

Financial Agreement

By and Between

The Borough of Garwood

and

490 South Avenue Urban Renewal, LLC

Dated as of: _____, 2017

FINANCIAL AGREEMENT

THIS FINANCIAL AGREEMENT (hereinafter “Agreement” or “Financial Agreement”), made this ___ day of _____, 2017, by and among **490 SOUTH AVENUE URBAN RENEWAL, LLC**, a New Jersey limited liability company, qualified to do business under the provisions of the Long Term Tax Exemption Law of 1992, as amended and supplemented, *N.J.S.A. 40A:20-1, et seq.* (the “Long Term Tax Exemption Law”), with offices at 570 Commerce Boulevard, Carlstadt New Jersey 07072 a New Jersey (the “Entity”) and the **BOROUGH OF GARWOOD**, a municipal corporation of the State of New Jersey in the County of Union with offices located at 403 South Avenue, Garwood, New Jersey 07027 (the “Borough”, and together with the Entity, the “Parties”).

W I T N E S S E T H:

WHEREAS, the Local Redevelopment and Housing Law, *N.J.S.A. 40A:12A-1 et seq.*, as amended from time to time (the “**Redevelopment Law**”), provides a process for municipalities to participate in the redevelopment and improvement of areas in need of redevelopment; and

WHEREAS, the municipal council of the Borough (“**Municipal Council**”) directed the Borough planning board (“**Planning Board**”) to investigate whether that certain area of the Borough commonly known as Block 401, Lots 1, 2, 3, 4 and 5; and Block 403, Lots 1, 2, 3, 4, 5, 6, 19, 20, 21 and 22, on the tax maps of the Borough, constitutes as an “area in need of redevelopment” as defined in the Redevelopment Law (“**Study Area**”); and

WHEREAS, on May 27, 2015, the Planning Board conducted an investigation and prepared a study and map of the boundaries of the Borough and made a recommendation to the Municipal Council to designate the Study Area as an area in need of redevelopment; and

WHEREAS, based upon the recommendation of the Planning Board, the Municipal Council on September 13, 2015 adopted a resolution to designate the Study Area as an “area in need of redevelopment” (“**Redevelopment Area**”) in accordance with the Redevelopment Law; and

WHEREAS, in accordance with the Redevelopment Law, a redevelopment plan prepared by the Borough’s Department of Planning and Development entitled ‘South Avenue – Transit Oriented Redevelopment Plan’ dated May 27, 2015 (the “**Initial Plan**”) for the Block 401, Lots 1, 2, 3, 4 and 5 (the “**South Avenue Transit Properties**”) was referred to the Planning Board for its review and recommendation by the Municipal Council; and

WHEREAS, prior to adoption, the Initial Plan was referred back to the Planning Board for review of proposed comments (the “**Redevelopment Plan**”); and

WHEREAS, in accordance with the Redevelopment Law, the Planning Board of the Borough reviewed the Redevelopment Plan and on April 26, 2017 recommended its adoption; and

WHEREAS, after reviewing the Planning Board's recommendation, the Municipal Council adopted the Redevelopment Plan by ordinance on May 24, 2017; and

WHEREAS, to realize the development of the South Avenue Transit Properties, the Borough has determined to exercise the powers of redevelopment and serve as the redevelopment entity responsible for carrying out the redevelopment projects in the South Avenue Transit Properties in accordance with the Redevelopment Plan pursuant to *N.J.S.A. 40A:12A-4(c)*; and

WHEREAS, Redeveloper is the owner and contract purchaser of the South Avenue Transit Properties (hereinafter, the "**Property**" and/or Redevelopment Area) and desires to be designated by the Borough as the redeveloper for the Property, and has provided information consisting of documentation evidencing financial responsibility and capability with respect to the Project (as defined herein), estimated total project costs, and estimated time schedule for commencement and completion of construction; and

WHEREAS, the Borough has determined that Redeveloper meets all necessary criteria, including financial capabilities, experience, expertise and project concept descriptions; and

WHEREAS, Redeveloper has agreed to undertake and make good faith effort to develop the Project in compliance with the Redevelopment Plan and in connection therewith, Redeveloper has agreed to devote substantial effort, assets and funds for the completion of the Project as contemplated herein; and

WHEREAS, in order to implement the development, financing, construction, operation and management of the Project, the Borough has determined to enter into this Redevelopment Agreement with Redeveloper, which specifies the rights and responsibilities of the Borough, and specifies the rights and responsibilities of Redeveloper with respect to the Project.

WHEREAS, pursuant to and in accordance with the provisions of the Act and the Long Term Tax Exemption Law, the Borough is authorized to provide for a tax exemption within a redevelopment area and for payments in lieu of taxes ("PILOTs") in accordance with certain applicable provisions of the Long Term Tax Exemption Law; and

WHEREAS, it is the intent of the Entity and the Borough that the calculations and determinations to be made under this Agreement with respect to any Net Profit (as defined herein) shall be based solely on, and with reference to, the Annual Gross Revenues (as defined herein) of the Entity, excluding any other entity, whether affiliated or unaffiliated with the Entity that is not organized as an urban renewal entity pursuant to the Long Term Tax Exemption Law; and

WHEREAS, in order to enhance the economic viability of and opportunity for a successful project, the Borough will enter into this Agreement with the Entity governing the PILOTs made to the Borough on the Project pursuant to the Long Term Tax Exemption Law and the Act; and

WHEREAS, in accordance with the Long Term Tax Exemption Law, the Entity filed an application, attached hereto as **Exhibit C** (the “Application”), with the Borough for approval of a long term tax exemption for the Improvements (as defined herein); and

WHEREAS, upon review of the Application and the Project, the Borough has made the following findings:

A. Relative Benefits of the Project:

The Redevelopment Area is currently improved with approximately 200,000 square feet of vacant industrial buildings and will benefit from the construction of the Project which consists of 298 multi-family residential units, 15,000 square feet of retail space, and parking. The Project is expected to produce 100 construction jobs. Furthermore, the property currently only generates approximately \$250,000 per year in real estate taxes. Upon completion, the Project would pay an annual service charge upon lease-up and stabilization of approximately \$800,000 per year.

B. Assessment of the importance of the tax exemption in obtaining development of the Project and influencing the locational decisions of probable occupants:

The Entity is making a significant equity contribution toward the cost of the Project and is providing new affordable housing as part of the Project. In order to improve the economic viability of the development of the Project so that the Project can compete on an equitable footing with comparable dwelling units within the municipality and surrounding market, the Borough has agreed to provide the tax exemption for the Project pursuant to this Agreement. The stability and predictability of the PILOT will make the Project more competitive and assist the Entity to undertake the Project in the Borough.

WHEREAS, the Municipal Council on _____, 2017 adopted an ordinance approving the Application and authorizing the execution of this Agreement (the “Ordinance”), a copy of which is attached hereto as **Exhibit D**; and

WHEREAS, in order to set forth the terms and conditions under which the Entity and the Borough shall carry out their respective obligations with respect to the payment of an annual service charge by the Entity, in lieu of real property taxes, the Parties have determined to execute this Financial Agreement.

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

ARTICLE I
GENERAL PROVISIONS

Section 1.01 Governing Law. This Financial Agreement shall be governed by the provisions of (a) the Long Term Tax Exemption Law, the Act and such other statutes as may be the sources of relevant authority, and (b) the Ordinance. It is expressly understood and agreed that the Borough expressly relies upon the facts, data, and representations contained in the Application in granting this tax exemption.

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

Act
Agency
Agreement/Financial Agreement
Application
Borough
Entity
Facility
Initial Plan
Long Term Tax Exemption Law
Municipal Council
Ordinance
Parties
PILOTs
Project
Redevelopment Agreement
Redevelopment Area
Redevelopment Plan

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

Administrative Fee: As defined in Section 4.10.

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

Allowable Profit Rate: The greater of twelve percent (12%) or the percentage per annum arrived at by adding one and one quarter percent (1.25%) 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 twelve percent (12%) or the percentage per annum arrived at by adding one and one quarter percent (1.25%) per annum to the interest rate per annum that the

Borough determines to be the prevailing rate of mortgage financing on comparable improvements in the county. The provisions of *N.J.S.A.* 40A:20-3(b) are incorporated herein by reference.

Annual Gross Revenue: The Annual Gross Revenue shall be calculated as set forth within *N.J.S.A.* 40A:20-3(a). Annual gross ordinary income received by the Entity and derived from or generated by the Project, specifically excluding, without limitation, extraordinary items, condemnation awards, insurance proceeds, gains from sales, transfers, or assumption of the Project or any part thereof, proceeds of any financing or refinancing, proceeds from any disposition of a partner or a partner's interest in the Entity or any successor entity.

Annual Service Charge: The amount the Entity has agreed to pay the Borough pursuant to Article IV herein with respect to the Improvements (but not the Land upon which the Improvements are located), which: (a) Entity has agreed to pay in part for municipal services supplied to the Project, (b) is in lieu of any taxes on the Improvements pursuant to *N.J.S.A.* 40A:20-12, (c) shall be paid on the Annual Service Charge Payment Dates, and (d) shall be prorated in the year in which this Agreement begins and the year in which this Agreement terminates.

Annual Service Charge Payment Dates: February 1, May 1, August 1 and November 1 of each year commencing after the date that a Certificate of Occupancy is issued for the Project and ending on the Termination Date.

Annual Service Charge Start Date: shall mean, with respect to the Project or any portion thereof, including any Unit, the earlier of Substantial Completion or the date that the Project or any portion thereof, as applicable, including any Unit, receives a Certificate of Occupancy, and shall be the date upon which the Annual Service Charge begins to accrue.

Applicable Law: All federal, State and local laws, ordinances, approvals, rules, regulations and requirements applicable to the Project including, but not limited to, the Act, the Long Term Tax Exemption Law, relevant construction codes including construction codes governing access for people with disabilities, and such zoning, sanitary, pollution and other environmental safety ordinances, laws and such rules and regulations thereunder, including all applicable environmental laws, applicable federal and State labor standards and all applicable laws or regulations with respect to the payment of prevailing wages

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

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

conformance with such principles by a certified public accountant licensed to practice that profession in the State.

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

Chief Financial Officer: The Borough's chief financial officer.

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

Default: A breach or the failure to perform any obligation imposed by the terms of this Agreement, or under Applicable Law.

Disclosure Statement – shall be as defined in Section 6.02(b).

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

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

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

Land – shall mean the real property, but not the Improvements, known as Block 401, Lots 1-5, all as set forth on the tax maps of the Borough, and more particularly described by the metes and bounds description set forth as **Exhibit A** to this Agreement.

Land Taxes – shall mean the amount of taxes assessed on the value of the Land upon which the Project is located.

Land Tax Payments – shall mean payments made on the quarterly due dates for Land Taxes as determined by the Tax Assessor and the Tax Collector.

Material Conditions – shall be as defined in Section 4.05 herein.

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

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

State – shall mean the State of New Jersey.

Substantial Completion – shall mean the date the work related to the Project, or any portion thereof in excess of 149 Units, is sufficiently complete in accordance with the Redevelopment Plan and the Redevelopment Agreement so that the Project, or any portion thereof, may be occupied or utilized for the use for which it is intended. The issuance of a temporary Certificate of Occupancy permitting the unrestricted use and occupancy of in excess of 149 Units, shall be conclusive proof that the Project, or any portion thereof, has reached Substantial Completion.

Tax Assessor – shall mean the Borough tax assessor.

Tax Collector – shall mean the Borough tax collector.

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

Term – shall be as defined in Section 3.01 of this Agreement.

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

Total Project Cost – shall have the meaning applied to such term in, and shall be construed in accordance with, the Exemption Law, specifically *N.J.S.A. 40A:20-3(h)*.

Unit – shall mean any residential apartment unit of the Project.

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

(a) The terms “hereby,” “hereof,” “hereto,” “herein,” “hereunder” and any similar terms, as used in this Financial Agreement, refer to this Financial Agreement, and the term

“hereafter” means after, and the term “heretofore” means before the date of delivery of this Financial Agreement.

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

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

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

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

(f) All notices to be given hereunder and responses thereto shall be given, unless a certain number of days is specified, in writing and within a reasonable time, which shall not be less than fifteen (15) days nor more than thirty (30) days, unless the otherwise dictated by applicable law, or as expressly stated herein to the contrary.

(g) This Financial Agreement shall become effective upon its execution and delivery by the parties hereto.

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

ARTICLE II **BASIS OF AGREEMENT**

Section 2.01 Covenant of Tax Exemption. The Borough hereby grants its approval for a tax exemption for the Improvements to be constructed and maintained in accordance with the terms and conditions of this Agreement and the provisions of Applicable Law, which Improvements shall be constructed and/or renovated on the Land. Land Taxes and Land Tax Payments shall continue to be paid on the Land at all times during the term of this Agreement.

Section 2.02 Representations of Entity. Approval is granted to the Entity, the Certificate of Formation for which is included in the Application as Exhibit 2. The Entity represents that its Certificate of Formation, (i) contains all the requisite provisions of law, (ii) has been reviewed and approved by the Commissioner of the State Department of Community Affairs, and (iii) has been filed with, as appropriate, the State Department of Treasury, all in accordance with *N.J.S.A. 40A:20-5*.

Section 2.03 Construction of the Project. The Entity represents that it will construct the Project in accordance with the Redevelopment Agreement, the Redevelopment Plan and Applicable Law, the use of which is more specifically described in the Application. The Entity further represents that the estimated cost of construction of the Project is as provided in its certification, a copy of which is included in the Application as Exhibit 11.

Section 2.04 Construction Schedule. The Entity agrees to diligently undertake to commence construction and complete the Project in accordance with the construction schedule set forth in the Redevelopment Agreement (therein referred to as the *Project Schedule*), as such schedule may be amended from time to time in accordance with the terms of the Redevelopment Agreement.

Section 2.05 Ownership, Management and Control.

(a) The Entity hereby represents that Edward Russo directly or indirectly owns a majority interest in the Entity

(b) The Entity hereby represents that it owns or is the contract purchaser of all parcels comprise the Property.

Section 2.06 Financial Plan. The Entity represents that it shall endeavor in good faith to cause the Improvements to be financed in accordance with industry standards applicable to projects of this nature, substantially as contemplated in the Financial Plan attached to the Application as Exhibits 11 and 13 of the Application. The Plan sets forth estimated Total Project Cost, amortization rate on Total Project Cost, the anticipated source of funds, the estimated interest rates to be paid on construction financing, the anticipated source and amount of paid-in capital, and the contemplated terms of any mortgage amortization.

Section 2.07 Statement of Rental Schedules. The Entity represents that its good faith projections of the initial rental schedules are set forth in Exhibit 13 of the Application.

ARTICLE III
DURATION OF AGREEMENT

Section 3.01 Term. It is understood and agreed by the Parties that this Agreement, including the obligation to pay the Annual Service Charge required under Article IV hereof and the Tax Exemption granted and referred to in Section 2.01 hereof, shall, with respect to the Project or any portion thereof, remain in full force and effect for thirty (30) years from the Annual Service Charge Start Date, but in no event longer than thirty-five (35) years from the date of execution hereof. Upon Termination, the Tax Exemption for the Project shall expire and the Improvements shall thereafter be assessed and taxed according to the general law applicable to other non-exempt property in the Borough. Upon Termination, all restrictions and limitations upon the Entity shall terminate upon the Entity's rendering and the Borough's acceptance of its final accounting, pursuant to N.J.S.A. 40A:20-13.

Section 3.02 Date of Termination. Upon any Termination of the Tax Exemption described in Section 2.01 hereof, the date of such Termination shall, for the purposes of the Entity's reporting obligations hereunder, be deemed to coincide with the end of the fiscal year of the Entity.

Section 3.03 Right of Termination. The Entity shall have the right to terminate this Agreement at any time after that date which is one (1) year from the date hereof on thirty (30) days prior written notice to the Borough.

ARTICLE IV
ANNUAL SERVICE CHARGE

Section 4.01 Payment of Conventional Taxes Prior to Commencement of Annual Service Charge. During the period between execution of this Agreement and the Substantial Completion of the Project, the Entity shall make payment of conventional real estate taxes with respect to the Land and any improvements currently existing thereon, at the time and to the extent due in accordance with generally applicable law.

Section 4.02 Commencement of Annual Service Charge. The Entity shall make payment of an annual service charge (the “**Annual Service Charge**”) commencing on the Annual Service Charge Start Date.

Section 4.03 Payment of Annual Service Charge.

(a) The Annual Service Charge shall be due and payable to the Borough on the Annual Service Charge Payment Dates, commencing to accrue as of the Annual Service Charge Start Date. In the event that the Entity fails to timely pay any installment of the Annual Service Charge, the amount past due shall, until paid, bear the highest rate of interest permitted under applicable State law then being assessed against other delinquent taxpayers in the case of unpaid taxes or tax liens.

(b) Each installment payment of the Annual Service Charge is to be made to the Borough and shall be clearly identified as “Annual Service Charge Payment for the 490 South Avenue North Project.”

Section 4.04 Annual Service Charge. In consideration of the exemption from taxation for the Improvements, Urban Renewal Entity shall pay the Annual Service Charge to the Borough on the Annual Service Charge Payment Dates in the amounts set forth below.

- (i) For each of the first fifteen (15) years from the Annual Service Charge Start Date, the Annual Service Charge shall be equal to the greater of (A) ten percent (10%) of the Annual Gross Revenue or (B) the Minimum Annual Service Charge, to the extent applicable;
- (ii) For each of the years 16 through 25 from the Annual Service Charge Start Date, the Annual Service Charge shall be equal to the greater of (A) eleven percent (11%) of the Annual Gross Revenue, (B) the Minimum Annual Service Charge, or (C) a percentage of the real property taxes otherwise due on the value of the Improvements to the extent applicable as more fully set forth in Section 4.05 below; and
- (iii) For each of the years 26 through 30 from the Annual Service Charge Start Date, the Annual Service Charge shall be equal to the greater of (A) twelve percent (12%) of the Annual Gross Revenue, (B) the Minimum Annual Service Charge, or (C) a percentage of the real property taxes otherwise due on the value of the Improvements to the extent applicable as more fully set forth in Section 4.05 below.

The first year of the Annual Service Charge shall be billed based on the Entity's estimated Annual Gross Revenue for the first full year of operation producing an Annual Service Charge of \$840,915, which amount shall be adjusted as appropriate when the Auditor's Report is completed.

Notwithstanding the provisions of the Long Term Tax Exemption Law or any provision of the 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 prosecuted during the thirty (30) year exemption period that this Agreement is in force and effect.

The Borough shall remit to the County of Union five percent (5%) of the Annual Service Charge received each year from the Entity, pursuant to *N.J.S.A. 40A:20-12(b)(2)(e)*.

i. Notwithstanding the tax provisions of the LTTE 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 Project Site and/or Project Improvements or any other legal proceeding regarding the Project during the term of this Agreement.

ii. If the Entity fails to timely pay the Minimum Annual Service Charge or Annual Service Charge, the amount unpaid shall bear the highest rate of interest permitted to be charged by the Borough in the case of unpaid taxes or tax liens in the Borough until paid.

iii. The Borough agrees that if the Annual Service Charge exceeds the total amount of real estate taxes otherwise due on the Project Site, the Annual Service Charge will be reduced to the equivalent of real estate taxes due on the Project Site.

Section 4.04(a) Miscellaneous. In no event shall the Annual Service Charge be less than the Minimum Annual Service Charge or ten percent (10%) of Annual Gross Revenue. Within ninety (90) days after a Certificate of Completion is or could have been issued for the Project, the actual construction costs shall be certified by an independent and qualified architect or engineer pursuant to *N.J.S.A. 40A:20-3(h)(4)*. The Minimum Annual Service Charge or the Annual Service Charge, as the case may be, shall first begin to accrue on the Annual Service Charge Start Date.

Section 4.05 Schedule of Staged Adjustments. The Annual Service Charge shall be reviewed and shall be adjusted in stages over the term of this Agreement in accordance with *N.J.S.A. 40A:20-12(b)* as follows:

(a) Stage One (Years 1-15): For each of the years one (1) through fifteen (15) from the Annual Service Charge Start Date, the Annual Service Charge shall be the amount due pursuant to Section 4.04 of this Agreement;

(b) Stage Two (Years 16-21): For each of the years sixteen (16) through twenty-one (21) from the Annual Service Charge Start Date, the Annual Service Charge shall be the greater

of (1) the amount due pursuant to Section 4.04 of this Agreement; or (2) twenty percent (20%) of the amount of the taxes otherwise due on the value of the Land and Improvements;

(c) Stage Three (Years 22-27): For each of the years twenty-two (22) through twenty-seven (27) from the Annual Service Charge Start Date, the Annual Service Charge shall be the greater of (a) the amount due pursuant to Section 4.04 of this Agreement or (b) forty percent (40%) of the amount of the taxes otherwise due on the value of the Land and Improvements;

(d) Stage Four (Years 28-29): For each of the years twenty-eight (28) through twenty-nine (29) from the Annual Service Charge Start Date, the Annual Service Charge shall be the greater of (a) the amount due pursuant to Section 4.04 of this Agreement or (b) sixty percent (60%) of the amount of the taxes otherwise due on the value of the Land and Improvements; and

(e) Stage Five (Year 30): For the thirtieth (30) year from the Annual Service Charge Start Date, the Annual Service Charge shall be the greater of (a) the amount due pursuant to Section 4.04 of this Agreement or (b) eighty percent (80%) of the amount of the taxes otherwise due on the value of the Land and Improvements.

Section 4.06 Consent of Entity to Annual Service Charge. The Entity hereby consents and agrees to the amount of Annual Service Charge and to the liens established in this Financial Agreement, and the Entity shall not contest the validity or amount of any such lien. Subject to the terms of this Agreement, 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 status of Entity as an "urban renewal entity" qualified under and as defined in the Long Term Tax Exemption Law. The Entity's remedies shall be limited to those specifically set forth herein and otherwise provided by law.

Section 4.07 Commencement of Annual Service Charge. The Entity shall be responsible for payment of the Annual Service Charge commencing on [the Completion Date of the Project, with the actual payment of the Annual Service Charge in accordance with Section 4.04(a).

Section 4.07(a) Payment of the Annual Service Charge. The Annual Service Charge shall be due and payable in equal quarterly installments on each November 1, February 1, May 1 and August 1 after the Completion Date. The Annual Service Charge shall be prorated in the year in which the Completion Date begins and the year in which this Financial Agreement terminates, such that the Entity shall pay the amount of the prorated Annual Service Charge on the quarterly payment date immediately following Commencement of the Annual Service Charge. In the event that the Entity fails to timely pay any installment, the amount past due shall bear the highest rate of interest permitted under applicable State law in the case of unpaid taxes or tax liens on land until paid.

Section 4.08 Material Conditions. It is expressly agreed and understood that all payments of Land Taxes, Annual Service Charges and any interest payments, penalties or costs of collection due thereon, are material conditions of this Financial Agreement. If any other term, covenant or condition of this Financial Agreement or the Application, as to any person or

circumstance shall, to any extent, be determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Financial Agreement or the application of such term, covenant or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each remaining term, covenant or condition of this Financial Agreement shall be valid and enforced to the fullest extent permitted by Applicable Law.

Section 4.09 No Reduction in Payment of the Annual Service Charge. The Parties agree that neither the amounts nor dates established for payment of the Annual Service Charge, as provided in Sections 4.03, 4.04 and 4.05 hereof shall be reduced below the Minimum Annual Service Charge or amended or otherwise modified through any tax appeal on the Improvements or any other legal proceeding regarding the Project during the term of this Agreement, unless the Parties both agree that a tax appeal is required to correct either the future land or future exempt improvement assessment due to errors in the assessments or due to changed circumstances or market conditions.

Section 4.10 Service Charges as Municipal Lien. In accordance with the provisions of the Long Term Tax Exemption Law, upon recordation of this Financial Agreement and the Ordinance, any amount due and owing hereunder, including the Annual Service Charge shall be and constitute a continuous municipal lien on the Project.

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 Borough reserves the right to prosecute an In Rem Tax Foreclosure action against the Property, as more fully set forth in this Agreement.

Section 4.12 Land Taxes. Land Taxes shall be assessed only on the Land portion of the Property without regard to any Improvements or increase in value to the land because of the Improvements. The Borough agrees it shall not impose an added assessment, omitted added assessment or similar assessment on the value of the Improvements prior to the Annual Service Charge Start Date.

The Entity is required to pay both the Annual Service Charge and the Land Tax Payments. The Entity shall be entitled to a credit for the amount, without interest, of the Land Taxes paid on the Property in the last four preceding quarterly installments against the Annual Service Charge.

The Entity is obligated to make timely Land Tax Payments in order to be entitled to a Land Tax credit against the Annual Service Charge for the subsequent year. No credit will be applied against the Annual Service Charge for partial payments of Land Taxes. In any year that the Entity fails to make any Land Tax Payments which default is not cured by the date which is the later of (i) thirty (30) days following the Entity's receipt of written notice specifying the unpaid Land Tax and indicating that failure to pay same will result in the termination of this Agreement, or (ii) such greater notice and cure period as may be provided pursuant to Applicable Law, then such delinquency shall render the Entity ineligible for any Land Tax credits against the Annual Service Charge for that year and such failure shall constitute a Default under this

Agreement. In addition, the Borough shall have, among this remedy and other remedies, the right to proceed against the Property pursuant to the Tax Sale Law and/or may terminate this Agreement in a manner consistent with the Default provisions set for in Article XIII hereof.

ARTICLE V **CERTIFICATE OF OCCUPANCY**

Section 5.01 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 timely manner after the Entity has satisfied all requirements to secure such Certificate of Occupancy.

Section 5.02 Filing of Certificate of Occupancy. It shall be the responsibility of the Entity to forthwith file with both the Tax Assessor and the Tax Collector a copy of each Certificate of Occupancy. Notwithstanding the foregoing, the filing of any Certificate of Occupancy shall not be a prerequisite for any action taken by the Borough, including, if appropriate, retroactive billing with interest to collect any charges hereunder to be due.

ARTICLE VI **ANNUAL AUDITS**

Section 6.01 Accounting System. The Entity agrees to calculate its “Net Profit” pursuant to *N.J.S.A. 40A:20-3(c)*. As stated in *N.J.S.A. 40A:20-3(c)*, this calculation shall be made in accordance with generally accepted accounting principles.

Section 6.02 Periodic Reports.

(a) Auditor’s Report. Within ninety (90) days after the close of each fiscal or calendar year (depending on the Entity’s accounting basis) that this Agreement shall continue in effect, the Entity shall submit to the Municipal Council, the Tax Collector and the Borough Clerk, who shall advise those municipal officials required to be advised, and the Division of Local Government Services in the State Department of Community Affairs, its Auditor’s Report for the preceding fiscal or calendar year. The report shall clearly identify and calculate the Net Profit for the Entity during the previous year. The Entity assumes all costs associated with preparation of the periodic reports.

(b) Disclosure Statement: On each anniversary date of the execution of this Agreement, if there has been a change in ownership or interest in the Project from the prior year’s filing, the Entity shall submit to the Municipal Council, the Tax Collector and the Borough Clerk, who shall advise those municipal officials required to be advised, a disclosure statement listing the persons having an ownership interest in the Project, and the extent of the ownership interest of each and such additional information as the Borough may request from time to time (the “**Disclosure Statement**”).

Section 6.03 Inspection. The Entity shall, upon request, permit the inspection of its property, equipment, buildings and other facilities of the Project and also permit, upon request, examination and audit of its books, contracts, records, documents and papers by representatives

duly authorized by the Borough, and State Division of Local Government Services in the Department of Community Affairs pursuant to *N.J.S.A.* 40A:20-9(e). Such inspection shall be made upon seven (7) business days' written notice during the Entity's regular business hours, in the presence of an officer or agent designated by the Entity. To the extent reasonably possible, the inspection will not materially interfere with construction or operation of the Project.

ARTICLE VII

LIMITATION ON PROFITS AND RESERVES

Section 7.01 Limitation on Profits and Reserves. During the period of tax exemption as provided herein, the Entity shall be subject to a limitation of its profits pursuant to the provisions of *N.J.S.A.* 40A:20-15. Pursuant to *N.J.S.A.* 40A:20-3(c), this calculation is 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 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. In no event shall any portion of the excess Net Profits be retained or contributed to such reserve if the amount of the reserve as of the end of such fiscal year equals or exceeds ten percent (10%) of the preceding year's Annual Gross Revenues. The reserve is to be noncumulative.

Section 7.02 Payment of Dividend and Excess Profit Charge. In the event the Net Profits of the Entity shall exceed the Allowable Net Profits for the period, taken as one accounting period, commencing on the Annual Service Charge Start Date and terminating at the end of the last full fiscal year, then the Entity, within one hundred (120) days after the end of that fiscal year, shall pay such excess Net Profits to the Borough as an additional service charge; provided, however, that the Entity may maintain a reserve as determined pursuant to aforementioned Section 7.01. The calculation of Net Profit and Allowable Net Profit shall be made in the manner required pursuant to *N.J.S.A.* 40A:20-3(b) and (c) and 40A:20-15.

Section 7.03 Payment of Reserve/Excess Net Profit Upon Termination, Expiration or Sale. The Termination Date of this Agreement, or the date of sale or transfer of the Improvements, shall be considered to be the close of the fiscal year of the Entity. Within ninety (90) days after such date, the Entity shall pay to the Borough the amount of the reserve, if any, maintained by it pursuant to Section 7.01 and the excess Net Profits, if any.

Section 7.04 Prohibition Against Use of Master Leases or Related Techniques. The Entity agrees that the intent of this Financial Agreement is to account for all revenue arising from the Project as if it accrues to the benefit of the Entity. The Entity shall therefore have no right to enter into any lease, contract or other agreement the effect of which is to interpose another person, corporation, or other entity between the Entity and the end users of the Project for the purpose of reducing the amount of revenue accounted for as benefiting the Entity. To the extent that the Borough, in its sole discretion, determines that such an arrangement has been put in place, the Borough shall have the right to recast the financial statements of the Entity so as to account for the Annual Gross Revenue and Net Profit as would have accrued to the Entity had

the arrangement not been in existence, and to require the Entity to make payments of the Annual Service Charge based on such recast financial statements.

ARTICLE VIII

ASSIGNMENT AND/OR ASSUMPTION; RIGHT TO DIVIDE OWNERSHIP

Section 8.01 Approval to Sale of Project by Entity Formed and Eligible to Operate Under Law. As permitted by *N.J.S.A. 40A:20-10*, it is understood and agreed that the Borough, on written application by the Entity, will consent to a sale of the Project (or a portion thereof) and the transfer of this Agreement (as pertaining to all or a portion of the Project) to another urban renewal entity, provided that (a) if such sale and transfer is to occur prior to Substantial Completion, the transferee urban renewal entity shall have demonstrated to the reasonable satisfaction of the Borough that it possesses the experience and capitalization necessary to complete and/or operate the Project or relevant portion thereof, which determination by the Borough shall not be unreasonably withheld, conditioned or delayed; (b) the transferee urban renewal entity does not own any other project subject to long term tax exemption at the time of transfer; (c) the transferee urban renewal entity is formed and eligible to operate under the Exemption Law; (d) the Entity is not then in Default of this Agreement or in violation of Applicable Law; (e) the Entity's obligations under this Agreement are fully assumed by the transferee urban renewal entity; and (f) the transferee urban renewal entity abides by all terms and conditions of this Agreement. Notwithstanding the foregoing, a transfer pursuant to this Section 7.01 is also subject to the transfer prohibitions and exemptions specified in Article 11 of the Redevelopment Agreement during the period that same are in effect.

Section 8.02 Severability. It is an express condition of the granting of the Tax Exemption that during its duration, the Entity shall not, without the prior consent of the Municipal Council by ordinance, convey, mortgage or transfer, all or part of the Project so as to sever, disconnect, or divide the Improvements from the Land which is basic to, embraced in, or underlying the exempted Improvements.

Section 8.03 Subordination of Fee Title. It is expressly understood and agreed that the Entity has the right to encumber and/or assign the fee title to the Land and/or Improvements for the purpose of financing and/or refinancing the design, development and construction of the Project and that any such encumbrance or assignment shall not be deemed to be a violation of this Agreement.

ARTICLE IX

RESERVATION OF RIGHTS AND REMEDIES

Section 9.01. Reservation of Rights and Remedies. Except as expressly provided herein, nothing contained in this Financial Agreement or otherwise shall constitute a waiver or relinquishment by the Borough or the Entity of any rights and remedies provided by Applicable Law. Unless otherwise expressly stated, nothing herein shall be deemed to limit any right of recovery that the Borough or the Entity has under law, in equity, or under any provision of this Financial Agreement.

ARTICLE X
COMPLIANCE

Section 10.01 Statutes and Ordinances. The Entity hereby agrees at all times prior to the Termination Date to remain bound by the provisions of the Application and Applicable Law, including, but not limited to, the Long Term Tax Exemption Law. The Entity's failure to comply with such statutes or ordinances shall constitute a Default under this Agreement and the Borough shall, among its other remedies, have the right to terminate this Agreement, subject to the Default procedure provisions of Article XIII herein.

ARTICLE XI
CONSTRUCTION

Section 11.01 Construction. This Financial Agreement shall be construed and enforced in accordance with the laws of the State, and without regard to or aid or any presumption or other rule requiring construction against the party drawing or causing this Agreement to be drawn since counsel for both the Entity and the Borough have combined in their review and approval of same.

ARTICLE XII
INDEMNIFICATION

Section 12.01 Indemnification. It is understood and agreed that in the event the Borough shall be named as party defendant in any action brought against the Borough or Entity by allegation of any breach, Default or a violation by the Entity of any of the provisions of this Agreement and/or the provisions of Applicable Law, Entity shall indemnify and hold the Borough harmless from and against all liability, losses, damages, demands, costs, claims, actions or expenses (including reasonable attorneys' fees and expenses) of every kind, character and nature arising out of or resulting from the action or inaction of Entity and/or by reason of any breach, Default or a violation of any of the provisions of this Agreement and/or the provisions of Applicable Law, including without limitation, *N.J.S.A. 40A:20-1 et seq.*, except for any misconduct by the Borough or any of its officers, officials, employees or agents, and Entity shall defend the suit at its own expense. Notwithstanding the foregoing, the Borough maintains the right to intervene as a party thereto, to which intervention Entity hereby consents, the expense thereof to be borne by Entity. To the extent practical and ethically permissible, the Entity's attorneys shall jointly defend and represent the interest of the Borough and the Entity as to all claims indemnified in connection with this Agreement.

ARTICLE XIII
DEFAULT AND REMEDIES

Section 13.01 Default. Default shall be the failure of any party to conform to the terms of this Agreement, and/or the failure of any party to perform any obligation imposed upon such party by Applicable Law beyond any applicable notice, cure or grace period.

Section 13.02 Cure Upon Default. Should the Entity be in Default, the Borough shall notify the Entity and any Secured Party in writing of said Default. Said notice shall set forth with particularity the basis of said Default. Except as provided in Section 8.02(b) hereof or otherwise limited by law, the Entity shall have sixty (60) days after it receives Notice to cure any Default (other than a Default in payment of any installment of the Annual Service Charge, which Default must be cured within fifteen (15) days after the Entity receives Notice). Curing the Default shall be the sole and exclusive remedy available to the Entity or the Secured Party, as applicable; provided, however, that if, in the reasonable opinion of the Borough, the Default cannot be cured within the applicable cure period using reasonable diligence, the time to cure may be extended upon written notice for an additional ninety (90) day period of time.

Upon the expiration of the cure period, or any approved extension thereof, and providing that the Default is not cured, the Borough shall have the right to terminate this Agreement in accordance with Section 13.03 of this Agreement.

Section 13.02 Remedies Upon Default.

(a) In the event the Entity or a Secured Party fails to cure or remedy the Default within the time period provided in Sections 13.02 or 8.02(b), respectively, the Borough may terminate this Agreement upon thirty (30) days written notice to the Entity and the Secured Party.

(b) Upon any Default in payment of any installment of the Annual Service Charge not cured within fifteen (15) days, the Borough in its sole discretion shall have the right to immediately exercise the following remedies: (1) terminate this Agreement, at which time: the Improvements on the Land shall be subject to conventional taxation; or (2) exercise any other remedy available to the Borough in law or equity. The Borough as a courtesy will give Entity and any Secured Party notice of the intention to exercise its remedies.

(c) No Default hereunder by the Entity shall terminate the tax exemption (except as described herein and after Notice and cure as provided for herein) and its obligation to make Annual Service Charges, which shall continue in effect for the duration of the term hereof and subject to Section 13.03 hereinafter.

(d) All of the remedies provided in this Agreement to the Borough, and all rights and remedies granted by law and equity shall be cumulative and concurrent and no determination of the invalidity of any provision of this Agreement shall deprive the Borough of any of its remedies or actions against the Entity because of Entity's failure to pay Land Taxes, the Annual Service Charge and/or any applicable water and sewer charges and interest payments. This right shall only apply to arrearages that are due and owing at the time, and the bringing of any action for Land Taxes, Annual Service Charges or other charges, or for breach of covenant or the resort of any other remedy herein provided for the recovery of Land Taxes, Annual Service Charges 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 13.03 Final Accounting. Within ninety (90) days after the Termination Date, the Entity shall provide a final accounting and pay to the Borough 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 Date of the Agreement shall be deemed to be the end of the fiscal year for the Entity.

Section 13.04 Conventional Taxes. Upon the Termination Date, 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 Borough.

ARTICLE XIV **DISPUTE RESOLUTION**

Section 14.01 Arbitration. In the event of a dispute arising between the Parties in reference to the terms and provisions as set forth herein, then the Parties shall submit the dispute to the American Arbitration Association in the State to be determined in accordance with its rules and regulations in such a fashion to accomplish the purpose of the Long Term Tax Exemption Law. Each Party to this Agreement shall designate an arbitrator, and the two (2) arbitrators shall choose a third arbitrator. The arbitrators designated and acting under this Agreement shall make a determination regarding the issue(s) in controversy in strict conformity with the terms of this Agreement and Applicable Law. Costs for said arbitration shall be borne equally by both Parties. 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 Borough, in addition to their other remedies, and subject to Article 13 of this Agreement, reserves the right to proceed against the Land, in the manner provided by 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 Charge were taxes or municipal liens on land. In either case, however, the Entity does not waive any defense it may have to contest the rights of the Borough to proceed in the above-mentioned manner. Subject to the provisions of Articles XII and XIII, in the event of a Default under or breach of this Agreement by the Entity which is not cured within the applicable grace period, thereby causing a default under a mortgage or similar instrument issued by the Entity to finance construction of the Project (or any refinance thereof), then the provisions of *N.J.S.A.* 55:17-1 to *N.J.S.A.* 55:17-11 shall apply, solely to protect the interest of the Secured Party or Secured Parties.

Notwithstanding anything herein to the contrary, no arbitrator shall have any power or authority to amend, alter, or modify any part of this Agreement, in any way.

ARTICLE XV **NOTICE**

Section 15.01 Notice. Formal notices, demands and communications between the Borough and Entity shall be deemed given if dispatched to the address set forth below by registered or certified mail, postage prepaid, return receipt requested, or by a commercial

overnight delivery service with packaging tracking capability and for which proof of delivery is available (“Notice”). In that case such notice is deemed effective upon delivery. Such written notices, demands and communications may be sent in the same manner to such other addresses as either party may from time to time designate by written notice.

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

If to the Borough:

Borough of Garwood
One Main Street
Garwood, New Jersey 07095
Attn: Honorable Charles Lombardo, Mayor

with copies to:

Borough of Garwood
One Main Street
Garwood, New Jersey 07095
Attn: Borough Attorney

William W. Northgrave, Esq.
McManimon, Scotland & Bauman, LLC
75 Livingston Avenue
Roseland, New Jersey 07068

If to Entity:

490 SOUTH URBAN RENEWAL LLC
c/o Russo Development, LLC
570 Commerce Boulevard
Carlstadt, New Jersey 07072
Attn: Edward Russo

With copies to:

Christopher Minks, Esq., SVP/General Counsel
c/o Russo Development, LLC
570 Commerce Boulevard
Carlstadt, New Jersey 07072

ARTICLE XVI
MISCELLANEOUS

Section 16.01 Conflict. The Parties agree that in the event of a conflict between the Application and this Financial Agreement, the language in this Financial Agreement shall govern and prevail.

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

Section 16.03 Entire Document. All conditions in the Ordinance of the Municipal Council approving this Agreement are incorporated in this Agreement and made a part hereof. This Agreement, with all attachments and exhibits, the Ordinance and the Application shall constitute the entire agreement between the Parties, shall be incorporated herein by reference thereto and there shall be no modifications thereto other than by a written instrument approved and executed by and delivered to each Party. All prior agreements and understandings, if any, are superseded.

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

Section 16.05 Recording. This entire Agreement will be filed and recorded with the Union County Clerk by the Entity at the Entity's expense.

Section 16.06 Municipal Services. The Entity and/or its successors (including without limitation any owner's or similar association) will be responsible to provide and/or pay for the following services:

(a) **Water & Sewer** – The Entity shall make payments for water and sewer charges and any services that create a lien on a Property with or superior to the lien for the Land Taxes and Annual Service Charge, as required by law.

(b) **Waste and Refuse Disposal** – Collection and disposition of all solid waste, refuse and recyclables emanating from the Project, shall be the responsibility of the Entity to have picked up and disposed of by a licensed collector, hauler, at the Entity's cost and expense. The Borough may establish regulations for the collection and for the storage and recycling of solid waste, discarded or old newspaper and/or other recyclables; compliance therewith shall be by and at the sole expense of the Entity.

Section 16.07 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 16.08 Financing Matters. The financial information required by the final paragraph of *N.J.S.A. 40A:20-9* is set forth in the Application.

Section 16.09 Amendments. This Agreement may not be amended, changed, modified, altered or terminated without the written consent of the Parties hereto.

Section 16.10 Certification. The Borough Clerk shall certify to the Tax Assessor, pursuant to *N.J.S.A. 40A:20-12*, that a Financial Agreement with the Entity, for the development of the Property, has been entered into and is in effect as required by *N.J.S.A. 40A:20-1, et seq.* Delivery by the Borough Clerk to the Tax Assessor of a certified copy of the Ordinance adopted by the Municipal Council approving the tax exemption described herein and this Financial Agreement shall constitute the required certification. Upon certification as required hereunder and upon the Annual Service Charge Start Date, the Tax Assessor shall implement the exemption and continue to enforce that exemption without further certification by the clerk until the expiration of the entitlement to exemption by the terms of this Financial Agreement or until the Tax Assessor has been duly notified by the Borough Clerk that the exemption has been terminated.

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

Section 16.11 Conditions Precedent.

This Agreement is expressly subject to the satisfaction by the Entity or the Borough of the following conditions precedent:

(a) Receipt by the Entity of all federal, State, county and municipal approvals required for the construction of the Project.

(b) Enactment by the Borough of all ordinances and other official action necessary under *N.J.S.A. 40A:20-1 et seq.* to enter into and effectuate the terms of this Agreement.

Section 16.12 Construction. This Agreement shall be construed and enforced in accordance with the laws of the State of New Jersey, and without regard to or aid of 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 Borough have combined in their review and approval of same.

EXHIBITS

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

- A. Metes and Bounds description of the Land
- B. Project Description
- C. Application with Exhibits
- D. Ordinance
- E. Project Costs
- F. Certificate of Formation for the Entity
- G. Financial Plan for Project
- H. Projected Revenues

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

ATTEST:

BOROUGH OF GARWOOD

Christina M. Ariemma
Borough Clerk

By: _____
Charles Lombardo
Mayor

490 SOUTH AVENUE URBAN RENEWAL, LLC

By: _____
Name: Edward Russo
Title: Manager

STATE OF NEW JERSEY

COUNTY OF UNION

The foregoing instrument was acknowledged before me this _____ day of _____, 2017, by the Borough of Garwood in the County of Union, State of New Jersey, by Mayor Charles Lombardo, on behalf of the Borough.

Notary Public

Commission Expiration: _____

_____ **LLC**

By: _____

STATE OF _____)

)

COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2017, by 490 SOUTH AVENUE URBAN RENEWAL LLC, a New Jersey Limited Liability Company, by Edward Russo, its Manager, on behalf of the company.

Notary Public

Commission Expiration: _____

EXHIBIT A

METES AND BOUNDS DESCRIPTION OF THE LAND

EXHIBIT B
PROJECT DESCRIPTION

EXHIBIT C

APPLICATION WITH EXHIBITS

EXHIBIT D
ORDINANCE

EXHIBIT E
ESTIMATED PROJECT COSTS

EXHIBIT F

**CERTIFICATE OF FORMATION
AND CERTIFICATE OF AUTHORITY
OF THE ENTITY**

EXHIBIT G
FINANCIAL PLAN FOR THE PROJECT

EXHIBIT H
PROJECTED REVENUES