. So long as there is compliance with the Applicable Law and this Agreement, it is understood and agreed by the Parties that this Agreement, including the obligation to pay Annual Service Charges under Article IV and the tax exemption granted and referred to in Section 2.01, shall remain in effect until the earlier of (A) thirty-five (35) years from the date of execution of this Agreement or (B) thirty (30) years from the Annual Service Charge Start Date for the Project. The tax exemption shall apply only so long as the Entity and the Project remain subject to the provisions of the Long Term Tax Exemption Law and shall continue in force only while the Project is owned or leased and operated and managed by a corporation, association or other entity formed and operating in accordance with the Long Term Tax Exemption Law. Upon Termination, the tax exemption for the Project shall expire and the Land and Improvements shall thereafter be assessed and taxed according to the general laws 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 Date of Termination. Upon any Termination of the tax exemption, as described in Section 3.01, the date of such Termination shall be deemed to be the last day of the fiscal year of the Entity.

SECTION 3.03 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 that the Entity has obtained the consent of the Commissioner of the Department of Community Affairs. Upon Termination of the Agreement, 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.

ARTICLE IV

ANNUAL SERVICE CHARGE

SECTION 4.01 Annual Service Charge Consent. The Entity hereby consents and agrees to the amount of Annual Service Charge and to the liens established in this Agreement, and the Entity shall not 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 under any circumstances, including without limitation any loss of the status of the Entity as an urban renewal entity qualified under and as defined in the Long Term Tax Exemption Law, or any violation by the Township of any provisions of this Agreement. The Entity's remedies shall be limited to those specifically set forth herein and otherwise provided by Applicable Law.

SECTION 4.02 Payment of Annual Service Charge.

A. In consideration of the tax exemption, the Entity shall make payment of the Annual Service Charge to be calculated from the Annual Service Charge Start Date consistent with Section 4.02B.

B. Payment of the Annual Service Charge shall be made to the Township on a quarterly basis on February 1, May 1, August 1 and November 1 immediately following the Annual Service Charge Start Date and thereafter on February 1, May 1, August 1 and November 1, as applicable, all in accordance with the Township's tax collection schedule, subject, nevertheless, to adjustment for over or underpayment within thirty (30) days after the close of each calendar year. The Annual Service Charge will be prorated in the year in which the Annual Service Charge Start Date commences and the date the exemption terminates. The obligation to pay the Annual Service Charge shall continue until the expiration of the term hereof or Termination of the Agreement.

C. In the event that the Entity fails to timely pay the Annual Service Charge or any installment thereof, the amount past due shall bear the highest rate of interest permitted under applicable New Jersey law and then being assessed by the Township against other delinquent taxpayers in the case of unpaid taxes or tax liens on the land until paid.

D. In accordance with the Long Term Tax Exemption Law, specifically N.J.S.A. 40A:20-12, in the event of any change in the tax-exemption status as provided herein during any tax year, including but not limited to any termination of such tax exemption as provided for herein, the procedure for the apportionment of any taxes and/or Annual Service Charge, as the case may be, shall be the same as in the case of other changes in tax exemption status to any other property located within the Township during the tax year, in accordance with Applicable Law.

SECTION 4.03 Annual Service Charge Amount. Pursuant to N.J.S.A. 40A:20-12, the Annual Service Charge shall be an amount equal to 12.5% of the Annual Gross Revenue generated by the Project. The first year of the Annual Service Charge shall be billed based on the Entity's estimated Gross Revenue, as set forth in the Fiscal Plan attached as Exhibit D to the Application, or the Minimum Annual Service Charge, whichever is greater.

Pursuant to N.J.S.A. 40A:20-12b(2)(e), notwithstanding any provisions of this Agreement to the contrary, the Annual Service Charge shall never be less than the amount of the total taxes levied against the Property in the last full tax year in which the Property was subject to taxation (the "**Minimum Annual Service Charge**").

Notwithstanding the provisions of the Long Term Tax Exemption Law or any provision of this Agreement to the contrary, the Annual Service Charge shall never be reduced below the Minimum Annual Service Charge through any tax appeal on the Land and/or Improvements or any other legal proceeding regarding the Project during the period that this Agreement is in force and effect. The parties agree and acknowledge that in accordance with N.J.S.A. 54:3-21(b), no tax appeal is cognizable during the Term of this Agreement.

SECTION 4.04 Reformation of Annual Service Charge Computation. In the event the exemption of the Land is invalidated by a Court of competent jurisdiction, the Parties agree that this Agreement shall remain valid and in full force and effect. If the exemption of the Land authorized under N.J.S.A. 40A:20-12 is invalidated, the Entity shall be obligated to make payment of Land Taxes according to the general laws applicable to all other tax ratables. Land Taxes shall be separately assessed for the Property, and shall be assessed only on the Land. The payment for Land Taxes shall be applied as a credit against the Annual Service Charge for the subsequent year. In any year that the Entity fails to make any Land Tax Payments when due and owing, such delinquency shall render the Entity ineligible for any land tax credits against the Annual Service Charge for that year. The Entity is required to make payment of both the Annual Service Charge and the Land Tax Payments. The Entity is required to pay the full Land Tax Payments in any given year and no credits will be applied against the Annual Service Charge for partial payment of the Land Taxes. The Entity's failure to make the requisite Annual Service Charge payment and/or the requisite Land Tax Payment in a timely manner shall constitute a violation and breach of this Agreement. The Township shall, among its other remedies, have the right to proceed against the Property pursuant to the Tax Sale Law and/or may declare a Default under this Agreement in accordance with Article XIV hereof.

SECTION 4.05 Schedule of Staged Adjustments. Pursuant to N.J.S.A. 40A:20-12b(2) the Annual Service Charge shall be adjusted as follows:

A. Stage One. Commencing on the Annual Service Charge Start Date until the fifteenth anniversary of the Annual Service Charge State Date, the Annual Service Charge shall be the amount established in accordance with Sections 4.03 or 4.04, as applicable.

B. Stage Two. From the first day after the fifteenth anniversary of the Annual Service Charge Start Date until the twenty-first anniversary of the Annual Service Charge Start Date, the Annual Service Charge shall be the amount established in accordance with Sections 4.03 or 4.04, as applicable, or 20% of the amount of the taxes otherwise due on the Land and Improvements, whichever is greater.

C. Stage Three. From the first day after the twenty-first anniversary of the Annual Service Charge Start Date until the twenty-seventh anniversary of the Annual Service Charge Start Date, the Annual Service Charge shall be the amount established in accordance with Sections 4.03 or 4.04, as applicable, or 40% of the amount of the taxes otherwise due on the Land and Improvements, whichever is greater.

D. Stage Four. From the first day after the twenty-seventh anniversary of the Annual Service Charge Start Date until the twenty-ninth anniversary of the Annual Service Charge Start Date, the Annual Service Charge shall be the amount established in accordance with Sections 4.03 or 4.04, as applicable, or 60% of the amount of the taxes otherwise due on the Land and Improvements, whichever is greater.

E. Stage Five. In the thirtieth year of the Agreement, the Annual Service Charge shall be the amount established in accordance with Sections 4.03 or 4.04, as applicable, or 80% of the amount of the taxes otherwise due on the Land and Improvements, whichever is greater.

SECTION 4.06 Administrative Fee. The Entity shall pay annually the Administrative Fee to the Township in addition to the Annual Service Charge. This fee shall be payable and due on each November 1 on or after the Annual Service Charge Start Date. In the event the Entity fails to pay the Administrative Fee when due and owing, the amount unpaid shall bear interest at the prime rate compounded annually.

SECTION 4.07 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, Land Taxes, if applicable, and Administrative Fee are material conditions of this Agreement (the "**Material Conditions**"). If any other term, covenant or condition of this Agreement, as to any person or circumstance shall, to any extent, 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 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 4.08 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, 4.03, 4.04 or 4.05 shall be reduced, amended or otherwise modified during the Term of this Agreement.

SECTION 4.09 Annual Service Charges as Municipal Lien. In accordance with the provisions of the Long Term Tax Exemption Law, the Annual Service Charge shall be and constitute a continuous municipal lien on the Property and the Improvements.

SECTION 4.10 Remittance of County Portion. Pursuant to N.J.S.A. 40A:20-12, upon receipt of the Annual Service Charge, the Township shall remit five (5%) percent of the Annual Service Charge collected by the Township to the County in accordance with N.J.S.A. 54:4-74.

SECTION 4.11 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 reserves the right to prosecute an In Rem Tax Foreclosure action against the Property, as more fully set forth in this Agreement and Applicable Law.

SECTION 4.12 Payment of Conventional Taxes on Land and Improvements During Construction. Prior to the Annual Service Charge Start Date, the Entity shall make payment of conventional real estate taxes with respect to the Land and the improvements existing thereon, at the times and to the extent due in accordance with Applicable Law.

ARTICLE V

REMEDY FOR ENTITY DEFAULT

SECTION 5.01 In the event of a Default on the part of the Entity to pay any installment of the Annual Service Charge required by Article IV above, the Township, in addition to its other remedies (including but not limited to those set forth at Article XIV hereof), reserves the right to proceed against the Project, in the manner provided by Applicable Law, including the Tax Sale Law, and any act supplementary or amendatory thereof. 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 Charges were taxes or municipal liens on land.

ARTICLE VI

CERTIFICATE OF OCCUPANCY

SECTION 6.01 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.

SECTION 6.02 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 any Certificate of Occupancy issued for the Project.

Failure of the Entity to file such issued Certificate of Occupancy as required by the preceding paragraph shall not militate against any action or non-action, taken by the 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 VII

ANNUAL AUDITS

SECTION 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 and as otherwise prescribed by Applicable Law.

SECTION 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, for the duration of this Agreement, the Entity shall submit to the Mayor, Township Council, the Township 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 Department of Community Affairs, its Auditor's Report for the preceding fiscal or calendar year pursuant to N.J.S.A. 40A:20-3(c). 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. Total Project Cost Audit: Within ninety (90) days after the Substantial Completion of the Project, the Entity shall submit to the Mayor, Township Council, the Tax Collector and the Township Clerk, who shall advise those municipal officials required to be advised, an audit of Total Project Cost, certified as to actual construction costs by the Entity's architect utilizing the form attached as Exhibit C to the Application.

C. Disclosure Statement: On each anniversary date of the execution of this Agreement, the Entity shall submit to the Mayor and Township Council, 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 7.03 Inspection. The Entity shall permit the inspection of its property, equipment, buildings and other facilities of the Project by representatives duly authorized by the Township and Division of Local Government Services in the Department of Community Affairs pursuant to N.J.S.A. 40A:20-9(e). The Entity shall also permit, upon written request, examination and audit of its books, contracts, records, documents and papers relating to the Project by representatives duly authorized by the Township and Division of Local Government

Services in the Department of Community Affairs pursuant to N.J.S.A. 40A:20-9(e). Such inspection shall be made upon five (5) days' prior written notice, in the presence of an officer or agent designated by the Entity. To the extent reasonably possible, the inspection will not materially interfere with construction or operation of the Project. Nothing in this section shall be construed to affect, limit or restrict the powers of municipal, county, State or other officials from carrying out those inspections that are generally applicable outside of the Long Term Tax Exemption Law context, including, but not limited to, inspections by fire officials, construction code officials, etc.

SECTION 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 and dividends pursuant to the provisions of N.J.S.A. 40A:20-15. Pursuant to N.J.S.A. 40A:20-3c, this calculation shall be completed in accordance with generally accepted accounting principles.

The Entity shall have the right to establish a reserve against vacancies, unpaid rentals, and reasonable contingencies in an amount up to ten percent (10%) of the Annual Gross Revenues of the Entity for the last full fiscal year preceding the year and may retain such part of the excess Net Profits as is necessary to eliminate a deficiency in that reserve, as provided in N.J.S.A. 40A:20-15. The reserve shall be noncumulative. Upon expiration or Termination of this Agreement, the amount of the reserve shall be paid over to the Township.

There is expressly excluded from calculation of Annual 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 Applicable Law.

SECTION 7.05 Payment of Dividend and Excess Profit Charge. In the event the Net Profits of the Entity in any fiscal year shall exceed the Allowable Net Profits for such period, then the Entity, within ninety (90) days after the end of such fiscal year 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 7.04. The calculation of Net Profit and Allowable Net Profit shall be made in the manner required pursuant to N.J.S.A. 40A:20-3c and 40A:20-15.

The Parties agree that any excess Net Profit will be retained by the Township as additional Annual Service Charge.

ARTICLE VIII

ASSIGNMENT AND/OR ASSUMPTION

SECTION 8.01 Approval of Sale of Project to Entity Formed and Eligible to Operate Under Applicable Law. The Entity shall not transfer all or any portion of the Project without the prior written approval of the Township, except that after completion of the Project, the Entity shall be permitted to transfer all or any portion of the Project to another urban renewal entity approved by the Township under the conditions set forth herein. As permitted by N.J.S.A. 40A:20-10a, it is understood and agreed that the Township, on written application by the Entity after completion of the Project, shall consent to a sale of the Project and the transfer of this Agreement provided: (i) the transferee entity does not own or lease any other Project subject to long term tax exemption at the time of transfer; (ii) the transferee entity is formed and eligible to operate under the Long Term Tax Exemption Law; (iii) the Entity is not then in Default of the Redevelopment Agreement, this Agreement or the Long Term Tax Exemption Law; (iv) the Entity's obligations under this Agreement are fully assumed by the transferee entity; (v) the transferee entity agrees to abide 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; (vi) the transferee entity possesses the requisite experience, qualifications, and financial capacity to operate and manage the Project; and (vii) the principal owners of the transferee entity possess the same business reputation, financial qualifications and credit worthiness as the Entity and are otherwise reputable. The Township may charge an administrative fee of $1,000.00 for processing any such application for transfer by the Entity.

SECTION 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 Lands which are basic to, embraced in, or underlying the exempt Improvements.

SECTION 8.03 Permitted Transfers. Notwithstanding the provisions set forth in Section 8.01 and Section 8.02 above, it is expressly understood and agreed that the Entity is permitted, without the prior approval of the Township, to effect the following transfers with respect to the Project:

A. Encumber the Project, e.g., mortgage financing, development easements, etc., provided that any such encumbrance is subordinate to the lien of the Annual Service Charges.

B. Transfer the ownership interest in the Entity to a related entity or Affiliate.

C. Transfer the ownership in the Entity by means of inheritance, devise or bequest or by operation of law upon an immediate family member of Interest Holders, or a trust established for the benefit of such immediate family member. For purposes of the foregoing sentence, an "immediate family member" shall mean a spouse, child or grandchild of any Interest Holder, and "Interest Holders" shall mean holders of interests in the Entity (or holders of interests in any entity directly or indirectly holding an interest in the Entity) as of the date of this Agreement.

D. Lease any portion of the Project to an end user, with such tenant not being required to be an entity eligible to operate under the Long Term Tax Exemption Law.

E. A onetime transfer of up to ten percent (10%) of the equity interest in the Entity to a third party, provided such transfer does not result in a change of control of the Entity.

Notwithstanding anything to the contrary contained in A. through E., above, or elsewhere in this Agreement, the Parties expressly agree and acknowledge that:

(i) the Entity shall not enter into any lease, whether or not with an affiliate or related entity, that shall operate to minimize or remove revenues properly includable in the calculation of Annual Gross Revenue; and

(ii) notwithstanding anything to the contrary contained in this Agreement, the Parties agree and acknowledge that prior to completion of the Project, all restrictions on transfer that are set forth in the Redevelopment Agreement shall apply in accordance with the terms thereof.

ARTICLE IX

WAIVER

SECTION 9.01. 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 the Applicable Law except for the express waiver herein of certain rights of acceleration and certain rights to terminate the Agreement and tax exemption for violation of any of the conditions provided herein. Nothing herein shall be deemed to limit any right of recovery that the Township or the Entity has under law, in equity, or under any provision of this Agreement.

ARTICLE X
NOTICE

SECTION 10.01 Any notice required hereunder to be sent by any Party to another Party shall be sent to all other Parties hereto simultaneously by certified or registered mail, return receipt requested or by commercial overnight delivery service with package tracking capabilities and for which proof of delivery is available, as follows:

A. When sent to the Entity it shall be addressed as follows:

Clark Walnut Developers Urban Renewal LLC
820 Morris Turnpike
Short Hills, New Jersey 07078
Attn: Anthony DiGiovanni

with a copy to:

Brett E. Tanzman, Esq.
c/o Wilf Law Firm, LLP
820 Morris Turnpike, Suite 201
Short Hills, New Jersey 07078

B. When sent to the Township, it shall be addressed as follows:

Mayor and Township Council of the Township of Clark
430 Westfield Avenue
Clark, New Jersey 07066

with a copy to:

Joseph J. Triarsi
c/o Triarsi, Betancourt, Wukovits & Dugan, LLC
Centennial Plaza
186 North Avenue East
Cranford, New Jersey 07016

The notice to the Township shall identify the subject with the tax account numbers of the tax parcels comprising the Property.

ARTICLE XI

COMPLIANCE

SECTION 11.01 Statutes and Ordinances. The Entity hereby agrees at all times prior to the expiration or Termination of this Agreement to remain bound by the provisions of Applicable Law. The Entity's failure to comply with such Applicable Law shall constitute a violation and breach of this Agreement.

ARTICLE XII

CONSTRUCTION

SECTION 12.01 Construction. This Agreement shall be construed and enforced in accordance with Applicable Law, 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 XIII

INDEMNIFICATION

SECTION 13.01 Indemnification. It is understood and agreed that in the event the Township shall be named as a party defendant in any action brought against the Township or the Entity by allegation of any breach, Default or a violation of any of the provisions of this Agreement and/or the provisions of the Long Term Tax Exemption Law or any other 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, the provisions of the Long Term Tax Exemption Law and/or any other Applicable Law except for any willful misconduct by the Township or any of its officers, officials, employees or agents, and the Entity shall defend the suit at its own expense. The Township shall be entitled to intervene in any such suit, and retain attorneys of its choosing, whether as party defendant or intervenor, the reasonable cost of such attorneys to be borne by the Entity in accordance with this Section.

ARTICLE XIV

DEFAULT

SECTION 14.01 Default. Default shall be failure of the Entity to conform to the terms of this Agreement and failure of the Entity to perform any obligation imposed upon the Entity by statute, ordinance or lawful regulation beyond any applicable notice, cure or grace period. In addition, a Default under the Redevelopment Agreement, which has not been cured in accordance with the terms of the Redevelopment Agreement, for failure to commence or complete the Project in accordance with the Redevelopment Agreement, shall constitute a Default under this Agreement.

SECTION 14.02 Cure Upon Default. Should a Party be in Default of any obligation under this Agreement (except for payment Defaults, which shall not require notice), the non-defaulting Party shall notify the defaulting Party and any mortgagee, if applicable, of the Entity in writing of said Default (the "**Default Notice**"). Said Default Notice shall set forth with particularity the basis of said Default. Except as otherwise limited by law, the defaulting Party shall have forty-five (45) days from the issuance of such Default Notice to cure any Default (other than any payment Default, for which a Default Notice is not required and which must be cured within ten (10) days from the occurrence thereof). With respect to a failure to perform any obligation other than a financial obligation, provided the defaulting party shall thereafter diligently and continuously proceed to correct same, the defaulting party shall have an additional one hundred eighty (180) days to complete the cure. In the event of any uncured Default by the Entity, the Township shall have the right to proceed against the Property pursuant to Applicable Law. Upon any Default in payment of any installment of the Annual Service Charge, the Township shall have the right to proceed to In Rem Tax Foreclosure consistent with the provisions and procedures of the Tax Sale Law. Notwithstanding anything herein to the contrary, except in connection with the Entity's obligation to make payments hereunder for which no extension shall be permitted, the Entity shall be entitled to a reasonable extension period in order to comply with any obligations hereunder, provided that they have commenced to cure the Default within the cure period.

SECTION 14.03 Remedies Upon Default Cumulative; No Waiver. Subject to 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 to it 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 the Entity's failure to pay Land Taxes, the Annual Service Charge, and/or the Administrative Fee and interest payments. This right shall only apply to arrearages that are due and owing at the time, and the bringing of any action for Land Taxes, Annual Service Charges, Administrative Fee or other charges, or for breach of covenant or the resort to any other remedy herein provided for the recovery of Land Taxes, Annual Service Charges, Administrative Fee or other charges shall not be construed as a waiver of the right to proceed with an In Rem Tax Foreclosure action consistent with the terms and provisions of this Agreement.

SECTION 14.04 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 14.02, the Township may terminate this Agreement upon thirty (30) days written notice to the Entity (the "**Notice of Termination**"). In addition, if the Redevelopment Agreement has been terminated, this Financial Agreement shall also automatically terminate.

SECTION 14.05 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 Termination of the Agreement shall be deemed to be the end of the fiscal year for the Entity.

SECTION 14.06 Conventional Taxes. Upon Termination or expiration of this Agreement, the tax exemption for the Project shall expire and the Land and the Improvements thereon shall thereafter be assessed and conventionally taxed according to the general law applicable to other nonexempt taxable property in the Township.

ARTICLE XV

MISCELLANEOUS

SECTION 15.01 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.

SECTION 15.02 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 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.

SECTION 15.03 Entire Document. All conditions in the Ordinance and Application are incorporated in this Agreement and made a part hereof.

SECTION 15.04 Good Faith. In their dealings with each other, the Parties agree that they shall act in good faith.

SECTION 15.05 Municipal Services. The Entity shall make payments for municipal services, including water and sewer charges and any services that create a lien on a parity with or superior to the lien for Land Taxes (if any) and Annual Service Charges, as required by law. Nothing herein is intended to release Entity from its obligation to make such payments.

SECTION 15.06 Financing Matters. The financial information required by the final paragraph of N.J.S.A. 40A:20-9 is set forth in the Application, and is incorporated herein by this reference thereto.

SECTION 15.07 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 15.08 Amendments. This Agreement may not be amended, changed, modified, altered or terminated without the written consent of the Parties hereto.

SECTION 15.09 Certification. The Township Clerk shall certify to the Tax Assessor, pursuant to N.J.S.A. 40A:20-12, that a financial agreement with an urban renewal entity, i.e., the Entity, for the development of the Redevelopment Area, has been entered into and is in effect as required by the Long Term Tax Exemption Law. 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, the Tax Assessor shall implement the exemption and continue to enforce that exemption without further certification by the 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 Clerk that the exemption has been terminated. Further, within ten (10) days of the execution of this Financial Agreement, the City Clerk shall provide a copy of the Financial Agreement and the Ordinance authorizing the same to the Union County Counsel and the Union County Chief Financial Officer for informational purposes in accordance with P.L. 2015, c. 247, Section 1, as codified in N.J.S.A. 40A:20-12.

SECTION 15.10 Application Fee. The Township and Entity agree that the Entity has paid to the Township an amount equal to $3,000.00 as a fee for processing the Application.

SECTION 15.11 Severability. 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.

{Signature page follows}

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

CLARK WALNUT DEVELOPERS URBAN RENEWAL , a New Jersey urban renewal entity

ATTEST:

By: ______________________ By: ______________________
Name:
Title: Member

ATTEST: **THE TOWNSHIP OF CLARK**

By: Edith L Merkel By: ______________________
Name:
Title:

ACKNOWLEDGEMENT

STATE OF NEW JERSEY)
) ss.
COUNTY OF UNION)

On this 16 day of November, 2020 before me, the subscriber, an officer duly authorized pursuant to N.J.S.A. 46:14-6.1 to take acknowledgements for use in the State of New Jersey, personally appeared Salvatore Bonaccorso, Mayor of the Township of Clark, and Edith Merkel, Clerk of the Township of Clark, both known to me to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same as the voluntary act of the Township of Clark.

THERESA MAZZARELLA
Notary Public, State of New Jersey
My Commission Expires
April 22, 2025

Theresa Mazzarella
Notary Public

AKNOWLEDGEMENT

STATE OF NEW JERSEY)
) ss.
COUNTY OF ~~ESSEX~~ Union)

On this 16 day of November, 2020 before me the subscriber, personally appeared ____________________, who by me duly sworn on his oath, deposed and makes proof to my satisfaction that he is a Member of Clark Walnut Developers Urban Renewal LLC, and thereupon he acknowledged that he executed, signed, sealed and delivered the foregoing instrument as and for his voluntary act and deed and that of the said limited liability company for the uses and purposes thereof.

Theresa Mazzarella
Notary Public

THERESA MAZZARELLA
Notary Public, State of New Jersey
My Commission Expires
April 22, 2025

LIST OF EXHIBITS

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

A. **Property Description**
B. **Application with Exhibits**
C. **Ordinance**
D. **Fiscal Plan**

EXHIBIT A
PROPERTY DESCRIPTION

SCHEDULE A

LEGAL DESCRIPTION

All that certain lot, parcel or tract of land, situate and lying in the Township of Clark, County of Union, State of New Jersey, and being more particularly described as follows:

Beginning at the corner formed by the intersection of the northeasterly sideline of Valley Road and the easterly sideline of Walnut Avenue, and thence running:

1. North 04 degrees 55 minutes West, along said easterly sideline of Walnut Avenue, a distance of 729.89 feet to a point, said point being distant 265.00 feet southerly measured along the aforesaid easterly sideline of Walnut Avenue from its intersection with the dividing line between lands now or formerly of The American Felt Company and lands of The Union County Park Commission; thence

2. South 89 degrees 11 minutes 30 seconds East, along the southerly line of lands now or formerly of The American Felt Company, a distance of 390.00 feet to a point thence; thence the following courses and distances along land conveyed by National Chair Co., Inc., et. als., Trustees, to The Union County Park Commission, by deed dated November 16, 1939 and recorded in Deed Book 1390 page 358; thence

3. South 15 degrees 11 minutes 30 seconds East, a distance of 120.00 feet to a point of curve; thence

4. Southeasterly, along a curve to the left having a radius of 78.77 feet, an arc distance of 57.33 feet to a point of tangency; thence

5. South 56 degrees 53 minutes 30 seconds East, a distance of 49.55 feet to a point; thence

6. South 12 degrees 15 minutes 30 seconds East, a distance of 159.40 feet to a point; thence

7. North 87 degrees 32 minutes 30 seconds East, a distance of 31.90 feet to a point; thence

8. South 14 degrees 24 minutes 30 seconds East, a distance of 197.55 feet to a point; thence

9. South 50 degrees 09 minutes 30 seconds West, a distance of 51.96 feet to a point; thence

10. South 26 degrees 36 minutes 30 seconds West, a distance of 241.04 feet to a point of curve; thence

11. Southerly, along a curve to the left having a radius of 102.32 feet, an arc distance of 74.68 feet to a point of tangency; thence

12. South 15 degrees 12 minutes 30 seconds East, a distance of 25.00 feet, more or less, to a point in the aforementioned northeasterly sideline of Valley Road; thence

13. North 44 degrees 30 minutes West, along the said northeasterly sideline of Valley Road, a distance of 56.96 feet to a point; thence

14. North 22 degrees 17 minutes East, along the line of land conveyed by National Chair Co., Inc., to John Kostick, by deed dated July 1, 1940, and recorded in Deed Book 1411 page 41, a distance of 76.23 feet to a point; thence

15. North 73 degrees 31 minutes West, along another line of land conveyed to John Kostiuk, as aforesaid, a distance of 107.80 feet to a point; thence

16. South 22 degrees 17 minutes West, along another line of land conveyed to John Kostiuk, aforesaid, a distance of 68.06 feet to a point in the aforesaid northeasterly sideline of Valley Road; thence

CONTINUED ON NEXT PAGE

17. North 78 degrees 16 minutes West, along the said northeasterly sideline of Central Avenue, a distance of 87.59 feet to an angle point; thence

18. North 73 degrees 31 minutes West, still along the northeasterly sideline of Valley Road, a distance of 166.45 feet to the aforementioned easterly sideline of Walnut Avenue and the point and place of beginning.

INFORMATIONAL NOTE: Being also known as Lot 7, in Block 155, on the Township of Clark Tax Map.

SCHEDULE A

LEGAL DESCRIPTION

All that certain lot, parcel or tract of land, situate and lying in the Township of Clark, County of Union, State of New Jersey, and being more particularly described as follows:

Beginning at a point in the northeasterly sideline of Valley Road, which point is located the following courses and distances from the intersection of the said northeasterly sideline of Valley Road with the easterly sideline of Walnut Street, and thence running:

a. South 74 degrees 02 minutes East, along the northeasterly sideline of Valley Road, 90.02 feet to a point of tangency of a curve; thence

b. Continuing along the northeasterly sideline of Valley Road, on a curve to the right having a radius of 539.87 feet, an arc distance of 129.93 feet to a point; thence

c. Still along the said sideline of Valley Road, South 78 degrees 16 minutes East, 38.74 feet to the point of beginning and from said point running as follows:

1. Continuing along Valley Road, South 78 degrees 16 minutes East, 19.33 feet to an angle point in said sideline of Valley Road; thence

2. Still along the northeasterly sideline of Valley Road, South 67 degrees 43 minutes East, 86.33 feet to another angle point in Valley Road; thence

3. Still along the northeasterly sideline of Valley Road, South 44 degrees 30 minutes East, 2.04 feet to a point; thence

4. North 22 degrees 17 minutes East, 76.23 feet to a point; thence

5. North 73 degrees 31 minutes West, 107.80 feet to a point; thence

6. South 22 degrees 17 minutes West, 68.06 feet to a point in the aforementioned northeasterly sideline of Valley Road and the point and place of beginning.

INFORMATIONAL NOTE: Being also known as Lot 10, in Block 155, on the Township of Clark Tax Map.

EXHIBIT B
EXEMPTION APPLICATION WITH EXHIBITS

This Financial Agreement is part of the Long-term Tax Exemption Agreement

EXHIBIT C
ORDINANCE

TOWNSHIP OF CLARK

Ordinance No. 20-21

Adopted November 16, 2020

Introduced: October 19, 2020 Public Hearing: November 16, 2020

AN ORDINANCE OF THE TOWNSHIP OF CLARK, COUNTY OF UNION, APPROVING THE APPLICATION AND FINANCIAL AGREEMENT FOR A TAX EXEMPTION PURSUANT TO THE LONG TERM TAX EXEMPTION LAW FOR CLARK WALNUT DEVELOPERS URBAN RENEWAL, LLC FOR THE CONSTRUCTION OF A RESIDENTIAL PROJECT LOCATED AT 35 WALNUT AVENUE

WHEREAS, by Resolution No.19-54 adopted on March 18, 2019, the Township Council of the Township of Clark (the "Council") designated property (the "Property") located at Block 155, Lots 7 and 10 as shown on the Tax Map of the Township of Clark as "an area in need of redevelopment" (the "Redevelopment Area"); and

WHEREAS, pursuant to Ordinance No. 19-09 dated April 1, 2019, the Township Council adopted a redevelopment plan (the "Redevelopment Plan") for the Redevelopment Area; and

WHEREAS, Clark Walnut Developers Urban Renewal, LLC ("Clark Walnut Developers") is the designated redeveloper of the Redevelopment Area, and shall enter into a redevelopment agreement (the "Redevelopment Agreement") with the Township; and

WHEREAS, Clark Walnut Developers intends to redevelop the Property by (i) constructing 177 residential rental units consisting of 149 rental apartments and including 28 affordable units and (ii) other amenities and related site improvements in the Redevelopment Area (collectively, the "Project"); and

WHEREAS, the Council has determined that the Project will qualify for a tax exemption under the Long Term Tax Exemption Law, N.J.S.A. 40A:20-1 et seq. (the "LTTEL"); and

WHEREAS, in accordance with the LTTEL, Clark Walnut Developers has filed with the Mayor of the Township an application for approval of a long term tax exemption (the "Long Term Tax Exemption") for the Project, which is incorporated herein by reference (the "Application") to be executed by and between Clark Walnut Developers and the Council; and

WHEREAS, the Mayor submitted the Application to the Council with his recommendation for approval; and

WHEREAS, Clark Walnut Developers also submitted to the Mayor (as part of the Application) a form of financial agreement (the "Financial Agreement"), to be executed by the Council and Clark Walnut Developers, establishing the rights, responsibilities and obligations of Clark Walnut Developers in accordance with the LTTEL; and

WHEREAS, the Council makes the following findings in accordance with N.J.S.A. 40A:20-11.a and N.J.S.A. 40:20-11.b regarding the relative benefits and costs of granting the tax abatement for the Project, and the importance of the tax abatement in realizing the development of the Project:

The Township finds that the Long Term Tax Exemption granted pursuant to the Financial Agreement will benefit the Township and the community by assuring the success of the redevelopment of the Property, which has exhibited the statutorily recognized redevelopment criteria for years. The benefits of granting the Long-Term Tax Exemption will substantially outweigh the costs, if any, associated with the Long Term Tax Exemption. The Long Term Tax Exemption is important to the Township, Clark Walnut Developers and the proposed tenants because without the incentive of the Long Term Tax Exemption, it is unlikely that the Project, which will address a portion of the Township's Third Round affordable housing obligation, would be undertaken. The high costs associated with the development and construction of the Project and the real estate taxes that would otherwise be levied upon the Project would operate as a disincentive to the redevelopment of the Property, and would therefore frustrate the goals and objectives of the Redevelopment Plan and would make the Project materially less competitive in the marketplace.

NOW, THEREFORE, BE IT ORDAINED by the Township Council of the Township of Clark, in the County of Union, State of New Jersey, as follows:

1. The Mayor and Township Clerk are hereby authorized to execute the Financial Agreement with Clark Walnut Developers, subject to minor modification or revision, as deemed necessary and appropriate after consultation with Redevelopment Counsel.

2. An executed copy of the Financial Agreement shall be certified by and be filed with the Office of the Township Clerk.

3. Within ten (10) calendar days following the later of (i) the effective date of this Ordinance following its final adoption by the Township Council approving the tax exemption or (ii) the execution of the Financial Agreement by Clark Walnut Developers, the Township Clerk shall file certified copies of this Ordinance and the Financial Agreement with the Tax Assessor of the Township and the Chief Financial Officer of Union County and to Union County Counsel, in accordance with N.J.S.A. 40A:20-12.

4. The Mayor and Township Clerk are hereby authorized to take such action and to execute such other documents on behalf of the Township as is necessary to effectuate the terms of the Financial Agreement, as deemed advisable by the Township Attorney or Redevelopment Counsel.

5. This Ordinance shall take effect upon adoption and publication according to law.

Effective Date: December 9, 2020

ATTEST:

APPROVED:

Edith L Merkel

EDITH L. MERKEL, RMC
Township Clerk

Patrick J O'Connor

PATRICK J. O'CONNOR
Council President

SALVATORE BONACCORSO
Mayor

Ord20/10-19 20-21AuthFinancialAgrmt-ClarkWalnutDevelopersUrbanRenewalLLC

	Motion to Introduce	Second	Motion to Adopt	Second	Aye	Nay	Abstain	Absent
Albanese					✓			
Barr					✓			
Hund		✓		✓	✓			
Mazzarella					✓			
Smith	✓		✓		✓			
Toal					✓			
O'Connor					✓			
Entire Council								
TOTAL					7			

EXHIBIT D
FISCAL PLAN

Walnut Development, Clark, NJ
FISCAL PLAN

177 total 28 affordable, 149 market		COSTS	% of costs	12.5% PILOT 177 units
1. LAND COST				
Land Acquired June 2018		$6,200,000.00		
Due Diligence		$200,000.00		
Carry 2 1/2 year interest/tax through Nov 2020		$1,250,000.00		
Environmental		$1,000,000.00		
demo/Asbestos		$1,000,000.00		
	TOTAL Land	$9,650,000.00	17.35%	$54,519.77
2. SOFT COSTS				
Engineering/site construction		$200,000.00		
Surveying		$60,000.00		
Field Inspections/Geotech		$200,000.00		
Architectural		$350,000.00		
Legal /Title/Township Approvals		$163,000.00		
Inspection Fees/Performance Guarantees		$619,500.00		
Real Estate Taxes (during construction)		$400,000.00		
Costs of Permanent Financing		$250,000.00		
Initial Leasing Expense		$250,000.00		
Builders Risk Insurance/Insurance		$400,000.00		
Salary/office expense		$450,000.00		
Construction Interest Expense /bank fees		$2,407,083.33		
		$5,749,583.33	10.34%	$32,483.52
3. SITE WORK COSTS				
Clubhouse		$418,980.00		
Impact fee/sewer Fee		$750,000.00		
Sewer Fee		$137,960.00		
Traffic Light		$250,000.00		
General @ $550,000/7 acre		$3,850,000.00		
Landscaping/common pool		$800,000.00		
	TOTAL SITE COSTS	$6,206,940.00	11.16%	$35,067.46
4. BUILDING CONSTRUCTION				Per Total units
Building Average@ $177,114 /unit		$31,831,404.00		$179,838.44
TOTAL BUILDING COSTS		**$31,831,404.00**	**57.22%**	**$179,838.44**
Subtotal Development costs		**$43,787,927.33**		
Developer Overhead 5% of Construction		**$2,189,396.37**	**3.94%**	
TOTAL DEVELOPMENT /Overhead /LAND		**$55,627,323.70**	**100.00%**	**$314,278.66**
PROJECTED RENTAL INCOME	**UNITS**	**AVG MTHLY**		**YEARLY**
1A-942	11	$2,100.00		$277,200.00
2-A 1386	96	$2,600.00		$2,995,200.00
2B-1777	18	$3,000.00		$648,000.00
2C-1506	6	$2,650.00		$190,800.00
2D 1626	6	$2,700.00		$194,400.00
2-d1 1451	9	$2,600.00		$280,800.00
2E-1964	3	$3,200.00		$115,200.00
Affordable -1000	28	$941.00		$316,176.00
1 TOTAL	177	$2,362.42		$5,017,776.00

	PER UNIT	3% VACANCY		-150,533.28
Revenue minus vacancy	$27,498.55	Adj Gross Revenue		4,867,242.72
EXPENSES/UNIT	-$5,020.00	EXPENSES		-$888,540.00
		Revenue-Expenses		$3,978,702.72
Taxes/unit	-$3,437.32	Pilot 12.5% G R	PILOT	-$608,405.34
NOI	$19,041.23	NOI		$3,370,297.38
		Cost		$55,627,323.70
		NOI/COST		6.06%

Operating Expenses

Expense Categories	Yearly Expenses	Expenses/Unit	%of revenue
management/health care	$212,400.00	$1,200.00	4.36%
Common Utilities	$88,500.00	$500.00	1.82%
Landscaping/Snow Removal	$106,200.00	$600.00	2.18%
Insurance	$75,225.00	$425.00	1.55%
Garbage	$26,550.00	$150.00	0.55%
2.5% Management Fee	$114,165.00	$645.00	2.35%
Repair/Maintenance/Turnover	$221,250.00	$1,250.00	4.55%
Reserve	$44,250.00	$250.00	0.91%
EXPENSES	$888,540.00	$5,020.00	18.26%

TOTAL UNIT SF CALCULATION

Unit Size	# of units	Total SF		
1A-942	11	10362		
2-A 1386	96	133056		
2B-1777	18	31986		
2C-1506	6	9036		
2D 1626	6	9756		
2-d1 1451	9	13059		
2E-1964	3	5892		
Affordable -1000	28	28000	Cost/foot	Total Cost
	177	241,147.00	$132.00	$31,831,404.00
		1,362.41	Per Unit	$179,838.44

		interest/mth	months	
$9,650,000.00	5.00%	$40,208.33	18	$723,750.00
$2,000,000.00	5.00%	$8,333.33	17	$141,666.67
$2,000,000.00	5.00%	$8,333.33	16	$133,333.33
$2,000,000.00	5.00%	$8,333.33	15	$125,000.00
$2,000,000.00	5.00%	$8,333.33	13	$108,333.33
$2,000,000.00	5.00%	$8,333.33	12	$100,000.00
$3,000,000.00	5.00%	$12,500.00	11	$137,500.00
$3,000,000.00	5.00%	$12,500.00	10	$125,000.00
$3,000,000.00	5.00%	$12,500.00	9	$112,500.00
$3,000,000.00	5.00%	$12,500.00	8	$100,000.00
$3,000,000.00	5.00%	$12,500.00	7	$87,500.00
$3,000,000.00	5.00%	$12,500.00	6	$75,000.00
$3,000,000.00	5.00%	$12,500.00	5	$62,500.00
$3,000,000.00	5.00%	$12,500.00	4	$50,000.00
$3,000,000.00	5.00%	$12,500.00	3	$37,500.00
$3,000,000.00	5.00%	$12,500.00	2	$25,000.00
$3,000,000.00	5.00%	$12,500.00	1	$12,500.00
$3,000,000.00	5.00%	$12,500.00	0	$0.00
$55,650,000.00				$2,157,083.33
			Bank fees	$250,000.00
				$2,407,083.33

Proposed Annual Service Charge Schedule - Clark Walnut Redevelopment Project

Period	Year	Annual Gross Revenue for Residential Component	Annual Service Charge Percentage	Annual Service Charge for Residential Component	Annual Service Charge Calculation The Greater of the Annual Service Charge (Column E) or the Percentage of Otherwise Applicable Real Estate Taxes	Annual Administrative Fee for Residential Component
1	Mar-23	$4,867,242.72	12.50%	$608,405.34	0.00%	$12,168.11
2	Mar-24	$4,940,251.36	12.50%	$617,531.42	0.00%	$12,350.63
3	Mar-25	$5,014,355.13	12.50%	$626,794.39	0.00%	$12,535.89
4	Mar-26	$5,089,570.46	12.50%	$636,196.31	0.00%	$12,723.93
5	Mar-27	$5,165,914.02	12.50%	$645,739.25	0.00%	$12,914.79
6	Mar-28	$5,243,402.73	12.50%	$655,425.34	0.00%	$13,108.51
7	Mar-29	$5,322,053.77	12.50%	$665,256.72	0.00%	$13,305.13
8	Mar-30	$5,401,884.57	12.50%	$675,235.57	0.00%	$13,504.71
9	Mar-31	$5,482,912.84	12.50%	$685,364.11	0.00%	$13,707.28
10	Mar-32	$5,565,156.53	12.50%	$695,644.57	0.00%	$13,912.89
11	Mar-33	$5,648,633.88	12.50%	$706,079.24	0.00%	$14,121.58
12	Mar-34	$5,733,363.39	12.50%	$716,670.42	0.00%	$14,333.41
13	Mar-35	$5,819,363.84	12.50%	$727,420.48	0.00%	$14,548.41
14	Mar-36	$5,906,654.30	12.50%	$738,331.79	0.00%	$14,766.64
15	Mar-37	$5,995,254.11	12.50%	$749,406.76	0.00%	$14,988.14
16	Mar-38	$6,085,182.92	12.50%	$760,647.87	20.00%	$15,212.96
17	Mar-39	$6,176,460.67	12.50%	$772,057.58	20.00%	$15,441.15
18	Mar-40	$6,269,107.58	12.50%	$783,638.45	20.00%	$15,672.77
19	Mar-41	$6,363,144.19	12.50%	$795,393.02	20.00%	$15,907.86
20	Mar-42	$6,458,591.36	12.50%	$807,323.92	20.00%	$16,146.48
21	Mar-43	$6,555,470.23	12.50%	$819,433.78	20.00%	$16,388.68
22	Mar-44	$6,653,802.28	12.50%	$831,725.28	40.00%	$16,634.51
23	Mar-45	$6,753,609.31	12.50%	$844,201.16	40.00%	$16,884.02
24	Mar-46	$6,854,913.45	12.50%	$856,864.18	40.00%	$17,137.28
25	Mar-47	$6,957,737.15	12.50%	$869,717.14	40.00%	$17,394.34
26	Mar-48	$7,062,103.21	12.50%	$882,762.90	40.00%	$17,655.26
27	Mar-49	$7,168,034.76	12.50%	$896,004.35	40.00%	$17,920.09
28	Mar-50	$7,275,555.28	12.50%	$909,444.41	60.00%	$18,188.89
29	Mar-51	$7,384,688.61	12.50%	$923,086.08	60.00%	$18,461.72
30	Mar-52	$7,495,458.94	12.50%	$936,932.37	80.00%	$18,738.65