

CITY COUNCIL

The City of Orange Township, New Jersey

DATE _____

NUMBER 37-2023

TITLE:

ORDINANCE OF THE CITY OF ORANGE TOWNSHIP TO APPROVE A TAX EXEMPTION FOR A TWENTY-TWO (22) YEAR PERIOD AND TO AUTHORIZE THE TWENTY-TWO (22) YEAR EXEMPTION AND AUTHORIZING THE EXECUTION OF A FINANCIAL AGREEMENT BETWEEN THE CITY AND 356 WASHINGTON URBAN RENEWAL LLC

WHEREAS, 356 Washington Urban Renewal LLC (the “Entity”) has applied for a long-term tax exemption for a redevelopment project on property located at 356 Washington Street in the City of Orange Township identified on the City tax map as Block 601, Lot 2 (the “Property”) which is located within the MX-2, Mixed-Use Medium Density Residential & Commercial Zone within an Urban Enterprise Zone and is governed by an Urban Enterprise Zone Plan; and

WHEREAS, as described more fully within the application for long term tax exemption that the Entity filed with the City, the proposed project consists of the construction of a six-story multifamily residential building with two floors of off-street parking below the residential units, with the building consisting of one hundred and forty-two (142) units and one hundred and eighty-three (183) off-street parking spaces, and with the third floor of the building containing an outdoor patio space for residents. (collectively, the “Project”); and

WHEREAS, the Project will conform to the Urban Enterprise Zone Plan and all applicable municipal zoning ordinances, to the extent it contains provisions that are relevant to the Project, and will also conform with the master plan of the City of Orange Township (the “City”); and

WHEREAS, the City is authorized under the provisions of the Long Term Tax Exemption Law, N.J.S.A. 40A:20-1 et seq. (the “LTTE Law”) to grant tax exemptions to qualifying entities constructing redevelopment projects within urban enterprise zones governed by redevelopment plans and to enter into financial agreements with such entities governing payments made to the City in lieu of real estate taxes on the Project; and

WHEREAS, pursuant to N.J.S.A. 40A:20-8, the Entity filed an application (the “Application”) with the City for approval of a long term tax exemption for the Project and has agreed to enter into a financial agreement with the City (the “Financial Agreement”); and

WHEREAS, the Financial Agreement sets forth the terms and conditions under which the Entity and the City shall carry out their respective obligations with respect to the long term tax exemption for the Project; and


A. MIZDAN

WHEREAS, the Mayor, together with counsel for the City, has reviewed the Application and found that it complies with the provisions of the LTTE Law; and

WHEREAS, the Entity has demonstrated to the satisfaction of the Mayor and City Council that the granting of a long term tax exemption will improve the quality of life for the occupants of the Project and the quality of life for the City of Orange; and

WHEREAS, the Mayor and City Council finds that the relative benefits of the Project to the City outweigh the costs to the City associated with granting the long term tax exemption in that it will provide needed housing for families, create both temporary and permanent jobs within the City, enhance the quality of life for residents in and around the Project and that it will be important in influencing the locational decisions of probable occupants of the Project; and

WHEREAS, the City Council has determined that the assistance provided to the Project pursuant to the Financial Agreement is necessary for the creation of the Project and will be a significant inducement for the Entity to proceed with the Project; and

WHEREAS, the Financial Agreement represents an arm's length transaction between the parties and all promises and agreements, express or implied, payment of fees or other benefits, terms or conditions related thereto are incorporated therein as it concerns the Project and the parties hereto as well as their agents and servants; and

WHEREAS, the Entity hereby certifies its compliance with the applicable municipal ordinances as well as the strictures of the LTTE Law.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Orange Township as follows:

SECTION 1: PROVISIONS

1. The Entity's Application is hereby approved.
2. The Financial Agreement providing for a long term tax exemption on the Project is hereby approved with the intent that upon execution of the Financial Agreement and upon the terms set forth therein, the Project will be exempt from taxation for a period of twenty-two (22) years.
3. The Mayor of the City is hereby authorized to execute the Financial Agreement substantially in the form as it has been presented to the City Council subject to modification or revision deemed necessary and appropriate in consultation with counsel.
4. The Clerk of the City is hereby authorized and directed, upon the execution of the Financial Agreement in accordance with the terms set forth herein, to attest to the

signature of the Mayor upon such document, and is hereby further authorized and directed thereupon affix the corporate seal of the City upon such document.

5. The City Clerk shall file certified copies of this ordinance and the Financial Agreement with the Tax Assessor of the City and the Director of the Division of Local Government Services within the Department of Community Affairs in accordance with Section 12 of the LTTE Law.

SECTION 2: INCONSISTENCIES

All other ordinances and parts of ordinances in conflict or inconsistent with this ordinance are hereby repealed but only to the extent of such conflict or inconsistency.

SECTION 3: HEADINGS

All headings within this ordinance are for convenience only and are not deemed to be part of this ordinance.

SECTION 4: EFFECTIVE DATE

This ordinance shall take effect as required by law.

ADOPTED:

Joyce L. Lanier
Municipal Clerk

Council President

APPROVED:

Dwayne D. Warren, Mayor

FINANCIAL AGREEMENT
(N.J.S.A. 40A: 20-1, et seq.)

This **FINANCIAL AGREEMENT** (hereinafter, the “**Financial Agreement**”) made this ____ day of _____, 2023 by and between 356 Washington Urban Renewal LLC, a New Jersey limited liability company qualified to do business under the provisions of the Long Term Tax Exemption Law, as amended and supplemented, (N.J.S.A. 40A:20-1 et seq.), having its principal office at c/o Universal Contracting of New York Corp., 111 John Street, Suite 1010, New York, NY 10038 (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 Entity has applied for a long-term tax exemption for a redevelopment project on property located at 356 Washington Street in the City of Orange Township identified on the City tax map as Block 601, Lot 2 (the “**Property**”) which is located within the MX-2, Mixed-Use Medium Density Residential & Commercial Zone within an Urban Enterprise Zone and governed by an Urban Enterprise Zone Plan; 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 proposed project consists of the construction of a six-story multifamily residential building with two floors of off-street parking below the residential units. The building shall consist of one hundred and forty-two (142) units and one hundred and eighty-three (183) off-street parking

spaces. The project additionally contains a third-floor outdoor patio space for residents. (the “Project”); 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. The granting of the long-term tax exemption provided herein will permit the development of market rate residential units 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 more housing options 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 Urban Enterprise Zone 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.

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 Long-Term Tax Exemption Law, N.J.S.A. 40A: 20-1 et. seq. (as amended and supplemented, the “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 twelve (12%) percent 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.

iii. Annual Service Charge - The amount that the Entity has agreed to pay the City in lieu of full taxation on the Improvements as set forth more fully within Section 4.1 of this Financial Agreement, and which is subject to verification and review by the City.

iv. Application - The Application was 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 - Document issued by the City authorizing occupancy of a building.

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.

ix. Entity – Shall mean 356 Washington Urban Renewal LLC, a New Jersey limited liability company qualified to do business under the provisions of the Law, and any lawful assignees as authorized under this Financial Agreement.

x. Gross Revenue – Any and all revenue derived from or generated by the Project of whatever kind or amount, whether received as rent from any tenants or income or fees from third parties, including but not limited to fees or income paid or received for parking, laundry room, vending machines, and the like, or as user fees or for any other services. No deductions will be allowed 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.

xi. Improvements - Any building, structure or fixture permanently affixed to the Land.

xii. 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.

xiii. Land – The land, but not the Improvements, on the Property.

xiv. Land Taxes - The amount of taxes assessed on the value of the Land. Land assessments are not abated and shall remain a lien on the Land.

xv. 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.

xvi. Law - The term “Law” shall refer to the Long-Term Tax Exemption Law, as amended and supplemented N.J.S.A. 40A: 20-1, et. seq.

xvii. Minimum Annual Service Charge - The minimum annual service charge shall be the greater of (i) the amount of the total taxes levied against all real property in the area covered

by the Project in the last full tax year in which the area was subject to taxation, and (ii) \$26,341.60.

xviii. Net Profit - The gross revenue of the Entity less all operating and non-operating expenses of the Entity, calculated on a cumulative basis from Substantial Completion through the most recent fiscal year, as determined in accordance with generally accepted accounting principles and the provisions of N.J.S.A. 40A:20-3(c).

xix. 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) and (i). The Project consists of the construction of a six-story multifamily residential building with two floors of off-street parking below the residential units. The building shall consist of one hundred and forty-two (142) units and one hundred and eighty-three (183) off-street parking spaces. The Project additionally contains a third-floor outdoor patio space for residents.

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

xxi. Property - The Land and the Improvements thereon located at 356 Washington Street in the City of Orange Township identified on the City tax map as Block 601, Lot 2.

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

xxiii. Substantial Completion - The determination by the City that the Project is ready for the use intended, as further defined in Section 6.2 of this Financial Agreement.

xxiv. Termination - Any act or omission which by operation of the terms of this Financial Agreement shall cause the Entity to relinquish its long-term tax exemption on the Property.

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 Exemption

The City has granted and does hereby grant its approval for a tax exemption for the Project to be acquired, developed and to be maintained under the provisions of the Law on the premises described in the Application. 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

(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 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, the Entity and 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 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 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 Improvements provided for in this Financial Agreement:

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

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

(i) minority workers in each construction trade; or

(ii) 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 (20%) percent of the dollar value of the hard costs of total procurements to be awarded in connection with the Project.

For purposes of this section, the term "Minority" shall mean persons who are Black, Hispanic, Portuguese, Latino, Asian American, American Indian or Alaskan Natives. 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 fifty-one (51%) percent owned and controlled by Minority group members and is qualified.

(c) 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.

(d) 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.

(e) Where applicable, it will at all times conform to the laws, regulations, policies of the State of New Jersey, 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 2.4 and 2.5 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 Project 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 2.4 and 2.5.

Article III – Duration of Financial Agreement

Section 3.1 Term

So long as there is compliance with the Law and this Financial Agreement, it is understood and agreed by the parties hereto that this Financial Agreement shall remain in effect for a term of twenty-two (22) years from the date of Substantial Completion of the Project 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 25 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 on the Property 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 shall terminate upon the Entity's rendering and the City's acceptance of the Entity's final accounting.

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 shall include the total of all revenues that would normally be payable to a landlord in the case where the landlord is responsible to pay all costs of operations and maintenance as well as to pay the full cost of the capital required to construct the Project. To the extent that the actual revenues collected by the Entity are less than such amount, due to any reason including without limitation, the payment of expenses by tenants that would normally be paid by the landlord, such as insurance, taxes and or maintenance or the existence of an intermediate entity between the Entity and any tenant, but specifically excluding reductions in

revenue due to vacancies within the Project, the City shall have the right, at its sole discretion, to recalculate the amount that the revenues would have been, without such issues and to utilize the results of its recalculations in all determinations of Annual Service Charges.

(b) All parking spaces on the Property, if applicable and approved by the Office of Central Planning, will be exclusively for the use of the owners, tenants or customers 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. In the event that the Entity seeks to lease the parking spaces on the Property, the Entity must first notify the City in writing and must comply with all City ordinances and State laws regarding parking.

(c) The Annual Service Charge for year one (1) through year fourteen (14) of this Financial Agreement shall be the amount equivalent to ten percent (10%) of the Annual Gross Revenue generated from the Project. The Annual Service Charge for the remaining period of the Financial Agreement shall be determined as follows, pursuant to N.J.S.A. 40A:20-12(b)(2):

- (i) During year fifteen (15) through year nineteen (19) of the Financial Agreement, the Annual Service Charge shall be an amount equal to ten percent (10%) of the Annual Gross Revenue generated from the Project or twenty percent (20%) of the amount of the taxes otherwise due on the value of the Land and Improvements, whichever is greater;
- (ii) During year twenty (20) of the Financial Agreement, the Annual Service Charge shall be an amount equal to ten percent (10%) of the Annual Gross Revenue generated from the Project or forty percent (40%) of the amount of the taxes otherwise due on the value of the Land and Improvements, whichever is greater;

- (iii) During year twenty-one (21) of the Financial Agreement, the Annual Service Charge shall be an amount equal to ten percent (10%) of the Annual Gross Revenue generated from the Project or sixty percent (60%) of the amount of the taxes otherwise due on the value of the Land and Improvements, whichever is greater;
- (iv) During year twenty-two (22) of the Financial Agreement, the Annual Service Charge shall be an amount equal to ten percent (10%) of the Annual Gross Revenue generated from the Project or eighty percent (80%) of the amount of the taxes otherwise due on the value of the Land and Improvements, whichever is greater.

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 Minimum Annual Service Charge shall not be reduced through any tax appeal on Land and/or Improvement during the period the Agreement is in force and effect.

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.

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 in the prior tax year (the “Land Tax Credit”) against the Annual Service Charge. For purposes of clarification the amount of the Land Tax Credit to be applied against the quarterly installment of the Annual Service Charge shall equal $\frac{1}{4}$ of the total Land Tax Payments paid by it in the last four preceding quarterly installments in the prior tax year. 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, among its other remedies, have the right to proceed against the Property pursuant to the In Rem Tax Foreclosure Act, N.J.S.A. 54: 5-1, et. seq. and/or may cancel the Financial Agreement upon thirty (30) days notice to the Entity. 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 two (2%) percent of the Annual Service Charge added for each year that the Financial Agreement is in effect in order to cover the City's administrative 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 for relief through the filing of 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 that the Superior Court does not accept jurisdiction, then the parties shall submit the dispute to the American Arbitration Association in New Jersey to be determined, in accordance with its 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 Property, 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 and failure to use best efforts to secure and submit said Certificates of Occupancy shall subject the Property to full taxation.

Section 6.2 Substantial Completion

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

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 by the Application and Financial Agreement 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'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 as required under 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 completion of the Project, the Entity agrees to submit a Total Project Cost audit certified by a certified public accountant within ninety (90) days after completion of the Project.

Section 7.3 Inspection

The Entity shall 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 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 percent (10%) of the gross revenues of the Entity for the fiscal year preceding the year in which a determination is being made with respect to permitted Net Profits 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 percent (10%) of the preceding year's gross revenues 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 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 paragraph 7.4.

Article VIII - Assignment and/or Assumption

Section 8.1 Approval

Any change made in the ownership of the Project, any change made in the ownership of the Entity prior to Substantial Completion, or any other change that would materially affect the terms of the Financial Agreement shall be void unless approved by the Municipal Council by resolution. It is understood and agreed that the City, on written application by the Entity, will not unreasonably withhold its consent to a sale of the Project and the transfer of the Financial Agreement to an urban renewal entity eligible to operate under the Law provided that the Entity is not in default regarding any performance required of it hereunder and full compliance with the Law has occurred and the Entity obligation under this Financial Agreement with the City is fully assumed by the transferee.

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 Waiver

Section 9.1 Waiver

Nothing contained in this Financial Agreement or otherwise shall constitute a waiver or relinquishment by the City of any rights and remedies, including without limitation, the right to terminate the Financial Agreement and tax exemption for violation of any of the conditions provided herein. Nothing herein shall be deemed to limit any right of recovery of any amount that the City has under law, in equity, or under any provisions of this Financial Agreement.

Article X – Notice

Section 10.1 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:

356 Washington Urban Renewal LLC
c/o Universal Contracting of New York Corp.
111 John Street, Suite 1010
New York, NY 10038

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

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

The notice to the City shall identify the subject as “356 Washington Development Project” and shall include any assigned tax account numbers.

Article XI – Compliance

Section 11.1 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.

Article XII - Construction

Section 12.1 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 XIII – Indemnification

Section 13.1 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 XIV - Default

Section 14.1 Default

Default shall be failure of the Entity to conform 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.

Section 14.2 Cure Upon Default

Should the Entity be in default on any obligation other than the obligation to pay the Annual Service Charge and Land Taxes 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 notice. 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 14.3 Remedies Upon Default

Subsequent to the passage of thirty (30) days after the Entity's receipt of a default notice 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 or which, under the terms hereof, would in the future become due nor shall 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 be construed as a waiver of the right to terminate said tax exemption or proceed with In Rem Foreclosure action or any other remedy.

Article XV - Termination

Section 15.1 Termination Upon Default of the Entity

In the event the Entity fails to cure or remedy such default or breach within the time period provided in Section 14.2, the City may cancel this Financial Agreement upon thirty (30) days notice to the Entity and all lenders of record. For purposes of rendering a final financial accounting the termination of the Financial 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 15.2 Voluntary Termination by the Entity

The Entity may after the expiration of one year from the completion date of the Project notify the Municipal Council of the City that as of a certain date designated in the notice, it relinquishes its status as a tax exempted project. As of the date so set, the tax exemption, the service charges and the profit and dividend restriction shall terminate. Upon termination, the Entity shall provide a final accounting and pay any reserve, if any, to the City pursuant to the provisions of N.J.S.A. 40A:20-13 and 15.

Section 15.3 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.

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 XVI - Miscellaneous

Section 16.1 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 16.2 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 16.3 Entire Document

This Financial Agreement and all conditions in the Ordinance of the Municipal Council approving this Financial Agreement are incorporated in this Financial Agreement and made a part hereof.

Section 16.4 Good Faith

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

Section 16.5 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 16.6 Recording

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

Article XVII – Exhibits

Exhibit A – The 356 Washington Urban Renewal 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:

**356 WASHINGTON URBAN RENEWAL
LLC**

Witness

By:_____
Managing Member

ATTEST:

THE CITY OF ORANGE TOWNSHIP

Clerk

Dwayne D. Warren, Esq., Mayor

APPROVED AS TO FORM

City Attorney

EXHIBIT A
[Long Term Tax Exemption Application]