

**STATE OF NEW JERSEY**  
**DEPARTMENT OF COMMUNITY AFFAIRS**  
**DIVISION OF LOCAL GOVERNMENT SERVICES**  
**LOCAL FINANCE BOARD**

**APPLICATION**

**CITY OF ORANGE TOWNSHIP,  
IN THE COUNTY OF ESSEX, STATE OF NEW JERSEY**

**NEW JERSEY LOCAL FINANCE BOARD**

Melanie Walter, Director

Patricia Parkin-McNamara, Executive Secretary

STATE OF NEW JERSEY  
DEPARTMENT OF COMMUNITY AFFAIRS  
DIVISION OF LOCAL GOVERNMENT SERVICES  
LOCAL FINANCE BOARD  
APPLICATION DATA

APPLICANT'S NAME: CITY OF ORANGE TOWNSHIP

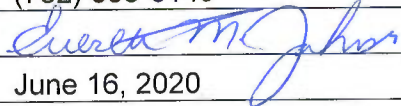
ADDRESS: 29 North Day Street

Orange, NJ 07050

COUNTY Essex  
ID # 22-6002178  
YEAR 2020

STATUTE TO WHICH APPLICATION IS BEING SUBMITTED: N.J.S.A. 40A:3-4

AMOUNT FOR WHICH APPLICATION IS BEING SUBMITTED: \$200,000

CONTACT PERSON: Everett M. Johnson, Esq.  
TITLE: Bond Counsel  
ORGANIZATION/FIRM: Wilentz, Goldman & Spitzer, P.A.  
ADDRESS: 90 Woodbridge Center Drive  
P.O. Box 10  
Woodbridge, New Jersey 07095  
PHONE NUMBER: (732) 855-6149  
SIGNATURE:   
DATE: June 16, 2020

FOR DIVISION USE ONLY

DATE OF HEARING	_____
SCHEDULED TIME	_____
REFERENCE FILE	_____
LFB ACTION	_____
WP DOC. #	_____

## RESOLUTION SERVICE LIST

### MAYOR

NAME: Dwayne D. Warren  
ADDRESS: City of Orange Township  
29 North Day Street  
Orange, NJ 07050  
EMAIL: mayor@orangenj.gov

### BUSINESS ADMINISTRATOR

NAME: Christopher Hartwyk  
ADDRESS: City of Orange Township  
29 North Day Street  
Orange, NJ 07050  
EMAIL: chartwyk@orangenj.gov

DIRECTOR OF FINANCE: NAME: Adrian O. Mapp  
ADDRESS: City of Orange Township  
29 North Day Street  
Orange, NJ 07050  
EMAIL: amapp@orangenj.gov

### CHIEF FINANCIAL OFFICER

NAME: Nile S. Clements  
ADDRESS: City of Orange Township  
29 North Day Street  
Orange, NJ 07050  
EMAIL: nclements@orangenj.gov

### CLERK

NAME: Joyce Lanier  
ADDRESS: City of Orange Township  
29 North Day Street  
Orange, NJ 07050  
EMAIL: jlanier@orangenj.gov

CITY ATTORNEY

NAME: Gracia R. Montilus, Esq.  
ADDRESS: City of Orange Township  
29 North Day Street  
Orange, NJ 07050  
EMAIL: gmontilus@orangenj.gov

BOND COUNSEL

NAME: Everett M. Johnson, Esq.  
ADDRESS: Wilentz, Goldman & Spitzer, P.A.  
90 Woodbridge Center Drive  
Woodbridge, NJ 07095  
PHONE: (732) 855-6149  
EMAIL: ejohnson@wilentz.com

AUDITOR

NAME: Frank McEnerney, CPA  
ADDRESS: PKF O'Connor Davies, LLP  
293 Eisenhower Parkway  
Livingston, NJ 07039  
EMAIL: fmcenerney@pkfod.com

BUDGET CONSULTANT

NAME: Dieter P. Lerch, CPA  
ADDRESS: Lerch, Vinci & Higgins, LLP  
17-17 Route 208  
Fair Lawn, NJ 07410  
EMAIL: dlerch@lvhcpa.com

## EXECUTIVE SUMMARY

The City of Orange Township, in the County of Essex, State of New Jersey (the "City") seeks the approval of the Local Finance Board (the "LFB") for the adoption of the following bond ordinance, pursuant to N.J.S.A. §40A:3-4 of the provisions of the Municipal Qualified Bond Act, N.J.S.A. 40A:3-1 et seq. (the "MQBA"), entitled:

**“BOND ORDINANCE PROVIDING FOR THE ISSUANCE OF REDEVELOPMENT AREA BONDS TO PROVIDE ASSISTANCE TO A REDEVELOPMENT PROJECT LOCATED AT BLOCK 2804, LOTS 1, 2, 9, 10 AND 11 ON THE OFFICIAL TAX MAP OF THE CITY OF ORANGE TOWNSHIP, IN THE COUNTY OF ESSEX, STATE OF NEW JERSEY (THE “CITY”); APPROPRIATING \$200,000 THEREFOR AND AUTHORIZING THE ISSUANCE OF \$200,000 BONDS OR NOTES OF THE CITY TO FINANCE COSTS THEREOF” (the “Bond Ordinance”).**

The City proposes to adopt the Bond Ordinance, pursuant to the provisions of the MQBA, which form, as introduced, is attached hereto as Exhibit A, to appropriate \$200,000 and authorize the issuance of \$200,000 in redevelopment area bonds or notes to finance Infrastructure Improvements (as hereinafter defined) related to a redevelopment project for the City. The Infrastructure Improvements include, but are not limited to, curb replacements, street resurfacing, sidewalks, street lighting, landscaping, crosswalks and similar improvements to be determined in consultation with the City Planner along a portion of Reock Street (collectively, the “Infrastructure Improvements”) located along the frontage of the Project Site (as hereinafter defined), consistent with the Redeveloper’s (as hereinafter defined) approved site plan.

The City previously designated approximately 21 parcels of real property located in the City (the “Redevelopment Area”) as an area in need of redevelopment under the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq. (the “Redevelopment Law”). Thereafter, the City adopted the “Reock Street Redevelopment Plan” by Ordinance No. 6-2010 finally adopted by the City Council on April 10, 2010, as amended by Ordinance No. 40-2011 finally adopted by the City Council on January 12, 2012 (collectively, the “Redevelopment Plan”) to govern the redevelopment of the properties located within the Redevelopment Area. PEEK Reock I Owner Urban Renewal, LLC (the “Redeveloper”) proposes to undertake a redevelopment project, in accordance with the Redevelopment Plan, on the Project Site (as hereinafter defined), consisting of the construction of a 6-story, 50-unit multi-family residential building with 40 on-site parking spaces provided on the ground floor, and other related improvements (the “Project”). The Project Site will include that portion of the Redevelopment Area identified on the City’s official tax map as Tax Block 2804, Lots 1, 2, 9, 10 and 11, more commonly known by the street address of 258-276 Reock Street, Orange, New Jersey (collectively, the “Project Site”). In June of 2020, the City authorized, by resolution, the execution and delivery of a Redevelopment Agreement with the Redeveloper (the “Redevelopment Agreement”) in order to fully set forth the understanding of the City and the Redeveloper with respect to the construction and development of the Project. Despite the Redeveloper’s investment of equity and borrowed funds, such amounts are

insufficient to pay for all of the costs associated with the development and construction of the Project. In order to defray certain eligible costs of the portion of the Project comprising the Infrastructure Improvements, the City wishes, upon satisfaction of such conditions as shall be set forth in the Redevelopment Agreement, to issue general obligation bonds or notes in one or more series in an aggregate principal amount not to exceed \$200,000 (collectively, the "Bonds") pursuant to the Redevelopment Area Bond Financing Law, N.J.S.A. 40A:12A-64 et seq. (the "RAB Law"), the Redevelopment Law, and/or the Local Bond Law, N.J.S.A. 40A:2-1 et seq. (the "Local Bond Law"), as applicable.

The Redeveloper and the City will enter into a financial agreement whereby the Redeveloper will, among other things, make payments-in-lieu of taxes ("PILOT") to the City (the "Financial Agreement"). However, no portion of the PILOT will be pledged to the bondholders of the Bonds. The Bonds will be a full faith and credit general obligation of the City and the City shall be obligated to levy *ad valorem* taxes upon all the taxable property within the City for the payment of the debt obligations and the interest thereon without limitation as to rate or amount. The City is issuing the Bonds to subsidize the Project by funding the Infrastructure Improvements. Since the Bonds are being issued pursuant to the RAB Law, the minimum or maximum annual service charge and required staged increases in annual service charges over the term of the Financial Agreement will not apply. Additionally, as long as the Bonds remain outstanding, the Redeveloper will not be able to relinquish its status as an "urban renewal entity" under the Redevelopment Law. However, the PILOT payments due under the Financial Agreement consists of the Base Annual Service Charge and the RAB Annual Service Charge. The Base Annual Service Charge will cover the cost of municipal services related to the Project. The RAB Annual Service Charge will be structured so that it is sufficient to pay the principal of and interest on the Bonds.

#### Local Finance Board Request

The City is requesting approval to adopt the Bond Ordinance pursuant to the provisions of the MQBA.

PART I

STATE OF NEW JERSEY  
DEPARTMENT OF COMMUNITY AFFAIRS  
DIVISION OF LOCAL GOVERNMENT SERVICES  
LOCAL FINANCE BOARD

**APPLICATION CERTIFICATION**

APPLICANT'S NAME: CITY OF ORANGE TOWNSHIP, IN THE  
COUNTY OF ESSEX, STATE OF NEW JERSEY

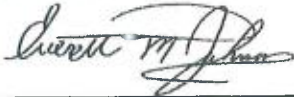
I, Nile S. Clements, Chief Financial Officer of the City of Orange Township, in the County of Essex (the "City"), DO HEREBY DECLARE:

1. That the documents submitted herewith and the statements contained herein are true to the best of my knowledge and belief; and
2. That this application was considered and its submission to the Local Finance Board was approved by the governing body of the City on June 16, 2020.



NILE S. CLEMENTS,  
Chief Financial Officer

ATTEST:



EVERETT M. JOHNSON,  
Attorney-at-Law of the State of New Jersey  
Date: June 18, 2020



**CITY COUNCIL****The City of Orange Township, New Jersey**

June 16, 2020

274-2020

DATE

NUMBER

**TITLE:**

**RESOLUTION OF THE CITY OF ORANGE TOWNSHIP, IN THE COUNTY OF ESSEX, STATE OF NEW JERSEY AUTHORIZING THE SUBMISSION OF AN APPLICATION TO THE LOCAL FINANCE BOARD REQUESTING APPROVAL OF A BOND ORDINANCE (REOCK STREET REDEVELOPMENT PROJECT) AUTHORIZING THE ISSUANCE OF NOT TO EXCEED \$200,000 REDEVELOPMENT AREA BONDS PURSUANT TO THE PROVISIONS OF N.J.S.A. 40A:2-26(e) AND N.J.S.A. 40A:3-4**

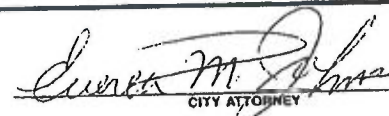
WHEREAS, THE CITY COUNCIL OF THE CITY OF ORANGE TOWNSHIP, IN THE COUNTY OF ESSEX, STATE OF NEW JERSEY (the "City") desires to submit an application (the "Application") to the Local Finance Board, in the Division of Local Government Services, New Jersey Department of Community Affairs (the "Local Finance Board"), for (i) its approval of a bond ordinance, entitled "BOND ORDINANCE PROVIDING FOR THE ISSUANCE OF REDEVELOPMENT AREA BONDS TO PROVIDE ASSISTANCE TO A REDEVELOPMENT PROJECT LOCATED AT BLOCK 2804, LOTS 1, 2, 9, 10 AND 11 ON THE OFFICIAL TAX MAP OF THE CITY OF ORANGE TOWNSHIP, IN THE COUNTY OF ESSEX, STATE OF NEW JERSEY (THE "CITY"); APPROPRIATING \$200,000 THEREFOR AND AUTHORIZING THE ISSUANCE OF \$200,000 BONDS OR NOTES OF THE CITY TO FINANCE COSTS THEREOF" (the "Bond Ordinance"), pursuant to the Municipal Qualified Bond Act, N.J.S.A. 40A:3-1 et seq. (the "MQBA"), specifically N.J.S.A. 40A:3-4(b), (ii) the issuance of not to exceed \$200,000 Redevelopment Area Bonds (the "Bonds") as Qualified Bonds under the MQBA, and (iii) the issuance of the Bonds with non-conforming maturity schedules under N.J.S.A. 40A:2-26(e) of the Local Bond Law, N.J.S.A. 40A:2-1 et seq. (the "Local Bond Law").

WHEREAS, the City believes with respect to the Bond Ordinance and the Bonds:

- (a) it is in the public interest to accomplish such redevelopment project authorized by the Bond Ordinance;
- (b) said redevelopment project authorized by the Bond Ordinance is for the health, wealth, convenience or betterment of the inhabitants of the City;
- (c) the amounts to be expended for the portion of the redevelopment project authorized by the Bond Ordinance is not unreasonable or exorbitant; and
- (d) the adoption of the Bond Ordinance and the debt obligations authorized to be issued thereunder are an efficient and feasible means of providing services for the needs of the inhabitants of the City, and will not create an undue financial burden to be placed upon the City.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ORANGE TOWNSHIP, IN THE COUNTY OF ESSEX, STATE OF NEW JERSEY, as follows:

Section 1. The submission of the Application to the Local Finance Board is hereby approved, and Wilentz, Goldman & Spitzer, P.A., Bond Counsel to the City (the "Bond Counsel"), Gluck Walrath LLP, Redevelopment Counsel to the City, Lerch, Vinci & Higgins, LLP, Budget Consultant to the City ("Budget Consultant"), and PKF O'Connor Davies, LLP, Auditor to the City (the "Auditor"), along with other officials and representatives of the City, are hereby authorized and directed to prepare and submit such Application and to represent the City in such matters pertaining thereto.

  
CITY ATTORNEY

Section 2. The City Clerk is hereby authorized and directed to prepare and file certified copies of this resolution, after adoption, and the Bond Ordinance, after introduction, with the Local Finance Board as part of such Application.

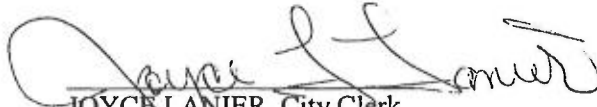
Section 3. The Local Finance Board is hereby respectfully requested to consider such Application and to record its approval as provided by applicable New Jersey Statutes, including the MQBA, specifically N.J.S.A. 40A:3-4(b), the Local Bond Law, specifically, N.J.S.A. 40A:2-26(e), and N.J.S.A. 58:11B-9(a).

Section 4. Any prior actions taken by, as applicable, the Business Administrator, Chief Financial Officer, Director of Finance, Bond Counsel, Budget Consultant, Auditor and other authorized officers and professionals of the City in relation to the preparation and submission of the Application are hereby ratified and confirmed.

Section 5. This resolution shall take effect immediately..

ADOPTED:

JUN 16 2020

  
JOYCE LANIER, City Clerk  
City Clerk

  
TENCY A. EASON  
Council President

Certified to be a true copy of a resolution adopted by the  
Governing Body of the City of Orange Township

at a public meeting on

JUNE 16, 2020

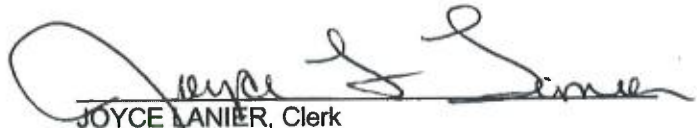
  
Municipal Clerk

CERTIFICATION

I, JOYCE LANIER, City Clerk of the City of Orange Township, in the County of Essex, State of New Jersey (the "City"), DO HEREBY CERTIFY that the annexed resolution entitled, "RESOLUTION OF THE CITY OF ORANGE TOWNSHIP, IN THE COUNTY OF ESSEX, STATE OF NEW JERSEY AUTHORIZING THE SUBMISSION OF AN APPLICATION TO THE LOCAL FINANCE BOARD REQUESTING APPROVAL OF A BOND ORDINANCE (REOCK STREET REDEVELOPMENT PROJECT) AUTHORIZING THE ISSUANCE OF NOT TO EXCEED \$200,000 REDEVELOPMENT AREA BONDS PURSUANT TO THE PROVISIONS OF N.J.S.A. 40A:2-26(e) AND N.J.S.A. 40A:3-4", is a copy of a resolution which was duly adopted by the City Council of the City at a meeting duly called and held on June 16, 2020 in full compliance with the Open Public Meetings Act, N.J.S.A. 10:4-6 et seq., at which meeting a quorum was present and acting throughout and which resolution has been compared by me with the original thereof as contained in the minutes as officially recorded in my office in the Minute Book of such governing body and is a true, complete and correct copy thereof and of the whole of the original minutes so far as they relate to the subject matters referred to within, and the aforesaid resolution has not been repealed, amended or rescinded but remains in full force and effect on and as of the date hereof.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of said City this 18<sup>TH</sup> day of June 2020.

(SEAL)

  
JOYCE LANIER, Clerk  
City of Orange Township

**RESOLUTION NO. 274-2020**

**ON CONSENT AGENDA**

**REGULAR MEETING-- JUNE 16, 2020**

**MOTION TO ADOPT: Williams**

**SECOND: Jackson**

**YEAS: Coley, Jackson, Johnson, Jr., Summers-Johnson, Williams, Wooten and Council President Eason**

**NAYS: None**

**ABSTENTIONS: None**

**ABSENCES: None**

PART II

(part II)

PROPOSED ISSUANCE OF OBLIGATIONS

- 1) Type of Obligation
- General Obligation Bond
  - Revenue Bond
  - Special Obligation Bond
  - Qualified Bond
  - School Qualified Bond
  - Project Note (BAN)
  - Other – Redevelopment Area Bond

2) Purpose of Proposed Financing –

- Temporarily finance the construction, improvement or acquisition of facilities, infrastructure, equipment, etc.
- Permanently finance the construction, improvement or acquisition of facilities, infrastructure, equipment, etc.
- Renew outstanding temporary Obligations
- Advance refund outstanding permanent obligations
- Current refunding issue

3) Amount of Proposed Financing

\$200,000 Proposed to be issued  
\$200,000 Maximum to be authorized

4) Tax Implications

Yes Is issue Tax-Exempt?  
No Is issue Taxable?  
No Are Private Activity Bonds utilized?  
No Is volume cap allocation necessary?  
N/A If yes: Has volume cap allocation been received?  
From whom: N/A  
For how much: N/A  
Will the 1986 Tax Reform Act or any proposed changes to the Act impose restrictions as to the type of financing and/or limitation on debt structuring?  
\_\_\_\_\_  
If yes, describe: N/A

5) DESCRIPTION OF OBLIGATIONS:

- (A) Short Term Obligations – Yes
- (B) Permanent Bonds - Yes
- (C) Maturity(ies) – N/A\*

Serial Maturities from \_\_\_ to \_\_\_

Sinking Fund Payments from \_\_\_ to \_\_\_

Term Maturities from \_\_\_ to \_\_\_

\* The City is seeking approval to adopt the Bond Ordinance pursuant to the MQBA and is not seeking the approval for the issuance of Bonds.

5) (Cont.)

(D) Amortization TBD\*

\_\_\_ Bullet Maturity

\_\_\_ Level Principal

\_\_\_ Level Debt Service

\_\_\_ Other

(E) If the obligations will have a variable interest rate, answer the following questions:

N/A

(1) Explain the benefit in issuing variable rate bonds.

N/A

(2) What are the administrative costs anticipated from the issuance and renewal of the variable rate bonds?

N/A

(3) Under what circumstances can the variable rate be converted to a fixed rate and what is the conversion fee?

N/A

\* The City is seeking approval to adopt the Bond Ordinance pursuant to the MQBA and is not seeking the approval for the issuance of Bonds.





(part II)

7) Issuance Matters

a) Method of Issuance – To Be Determined

b) Amount of authorized and issued debt prior to issue:

Gross Debt - \$80,431,057

c) Net debt expressed as a percentage of equalized valuations of taxable real estate prior to issue

2.691%

d) Net debt expressed as a percentage of equalized valuations of taxable real estate after the issue

3.066% (Reflects the \$200,000 authorization from this application and includes the \$5,400,000 authorization from the City's other application being submitted)

e) Provide a recapitulation of applicant's indebtedness issued and outstanding as of the date of the application

See Exhibit B

f) Provide a proposed maturity schedule indicating annual debt service payments broken down by principal and interest subsequent to the issuance of the proposed obligations N/A\*

\* The City is seeking approval to adopt the Bond Ordinance pursuant to the MQBA and is not seeking the approval for the issuance of Bonds.

(part II)

8) Provide the Sources and Uses of the Proposed Issue

**SOURCES**

a)	Proceeds of Issue	\$200,000
b)	Other Cash Contributions	\$
c)	Other (describe)	\$
	Total Sources	\$200,000.00

**USES**

a)	Facilities and Equipment Costs	\$175,000
b)	Costs of Issuance	\$ 25,000*
c)	Other (describe)	\$
	Total Uses	\$200,000

\*Includes estimated costs for the actual issuance of bonds and bond anticipation notes.

(part II)

Proposed Issuance Costs

	<u>Name</u>	<u>Proposed Amount</u>
Bond Counsel:	<u>Wilentz, Goldman &amp; Spitzer, P.A.</u>	\$5,000.00*
Auditor:	<u>PKF O'Connor Davies, LLP</u>	<u>\$2,000.00*</u>
Budget Consultant:	<u>Lerch, Vinci &amp; Higgins, LLP</u>	<u>\$2,000.00*</u>
	Total Issuance Costs	<u>\$9,000.00*</u>

\* These fees are related to the preparation of the bond ordinance and services related to the Local Finance Board application. Actual fees for the sale of notes or bonds will be determined at a future date since the authorization will likely be combined with others for efficiency.

(part II)

9) Budget and Audit Submission Requirements

a) Has the current year's budget been approved and adopted by the Division of Local Government Services?

No.

b) Has the previous year's audit been completed and submitted to the Division of Local Government Services?

No.

c) Provide a statement of the impact on the local unit's or units' budget, debt service requirements, debt service ratings, local tax rate and service fees if the proposed project is implemented or the proposed project financing is undertaken.

The debt service impact, if any, on the City's budget from the proposed issuance of Bonds will be negligible since the RAB Annual Service Charges, although not pledged directly to the bondholders, will be structured to cover the debt service on the Bonds. Additionally, if the developer defaults on the payment of the RAB Annual Service Charges, the principal and interest on \$200,000 paid over 30 years will have very little impact on the City's budget.

d) Has the Annual Debt Statement been submitted to the Division of Local Government Services?

Yes.

e) Has the Supplemental Debt Statement for this proposed issuance of obligations been submitted to the Division of Local Government Services?

Yes.

f) Has the Capital Budget been adopted?

No.

10) Provide a certified copy of an introduced ordinance adopted by the local unit indicating the intent of the local unit for the issuance of the proposed obligations.

See Exhibit A for a certified copy of the bond ordinance, as introduced, by the City Council of the City.

## PART III

(part III)

TRANSACTIONS TO FINANCE THE CONSTRUCTION OR ACQUISITION OF  
FACILITIES, INFRASTRUCTURE, EQUIPMENT, ETC.

1) Description of Proposed Projects:

(See Exhibit A attached hereto).

- 2) Who will:
- a) Use the Facilities –  
City of Orange Township
  - b) Operate the Facilities -  
City of Orange Township
  - c) Own the Facilities -  
City of Orange Township

3) When will the facilities be fully acquired or completed? The Infrastructure Improvements are expected to be completed in 2022.

4) Provide a breakdown of the hard cost of the proposed project being constructed, acquired, etc. EXCLUDING financing costs, such as capitalized interest, cost of issuance, etc.

The estimated cost is \$200,000.

## PART IV

(part IV)

### QUALIFIED BOND ISSUE

A) Provide a breakdown of applications submitted to the Local Finance Board for the previous four years.

<u>DATE APPROVED</u>	<u>AMOUNT APPROVED</u>	<u>AMOUNT ISSUED</u>
02/2017	\$2,150,000	Notes Only
09/2017	\$783,860	None/Re-appropriation
09/2017	\$9,433,000	\$9,433,000 Bonds
12/2018	\$250,000	None
12/2018	\$10,000,000	\$9,910,000 Notes
10/2019	\$13,570,000	\$0
10/2019	\$13,811,000	\$13,811,000 Notes

B) What is the amount of annual Qualified Bond debt service payments prior to this issue?

See Exhibit C attached hereto.

C) What is the amount of the proposed annual Qualified Bond debt service payments if this issue is approved?

See Exhibit C attached hereto.

D) What is the amount of Qualified Bond revenues eligible to be pledged against debt service payments?

See Exhibit C attached hereto.

E) Have the required Qualified Bond reports been submitted to the Division of Local Government Services, pursuant to the Local Finance Board resolution?

Yes.



Exhibit A

## CERTIFICATE OF INTRODUCTION

I, the undersigned Clerk of the City of Orange Township, in the County of Essex, State of New Jersey (the "City") DO HEREBY CERTIFY that the foregoing is an extract from the Minutes of a meeting of the governing body of the City duly called and held on June 16, 2020 at 7:00 p.m. at the City Hall and that the following was the roll call:

Present: Coley, Jackson, Johnson, Jr., Summers-Johnson, Williams & President Eason

Absent: Wooten

I FURTHER CERTIFY that the foregoing extract has been compared by me with the original minutes as officially recorded in my office in the Minute Book of the governing body and is a true, complete and correct copy thereof and of the whole of the original minutes so far as they relate to the subject matters referred to in the extract.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of the City as of this 18th day of June 2020.

(SEAL)

  
JOYCE LANIER, City Clerk  
City of Orange Township

**CITY COUNCIL**

**The City of Orange Township, New Jersey**

DATE \_\_\_\_\_

NUMBER 21-2020

**TITLE: BOND ORDINANCE PROVIDING FOR THE ISSUANCE OF REDEVELOPMENT AREA BONDS TO PROVIDE ASSISTANCE TO A REDEVELOPMENT PROJECT LOCATED AT BLOCK 2804, LOTS 1, 2, 9, 10 AND 11 ON THE OFFICIAL TAX MAP OF THE CITY OF ORANGE TOWNSHIP, IN THE COUNTY OF ESSEX, STATE OF NEW JERSEY (THE "CITY"); APPROPRIATING \$200,000 THEREFOR AND AUTHORIZING THE ISSUANCE OF \$200,000 BONDS OR NOTES OF THE CITY TO FINANCE COSTS THEREOF**

WHEREAS, the City of Orange Township, in the County of Essex, New Jersey (the "City") previously determined that certain properties (collectively, the "Redevelopment Area") are an area in need of redevelopment under the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq. (the "Redevelopment Law"); and

WHEREAS, the City previously adopted one or more redevelopment plans (collectively, the "Redevelopment Plan") to govern the redevelopment of the properties located within the Redevelopment Area; and

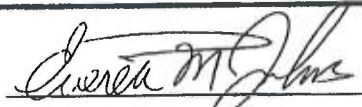
WHEREAS, PEEK Reock I Owner Urban Renewal, LLC, having its principal place of business at c/o PEEK Properties, 59 Main Street, Suite 203, West Orange, New Jersey 07052 (the "Entity"), has proposed to undertake a redevelopment project on that portion of the Redevelopment Area identified on the City's official tax map as Tax Block 2804, Lots 1, 2, 9, 10 and 11, more commonly known by the street address of 258-276 Reock Street, Orange, New Jersey (the "Project Site"), consisting of the construction of a 6-story, 50-unit multi-family residential rental apartment building with 40 on-site parking spaces provided on the ground floor, and other related improvements (collectively, the "Project"); and

WHEREAS, the Project includes the construction of such reasonably necessary infrastructure improvements along the frontage of the Project and Property that are caused or necessitated as a result of the construction of the Project, including but not limited to curb replacements, street resurfacing, sidewalks, street lighting, landscaping, crosswalks and similar improvements consistent with the Entity's approved site plan, to be determined in consultation with the City Planner (collectively, the "Infrastructure Improvements"); and

WHEREAS, by resolution adopted on June 16, 2020, the City has heretofore authorized the execution and delivery of a Redevelopment Agreement with the Entity (the "Redevelopment Agreement"), in order to fully set forth the understanding of the City and the Entity with respect to the construction and development of the Project; and

WHEREAS, the City expects to issue its general obligation bonds and/or notes in an aggregate principal amount not to exceed \$200,000 (collectively, the "Bonds") pursuant to the Redevelopment Area Bond Financing Law, N.J.S.A. 40A:12A-64 et seq. (the "RAB Law"), the Redevelopment Law, and/or the Local Bond Law, N.J.S.A. 40A:2-1 et seq. (the "Local Bond Law"), as applicable, in order to defray certain eligible costs of the Infrastructure Improvements; and

WHEREAS, the Redevelopment Agreement provides that the City shall agree to Issue the Bonds following the effectiveness of this bond ordinance and receipt of any necessary governmental approvals.



NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ORANGE TOWNSHIP, IN THE COUNTY OF ESSEX, NEW JERSEY (not than two-thirds of all members thereof affirmatively concurring) AS FOLLOWS:

Section 1. The improvements or purposes described in Section 3 of this bond ordinance are hereby authorized to be undertaken by the City as general improvements. For the improvements or purposes described in Section 3 hereof, there is hereby appropriated the amount of \$200,000. Pursuant to Section 37 of the Redevelopment Law (N.J.S.A. 40A:12A-37c(2)), no down payment is required, notwithstanding the requirements of Section 11 of the Local Bond Law (N.J.S.A. 40A:2-11), because the improvements and purposes set forth in Section 3 constitute a "redevelopment project" under the Redevelopment Law.

Section 2. For the financing of said improvement or purpose described in Section 3 hereof, negotiable bonds are hereby authorized to be issued in the principal amount of not to exceed \$200,000 pursuant to, and within the limitations prescribed by, the Local Bond Law and the Redevelopment Law. In anticipation of the issuance of the bonds, negotiable bond anticipation notes are hereby authorized to be issued pursuant to, and within the limitations prescribed by, the Local Bond Law and the Redevelopment Law.

Section 3. (a) The improvements hereby authorized and the purposes for which the bonds are to be issued is to defray the costs of all or a portion of the eligible Infrastructure Improvements defined in the recitals hereof, and also including all work, engineering, materials, equipment, labor and appurtenances necessary therefor or incidental thereto.

(b) The estimated maximum amount of bonds or bond anticipation notes to be issued for said improvement or purpose is \$200,000.

(c) The estimated cost of the improvement or purpose is \$200,000.

Section 4. All bond anticipation notes issued hereunder shall mature at such times as may be determined by the Chief Financial Officer of the City, provided that no note shall mature later than one (1) year from its date or otherwise authorized by the Local Bond Law and the Redevelopment Law. The notes shall bear interest at such rate or rates and be in such form as may be determined by the Chief Financial Officer. The Chief Financial Officer of the City shall determine all matters in connection with the notes issued pursuant to this bond ordinance, and the signature of the Chief Financial Officer upon the notes shall be conclusive evidence as to all such determinations. All notes issued hereunder may be renewed from time to time in accordance with the provisions of the Local Bond Law and the Redevelopment Law. The Chief Financial Officer is hereby authorized to sell part or all of the notes from time to time at public or private sale and to deliver them to the purchaser thereof upon receipt of payment of the purchase price and accrued interest thereon from their dates to the date of delivery thereof. The Chief Financial Officer is directed to report in writing to the governing body at the meeting next succeeding the date when any sale or delivery of the notes pursuant to this bond ordinance is made. Such report must include the principal amount, the description, the interest rate, and the maturity schedule of the notes so sold, the price obtained and the name of the purchaser.

Section 5. The City hereby certifies that it has adopted a capital budget or temporary capital budget, as applicable. The capital budget of the City is hereby amended to conform with the provisions of this bond ordinance, and to the extent of any inconsistency herewith, a resolution in the form promulgated by the Local Finance Board showing full detail of the

amended capital budget and capital programs as approved by the Director of the Division of Local Government Services, New Jersey Department of Community Affairs, will be on file in the office of the Clerk and will be available for public inspection.

Section 6. The following additional matters are hereby determined, declared, recited and stated:

(a) The purposes described in Section 3 of this bond ordinance are not current expenses. They are improvements the City may lawfully undertake as general improvements within the Redevelopment Area described in the Redevelopment Plan, and no part of the cost thereof has been or shall be specially assessed on property specially benefitted thereby.

(b) Pursuant to N.J.S.A. 40A:12A-37(c), the obligations authorized herein shall mature in annual installments commencing not more than two (2) and ending not more than forty (40) years from the date of issuance.

(c) The Supplemental Debt Statement required by the Local Bond Law has been duly made and filed in the Office of the Clerk of the City and a complete executed duplicate thereof has been filed in the Office of the Director of the Division of Local Government Services, within the New Jersey Department of Community Affairs, and such statement shows that the gross debt of the City as defined in the Local Bond Law is increased by the authorization of the bonds or notes provided for in this bond ordinance by \$200,000 and the said obligations authorized by this bond ordinance will be within all debt limitations prescribed by said Local Bond Law.

(d) An amount not exceeding \$50,000 for items of expense listed in and permitted under N.J.S.A. 40A:2-20 is included in the estimated cost indicated herein for the purposes or improvements described herein.

(e) The obligations of the City authorized by this bond ordinance shall bear interest at a maximum rate of not to exceed six (6.00%) per centum per annum, without further authorization of the City Council, which authorization may be by resolution.

Section 7. In the event the United States of America, the State of New Jersey, and/or the County of Essex make a contribution or grant in aid to the City, for the improvement and purpose authorized hereby and the same shall be received by the City prior to the issuance of the bonds or notes authorized in Section 2 hereof, then the amount of such bonds or notes to be issued shall be reduced by the amount so received from the United States of America, the State of New Jersey and/or the County of Essex. In the event, however, that any amount so contributed or granted, as applicable, by the United States of America, the State of New Jersey and/or the County of Essex shall be received by the City after the issuance of the bonds or notes authorized in Section 2 hereof, then such funds shall be applied to the payment of the bonds or notes so issued and shall be used for no other purpose. This Section 4 shall not apply, however, with respect to any contribution or grant in aid received by the City as a result of using funds from this bond ordinance as "matching local funds" to receive such contribution or grant in aid.

Section 8. The City reasonably expects to reimburse any expenditures toward the costs of the improvement or purpose described in Section 3 hereof and paid prior to the issuance of any bonds or notes authorized by this bond ordinance with the proceeds of such bonds or notes. This Section 8 is intended to be and hereby is a declaration of the City's

official intent to reimburse any expenditures toward the costs of the improvement or purpose described in Section 3 hereof to be incurred and paid prior to the issuance of bonds or notes authorized herein in accordance with Treasury Regulations §1.150-2. All reimbursement allocations will occur not later than eighteen (18) months after the later of (i) the date the expenditure from a source other than any bonds or notes authorized by this bond ordinance is paid, or (ii) the date the improvement or purpose described in Section 3 hereof is "placed in service" (within the meaning of Treasury Regulations §1.150-2) or abandoned, but in no event more than three (3) years after the expenditure is paid.

Section 9. The Chief Financial Officer of the City is hereby authorized to prepare and to update from time to time as necessary a financial disclosure document to be distributed in connection with the sale of obligations of the City, which are authorized herein, and to execute such disclosure document on behalf of the City. The Chief Financial Officer is further authorized to enter into the appropriate undertaking to provide secondary market disclosure on behalf of the City pursuant to Rule 15c2-12 of the Securities and Exchange Commission (the "Rule") for the benefit of holders and beneficial owners of obligations of the City, which are authorized herein, and to amend such undertaking from time to time in connection with any change in law, or interpretation thereof, provided such undertaking is and continues to be, in the opinion of a nationally recognized bond counsel, consistent with the requirements of the Rule. In the event that the City fails to comply with its undertaking, the City shall not be liable for any monetary damages, and the remedy shall be limited to specific performance of the undertaking.

Section 10. The full faith and credit of the City is hereby pledged to the punctual payment of the principal of and the interest on the obligations authorized by this bond ordinance. The obligations shall be direct, unlimited obligations of the City, and the City shall be obligated to levy *ad valorem* taxes upon all the taxable property within the City for the payment of the principal of the obligations authorized herein and the interest thereon without limitation as to rate or amount unless payment is provided from other sources.

Section 11. After passage upon first reading of this bond ordinance, the City Clerk is hereby directed to publish the full text or a summary of this bond ordinance, together with the notice entitled: "NOTICE OF PENDING BOND ORDINANCE" (with appropriate completions, insertions and corrections), at least once in a newspaper qualified under N.J.S.A. 40A:2-19, at least seven days prior to the date set for public hearing and further consideration for final passage (which date shall be at least ten days after introduction and first reading). The City Clerk is further directed to comply with all provisions of N.J.S.A. 40A:2-17(b) regarding postings, publications, and the provision of copies of this bond ordinance.

Section 12. After final adoption of this bond ordinance by the City Council, and approval by (or passage over the veto of) the Mayor, the City Clerk is hereby directed to publish the full text or summary of this bond ordinance, as finally adopted, together with the notice entitled: "NOTICE OF ADOPTION OF BOND ORDINANCE" (with appropriate completions, insertions and corrections), at least once in a newspaper qualified under N.J.S.A. 40A:2-19.

Section 13. To the extent that any previous ordinance or resolution is inconsistent herewith or contradictory hereto, said ordinance or resolution is hereby repealed or amended to the extent necessary to make it consistent herewith.

Section 14. This bond ordinance shall take effect twenty (20) days after the first publication thereof after final adoption and approval by the Mayor, as provided by the Local Bond Law.

ADOPTED ON SECOND READING

\_\_\_\_\_  
JOYCE LANIER, City Clerk  
City Clerk

\_\_\_\_\_  
TENCY A. EASON  
Council President

\_\_\_\_\_  
Dwayne D. Warren, Esq.  
Mayor

\_\_\_\_\_  
Date

Exhibit B



**CITY OF ORANGE TOWNSHIP  
GROSS DEBT ISSUED AND OUTSTANDING AS OF 6/17/2020**

<u>General Capital</u>	
Bonds	\$ 7,545,000.00
Notes	20,233,000.00
Loans	3,504,509.00
Authorized but not Issued	10,523,837.00
 <u>Water/Sewer Utility Capital</u>	
Bonds	13,800,000.00
Notes	7,500,000.00
Loans	3,735,184.00
Authorized but not Issued	<u>13,589,527.00</u>
 Gross Debt Issued and Outstanding as of 6/17/2020	 <u><u>\$ 80,431,057.00</u></u>

Exhibit C

EXHIBIT C

CITY OF ORANGE TOWNSHIP  
 QUALIFIED BOND DEBT SERVICE RATIO  
 AS OF JUNE 17, 2020

	Outstanding Qualified Bonds (as of 6/17/2020)	Highest Annual Debt Service		Total Debt Service
		Principal	Interest	
<u>Existing Qualified Debt &amp; Debt Service</u>				
General Capital	\$ 7,545,000	\$ 940,000	\$ 261,850	\$ 1,201,850
Water/Sewer Utility Capital	13,800,000	2,360,000	47,200	2,407,200
<b>Total Existing Qualified Debt &amp; Debt Service</b>	<b>21,345,000</b>	<b>3,300,000</b>	<b>309,050</b>	<b>3,609,050</b>
<u>Other Qualified Debt Not Yet Permanently Financed</u>				
General Capital	18,861,000	1,684,706	387,025	2,071,731
Water/Sewer Utility Capital	18,770,000	720,832	269,012	989,844
<b>Total Other Qualified Debt Not Yet Permanently Financed</b>	<b>37,631,000</b>	<b>2,405,538</b>	<b>656,037</b>	<b>3,061,575</b>
<u>Proposed Qualified Debt</u>				
General Capital Bond Ordinance	5,400,000	510,000	15,500	525,500
General Capital RAB Ordinance	200,000			
<b>Total Proposed Qualified Debt &amp; Debt Service</b>	<b>5,600,000</b>	<b>510,000</b>	<b>15,500</b>	<b>525,500</b>
<b>Total Outstanding Qualified Debt (including new bond ordinances)</b>	<b>\$ 64,576,000</b>	<b>\$ 6,215,538</b>	<b>\$ 980,587</b>	<b>\$ 7,196,125</b>
2020 Municipal Qualified Revenues				<u>\$ 8,372,797</u>
Qualified Debt Coverage Ratio				<u>1.16</u>

Exhibit D

**FINANCIAL AGREEMENT**  
(N.J.S.A. 40A:20-1 et seq. and N.J.S.A. 40A:12A-64 et seq.)

This **FINANCIAL AGREEMENT** (hereinafter, this “**Financial Agreement**”) made this \_\_\_\_\_ day of \_\_\_\_\_, 2020 by and between PEEK Reock I Owner Urban Renewal, LLC, a New Jersey Limited Liability Corporation qualified to do business under the provisions of the Long Term Tax Exemption Law, N.J.S.A. 40A: 20-1 et seq. (the “**LTTE Law**”), having its principal office at c/o PEEK Properties, 59 Main Street, Suite 203, West Orange, New Jersey 07052 (hereinafter referred to as the “**Entity**”), and the City of Orange Township, a Municipal Corporation in the County of Essex and the State of New Jersey, having offices at City Hall, 29 North Day Street, Orange, New Jersey 07050 (hereinafter referred to as the “**City**”).

**WITNESSETH:**

**WHEREAS**, the governing body of the City (the “**City Council**”) has previously determined that certain properties (collectively, the “**Redevelopment Area**”) are an area in need of redevelopment under the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq. (the “**Redevelopment Law**”); and

**WHEREAS**, the City has previously adopted one or more redevelopment plans (collectively, and as may be further amended from time to time, in accordance with the Redevelopment Law, the “**Redevelopment Plan**”) to govern the redevelopment of the properties located within the Redevelopment Area; and

**WHEREAS**, as described more fully within the application for long term tax exemption submitted by the Entity (a copy of which is attached hereto as Exhibit A) (the

“**Application**”), the Entity has proposed to undertake a redevelopment project on that portion of the Redevelopment Area identified on the City’s official tax map as Tax Block 2804, Lots 1, 2, 9, 10 and 11, more commonly known by the street address of 258-276 Reock Street, Orange, New Jersey (the “**Land**”), consisting of the construction of a 6-story, 50-unit multi-family residential rental apartment building with 40 on-site parking spaces provided on the ground floor, and other related improvements (collectively, the “**Project**”); and

**WHEREAS**, the Project includes the construction of such reasonably necessary infrastructure improvements along the frontage of the Project and Land that are caused and necessitated as a result of the construction of the Project, including but not limited to curb replacements, street resurfacing, sidewalks, street lighting, landscaping, crosswalks and similar improvements consistent with the Entity’s approved site plan, to be determined in consultation with the City Planner (collectively, the “**Infrastructure Improvements**”); and

**WHEREAS**, by resolution adopted on June 16, 2020, the City has heretofore authorized the execution and delivery of a Redevelopment Agreement with the Entity (the “**Redevelopment Agreement**”), in order to fully set forth the understanding of the City and the Entity with respect to the construction and development of the Project; and

**WHEREAS**, in order to defray certain eligible costs of the portion of the Project comprising the Infrastructure Improvements, the City expects to issue its general obligation bonds and/or notes in one or more series in an aggregate principal amount not to exceed \$200,000 (collectively, the “**Bonds**”) pursuant to the Redevelopment Area

Bond Financing Law, N.J.S.A. 40A:12A-64 et seq. (the “**RAB Law**”), and/or the Local Bond Law, N.J.S.A. 40A:2-1 et seq., as applicable; and

**WHEREAS**, in the Redevelopment Agreement the City has agreed to issue the Bonds following the effectiveness of the related bond ordinance and receipt of any necessary governmental approvals; and

**WHEREAS**, the Entity has obtained preliminary and final site plan approval for the Project from the City Planning Board on November 26, 2019, as memorialized in a resolution of the City Planning Board adopted on December 19, 2019; and

**WHEREAS**, the Project will conform to the Redevelopment Plan and all applicable municipal zoning ordinances, to the extent it contains provisions that are relevant to the Project, and will be in conformation with the master plan of the City; and

**WHEREAS**, the City Council has reviewed the Application and has made the following findings:

A. Relative Benefits of the Project when Compared to Costs:

(i) The granting of the long term tax exemption provided herein will permit the development of market rate residential units and on-site parking on the Property which would not be developed but for the granting of the exemption provided herein and will also create both temporary construction and permanent jobs which will benefit the community. Thus, the City Council finds that this substantial public benefit outweighs the difference between the unabated tax amount and the amount that the Entity will be required to pay hereunder.

B. Assessment of the Importance of the Tax Exemption in Developing the Project and Influencing the Locational Decisions of Potential Occupants:

(i) This long term tax exemption represents a logical and economical method of attracting residents who will utilize retail/commercial operations which are vital to the City and the community because but for the provision of this financial incentive and the subsidy provided thereby, the development of residential rental housing units would not be possible and thus would not occur; and

(ii) The relative stability and predictability of the Annual Service Charges will enhance the Entity's ability and opportunity to successfully construct, operate and maintain this Project, which in turn will ensure the likelihood of success over the life of the Project; and

(iii) The long term tax exemption granted under this Financial Agreement is important to the City because without the incentive of the tax exemption granted under this Financial Agreement, it is unlikely that the Project would be undertaken and as such the goals and objectives of the Redevelopment Plan would go unfulfilled. The tax exemption is also expected to influence the locational decisions of potential occupants of the Project, and will be of benefit to the local businesses in the community and will foster the growth of additional off-site local business opportunities; and

**WHEREAS**, the parties hereto wish to set forth in detail their mutual rights and obligations with respect to the tax exemption applicable to this Project by entering into this Financial Agreement; and

**WHEREAS**, the RAB Law (specifically N.J.S.A. 40A:12A-66(a)) authorizes a municipality to dispense with the provisions requiring a minimum or maximum amount of service charge and requiring staged increase in the annual service charges where a



redevelopment project (such as the Project) is being financed with bonds under the RAB Law (such as the Bonds); and

**WHEREAS**, the City does hereby grant its approval for the Project as a redevelopment project to be developed and to be maintained upon the terms and conditions hereinafter set forth herein.

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

### Article I - General Provisions

#### **Section 1.1 Governing Law**

This Financial Agreement shall be governed by the provisions of the LTTE Law and the RAB Law. It is expressly understood and agreed that the City expressly relies upon the facts, data, and presentations contained in the Application attached hereto in granting this tax exemption.

#### **Section 1.2 General Definitions**

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

i. Allowable Net Profit – The amount arrived at by applying the allowable profit rate to the total project cost pursuant to the provisions of N.J.S.A. 40A: 20-3(c).

ii. Allowable Profit Rate – The Allowable Profit Rate means the greater of 12% or the percentage per annum arrived at by adding 1 ¼% per annum to the annual interest percentage rate payable on the Entity’s initial permanent mortgage financing. The provisions of N.J.S.A. 40A:20-3(b) are incorporated herein by reference.

iii. Annual Service Charge – The amount that the Entity has agreed to pay the City in lieu of full taxation on the Improvements (but not the Land, which will remain subject to taxation) as set forth more fully within Section 4.1 of this Financial Agreement, and which shall be prorated in the year in which the Substantial Completion of the Project occurs and the year in which this Financial Agreement terminates.

iv. Application – The application filed by the Entity pursuant to N.J.S.A. 40A:20-8 for a long term tax exemption for the Project which is attached hereto as Exhibit A.

v. Auditor's Report – A complete financial statement outlining the financial status of the Project (for a period of time as indicated by context) the contents of which shall include a certification of Total Project Cost (in the first Auditor's Report following Substantial Completion only, with any changes to be contained in a subsequent Annual Report) and proper and accurate computations of annual Gross Revenue and Net Profit. The contents of the Auditor's Report shall be prepared in conformity with generally accepted accounting principles and shall contain such information as necessary to compute the foregoing items, and any other items required by Law, Statutes or Ordinance. The Auditor's Report shall be certified as to its conformance with such principles by a certified public accountant who is licensed to practice that profession in the State of New Jersey.

vi. Certificate of Occupancy – Permanent or temporary certificate of occupancy as such terms are defined in the New Jersey Administrative Code, issued by the City authorizing occupancy of a building, in whole or in part, pursuant to N.J.S.A. 52:27D-133.

- vii. City – The City of Orange Township, New Jersey.
- viii. Default – Shall be the failure of the Entity to perform any obligation imposed upon the Entity by the terms of this Financial Agreement, beyond the expiration of any notice, grace and cure periods as provided hereunder.
- ix. Director – The City’s Director of Development, or such other officer of the City as may be appointed by the City’s Business Administrator to undertake all or part of the functions of the Director as provided in this Financial Agreement.
- x. Entity – Shall mean PEEK Reock I Owner Urban Renewal, LLC, a New Jersey Limited Liability Corporation qualified to do business under the provisions of the Law, and any lawful assignees as authorized under this Financial Agreement.
- xi. Gross Revenue or Annual Gross Revenue – The annual gross revenue of the Project calculated as set forth in N.J.S.A. 40A:20-3(a). The parties acknowledge that Gross Revenue (A) shall include income or fees paid or received from parking (whether paid by tenants or by third parties), without reduction for expenses, (B) shall include insurance, operating and maintenance expenses paid by a tenant which are ordinarily paid by a landlord, as represented by the Entity in its calculation of Gross Revenue, (C) shall include all other revenue from the Project, including but not limited to revenue from the laundry room, vending machines, and the like, without reduction for expenses, (D) shall exclude extraordinary items, condemnation awards, insurance proceeds (other than business interruption insurance), gains from sales, transfers or assumption of the Project or any part thereof, proceeds of any financing or refinancing, and proceeds from any disposition of a partner or a partner’s interest in the Entity or any successor entity, and (E) shall be computed without deduction for operating or maintenance costs, including,

but not limited to, gas, electric, water and sewer, other utilities, garbage removal and insurance charges, whether paid for by the Entity, tenant or third party.

xii. Improvements – Any building, structure or fixture permanently affixed to the Land as part of the Project and incorporated therein, which improvements are recognized as exempted from taxation under this Financial Agreement.

xiii. Infrastructure Improvements – Shall have the meaning ascribed thereto in the Recitals hereto.

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

xv. Land – The land, but not the Improvements, located at Block 2804, Lots 1, 2, 9, 10 and 11, as described more particularly by the metes and bounds description set forth within the Application.

xvi. Land Taxes – The amount of taxes assessed on the value of the Land upon which the Project is located. Land assessments are not abated and shall remain a lien on the Land.

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

xviii. Law – The term Law shall refer, collectively, to the LTTE Law and the RAB Law.

xix. Minimum Annual Service Charge – The minimum annual service charge shall be the amount of the total taxes levied against the Property in the last full tax year in which the area was subject to taxation.

xx. Net Profit – The Gross Revenue of the Entity less all operating and non-operating expenses of the Entity, as determined in accordance with generally accepted accounting principles and the provisions of N.J.S.A. 40A:20-3(c).

xxi. Project – The Land and Improvements thereon which are the subject of this Financial Agreement and as defined in N.J.S.A. 40A:20-3 (e) & (i). The Project entails the construction of a 6-story, 50-unit multi-family residential rental apartment building and other related improvements, to be located on the Land, and also including the Infrastructure Improvements, as described more fully within the Application and in the Recitals hereto.

xxii. Pronouns – He or it shall mean the masculine, feminine or neuter gender, the singular, as well as, the plural, as proper meaning requires.

xxiii. Property – The Land and the Improvements thereon located at Block 2804, Lots 1, 2, 9, 10 and 11 as described on the Official Tax Map of the City of Orange Township, and more commonly known as 258-276 Reock Street, Orange, New Jersey.

xxiv. Statutes – The term Statutes when used in this Financial Agreement shall refer to all relevant statutes of the State of New Jersey.

xxv. Substantial Completion – The determination by the City that the Project is ready for the use intended and issuance of Certificates of Occupancy for the Project, as further defined in Section 6.2 of this Financial Agreement.

xxvi. Termination – The expiration of the term of this Financial Agreement in accordance with Section 3.1 hereof or the termination of this Financial Agreement in accordance with Section 14.1 hereof, in either case resulting, by operation of the terms of

this Financial Agreement, in the termination of the tax abatement provided hereunder in respect of the Improvements.

### **Section 1.3 Exhibits Incorporated**

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

## **Article II - Approval**

### **Section 2.1 Approval of Tax Abatement**

The City has granted and does hereby grant its approval for a tax abatement for the Improvements (but not the Land) to be constructed in accordance with this Financial Agreement and the Application, such tax abatement to be effective on the date provided in Section 6.2 hereof and extending throughout the Term described in Section 3.1 hereof, unless this Financial Agreement is sooner terminated pursuant to Section 14.1 hereof.

The City agrees that it shall not impose any added assessment, omitted added assessment or similar assessment on the value of the Improvements prior to the Annual Service Charge Start Date (as defined in Section 6.2 hereof).

The Entity represents and covenants that, effective as of the completion of the Project, it shall use the Project for the purposes set forth in the Application, and the land use applications filed with, and as approved by, the City in connection with this Project.

### **Section 2.2 Approval of Entity**

Approval hereunder is granted to the Entity for the contemplated Project on the Property, which shall in all respects comply and conform to all applicable statutes of the State of New Jersey, and the lawful regulations made pursuant thereto, governing land,

building(s) and the use thereof, and which Project is more particularly described in the Application.

**Section 2.3 First Source Employment During and After Construction; First Source Pass Through**

(a) If the Entity, its successors and/or assigns and/or any subsequent purchasers and/or any third party management companies retained to manage the Property, intend to hire new or replacement employees, for either part time or full time employment, for the construction of the Project or for the operation of the Project once it is constructed, the Entity, its successors and/or assigns and/or subsequent purchasers and/or any third party management companies retained to manage the Property, shall make good faith efforts to hire City residents to fill these jobs as specified below. The City, through the City's Office of Human Resources and/or a non-profit entity to be named by the City as the job referral center (hereinafter, the "Job Referral Center"), shall be available to assist in providing qualified candidates for the above 'first source' interviewing and hiring. The good faith efforts by the Entity, its successors and/or assigns and/or subsequent purchasers and/or any third party management companies retained to manage the Property, shall include, but not be limited to, the following: (1) written notification to the Job Referral Center of any new full or part-time job opportunities at least five (5) business Days prior to the commencement of the interviewing process. Such notification shall include, but not be limited to, the number of positions available, projected start date, estimated level of compensation, the skills and experience required for successful applicants, and the anticipated term of employment; (2) hold a first source interview window of at least five (5) business Days during which only candidates referred by the Job Referral Center shall be interviewed. These first source interviews shall take place prior to interviewing candidates

from the general public; (3) cooperate with efforts to recruit City residents for employment opportunities, including participation in job fairs or similar events held by the City; and (4) meet with appropriate City officials to determine the status of recruitment efforts and to plan future employment recruitment activities. The Entity, its successors and/or assigns and/or subsequent purchasers and/or any third party management companies retained to manage the Property, shall maintain records of this first source notification, interviewing and hiring activity for review by the City upon the City's written request.

(b) Upon completion of the Project, as evidenced by the receipt of a Certificate of Occupancy, Redevelopers, its successors and/or assigns and/or any subsequent purchasers, shall include a provision in all of their non-residential leases for space in a structure constructed as part of the Project providing that:

“If the lessee (tenant) intends to hire a new or replacement employee for either part time or full time employment, the lessee shall use good faith efforts to hire City residents to fill those jobs as specified below. The City, through the Job Referral Center, shall be available to assist in providing qualified candidates for the above ‘first source’ interviewing and hiring. The lessee’s good faith effort shall include, but not be limited to: (1) written notification to the Job Referral Center of any new full or part-time job opportunities at least five (5) business Days prior to the commencement of the interviewing process. Such notification shall include, but not be limited to, the number of positions available, projected start date, estimated level of compensation, the skills and experience required for successful applicants, and the anticipated term of employment; (2) hold a first source



interview window of at least five (5) business Days during which only candidates referred by the Job Referral Center shall be interviewed. These first source interviews shall take place prior to interviewing candidates from the general public; (3) cooperate with efforts to recruit City residents for employment opportunities, including participation in job fairs or similar events held by the City; and (4) meet with appropriate City officials to determine the status of recruitment efforts and to plan future employment recruitment activities. Lessee will maintain records of this ‘first source’ notification, interviewing and hiring activity (including but not limited to a written description of the reasons for the decision not to hire any candidate referred by the Job Referral Center for review by the City upon the City’s written request. Failure of the lessee to comply with this ‘first source’ requirement shall be considered by the lessor to be a material breach of the lease and shall entitle the lessor to exercise any and all remedies provided for in the lease for a material breach including eviction.”

(c) Upon written notice from the City to the Entity or its successors and/or assigns and/or any subsequent purchasers that the tenant is not using good faith efforts to hire City residents and is not in compliance with the first source provisions of the lease, the Entity and its successors and/or assigns and/or any subsequent purchasers agree to enforce the lease provisions set forth within Section 2.3(b) above to ensure compliance by all lessees. The Entity and its successors and/or assigns and/or any subsequent purchasers also agree to include the terms of this Section 2.3 in any contract for sale or transfer of the Property or any structure constructed as part of the Project to any other person or entity and

to explicitly provide within such contract that these terms shall survive the closing and that the City shall be a third party beneficiary as to the enforcement of these terms.

(d) In addition to any other remedy provided under this Financial Agreement and any other remedy provided by law, the Parties hereby agree that the provisions of this Section 2.3 may be enforced by the City through specific performance.

#### **Section 2.4 Affirmative Action**

The Entity, for itself and its successors and assigns, agrees that during the construction of the Project:

(1) It will comply with the provisions of the Affirmative Action Language contained herein.

(2) When hiring workers in each construction trade, or when engaging contractors, the Redeveloper agrees, pursuant to the City's request, to use its best efforts to employ:

a. Minority workers in each construction trade; or

b. Minority contractors consistent with the following goals: (as to workers) - a goal of employing twenty (20%) percent Minority workers out of the total number of workers employed as part of the work force in connection with the Project; or (as to contractors) - a goal of contracting with Qualified Minority Business Enterprises for twenty percent (20%) of the dollar value of the hard costs of total procurements to be awarded in connection with the Project.

c. For purposes of this Section, the term “Minority” shall mean persons who are either one or a combination of: (i) African American (a person having origins in any of the black racial groups of Africa), (ii) Alaskan Native and/or American Indian (a person having origins in any of the original peoples of North America), (iii) Asian American (a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, Hawaii or the Pacific Islands), (iv) Hispanic (a person of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race), or (v) Female (a person of the female gender). The term “Qualified Minority Business Enterprise” shall mean a business which has its principal place of business in New Jersey, is independently owned and operated, is at least 51% owned and controlled by Minority group members and is qualified.

(3) It will undertake a program of local preference to facilitate entering into contracts with and/or purchasing goods and services from local merchants and businesses located within the City.

(4) It will endeavor to comply with the above stated goals by, among other things, considering employment of applicants, contractors and vendors who are from a pool registered by the City or its designee.

(5) Where applicable, it will at all times conform to the laws, regulations, policies of the State, the federal government, and other governmental bodies with respect to affirmative action and equal employment opportunities requirements, and particularly those which are imposed as a condition to receipt of any government-sponsored funding

for the Project, notwithstanding any other provision of this Financial Agreement to the contrary.

### **Section 2.5 Compliance and Reporting**

The obligations contained in Sections 2.3 and 2.4 shall be binding on all contractors and subcontractors to the extent that any work is done by any contractor or subcontractor, and any contract entered into by the Entity (or any other person or entity) in respect of the construction of the Improvements shall so provide. The Entity covenants to enforce (and cause any other person or entity to enforce) its contracts with its contractors and subcontractors if such parties are not in compliance with Sections 2.3 and 2.4.

The Entity and its contractors and subcontractors shall submit monthly (or at less frequent intervals, not less than quarterly, if so directed by the Director) reports regarding their compliance with Sections 2.3 and 2.4 as the City may reasonably require. Upon completion of the Improvements, the Entity shall certify that it has complied with the requirements of Sections 2.3 and 2.4. No Certificate of Completion or Certificate of Occupancy shall be issued prior to the Entity filing a report satisfactory to the City evidencing compliance with the provisions of Sections 2.3 and 2.4.

Following completion of the Improvements, the Entity shall continue to comply with the provisions of Section 2.3 in connection with the ongoing operations of the Project, and shall submit quarterly reports regarding its compliance with Section 2.3 as the City may reasonably require.

Any contract of sale or transfer of the Project to any other person or entity shall include the terms of Sections 2.3, 2.4 and 2.5 and shall explicitly provide within such

contract that these terms shall survive the closing of such sale or transfer.

Failure to comply with the requirements of Sections 2.3, 2.4 or 2.5 shall constitute a Default within the meaning of Section 13.1, as to which the provisions of Sections 13.2, 13.3 and 14.1 shall be applicable. In addition to any other remedy provided under this Financial Agreement and any other remedy provided by law, the parties agree that the provisions of Sections 2.3 and 2.4 may be enforced by the City through specific enforcement.

### **Article III – Duration of Financial Agreement**

#### **Section 3.1 Term**

So long as there is compliance with the Law and this Financial Agreement, and except as provided in Section 14.1 hereof, it is understood and agreed by the parties hereto that this Financial Agreement shall remain in effect for a term of thirty (30) years from the date of Substantial Completion of the Project (which shall be the start date of the tax abatement and the Annual Service Charge payments under this Financial Agreement) and shall continue in force only while said Project is owned by an urban renewal entity formed pursuant to the Law; provided, however, that in no case shall this Financial Agreement remain in effect longer than 35 years from the date of execution of this Financial Agreement. Upon expiration of the term of this tax exemption, (i) the tax exemption for the Project shall no longer be in effect and the Land and the Improvements thereon shall thereafter be assessed and taxed according to the general law applicable to other non-exempt property in the City and (ii) all restrictions and limitations upon the Entity outlined in this Financial Agreement shall terminate upon the Entity's rendering and the City's acceptance of the Entity's final accounting.

### **Section 3.2 Termination by Entity Not Permitted**

Pursuant to N.J.S.A. 40A:12A-66, the provisions of N.J.S.A. 40A:20-13 permitting the relinquishment of tax-exemption status under the LTTE Law after the expiration of one (1) year from the project completion date, shall not apply to redevelopment projects (such as the Project) financed with bonds under the RAB Law (such as the Bonds). Accordingly, the Entity shall have no authority to voluntarily terminate this Financial Agreement.

### **Article IV - Annual Service Charge**

#### **Section 4.1 Annual Service Charge**

(a) The Annual Gross Revenue shall be calculated as set forth within N.J.S.A. 40A:20-3(a) and the definition thereof contained in Section 1.2 hereof.

(b) All parking spaces on the Property will be exclusively for the use of the owners, tenants or occupants of the Property. If the Entity charges for the parking spaces on the Property, the Entity must report this as other revenue generated from the Project. All such parking revenues shall be included, without reduction for expenses, in Annual Gross Revenue for purposes of computing the Annual Service Charges under paragraph (c) below. In the event that the Entity seeks to lease the parking spaces on the Property to third parties other than the owners, tenants or occupants of the Property, the Entity must first notify the City in writing and must comply with all City ordinances and State laws regarding parking.

(c) Pursuant to N.J.S.A. 40A:12A-66, the provisions of N.J.S.A. 40A:20-12 establishing a minimum or annual service charge and requiring staged increases in the annual service charge over the term of the exemption period shall not apply to

redevelopment projects financed with bonds under the RAB Law (such as the Bonds). The Infrastructure Improvements (which constitute a portion of the Project) will be financed by the Bonds.

(d) The Annual Service Charge payable by the Entity to the City for each year shall consist of the sum of the Base Annual Service Charge and the RAB Annual Service Charge.

(e) The Base Annual Service Charge payable by the Entity to the City for each year shall be as follows:

- (i) During year one (1) through year fifteen (15) of the Financial Agreement, the Base Annual Service Charge shall be an amount equal to five percent (5%) of the Annual Gross Revenue generated from the Project;
- (ii) During year sixteen (16) through year twenty (20) of the Financial Agreement, the Base Annual Service Charge shall be an amount equal to seven percent (7%) of the Annual Gross Revenue generated from the Project;
- (iii) During year twenty-one (21) through year twenty-five (25) of the Financial Agreement, the Base Annual Service Charge shall be an amount equal to nine percent (9%) of the Annual Gross Revenue generated from the Project; and
- (iv) During year twenty-six (26) through year thirty (30) of the Financial Agreement, the Base Annual Service Charge shall be an

amount equal to ten percent (10%) of the Annual Gross Revenue generated from the Project.

(e) The RAB Annual Service Charge payable by the Entity to the City for each year shall be equal to the product of 1.05263 times the amount of debt service scheduled to be paid by the City during such year in respect of the Bonds. The City shall provide a debt service schedule to the Entity promptly following the issuance of the Bonds.

(f) In no event shall the Annual Service Charge, excluding taxes on the Land, in any year after the Annual Service Charge Start Date be less than the Minimum Annual Service Charge. The parties agree that the Minimum Annual Service Charge for the Project shall be \$16,295.79 pursuant to N.J.S.A. 40A:20-12(b). The Minimum Annual Service Charge shall not be reduced through any tax appeal on Land and/or Improvements during the period the Agreement is in force and effect; provided, however, that the foregoing shall not prohibit the Entity from appealing land taxes applicable to the Land as may be then assessed at any time during the term of this Financial Agreement.

#### **Section 4.2 Quarterly Installments**

The Entity expressly agrees that the aforesaid Annual Service Charge(s) shall be made in quarterly installments on those dates when real estate tax payments are due; subject, nevertheless, to adjustment for over or underpayment within thirty (30) days after the close of each City fiscal year. In the event that the Entity fails to so pay, the amount unpaid shall bear the highest rate of interest permitted in the case of unpaid taxes or tax liens on the land until paid.



In the Application, the Entity has projected the following estimated amounts of Annual Gross Revenues for each year of operation (the “Projected AGR”):

YEAR	AMOUNT	YEAR	AMOUNT	YEAR	AMOUNT
1	\$1,151,229	11	\$1,547,156	21	\$2,079,248
2	1,185,766	12	1,593,570	22	2,141,625
3	1,221,339	13	1,641,377	23	2,205,874
4	1,257,979	14	1,690,619	24	2,272,050
5	1,295,718	15	1,741,337	25	2,340,212
6	1,334,590	16	1,793,577	26	2,410,418
7	1,374,628	17	1,847,385	27	2,482,730
8	1,415,866	18	1,902,806	28	2,557,212
9	1,458,342	19	1,959,890	29	2,633,929
10	1,502,093	20	2,018,687	30	2,712,947

For each year, the quarterly installments of the Base Annual Service Charge shall be based on the Projected AGR, which amount shall be adjusted when the Auditor’s Report is completed for such year. In the event of any such adjustment, (i) any surplus owing to the Entity as a result of an overpayment revealed by such calculation shall be credited against the next quarterly installment of Base Annual Service Charges payable by the Entity after the date such Auditor’s Report is filed (provided, that if there are no future quarterly installments then the City shall retain such surplus amount), and (ii) any deficiency owing to the City as a result of an underpayment revealed by such calculation

shall be paid by the Entity to the City within thirty (30) days of the date such Auditor's Report is filed.

In the event the Auditor's Report for any such year is not timely filed by the Entity, the City may make the above-referenced calculations, which calculations shall be binding upon the Entity absent manifest error.

#### **Section 4.3 Land Tax Credit**

The Entity is obligated to make Land Tax Payments, notwithstanding any entitlement to a Land Tax Credit against the Annual Service Charge for the subsequent year. The Entity shall be entitled to a credit for the amount, without interest, of the Land Tax Payments paid by it in the last four preceding quarterly installments against the Annual Service Charge. The Entity's failure to make the requisite Annual Service Charge payment in a timely manner shall constitute a violation and breach of the Financial Agreement and the City shall, if such failure shall continue for greater than thirty (30) days following the date such quarterly Annual Service Charge installment is due, (i) render the Entity ineligible for any Land Tax credit in respect of such quarterly Annual Service Charge installment (which shall automatically result in an increase in the amount due on such quarterly Annual Service Charge installment), (ii) enable the City, among its other remedies, to proceed against the Property pursuant to the In Rem Tax Foreclosure Act, N.J.S.A. 54:5-1 et seq., and/or (iii) enable the City to cancel the Financial Agreement in a manner consistent with the provisions of Section 14.1 hereof. Any default arising out of the Entity's failure to pay Land Taxes and/or Annual Service Charges, shall not be subject to the default procedural remedies as provided in Section 5.1 of this Financial Agreement.

#### **Section 4.4 Material Conditions**

It is expressly agreed and understood that all Land Tax Payments, Annual Service Charges, including the methodology of computation, water and sewer charges, and any interest payments due, are material conditions of this Financial Agreement. If any other term, covenant or condition of this Financial Agreement or the Application, 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 as to which it is held invalid or unenforceable, shall not be affected thereby, and each term, covenant or condition of this Financial Agreement shall be valid and be enforced to the fullest extent permitted by law.

#### **Section 4.5 City Administrative Charge**

In addition to the Annual Service Charge, there will be a fee of 2% of the Annual Service Charge added to cover City administration costs.

### **Article V - Dispute Resolution**

#### **Section 5.1 Remedies**

In the event of a breach of this Financial Agreement by either of the parties hereto or a dispute arising between the parties in reference to the terms and provisions as set forth herein, other than those items specifically included as material conditions herein, either party may apply to the Superior Court of New Jersey by an appropriate proceeding, to settle and resolve said dispute in such fashion as will tend to accomplish the purposes of the Law. In the event the Superior Court shall not entertain jurisdiction, then the parties shall submit the dispute to the American Arbitration Association in New Jersey to be determined in accordance with its expedited commercial rules and regulations in such

a fashion to accomplish the purpose of said Law. Costs for said arbitration shall be borne equally by the parties. In the event of a default on the part of the Entity, to pay the Annual Service Charge as defined in Article IV, above, the City among its other remedies, reserves the right to proceed against the Entity's land and premises, in the manner provided by N.J.S.A. 54:5-1 to 54:5-129, and any act supplementary or amendatory thereof. Whenever the word "Taxes" appear, or is applied, directly or implied to mean taxes or municipal liens on land, such statutory provisions shall be read, as far as is pertinent to this Financial Agreement, as if the Annual Service Charge were taxes or municipal liens on land. In such event, however, the Entity, whichever the case may be, does not waive any defense it may have to contest the right of the City to proceed in the above mentioned manner by conventional or In Rem Tax foreclosure.

#### **Article VI – Certificate of Occupancy**

##### **Section 6.1 Certificate of Occupancy**

It is understood and agreed that it shall be the obligation of the Entity to make application for and make all best efforts to obtain all Certificates of Occupancy in a timely manner, as identified in the Application. Failure on the part of the Entity to use all best efforts to secure and submit said Certificates of Occupancy in a timely manner shall constitute a default hereunder, which shall be subject to the provisions of Articles XIII and XIV hereof.

##### **Section 6.2 Substantial Completion**

The Annual Service Charge is to commence from the first day of the month following the Substantial Completion, as herein defined, of the Project or any phase(s) thereof if the Project is undertaken in phases (the "Annual Service Charge Start Date").

The phrase “Substantial Completion” denotes the issuance, by the City’s Construction Official, of any valid Certificate of Occupancy of all, or a substantial part of, the Project’s structure.

**Section 6.3 Filing of Certificate of Occupancy**

It shall be the primary responsibility of the Entity to forthwith file with the Tax Assessor, the Tax Collector and the Chief Financial Officer of the City a copy of such certificate.

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 City’s Tax Assessor in the absence of such filing by the Entity.

The estimated cost basis disclosed in the Application may at the option of the City’s Construction Official be used as the basis for construction cost in the issuance of the building permit(s).

**Article VII - Annual Audits**

**Section 7.1 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 in the Law during the term of the tax exemption.

**Section 7.2 Periodic Reports**

Within ninety (90) days after the close of each fiscal or calendar year, depending on the Entity’s accounting basis, that this Financial Agreement shall continue in effect, the Entity shall submit its Auditor’s Report certified by a certified public accountant for the preceding fiscal or calendar year to the City, to the attention of the City’s Chief

Financial Officer, and the City Clerk, who shall advise those municipal officials required to be advised, and to the Director of the Division of Local Government Services in the Department of Community Affairs N.J.S.A. 40A:20-9(d). Said Auditor's Report shall include, but not be limited to the following:

Rental schedule of the Project, and the terms and interest rate on any mortgage(s) associated with the Project and such details as may relate to the financial affairs of the Entity and to its operation and performance hereunder, pursuant to the Law and this Financial Agreement.

After full completion of the Project (as opposed to Substantial Completion), the Entity agrees to submit a Total Project Cost audit certified by a Certified Public Accountant within ninety (90) days after full completion of the Project.

### **Section 7.3 Inspection**

The Entity shall, upon request by the City, permit the inspection of property, equipment, buildings and other facilities of the Project. It also shall permit, upon request, examination and audit of its books, contracts, records, documents and papers by representatives duly authorized by the City. Such inspection, examination or audit shall be made during the reasonable hours of the business day, in the presence of any officer or agent of the Entity.

### **Section 7.4 Limitation of Profits and Reserves**

During the period of tax exemption as provided herein, the Entity shall be subject to limitation of its profits payable by it pursuant to the provisions of N.J.S.A. 40A:20-15.

The Entity shall have the right to establish a reserve against unpaid rentals, reasonable contingencies and/or vacancies in an amount not exceeding ten (10%) percent

of the Annual Gross Revenue of the Entity for the last full fiscal year preceding the year in which a determination is being made with respect to permitted Net Profits and may retain 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, said reserve to be noncumulative, it being intended that no further credits thereto shall be permitted after the reserve shall have attained the allowable level of ten (10%) percent of the preceding year's Annual Gross Revenue as aforesaid.

#### **Section 7.5 Payment of Dividend and Excess Profit Charge**

In the event the Net Profits of the Entity, as provided in N.J.S.A. 40A:20-15, shall exceed the Allowable Net Profits for such period, then the Entity shall, within ninety (90) days after the end of such fiscal year, pay such excess profit to the City as an additional service charge; provided, however, that the Entity may maintain a reserve as determined pursuant to aforementioned Section 7.4.

### **Article VIII - Assignment and/or Assumption**

#### **Section 8.1 Approval**

Any change made in the ownership of the Project, or any other change that would materially affect the terms of this Financial Agreement, shall be void unless approved by the City. As permitted by N.J.S.A. 40A:20-10, it is understood and agreed that the City, on written application by the Entity, will not unreasonably withhold its consent to the sale of the Project (but not a portion thereof) and the transfer of this Financial Agreement to another urban renewal entity, provided that (a) if such sale and transfer is to occur prior to Substantial Completion, the transferee urban renewal entity shall have demonstrated to the reasonable satisfaction of the City that it possesses the experience and capitalization

necessary to complete and operate the Project, which determination by the City shall not be unreasonably withheld, conditioned or delayed; (b) the transferee urban renewal entity does not own any other project subject to long term tax exemption at the time of transfer; (c) the transferee urban renewal entity is formed and eligible to operate under the Law; (d) the Entity is not then in Default of this Financial Agreement or in violation of the Law; (e) the Entity's obligations under this Financial Agreement is fully assumed by the transferee urban renewal entity; and (f) the transferee urban renewal entity abides by all terms and conditions of this Financial Agreement. Any such consent shall be conditioned upon payment of an application fee equal to two percent (2%) of the Annual Service Charge.

#### **Section 8.2 Operation of Project**

The Project shall be operated in accordance with the provisions of the Law, as currently amended and/or supplemented. Operation of the Project under this Financial Agreement shall not only be terminable as provided by the Law, but also by a material breach of this Financial Agreement.

#### **Section 8.3 Termination**

The Entity hereby agrees at all times prior to the expiration or termination of this Financial Agreement to remain bound by the provisions of the Law. 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 Municipal Council, convey, mortgage or transfer, all or part of the Project so as to sever, disconnect, or divide the Improvements from the Land which are basic to, embraced in, or underlying the exempted Improvements.



**Article IX – Notice**

**Section 9.1 Notice**

Any notice required hereunder to be sent by either party to the other shall be sent by certified or registered mail, return receipt requested, addressed as follows:

- (a) When sent by the City to the Entity it shall be addressed as follows:

PEEK Reock I Owner Urban Renewal, LLC  
c/o PEEK Properties  
59 Main Street, Suite 203  
West Orange, New Jersey 07052  
Attn: \_\_\_\_\_

With a copy to:

Reginald Jenkins, Jr., Esq.  
Chasan Lamparello Mallon & Cappuzzo, PC  
300 Lighting Way, Suite 200  
Secaucus, New Jersey 07094

- (b) When sent by the Entity to the City, it shall be addressed as follows:

City Hall  
29 North Day Street  
Orange, New Jersey 07050  
Attention: Municipal Clerk

The notice to the City shall identify the subject as “Reock Street Redevelopment Project” and shall include any assigned tax account numbers.

**Article X – Compliance**

**Section 10.1 Statutes and Ordinances**

The Entity hereby agrees at all times prior to the expiration or termination of this Financial Agreement to remain bound by the provisions of Federal and State Statutes and Municipal Ordinances and Regulations including, but not limited to, the Law. The Entity’s failure to comply with such statutes or Ordinances shall constitute a violation

and breach of the Financial Agreement and the City shall, among its other remedies, have the right to terminate said tax exemption in accordance with the provisions of Articles XIII and XIV hereof.

### **Article XI - Construction**

#### **Section 11.1 Construction**

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

### **Article XII – Indemnification**

#### **Section 12.1 Defined**

It is understood and agreed that in the event the City shall be named as party defendant in any action brought against the Entity by reason of any breach, default or a violation of any of the provisions of this Financial Agreement and/or the provisions of the Law, the Entity shall indemnify and hold the City harmless, and the Entity agrees to defend the suit at its own expense. However, the City maintains the right to intervene as a party thereto, to which intervention the Entity consents, the expense thereof to be borne by the Entity.

### **Article XIII - Default**

#### **Section 13.1 Default**

Default shall be failure of the Entity to comply with the terms of this Financial Agreement and failure of the Entity to perform any obligation imposed upon the Entity

by statute, ordinance or lawful regulation, subject to the expiration of any applicable notice, grace and cure periods provided in this Financial Agreement.

### **Section 13.2 Cure Upon Default**

Should the Entity be in default as defined and set forth in this Financial Agreement, the City shall notify the Entity in writing of said default. Said notice shall set forth with particularity the basis of said default. The Entity shall have thirty (30) days from its receipt of such notice to cure any alleged default (other than a default in the payment of any installment of the Annual Service Charge, which shall instead be subject to the provisions of Section 4.3 hereof), provided that if the default cannot reasonably be cured within the applicable cure period using reasonable diligence, then the time to cure shall be extended upon written request for one additional thirty (30) day period of time. The City may not cancel the Financial Agreement unless thirty (30) days' notice to cure has also been given to all lenders of record.

### **Section 13.3 Remedies Upon Default**

Subsequent to the passage of requisite number of days after the Entity's receipt of a default notice (as set forth in Sections 4.3 or 14.2 hereof) without cure, the City shall have the right to proceed against the property pursuant to the In Rem Tax Foreclosure Act, N.J.S.A. 54: 4-1, et seq., if the default is the failure to pay the Annual Service Charge, and/or may cancel the Financial Agreement. All of the remedies provided in this agreement to the City, and all rights and remedies granted to it by law and equity shall be cumulative and concurrent. No determination of any provision within this Financial Agreement shall deprive the City of any of its remedies or actions against the Entity because of its failure to pay land taxes, the Annual Service Charge, and/or the water and

sewer charges and interest payments. This right shall apply to arrearages that are due and owing at the time, and the bringing of any action for land taxes and Annual Service Charges, or other charges, or for breach of covenant or the resort of any other remedy herein provided for the recovery of land taxes, Annual Service Charges, and water and sewer charges, or other charges shall not be construed as a waiver of the right to terminate said tax exemption and/or proceed with In Rem Foreclosure action or any other remedy.

#### **Article XIV - Termination**

##### **Section 14.1 Termination Upon Default of the Entity**

In the event the Entity fails to cure or remedy such default or material breach within the time period provided in Section 13.2, the City may cancel this Financial Agreement upon thirty (30) days notice to the Entity and all lenders of record, which may be nullified upon a cure of the subject default by or on behalf of the Entity. For purposes of rendering a final financial accounting the termination of the agreement shall be deemed to be the end of the fiscal year for the Entity. The Entity shall within ninety (90) days after the date of such termination pay to the City a sum equal to the amount of the reserves, if any, maintained pursuant to N.J.S.A. 40A:20-13 and 15. Upon such termination of the Project, all affected parcels and all improvements made thereto shall be assessed and subject to taxation as are all other taxable properties within the City.

##### **Section 14.2 Final Accounting**

Upon any termination of such exemption, whether by affirmative action of the Entity or by virtue of the provisions of the Law, or pursuant to the terms of this Financial Agreement, the date of such termination shall be deemed to be the end of the fiscal year

of the Entity solely for the purpose of providing a final accounting pursuant to this Financial Agreement.

It is further provided that at the end of the period of tax exemption granted hereunder, the Land and Improvements shall be assessed and taxed according to general law like other property in the City. At the same date, all restrictions and limitations upon the Entity shall terminate upon the Entity rendering its final accounting with the City, and the City's acceptance thereof, pursuant to N.J.S.A. 40A:20-13.

### **Article XV - Miscellaneous**

#### **Section 15.1 Conflict**

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

#### **Section 15.2 Oral Representations**

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

#### **Section 15.3 Entire Document**

All conditions in the Ordinance of the Municipal Council approving this Financial Agreement, and the Application, with all attachments and exhibits, are incorporated in this Financial Agreement and made a part hereof.

#### **Section 15.4 Good Faith**

In their dealings with each other, utmost good faith is required from the Entity and the City.

#### **Section 15.5 Grammatical Agreement**

The bracketing of the letter(s) at the end of a word such as unit(s) shall mean the singular or plural as proper meaning requires and all related verbs and pronouns shall be made to correspond.

#### **Section 15.6 Recording**

Either this entire Financial Agreement or a memorandum of recording will be filed and recorded with Essex County Register of Deeds by the Entity.

#### **Article XVI – Exhibits**

Exhibit A – PEEK Reock I Owner Urban Renewal, LLC Tax Abatement Application

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

ATTEST:

**PEEK REOCK I OWNER  
URBAN RENEWAL, LLC**

\_\_\_\_\_  
Witness

By: \_\_\_\_\_

ATTEST:

**THE CITY OF ORANGE  
TOWNSHIP**

\_\_\_\_\_  
Clerk

\_\_\_\_\_  
Dwayne D. Warren, Esq., Mayor

APPROVED AS TO FORM

\_\_\_\_\_  
City Attorney