

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

DATE \_\_\_\_\_

NUMBER 38-2023**TITLE:**

**ORDINANCE OF THE MUNICIPAL COUNCIL OF THE CITY OF ORANGE TOWNSHIP TO APPROVE A TAX EXEMPTION FOR A TWENTY-FIVE (25) YEAR PERIOD AND TO AUTHORIZE THE TWENTY-FIVE (25) YEAR EXEMPTION AND AUTHORIZING THE EXECUTION OF A FINANCIAL AGREEMENT FOR PAYMENTS IN LIEU OF TAXES BETWEEN THE CITY AND PEEK CLEVELAND I OWNER URBAN RENEWAL, LLC**

**WHEREAS**, the property located at 66 Cleveland Street (Block 2102, Lot 11), 76 Cleveland Street (Block 2102, Lot 12), 82 Cleveland Street (Block 2102, Lot 13), and 69 North Essex Street (Block 2102, Lot 24) (all of which are expected to be consolidated into a new tax lot, to be designated Block 2101, Lot 11.1) (collectively, the **"Property"**) is located within the North Main Street Redevelopment Area (the **"Redevelopment Area"**) and is governed by the North Main Street Redevelopment Plan (the **"Redevelopment Plan"**); and

**WHEREAS**, the City of Orange Township, in the County of Essex, New Jersey (the **"City"**) has heretofore designated the Redevelopment Area and adopted the Redevelopment Plan in accordance with the provisions of the Local Redevelopment and Housing Law, *N.J.S.A. 40A:12A-1 et seq.* (the **"Redevelopment Law"**); and

**WHEREAS**, PEEK Cleveland I Owner Urban Renewal, LLC, having its principal place of business at c/o PEEK Properties, LLC, 300 Executive Drive, Suite 360, West Orange, New Jersey 07052 (the **"Entity"**), has proposed the construction, on the Property, of a redevelopment project consisting of the demolition of the existing two boarding houses and the two vacant single family homes located on the Property and the construction of a five-story 72 unit multi-family market-rate residential property which shall include twelve (12) studio units, thirty-three (33) one bedroom units, and twenty-seven (27) two bedroom units along with 82 garage parking spots, and other related improvements (the **"Project"**); and

**WHEREAS**, the City expects to authorize, by resolution, 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 Project includes the construction of such reasonably necessary infrastructure improvements along the frontage of the Project and the Property 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, as well as offsite improvements that will enhance the area, to be determined in consultation with the City Planner and/or City Engineer (collectively, the **"Infrastructure and Offsite Improvements"**); and

**WHEREAS**, the City expects to issue its general obligation bonds and/or notes in an aggregate principal amount not to exceed \$250,000 (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. (the “**Local Bond Law**”), as applicable, in order to defray certain eligible costs of the Infrastructure and Offsite Improvements; and

**WHEREAS**, the Entity has obtained preliminary and final site plan approval for the Project from the City Planning Board on September 22, 2021, as memorialized in a resolution of the City Planning Board adopted on October 27, 2021; 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 is authorized under the provisions of the Long Term Tax Exemption Law, *N.J.S.A.* 40A:20-1 et seq. (the “**LTTE Law**”) and the RAB Law to grant tax exemptions to qualifying entities constructing redevelopment projects within redevelopment areas 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 for payments in lieu of taxes (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

**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 the RAB Law; and

**WHEREAS**, the Entity has demonstrated to the satisfaction of the Mayor and Municipal Council that the granting of a long term tax exemption and payments in lieu of taxes 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 Municipal Council find 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 and parking, as well as create both temporary and permanent jobs within the City, enhance the quality of life for residents in and around the neighborhood, and influence locational decisions of probable new residents; and

**WHEREAS**, the Municipal 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 and the RAB Law.

**NOW, THEREFORE, BE IT ORDAINED BY THE MUNICIPAL 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 and payments in lieu of taxes 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 exempt from taxation for a period of twenty-five (25) 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 City Clerk 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, Esq.,  
Mayor

## **NOTICE OF PENDING ORDINANCE**

**PUBLIC NOTICE IS HEREBY GIVEN** that the foregoing ordinance was duly introduced and passed upon first reading at a regular meeting of the City Council of the City of Orange Township, in the County of Essex, New Jersey, held on July 5, 2023. The ordinance authorizes the execution and delivery of a Financial Agreement with PEEK Cleveland I Owner Urban Renewal, LLC in connection with a redevelopment project to be located at 66 Cleveland Street (Block 2102, Lot 11), 76 Cleveland Street (Block 2102, Lot 12), 82 Cleveland Street (Block 2102, Lot 13), and 69 North Essex Street (Block 2102, Lot 24) (all of which are expected to be consolidated into a new tax lot, to be designated Block 2101, Lot 11.1) and consisting of the demolition of the existing two boarding houses and the two vacant single family homes located on the property and the construction of a five-story 72 unit multi-family market-rate residential property which shall include twelve (12) studio units, thirty-three (33) one bedroom units, and twenty-seven (27) two bedroom units along with 82 garage parking spots, and other related improvements, and also including the construction of such reasonably necessary infrastructure improvements along the frontage of the project and the property that are caused and necessitated as a result of the construction of the project, as well as offsite improvements that will enhance the area. Under the Financial Agreement, the project will receive a 25-year tax exemption and the redeveloper will be obligated to pay certain annual service charges to the City in lieu of taxes on the improvements. Further notice is hereby given that said ordinance will be considered for final passage and adoption, after public hearing thereon, at a regular meeting of said City Council to be held at City Hall, 29 North Day Street, Orange, New Jersey 07050 on \_\_\_\_\_, 2023 at \_\_\_\_ p.m., and during the week prior to and up to and including the date of such meeting, copies of said ordinance will be made available without cost at the City Clerk's Office to the members of the general public who shall request the same.

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Joyce L. Lanier, City Clerk

**NOTICE OF ADOPTION OF ORDINANCE**

**PUBLIC NOTICE IS HEREBY GIVEN** that the ordinance published herewith has been finally adopted by the City Council of the City of Orange Township, in the County of Essex, New Jersey on \_\_\_\_\_, 2023. The ordinance authorizes the execution and delivery of a Financial Agreement with PEEK Cleveland I Owner Urban Renewal, LLC in connection with a redevelopment project to be located at 66 Cleveland Street (Block 2102, Lot 11), 76 Cleveland Street (Block 2102, Lot 12), 82 Cleveland Street (Block 2102, Lot 13), and 69 North Essex Street (Block 2102, Lot 24) (all of which are expected to be consolidated into a new tax lot, to be designated Block 2101, Lot 11.1) and consisting of the demolition of the existing two boarding houses and the two vacant single family homes located on the property and the construction of a five-story 72 unit multi-family market-rate residential property which shall include twelve (12) studio units, thirty-three (33) one bedroom units, and twenty-seven (27) two bedroom units along with 82 garage parking spots, and other related improvements, and also including the construction of such reasonably necessary infrastructure improvements along the frontage of the project and the property that are caused and necessitated as a result of the construction of the project, as well as offsite improvements that will enhance the area. Under the Financial Agreement, the project will receive a 25-year tax exemption and the redeveloper will be obligated to pay certain annual service charges to the City in lieu of taxes on the improvements. A copy of the ordinance has been filed for public inspection in the City Clerk's Office, located at City Hall, 29 North Day Street, Orange, New Jersey 07050. Further notice is hereby given that any action or proceeding of any kind or nature in any court questioning the validity or proper authorization of ordinance or the actions authorized to be taken as set forth in the ordinance shall be commenced within 20 days after the publication of this notice, as stated below.

Date of publication: \_\_\_\_\_, 2023.

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Joyce L. Lanier, City Clerk

**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 \_\_\_\_\_, 2023 by and between PEEK Cleveland I Owner Urban Renewal, LLC, a New Jersey limited liability company 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 300 Executive Drive, Suite 360 West Orange, NJ 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 those

portions of the Redevelopment Area identified on the City's official tax map as Block 2102, Lots 11, 12, 13, and 24 all situate in the City of Orange Township, New Jersey (collectively, the "**Land**"), consisting of the demolition of the existing two boarding houses and the two vacant single family homes located on the Property and the construction of a five-story 72 unit multi-family market-rate residential property which shall include twelve (12) studio units, thirty-three (33) one bedroom units, and twenty-seven (27) two bedroom units along with 82 garage parking spots, and other related improvements (collectively, the "**Project**"); and

**WHEREAS**, the City expects to authorize, by resolution, 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 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, as well as offsite improvements that will enhance the area, all to be determined in consultation with the City Planner and/or City Engineer (collectively, the "**Infrastructure and Offsite Improvements**"); and

**WHEREAS**, in order to defray certain eligible costs of the portion of the Project comprising the Infrastructure and Offsite 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 \$250,000.00 (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**, the Entity has obtained preliminary and final site plan approval for the Project from the City Planning Board, as memorialized in a resolution of the City Planning Board adopted on October 27, 2021, Case No. 21-04; 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 Cleveland 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 and Offsite Improvements – Shall have the meaning ascribed thereto in the Recitals hereto and in any Redevelopment Area Bond ordinance pertaining to the Project. The Infrastructure and Offsite Improvements are part of the Project.

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 2102, Lots 11, 12, 13, and 24, 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 an amount determined by the parties; provided such amount shall not be less than the amount of the total taxes levied against the Property in the last full tax year in which the area was subject to taxation (i.e., \$41,322), and no greater than an amount equal to the Base Annual Service Charge payable in the first year (i.e., \$87,437).

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 five-story multi-family residential apartment project containing approximately 72 market rate rental apartment units with on-site 82-space first floor parking garage and other related improvements, all to be located on the Land, and also including the Infrastructure and Offsite 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 2102, Lots 11, 12, 13, and 24, as described on the Official Tax Map of the City of Orange Township, and more commonly known and commonly known as 76 Cleveland Street and 69 North Essex Avenue, Orange, New Jersey. The Land is expected to be consolidated into a new tax lot, to be designated Block 2101, Lot 11.1.

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) 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), subject to possible early termination as provided in Section 4.6 hereof, 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 and Offsite 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 twelve (12) 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 thirteen (13) through year seventeen (17) of the Financial Agreement, if applicable, the Base Annual Service Charge shall be an amount equal to seven percent (7%) of the Annual Gross Revenue generated by the Project;
- (iii) During year eighteen (18) through year twenty-two (22) of the Financial Agreement, if applicable, the Base Annual Service Charge shall be an amount equal to ten percent (10%) of the Annual Gross Revenue generated by the Project; and
- (iv) During year twenty-three (23) through year twenty-five (25) of the Financial Agreement, if applicable, the Base Annual Service Charge shall be an amount equal to eleven percent (11%) of the Annual Gross Revenue generated by the Project.
- (v) The Base Annual Service Charge shall be increased on each anniversary of the Annual Service Charge Start Date until this Agreement is terminated by an amount equal to: a dollar amount equal to the increase in the non-municipal/library portion of the Land Taxes provided that such increase shall not exceed 3% of the Base Annual Service Charge (“Land Tax Adjustment Cap”), and provided further that any unused portion of the Land Tax Adjustment Cap shall be carried over to future years.



(f) 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.

(g) 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 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	\$1,748,743	11	\$2,029,488	21	\$ 2,355,304

2	\$1,774,974	12	\$2,059,930	22	\$ 2,390,633
3	\$1,801,599	13	\$2,090,829	23	\$2,426,493
4	\$1,828,623	14	\$2,122,192	24	\$2,462,890
5	\$1,856,052	15	\$2,154,024	25	\$2,499,833
6	\$1,883,893	16	\$2,186,335		
7	\$1,912,151	17	\$2,219,130		
8	\$1,940,834	18	\$2,252,417		
9	\$1,969,946	19	\$2,286,203		
10	\$1,999,495	20	\$2,320,496		

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. Notwithstanding the forgoing, the following changes in ownership interests in the Entity shall be permitted, provided that prompt written notice thereof shall be given to the City as soon as practicable thereafter and written notice thereof shall also be included with the next succeeding Auditor's Report filed by the Entity pursuant to Section 7.2 hereof:

(1) transfers of ownership interests held by individuals due to death or for purposes of estate planning, or otherwise where transfers are made between, among or to then existing principals, owners, officers of the Entity or its members, or family members



of any of the foregoing or other beneficial interest owners or trusts for the benefit of any of the foregoing;

(2) any transfer, either directly or indirectly, of the non-managing member interest in the Entity;

(3) the admission of an institutional investor into the ownership structure of the Entity as a non-managing member to finance the Project or a portion thereof, and/or any subsequent assignments of said investor's interest in the Entity, or

(4) transfers of ownership interests to an affiliate of the Entity, to PEEK Properties, LLC ("PEEK") or to an affiliate of PEEK, provided that PEEK or an affiliate thereof controlled by PEEK shall remain the managing member.

No administrative fee shall be payable in respect of any transfers of ownership interest described in clauses (1) through (4) above. 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 are 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 Cleveland I Owner Urban Renewal, LLC  
300 Executive Drive, Suite 360  
West Orange, NJ 07052

Attention:

Phillip Evanski, Manager

Phone: 973-736-9600

Email: pevanski@peekcp.com

With a copy to:

Reginald Jenkins, Jr., Esq.  
Trenk Isabel Siddiqui & Shahdanian, P.C.  
290 Park Avenue, Suite 2370  
Livingston, New Jersey 07039

Phone: (973) 533-1000

Email: rjenkins@trenkisabel.law

(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 “Cleveland 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 may be filed and recorded with Essex County Register of Deeds by the Entity.

**Article XVI – Exhibits**

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

[Signature page follows]



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

**ATTEST:**

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

\_\_\_\_\_  
Witness

By: \_\_\_\_\_  
Emanuel Klein, Member

**ATTEST:**

**THE CITY OF ORANGE  
TOWNSHIP**

\_\_\_\_\_  
Clerk

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

**APPROVED AS TO FORM**

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

**EXHIBIT A**