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## ORDINANCE #2022-20

Introduction: July 25, 2022

Adoption: August 22, 2022

**ORDINANCE OF THE TOWNSHIP OF SOUTH ORANGE VILLAGE, COUNTY OF ESSEX, STATE OF NEW JERSEY APPROVING 8 SECOND STREET URBAN RENEWAL, LLC'S APPLICATION FOR TAX EXEMPTION FOR THE AREA IN THE VILLAGE IDENTIFIED AS BLOCK 1905, LOT 1 ON THE VILLAGE'S OFFICIAL TAX MAPS, APPROVING AND AUTHORIZING THE EXECUTION OF A FINANCIAL AGREEMENT BY AND BETWEEN THE VILLAGE AND 8 SECOND STREET URBAN RENEWAL, LLC, AND APPROVING AND AUTHORIZING THE EXECUTION OF AN ASSIGNMENT AND ASSUMPTION OF REDEVELOPMENT AGREEMENT FROM 8 SECOND STREET, LLC TO 8 SECOND STREET URBAN RENEWAL, LLC**

**WHEREAS**, the Local Redevelopment and Housing Law, *N.J.S.A. 40A:12A-1 et seq.*, as amended and supplemented 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/or rehabilitation; and

**WHEREAS**, the Township of South Orange Village (the "**Village**"), in the County of Essex, State of New Jersey (the "**State**"), is authorized pursuant to the Redevelopment Law to arrange or contract for the planning, construction or undertaking of any development project or redevelopment work in an area designated as an "area in need of redevelopment" pursuant to *N.J.S.A. 40A:12A-8* of the Redevelopment Law; and

**WHEREAS**, pursuant to and in accordance with the criteria set forth in the Redevelopment Law, the Board of Trustees of the Village (the "**Trustees**") adopted Resolution No. 66-95 directing the Planning Board of the Village (the "**Planning Board**") to undertake an investigation to determine whether all or a portion of certain properties within the Village, including, among other properties, certain property now identified as Block 1905, Lot 1 on the Village's official tax maps (the "**Study Area**") constitute an "area in need of redevelopment" under the Redevelopment Law; and

**WHEREAS**, the Redevelopment Law requires the Planning Board to conduct a public hearing prior to making its recommendation to the Trustees as to whether the Study Area should be designated as an "area in need of redevelopment," at which hearing the Planning Board shall hear all persons who are interested in or would be affected by a determination that the Study Area is an area in need of redevelopment; and

**WHEREAS**, after the conclusion of public hearings held on October 10, 1995, and November 6, 1995, the Planning Board, by resolution adopted on December 4, 1995, recommended the Study Area be designated by the Trustees as "an area in need of redevelopment" in accordance with the Redevelopment Law; and



**WHEREAS**, by virtue of Resolution 301-95 adopted on December 18, 1995, the Trustees designated the Study Area as an "area in need of redevelopment" as set forth in the Redevelopment Law (the "**Redevelopment Area**"); and

**WHEREAS**, pursuant to N.J.S.A. 40A:12-4, the Trustees have determined to act as the "redevelopment entity" (as such term is defined in N.J.S.A. 40A:12A-3 of the Redevelopment Law) for the Redevelopment Area; and

**WHEREAS**, 8 Second Street, LLC (the "**Redeveloper**"), a limited liability company organized under the laws of the State of New Jersey, and having its principal place of business at c/o Markbuilt Homes, 2029 Morris Avenue, Union, New Jersey 07083, previously owned that portion of Redevelopment Area identified as Block 1905, Lot 1 on the Village's tax maps (the "**Property**"); and

**WHEREAS**, Redeveloper is a developer with resources and a team of professionals in planning, redevelopment, law, engineering, environmental issues, architecture, design, finance, and real estate development required for the proposed redevelopment of the Property; and

**WHEREAS**, by Ordinance No. 96-43 adopted on November 25, 1996, in accordance with the Redevelopment Law, the Trustees adopted the "Central Business District Redevelopment Plan," which was subsequently amended by Ordinance No. 20-2002, adopted on September 23, 2002, by Ordinance No. 08-20, adopted on October 15, 2008, by Ordinance 2012-24 adopted on January 28, 2013 and by Ordinance 2014-03 adopted on May 19, 2014 (the "**CBD Plan**") for an area in the Village known as the Central District Redevelopment Area, which includes the Property; and

**WHEREAS**, the Redevelopment Law authorizes a redevelopment entity to arrange or contract for the planning, construction or undertaking of any development project or redevelopment work in an area designated as "an area in need of redevelopment" pursuant to N.J.S.A. 40A:12A-8; and

**WHEREAS**, on September 14, 2020, the Trustees adopted Resolution 2020-212 designating the Redeveloper as the "conditional redeveloper" of the Property, and approving and authorizing execution of a conditional redeveloper's agreement (the "**Conditional Redeveloper's Agreement**"); and

**WHEREAS**, in order to redevelop the Property as envisioned by the Village and Redeveloper, certain changes were required to be made to the CBD Plan; and



**WHEREAS**, on March 31, 2021, the Trustees introduced Ordinance 2021-12 and requested the Planning Board to review and comment on the redevelopment plan entitled "Second and Sloan Street Redevelopment Plan," dated March 31, 2021 (the "**Redevelopment Plan**"), to determine its consistency with the Village's Master Plan (the "**Master Plan**"), pursuant to N.J.S.A. 40A:12A-7(e); and

**WHEREAS**, on May 3, 2021, the Planning Board adopted a resolution declaring that the Redevelopment Plan is consistent with the Master Plan and memorializing its recommendation to the Trustees that the Redevelopment Plan be adopted; and

**WHEREAS**, on April 26, 2021, by Ordinance 2021-12, the Trustees adopted the Redevelopment Plan for the Property; and

**WHEREAS**, the Redeveloper proposed to redevelop, finance and construct on the Property a redevelopment project consisting of the development of one (1) five-story multi-family residential building with approximately forty-one (41) residential units (not including one (1) super intendent unit), inclusive of thirty-three (33) market-rate units and eight (8) affordable residential units, a minimum of two thousand (2,000) square feet (+/- 75 square feet) of commercial space dedicated to the Village rent-free for a minimum period of fifteen (15) years to be used as a community artist incubator space, and on-site ground level parking to include a minimum number of parking spaces for all uses as set forth in the Redevelopment Plan, provided however, that ten percent (10%) of all parking spaces be outfitted with electrical vehicle charging stations to accommodate electric vehicle charging, together with certain related on-site and off-site improvements all in accordance with the Redevelopment Plan (the "**Project**"); and

**WHEREAS**, the Redeveloper submitted information outlining its financial capabilities, experience, expertise, and project concept descriptions for the Project and requested designation by the Village as the redeveloper for the Property; and

**WHEREAS**, the Village determined that the Redeveloper, in accordance with applicable provisions of the Redevelopment Plan, will contribute to the redevelopment and reinvigoration of the Village and to the social and economic improvement of the Village in accordance with the legislative intent, goals and objectives of the Redevelopment Law; and

**WHEREAS**, the Village determined that the Redeveloper possesses the proper qualifications, expertise, financial resources, and capacity to implement and complete the Project in accordance with the Redevelopment Plan, Project Description (as defined in the Redevelopment Agreement), and all other Applicable Laws, ordinances, and regulations; and



**WHEREAS**, the Village recognizes that the involvement of the Redeveloper in this effort will ensure that residents of the Village will benefit from the expertise of the private sector in facilitating successful redevelopment of the Property; and

**WHEREAS**, in order to implement the development, financing, construction, operation and management of the Project, on January 10, 2022 the Trustees adopted Resolution No. 2022-005 designating the Redeveloper as the "redeveloper" (as defined in the Redevelopment Law) of the Property and authorizing the execution of a redevelopment agreement, which specifies terms, rights, and responsibilities of the Village and the Redeveloper with respect to the redevelopment of the Property and the construction of the Project; and

**WHEREAS**, on April 2, 2022, the Village and the Redeveloper executed a redevelopment agreement (the "**Redevelopment Agreement**"); and

**WHEREAS**, despite the Redeveloper's substantial investment of equity and borrowed funds, such amounts are insufficient to pay for all the costs associated with the Project; and

**WHEREAS**, pursuant the Redevelopment Law, improvements to property located within an area in need of redevelopment may qualify for long term tax exemptions under the Long Term Tax Exemption Law, N.J.S.A. 40A:20-1 et seq., as amended and supplemented (the "**Long Term Tax Exemption Law**"); and

**WHEREAS**, 8 Second Street Urban Renewal, LLC (the "**URE**"), an urban renewal entity qualified to do business under the provisions of the Long Term Tax Exemption Law with offices at c/o Markbuilt Homes, 2029 Morris Avenue, Union, New Jersey 07083, is an Affiliate (as that term is defined in the Redevelopment Agreement) of the Redeveloper; and

**WHEREAS**, the Redeveloper has since transferred to title to the Property to the URE; and

**WHEREAS**, the Long Term Tax Exemption Law authorizes the Village to accept, in lieu of real property taxes, an Annual Service Charge (as defined in the Long Term Tax Exemption Law), to be paid by the URE to the Village in connection with the Project; and

**WHEREAS**, on June 30, 2022, in order to enhance the economic viability of an opportunity for a successful project, the URE submitted an application for the approval of the Project (the "**Application**"), which is on file with the Village Clerk, to the Village for the approval of an urban renewal project for tax exemption in connection with the Project pursuant to the Long Term Tax Exemption Law in exchange for which the URE proposes to make payments to the Village of Annual Service Charges in lieu of taxes, all in accordance with N.J.S.A. 40A:20-8; and



**WHEREAS**, the URE also submitted to the Village a form of financial agreement attached to the Application, establishing the rights, responsibilities, and obligations of the URE; and

**WHEREAS**, pursuant to N.J.S.A. 40A:20-8, the Village President has reviewed the Application and, by a letter, a copy of which is attached hereto as **Exhibit A** (the "**President's Recommendation**"), the Village President has submitted the Application and the financial agreement attached hereto as **Exhibit B** (the "**Financial Agreement**") to the Trustees with her recommendation for approval, subject to the condition that the URE pay, in lieu of tax payments on the Project, an Annual Service Charge, such that the combined tax payment on the land and the Annual Service Charge paid by the URE each year shall be no less than the amount of the total property taxes that would otherwise be owed on the Property, after redevelopment, if the Financial Agreement had not been executed; and

**WHEREAS**, upon review of the proposed Project, the Application and the President's Recommendation, the Village has made the following findings with respect to the Project pursuant to N.J.S.A. 40A:20-11:

1. The Project is a transit-oriented development that furthers smart growth norms and will substantially enhance the viability and vitality of the Village's downtown. The Property consists of commercial space and a parking lot, which are currently vacant and underutilized. The Project will redevelop with Property with approximately forty-one (41) residential units (not including one (1) super intendent unit), inclusive of thirty-three (33) market-rate units and eight (8) affordable residential units, the Community Artist Incubator Space which includes two thousand (2,000) square feet (+/- 75 square feet) of ground-floor commercial space dedicated to the Village rent-free for a minimum period of fifteen (15) years, on-site ground level parking to include a minimum number of parking spaces for all uses as set forth in the Redevelopment Plan, provided however, that ten percent (10%) of all parking spaces be outfitted with electrical vehicle charging stations to accommodate electric vehicle charging, and certain related on-site and off-site improvements. The Project will create approximately thirty-five (35) temporary construction jobs and approximately three (3) permanent jobs. The Project will generate significant amounts of new municipal revenues through the Annual Service Charge and water/sewer fees. Accordingly, the Project will produce direct and indirect economic benefits to the Village and its residents, substantial commerce, and improvement to the quality of life and creation of public benefits for existing and future residents of the Village.

2. The costs associated with the demolition and remediation of the Property and construction of the proposed Project and community amenities, makes the redevelopment of the Property extraordinarily expensive. Given the uncertainty and instability of current economic and market conditions (including the extraordinary costs associated with demolition and remediation of the Property and other development costs, as well as the costs of providing the community amenities necessary and desired by



the Village) impacting this Project, the investment risk makes the financing of the Project infeasible in the absence of a tax exemption provided by the Village. Accordingly, without the incentive of the tax exemption, it is unlikely that the Project would be undertaken. Without the Project, the benefits described above would not be realized.

3. The tax exemption permits the private mixed-use development of underutilized property without any cost to the public while simultaneously producing a stream of revenue in the form of the Annual Service Charges and water/sewer fees, temporary and permanent jobs which produce indirect economic benefits, substantial commerce, and improvement of the quality of life and creation of public benefits for existing and future residents of the Village. The relative stability and predictability of the Annual Service Charges will allow the owners and, by extension, the occupants, of the Project to stabilize their expenses, which will ensure the likelihood of the success of the Project and ensure that it will have a positive impact on the surrounding area. Further, the relative stability and predictability of the Annual Service Charge makes the Project more attractive to investors and lenders needed to finance the Project.

4. The tax exemption permits the development of the Project in an area that cannot otherwise be feasibly developed by reducing the expenses associated with the operation of the Project. Reduced expenses allow for more competitive rents. As a result, the locational decisions of the probable tenants will be influenced positively by the tax exemption.

5. The Project is consistent with the Redevelopment Plan, will further its objectives and will contribute to the economic growth of the Village.

6. The Financial Agreement was a material inducement to the Redeveloper and the URE to undertake the Project in the Village and facilitate the redevelopment of the Project; and

**WHEREAS**, in accordance with the provisions of the Long Term Tax Exemption Law, the Village desires to approve the Application and the Financial Agreement; and

**WHEREAS**, the Redeveloper and the Village anticipated the assignment and assumption of the Redevelopment Agreement in its entirety from Redeveloper to the URE for the Project, which the URE's formation process was under way at the time the Trustees adopted Resolution No. 2022-005; and

**WHEREAS**, Sections 7.01 (a) and (c) of the Redevelopment Agreement expressly permits the transfer of a portion of the Redeveloper's rights, duties, and obligations under the Redevelopment Agreement and to the Redevelopment Area to an Affiliate (as that term is defined in the Redevelopment Agreement) of the Redeveloper; and



**WHEREAS**, pursuant to Sections 7.01 (a) and (c) of the Redevelopment Agreement, the Redeveloper desires and intends to transfer its rights, duties, and obligations under the Redevelopment Agreement to URE, the URE desires and intends to assume the same, and the Village further desires to authorize the execution of an assignment and assumption agreement with the Redeveloper and the URE to memorialize same (the "**Assignment and Assumption Agreement**"); and

**WHEREAS**, the Village further desires to authorize the Village President to negotiate and execute any other documents or agreements that are incident to the Assignment and Assumption Agreement.

**NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF TRUSTEES OF THE TOWNSHIP OF SOUTH ORANGE VILLAGE, NEW JERSEY AS FOLLOWS:**

**Section 1.** The Recitals are incorporated by reference as if set forth in full.

**Section 2.** The Application submitted by the URE is hereby approved in accordance with Section 8 of the Long Term Tax Exemption Law.

**Section 3.** The Village President is hereby authorized and directed to negotiate, finalize, and execute the Financial Agreement in substantially the form attached hereto as **Exhibit B**, with such amendments, modifications and revisions as deemed necessary by the Village President in consultation with Village staff and professionals.

**Section 4.** The Village President and Village Clerk are hereby authorized to negotiate and execute any other documents or agreements, with the URE for the Project, required in furtherance of this Ordinance and the execution of the Financial Agreement, in the discretion of the Village President in consultation with Village staff and professionals; and all prior actions of the Village President and Village staff and professionals in connection with the Financial Agreement are hereby ratified.

**Section 5.** The Village Clerk is hereby authorized and directed, upon execution of the Financial Agreement by the Village President, to attest to the signature of the Village President and to affix the corporate seal of the Village upon such document.

**Section 6.** Any exemption from taxation as set forth in the Financial Agreement is hereby granted to the URE, with respect to the Project for the term set forth in the Financial Agreement; provided that in no event shall the term of the Financial Agreement exceed the earlier of (i) twenty (20) years from the Effective Date of the Financial Agreement (as defined in the Financial Agreement) or (ii) fifteen (15) years from the Annual Service Charge Start Date for the Project (as defined in the Financial Agreement)



and only so long as the URE remains subject to and in compliance with the Financial Agreement and the Long Term Tax Exemption Law and; provided further, that the URE does not file a petition of tax appeal for the Project or any part thereof.

**Section 7.** The executed copy of the Financial Agreement shall be certified by and filed with the Office of the Village Clerk. Further, the Village Clerk shall file certified copies of this Ordinance and the Financial Agreement with the Tax Assessor of the Village and the Director of the Division of Local Government Services with the Department of Community Affairs within ten (10) calendar days following the later of the effective date of this Ordinance or the execution of the Financial Agreement by the URE, in accordance with Section 12 of the Long Term Tax Exemption Law.

**Section 8.** The Project shall conform with all federal, state and Village laws, ordinances and regulations relating to its construction and use.

**Section 9.** The URE shall, in the operation of the Project, comply with all laws so that no person will be subject to discrimination on the basis age, race, color, creed, religion, ancestry, national origin, sexual orientation, gender, sex or familial status, and URE, its successors and assigns, shall comply with all applicable laws prohibiting discrimination or segregation by reason of age, race, color, creed, religion, ancestry, national origin, sexual orientation, gender, sex or familial status.

**Section 10.** The URE shall, from the time, as the Annual Service Charge becomes effective under the Financial Agreement, pay to the Village the estimated quarterly Annual Service Charge for the Project until the correct amount due from the URE is determined by the Auditor's Report (as defined in the Financial Agreement), required to be submitted under the terms of the Financial Agreement. After the Auditor's Report has been accepted by the Village and within ninety (90) days thereafter, the Village and the URE shall adjust any over or underpayment so made or required to be made for the period covered by the Auditor's Report.

**Section 11.** The Village hereby determines that the Redeveloper and the URE have complied with the requirements for transfer set forth in the Redevelopment Agreement, that there have been no events of default or violations of the terms of the Redevelopment Agreement, and hereby consents to the transfer of the Redeveloper's interest in the Redevelopment Agreement with respect to the Project, and all rights, duties, and obligations of the Redeveloper with respect to the Project thereunder, to the URE. The Village further agrees and acknowledges that upon execution of such transfer to the URE, the Redeveloper shall be and is hereby released from all duties and obligations existing under the Redevelopment Agreement with respect to the Project.



**Section 12.** The Village President is hereby authorized and directed to negotiate, finalize, and execute the Assignment and Assumption Agreement in substantially the form attached hereto as **Exhibit C**, with such amendments, modifications and revisions as deemed necessary by the Village President in consultation with Village staff and professionals.

**Section 13.** The Village President and Village Clerk are hereby authorized to negotiate and execute any other documents or agreements, with the URE for the Project, required in furtherance of this Ordinance and the execution of the Assignment and Assumption Agreement, in the discretion of the Village President in consultation with Village staff and professionals; and all prior actions of the Village President and Village staff and professionals in connection with the Assignment and Assumption Agreement are hereby ratified.

**Section 14.** This Ordinance shall take effect in accordance with all applicable laws.

**Section 15.** This Ordinance shall not be codified upon passage.

**Introduction – First Reading**

Trustee Member	Motion	Second	Ayes	Nays	Abstain	Absent
Brown			X			
Coallier			X			
Haskins			X			
Hartshorn Hilton		X	X			
Jones						X
Zuckerman	X		X			

**CERTIFICATION**

I, Ojetti E. Davis, Village Clerk of the Township of South Orange Village, County of Essex, State of New Jersey, do hereby certify that this Ordinance was introduced on first reading by the Board of Trustees at their meeting held on July 25, 2022.

  
 Ojetti E. Davis  
 Village Clerk



**Adoption – Second Reading**

Trustee Member	Motion	Second	Ayes	Nays	Abstain	Absent
Brown			X			
Coallier			X			
Haskins			X			
Hartshorn Hilton						X
Jones		X	X			
Zuckerman	X		X			

**CERTIFICATION**

I, Ojetti E. Davis, Village Clerk of the Township of South Orange Village, County of Essex, State of New Jersey, do hereby certify that this Ordinance was adopted on second reading by the Board of Trustees at their meeting held on August 22, 2022.

Ojetti E. Davis  
Village Clerk

Adopted:

Sheena C. Collum, Village President

Attest:

Ojetti E. Davis, Village Clerk



**EXHIBIT A  
PRESIDENT'S RECOMMENDATION**

**SOUTH ORANGE VILLAGE**  
Municipal Offices  
76 South Orange Ave  
Suite 302  
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Essex County  
New Jersey 07079

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VILLAGE PRESIDENT**  
  
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**Sheena C. Collum**  
Village President



July 20, 2022

Members of the Township of South Orange Village, Board of Trustees  
c/o Office of the Village Clerk  
The Township of South Orange Village  
76 South Orange Avenue, Suite 302  
South Orange, New Jersey 07079  
Attn: Acting Village Clerk, Ojetli E. Davis

**Re: Long Term Tax Exemption Application  
8 Second Street Urban Renewal, LLC**

Dear Members of the Board of Trustees:

In accordance with the requirements of the Long Term Tax Exemption Law, N.J.S.A. 40A:20-1 et seq. (the "Long Term Tax Exemption Law"), I have reviewed the application, proposed financial agreement, and related documents submitted by 8 Second Street Urban Renewal, LLC for the proposed redevelopment of property within the Township of South Orange Village (the "Village") identified as Block 1905, Lot 1 on the Village's official tax maps (the "Property"), including the construction of one (1) five-story multi-family residential building with ground floor community use space and parking consisting of approximately forty-one (41) residential units (not including one (1) super intendent unit), inclusive of thirty-three (33) market-rate units and eight (8) affordable residential units, a minimum of two thousand (2,000) square feet (+/- 75 square feet) of commercial space dedicated to the Village rent-free for a minimum period of fifteen (15) years to be used as a community artist incubator space, and on-site ground level parking with ten percent (10%) of all parking spaces outfitted with electrical vehicle charging stations to accommodate electric vehicle charging, together with certain related on-site and off-site improvements (together, the "Project"). The Project will provide both short- and long-term economic development advantages to the Village, inasmuch as it will create approximately thirty-five (35) temporary construction jobs and approximately three (3) permanent jobs in the Village, and will both create new and improve existing public spaces.

I believe the Project is a desirable and beneficial improvement in the Village and that the use of the Long Term Tax Exemption Law will assist the Village in advancing the revitalization of the redevelopment area. Therefore, I recommend that the Board of Trustees favorably consider a long term tax exemption for the Project, provided that all legal prerequisites have been met.

Sincerely yours,

  
Hon. Sheena C. Collum  
Village President



**EXHIBIT B  
FINANCIAL AGREEMENT**

**DRAFT AGREEMENT**  
**July 19, 2022**

**Record and Return to:**

**FINANCIAL AGREEMENT**  
**BY AND BETWEEN**  
**THE TOWNSHIP OF SOUTH ORANGE VILLAGE**  
**AND**  
**8 SECOND STREET URBAN RENEWAL, LLC**

**DATED AS OF \_\_\_\_\_, 202\_\_**

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## FINANCIAL AGREEMENT

**THIS FINANCIAL AGREEMENT** (hereinafter this “**Agreement**”), made this \_\_\_ day of \_\_\_\_\_, 202\_\_\_, (the “**Effective Date**”) by and between **8 SECOND STREET URBAN RENEWAL, LLC**, an urban renewal entity qualified to do business under the provisions of the Long Term Tax Exemption Law, N.J.S.A. 40A:20-1 et seq., as amended and supplemented (the “**Long Term Tax Exemption Law**”), with offices at 2029 Morris Avenue, Union, New Jersey 07083 (the “**Entity**”) and the **TOWNSHIP OF SOUTH ORANGE VILLAGE**, a municipal corporation in the County of Essex and the State of New Jersey (the “**Village**”, and together with the Entity, the “**Parties**” or each, a “**Party**”).

### WITNESSETH:

**WHEREAS**, the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq., as amended and supplemented 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/or rehabilitation; and

**WHEREAS**, the Redevelopment Law authorizes the redevelopment entity to arrange or contract for the planning, construction or undertaking of any development project or redevelopment work in an area designated as an “area in need of redevelopment” pursuant to N.J.S.A. 40A:12A-8; and

**WHEREAS**, on December 18, 1995, the Board of Trustees (the “**Trustees**”) of the Village adopted Resolution No. 2018-259 designating certain property in the Village commonly known as the Central Business District Redevelopment Area (the “**Redevelopment Area**”), as an area in need of redevelopment in accordance with the Redevelopment Law; and

**WHEREAS**, the Entity owns certain property within the Redevelopment Area identified as Block 1905, Lot 1 on the official tax maps of the Village (the “**Property**”) and as more particularly described by the metes and bounds description attached hereto as **Exhibit A**; and

**WHEREAS**, by Ordinance No. 96-43 adopted on November 25, 1996, in accordance with the Redevelopment Law, the Village adopted the “Central Business District Redevelopment Plan,” which was subsequently amended by Ordinance No. 20-2002, adopted on September 23, 2002, by Ordinance No. 08-20, adopted on October 15, 2008, by Ordinance 2012-24 adopted on January 28, 2013 and by Ordinance 2014-03 adopted on May 19, 2014 (the “**CBD Plan**”), for the Redevelopment Area, which includes the Property; and

**WHEREAS**, on September 14, 2020, the Trustees adopted Resolution 2020-212 designating the 8 Second Street, LLC (the “**Redeveloper**”), an affiliate of the Entity, as the “conditional redeveloper” of the Property, approving and authorizing execution of a conditional redeveloper’s agreement, and authorizing Village President to execute same; and

**WHEREAS**, in order to redevelop the Property as envisioned by the Village and Redeveloper, certain changes were required to be made to the CBD Plan; and

**WHEREAS**, on April 26, 2021, by Ordinance 2021-12, the Village adopted the redevelopment plan entitled “Second and Sloan Street Redevelopment Plan” dated March 31, 2021 (the “**Redevelopment Plan**”) for the Property; and

**WHEREAS**, on January 10, 2022, the Village adopted Resolution No. 2022-005 designating the Redeveloper as the “redeveloper” of the Property and approved and authorized execution of a redevelopment agreement with the Redeveloper; and

**WHEREAS**, the Village and the Redeveloper entered into that certain redevelopment agreement dated April 2, 2022 (the “**Redevelopment Agreement**”) pursuant to which, among other things, the Redeveloper agreed to develop, finance, and construct on the Property a redevelopment project consisting of the development of one (1) five-story multi-family residential building with approximately forty-one (41) residential units (not including one (1) super intendent unit), inclusive of thirty-three (33) market-rate units and eight (8) affordable residential units, ground floor community space and parking including a minimum of two thousand (2,000) square feet (+/- 75 square feet) of commercial space dedicated to the Village rent-free for a minimum period of fifteen (15) years to be used as a community artist incubator space (the “**Community Artist Incubator Space**” as further described in the Redevelopment Agreement), and on-site ground level parking to include a minimum number of parking spaces for all uses as set forth in the Redevelopment Plan, provided however, that ten percent (10%) of all parking spaces be outfitted with electrical vehicle charging stations to accommodate electric vehicle charging, together with certain related on-site and off-site improvements (the “**Project**” as further described in the Redevelopment Agreement); and

**WHEREAS**, on June 30, 2022, the Entity submitted a long term tax exemption application, a copy of which is attached hereto as **Exhibit B** (the “**Application**”) complying with the requirements of N.J.S.A. 40A:20-8 and requesting approval of a long term tax exemption pursuant to the Long Term Tax Exemption Law; and

**WHEREAS**, on \_\_\_\_\_, 202\_\_\_\_, the Trustees adopted an ordinance entitled, “Ordinance of the Village of South Orange Township, County of Essex, State of New Jersey Approving 8 Second Street Urban Renewal LLC’s Application For Tax Exemption For the area in the Village identified as block 1905, lot 1 on the Village’s official tax maps, approving and authorizing the execution of a Financial Agreement by and between the Village and 8 Second Street Urban Renewal, LLC, and approving and authorizing the execution of an assignment and assumption of redevelopment agreement from 8 Second Street, LLC to 8 Second Street Urban Renewal, LLC” a copy of which is attached hereto as **Exhibit C** (the “**Ordinance**”); and

**WHEREAS**, the Ordinance also permits assignment and assumption of the Project and the Redevelopment Agreement from the Redeveloper to the Entity, as a qualified urban renewal entity for this Project; and

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

A. Relative Benefits of the Project:

i. The Project is a transit-oriented development that furthers smart growth norms and will substantially enhance the viability and vitality of the Village's downtown. The Property consists of commercial space and a parking lot, which are currently vacant and underutilized. The Project will redevelop with Property with approximately forty-one (41) residential units (not including one (1) super intendent unit), inclusive of thirty-three (33) market-rate units and eight (8) affordable residential units, the Community Artist Incubator Space which includes two thousand (2,000) square feet (+/- 75 square feet) of ground-floor commercial space dedicated to the Village rent-free for a minimum period of fifteen (15) years, on-site ground level parking to include a minimum number of parking spaces for all uses as set forth in the Redevelopment Plan, provided however, that ten percent (10%) of all parking spaces be outfitted with electrical vehicle charging stations to accommodate electric vehicle charging, and certain related on-site and off-site improvements. The Project will create approximately thirty-five (35) temporary construction jobs and approximately three (3) permanent jobs. The Project will generate significant amounts of new municipal revenues through the Annual Service Charge and water/sewer fees. Accordingly, the Project will produce direct and indirect economic benefits to the Village and its residents, substantial commerce, and improvement to the quality of life and creation of public benefits for existing and future residents of the Village.

ii. The costs associated with the demolition and remediation of the Property and construction of the proposed Project and community amenities, makes the redevelopment of the Property extraordinarily expensive. Given the uncertainty and instability of current economic and market conditions (including the extraordinary costs associated with demolition and remediation of the Property and other development costs, as well as the costs of providing the community amenities necessary and desired by the Village) impacting this Project, the investment risk makes the financing of the Project infeasible in the absence of a tax exemption provided by the Village. Accordingly, without the incentive of the tax exemption, it is unlikely that the Project would be undertaken. Without the Project, the benefits described above would not be realized.

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

i. The tax exemption permits the private mixed-use development of underutilized property without any cost to the public while simultaneously producing a stream of revenue in the form of the Annual Service Charges and water/sewer fees, temporary and permanent jobs which produce indirect economic benefits, substantial commerce, and improvement of the quality of life and creation of public benefits for existing and future residents of the Village. The relative stability and predictability of the Annual Service Charges will allow the owners and, by extension, the occupants, of the Project to stabilize their expenses, which will ensure the likelihood of the success of the Project and ensure that it will have a positive impact on the surrounding area. Further, the relative stability

and predictability of the Annual Service Charge makes the Project more attractive to investors and lenders needed to finance the Project.

ii. The tax exemption permits the development of the Project in an area that cannot otherwise be feasibly developed by reducing the expenses associated with the operation of the Project. Reduced expenses allow for more competitive rents. As a result, the locational decisions of the probable tenants will be influenced positively by the tax exemption.

**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 (a) the Long Term Tax Exemption Law, (b) the Redevelopment Law, (c) the Ordinance, and (d) all other Applicable Laws. It is expressly understood and agreed that the Village 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  
Application  
Community Artist Incubator Space  
Effective Date  
Entity  
Long Term Tax Exemption Law  
Municipality  
Ordinance  
Party/Parties  
Project  
Property  
Redevelopment Agreement  
Redevelopment Area  
Redevelopment Law  
Redevelopment Plan  
Trustees  
Village

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

Administrative Fee – The fee paid to the Village by the Entity, as set forth in Section 4.06 of this Agreement.

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:20-3(b).

Allowable Profit Rate - As defined by N.J.S.A. 40A:20-3(b).

Annual Gross Revenue – The annual gross revenue or gross shelter rent or annual gross rents, as appropriate, and other income, for the Entity from the Project, as provided in N.J.S.A. 40A:20-3(a).

Annual Service Charge - The amount the Entity has agreed to pay the Village, or its designee, pursuant to Article IV for municipal services supplied to the Project, which sum is in lieu of any taxes on the Land and Improvements, which amount shall be prorated 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 first day of the month following the month the Project receives any temporary or permanent Certificate of Occupancy.

Applicable Law – All federal, State and local laws, ordinances, approvals, rules, regulations and requirements applicable thereto including, but not limited to, the Redevelopment Law, the Long Term Tax Exemption Law, as applicable, relevant construction codes including construction codes governing access for persons with disabilities, and such zoning, sanitary, pollution and other environmental safety ordinances, laws and such rules and regulations thereunder.

Auditor's Report - A financial statement (a) outlining the financial status of the Project, (b) prepared consistent with generally accepted accounting principles and relevant provisions of the Long Term Tax Exemption Law, (c) detailing all items as required by the Long Term Tax Exemption Law, and (d) certified as to its conformance with such principles by a certified public accountant licensed to practice in the State of New Jersey.

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. The entity or individual(s) with the right to direct or cause the direction of the management and operation of the managing member of the Entity shall be deemed to have Control of the Entity.

Community Artist Incubator Space Agreement - the agreement by and between the Village and Redeveloper, or their respective designees, concerning the terms and conditions of the Village's use and occupancy of the Community Artist Incubator Space.

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

County – The County of Essex.

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.

Default Notice – As defined in Section 15.02.

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

Financial Plan – The financial plan prepared pursuant to N.J.S.A. 40A:20-8(e) attached 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 Village may enforce the lien for taxes due and owing by a tax sale in accordance with the provisions of N.J.S.A. 54:5-1 et seq.

In Rem Tax Foreclosure Act – N.J.S.A. 54:5-104.29 et seq., as the same may be amended or supplemented from time to time.

Land – The real property, but not the Improvements, known as Block 1905, Lot 1 on the official tax maps of the Village, and more particularly described by the metes and bounds description set forth in **Exhibit A** of this Agreement.

Land Taxes - The amount of taxes assessed on the value of the Land, exclusive of the value of any Improvements related thereto, in accordance with Applicable Laws.

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 – The total taxes levied against all real property constituting the Property in the last full tax year in which the Property was subject to taxation, which shall be Twenty-Five Thousand Five Hundred Ninety-Five and 41/100 Dollars (\$25,595.41).

Net Profit – The Annual 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), 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 abatement granted pursuant to this Agreement as well as all other expenses permitted under the provisions of N.J.S.A. 40A:20-3(c).

State – The State of New Jersey.

Tax Assessor – The Village tax assessor.

Tax Collector – The Village 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 or forfeit the tax exemption granted pursuant to this Agreement.

Termination Date- the date when Termination of this Agreement occurs.

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:20-3(h). 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.

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 10 days nor more than 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.

**{End of Article I}**

**ARTICLE II**  
**APPROVAL**

**SECTION 2.01 Approval of Tax Exemption**

The Village has granted and does hereby grant its approval for a tax exemption for the Project on Property in accordance with the provisions of the Long Term Tax Exemption Law. Pursuant to the Ordinance, the Land and Improvements to be constructed and maintained by the Entity shall be exempt from taxation as provided for herein.

**SECTION 2.02 Approval of the Entity**

Approval is granted to the Entity based on its representation that its Certificate of Formation attached to the Application as “**Exhibit 3**” thereto 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 Improvements to be constructed in accordance with the Redevelopment Plan and the Redevelopment Agreement.

**SECTION 2.04 Construction Schedule**

The Entity agrees to diligently undertake to commence construction as required by the Redevelopment Agreement.

**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 in accordance with the Redevelopment Plan and all Applicable Laws.

**SECTION 2.06 Financial Plan**

The Entity represents that the Improvements shall be financed generally in accordance with the representations set forth in the Financial Plan. The Application and Financial Plan set forth estimated Total Project Cost, amortization rate on Total Project Cost, the source of funds, the interest rates to be paid on construction financing, the source and amount of paid-in capital, and the terms of any mortgage amortization.

**{End of Article II}**

**ARTICLE III**  
**DURATION OF AGREEMENT**

**SECTION 3.01 Term**

This Agreement is effective on the Effective Date. So long as there is compliance with the Applicable Laws 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 (i) twenty (20) years from the date of the Effective Date or (ii) fifteen (15) years from the Annual Service Charge Start Date for the Project. The tax exemption shall only be effective during the period of usefulness of the Project and shall continue in force only while the Project is owned or leased by a corporation, association or other entity formed and operating under 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 nonexempt property in the Village. Upon Termination all restrictions and limitations upon the Entity shall terminate upon the Entity's rendering and the Village's acceptance of its final accounting, pursuant to N.J.S.A. 40A:20-12, provided however that, in the event that the Entity fails to commence construction as required by the Redevelopment Agreement is duly terminated, the Village may terminate this Agreement upon ten (10) days prior written notice to the Entity.

**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 Village 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 imposed by this Agreement shall terminate upon the Entity's rendering and the Village's acceptance of its final accounting, pursuant to N.J.S.A. 40A:20-12.

**{End of Article III}**

**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 described in this Agreement, and the Entity shall not contest the validity or amount of any such lawfully imposed 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 Village 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 commencing on the Annual Service Charge Start Date.

B. Payment of the Annual Service Charge shall be made to the Village on a quarterly basis on February 1, May 1, August 1, and November 1 after the Annual Service Charge Start Date in accordance with the Village's tax collection schedule, subject, nevertheless, to adjustment for over or underpayment within 90 days after the close of each calendar year. The obligation to pay the Annual Service Charge shall continue until the 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 State law and then being assessed by the Village against other delinquent taxpayers in the case of unpaid taxes or tax liens on 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, 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 Village during the tax year, in accordance with Applicable Law.

**SECTION 4.03 Annual Service Charge Amount**

(a) Annual Service Charge. In consideration for the tax exemption provided for herein, the Entity shall make payment to the Village of an Annual Service Charge in an amount calculated as follows:

A. Commencing on the Annual Service Charge Start Date through the conclusion of the Fifth (5<sup>th</sup>) year of the Exemption Term, the Annual Service Charge for the Project shall be equal to the greater of (i) the Minimum Annual Service Charge, or (ii) ten percent (10%) of the Annual Gross Revenue;

B. Commencing on the first day of the sixth (6<sup>th</sup>) year of the Exemption Term through the conclusion of the tenth (10<sup>th</sup>) year of the Exemption Term, the Annual Service Charge for the Project shall be equal to the greater of (i) the Minimum Annual Service Charge, or (ii) twelve and one half percent (12.5%) of Annual Gross Revenue; and

C. Commencing on the first day of the eleventh (11<sup>th</sup>) year of the Exemption Term through the conclusion of the fifteenth (15<sup>th</sup>) year of the Exemption Term, the Annual Service Charge for the Project shall be equal to the greater of (i) the Minimum Annual Service Charge, or (ii) fifteen percent (15%) of Annual Gross Revenue.

(b) the Minimum Annual Service Charge. The first year of the Annual Service Charge shall be billed based on the Minimum Annual Service Charge. The Entity shall use the prior year's Annual Gross Revenues to estimate the Annual Service Charge for each year. Pursuant to N.J.S.A. 40A:20-3(c), within ninety (90) days of the end of each year the Entity shall review the Annual Service Charge for the prior year and apply any underpayment or overpayment to the then current year.

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. Further, any and all tax appeals currently pending on the Land or existing improvements have been withdrawn.

#### **SECTION 4.04 Reformation of Annual Service Charge Computation**

In the event the tax 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, and shall be reformed to cure the invalid provision so that the Annual Service Charge shall be in the amount set forth in Section 4.03, but the Entity shall receive a credit against the Annual Service Charge for any Land Taxes paid as hereinafter provided.

If the tax exemption of the Land authorized under N.J.S.A. 40A:20-12 is invalidated, then the provisions of this paragraph shall apply, and 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 without regard to any improvements or increase in value to the Land because of the Improvements. 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. The Entity is required to make payment of both the Annual Service Charge and the Land

Tax Payments, if applicable. 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 Village shall, among its other remedies, have the right to proceed against the Property pursuant to the In Rem Tax Foreclosure Act, N.J.S.A. 54:5-1, et seq. and/or may declare a Default under this Agreement upon sixty (60) days written notice to the Entity.

#### **SECTION 4.05 Schedule of Stage Adjustments to Annual Service Charge**

Pursuant to N.J.S.A. 40A:20-12(b), the Annual Service Charge shall be adjusted as follows:

A. Stage One. Commencing on the Annual Service Charge Start Date through the conclusion of eleventh (11<sup>th</sup>) year of the Exemption Term, the Annual Service Charge shall be the amount established in accordance with Section 4.03 or 4.04 of the Agreement, as applicable.

B. Stage Two. From the first day of the twelfth (12<sup>th</sup>) year of the Exemption Term through the conclusion of the twelfth (12<sup>th</sup>) year of the Exemption Term, the Annual Service Charge shall be the amount established in accordance with Section 4.03 or 4.04 of the Agreement, as applicable, or twenty percent (20%) of the amount of the taxes otherwise due on the Land and Improvements, whichever is greater.

C. Stage Three. From the first day of the thirteenth (13<sup>th</sup>) year of the Exemption Term through the conclusion of the thirteenth (13<sup>th</sup>) year of the Exemption Term, the Annual Service Charge shall be the greater of: (i) the amount established in accordance with Section 4.03 or 4.04 of the Agreement, as applicable, or (ii) forty percent (40%) of the amount of the taxes otherwise due on the Land and Improvements.

D. Stage Four. From the first day of the fourteenth (14<sup>th</sup>) year of the Exemption Term through the conclusion of the fourteenth (14<sup>th</sup>) year of the Exemption Term, the Annual Service Charge shall be the amount established in accordance with Section 4.03 or 4.04 of the Agreement, as applicable, or sixty percent (60%) of the amount of the taxes otherwise due on the Land and Improvements, whichever is greater.

E. Fifth Stage. From the first day of the fifteenth (15<sup>th</sup>) year of the Exemption Term through the conclusion of the fifteenth (15<sup>th</sup>) year of the Exemption Term, the Annual Service Charge shall be the greater of: (i) the amount established in accordance with Section 4.03 or 4.04 of the Agreement, as applicable, or (ii) eighty percent (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 an Annual Administrative Fee equal to two percent (2%) of the previous year's Annual Service Charge. The Annual Administrative Fee shall be paid by the Entity and shall be due and paid in the same manner as the quarterly Annual Service Charge payments.

#### **SECTION 4.07 Material Conditions**

It is expressly agreed and understood that, subject to the provisions of Section 4.04 above, the tax exemption granted by this Agreement and all payments of Annual Service Charges and any interest payments, penalties or costs of collection due thereon, Land Taxes and the 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 and 4.03 hereof shall be reduced, amended or otherwise modified during the Term of this Agreement. The Entity and the Village hereby consent and agree to the amount of Annual Service Charge and the Entity hereby consents and agrees to the liens established in this Financial Agreement, and the Entity shall not contest the validity or amount of any such lien; provided, however, that the foregoing shall not be construed to bar the Entity from raising the defense that (i) the Annual Service Charge then due and owing has been paid in full or (ii) that the Annual Service Charge is not yet due and owing. 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 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 Village of any provisions of this Financial Agreement, termination of the Redevelopment Agreement or failure of the Entity to complete the Project.

#### **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 constitutes a continuous municipal lien on the Land and the Improvements.

#### **SECTION 4.10 Security for Payment of Annual Service Charges**

In order to secure the full and timely payment of the Annual Service Charges, the Village 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.

#### **SECTION 4.11 Community Artist Incubator Space Agreement**

As set forth in Section 4.27 of the Redevelopment Agreement, The Village shall have the right to, subject to provisions set forth in the Redevelopment Agreement and Community Artist Incubator Space Agreement, to lease the Community Artist Incubator Space for a term of fifteen (15) years commencing upon Project Completion, for \$1.00 paid annually. The Community Artist Incubator Space shall front on Sloan Street.

**{End of Article IV}**

## **ARTICLE V** **REMEDIES**

### **SECTION 5.01 Dispute Resolution**

In the event of a breach of this Agreement by any of the Parties or a dispute arising between the Parties in reference to the terms and provisions as set forth herein (except with regard to an event of a Default on the part of the Entity to pay any installment of the Annual Service Charge as required by Article IV) then the Parties shall submit the dispute to mediation. The Parties agree that the mediation will be before a retired judge of the Superior Court of New Jersey agreed upon by the Parties within ten (10) days after request by either Party upon occurrence of a dispute, or if the Parties fail to so agree, a retired judge of the Superior Court appointed by the Assignment Judge of Essex County upon application of either Party. The Parties agree to engage in good faith in the mediation effort to seek resolution of the disagreement. The good faith obligation shall require, as a condition precedent to commencement of any arbitration other than one seeking emergent relief, participation of up to six (6) hours at a mediation session conducted by the Mediator at a time and place fixed by the Mediator, all to occur within thirty (30) days after appointment of the Mediator. The Parties further agree that the mediation procedure is voluntary and non-binding (beyond good faith obligation described in the previous sentence). Following good faith participation, either Party may at any time terminate the mediation proceeding with or without cause. The Mediator shall also have the right to terminate the mediation if the Mediator shall determine that the efforts to reach a settlement are likely to be futile. The Parties agree to share the burden of the Mediator's compensation equally and each agrees to pay its share pursuant to the Mediator's invoice to be rendered at completion or termination of the mediation process. To the extent not expressly modified by provisions of this article, the American Arbitration Association Mediation Rules are incorporated herein and as a part of this Article shall govern the Parties and the Mediator in the conduct of the mediation proceeding. Except in cases of where emergent injunctive relief is required, the resort by a Party to any arbitration for relief pertaining to this Agreement before completion of good faith participation in the mediation process called for herein shall constitute an immediate and material breach of this Agreement by such Party.

If a dispute is not resolved by mediation as provided above, or requires injunctive emergent relief, the Parties agree that the matter shall be submitted to an arbitrator mutually selected and agreed to by the Parties. If the Parties cannot agree upon an arbitrator, then each Party shall select an arbitrator, who in turn will mutually select a third arbitrator. The arbitrator retained to resolve the dispute shall abide by the rules and regulations of arbitration as set forth and/or followed by the American Arbitration Association in the State of New Jersey in such a fashion to accomplish the purpose of said laws. Costs for said arbitration shall be paid by the non-prevailing Party. The demand for arbitration shall be filed in writing and shall be made within a reasonable time after a dispute or breach occurs. The award rendered by the arbitrator shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

**SECTION 5.02 Remedies**

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, the Village in addition to its other remedies, reserves the right to proceed against the Project, in the manner provided by Applicable Law, including the Tax Sale Law and the In Rem Tax Foreclosure Act, 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. In either case, however, the Entity does not waive any defense it may have to contest the rights of the Village to proceed in the above-mentioned manner.

**{End of Article V}**

## 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 responsibility of the Entity to promptly 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 Village, including, if appropriate retroactive billing with interest for any charges determined to be due, in the absence of such filing by the Entity.

**{End of Article VI}**

## 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, commencing with the year in which the Annual Service Charge Start Date occurs, for the duration of this Agreement, the Entity shall submit to the Village President, Trustees, the Tax Collector and the Municipal 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 Auditor's 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 final Certificate of Occupancy is issued for the Project, the Entity shall, unless this Agreement is terminated, submit to the Village President, Trustees, the Tax Collector and the Municipal Clerk, who shall advise those municipal officials required to be advised, an audit of Total Project Cost, certified as to actual construction costs in a form acceptable to the Village.

C. Disclosure Statement: On each anniversary date of the execution of this Agreement, if there has been a change in ownership or interest from the prior year's filing, the Entity shall submit to the Village President, Trustees, the Tax Collector and the Municipal 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 Village may request from time to time.

#### **SECTION 7.03 Inspection**

The Entity shall permit the inspection of the Property, equipment, buildings and other facilities of the Project, by representatives duly authorized by the Village 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 Village 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 10 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. The Parties acknowledge that inspections in the normal course do not require advance notice (e.g., building, fire, 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:20-3(b) and (c), this calculation shall be completed in accordance with generally accepted accounting principles. In accordance with N.J.S.A. 40A:20-15, excess Net Profits shall be calculated on an annual but cumulative basis.

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.

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 all or a portion of the Project, 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 one hundred twenty (120) days after the end of such fiscal year shall pay such excess Net Profits to the Village as an additional service charge; provided, however, that the Entity may maintain a reserve as determined pursuant to aforementioned Section 7.04 from such excess Net Profits. The calculation of Net Profit and Allowable Net Profit shall be made in the manner required pursuant to N.J.S.A. 40A:20-3(c) and 40A:20-15.

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

**{End of Article VII}**

## 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 voluntarily transfer more than ten percent (10%) of the direct ownership of the Project until it has removed itself and the Project from all restrictions under this Agreement. The Entity shall, however, be permitted to transfer all or any portion of the Project to another urban renewal entity approved by the Village as follows:

As permitted by N.J.S.A. 40A:20-10(a), it is understood and agreed that the Village, on written application by the Entity after completion of the Project, will 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 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 Village in regard to the Project; and (vi) 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 Entity shall pay an administrative transfer fee equal to one percent (1%) of the then applicable Annual Service Charge for processing any such application by the Entity.

If this Agreement is transferred in accordance with this Section, then pursuant to N.J.S.A. 40A:20-6, the Entity shall be discharged from any further obligation under this Agreement and shall be qualified to undertake another project pursuant to the Long Term Tax Exemption Law. The date of transfer of the Project to a purchasing entity shall be considered to be the close of the fiscal year of the Entity. Within one hundred twenty (120) days after that date of the transfer of the Project, the Entity shall pay to the Village the amount of reserve, if any, maintained by it, as well as the excess Net Profit, if any, pursuant to N.J.S.A. 40A:20-15.

#### SECTION 8.02 No Subdivision/Division of Land and Improvements.

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 Trustees by ordinance, convey, mortgage or transfer all or part of the Project in a manner that would cause the severance or division of the Improvements from the Land which are basic to, embraced in, or underlying the exempt Improvements.

#### SECTION 8.03 Subordination of Fee Title

It is expressly understood and agreed that the Entity has the right, subordinate to the lien of the Annual Service Charges, and to the rights of the Village hereunder to mortgage, encumber, lease and/or, if applicable, assign the lease to, the Land and/or Improvements, and that any such mortgage, encumbrance, lease or assignment shall not be deemed to be a violation of this Agreement.

**{End of Article VIII}**

## ARTICLE IX

### VILLAGE DETERMINATIONS AND OBLIGATIONS

#### **SECTION 9.01 Relative Benefits**

In accordance with the Long Term Tax Exemption Law, specifically N.J.S.A. 40A:20-11(a), the Village hereby finds and determines that this Agreement is to the direct benefit of the health, safety, welfare and financial well-being of the Village and its citizens despite the tax exemption granted hereunder. The Project is a transit-oriented development, that furthers smart growth norms, and will substantially enhance the viability and vitality of the Village's downtown. The Property consists of commercial space and a parking lot, which are currently vacant and underutilized. The Project will redevelop with Property with approximately forty-one (41) residential units (not including one (1) super intendent unit), inclusive of thirty-three (33) market-rate units and eight (8) affordable residential units, a minimum of two thousand (2,000) square feet (+/- 75 square feet) of commercial space dedicated to the Village rent-free for a minimum period of fifteen (15) years to be used as artist incubator space, and certain related on-site and off-site improvements. The Project will create thirty-five (35) temporary construction jobs and three (3) permanent jobs. The Project will generate significant amounts of new municipal revenues through the Annual Service Charge and water/sewer fees. Accordingly, the Project will produce direct and indirect economic benefits to the Village and its residents, substantial commerce, and improvement of the quality of life and creation of public benefits for existing and future residents of the Village.

The costs associated with the demolition and remediation of the Property, construction of the proposed Project and community amenities, makes the redevelopment of the Property extraordinarily expensive. In light of market conditions and other economic factors impacting this Project, it is not financially feasible to undertake the development of this Project in the absence of the tax exemption. Accordingly, without the incentive of the tax exemption, it is unlikely that the Project would be undertaken. Without the Project, the benefits described above would not be realized.

#### **SECTION 9.02 Importance of Tax Exemption**

In accordance with the Long Term Tax Exemption Law, specifically N.J.S.A. 40A:20-11(b), the Village hereby finds and determines that it has reviewed the Application and accompanying financial information and it has determined that this Agreement is a critical incentive for the Entity to undertake the Project in the Village due to the extraordinary costs associated with the development of the Property.

The tax exemption permits the private mixed-use development of underutilized property without any cost to the public while simultaneously producing a stream of revenue in the form of the Annual Service Charges and water/sewer fees, temporary and permanent jobs which produce indirect economic benefits, substantial commerce, and improvement of the quality of life and creation of public benefits for existing and future residents of the Village. The relative stability and predictability of the Annual Service Charges will allow the owners and, by extension, the

occupants, of the Project to stabilize their expenses, which will ensure the likelihood of the success of the Project and ensure that it will have a positive impact on the surrounding area. Further, the relative stability and predictability of the Annual Service Charge makes the Project more attractive to investors and lenders needed to finance the Project.

The tax exemption permits the development of the Project in an area that cannot otherwise be feasibly developed by reducing the expenses associated with the operation of the Project. Reduced expenses allow for more competitive rents. As a result, the locational decisions of the probable tenants will be influenced positively by the tax exemption.

**{End of Article IX}**

**ARTICLE X**

**WAIVER**

**SECTION 10.01 Waiver**

Nothing contained in this Agreement or otherwise shall constitute a waiver or relinquishment by the Village 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 Village or the Entity has under law, in equity, or under any provision of this Agreement.

**{End of Article X}**

**ARTICLE XI**

**NOTICE**

**SECTION 11.01 Notice**

Any notice required hereunder to be sent by any Party to another Party shall be in writing and shall be sufficiently given or delivered if dispatched by United States Registered or Certified Mail, postage prepaid and return receipt requested, or delivered by overnight courier or delivered personally (with receipt acknowledged), or by facsimile transmission (with receipt acknowledged) to the Parties at their respective addresses set forth herein, as follows:

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

Jeffrey B. Markovitz  
8 Second Street Urban Renewal, LLC  
2029 Morris Avenue  
Union, New Jersey 07083

Michael Markovitz  
8 Second Street Urban Renewal, LLC  
2029 Morris Avenue  
Union, New Jersey 07083

*With a copy to:*

Derek W. Orth, Esq.  
Inglesino, Webster, Wyciskala & Taylor LLC  
600 Parsippany Road Suite 204  
Parsippany, New Jersey 07054

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

Township of South Orange Village  
Village Hall  
76 South Orange Avenue  
South Orange, New Jersey 07040  
ATTN: Village President and Township Administrator

*With a copy to:*

Tiena M. Cofoni, Esq.  
McManimon, Scotland & Baumann, LLC  
75 Livingston Avenue  
Roseland, New Jersey 07068

The notice to the Village shall identify the subject with the tax account numbers of the tax parcels comprising the Land. From time to time either Party may designate a different Person or address for all the purposes of this Notice provision by giving the other Party no less than ten (10) Days' Notice in advance of such change of address in accordance with the provisions hereof. Notices shall be effective upon the earlier of receipt or rejection of delivery by the addressee. In addition, if the Entity delivers formal written notice to the Village of the name and address of any Secured Party, then the Village shall provide such Secured Party with a copy of any notice required to be sent to the Entity.

**{End of Article XI}**

## **ARTICLE XII**

### **COMPLIANCE**

#### **SECTION 12.01 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 and any lawful ordinances and resolutions of the Village, 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 violation and breach of the Agreement.

**{End of Article XII}**

**ARTICLE XIII**

**CONSTRUCTION**

**SECTION 13.01 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 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 Village have combined in their review and approval of same.

**{End of Article XIII}**

## ARTICLE XIV

### INDEMNIFICATION

#### SECTION 14.01 Indemnification

It is understood and agreed that in the event the Village shall be named as a party defendant in any action brought against the Village or the Entity by allegation of any breach, Default or a violation by the Entity only 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, to the fullest extent permitted by law, indemnify, defend, and hold the Village 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 breach, Default or a violation by the Entity of any of the provisions of this Agreement, the provisions of the Long Term Tax Exemption Law, and/or any other Applicable Law. In no event shall the Entity be required to indemnify the Village for any liability, losses, damages, demands, costs, claims, actions or expenses (including reasonable attorneys' fees and expenses) resulting solely from any negligence or misconduct by the Village or any of its officers, officials, employees or agents, or resulting from the illegality or unenforceability of this Agreement or any of the terms of this Agreement. To the extent the Entity is required to indemnify the Village hereunder, the Entity shall defend the suit at its own expense. However, the Village maintains the right to intervene as a party thereto at its own sole cost and expense, to which intervention the Entity hereby consents. This Section shall survive the termination of this Financial Agreement.

**{End of Article XIV}**

## ARTICLE XV

### DEFAULT

#### **SECTION 15.01** Default

Default shall be failure of either Party to conform to the terms of this Agreement and failure of the Entity to perform any obligation imposed by statute, ordinance or lawful regulation beyond any applicable notice, cure or grace period.

#### **SECTION 15.02** Cure Upon Default

Should a Party be in Default of any obligation under this Agreement, the non-defaulting Party shall notify the defaulting Party and a Secured Party or 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 sixty (60) days to cure any Default (other than a Default in payment of any installment of the Annual Service Charge which default must be cured within ten (10) days from the date of its receipt of the Default Notice) provided such cure can reasonably be effected within such sixty (60) day period in which case Entity shall have such additional time to cure as reasonably necessary to effect same. In the event of any uncured Default by the Entity, the Village 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 Village shall have the right to proceed to In Rem Tax Foreclosure consistent with the provisions and procedures of the In Rem Tax Foreclosure Act.

#### **SECTION 15.03** 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 Village, and all rights and remedies granted to them by law and equity shall be cumulative and concurrent and no determination of the invalidity of any provision of this Agreement shall deprive the Village of any of their remedies or actions against the Entity because of 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 of 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 15.04** 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 15.02, the Village has the right to terminate this Agreement upon thirty (30) days written notice to the Entity (the “**Notice of Termination**”).

**SECTION 15.05 Final Accounting**

Within ninety (90) days after the date of Termination, the Entity shall provide a final accounting and pay to the Village 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 15.06 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 Village.

**{End of Article XV}**

## ARTICLE XVI

### MISCELLANEOUS

#### **SECTION 16.01** 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 16.02** Oral Representations

There have been no oral representations made by either of the Parties hereto which are not contained in this Agreement. This Agreement, the 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 16.03** Entire Document

All conditions in the Ordinance are incorporated in this Agreement and made a part hereof.

#### **SECTION 16.04** Good Faith

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

#### **SECTION 16.05** Recording

This entire Agreement will be filed or recorded with the Essex County Clerk by the Entity or the Village at the Entity's expense within ten (10) days of the Effective Date. Upon Termination of this Agreement, the Parties shall execute and record an instrument discharging this Agreement of record in form reasonably satisfactory to the parties.

#### **SECTION 16.06** 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 and Annual Service Charges, as required by law. Nothing herein is intended to release Entity from its obligation to make such payments.

#### **SECTION 16.07** Annual Service Charge Paid to County

Pursuant to N.J.S.A. 40A:20-12, the Village shall remit five percent (5%) of the Annual Service Charge received by the Village to Essex County.

#### **SECTION 16.08** Financing Matters

The financial information required by the final paragraph of N.J.S.A. 40A:20-9 are set forth in the Application.

**SECTION 16.09 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 16.10 Amendments**

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

**SECTION 16.11 Certification**

The Municipal Clerk shall certify to the Tax Assessor, pursuant to N.J.S.A. 40A:20-12, that an agreement with an urban renewal entity, i.e., the Entity, for the redevelopment of the Redevelopment Area, has been entered into and is in effect as required by the Long Term Tax Exemption Law. Delivery by the Municipal Clerk to the Tax Assessor of a certified copy of the Ordinance and this Agreement 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 Municipal 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) calendar days following the later of the effective date of the Ordinance or the execution of this Agreement by all Parties hereto, the Municipal Clerk shall transmit a certified copy of the Ordinance and this Agreement to the chief financial officer of Essex County and to the Essex County counsel for informational purposes.

**SECTION 16.12 Severability**

Subject to, and except as otherwise provided in Sections 4.04 and 4.07, 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.

**SECTION 16.13 Effect of Amendment and Restatement**

This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto and supersedes all negotiations or previous agreements between the Parties with respect to all or any part of the subject matter hereof.

**SECTION 16.14 Estoppel Certificate**

Within thirty (30) days following written request therefor by the Entity, the Village shall issue a signed estoppel certificate in reasonable form stating that (i) this Agreement is in full force and effect, (ii) to the best of the Village's knowledge, no Default has occurred under this Agreement (nor any event which, with the passage of time and/or the giving of notice would result in the occurrence of a Default) or stating the nature of any Default, and (iii) stating any such other factual information as may be requested related to this Agreement, provided that, (a) the Village has had an opportunity to confer with its counsel regarding the form of such Estoppel Certificate (b) the information requested is within the Village's control or possession and (c) such information is not otherwise privileged or confidential.

**SECTION 16.15 Effective Date**

The Parties agree that the Effective Date of this Agreement shall be the last date that this Agreement is executed and delivered by both Parties, which date shall be inserted at the top of the first page hereof.

**{End of Article XVI}**

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

**8 Second Street Urban Renewal, LLC**  
a New Jersey limited liability company

**By:** \_\_\_\_\_  
Name: Michael Markovitz  
Title: Managing Member

**TOWNSHIP OF SOUTH ORANGE VILLAGE**

\_\_\_\_\_  
Sheena C. Collum, Village President



STATE OF NEW JERSEY :  
 : ss  
COUNTY OF ESSEX :

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_  
202\_\_\_\_, by Sheena Collum, and this person acknowledged under oath, to my satisfaction that:

- (a) she is the President of the Township of South Orange Village, a municipal corporation of the County of Essex and State of New Jersey, named in the within document;
- (b) she is authorized to execute the attached document on behalf of the Township of South Orange Village;
- (c) she executed the attached document on behalf of the Township of South Orange Village; and
- (d) the attached document was signed and made by the Township of South Orange Village as its duly authorized and voluntary act.

\_\_\_\_\_  
Notary Public

SEAL

## **LIST OF EXHIBITS**

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

**Exhibit A – Metes and Bounds Description of the Land**

**Exhibit B – Tax Exemption Application with Exhibits**

**Exhibit C – Ordinance**

**EXHIBIT A**  
**METES AND BOUNDS DESCRIPTION OF THE LAND**

**EXHIBIT B**  
**TAX EXEMPTION APPLICATION WITH EXHIBITS**

**EXHIBIT C  
ORDINANCE**

**I** **INGLESINO WEBSTER**  
**WYCISKALA TAYLOR, LLC**  
ATTORNEYS AT LAW

600 PARSIPPANY ROAD, SUITE 204  
PARSIPPANY, NEW JERSEY 07054  
T (973) 947-7111  
FAX (973) 887-2700  
www.iwvt.law

DEREK W. ORTH  
Direct: (973) 585-7721  
dorth@iwvt.law

June 30, 2022

**Via Electronic Mail**

Adam Loehner  
Village Administrator  
The Township of South Orange Village  
76 South Orange Avenue  
South Orange, New Jersey 07079

**Re: 8 Second Street Urban Renewal, LLC**  
**Block 1905, Lot 1**  
**Application for Long Term Tax Exemption**

Dear Mr. Loehner:

This firm represents 8 Second Street Urban Renewal, LLC (the "Applicant"). Enclosed herewith is our Application for a Long Term Tax Exemption in connection with the inclusionary project located at 8 Second Street, South Orange, New Jersey. If the Village President approves this application, we respectfully request that the financial agreement ordinance be placed on the Board of Trustees' July meeting for introduction.

We thank the Village for its consideration of this application, and we look forward to commencing construction on this exciting community which will enhance the Village's downtown. Please feel free to contact me with any questions.

Very truly yours,

/s/ Derek W. Orth  
DEREK W. ORTH

Encls.

cc: 8 Second Street Urban Renewal, LLC (via electronic mail)  
Village Professionals (via electronic mail)

**Application for  
Long Term Tax Exemption**

8 Second Street Urban Renewal, LLC

---

Name of Applicant

c/o Markbuilt Homes  
2029 Morris Avenue  
Union, New Jersey 07083

---

Address of Applicant

8 Second Street, South Orange, New Jersey 07079

---

Address of Project Site

## **Overview of application contents:**

- Section I - General instructions regarding the completion of the application
- Section II - Identification of the applicant
- Section III - Detailed description of the Project
- Section IV - Type of exemption and term requested
- Representations and certifications required by statute
- Signature by the applicant
- Exhibits

## **I. Instructions:**

**Please complete this application in its entirety and attach all required supporting documentation. Incomplete applications will be returned and may significantly delay the tax exemption authorization process or cause the application to be denied.**

### **Important notes:**

- 1) Certain documents required in this application must be prepared by qualified professionals other than the applicant. In particular, survey documents must be signed and sealed by a licensed surveyor, site plan documents must be signed and sealed by a professional engineer and detailed cost estimates must be certified by a licensed engineer or architect.
- 2) Under New Jersey law, applicants for long-term exemption must be organized as an Urban Renewal Entity as certified by the New Jersey Department of Community Affairs. (Low and moderate income housing projects located in particular areas may be exempt from this requirement in certain cases.)
- 3) The application must be accompanied by a proposed form of financial agreement. Please ensure that the financial agreement attached to this application is appropriate to the type of project for which you are seeking an exemption.

### **Completed applications, including the application fee, should be submitted to:**

Adam Loehner  
Village Administrator  
The Township of South Orange Village  
76 South Orange Ave.  
South Orange, New Jersey 07079

If you have any questions regarding the application or the tax exemption process, please contact:

Bhavini Doshi, Esq.  
McManimon, Scotland & Baumann  
75 Livingston Avenue  
Roseland, New Jersey 07068  
Tel.: (973) 622-1800

## **II. Developer Identification:**

**A. Name of Applicant:**

8 Second Street Urban Renewal, LLC

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**B. Principal Address:**

c/o Markbuilt Homes, 2029 Morris Avenue, Union, New Jersey 07083

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**C. Type of Entity (check one)**

Corporation  LLC  LLP  Partnership  Other (please specify)

---

**D. Contact Information**

1.) Name of Primary Contact: Derek W. Orth, Esq.

2.) Contact Numbers:

a. Phone: 973-585-7721

b. Fax: 973-887-2700

c. Email: dorth@iwwt.law

**E. Name and Address of Statutory Agent:**

Please list the name and address of the entity upon whom a legal process can be served:

Michael Markovitz

2029 Morris Avenue

Union, New Jersey 07083

---

**F. Federal Tax Identification Number:**

88-2958903

**G. Disclosure of Ownership:**

New Jersey law (NJSA 52:25-24.2) requires that all corporations and partnerships seeking a public contract submit a list of the names and addresses of all principals who own more than 10% of any class of stock, or 10% or more of the total stock (if a corporation), or 10% or more of the partnership. In addition, if the Developer has, as one or more of its owners, a corporation or partnership, the ownership of those entities must be similarly disclosed, and that process shall continue down the entire chain of ownership until the names and addresses of every unincorporated stockholder and/or individual partner is disclosed.

Please provide the necessary information utilizing the form provided with **Exhibit 1** to this application.

**H. Certificates of Incorporation and Approval:**

Please provide a copy of the approved certificate of incorporation or formation by the State of New Jersey for the entity applying for the exemption. Attach the certificate as **Exhibit 2** to this application.

Also include a copy of the certificate of approval of the urban renewal entity issued by the State of New Jersey Department of Community Affairs. Attach that certificate as **Exhibit 3** to this application. (The only projects exempt from this requirement are low and moderate income housing projects located outside a designated redevelopment area.)

**I. Authorization to Submit Application:**

Please provide a certified copy, bearing the seal of the urban renewal entity, of a company resolution authorizing submission of the application in the form provided as **Exhibit 4** to this application.

### III. Project Description:

#### A. Applicant's Ownership Interest in the Project:

Conventional (Fee Simple)       Condominium

#### B. Project Type (Please check all that apply):

Residential;  Retail;  Office;  Manufacturing;  Distribution Facility;  Hotel;  Mixed Use;  Other (Specify): with approximately 1,975 SF of artist incubator space on the ground floor

If the Project involves more than one type of usage, indicate the percentage that each usage bears to the overall Project measured using square feet of gross area:

98% Residential;  % Retail;  % Office;  % Manufacturing;  % Distribution Facility;  
 % Hotel; 2 % Other (specify here artist incubator space)

#### C. Marketing Expectation:

For Sale       For Lease       For Sale and Lease

#### D. Project Location:

1. Provide all of the street addresses by which the Project Site is currently known:

Address #1: 8 Second Street, South Orange, New Jersey 07079

Address #2: \_\_\_\_\_

Address #3: \_\_\_\_\_

Address #4: \_\_\_\_\_

Use additional sheets if necessary

2. Provide all tax lots that comprise the Project Site. Designate lots as they appear on the official maps of the Tax Assessor as of the date of this application (i.e. prior to any subdivision associated with the Project):

Block 1905 Lots: 1

Block \_\_\_\_\_ Lots: \_\_\_\_\_

Block \_\_\_\_\_ Lots: \_\_\_\_\_

Block \_\_\_\_\_ Lots: \_\_\_\_\_

Use additional sheets if necessary

3. Metes and Bounds Description:

Please attach the metes and bounds description of the Project Site as **Exhibit 5** to this application.

4. Survey:

Please attach survey of the Project Site as **Exhibit 6** to this application. If a survey has not yet been completed, a plotting on the official tax map may be provided at this time. A certified survey will be required prior to execution of any financial agreement.

**E. Deed or Lease Agreement:**

Please attach a copy of the deed or lease agreement for the Project Site as **Exhibit 7** to this application confirming that the Project is under the control of the applicant.

**F. Purpose of Project:**

Please check all that apply:

- 1. This Project is located within an officially designated "area in need of redevelopment."  
 Yes  No
- 2. This Project is located within an Urban Enterprise Zone.  
 Yes  No
- 3. This Project is intended to provide housing to low and/or moderate income households:  
 Yes  No

Please indicate the number of units of each type listed below, as appropriate.

Number of units for low income households   3    
 Number of units for moderate income households   5    
 Number of market rate units  33   
 Total number of residential units  41 

- 4. This Project is intended to provide housing to households relocated as a result of a redevelopment project:  Yes  No
- 5. This Project is intended as a means to implement the objectives set forth in an adopted Redevelopment Plan:  Yes  No
- 6. If the answer to questions 3 through 5 of this section was "No", please indicate the purpose of the Project:

  Multifamily residential with on-site affordable units and ground floor artist-incubator space.  

\_\_\_\_\_

\_\_\_\_\_

**G. Narrative Description of Project:**

Provide a brief narrative description of the Project, including the height and bulk of proposed improvements, type of construction materials to be used and expected square foot area of each proposed use. Indicate the number and type of each unit to be constructed as part of the Project and whether the Project will be restricted to any group or groups on the basis of age or income. Include maps, renderings, floor plans and other graphic materials if available. Attach this description as **Exhibit 8** to this application.

**H. Current Conditions:**

1. Provide a brief description of any improvements that are in place currently on the Project Site and indicate which if any are expected to be reused as part of the Project. Attach extra pages as needed.

The Project Site is currently occupied with a vacant one-story Wells Fargo bank building and associated drive-through, two surface parking lots, and concrete walkways. The Applicant does not intend to re-use any of the existing structures or improvements.

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2. Provide a list with the current tax assessment and the current real property tax levy for each lot included within the Project Site. Attach extra pages as needed.

Block	Lot	Current Tax Assessment	Current Real Property Tax Levy
1905	1	\$726,600	\$24,595.41

3. Provide a list showing the current status of all municipal fees and charges which are currently levied against each lot located within the Project Site, including, without limitation water charges, sewer charges, permit or license fees, fines and/or penalties. Attach extra pages as needed.

Block	Lot	Current Status of Municipal Fees and Charges (specify type)
1905	1	All taxes and fees are current.

**I. Site Plan Approval:**

Provide a copy of the site plan approved by the Planning Board for the Project. Also provide a copy of the resolution of the Planning Board providing final site plan approval for the Project. Attach the site plan as **Exhibit 9** to this application and the Planning Board resolution as **Exhibit 10** of this application.

**J. Project Cost Estimates**

1. Provide a detailed cost breakdown for the Project, including both hard and soft costs. The estimate should be certified by a licensed architect or engineer. Attach the completed estimate for the entire Project, with the required certification, as **Exhibit 11** to this application.
2. For each type of unit to be included within the Project, provide an estimate of the total unit cost for that unit. This may be provided at a summary level, not at the level set forth for the estimate required by *Section J.1* above. The estimate should also be certified by a licensed architect or engineer. Attach the completed unit estimates, with the required certification, as **Exhibit 12** to this application.

**K. Project Pro-Forma:**

Provide a detailed projection of the estimated revenues and expenses for the Project. The projections for all rental projects and for the rental component of mixed-use projects should cover the full exemption period. Projections involving the sale of units should be for the period expected to be needed to complete all sales activity. Attach the projection as **Exhibit 13** to this application.

**L. Project Financing Plan:**

1. Provide a detailed explanation of the expected method by which the Project will be financed, indicating the amount of equity to be contributed and its source, all public loans and/or grants that are to be used and all private sources of capital. Attach this explanation as **Exhibit 14** to this application.
2. Private Financing Commitments: Provide certified copies of any and all letters from public or private sources of capital indicating a commitment to make funds available for the Project. Attach these letters as **Exhibit 15** to this application.

**M. Explanation of the Need for Tax Exemption:**

Provide an explanation of why the applicant believes that a long term tax exemption is necessary to make this Project economically feasible. Attach the explanation as **Exhibit 16** to this application.

**N. Project Schedule:**

Attach a detailed schedule of the key milestone dates in the approval, construction and leasing or sale of the Project as **Exhibit 17** to the application.

**O. Statement of Project Benefits:**

Provide a detailed description of the public benefits that would result from the Project. At a minimum, include a projection of the number and type of construction jobs to be created, the number and type of permanent jobs to be created and the amount of municipal revenue to be generated by the Project through the payment of taxes, payments in lieu of taxes, water and sewer fees and any other municipal payments. Attach the description as **Exhibit 18** to the application.

#### **IV. Exemption Information:**

**A. Annual Service Charge to be based on: (please check one)**

Long Term Commercial/Industrial Project with an annual service charge equal to 10% percent of annual gross revenue (*N.J.S.A. 40A:20-12*).

Long Term Commercial/Industrial Project with an annual service charge equal to 2% of total project cost (*N.J.S.A. 40A:20-12*). (Owner Occupied only).

Long Term Residential Project with an annual service charge based on the formula pursuant to *N.J.S.A. 40A:20-12(b)(1)*.

Long Term Residential Condominium with an annual service charge based on the formula pursuant to *N.J.S.A. 40A:20-12(b)(1)*.

A negotiated amount pursuant to the *Redevelopment Area Bond Financing Law, N.J.S.A. 40A:12A-64 et seq.*

**B. Term Requested:**

15 Years

**C. Proposed Rates and Phases:**

<u>Starting Year</u>	<u>Ending Year</u>	<u>Rate</u>	<u>Phase-out (alternative method)</u>
<u>1</u>	<u>5</u>	<u>10%</u>	<u>_____</u>
<u>6</u>	<u>10</u>	<u>12.5%</u>	<u>_____</u>
<u>11</u>	<u>15</u>	<u>15%</u>	<u>_____</u>
<u>_____</u>	<u>_____</u>	<u>_____</u>	<u>_____</u>
<u>_____</u>	<u>_____</u>	<u>_____</u>	<u>_____</u>
<u>_____</u>	<u>_____</u>	<u>_____</u>	<u>_____</u>

**D. Form of Financial Agreement:**

Attach the proposed form of the financial agreement as **Exhibit 19** to this application. The correct form for your project type should be attached to this application. Please note that the final financial agreement provides that a sealed certification by the Project architect as to the final Project cost must be submitted so that it can be added to the agreement within 60 days after the issuance of the Certificate of Occupancy for the Project.

## Representations and Certifications:

The Applicant certifies that all information contained in the application for a tax exemption, including but not limited to the information contained in the Exhibits attached hereto, is true and accurate to the best of his or her knowledge and further certifies to the following:

A. The Project conforms to the Redevelopment Plan that is in effect for the area that includes the Project site and with any Redevelopment Agreement as may be in place between the Municipality and the Developer.

B. The Project either: 1) conforms to the Master Plan of the Municipality; or 2) to the extent that the Redevelopment Plan is inconsistent with the Master Plan, the Project conforms to the Redevelopment Plan and the Municipal Council, in adopting the Redevelopment Plan, set forth its reasons for adopting a Redevelopment Plan with such inconsistencies.

C. The Project will conform to and the applicant(s) agrees to comply with all Federal and State laws and to all applicable municipal ordinances.

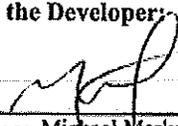
D. Construction of the Project has not commenced as of the time of the submission of this application. The applicant understands that the Municipal Council is under no obligation to approve this tax exemption application. Any work done on the assumption of receipt of a tax exemption following the submission of the application and before final approval is undertaken at the risk of the developer. **Note that under no circumstances will an exemption be granted for a project that has already reached substantial completion.**

F. No officer or employee of the Municipality has any interest, directly or indirectly, in the Project that is the subject of this application.

## Signatures

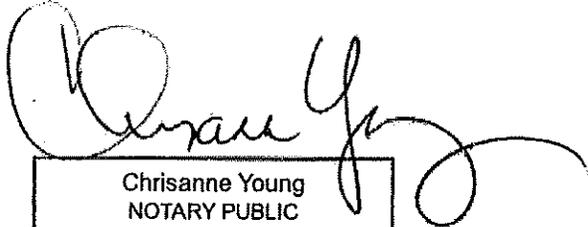
By my signature below, I hereby submit this long term tax exemption application on behalf of the Developer. I certify that all of the information contained herein, including, but not limited to the information contained in the Exhibits attached hereto, is true and accurate to the best of my knowledge and belief. I am aware that if any of the information provided is willfully false, that I am, subject to prosecution.

For the Developer:

  
\_\_\_\_\_  
Name: Michael Markovitz  
Title: Authorized Representative

6-30-22  
Date

Please notarize here or  
provide attestation and  
seal of corporate secretary

  
Chrisanne Young  
NOTARY PUBLIC  
STATE OF NEW JERSEY  
MY COMMISSION EXPIRES SEPT. 10, 2024

## EXHIBITS

The following is a check-list of required exhibits that must be attached to the application:

<u>Exhibit #</u>	<u>Description</u>	<u>Included?</u>
1	Disclosure of Ownership	___
2	Certificate of Incorporation	___
3	Certificate of DCA Approval of Urban Renewal Entity	___
4	Resolution Authorizing Submission of Application	___
5	Metes and Bounds Description	___
6	Survey	___
7	Copy of Deed or Lease Agreement	___
8	Narrative Description of Project	___
9	Site Plan as Approved by Planning Board	___
10	Site Plan Approval Resolution	___
11	Total Project Cost Estimate	___
12	Cost Estimates for Each Unit Type	___
13	Project Pro-Forma	___
14	Project Financing Plan	___
15	Private Financing Commitments	___
16	Explanation of the Need for Tax Exemption	___
17	Project Schedule	___
18	Summary of Project Benefits	___
19	Form of Financial Agreement	___

DISCLOSURE OF OWNERSHIP

Instructions:

New Jersey law (NJSA 52:25-24.2) requires that all corporations and partnerships seeking a public contract submit a list of the names and addresses of all principals who own more than 10% of any class of stock, or 10% or more of the total stock (if a corporation), or 10% or more of the partnership. In addition, if the Developer has as one or more of its owners a corporation or partnership, the ownership of those entities must be similarly disclosed, and that process shall continue down the entire chain of ownership until the names and addresses of every unincorporated stockholder and/or individual partner with more than a 10% interest is disclosed.

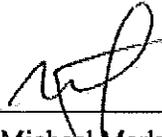
This information must be provided on the forms following these instructions entitled "Disclosure of Ownership." Separate forms should be used for each corporation or partnership included in the chain of ownership. Each form must be signed by an officer of the corporation and be attested to by the secretary (if a corporation) or by all partners (if a partnership). Partnership forms must be notarized as well.

Failure to properly complete this disclosure statement or to submit it as part of the application will be grounds for the application to be rejected.

**DISCLOSURE OF OWNERSHIP**  
(for use by Corporations)

**I. Principals (list all owners of 10% or more of stock)**

<u>Name</u>	<u>Home Address</u>	<u>Title</u>	<u>%Owned</u>
Michael Markovitz	2029 Morris Avenue, Union, NJ 07083	Authorized Rep.	50%
Jeffrey Markovitz	2029 Morris Avenue, Union, NJ 07083	Authorized Rep.	50%

By:  \_\_\_\_\_ 6.30.22  
Michael Markovitz  
Authorized Representative

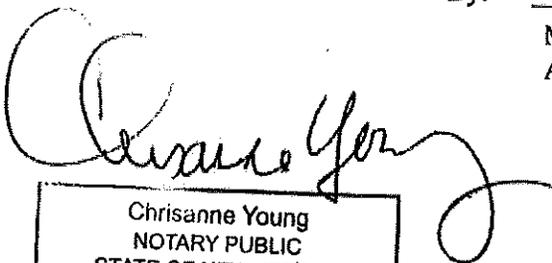
  
Chrisanne Young  
NOTARY PUBLIC  
STATE OF NEW JERSEY  
MY COMMISSION EXPIRES SEPT. 10, 2024

EXHIBIT 2

CERTIFICATE OF INCORPORATION

Please attach a copy of the approved certificate of incorporation of the entity applying for the exemption to this sheet.

**CERTIFICATE OF FORMATION  
OF  
8 SECOND STREET URBAN RENEWAL, LLC**

LLC

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

**FILED**  
**JUN 02 2022**  
**STATE TREASURER**

1. The name of the limited liability company is:

**8 SECOND STREET URBAN RENEWAL, LLC**

(referred to below as the "Company").

060047380

2. The address of the Company's initial registered office in New Jersey is 2029 Morris Avenue, Union, New Jersey 07083. The Company's initial registered agent at that address is Michael Markovitz.

3. The principal address of the Company shall be c/o Markbuilt Homes, 2029 Morris Avenue, Union, New Jersey 07083.

4. The term of the Company shall be perpetual.

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

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

7. The Company declares that (a) it has been organized to serve a public purpose; (b) its operations shall be directed toward: (i) the redevelopment of redevelopment areas, the facilitation of the relocation of residents displaced or to be displaced by redevelopment, or the conduct of low and moderate income housing projects; (ii) the

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S 3157843  
7 5599129

acquisition, management and operation of a project, redevelopment relocation housing project, or low and moderate income housing project under P.L.1991, c.431 (C.40A:20-1 et seq.); and (c) it shall be subject to regulation by the Municipality, and to a limitation or prohibition, as appropriate, on profits or dividends for so long as it remains the owner of a project subject to P.L.1991, c.431 (C.40A:20-1 et seq.).

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

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

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

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

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

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

IN WITNESS WHEREOF, the undersigned duly authorized person has executed this Certificate of Formation this 30<sup>th</sup> day of November, 2021.

  
\_\_\_\_\_  
Michael Markovitz  
Authorized Person



**State of New Jersey**  
DEPARTMENT OF COMMUNITY AFFAIRS  
LOCAL PLANNING SERVICES  
101 SOUTH BROAD STREET  
PO Box 813  
TRENTON, NJ 08623-0813  
(609) 292-3000 • FAX (609) 633-6056

**PHILIP D. MURPHY**  
Governor

**LT. GOVERNOR SHEILA Y. OLIVER**  
Commissioner

DEPARTMENT OF COMMUNITY AFFAIRS

TO: State Treasurer  
RE: 8 SECOND STREET URBAN RENEWAL, LLC  
File # 3274  
An Urban Renewal Entity

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

Done this 3<sup>rd</sup> day of February 2022 at Trenton, New Jersey.

DEPARTMENT OF COMMUNITY AFFAIRS

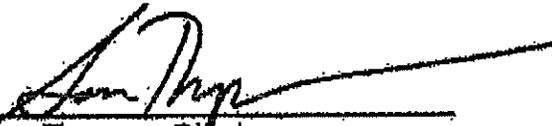
By:   
Sean Thompson, Director  
Local Planning Services



Exhibit 3

Certificate of Approval of Urban Renewal Entity from the New Jersey Department of  
Community Affairs (DCA)

Please attach a copy of DCA's certificate of approval of the applicant as an Urban Renewal entity to this sheet. (Low and moderate income housing projects to be constructed outside an approved redevelopment area are exempt from this requirement.)



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

PHILIP D. MURPHY  
*Governor*

LT. GOVERNOR SHEILA Y. OLIVER  
*Commissioner*

DEPARTMENT OF COMMUNITY AFFAIRS

TO: State Treasurer  
RE: 8 SECOND STREET URBAN RENEWAL, LLC  
File # 3274  
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Done this 3<sup>rd</sup> day of February 2022 at Trenton, New Jersey.

DEPARTMENT OF COMMUNITY AFFAIRS

By: 

Sean Thompson, Director  
Local Planning Services



METES AND BOUNDS DESCRIPTION

CASEY & KELLER, INC.

LAND SURVEYORS + CIVIL ENGINEERS + PLANNERS

N.J. STATE BOARD OF PROFESSIONAL ENGINEERS & LAND SURVEYORS  
CERTIFICATE OF AUTHORIZATION NO. 24GA27985400

258 MAIN STREET, MILLBURN, NEW JERSEY, 07041  
VOICE: 973-379-3280 FAX: 973-379-7993

**DEED DESCRIPTION**  
**8 Second Street**

Tax Lot 1, Block 1905 in the Township of South Orange Village, Essex County, New Jersey.

BEGINNING at a point in the northerly side of Third Street, therein distant westerly 241.89 feet from the intersection of the same with the westerly side of Valley Street.

- thence (1) along said side of Third Street N 47 deg. 55 min. 50 sec, W 78.88 feet to a point of curve in the same;
- thence (2) still along the same northerly on the arc of a curve, curving to the right having a radius of 25.00 feet for a distance of 37.96 feet to a point of tangency on the easterly side of Sloan Street;
- thence (3) along said side of Sloan Street N 39 deg. 05 min. E 202.29 to a point in the southerly side of Second Street;
- thence (4) along said side of Second Street S 52 deg. 28 min. 10 sec. E 86.00 feet;
- thence (5) S 37 deg. 41 min. 50 sec. W 113.85 feet;
- thence (6) S 51 deg. 46 min. 20 sec. E 19.32 feet;
- thence (7) S 41 deg. 45 min. 30 sec. W 119.81 feet to the northerly side of Third Street and the point or place of BEGINNING.



---

Michael Lanzafama PE & PLS Reg. # 30084  
NJ Licensed Professional Land Surveyor & Engineer

RESOLUTION AUTHORIZING SUBMISSION OF APPLICATION

Please attach a notarized resolution that follows the format below:

FORM OF CERTIFIED CORPORATE RESOLUTION

PLEASE TAKE NOTICE that a meeting of the Board of Directors of the

8 Second Street Urban Renewal, LLC was held at 10 A.M. on June 30, 2022  
(Name of Corporation) P.M. (Date)  
at  
2029 Morris Avenue, Union, New Jersey 07083  
(Address)

at which time the following RESOLUTION was unanimously adopted:

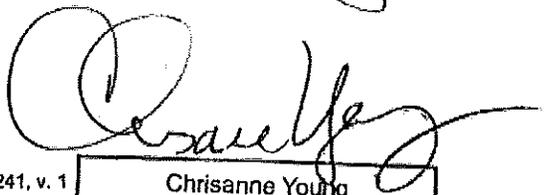
RESOLVED that this Corporation is authorized to submit an application to the Municipality for the provision of a long term tax exemption.

BE IT FURTHER RESOLVED that if this Corporation's application is accepted by the Municipality, the President of this Corporation is authorized to execute and deliver on its behalf, a contract with the Municipality, substantially in the form attached to the application, with such changes thereto as may be negotiated by the parties.

The undersigned Secretary of this Corporation hereby certifies that the foregoing Resolution was lawfully adopted by the Board of Directors of this Corporation on the date set forth above, that the foregoing Resolution is a true, accurate and complete copy of the Resolution so adopted and placed in the Corporation's records, and that they are in full force and effect as of the date hereof.



6-30-22



4876-3532-7241, v. 1

Chrisanne Young  
NOTARY PUBLIC  
STATE OF NEW JERSEY  
MY COMMISSION EXPIRES SEPT. 10, 2024

SURVEY

Attach survey of the Project Site. If a survey has not yet been completed, a plotting on the official tax map may be provided at this time. A certified survey will be required prior to execution of any financial agreement.



COPY OF DEED OR LEASE AGREEMENT

Please attach evidence that applicant has legal control over site(s) included in the proposed project.

Attached as Exhibit 7 is a draft deed transferring the subject property to the Applicant URE. The Applicant will complete the transfer in the near future prior to the execution of the Financial Agreement, if approved.

Prepared by: James L. Esposito, Esq.

**DEED**

This Deed is made on \_\_\_\_\_, 2022, and delivered on \_\_\_\_\_, 2022,

**BY AND BETWEEN:**

**8 SECOND STREET, LLC**, a New Jersey limited liability company, with an address of 2029 Morris Avenue, Union, New Jersey 07083, hereinafter referred to as the Grantor,

**AND**

**8 SECOND STREET URBAN RENEWAL, LLC**, a New Jersey urban renewal limited liability company, with an address of 2029 Morris Avenue, Union, New Jersey 07083, hereinafter referred to as the Grantee,

The words "Grantor" and "Grantee" shall mean all Grantors and all Grantees listed above.

**Transfer of Ownership.** The Grantor grants and conveys (transfers ownership of) all interest owned by the Grantor in the property described below to the Grantee. This transfer is made for the sum of **TEN AND 00/100 DOLLARS (\$10.00)**. The Grantor acknowledges receipt of this money. This Deed is made with the unanimous consent of the members of the Grantor.

**Tax Map Reference.** (N.J.S.A. 46:15-1.1) Township of South Orange Village, **Block 1905, Lot 1.**

**Property.** The property consists of the land and all the buildings and structures on the land in the Village of South Orange, County of Essex, State of New Jersey. The legal description is attached hereto as **Exhibit A** and made a part hereof.

**BEING** the same premises conveyed to Grantor by deed from Wells Fargo Bank, N.A., a National Banking Association, successor by merger to Howard Savings Institution, Howard Bank and First Fidelity Bank, by deed dated November 24, 2019 and recorded December 12, 2019, in the Clerk's Office of Essex County as Instrument No. 2019117970.

**Being** the same premises conveyed to Wells Fargo Bank, N.A., a National Banking Association, successor by merger to Howard Savings Institution, Howard Bank and First Fidelity Bank, by mesne bank mergers and name changes by deed from the Federal Deposit Insurance Corporation, as Receiver of the Howard Savings Bank, dated February 28, 1993, recorded October 4, 1993 in the Essex County Register's Office in Deed Book 5279 Page 189.

Commonly known as **8 Second Street, South Orange, New Jersey 07079.**

**Promises by Grantor.** The Grantor promises that the Grantor has done no act to encumber the property. This promise is called a "covenant as to grantor's acts" (N.J.S.A. 46:4-6). This promise means that the Grantor has not allowed anyone else to obtain any legal rights which affect the property, such as by making a mortgage or allowing a judgment to be entered against the Grantor.

**Signatures.** The Grantor signs this Deed as of the date at the top of the first page.

**8 SECOND STREET, LLC,**  
a New Jersey limited liability company

By: \_\_\_\_\_  
Name:  
Title:

**STATE OF NEW JERSEY )**  
**) ss.**  
**COUNTY OF \_\_\_\_\_ )**

I CERTIFY that on this \_\_\_\_\_ day of \_\_\_\_\_ 2022,  
\_\_\_\_\_ personally appeared before me and stated to my satisfaction that this person (or if more than one, each person):

- a) was the maker of this instrument;
- b) was authorized to and did execute this instrument as the Authorized Representative of **8 SECOND STREET, LLC**, the entity named in this instrument;
- c) executed and delivered this instrument as the voluntary act of the entity named in this instrument;
- d) made this Deed for **\$10.00** as the full and actual consideration paid or to be paid for the transfer of title. (Such consideration is defined in N.J.S.A. 46:15-5)

\_\_\_\_\_  
Notary Public \_\_\_\_\_  
My Commission Expires \_\_\_\_\_

**Record and Return to:**

Derek W. Orth, Esq.  
Inglesino, Webster, Wyciskala & Taylor, LLC  
600 Parsippany Road  
Suite 204  
Parsippany, NJ 07054

**EXHIBIT A**

D E S C R I P T I O N

ALL THAT certain tract, lot and parcel of land lying and being in the  
Twp. of South Orange Village County of Essex and State of New Jersey  
being more particularly described as follows:

BEGINNING AT THE CORNER FORMED BY THE INTERSECTION OF THE EASTERN LINE OF  
BLOAN STREET AND THE SOUTHERLY LINE OF SECOND STREET AND RUNNING THENCE:

1. ALONG SAID SOUTHERLY LINE OF SECOND STREET, SOUTH 91 DEGREES 08 MINUTES  
10 SECONDS EAST 86.02 FEET TO A POINT; THENCE
2. SOUTH 37 DEGREES 41 MINUTES 30 SECONDS WEST 111.84 FEET TO A POINT; THENCE
3. SOUTH 71 DEGREES 48 MINUTES 30 SECONDS EAST 17.51 FEET TO A POINT; THENCE
4. SOUTH 41 DEGREES 48 MINUTES 30 SECONDS WEST 119.08 FEET TO THE NORTHERLY  
LINE OF THIRD STREET; THENCE
5. ALONG SAID NORTHERLY LINE OF THIRD STREET, NORTH 37 DEGREES 08 MINUTES  
30 SECONDS WEST 78.04 FEET TO A POINT OF CURVE; THENCE
6. STILL ALONG SAID NORTHERLY LINE OF THIRD STREET, NORTHERLY ON A CURVE TO  
THE RIGHT HAVING A RADIUS OF 25.0 FEET IN THE DISTANCE OF 27.94 FEET TO  
A POINT IN THE EASTERN LINE OF BLOAN STREET; THENCE
7. ALONG THE EASTERN LINE OF BLOAN STREET, NORTH 37 DEGREES 08 MINUTES  
WEST 102.29 FEET TO THE POINT AND PLACE OF BEGINNING.

THE ABOVE DESCRIPTION BEING DRAWN IN ACCORDANCE WITH A SURVEY MADE BY CAPARSO  
AND HINCOB, INC., DATED JUNE 7, 1993.

BEING KNOWN AND DESIGNATED AS LOT 1 BLOCK 1901 ON THE TAX MAPS OF THE  
TOWNSHIP OF SOUTH ORANGE VILLAGE.

Not Certified Copy

NARRATIVE DESCRIPTION OF PROJECT

Including the height and bulk of proposed improvements, type of construction materials to be used and expected square foot area of each proposed use. Describe each type of unit to be constructed as part of the Project as well as any restrictions relating to age or income. Include maps, renderings, floor plans and other graphic materials if available.

The Applicant has obtained approvals for the construction of a 5-story, 42-unit, multi-family inclusionary rental development. One of the units will be reserved for a building superintendent. 8 of the units will be reserved for low- and moderate-income households. Approximately 1,875 SF of ground floor space will be utilized as artist incubator space. Exterior finishes include brick, precast stone, fiber cement panels, solid glass, structural brick masonry, mechanical louvers, and railing systems, amongst other things. The building will consist of a concrete podium with wood framed construction above. See attached architectural and civil plans for additional information.

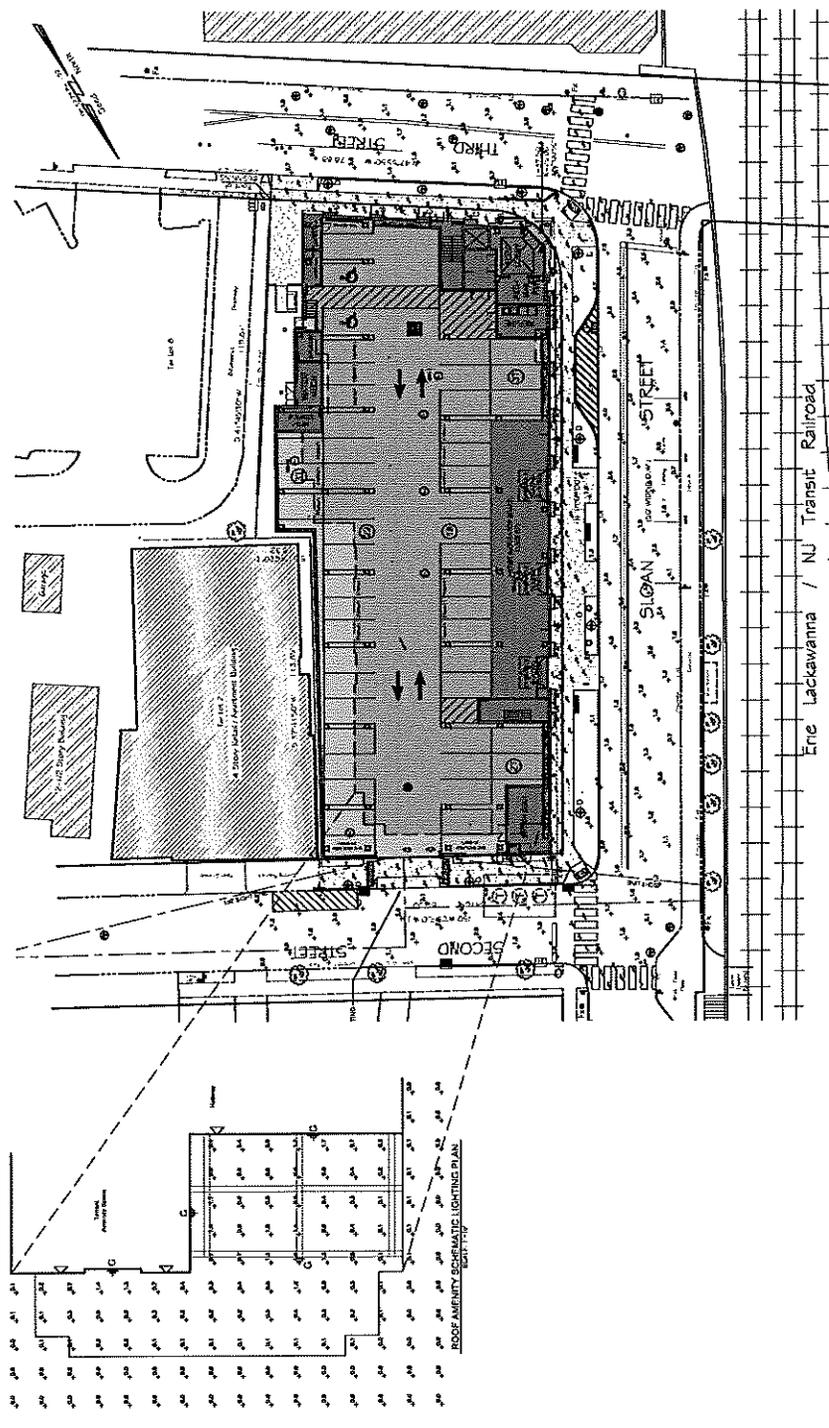
SITE PLAN APPROVAL BY PLANNING BOARD

Attached hereto as Exhibit 9 are the revised civil plans dated March 3, 2022, prepared by Casey & Keller, which were submitted to the Planning Board. Please note that the Applicant will be submitting finalized plans for resolution compliance in the near future.









**LIGHTING SCHEDULE**

LET	CITY	LUMINAIRE	DOT	LF	OUTPUT
A	12	100W SLOAN ST 15' HGT. 15' DIA.	MA	15'	15000
B	12	100W SLOAN ST 15' HGT. 15' DIA.	MA	15'	15000
C	12	100W SLOAN ST 15' HGT. 15' DIA.	MA	15'	15000
D	12	100W SLOAN ST 15' HGT. 15' DIA.	MA	15'	15000
E	12	100W SLOAN ST 15' HGT. 15' DIA.	MA	15'	15000
F	12	100W SLOAN ST 15' HGT. 15' DIA.	MA	15'	15000
G	12	100W SLOAN ST 15' HGT. 15' DIA.	MA	15'	15000

Item	Qty	Unit	Material	Notes
100W SLOAN ST 15' HGT. 15' DIA.	15	Fixture	15000	
100W SLOAN ST 15' HGT. 15' DIA.	15	Fixture	15000	
100W SLOAN ST 15' HGT. 15' DIA.	15	Fixture	15000	
100W SLOAN ST 15' HGT. 15' DIA.	15	Fixture	15000	
100W SLOAN ST 15' HGT. 15' DIA.	15	Fixture	15000	
100W SLOAN ST 15' HGT. 15' DIA.	15	Fixture	15000	
100W SLOAN ST 15' HGT. 15' DIA.	15	Fixture	15000	
100W SLOAN ST 15' HGT. 15' DIA.	15	Fixture	15000	
100W SLOAN ST 15' HGT. 15' DIA.	15	Fixture	15000	
100W SLOAN ST 15' HGT. 15' DIA.	15	Fixture	15000	

**LIGHTING PLAN**  
8 SECOND STREET  
TAX LOT 1, BLOCK 195  
TWP. OF SOUTH ORANGE VILLAGE  
ESSEX COUNTY, NJ

**CASEY &**



**KELLER INCORPORATED**  
Civil Engineers  
Land Surveyors  
Planners

228 Main Street, 3rd Fl., 191  
Mantoloking, New Jersey 07941  
973-221-2200 Fax 973-221-2201

**BRIAN'S COMPANY**

NO.	DATE	DESCRIPTION
1	11/15/10	Issue for Review
2	11/15/10	Issue for Review
3	11/15/10	Issue for Review
4	11/15/10	Issue for Review
5	11/15/10	Issue for Review
6	11/15/10	Issue for Review
7	11/15/10	Issue for Review
8	11/15/10	Issue for Review

**Lighting Notes:**

1. All lighting fixtures shall be of the type and make specified herein.
2. The Owner is to be held responsible for obtaining all necessary permits from the County and City for the proposed lighting system.
3. All lighting fixtures shall be of the type and make specified herein.
4. All lighting fixtures shall be of the type and make specified herein.
5. All lighting fixtures shall be of the type and make specified herein.
6. All lighting fixtures shall be of the type and make specified herein.
7. All lighting fixtures shall be of the type and make specified herein.
8. All lighting fixtures shall be of the type and make specified herein.

**1.1 ELECTRICAL SYMBOLS**

- 1.1.1. 100W SLOAN ST 15' HGT. 15' DIA.
- 1.1.2. 100W SLOAN ST 15' HGT. 15' DIA.
- 1.1.3. 100W SLOAN ST 15' HGT. 15' DIA.
- 1.1.4. 100W SLOAN ST 15' HGT. 15' DIA.
- 1.1.5. 100W SLOAN ST 15' HGT. 15' DIA.
- 1.1.6. 100W SLOAN ST 15' HGT. 15' DIA.
- 1.1.7. 100W SLOAN ST 15' HGT. 15' DIA.
- 1.1.8. 100W SLOAN ST 15' HGT. 15' DIA.
- 1.1.9. 100W SLOAN ST 15' HGT. 15' DIA.
- 1.1.10. 100W SLOAN ST 15' HGT. 15' DIA.

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6. All lighting fixtures shall be of the type and make specified herein.
7. All lighting fixtures shall be of the type and make specified herein.
8. All lighting fixtures shall be of the type and make specified herein.

Scale: 1" = 20'

SITE PLAN APPROVAL RESOLUTION

**Resolution**  
**Township of South Orange Village**  
**Planning Board**  
**In the Matter of 8 Second Street, LLC**  
**Application # 288**  
**8 Second Street**  
**Decided on April 4, 2022**  
**Memorialized on May 2, 2022**  
**Preliminary and Final Site Plan Approval With Redevelopment Plan**  
**Deviations and Design Waivers**

**WHEREAS, 8 Second Street, LLC** (hereinafter the “Applicant”) has made an application for preliminary and final site plan approval and approval of deviations from the Second + Sloan Redevelopment Overlay requirements within the Central Business District Redevelopment Area and design waivers to construct a five-story multi-family residential building with community use space and a parking garage at 8 Second Street, also known as Block 1905, Lot 1 on the Tax Map of the Township of South Orange Village and located in the Second + Sloan Redevelopment Overlay Zone within the Central Business District Redevelopment Area; and

**WHEREAS,** public hearings were conducted on February 7, 2022, February 24, 2022, March 7, 2022 and April 4, 2022; and

**WHEREAS,** the Applicant was represented by Derek W. Orth, Esq.; and

**WHEREAS,** the Applicant provided testimony by Michael Lanzafama, a professional engineer whose credentials were accepted by the Board; Brian Conway of Casey & Keller, a professional engineer, landscape architect and professional planner whose credentials were accepted by the Board; and Laurance D. Appel, a professional architect whose credentials were accepted by the Board; and

**WHEREAS,** the Applicant presented and relied upon the application package initially submitted to the Board, filed December 9, 2021 and exhibits introduced as follows:

- A-1 Colorized site layout and dimension plan;
- A-2 Loading zone exhibit;
- A-3 Rendering of the corner of Third Street and Sloan Street dated February 4, 2022;
- A-4 Rendered copy of streetscape plan, Sheet 7, January 21, 2022;
- A-5 Aerial photograph;
- A-6 Sloan Street revised rendering February 4, 2022;
- A-7 Streetscape details revised February 4, 2022;
- A-8 Roof plan, PB-1.2a and details, revised February 11, 2022;

- A-9 Architectural drawings revised March 3, 2022;
- A-10 Architectural renderings revised with respect to Sloan Street and Third Street;
- A-11 Architectural renderings of Third Street and Sloan Street;
- A-12 Architectural renderings of storefronts of co-creative space;
- A-13 Materials board dated March 29, 2022;
- A-14 Truck turning plan with modifications regarding Sloan Street dated March 31, 2022.

as well as the following:

- Site Plan, consisting of 14 sheets prepared by Michael T. Lanzafama, P.E. of Casey & Keller, Inc. dated December 3, 2021, last revised January 21, 2022;
- Architectural plans consisting of 16 sheets prepared by Laurence D. Appel, R.A. dated October 13, 2020, last revised January 21, 2022;
- Street view photo board (1 sheet) prepared by Casey & Keller, Inc. dated December 6, 2021;
- Refuse truck turning plan and passenger vehicle turning plan (1 sheet) prepared by Casey & Keller, Inc. dated December 3, 2021;
- Stormwater Management Report prepared by Casey & Keller, Inc. dated November 29, 2021 and last revised on December 29, 2021;
- Stormwater Management Measures Maintenance Plan and Field Manual prepared by Casey & Keller, Inc. dated December 3, 2021;
- Trip generation and analysis prepared by Hamal Associates, Inc. dated December 6, 2021; and
- Sustainable design letter (4 pages) prepared by Laurance D. Appel, R.A. dated January 21, 2022;
- Environmental summary prepared by Environmental Logic, LLC dated February 2, 2022;
- Architectural response memos prepared by Laurance D. Appel, R.A. dated March 3, 2022 and March 4, 2022;

**WHEREAS**, representatives of the public participated in the hearing, asking questions of the witnesses and offering statements in regard to the application; and

**WHEREAS**, the Board reviewed and considered the application and documents submitted therewith; and

**WHEREAS**, the Board also considered the input of its professionals at the hearing and in written reports, including the reports of Greer Patras, Board Planner dated December 29, 2021 and February 4, 2022 and Eric L. Keller, P.E., Board Engineer, dated December 28, 2021, February 2, 2022 and March 31, 2022; and

**WHEREAS**, the Board also considered the input of the South Orange Design Review Board dated February 21, 2022 and March 18, 2022 and the South Orange Environmental Commission dated February 23, 2022.

**NOW THEREFORE**, the Board makes the following findings of fact, based upon the evidence presented at its public hearings, at which a record was made.

1. The subject properties are located at 8 Second Street, also known as Block 1905, Lot 1. The property has an area of 22,039 square feet. The property is a corner lot with frontage on Second Street, Third Street and Sloan Street. The lot currently includes a one-story Wells Fargo bank building with drive-thru and parking.

2. The property is located in the Second + Sloan Redevelopment Overlay District of the Central Business District Zone.

3. The Applicant proposes to remove the existing site improvements and construct a five-story building consisting of the following. On the first floor, the Applicant will construct a 1,975 square foot artist incubator space and window art display area, as well as a parking garage with 26 standard parking spaces, three of which will accommodate electric vehicles, 12 compact spaces, 16 tandem spaces and 2 ADA-compliant spaces; a refuse and recycling area, a residential lobby and elevator and mechanical storage and switch gear rooms.

4. On the second, third and fourth floors, the Applicant proposes to construct 11 residential units and support improvements on each floor, with a superintendent's apartment on the third floor. On the fifth floor, the Applicant will construct 9 residential units, support services and indoor and outdoor amenity space.

5. The Applicant requests the following deviations from the Second + Sloan Redevelopment Plan:

a. Relief from Section 6.2.L.i which permits up to 30% (14 spaces) of the total parking spaces provided to be tandem parking spaces, whereas 33% (16 spaces) are proposed as tandem spaces;

b. Relief from Section 6.2.L.i in that a minimum tandem parking space dimension of 8 feet wide by 18 feet long is required, but 3 tandem parking spaces are proposed at a dimension of 9 feet wide by 16 feet long;

c. Relief from Section 6.2.M.i which requires a minimum of one on-site loading space with a dimension of 11 feet by 40 feet, whereas the Applicant proposes 0 on-site loading spaces and the off-site loading spaces are 7 feet by 30 feet along Second Street and 8 feet by 23 feet along Sloan Street.

d. Relief from Ordinance Section 185-141A.8 which provides for a maximum of 6 colors on a sign whereas more than 6 colors are proposed;

e. Relief from Section 6.2.Q.iii which prohibits commercial branding on window

displays whereas window signs with commercial branding are proposed for the co-creative space.

6. The Applicant requests the following design waivers from the Redevelopment Plan and/or the Land Development Ordinance:

a. Relief from Section 7.4.D.iii, which provides for a minimum of 9 foot width of sidewalks and no less than 6' of unobstructed pedestrian passage whereas in two locations on Second Street, the Applicant proposes less than 6 feet of passage due to plantings light poles on the sidewalk; and

b. Relief from Section 7.3.A, which provides for a minimum of 2 foot candles and a maximum of five foot candles on pedestrian sidewalks, whereas 0.8 foot candles are proposed on the Second Street pedestrian sidewalk;

c. Relief from Section 7.3.A, which provides for a minimum of 2 foot candles and a maximum of 5 foot candles permitted for building entrances, but 1.7 foot candles is proposed in the Sloan Street building entrance; and

d. Relief from Section 7.3.F which provides that lights are to be fully enclosed, or shielded, full cutoff fixtures used to prevent light spillage onto off-site properties or upward in to the sky required, but cylinder lights that produce up light are proposed.

7. The proposed building is a five-story structure with approximately 19,546 square footprint. The first floor will include a 1,975 square foot artist incubator space, along with parking and services. The incubator space will be leased to the Village free of charge for 15 years, as provided for in the Redevelopment Agreement between the Applicant and the Village. There will be 42 apartments, with 41 rented and one reserved for the superintendent. Eight of those units will be designated affordable housing units. The 34 market units will consist of 4 one-bedroom, 3 one-bedroom plus a den, 14 two-bedroom, 9 two-bedroom plus a den and 4 three-bedroom units. The 8 affordable units will consist of 1 one-bedroom unit, 5 two-bedroom units and 2 three-bedroom units. The affordable units will be distributed throughout the building. As later noted, the Applicant agreed during the course of the hearings to eliminate the one-bedroom affordable unit and replace it with either a two-bedroom or a three-bedroom affordable unit. The project complies with its affordable housing obligation by providing 20% of affordable units on site.

8. An amenity deck with an area of approximately 1,780 of net square feet will be located along the Second Street frontage and part of the Sloan Street frontage.

9. The façade materials will primarily consist of brick and fiber-cement panel with large areas of glass. The railings and glass frames will be black and there will be a dark charcoal brick along the base.

10. The lobby area will include a broad, open glass façade that is well lit.

11. On the roof, equipment will be set back at least 10 feet from the parapet. The parapet will screen the equipment. The elevator bulkhead extends above the roof approximately 14 inches but will still be screened by the parapet. The bulkhead for the stairway was removed and replaced with a hatch and an interior ship ladder.

12. The design of the facades and other features of this building underwent considerable review by the Board professionals and the Design Review Board. In response to those comments, significant revisions were made. Among those revisions were the following. Some windows that had previously been opaque will now be clear and will include art displays. A stairway was modified so that clear glass could be utilized at a door and a store front to each side. The Third Street stairs have been revised to show a roof hatch in lieu of a stair to the roof. A glass high speed garage door was added. The size of a rooftop pergola was reduced and moved five feet further away from the building line and its color was darkened. The colors of the panels above the retail spaces are dark to be consistent with the metal framing. The storefront window at the ground floor of the Third Street façade was replaced with a recessed brick wall. The fifth-floor windows near the corner element were removed. The decorative architectural band at the fourth-floor line was replaced with rowlock and soldier brick course.

13. The extent of transparency on the facades complies with the standards of the Redevelopment Plan.

14. Ingress and egress to the parking garage will be provided from Second Street. There will be a depressed curb on Sloan Street for artists to move in equipment and artwork. There will be a curb cut on Third Street for access to the loading area for maintenance and contractor vehicles. The garage door will open fast enough to avoid queuing on Second Street. There will be a notice in the lease regarding the permitted size of moving vans and trucks.

15. The Applicant submitted a truck movement plan that indicated that modifications to Sloan Street for the project will provide adequate and safe ability for emergency vehicles to navigate on Second Street. The Board engineer testified that these emergency vehicles can adequately maneuver on these streets and perform their functions safely. The streetscape plan provides for a more pedestrian friendly environment and actually eliminates some obstructions to emergency vehicles such as long-term parked cars. The hydrant and loading areas are not near each other and there is adequate room for a fire truck to park on Second Street. On the east side of Sloan Street, there is no difference between the existing and proposed conditions regarding a truck making a left turn to Third Street. For these reasons, the Board finds the circulation plan to be acceptable.

16. The traffic volumes with this project will be reduced from the traffic generated by the prior bank use.

17. The Redevelopment Plan requires one on-site loading space with dimensions of 11 feet by 40 feet. The Applicant is proposing a 11.5 feet by 30 feet space behind the building on the site for maintenance and service vehicles. The entrance to this loading space would be provided off of Third Street for contractors and repair persons. Also, there will be a short-term loading space on Sloan Street and a loading space on Second Street for trash pickups and for

moving in and out of tenants in this building and the adjacent residential building. Board of Trustees approval for these on-street loading spaces will be required.

18. Forty-eight parking spaces will be provided. Twenty-six of those will be standard spaces with dimensions of 9 feet by 18 feet. Twelve spaces will be compact spaces with dimensions of 8 feet by 18 feet. Two ADA-compliant spaces will be provided. Three electric vehicle charging stations will be provided and four spaces will be make-ready for EV stations. 16 of the spaces will be tandem. All spaces will be assigned.

19. The plan requires 47 spaces and the Applicant is proposing 48. One space may need to be eliminated when the specifications for the ATM, utility work and the refuse and recycling space are complete. The Board agrees that one stall may be eliminated in that instance, subject to review and approval by the Board Engineer.

20. Thirty-seven bike spaces will be provided. Thirty-one of those spaces will be located indoors and 6 spaces will be provided outdoors.

21. For the on-street loading spaces, a sign will be provided indicating that the area is a loading zone and providing a time limit. The sign should also provide that there is no idling permitted. The sign installation must be approved by the Board of Trustees.

22. Cross walks at the intersections of Third Street and Sloan Street and Second Street and Sloan Street are designed to ensure pedestrian safety. Specifically, the requirements for these pedestrian facilities are as follows:

- a) **All Crosswalks (All 4 crosswalks at 2<sup>nd</sup> & 3<sup>rd</sup> Street intersections with Sloan Street):**
  - i. ADA Accessible curb ramps are required at all crosswalks.
  - ii. The width of crosswalk striping should be no less than the width of the sidewalks they connect. Minimum width is 8 feet.
  - iii. Crosswalks should be demarcated with high visibility, long life materials that are distinct from the roadway in appearance. We recommend a thermoplastic pavement marking or methyl methacrylate (MMA) for the crosswalks or suitable equal. Colored and stamped asphalt is not an acceptable surface treatment.
  - iv. Crosswalks should be sufficiently illuminated by streetlights to ensure visibility of pedestrians.
  - v. All crosswalk striping shall be thermoplastic striping.
- b) **Additional Standards for 3<sup>rd</sup> Street Crosswalk at Sloan Street:**
  - i. This should consist of highly visible markings that exemplify an artistic and playful design to complement the artist incubator space and art theme of the building.
  - ii. Crosswalks should have vehicle-facing LED-flashing signage facing approaching traffic (as exists at Ridgewood & 3<sup>rd</sup>).
  - iii. An Advance Pedestrian Crossing sign is to be placed on westbound 3<sup>rd</sup> Street approximately 200 feet in advance of the 3<sup>rd</sup> Street crosswalk. There is already an advance pedestrian crossing sign for eastbound traffic (coming from Ridgewood Avenue).

**c) Additional Requirements for Sloan Street Crosswalk at 2<sup>nd</sup> Street:**

- i. Pedestrian crossing signs (W11-2) with downward angled arrows (W16-7P) are to be placed on each approach to this crosswalk.

23. Significant streetscape plans are proposed. Along widened sidewalks along Sloan, planters, three benches of black metal, two trash receptacles and one recycling container, also of black metal, will be installed. Three bike racks near the co-creative space will be provided. Shrubs and perennials in planting beds will be installed with a mix of species.

24. On Third Street, three street trees will be added to complement the trees on the south side of the street. On Second Street, espaliered trees will be added to both sides of the garage door. An additional street tree will be added at an offsite location. The Applicant will maintain landscaping for three years. The landscaping will be subject to periodic inspection by municipal employees for the three year maintenance period to identify if any trees require replacement or other care by the applicant. All trees will have gator bags and deer guards installed.

25. Eight street lights are proposed around the perimeter of the site with heights of 13 feet. Building-mounted lights are provided. These are recessed, high-hat style lights that are adjustable. The Applicant agreed that the adjustable lights will be powered at 50%. The building-mounted lights are cylinder lights set at a height of ten feet. The cross walk lighting is below the minimum levels set forth in the Redevelopment Plan but fall within professional standards. On the rooftop, amenity lighting will be provided at a height of ten feet on each wall. That lighting will be shielded and downward facing. There are two existing lights and two proposed at the Sloan Street and Third Street cross walk and one new light and two existing lights at the Sloan Street and Second Street cross walk. The existing lights to remain are located across Sloan Street and are not on the Applicant's Property.

26. With respect to signs, at the request of the Board and the Design Review Board, the sign package was modified. A wall sign is proposed on each side of the lobby entry providing for the depiction of "88" on the walls. These signs are not internally lit. In addition, there are designs permitted on the incubator space that are artistic in nature and have colors in excess of the six colors permitted by the Land Development Ordinance and therefore require a variance.

27. The project is providing a generator only with enough capacity to provide for operation of the key fob access to the building. In the event of a loss of power, the elevator will be able to descend to the ground floor. The generator will be natural gas powered and will be tested according to the protocols of state law. There will be a four foot high fence proposed to screen that generator from Sloan Street with planting on the east side.

28. The drainage system is designed to significantly reduce peak runoff rates from the existing condition of 81% impervious. Roof runoff will be directed to the underground detention system in the garage.

29. Utilities are available from all three street frontages. There is an easement for an overhead power line which will be relocated. An underground electric service has been approved by PSE&G. A water main will be relocated. Sanitary service will be provided from a main on Sloan Street. There is adequate water volume and pressure.

**NOW, THEREFORE**, based upon the foregoing findings of fact, the Board reaches the following conclusions of law.

1. An Applicant seeking relief from the provisions of the Second + Sloan Redevelopment Plan must comply with the provisions of Section 8.5C of that Plan. That Section provides as follows:

The Planning Board may grant deviations from the regulations contained within this Plan where, by reason for exceptional narrowness, shallowness or shape for a specific piece of property, or by reason of exceptional topographic conditions, pre-existing structures or physical features uniquely affecting a specific piece of property, the strict application of any area, yard, bulk or design objective or regulation adopted pursuant to this Redevelopment Plan would result in peculiar practical difficulties to, or exceptional or undue hardship upon, the developer of such property. The Planning Board may also grant such relief in an application relating to a specific piece of property where the purposes of this Plan would be advanced by a deviation from the strict requirements of this Redevelopment Plan and the benefits of the deviation would outweigh any detriments. No relief may be granted under the terms of this section unless such deviation or relief can be granted without substantial detriment to the public good and without substantial impairment of the intent and purpose of this Redevelopment Plan.

2. This application satisfies the criteria for the deviations requested. With respect to the deviation from Section 6.2Q.iii related to no commercial branding on window signs, here the artistic styling on the windows is an integral part of the identification of the co-creative space and will provide that space with an attractive appearance from the street without negative impact.
3. With respect to the deviation from Section 6.2M related to the loading space, the Applicant is providing for on-site loading for building maintenance and repair, while providing loading spaces on Sloan Street for some short-term delivery services and a loading space on Second Street for trash service and move-in/move-out, albeit at a smaller size than required by the Plan.
4. With respect to the deviation relating to tandem parking, the plan requires that up to 30% of the spaces may be tandem with dimensions of 8 feet by 18 feet. 16 tandem spaces (33% of total parking spaces) are provided, which does not meet the requirement, and three of them have dimensions of 9 feet by 16 feet, which is less than required. The Board finds this is a minor deviation which causes no negative impact.

5. With respect to the variance under Section 185-141.A8 regarding additional colors in the sign, the Board finds that the benefits of granting this relief outweigh any detriments pursuant to N.J.S.A. 40:55D-70(c)(2).
6. With regard to the design waiver for sidewalk width, there is sufficient width under the Plan requirements for pedestrian passage unobstructed except that on Second Street, there are two locations where the width is less than required due to plantings in the sidewalk and light poles. The Board finds there is adequate space for all activities notwithstanding this lesser width.
7. With regard to the design waivers related to lighting, the Board finds that the lighting is adequate notwithstanding these deviations from the design standards. The lighting on the roof deck is uniform and low and the upward facing component of the lighting for the cylinders provides a positive visual effect with no detrimental impact.

**NOW THEREFORE** be it resolved by the Planning Board of the Township of South Orange Village that the application of 8 Second Street, LLC for property located at 8 Second Street, also known as Block 1905, Lot 1 as determined as follows:

1. The Board grants preliminary and final site plan approval pursuant to N.J.S.A. 40:55D-46 and 50.
2. The Board grants the deviations from the Second + Sloan Redevelopment Plan set forth herein, pursuant to Section 8.5C of that Plan.
3. The Board grants the design waivers requested pursuant to N.J.S.A. 40:55D-51.

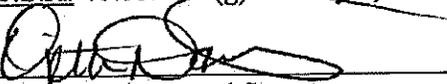
**AND IT IS FURTHER RESOLVED** that the above approval is subject to the following terms and conditions:

1. The Applicant shall comply with all applicable Township, County and State laws, ordinances, regulations and directives, including without limitation, obtaining all applicable local and state approvals and/or permits.
2. In the event that any other required regulatory approval conflicts with the terms and conditions hereof, or materially alters the same, or the terms and conditions hereof are materially altered by any change in applicable law or regulation other than those municipal regulations for which change is prohibited by the Municipal Land Use Law (MLUL), or in the event Applicant or its successors or assigns construct or attempt to construct any improvement in conflict with or in violation of the terms of this approval, the Board hereby reserves the right to withdraw, amend or supplant the instant approval.
3. The Applicant shall pay all outstanding taxes, application fees, technical review fees and inspection fees that may be required hereunder. The Applicant shall pay any additional fees or escrow deposits which may be due and owing within ten (10) days of notification.

4. All construction, use and development of the property shall be in conformance with the plans approved herein, all representations of the Applicant and its witnesses during the public hearing, all exhibits introduced by the Applicant, and all terms and conditions of this resolution.
5. Revised plans will be submitted for Resolution Compliance review and approval by the Board Professionals, which shall contain an approvals statement, signature blocks, and a list of all conditions of approval on the cover sheet of revised plans, revisions discussed herein and based on testimony provided, exhibits, agreements made with the Board Professionals at all meetings, and the reports by the Board Professionals, and any notations related to conditions of approval. After those plans are approved by the board professionals, a final set of all plans will be provided for signature, and then the applicant may proceed with building permits. Any changes to the plans during this process must be requested in writing.
6. The Applicant will comply with all terms and conditions set forth in the Planning Report No. 1 of Greer Patras, P.P. dated February 4, 2022 and the Reports of Eric L. Keller, P.E. dated February 2, 2022 and March 31, 2022.
7. The Applicant will work with the designees of the Environmental Commission in good faith with respect to the landscaping provided in this project.
8. The Applicant will plant a quantity of one (1) tree at an offsite location to be determined in coordination with the designees of the Environmental Commission.
9. The Applicant will develop a pedestrian access and safety plan that, to the extent safe to do so, will provide for pedestrian access during construction along Second Street, Third Street and Sloan Street, subject to approval by the Village.
10. The Applicant will schedule and participate in a pre-construction meeting with the Board professionals and Township Professionals prior to beginning of construction.
11. The Applicant will obtain approval from all other governmental agencies whose approval is required for the project, including but not limited to, the Board of Trustees of the Township of South Orange Village.
12. The emergency generator will be tested pursuant to the requirements of state law. The elevator will be able to descend in the event of a loss of power.
13. The Applicant will maintain landscaping for three years and will comply with recommendations made by municipal personnel with respect to whether tree replacement or maintenance needs to be performed during the three year period. All trees will have gator bags and deer guards installed.
14. The Applicant will provide a landscaped buffer along the side yard subject to review and approval by the Board Professionals.

15. The final design of all crosswalk improvements shall be done in coordination with the Board Professionals.
16. The Applicant will comply with all affordable housing requirements, will update the plan with unit and bedroom count notes, will comply with fractional fee requirements unless otherwise agreed upon as part of agreements with the Board of Trustees, and will provide a copy of the deed restriction for these units. To effectuate the Village's affordable housing goals, the Applicant will provide an additional two- or three- bedroom unit instead the previously proposed one bedroom unit.
17. The final colors of the cement panels shall be done in coordination with the Design Review Board.
18. The final lighting plan shall be done in coordination with the Board Professionals. The adjustable lights provided will be powered at 50% to maintain compliance with footcandle levels.
19. The Applicant shall provide a loading space behind the building on the site for maintenance vehicles with an entrance off of Third Street for contractors and repair persons. The Applicant shall provide be a short-term loading space on Sloan Street and a loading space on Second Street for trash pickups and for moving in and out of tenants in this building and the adjacent 14 Second Street residential building.
20. For all on-street loading zones, a sign shall be provided indicating that the area is a loading zone with a time limit. The sign shall also provide that there is no idling permitted. Details of such shall be provided.
21. The Applicant will provide a notice in the lease regarding the permitted size of moving vans and trucks.
22. Upon receipt of specifications for the ATM, utility work and the refuse and recycling space, one parking stall may be eliminated in that instance, subject to review and approval by the Board Engineer.
23. The Applicant shall provide three electric vehicle charging stations and four make-ready EV spaces, including details and labeling of such.

The undersigned secretary certifies that this decision was made by this Board on April 4, 2022 and memorialized herein pursuant to N.J.S.A. 40:55D-10(g) on May 2, 2022.

  
Ojetji Davis, Board Secretary

Vote on Action Taken by the Board

FOR:

AGAINST:

ABSTAIN:

Board Member(s) Eligible to Vote:

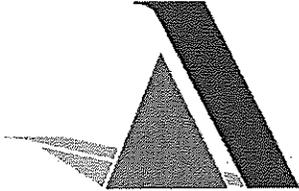
BOARD MEMBER	MOTION	SECOND	AYE	NAY	ABSTAIN	ABSENT
BUSCH-VOGEL	X		X			
COLTON-MAX (Ch.)			X			
LERMAN (V.Ch)						
LOEHNER			X			
MILLER			X			
KRAIKER						X
ZUCKERMAN			X			
MORIN			X			
HOUSE		X	X			

Vote on Memorization of the resolution:

BOARD MEMBER	MOTION	SECOND	AYE	NAY	ABSTAIN	ABSENT
BUSCH-VOGEL			X			
COLTON-MAX (Ch.)			X			
LERMAN (V.Ch)						
LOEHNER			X			
MILLER			X			
KRAIKER						
ZUCKERMAN	X		X			
MORIN		X	X			
HOUSE			X			

TOTAL PROJECT COST ESTIMATE

Please fill out the form included below or attach a form substantially similar in its level of detail. This estimate must be certified by a licensed architect or engineer.



23 Vreeland Road - Suite 260  
Florham Park, New Jersey 07932

**APPEL DESIGN GROUP,**  
ARCHITECTS

T 973.994.1776  
F 973.577.4455

June 29, 2022

Michael Markovitz  
8 Second Street Urban Renewal, LLC  
C/O  
Mark Built Properties, LLC  
2029 Morris Avenue  
Union, NJ 07083

RE: Mosaic at South Orange  
8 Second Street  
Second Street and Sloan Street  
Block 1905, Lot 1  
South Orange, NJ

ADG Project: MARKBUILT02

Mr. Markovitz:

As the Architect of Record for the above referenced project, I have reviewed the Estimated Construction Cost (Exhibit 11) provided by you in relation to the above referenced project. A copy is attached hereto. Based upon the review, I represent to my best knowledge and belief, that the Estimated Construction Cost information for the building construction and improvements is reasonable, accurate, and in line with projects of similar size and scope.

Sincerely,

**Appel Design Group Architects, PA**  
Laurance D. Appel, AIA, Principal

CC: *Michael Markovitz (Markbuilt Homes)*  
*Michael Lerman (Markbuilt Homes)*  
*Derek W. Orth Attorney at Law*

<b>The Mosaic at South Orange</b>	
<b>8 Second Street, LLC</b>	
<b>Estimated Construction Costs (83,813 Gross SF)</b>	
<b>Date Prepared 6/29/22</b>	
<b>Cost Items</b>	<b>Amount</b>
<b>Hard Costs</b>	
PSEG Design & Vault	\$320,000
Sitework: demo, earthwork, utilities, landscaping	\$1,026,272
Concrete: footings, foundation walls, podium	\$1,694,000
Masonry: stairwells, elevator shaft, brickwork, stone	\$910,000
Metals: pan stairs, stair rails, ext. rails, misc. iron	\$280,000
Rough Carpentry: trusses, panels, lumber and labor to install	\$1,610,000
Finish Carpentry: interior trim, cabs, vanities, tops	\$770,000
Roofing: EPDM & metal copings	\$350,000
Siding: metal & cement panels	\$490,000
Waterproofing: caulking, foundation, joint sealants, deck cover	\$70,000
Doors: garage, common areas, unit doors, frames & hardware	\$175,000
Windows: unit windows & sliders, storefronts, atrium glass	\$525,000
Common Area: finishes & interior trim	\$245,000
Drywall & Ceilings: partitions, suspended ceilings, insulation	\$420,000
Painting	\$175,000
Tile	\$217,000
Flooring	\$385,000
Appliances	\$245,000
Specialties: canopies, racks, accessories, pipe guards, FE's	\$105,000
Equipment: trash chute	\$35,000
Furnishings	\$150,000
Special Construction: Amenity Areas & Art Gallery	\$315,000
Elevator	\$150,000
Fire Protection Sprinklers	\$210,000
HVAC	\$560,000
Plumbing	\$595,000
Electrical: power, lighting, security, FA, cable/data/phone	\$700,000
Subtotal	\$12,727,272
Construction Contingency - 5%	\$636,364
General Conditions @ 5% (trailer/laborer/trash chute/dumpsters)	\$636,364
<b>Total Hard Costs</b>	<b>\$14,000,000</b>
<b>Soft Costs</b>	
Marketing, CX Fees, County Fees, Soils	\$2,500,000
<b>Total Soft Costs</b>	<b>\$2,500,000</b>
<b>Estimated Grand Total</b>	<b>\$16,500,000</b>

COST ESTIMATE FOR EACH UNIT TYPE

Attach a summary of the estimated total costs for each unit, broken down by type of unit. This information can be presented in summary form, not at the level of detail required in Exhibit 11. However, this estimate must also be certified by a licensed architect or engineer.

\*\*See Exhibit 11.

PROJECT PRO FORMA

South Orange Sloan Street Apartments  
 8 Second Street  
 South Orange, New Jersey  
 Block 1905, Lot 1

Building Type: 41 Unit Apartment Building  
 Market Rate Units: 33  
 COAH Units (100% built on site): 8  
 Construction Type: 4 Story Masonry/Wood Frame Dwelling Over Parking

SCHEDULE OF CASH USES AND SOURCES

		<i>*Per Gross Square Feet</i>
<b>NET CASH USES BEFORE FINANCING SOURCES</b>		
Land	\$ 1,900,000	\$ 31
Site Costs (Includes Demolition)	675,000	11
Environmental Remediation	325,000	5
Soft Costs (Includes Professional Fees, Permits, Carrying Costs, Management Fees, Etc.)	2,737,500	45
Construction Costs	10,842,500	177
Contingency (5%)	542,125	9
<b>Net Cash Uses Before Financing Sources</b>	<b>\$ 17,022,125</b>	<b>\$ 278</b>
<b>FINANCING SOURCES</b>		
Member Contributions	\$ 5,022,125	\$ 82
Construction Loan Funding	12,000,000	196
<b>Total Financing Sources</b>	<b>\$ 17,022,125</b>	<b>\$ 278</b>

\* - Building consists of approximately 61,250 gross; 48,500 net square feet.

South Orange Sloan Street Apartments  
 8 Second Street  
 South Orange, New Jersey  
 Block 1905, Lot 1

Building Type: 41 Unit Apartment Building  
 Market Rate Units: 33  
 COAH Units (100% built on site): 8  
 Construction Type: 4 Story Masonry/Wood Frame Dwelling Over Parking

SCHEDULE OF REVENUE

<u>Base Projection</u>	<u>Units</u>	<u>Rate</u>	<u>Average Square Feet</u>	<u>Gross Monthly Rent</u>	<u>Gross Annual Rent</u>
<b>REVENUE</b>					
<b>Rental Income:</b>					
Residential Fair Market Rentals	33	\$3.05 Per SF (Mo.)	1,171	\$ 117,861	\$ 1,414,332
Garage Rentals	32	\$100 Per Space (Mo.)		3,200	38,400
Residential COAH Rentals	8	\$1,000 Per Unit (Mo.)	1,171	8,000	96,000
Community Space	1	*	1,500	*	*
<b>Total Rental Income</b>				<b>129,061</b>	<b>1,548,732</b>
<b>Other Income:</b>					
ATM Revenue	1	\$1,250 Per Unit (Mo.)		1,250	15,000
<b>Total Revenue</b>				<b>\$ 130,311</b>	<b>\$ 1,563,732</b>

\* - Proposed to be leased rent-free to the Village.

South Orange Sloan Street Apartments  
 8 Second Street  
 South Orange, New Jersey  
 Block 1905, Lot 1

Building Type: 41 Unit Apartment Building  
 Market Rate Units: 33  
 COAH Units (100% built on site): 8  
 Construction Type: 4 Story Masonry/Wood Frame Dwelling Over Parking

SCHEDULE OF REVENUE AND EXPENSES

	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9
	2023 *	2024	2025	2026	2027	2028	2029	2030	2031
<b>REVENUE</b>									
Rental Income	\$ 1,548,732	\$ 1,579,707	\$ 1,611,301	\$ 1,643,527	\$ 1,676,398	\$ 1,709,926	\$ 1,744,125	\$ 1,779,008	\$ 1,814,588
Vacancies*	(174,328)	(44,454)	(45,343)	(46,250)	(47,175)	(48,119)	(49,081)	(50,063)	(51,064)
Other Income	13,200	15,000	15,000	15,000	15,000	15,000	15,000	15,000	15,000
<b>Total Revenue</b>	<b>1,387,604</b>	<b>1,550,253</b>	<b>1,580,958</b>	<b>1,612,277</b>	<b>1,644,223</b>	<b>1,676,807</b>	<b>1,710,044</b>	<b>1,743,945</b>	<b>1,778,524</b>
<b>OPERATING EXPENSES</b>									
Operating and Maintenance	164,000	167,280	170,626	174,039	177,520	181,070	184,691	188,385	192,153
Payment in Lieu of Taxes	138,760	155,025	158,096	161,228	164,422	209,601	213,756	217,993	222,316
Credit for Prior Year Land Taxes	-	(14,978)	(15,278)	(15,584)	(15,896)	(16,214)	(16,538)	(16,869)	(17,206)
Payment in Lieu of Taxes Administrative Fee	2,775	3,101	3,162	3,225	3,288	4,192	4,275	4,360	4,446
Realtor Commissions	108,000	16,560	16,891	17,229	17,574	17,925	18,284	18,649	19,022
Superintendent	78,254	79,819	81,415	83,044	84,705	86,399	88,127	89,889	91,687
Management Fees	61,949	63,188	64,452	65,741	67,056	68,397	69,765	71,160	72,584
Utilities	19,500	20,400	20,808	21,224	21,648	22,081	22,523	22,973	23,432
Land Taxes	14,978	15,278	15,584	15,896	16,214	16,538	16,869	17,206	17,550
Capital Reserves	12,300	12,546	12,797	13,053	13,314	13,580	13,852	14,129	14,412
<b>Total Expenses</b>	<b>600,516</b>	<b>518,219</b>	<b>528,554</b>	<b>539,095</b>	<b>549,844</b>	<b>603,569</b>	<b>615,603</b>	<b>627,875</b>	<b>640,396</b>
<b>Operating Income</b>	<b>787,088</b>	<b>1,032,034</b>	<b>1,052,404</b>	<b>1,073,182</b>	<b>1,094,379</b>	<b>1,073,238</b>	<b>1,094,441</b>	<b>1,116,070</b>	<b>1,138,128</b>
<b>DEBT SERVICE (30 Year Amortization, Fixed 5.5%)</b>									
Principal	161,652	170,770	180,403	190,579	201,329	212,685	224,683	237,356	250,745
Interest Expense	655,965	646,847	637,214	627,038	616,288	604,932	592,935	580,261	566,872
<b>Total Debt Service</b>	<b>817,617</b>	<b>817,617</b>	<b>817,617</b>	<b>817,617</b>	<b>817,617</b>	<b>817,617</b>	<b>817,618</b>	<b>817,617</b>	<b>817,617</b>
<b>Net Income</b>	<b>\$ (30,529)</b>	<b>\$ 214,417</b>	<b>\$ 234,787</b>	<b>\$ 255,565</b>	<b>\$ 276,762</b>	<b>\$ 255,621</b>	<b>\$ 276,823</b>	<b>\$ 298,453</b>	<b>\$ 320,511</b>
<b>Payment in Lieu of Taxes Annual Service Charge Rate</b>	<b>10.0%</b>	<b>10.0%</b>	<b>10.0%</b>	<b>10.0%</b>	<b>10.0%</b>	<b>12.5%</b>	<b>12.5%</b>	<b>12.5%</b>	<b>12.5%</b>
<b>Expense to Income Ratio</b>	<b>43.28%</b>	<b>33.43%</b>	<b>33.43%</b>	<b>33.44%</b>	<b>33.44%</b>	<b>36.00%</b>	<b>36.00%</b>	<b>36.00%</b>	<b>36.01%</b>
<b>Unleveraged Rate of Return</b>	<b>4.62%</b>	<b>6.06%</b>	<b>6.18%</b>	<b>6.30%</b>	<b>6.43%</b>	<b>6.30%</b>	<b>6.43%</b>	<b>6.56%</b>	<b>6.69%</b>

\* - Year 1 projects approximately 12% vacancies during lease up period, while subsequent years project approximately 3% vacancies.

South Orange Sloan Street Apartments  
 8 Second Street  
 South Orange, New Jersey  
 Block 1905, Lot 1

Building Type: 41 Unit Apartment Building  
 Market Rate Units: 33  
 COAH Units (100% built on site): 8  
 Construction Type: 4 Story Masonry/Wood Frame Dwelling Over Parking

SCHEDULE OF REVENUE AND EXPENSES

	Year	Year	Year	Year	Year	Year	Year
	2032	2033	2034	2035	2036	2037	
<b>REVENUE</b>							
Rental Income	\$ 1,850,880	\$ 1,887,898	\$ 1,925,656	\$ 1,964,169	\$ 2,003,452	\$ 2,043,521	
Vacancies*	(52,085)	(53,127)	(54,190)	(55,274)	(56,379)	(57,507)	
Other Income	15,000	15,000	15,000	15,000	15,000	15,000	
<b>Total Revenue</b>	<b>1,813,795</b>	<b>1,849,771</b>	<b>1,886,466</b>	<b>1,923,895</b>	<b>1,962,073</b>	<b>2,001,014</b>	
<b>OPERATING EXPENSES</b>							
Operating and Maintenance	195,996	199,916	203,914	207,992	212,152	216,395	
Payment in Lieu of Taxes	226,724	277,466	282,970	288,584	294,311	300,152	
Credit for Prior Year Land Taxes	(17,550)	(17,901)	(18,624)	(18,624)	(18,996)	(19,376)	
Payment in Lieu of Taxes Administrative Fee	4,534	5,549	5,659	5,772	5,886	6,003	
Recallor Commissions	19,403	19,791	20,187	20,590	21,002	21,422	
Superintendent	93,521	95,391	97,299	99,245	101,230	103,254	
Management Fees	74,035	75,516	77,026	78,567	80,138	81,741	
Utilities	23,901	24,379	24,867	25,364	25,871	26,388	
Land Taxes	17,901	18,259	18,624	18,996	19,376	19,764	
Capital Reserves	14,700	14,994	15,294	15,600	15,912	16,230	
<b>Total Expenses</b>	<b>653,164</b>	<b>713,360</b>	<b>727,581</b>	<b>742,086</b>	<b>756,882</b>	<b>771,974</b>	
<b>Operating Income</b>	<b>1,160,631</b>	<b>1,136,411</b>	<b>1,158,885</b>	<b>1,181,809</b>	<b>1,205,191</b>	<b>1,229,040</b>	
<b>DEBT SERVICE (30 Year Amortization, Fixed 5.5%)</b>							
Principal	264,890	279,832	295,616	312,291	329,907	348,516	
Interest Expense	552,728	537,786	522,002	505,327	487,711	469,102	
<b>Total Debt Service</b>	<b>817,618</b>	<b>817,618</b>	<b>817,618</b>	<b>817,618</b>	<b>817,618</b>	<b>817,618</b>	
<b>Net Income</b>	<b>\$ 343,013</b>	<b>\$ 318,793</b>	<b>\$ 341,267</b>	<b>\$ 364,191</b>	<b>\$ 387,573</b>	<b>\$ 411,422</b>	
<b>Payment in Lieu of Taxes Annual Service Charge Rate</b>	<b>12.5%</b>	<b>15.0%</b>	<b>15.0%</b>	<b>15.0%</b>	<b>15.0%</b>	<b>15.0%</b>	
<b>Expense to Income Ratio</b>	<b>36.01%</b>	<b>38.56%</b>	<b>38.57%</b>	<b>38.57%</b>	<b>38.58%</b>	<b>38.58%</b>	
<b>Unleveraged Rate of Return</b>	<b>6.82%</b>	<b>6.68%</b>	<b>6.81%</b>	<b>6.94%</b>	<b>7.08%</b>	<b>7.22%</b>	

\* - Year 1 projects approximately 12% vacancies during lease up period, while subsequent years project approximately 3% vacancies.

South Orange Sloan Street Apartments  
 8 Second Street  
 South Orange, New Jersey  
 Block 1905, Lot 1

Building Type: 41 Unit Apartment Building  
 Market Rate Units: 33  
 COAH Units (100% built on site): 8  
 Construction Type: 4 Story Masonry/Wood Frame Dwelling Over Parking

SCHEDULE OF NET MUNICIPAL REVENUE  
 PAYMENT IN LIEU OF TAXES (PILOT) COMPARED TO CONVENTIONAL PROPERTY TAXES

Year	PAYMENT IN LIEU OF TAXES (PILOT)										CONVENTIONAL PROPERTY TAXES			Additional Municipal Revenue
	Annual Gross Revenue	Annual Service Charge Rate	Annual Service Charge Amount	Credit for Prior Year Taxes	Municipal Admin- istrative 2% Fee	Less: County Portion 5%	Municipal Share of Land Taxes	Net Municipal Revenue	Total	Net Municipal Share	On Land and Improvements			
1 2023	\$ 1,387,604	10.0%	\$ 138,760	-	\$ 2,775	\$ (6,938)	\$ 4,129	\$ 138,726	\$ 543,966	\$ 147,039	\$	\$ (8,313)		
2 2024	1,550,253	10.0%	155,025	(14,978)	3,101	(7,751)	4,212	139,609	554,845	149,980		(10,371)		
3 2025	1,580,958	10.0%	158,096	(15,278)	3,162	(7,905)	4,296	142,371	565,942	152,980		(10,609)		
4 2026	1,612,277	10.0%	161,228	(15,584)	3,225	(8,061)	4,382	145,190	577,261	156,040		(10,850)		
5 2027	1,644,223	10.0%	164,422	(15,896)	3,288	(8,221)	4,470	148,063	588,806	159,161		(11,098)		
6 2028	1,676,807	12.5%	209,601	(16,214)	4,192	(10,480)	4,559	191,658	600,582	162,344		29,314		
7 2029	1,710,044	12.5%	213,756	(16,538)	4,275	(10,688)	4,650	195,455	612,594	165,591		29,864		
8 2030	1,743,945	12.5%	217,993	(16,869)	4,360	(10,900)	4,743	199,327	624,846	168,903		30,424		
9 2031	1,778,524	12.5%	222,316	(17,206)	4,446	(11,116)	4,838	203,278	637,343	172,281		30,997		
10 2032	1,813,795	12.5%	226,724	(17,550)	4,534	(11,336)	4,935	207,307	650,090	175,727		31,580		
11 2033	1,849,771	15.0%	277,466	(17,901)	5,549	(13,873)	5,034	256,275	663,092	179,242		77,033		
12 2034	1,886,466	15.0%	282,970	(18,259)	5,659	(14,149)	5,135	261,356	676,354	182,827		78,529		
13 2035	1,923,895	15.0%	288,584	(18,624)	5,772	(14,429)	5,238	266,541	689,881	186,484		80,057		
14 2036	1,962,073	15.0%	294,311	(18,996)	5,886	(14,716)	5,343	271,828	703,679	190,214		81,614		
15 2037	2,001,014	15.0%	300,152	(19,376)	6,003	(15,008)	5,450	277,221	717,753	194,018		83,203		
			\$ 3,311,404	\$ (239,269)	\$ 66,227	\$ (163,571)	\$ 71,414	\$ 3,044,205	\$ 9,407,034	\$ 2,542,831		\$ 501,374		

South Orange Sloan Street Apartments  
 8 Second Street  
 South Orange, New Jersey  
 Block 1905, Lot 1

Building Type: 41 Unit Apartment Building  
 Market Rate Units: 33  
 COAH Units (100% built on site): 8  
 Construction Type: 4 Story Masonry/Wood Frame Dwelling Over Parking

**SCHEDULE OF NET MUNICIPAL REVENUE  
 PAYMENT IN LIEU OF TAXES (PILOT) COMPARED TO CONVENTIONAL PROPERTY TAXES**

CONVENTIONAL PROPERTY TAXES BASE YEAR (2021)

	Land	Improvements	Total
Total Project Cost	\$ 478,062	\$ 16,544,063	\$ 17,022,125
Assessed Valuation	433,793	15,012,083	15,445,876
Tax Liability	14,684	508,159	522,843
	90.74%	Assess. Ratio	
	3.385%	Tax Rate	
Distribution of Taxes:			
County Tax	0.513%		
County Open Space Tax	0.017%		
District School Tax	1.940%		
Municipal Purpose Tax	0.868%		
Municipal Open Space Tax	0.010%		
Municipal Library Tax	0.037%		
Total	3.385%		

Municipal Purpose Tax	3,765	130,305	134,070
Municipal Open Space Tax	43	1,501	1,544
Municipal Library Tax	161	5,554	5,715
Total Municipal Share of Taxes	\$ 3,969	\$ 137,360	\$ 141,329

**Notes:**  
 Revenues and conventional property taxes are projected to increase 2% annually.

PROJECT FINANCING PLAN

Attach a detailed explanation of the expected method by which the Project will be financed, indicating the amount of equity to be contributed and its source, all public loans and/or grants that are to be used and all private sources of capital.

The Applicant will contribute approximately \$5,000,000 in equity to the Project. The Applicant will obtain private construction loan funding for the balance of the project costs, which the Applicant expects to amount to approximately \$14,000,000.00.

PRIVATE FINANCING COMMITMENTS

Attach certified copies of any and all letters from public or private sources of capital indicating a commitment to make funds available for the Project.

\*\*The first page of the Applicant's loan commitment is attached.



June 14, 2022 REVISED

Mr. Michael Markovitz  
8 Second Street LLC  
2029 Morris Ave  
Union, New Jersey 07083-6047

Dear Mr. Markovitz:

We are pleased to advise you that Valley National Bank ("Bank") has approved a combination construction and permanent financing loan ("Loan") to 8 Second Street LLC ("Borrower") in the maximum principal amount of \$14,000,000. The Bank's approval of the Loan is subject to the following terms and conditions and such other requirements as the Bank, or its attorney may specify:

**BORROWER:** 8 Second Street LLC, a New Jersey limited liability company

**AMOUNT:** Construction Portion of Loan ("Construction Loan"): a maximum of Fourteen Million Dollars (\$14,000,000)  
Permanent Financing ("Permanent Loan"): The Loan may be increased up to a maximum LTV of 75% subject to a new appraisal based on the as-is value of the completed and stabilized Property

**PURPOSE:** To provide construction and permanent financing for the development of a 42-unit, multi-family building (the "Loan")

**PROJECT:** Construction of a 42-unit, for-rent, multi-family building located at 8 Second Street, South Orange, New Jersey on Block 1905, Lot 1 in Essex County and is situated on a 0.46-acre lot. ("Property").

## **I. LOAN TERMS**

### **TERMS APPLICABLE ONLY TO CONSTRUCTION LOAN**

**INTEREST:** Interest on the unpaid principal balance of the Construction Loan shall be calculated at a floating rate equal at all times to Wall Street Journal Prime ("Prime Rate"), as such Prime Rate may change from time to time, adjusted daily. Any change in the Prime Rate shall be effective immediately when adopted by the Bank, without notice to Borrower. Interest shall be calculated on a 360-day year based on the actual number of days elapsed and shall be due and payable monthly.

**TERM:** The term of the Construction Loan will be thirty-six (36) months from the closing date of the Construction Loan.

**TERMS OF PAYMENT:** The Note evidencing the Loan will provide for monthly payments of interest only at the rate set forth above for the Construction Loan. Payments shall be due and payable commencing on the first day of the first month following the closing date of the Loan and shall continue the first day of each month thereafter until and through the date preceding the commencement date of the Permanent Loan.

**GUARANTEE:** Payment and performance of all obligations under the Mortgage and Note will be unconditionally guaranteed by Michael Markovitz (the "Guarantor"). This guarantee shall remain in effect so long as any sums due and payable under the Construction Loan are unpaid. Borrower and the Guarantor

EXPLANATION OF NEED FOR TAX EXEMPTION

Attach an explanation of why the applicant believes that a long term tax exemption is necessary to make this Project economically feasible. Include specific figures where possible to explain any financing gaps.

The costs associated with the demolition and remediation of the Property and construction of the proposed Project and community amenities, makes the redevelopment of the Property extraordinarily expensive. In light of market conditions and other economic factors (including development costs and construction of community amenities) impacting this Project, it is not financially feasible to undertake the development of this Project in the absence of the tax exemption. Accordingly, without the incentive of the tax exemption, it is unlikely that the Project would be undertaken. Without the Project, the benefits described above would not be realized.

PROJECT SCHEDULE

Attach a detailed schedule of the key milestone dates in the approval, construction and leasing or sale of the Project.

See Redevelopment Agreement with Project Schedule.

SUMMARY OF PROJECT BENEFITS

Attach a summary of all the public benefits associated with this Project, including, at a minimum, the number and type of construction jobs anticipated, the number and type of permanent jobs to be created and the amount of municipal revenue to be generated by the Project through the payment of taxes, payments in lieu of taxes, water and sewer fees and any other municipal payments.

The Project is a transit-oriented development that furthers smart growth norms and will substantially enhance the viability and vitality of the Village's downtown. The Property consists of commercial space and a parking lot, which are currently vacant and underutilized. The Project will redevelop with Property with approximately forty-one (41) residential units, inclusive of thirty-three (33) market-rate units and eight (8) affordable residential units, the Community Artist Incubator Space which includes two thousand (2,000) square feet (+/- 75 square feet) of ground-floor commercial space dedicated to the Village rent-free for a minimum period of fifteen (15) years, on-site ground level parking to include a minimum number of parking spaces for all uses as set forth in the Redevelopment Plan, provided however, that ten percent (10%) of all parking spaces be outfitted with electrical vehicle charging stations to accommodate electric vehicle charging, and certain related on-site and off-site improvements. The Project will create approximately 35 temporary construction jobs and approximately 3 permanent jobs. The Project will generate significant amounts of new municipal revenues through the Annual Service Charge and water/sewer fees. Accordingly, the Project will produce direct and indirect economic benefits to the Village and its residents, substantial commerce, and improvement of the quality of life and creation of public benefits for existing and future residents of the Village.

FORM OF FINANCIAL AGREEMENT

The appropriate form of Financial Agreement should be attached to this application.

**DRAFT AGREEMENT**  
**January 10, 2022**

**FINANCIAL AGREEMENT**  
**BY AND BETWEEN**  
**THE TOWNSHIP OF SOUTH ORANGE VILLAGE**  
**AND**  
**[8 SECOND STREET, LLC URE]**

**DATED AS OF \_\_\_\_\_, 202\_\_**

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## FINANCIAL AGREEMENT

**THIS FINANCIAL AGREEMENT** (hereinafter this “**Agreement**”), made this \_\_\_ day of \_\_\_\_\_, 202\_\_\_, (the “**Effective Date**”) by and between [**8 SECOND STREET, LLC URE**], an urban renewal entity qualified to do business under the provisions of the Long Term Tax Exemption Law, N.J.S.A. 40A:20-1 et seq., as amended and supplemented (the “**Long Term Tax Exemption Law**”), with offices at 2029 Morris Avenue, Union, New Jersey 07083 (the “**Entity**”) and the **TOWNSHIP OF SOUTH ORANGE VILLAGE**, a municipal corporation in the County of Essex and the State of New Jersey (the “**Village**”, and together with the Entity, the “**Parties**” or each, a “**Party**”).

### **WITNESSETH:**

**WHEREAS**, the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq., as amended and supplemented 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/or rehabilitation; and

**WHEREAS**, the Redevelopment Law authorizes the redevelopment entity to arrange or contract for the planning, construction or undertaking of any development project or redevelopment work in an area designated as an “area in need of redevelopment” pursuant to N.J.S.A. 40A:12A-8; and

**WHEREAS**, on December 18, 1995, the Board of Trustees (the “**Trustees**”) of the Village adopted Resolution No. 2018-259 designating certain property in the Village commonly known as the Central Business District Redevelopment Area (the “**Redevelopment Area**”), as an area in need of redevelopment in accordance with the Redevelopment Law; and

**WHEREAS**, by Ordinance No. 96-43 adopted on November 25, 1996, in accordance with the Redevelopment Law, the Village adopted the “Central Business District Redevelopment Plan,” which was subsequently amended by Ordinance No. 20-2002, adopted on September 23, 2002, by Ordinance No. 08-20, adopted on October 15, 2008, by Ordinance 2012-24 adopted on January 28, 2013 and by Ordinance 2014-03 adopted on May 19, 2014 (the “**CBD Plan**”), for the Redevelopment Area, which includes the Property; and

**WHEREAS**, the Entity is the owner of certain property within the Redevelopment Area identified as Block 1905, Lot 1 on the official tax maps of the Village (the “**Property**”) and as more particularly described by the metes and bounds description attached hereto as **Exhibit A**; and

**WHEREAS**, in order to redevelop the Property as envisioned by the Village and Redeveloper, certain changes were required to be made to the CBD Plan; and

**WHEREAS**, on April 26, 2021, by Ordinance 2021-12, the Village adopted the redevelopment plan entitled “Second and Sloan Street Redevelopment Plan” dated March 31, 2021 (the “**Redevelopment Plan**”) for the Property; and

**WHEREAS**, on \_\_\_\_\_, 202\_\_\_, the Village adopted Resolution No. designating the Entity as the “redeveloper” of the Property and approved authorized execution of a redevelopment agreement with the Entity; and

**WHEREAS**, the Village and the Entity entered into that certain redevelopment agreement dated \_\_\_\_\_, 202\_\_\_ (the “**Redevelopment Agreement**”) pursuant to which, among other things, the Entity agreed to redevelop the Property by constructing thereon a project consisting of the development of a five-story multi-family residential building with consisting of approximately forty-one (41) residential units, inclusive of thirty-three (33) market-rate units and eight (8) affordable residential units, ground floor community space and parking including a minimum of two thousand (2,000) square feet (+/- 75 square feet) of commercial space dedicated to the Village rent-free for a minimum period of fifteen (15) years to be used as a community artist incubator space (the “**Community Artist Incubator Space**” as further described in the Redevelopment Agreement), and on-site ground level parking to include a minimum number of parking spaces for all uses as set forth in the Redevelopment Plan, provided however, that ten percent (10%) of all parking spaces be outfitted with electrical vehicle charging stations to accommodate electric vehicle charging , together with certain related on-site and off-site improvements (the “**Project**” as further described in the Redevelopment Agreement); and

**WHEREAS**, on \_\_\_\_\_, 202\_\_\_ the Entity submitted an application, a copy of which is attached hereto as **Exhibit B** (the “**Application**”) complying with the requirements of N.J.S.A. 40A:20-8 and requesting approval of a long term tax exemption pursuant to the Long Term Tax Exemption Law; and

**WHEREAS**, on \_\_\_\_\_, 202\_\_\_, the Board of Trustees finally adopted an ordinance entitled, “Ordinance of the Village of South Orange Township, County of Essex, New Jersey Approving the Application and Financial Agreement for Tax Exemption for an Urban Renewal Project with Respect to a Portion of the Central Business District Redevelopment Area Located on Block 1905, Lot 1,” a copy of which is attached hereto as **Exhibit C** (the “**Ordinance**”); and

**WHEREAS**, the Ordinance also permits assignment and assumption of the Project and the Redevelopment Agreement by the Entity, as qualified urban renewal entity for this Project; and

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

A. Relative Benefits of the Project:

- i. The Project is a transit-oriented development that furthers smart growth norms and will substantially enhance the viability and vitality of the Village’s downtown. The Property consists of commercial space and a parking lot, which are currently vacant and underutilized. The Project will redevelop with Property with approximately forty-one (41) residential units, inclusive of thirty-three (33) market-rate units and eight (8) affordable residential units, the Community Artist Incubator Space which includes two thousand (2,000) square feet (+/- 75 square feet) of ground-floor commercial space dedicated to the Village rent-free for a minimum period of fifteen (15) years, on-site ground level parking to include a minimum

number of parking spaces for all uses as set forth in the Redevelopment Plan, provided however, that ten percent (10%) of all parking spaces be outfitted with electrical vehicle charging stations to accommodate electric vehicle charging, and certain related on-site and off-site improvements. The Project will create [ ] temporary construction jobs and [ ] permanent jobs (as referenced in the preambles hereof). The Project will generate significant amounts of new municipal revenues through the Annual Service Charge and water/sewer fees. Accordingly, the Project will produce direct and indirect economic benefits to the Village and its residents, substantial commerce, and improvement of the quality of life and creation of public benefits for existing and future residents of the Village.

ii. The costs associated with the demolition and remediation of the Property and construction of the proposed Project and community amenities, makes the redevelopment of the Property extraordinarily expensive. In light of market conditions and other economic factors (including development costs and construction of community amenities) impacting this Project, it is not financially feasible to undertake the development of this Project in the absence of the tax exemption. Accordingly, without the incentive of the tax exemption, it is unlikely that the Project would be undertaken. Without the Project, the benefits described above would not be realized.

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

i. The tax exemption permits the private mixed-use development of underutilized property without any cost to the public while simultaneously producing a stream of revenue in the form of the Annual Service Charges and water/sewer fees, temporary and permanent jobs which produce indirect economic benefits, substantial commerce, and improvement of the quality of life and creation of public benefits for existing and future residents of the Village. The relative stability and predictability of the Annual Service Charges will allow the owners and, by extension, the occupants, of the Project to stabilize their expenses, which will ensure the likelihood of the success of the Project and ensure that it will have a positive impact on the surrounding area. Further, the relative stability and predictability of the Annual Service Charge makes the Project more attractive to investors and lenders needed to finance the Project.

ii. The tax exemption permits the development of the Project in an area that cannot otherwise be feasibly developed by reducing the expenses associated with the operation of the Project. Reduced expenses allow for more competitive rents. As a result, the locational decisions of the probable tenants will be influenced positively by the tax exemption.

**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 (a) the Long Term Tax Exemption Law, (b) the Redevelopment Law, (c) the Ordinance, and (d) all other Applicable Laws. It is expressly understood and agreed that the Village 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  
Application  
Community Artist Incubator Space  
Effective Date  
Entity  
Long Term Tax Exemption Law  
Municipality  
Ordinance  
Party/Parties  
Project  
Property  
Redevelopment Agreement  
Redevelopment Area  
Redevelopment Law  
Redevelopment Plan  
Trustees  
Village

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

Administrative Fee – The fee paid to the Village by the Entity, as set forth in Section 4.06 of this Agreement.

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:20-3(b).

Allowable Profit Rate - As defined by N.J.S.A. 40A:20-3(b).

Annual Gross Revenue – The annual gross revenue or gross shelter rent or annual gross rents, as appropriate, and other income, for the Entity from the Project, as provided in N.J.S.A. 40A:20-3(a).

Annual Service Charge - The amount the Entity has agreed to pay the Village, or its designee, pursuant to Article IV for municipal services supplied to the Project, which sum is in lieu of any taxes on the Land and Improvements, which amount shall be prorated 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 first day of the month following the month the Project receives any temporary or permanent Certificate of Occupancy.

Applicable Law – All federal, State and local laws, ordinances, approvals, rules, regulations and requirements applicable thereto including, but not limited to, the Redevelopment Law, the Long Term Tax Exemption Law, as applicable, relevant construction codes including construction codes governing access for persons with disabilities, and such zoning, sanitary, pollution and other environmental safety ordinances, laws and such rules and regulations thereunder.

Auditor's Report - A financial statement (a) outlining the financial status of the Project, (b) prepared consistent with generally accepted accounting principles and relevant provisions of the Long Term Tax Exemption Law, (c) detailing all items as required by the Long Term Tax Exemption Law, and (d) certified as to its conformance with such principles by a certified public accountant licensed to practice in the State of New Jersey.

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. The entity or individual(s) with the right to direct or cause the direction of the management and operation of the managing member of the Entity shall be deemed to have Control of the Entity.

Community Artist Incubator Space Agreement - the agreement by and between the Village and Redeveloper, or their respective designees, concerning the terms and conditions of the Village's use and occupancy of the Community Artist Incubator Space.

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

County – The County of Essex.

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.

Default Notice – As defined in Section 15.02.

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

Financial Plan – The financial plan prepared pursuant to N.J.S.A. 40A:20-8(e) attached 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 Village may enforce the lien for taxes due and owing by a tax sale in accordance with the provisions of N.J.S.A. 54:5-1 et seq.

In Rem Tax Foreclosure Act – N.J.S.A. 54:5-104.29 et seq., as the same may be amended or supplemented from time to time.

Land – The real property, but not the Improvements, known as Block 1905, Lot 1 on the official tax maps of the Village, and more particularly described by the metes and bounds description set forth in **Exhibit A** of this Agreement.

Land Taxes - The amount of taxes assessed on the value of the Land, exclusive of the value of any Improvements related thereto, in accordance with Applicable Laws.

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 – The total taxes levied against all real property constituting the Property in the last full tax year in which the Property was subject to taxation, which shall be \$ \_\_\_\_\_.

Net Profit – The Annual 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), 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 abatement granted pursuant to this Agreement as well as all other expenses permitted under the provisions of N.J.S.A. 40A:20-3(c).

State – The State of New Jersey.

Tax Assessor – The Village tax assessor.

Tax Collector – The Village 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 or forfeit the tax exemption granted pursuant to this Agreement.

Termination Date- the date when Termination of this Agreement occurs.

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:20-3(h). 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.

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 10 days nor more than 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.

**{End of Article I}**

**ARTICLE II**  
**APPROVAL**

**SECTION 2.01 Approval of Tax Exemption**

The Village has granted and does hereby grant its approval for a tax exemption for the Project on Property in accordance with the provisions of the Long Term Tax Exemption Law. Pursuant to the Ordinance, the Land and Improvements to be constructed and maintained by the Entity shall be exempt from taxation as provided for herein.

**SECTION 2.02 Approval of the Entity**

Approval is granted to the Entity based on its representation that its Certificate of Formation attached to the Application as “**Exhibit [ ]**” thereto 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 Improvements to be constructed in accordance with the Redevelopment Plan and the Redevelopment Agreement.

**SECTION 2.04 Construction Schedule**

The Entity agrees to diligently undertake to commence construction as required by the Redevelopment Agreement.

**SECTION 2.05 Ownership, Management and Control**

The Entity represents that [it is the/the Entity’s Affiliate is] [owner/contract purchaser] of 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 in accordance with the Redevelopment Plan and all Applicable Laws.

**SECTION 2.06 Financial Plan**

The Entity represents that the Improvements shall be financed generally in accordance with the representations set forth in the Financial Plan. The Application and Financial Plan set forth estimated Total Project Cost, amortization rate on Total Project Cost, the source of funds, the interest rates to be paid on construction financing, the source and amount of paid-in capital, and the terms of any mortgage amortization.

**{End of Article II}**

**ARTICLE III**  
**DURATION OF AGREEMENT**

**SECTION 3.01 Term**

This Agreement is effective on the Effective Date. So long as there is compliance with the Applicable Laws 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 (i) twenty (20) years from the date of the Effective Date or (ii) fifteen (15) years from the Annual Service Charge Start Date for the Project. The tax exemption shall only be effective during the period of usefulness of the Project and shall continue in force only while the Project is owned or leased by a corporation, association or other entity formed and operating under 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 nonexempt property in the Village. Upon Termination all restrictions and limitations upon the Entity shall terminate upon the Entity's rendering and the Village's acceptance of its final accounting, pursuant to N.J.S.A. 40A:20-12, provided however that, in the event that the Entity fails to commence construction as required by the Redevelopment Agreement is duly terminated, the Village may terminate this Agreement upon ten (10) days prior written notice to the Entity.

**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 Village 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 imposed by this Agreement shall terminate upon the Entity's rendering and the Village's acceptance of its final accounting, pursuant to N.J.S.A. 40A:20-12.

**{End of Article III}**

**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 described in this Agreement, and the Entity shall not contest the validity or amount of any such lawfully imposed 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 Village 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 commencing on the Annual Service Charge Start Date.

B. Payment of the Annual Service Charge shall be made to the Village on a quarterly basis on February 1, May 1, August 1, and November 1 after the Annual Service Charge Start Date in accordance with the Village's tax collection schedule, subject, nevertheless, to adjustment for over or underpayment within 90 days after the close of each calendar year. The obligation to pay the Annual Service Charge shall continue until the 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 State law and then being assessed by the Village against other delinquent taxpayers in the case of unpaid taxes or tax liens on 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, 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 Village during the tax year, in accordance with Applicable Law.

**SECTION 4.03 Annual Service Charge Amount**

Annual Service Charge. In consideration for the tax exemption provided for herein, the Entity shall make payment to the Village, in lieu of real property taxes on the improvements within the Project Area, of an Annual Service Charge in an amount calculated as follows:

A. Commencing on the Annual Service Charge Start Date through the conclusion of the Fifth (5<sup>th</sup>) year of the Exemption Term, the Annual Service Charge for the Project shall be equal to the greater of (i) the Minimum Annual Service Charge, or (ii) ten percent (10%) of the Annual Gross Revenue;

B. Commencing on the first day of the sixth (6<sup>th</sup>) year of the Exemption Term through the conclusion of the tenth (10<sup>th</sup>) year of the Exemption Term, the Annual Service Charge for the Project shall be equal to the greater of (i) the Minimum Annual Service Charge, or (ii) twelve and one half percent (12.5%) of Annual Gross Revenue; and

(iii) Commencing on the first day of the eleventh (11<sup>th</sup>) year of the Exemption Term through the conclusion of the fifteenth (15<sup>th</sup>) year of the Exemption Term, the Annual Service Charge for the Project shall be equal to the greater of (i) the Minimum Annual Service Charge, or (ii) fifteen percent (15%) of Annual Gross Revenue.

(b) the Minimum Annual Service Charge. The first year of the Annual Service Charge shall be billed based on the Minimum Annual Service Charge. The Entity shall use the prior year's Annual Gross Revenues to estimate the Annual Service Charge for each year. Pursuant to N.J.S.A. 40A:20-3(c), within ninety (90) days of the end of each year the Entity shall review the Annual Service Charge for the prior year and apply any underpayment or overpayment to the then current year.

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. Further, any and all tax appeals currently pending on the Land or existing improvements have been withdrawn.

#### **SECTION 4.04 Reformation of Annual Service Charge Computation**

In the event the tax 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, and shall be reformed to cure the invalid provision so that the Annual Service Charge shall be in the amount set forth in Section 4.03, but the Entity shall receive a credit against the Annual Service Charge for any Land Taxes paid as hereinafter provided.

If the tax exemption of the Land authorized under N.J.S.A. 40A:20-12 is invalidated, then the provisions of this paragraph shall apply, and 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 without regard to any improvements or increase in value to the Land because of the Improvements. 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. The Entity is required to make payment of both the Annual Service Charge and the Land

Tax Payments, if applicable. 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 Village shall, among its other remedies, have the right to proceed against the Property pursuant to the In Rem Tax Foreclosure Act, N.J.S.A. 54:5-1, et seq. and/or may declare a Default under this Agreement upon sixty (60) days written notice to the Entity.

#### **SECTION 4.05 Schedule of Stage Adjustments to Annual Service Charge**

Pursuant to N.J.S.A. 40A:20-12(b), the Annual Service Charge shall be adjusted as follows:

A. Stage One. Commencing on the Annual Service Charge Start Date through the conclusion of eleventh (11<sup>th</sup>) year of the Exemption Term, the Annual Service Charge shall be the amount established in accordance with Section 4.03 or 4.04 of the Agreement, as applicable.

B. Stage Two. From the first day of the twelfth (12<sup>th</sup>) year of the Exemption Term through the conclusion of the twelfth (12<sup>th</sup>) year of the Exemption Term, the Annual Service Charge shall be the amount established in accordance with Section 4.03 or 4.04 of the Agreement, as applicable, or twenty percent (20%) of the amount of the taxes otherwise due on the Land and Improvements, whichever is greater.

C. Stage Three. From the first day of the thirteenth (13<sup>th</sup>) year of the Exemption Term through the conclusion of the thirteenth (13<sup>th</sup>) year of the Exemption Term, the Annual Service Charge shall be the greater of: (i) the amount established in accordance with Section 4.03 or 4.04 of the Agreement, as applicable, or (ii) forty percent (40%) of the amount of the taxes otherwise due on the Land and Improvements.

D. Stage Four. From the first day of the fourteenth (14<sup>th</sup>) year of the Exemption Term through the conclusion of the fourteenth (14<sup>th</sup>) year of the Exemption Term, the Annual Service Charge shall be the amount established in accordance with Section 4.03 or 4.04 of the Agreement, as applicable, or sixty percent (60%) of the amount of the taxes otherwise due on the Land and Improvements, whichever is greater.

E. Fifth Stage. From the first day of the fifteenth (15<sup>th</sup>) year of the Exemption Term through the conclusion of the fifteenth (15<sup>th</sup>) year of the Exemption Term, the Annual Service Charge shall be the greater of: (i) the amount established in accordance with Section 4.03 or 4.04 of the Agreement, as applicable, or (ii) eighty percent (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 an Annual Administrative Fee equal to two percent (2%) of the previous year's Annual Service Charge. The Annual Administrative Fee shall be paid by the Entity and shall be due and paid in the same manner as the quarterly Annual Service Charge payments.

#### **SECTION 4.07 Material Conditions**

It is expressly agreed and understood that, subject to the provisions of Section 4.04 above, the tax exemption granted by this Agreement and all payments of Annual Service Charges and any interest payments, penalties or costs of collection due thereon, Land Taxes and the 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 and 4.03 hereof shall be reduced, amended or otherwise modified during the Term of this Agreement. The Entity and the Village hereby consent and agree to the amount of Annual Service Charge and the Entity hereby consents and agrees to the liens established in this Financial Agreement, and the Entity shall not contest the validity or amount of any such lien; provided, however, that the foregoing shall not be construed to bar the Entity from raising the defense that (i) the Annual Service Charge then due and owing has been paid in full or (ii) that the Annual Service Charge is not yet due and owing. 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 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 Village of any provisions of this Financial Agreement, termination of the Redevelopment Agreement or failure of the Entity to complete the Project.

**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 constitutes a continuous municipal lien on the Land and the Improvements.

**SECTION 4.10 Security for Payment of Annual Service Charges**

In order to secure the full and timely payment of the Annual Service Charges, the Village 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.

**SECTION 4.11 Community Artist Incubator Space Agreement**

As set forth in Section 4.27 of the Redevelopment Agreement, The Village shall have the right to, subject to provisions set forth in the Redevelopment Agreement and Community Artist Incubator Space Agreement, to lease the Community Artist Incubator Space for a term of fifteen

(15) years commencing upon Project Completion, for \$1.00 paid annually. The Community Artist Incubator Space shall front on Sloan Street.

**{End of Article IV}**

**ARTICLE V**  
**REMEDIES**

**SECTION 5.01 Dispute Resolution**

In the event of a breach of this Agreement by any of the Parties or a dispute arising between the Parties in reference to the terms and provisions as set forth herein (except with regard to an event of a Default on the part of the Entity to pay any installment of the Annual Service Charge as required by Article IV) then the Parties shall submit the dispute to mediation. The Parties agree that the mediation will be before a retired judge of the Superior Court of New Jersey agreed upon by the Parties within ten (10) days after request by either Party upon occurrence of a dispute, or if the Parties fail to so agree, a retired judge of the Superior Court appointed by the Assignment Judge of Essex County upon application of either Party. The Parties agree to engage in good faith in the mediation effort to seek resolution of the disagreement. The good faith obligation shall require, as a condition precedent to commencement of any arbitration other than one seeking emergent relief, participation of up to six (6) hours at a mediation session conducted by the Mediator at a time and place fixed by the Mediator, all to occur within thirty (30) days after appointment of the Mediator. The Parties further agree that the mediation procedure is voluntary and non-binding (beyond good faith obligation described in the previous sentence). Following good faith participation, either Party may at any time terminate the mediation proceeding with or without cause. The Mediator shall also have the right to terminate the mediation if the Mediator shall determine that the efforts to reach a settlement are likely to be futile. The Parties agree to share the burden of the Mediator's compensation equally and each agrees to pay its share pursuant to the Mediator's invoice to be rendered at completion or termination of the mediation process. To the extent not expressly modified by provisions of this article, the American Arbitration Association Mediation Rules are incorporated herein and as a part of this Article shall govern the Parties and the Mediator in the conduct of the mediation proceeding. Except in cases of where emergent injunctive relief is required, the resort by a Party to any arbitration for relief pertaining to this Agreement before completion of good faith participation in the mediation process called for herein shall constitute an immediate and material breach of this Agreement by such Party.

If a dispute is not resolved by mediation as provided above, or requires injunctive emergent relief, the Parties agree that the matter shall be submitted to an arbitrator mutually selected and agreed to by the Parties. If the Parties cannot agree upon an arbitrator, then each Party shall select an arbitrator, who in turn will mutually select a third arbitrator. The arbitrator retained to resolve the dispute shall abide by the rules and regulations of arbitration as set forth and/or followed by the American Arbitration Association in the State of New Jersey in such a fashion to accomplish the purpose of said laws. Costs for said arbitration shall be paid by the non-prevailing Party. The demand for arbitration shall be filed in writing and shall be made within a reasonable time after a dispute or breach occurs. The award rendered by the arbitrator shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

**SECTION 5.02 Remedies**

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, the Village in addition to its other remedies, reserves the right to proceed against the Project, in the manner provided by Applicable Law, including the Tax Sale Law and the In Rem Tax Foreclosure Act, 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. In either case, however, the Entity does not waive any defense it may have to contest the rights of the Village to proceed in the above-mentioned manner.

**{End of Article V}**

**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 responsibility of the Entity to promptly 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 Village, including, if appropriate retroactive billing with interest for any charges determined to be due, in the absence of such filing by the Entity.

**{End of Article VI}**

## 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, commencing with the year in which the Annual Service Charge Start Date occurs, for the duration of this Agreement, the Entity shall submit to the Village President, Board of Trustees, the Tax Collector and the Municipal 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 Auditor's 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 final Certificate of Occupancy is issued for the Project, the Entity shall, unless this Agreement is terminated, submit to the Village President, Board of Trustees, the Tax Collector and the Municipal Clerk, who shall advise those municipal officials required to be advised, an audit of Total Project Cost, certified as to actual construction costs in a form acceptable to the Village.

C. Disclosure Statement: On each anniversary date of the execution of this Agreement, if there has been a change in ownership or interest from the prior year's filing, the Entity shall submit to the Village President, Board of Trustees, the Tax Collector and the Municipal 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 Village may request from time to time.

#### **SECTION 7.03** Inspection

The Entity shall permit the inspection of the Property, equipment, buildings and other facilities of the Project, by representatives duly authorized by the Village 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 Village 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 10 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. The Parties acknowledge that inspections in the normal course do not require advance notice (e.g., building, fire, 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:20-3(b) and (c), this calculation shall be completed in accordance with generally accepted accounting principles. In accordance with N.J.S.A. 40A:20-15, excess Net Profits shall be calculated on an annual but cumulative basis.

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.

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 all or a portion of the Project, 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 one hundred twenty (120) days after the end of such fiscal year shall pay such excess Net Profits to the Village as an additional service charge; provided, however, that the Entity may maintain a reserve as determined pursuant to aforementioned Section 7.04 from such excess Net Profits. The calculation of Net Profit and Allowable Net Profit shall be made in the manner required pursuant to N.J.S.A. 40A:20-3(c) and 40A:20-15.

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

**{End of Article VII}**

## 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 voluntarily transfer more than ten percent (10%) of the direct ownership of the Project until it has removed itself and the Project from all restrictions under this Agreement. The Entity shall, however, be permitted to transfer all or any portion of the Project to another urban renewal entity approved by the Village as follows:

As permitted by N.J.S.A. 40A:20-10(a), it is understood and agreed that the Village, on written application by the Entity after completion of the Project, will 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 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 Village in regard to the Project; and (vi) 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 Entity shall pay an administrative transfer fee equal to one percent (1%) of the then applicable Annual Service Charge for processing any such application by the Entity.

If this Agreement is transferred in accordance with this Section, then pursuant to N.J.S.A. 40A:20-6, the Entity shall be discharged from any further obligation under this Agreement and shall be qualified to undertake another project pursuant to the Long Term Tax Exemption Law. The date of transfer of the Project to a purchasing entity shall be considered to be the close of the fiscal year of the Entity. Within one hundred twenty (120) days after that date of the transfer of the Project, the Entity shall pay to the Village the amount of reserve, if any, maintained by it, as well as the excess Net Profit, if any, pursuant to N.J.S.A. 40A:20-15.

#### **SECTION 8.02** No Subdivision/Division of Land and Improvements.

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 Board of Trustees by ordinance, convey, mortgage or transfer all or part of the Project in a manner that would cause the severance or division of the Improvements from the Land which are basic to, embraced in, or underlying the exempt Improvements.

#### **SECTION 8.03** Subordination of Fee Title

It is expressly understood and agreed that the Entity has the right, subordinate to the lien of the Annual Service Charges, and to the rights of the Village hereunder to mortgage, encumber, lease and/or, if applicable, assign the lease to, the Land and/or Improvements, and that any such mortgage, encumbrance, lease or assignment shall not be deemed to be a violation of this Agreement.

**{End of Article VIII}**

## ARTICLE IX

### VILLAGE DETERMINATIONS AND OBLIGATIONS

#### **SECTION 9.01 Relative Benefits**

In accordance with the Long Term Tax Exemption Law, specifically N.J.S.A. 40A:20-11(a), the Village hereby finds and determines that this Agreement is to the direct benefit of the health, safety, welfare and financial well-being of the Village and its citizens despite the tax exemption granted hereunder. The Project is a transit-oriented development, that furthers smart growth norms, and will substantially enhance the viability and vitality of the Village's downtown. The Property consists of commercial space and a parking lot, which are currently vacant and underutilized. The Project will redevelop with Property with approximately forty-one (41) residential units, inclusive of thirty-three (33) market-rate units and eight (8) affordable residential units, a minimum of two thousand (2,000) square feet (+/- 75 square feet) of commercial space dedicated to the Village rent-free for a minimum period of fifteen (15) years to be used as artist incubator space, and certain related on-site and off-site improvements. The Project will create [ ] temporary construction jobs and [ ] permanent jobs (as referenced in the preambles hereof). The Project will generate significant amounts of new municipal revenues through the Annual Service Charge and water/sewer fees. Accordingly, the Project will produce direct and indirect economic benefits to the Village and its residents, substantial commerce, and improvement of the quality of life and creation of public benefits for existing and future residents of the Village.

The costs associated with the demolition and remediation of the Property, construction of the proposed Project and community amenities, makes the redevelopment of the Property extraordinarily expensive. . In light of market conditions and other economic factors impacting this Project, it is not financially feasible to undertake the development of this Project in the absence of the tax exemption. Accordingly, without the incentive of the tax exemption, it is unlikely that the Project would be undertaken. Without the Project, the benefits described above would not be realized.

#### **SECTION 9.02 Importance of Tax Exemption**

In accordance with the Long Term Tax Exemption Law, specifically N.J.S.A. 40A:20-11(b), the Village hereby finds and determines that it has reviewed the Application and accompanying financial information and it has determined that this Agreement is a critical incentive for the Entity to undertake the Project in the Village due to the extraordinary costs associated with the development of the Property.

The tax exemption permits the private mixed-use development of underutilized property without any cost to the public while simultaneously producing a stream of revenue in the form of the Annual Service Charges and water/sewer fees, temporary and permanent jobs which produce indirect economic benefits, substantial commerce, and improvement of the quality of life and creation of public benefits for existing and future residents of the Village. The relative stability and predictability of the Annual Service Charges will allow the owners and, by extension, the

occupants, of the Project to stabilize their expenses, which will ensure the likelihood of the success of the Project and ensure that it will have a positive impact on the surrounding area. Further, the relative stability and predictability of the Annual Service Charge makes the Project more attractive to investors and lenders needed to finance the Project.

The tax exemption permits the development of the Project in an area that cannot otherwise be feasibly developed by reducing the expenses associated with the operation of the Project. Reduced expenses allow for more competitive rents. As a result, the locational decisions of the probable tenants will be influenced positively by the tax exemption.

**{End of Article IX}**

**ARTICLE X**

**WAIVER**

**SECTION 10.01 Waiver**

Nothing contained in this Agreement or otherwise shall constitute a waiver or relinquishment by the Village 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 Village or the Entity has under law, in equity, or under any provision of this Agreement.

**{End of Article X}**

## ARTICLE XI

### NOTICE

#### SECTION 11.01 Notice

Any notice required hereunder to be sent by any Party to another Party shall be shall be in writing and shall be sufficiently given or delivered if dispatched by United States Registered or Certified Mail, postage prepaid and return receipt requested, or delivered by overnight courier or delivered personally (with receipt acknowledged), or by facsimile transmission (with receipt acknowledged) to the Parties at their respective addresses set forth herein, as follows:

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

Jeffrey B. Markovitz  
[8 SECOND STREET, LLC URE]  
2029 Morris Avenue  
Union, New Jersey 07083

Michael Markovitz  
[8 SECOND STREET, LLC URE]  
2029 Morris Avenue  
Union, New Jersey 07083

*With a copy to:*

Derek W. Orth, Esq.  
Inglesino, Webster, Wyciskala & Taylor LLC  
600 Parsippany Road Suite 204  
Parsippany, New Jersey 07054

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

Township of South Orange Village  
Village Hall  
76 South Orange Avenue  
South Orange, New Jersey 07040  
ATTN: Village President and Township Administrator

*With a copy to:*

Bhavini A. Doshi, Esq.  
McManimon, Scotland & Baumann, LLC  
75 Livingston Avenue  
Roseland, New Jersey 07068

The notice to the Village shall identify the subject with the tax account numbers of the tax parcels comprising the Land. From time to time either Party may designate a different Person or address for all the purposes of this Notice provision by giving the other Party no less than ten (10) Days' Notice in advance of such change of address in accordance with the provisions hereof. Notices shall be effective upon the earlier of receipt or rejection of delivery by the addressee. In addition, if the Entity delivers formal written notice to the Village of the name and address of any Secured Party, then the Village shall provide such Secured Party with a copy of any notice required to be sent to the Entity.

**{End of Article XI}**

**ARTICLE XII**

**COMPLIANCE**

**SECTION 12.01 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 and any lawful ordinances and resolutions of the Village, 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 violation and breach of the Agreement.

**{End of Article XII}**

**ARTICLE XIII**

**CONSTRUCTION**

**SECTION 13.01 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 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 Village have combined in their review and approval of same.

**{End of Article XIII}**

## ARTICLE XIV

### INDEMNIFICATION

#### SECTION 14.01 Indemnification

It is understood and agreed that in the event the Village shall be named as a party defendant in any action brought against the Village or the Entity by allegation of any breach, Default or a violation by the Entity only 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, to the fullest extent permitted by law, indemnify, defend, and hold the Village 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 breach, Default or a violation by the Entity of any of the provisions of this Agreement, the provisions of the Long Term Tax Exemption Law, and/or any other Applicable Law. In no event shall the Entity be required to indemnify the Village for any liability, losses, damages, demands, costs, claims, actions or expenses (including reasonable attorneys' fees and expenses) resulting solely from any negligence or misconduct by the Village or any of its officers, officials, employees or agents, or resulting from the illegality or unenforceability of this Agreement or any of the terms of this Agreement. To the extent the Entity is required to indemnify the Village hereunder, the Entity shall defend the suit at its own expense. However, the Village maintains the right to intervene as a party thereto at its own sole cost and expense, to which intervention the Entity hereby consents. This Section shall survive the termination of this Financial Agreement.

{End of Article XIV}

## ARTICLE XV

### DEFAULT

#### **SECTION 15.01** Default

Default shall be failure of either Party to conform to the terms of this Agreement and failure of the Entity to perform any obligation imposed by statute, ordinance or lawful regulation beyond any applicable notice, cure or grace period.

#### **SECTION 15.02** Cure Upon Default

Should a Party be in Default of any obligation under this Agreement, the non-defaulting Party shall notify the defaulting Party and a Secured Party or 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 sixty (60) days to cure any Default (other than a Default in payment of any installment of the Annual Service Charge which default must be cured within ten (10) days from the date of its receipt of the Default Notice) provided such cure can reasonably be effected within such sixty (60) day period in which case Entity shall have such additional time to cure as reasonably necessary to effect same. In the event of any uncured Default by the Entity, the Village 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 Village shall have the right to proceed to In Rem Tax Foreclosure consistent with the provisions and procedures of the In Rem Tax Foreclosure Act.

#### **SECTION 15.03** 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 Village, and all rights and remedies granted to them by law and equity shall be cumulative and concurrent and no determination of the invalidity of any provision of this Agreement shall deprive the Village of any of their remedies or actions against the Entity because of 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 of 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 15.04** 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 15.02, the Village has the right to terminate this Agreement upon thirty (30) days written notice to the Entity (the “**Notice of Termination**”).

**SECTION 15.05 Final Accounting**

Within ninety (90) days after the date of Termination, the Entity shall provide a final accounting and pay to the Village 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 15.06 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 Village.

**{End of Article XV}**

## ARTICLE XVI

### MISCELLANEOUS

#### **SECTION 16.01** 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 16.02** Oral Representations

There have been no oral representations made by either of the Parties hereto which are not contained in this Agreement. This Agreement, the 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 16.03** Entire Document

All conditions in the Ordinance are incorporated in this Agreement and made a part hereof.

#### **SECTION 16.04** Good Faith

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

#### **SECTION 16.05** Recording

This entire Agreement will be filed or recorded with the Essex County Clerk by the Entity or the Village.

#### **SECTION 16.06** 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 and Annual Service Charges, as required by law. Nothing herein is intended to release Entity from its obligation to make such payments.

#### **SECTION 16.07** Annual Service Charge Paid to County

Pursuant to N.J.S.A. 40A:20-12, the Village shall remit five percent (5%) of the Annual Service Charge received by the Village to Essex County.

#### **SECTION 16.08** Financing Matters

The financial information required by the final paragraph of N.J.S.A. 40A:20-9 are set forth in the Application.

**SECTION 16.09 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 16.10 Amendments**

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

**SECTION 16.11 Certification**

The Municipal Clerk shall certify to the Tax Assessor, pursuant to N.J.S.A. 40A:20-12, that an agreement with an urban renewal entity, i.e., the Entity, for the redevelopment of the Redevelopment Area, has been entered into and is in effect as required by the Long Term Tax Exemption Law. Delivery by the Municipal Clerk to the Tax Assessor of a certified copy of the Ordinance and this Agreement 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 Municipal 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) calendar days following the later of the effective date of the Ordinance or the execution of this Agreement by all Parties hereto, the Municipal Clerk shall transmit a certified copy of the Ordinance and this Agreement to the chief financial officer of Essex County and to the Essex County counsel for informational purposes.

**SECTION 16.12 Severability**

Subject to, and except as otherwise provided in Sections 4.04 and 4.07, 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.

**SECTION 16.13 Effect of Amendment and Restatement**

This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto and supersedes all negotiations or previous agreements between the Parties with respect to all or any part of the subject matter hereof.

**SECTION 16.14 Estoppel Certificate**

Within thirty (30) days following written request therefor by the Entity, the Village shall issue a signed estoppel certificate in reasonable form stating that (i) this Agreement is in full force and effect, (ii) to the best of the Village's knowledge, no Default has occurred under this Agreement (nor any event which, with the passage of time and/or the giving of notice would result in the occurrence of a Default) or stating the nature of any Default, and (iii) stating any such other factual information as may be requested related to this Agreement, provided that, (a) the Village has had an opportunity to confer with its counsel regarding the form of such Estoppel Certificate (b) the information requested is within the Village's control or possession and (c) such information is not otherwise privileged or confidential.

**SECTION 16.15 Effective Date**

The Parties agree that the Effective Date of this Agreement shall be the last date that this Agreement is executed and delivered by both Parties, which date shall be inserted at the top of the first page hereof.

**{End of Article XVI}**

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

**[8 SECOND STREET, LLC URE]**  
a New Jersey limited liability company

**By:** \_\_\_\_\_  
Name: Michael Markovitz  
Title: Managing Member

**TOWNSHIP OF SOUTH ORANGE VILLAGE**

\_\_\_\_\_  
Sheena C. Collum, Village President



STATE OF NEW JERSEY :  
 : ss  
COUNTY OF ESSEX :

The foregoing instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_  
202\_\_\_, by Sheena Collum, and this person acknowledged under oath, to my satisfaction that:

- (a) she is the President of the Township of South Orange Village, a municipal corporation of the County of Essex and State of New Jersey, named in the within document;
- (b) she is authorized to execute the attached document on behalf of the Township of South Orange Village;
- (c) she executed the attached document on behalf of the Township of South Orange Village; and
- (d) the attached document was signed and made by the Township of South Orange Village as its duly authorized and voluntary act.

\_\_\_\_\_  
Notary Public

SEAL

**LIST OF EXHIBITS**

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

**Exhibit A – Metes and Bounds Description of the Land**

**Exhibit B – Tax Exemption Application with Exhibits**

**Exhibit C – Ordinance**

**EXHIBIT A  
METES AND BOUNDS DESCRIPTION OF THE LAND**

DRAFT

**EXHIBIT B**  
**TAX EXEMPTION APPLICATION WITH EXHIBITS**

DRAFT

**EXHIBIT C  
ORDINANCE**

DRAFT



**EXHIBIT C**  
**ASSIGNMENT AND ASSUMPTION AGREEMENT**

## ASSIGNMENT AND ASSUMPTION AGREEMENT

**THIS ASSIGNMENT AND ASSUMPTION AGREEMENT** (this “Assignment”) is entered into as of this \_\_\_ day of \_\_\_\_\_, 202\_\_\_ (the “Effective Date”), by and among **8 SECOND STREET, LLC**, a limited liability company organized under the laws of the State of Delaware, and having its principal place of business at 2029 Morris Avenue, Union, New Jersey 07083 (the “Assignor”), **THE TOWNSHIP OF SOUTH ORANGE VILLAGE**, a municipal corporation in the State of New Jersey, having its offices at 76 South Orange Avenue, Suite 302, South Orange, New Jersey 07079 (the “Village”), and **8 SECOND STREET URBAN RENEWAL, LLC**, an urban renewal entity qualified to do business under the provisions of the Long Term Tax Exemption Law, *N.J.S.A. 40A:20-1 et seq.*, as amended and supplemented (the “Long Term Tax Exemption Law”), having its offices at c/o Markbuilt Homes, 2029 Morris Avenue, Union, New Jersey 07083 (the “Assignee”).

### WITNESSETH:

**WHEREAS**, on December 18, 1995, the Board of Trustees (the “Trustees”) of the Village, in accordance with the criteria set forth in the Local Redevelopment and Housing Law, *N.J.S.A. 40A:12A-1 et seq.*, as amended and supplemented (the “Redevelopment Law”), adopted Resolution No. 301-95 designating certain property in the Village commonly known as the Central Business District Redevelopment Area (the “Redevelopment Area”), as an area in need of redevelopment in accordance with the Redevelopment Law; and

**WHEREAS**, the Assignor is previous owner of certain property within the Redevelopment Area identified as Block 1905, Lot 1 on the official tax maps of the Village (the “Property”); and

**WHEREAS**, the Assignee is the owner of the Property; and

**WHEREAS**, by Ordinance No. 96-43 adopted on November 25, 1996, in accordance with the Redevelopment Law, the Trustees adopted the “Central Business District Redevelopment Plan,” which was subsequently amended by Ordinance No. 20-2002, adopted on September 23, 2002, by Ordinance No. 08-20, adopted on October 15, 2008, by Ordinance 2012-24 adopted on January 28, 2013 and by Ordinance 2014-03 adopted on May 19, 2014 (the “CBD Plan”) for an area in the Village known as the Central District Redevelopment Area, which includes the Property; and

**WHEREAS**, on September 14, 2020, the Trustees adopted Resolution 2020-212 designating the Assignor as the “conditional redeveloper” of the Property, approving and authorizing execution of a conditional redeveloper’s agreement, and authorizing Village President to execute same; and

**WHEREAS**, in order to redevelop the Property as envisioned by the Village and Assignor, certain changes were required to be made to the CBD Plan; and

**WHEREAS**, on April 26, 2021, by Ordinance 2021-12, the Village adopted the redevelopment plan entitled “Second and Sloan Street Redevelopment Plan” dated March 31, 2021 (the “**Redevelopment Plan**”) for the Property; and

**WHEREAS**, in furtherance of the redevelopment of the Redevelopment Area and as authorized by Resolution No. 2022-005 adopted by the Trustees on January 10, 2022, the Trustees determined to enter into that certain “Redevelopment Agreement”, dated April 2, 2022 (the “**Redevelopment Agreement**”), with Assignor, which Redevelopment Agreement designated Assignor as the “redeveloper”, as that term is defined in the Redevelopment Law, of the Property and which specifies the respective rights and responsibilities of the Assignor and the Village with respect to the Project (as that term is defined in the Redevelopment Agreement); and

**WHEREAS**, Sections 7.01(a) and (c) of the Redevelopment Agreement expressly permits the transfer of a portion of Assignor’s rights, duties, and obligations under the Redevelopment Agreement and to the Redevelopment Area to an Affiliate (as that term is defined in the Redevelopment Agreement) of Assignor; and

**WHEREAS**, Assignee is an Affiliate (as that term is defined in the Redevelopment Agreement) of Assignor; and

**WHEREAS**, pursuant to the Long Term Tax Exemption Law and as authorized by Ordinance No. \_\_\_ adopted by the Trustees on \_\_\_\_\_, 202\_\_\_ (the “**Ordinance**”), the Village and Assignee entered into that certain Financial Agreement dated \_\_\_\_\_, 202\_\_\_, pursuant to which the Village granted Assignee, as an Affiliate of Redeveloper, a long term tax exemption for the Improvements (as that term is defined in the Redevelopment Agreement); and

**WHEREAS**, the Assignor has provided notice to the Village, in compliance with Section 7.01 of the Redevelopment Agreement, of the transfer, of the nature of such transfer, and the name(s) and address(es) of the Assignee and any parties, individuals and/or entities comprising the Assignee; and

**WHEREAS**, Assignor desires and intends to assign all of its rights, duties and obligations under the Redevelopment Agreement, Assignee desires and intends to assume the same, and the Village has consented to same.

**WHEREAS**, also pursuant to the Ordinance, the Village President, on behalf of the Village, was authorized to execute this Assignment with the Assignor and the Assignee.

**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:

**Section 1. Representations, Warranties and Covenants.** (a) The Assignor hereby represents, warrants and covenants as follows:

(i) it is duly formed and validly existing under the laws of the State of New Jersey and all necessary resolutions or authorizations have been duly adopted to authorize the execution and delivery of this Assignment and direct the persons executing this Assignment to do so for and on its behalf;

(ii) it has the right to assign its rights, duties and obligations under the Redevelopment Agreement, and no other person, firm or corporation, other than the parties hereto, has any right, title or interest therein except as otherwise permitted under the Redevelopment Agreement;

(iii) as of the date hereof, to the best of its knowledge and belief after diligent inquiry, there is no action, proceedings or investigation now pending, nor any basis therefor, known or believed to exist which questions the validity of this Assignment, the Assignor's execution thereof, or any action or act taken or to be taken by the Assignor pursuant to this Assignment;

(iv) the execution and delivery of this Assignment and its performance hereunder will not constitute a violation of the Redevelopment Agreement or of any governmental approvals, nor of Assignor's operating agreement or any other agreement, mortgage, indenture, instrument or judgment to which Assignor may be a party; and

(v) Assignor has not received any notice of default under the Redevelopment Agreement, and has no knowledge of any facts and circumstances that would give rise to a default thereunder. To the best of Assignor's knowledge, the Redevelopment Agreement is in full force and effect.

(b) the Assignee hereby represents, warrants and covenants as follows:

(i) it is duly formed and validly existing under the laws of the State of New Jersey and all necessary resolutions or authorizations have been duly adopted to authorize the execution and delivery of this Assignment and direct the persons executing this Assignment to do so for and on its behalf;

(ii) it fully assumes Assignor's obligations under the Redevelopment Agreement on a going forward basis;

(iii) it will abide all terms and conditions of the Redevelopment Agreement;

(iv) as of the date hereof, to the best of its knowledge and belief after diligent inquiry, there is no action, proceedings or investigation now pending, nor any basis therefor, known or believed to exist which (1) questions the validity of this Assignment, the Assignee's execution thereof, or any action or act taken or to be taken by the Assignee pursuant to this Assignment; or (2) is likely to result in a material adverse change in Assignee's property, assets, liabilities or condition which will materially and substantially impair Assignee's ability to perform its obligations pursuant to the terms of this Assignment; and

(v) the execution and delivery of this Assignment and its performance hereunder will not constitute a violation of the Redevelopment Agreement or of any governmental approvals, nor of Assignee's operating agreement or any other agreement, mortgage, indenture, instrument or judgment to which Assignee may be a party.

**Section 2.** Assignment and Assumption of Rights, Duties and Obligations relating to the Redevelopment Agreement. The Assignor hereby assigns, transfers and sets over to Assignee and Assignee assumes all of Assignor's duties, obligations, rights, title and interest in, to and under the Redevelopment Agreement. Notwithstanding anything in this Assignment to the contrary, the Assignor and the Assignee shall each be jointly and severally obligated and liable for all obligations under the Redevelopment Agreement, including the Completion of Construction of the Project (as those terms are defined in the Redevelopment Agreement).

**Section 3.** Village Rights. The Assignor and Assignee acknowledge and agree that this Assignment is not intended to diminish or reduce any of the rights of the Village under the Redevelopment Agreement, including the right to enforce the terms thereof. Further, all other terms and provisions of the Redevelopment Agreement shall remain in full force and effect.

**Section 4.** Term. So long as no default has occurred under the Redevelopment Agreement beyond the expiration of applicable notice and grace periods set forth therein, the Assignee shall have the right to retain, use and enjoy the benefits of the Redevelopment Agreement pursuant to the provisions of this Assignment.

**Section 5.** Third Party Beneficiaries. Except for the Village and its successors and/or assigns, nothing contained herein is intended or shall be deemed to create or confer any rights upon any third person not a party hereto, whether a third party beneficiary or otherwise, except as expressly provided herein, nor shall anything contained herein be construed to create any relationship of partnership, agency, joint venture or the like between the parties hereto.

**Section 6.** Severability of Invalid Provisions. If any one or more of the provisions contained herein shall be held to be illegal or invalid in a final proceeding, then any such provisions shall be null and void and shall be deemed separable from the remaining provisions and shall in no way affect the validity of any of the other provisions hereof.

**Section 7.** Governing Law. This Assignment shall be governed by and construed and enforced pursuant to the laws of the State of New Jersey, without regard to its conflict of law principles. Any action hereunder shall be brought exclusively in a court of the State of New Jersey, sitting in Essex County, New Jersey, or in a United States Court having jurisdiction in the District of New Jersey, sitting in Essex County, New Jersey, and the parties hereto hereby waive objections to such venue. The parties hereto for themselves and their successors and assigns, hereby waive trial by jury in any action arising out of or in connection with this Assignment.

**Section 8.** Counterparts. This Assignment 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 9.** Effective Date. The Parties agree that the Effective Date of this Assignment shall be the last date that this Assignment is executed and delivered by both Parties, which date shall be inserted at the top of the first page hereof.

**{REMAINDER OF PAGE INTENTIONALLY LEFT BLANK}**

**IN WITNESS WHEREOF**, the parties hereto have caused this Assignment to be properly executed as of the date first written above.

**8 SECOND STREET, LLC**

By: \_\_\_\_\_  
Name: Michael Markovitz  
Title: Authorized Signatory  
Date:

**8 SECOND STREET URBAN RENEWAL, LLC**

By: \_\_\_\_\_  
Name: Michael Markovitz  
Title: Authorized Signatory  
Date:

**TOWNSHIP OF SOUTH ORANGE VILLAGE**

By: \_\_\_\_\_  
Name: Sheena Collum  
Title: Village President  
Date: