

CITY COUNCIL

The City of Orange Township, New Jersey

DATE _____

NUMBER 23-2024

TITLE: ORDINANCE OF THE MUNICIPAL COUNCIL OF THE CITY OF ORANGE TOWNSHIP TO APPROVE A TAX EXEMPTION FOR A TWENTY-THREE (23) YEAR PERIOD AND TO AUTHORIZE THE TWENTY-THREE (23) YEAR EXEMPTION AND AUTHORIZING THE EXECUTION OF A FINANCIAL AGREEMENT FOR PAYMENTS IN LIEU OF TAXES BETWEEN THE CITY AND MORROW STREET URBAN RENEWAL, LLC

WHEREAS, the property located at 566-588 Morrow Street and 507-515 South Jefferson Street (Block 6003, Lots 5, 6, 7, 8, 11, 12, 13, 14, 27, 28, 29 and 30) (collectively, the **"Property"**) is located within the Central Valley Redevelopment Area, District 2 Zone (the **"Redevelopment Area"**) and is governed by the Central Valley 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, Morrow Street Urban Renewal, LLC, having its principal place of business at 5308 13th Avenue, Brooklyn, New York 11219 (the **"Entity"**), has proposed the construction, on the Property, of a redevelopment project consisting of the demolition of the existing structures located on the Property and the construction of a six-story multifamily mixed-use development, consisting of two (2) separate buildings to be connected via a second floor skybridge containing amenity space, and the two buildings to contain a total of two hundred and two (202) residential units, approximately two thousand (2,000) square feet of commercial space, and parking areas containing two hundred and two (202) parking spaces, all as described more fully within the hereinafter-defined Application (collectively, the **"Project"**); and

WHEREAS, the Project includes the construction of various infrastructure improvements to the Project Site and the streets abutting the Property that are required as a result of the construction of the Project, including but not limited to curb replacements, street resurfacing, and construction of sidewalks, street lighting, landscaping, crosswalks and similar improvements, all consistent with the Redeveloper's approved site plan, to be determined in consultation with the City Planner (collectively, the **"Infrastructure Improvements"**); 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 City expects to issue its general obligation bonds and/or notes in an aggregate principal amount not to exceed \$250,000 (collectively, the **"RAB Bonds"**) pursuant to the Redevelopment Area Bond Financing Law, *N.J.S.A. 40A:12A-64 et seq.* (the **"RAB Law"**), the Redevelopment Law and/or the Local Bond Law, *N.J.S.A. 40A:2-1 et seq.* (the



“**Local Bond Law**”), as applicable, in order to defray certain eligible costs of the portion of the Project comprising the Infrastructure Improvements, which RAB Bonds shall be not be secured by the annual charges payable under the hereinafter-defined Financial Agreement, but instead will constitute general obligations secured by the full faith and credit of the City; 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 also conform 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 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 improvements to be constructed in connection with 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

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 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 and parking, create both temporary and permanent jobs within the City, enhance the quality of life for residents in and around the neighborhood, and influence the 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.

The Financial Agreement providing for a long term tax exemption and payments in lieu of taxes on the improvements to be constructed in connection with the Project is hereby approved with the intent that upon execution of the Financial Agreement and upon the terms set forth therein, the Improvements will be exempt from taxation for a period of twenty-three (23) years.

2. The Mayor of the City is hereby authorized to execute the Financial Agreement substantially in the form as it has been presented to the Municipal Council subject to modification or revision deemed necessary and appropriate in consultation with counsel.

3. 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(s), and is hereby further authorized and directed to thereupon affix the corporate seal of the City upon such document(s).

4. 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

Tency A. Eason
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 _____, 2024. The ordinance authorizes the execution and delivery of a Financial Agreement with Morrow Street Urban Renewal, LLC (the “Entity”) in connection with a redevelopment project to be located at 566-588 Morrow Street, 567-585 Morrow Street and 507-515 South Jefferson Street (Block 6003, Lots 5, 6, 7, 8, 11, 12, 13, 14, 27, 28, 29 and 30) and consisting of the demolition of the existing structures located on the property and the construction of a six-story multifamily mixed-use development, consisting of two (2) separate buildings to be connected by a second floor skybridge containing amenity space, and the two buildings to contain a total of two hundred and two (202) residential units, approximately two thousand (2,000) square feet of commercial space, and parking areas containing two hundred and two (202) parking spaces (the “Project”). Under the Financial Agreement, the improvements to be constructed in connection with the Project will receive a 23-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 _____, 2024 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.

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 _____, 2024. The ordinance authorizes the execution and delivery of a Financial Agreement with Morrow Street Urban Renewal, LLC (the “Entity”) in connection with a redevelopment project to be located at 566-588 Morrow Street, 567-585 Morrow Street and 507-515 South Jefferson Street (Block 6003, Lots 5, 6, 7, 8, 11, 12, 13, 14, 27, 28, 29 and 30) and consisting of the demolition of the existing structures located on the property and the construction of a six-story multifamily mixed-use development, consisting of two (2) separate buildings to be connected by a second floor skybridge containing amenity space, and the two buildings to contain a total of two hundred and two (202) residential units, approximately two thousand (2,000) square feet of commercial space, and parking areas containing two hundred and two (202) parking spaces (the “Project”). Under the Financial Agreement, the improvements to be constructed in connection with the Project will receive a 23-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: _____, 2024.

Joyce L. Lanier, City Clerk



Honorable Dwayne D. Warren, Esq.
Mayor

Office of the Mayor

Municipal Building
29 North Day Street
Orange, New Jersey 07050
(973) 952-6100 • www.OrangeNJ.gov

May 15, 2024

Joyce L. Lanier, City Clerk
City of Orange Township
City Hall
29 North Day Street
Orange, New Jersey 07050

**Re: Long Term Tax Exemption Application for:
Morrow Street Urban Renewal, LLC**
566-588 Morrow Street and 507-515 South Jefferson Street
(Block 6003, Lots 5, 6, 7, 8, 11, 12, 13, 14, 27, 28, 29 and 30)

Dear Ms. Lanier:

I have reviewed the Application, Financial Agreement and supporting documents (collectively, the "Application") submitted by **Morrow Street Urban Renewal, LLC** (the "Applicant") for a redevelopment project (the "Project") consisting of the demolition of the existing structures located on the above-described premises (the "Property") and the construction of a six-story multifamily mixed-use development, consisting of two (2) separate buildings to be connected via a second floor skybridge containing amenity space, and the buildings to contain a total of two hundred and two (202) residential units, approximately two thousand (2,000) square feet of commercial space, and parking areas containing two hundred and two (202) parking spaces, all as described more fully within the Application.

The Project includes the construction of various infrastructure improvements to the Project Site and the streets abutting the Property that are required as a result of the construction of the Project, including but not limited to curb replacements, street resurfacing, and construction of sidewalks, street lighting, landscaping, crosswalks and similar improvements, all consistent with the Redeveloper's approved site plan, to be determined in consultation with the City Planner (collectively, the "Infrastructure Improvements").

Resolutions authorizing the execution and delivery of a Redevelopment Agreement, a Community Benefits Agreement and a Funding Agreement with the Applicant will be presented for Municipal Council consideration simultaneously with the introduction of the ordinance approving the hereinafter-defined Financial Agreement.

The City expects to issue its redevelopment area bonds and/or notes in an aggregate principal amount not to exceed \$250,000 (the "RAB Bonds") pursuant to the Redevelopment Area Bond Financing Law, *N.J.S.A. 40A:12A-64 et seq.* (the "RAB Law"), the Local Redevelopment and Housing Law, *N.J.S.A. 40A:12A-1 et seq.* (the "Redevelopment Law") and/or the Local Bond Law, *N.J.S.A. 40A:2-1 et seq.* (the



“Local Bond Law”), as applicable, in order to defray certain eligible costs of the portion of the Project comprising the Infrastructure Improvements. The RAB Bonds will not be secured by the annual charges payable under the hereinafter-defined Financial Agreement, but instead will constitute general obligations secured by the full faith and credit of the City. A bond ordinance authorizing the issuance of the RAB Bonds will be presented for Municipal Council approval at a future time.

The Applicant has submitted an application for a twenty-three (23) year Long Term Tax Abatement for the improvements to be constructed in connection with the Project, pursuant to the Long Term Tax Exemption Law, *N.J.S.A. 40A:20-1 et seq.*, and the RAB Law. The Applicant is requesting an “Annual Service Charge” (i.e., a PILOT obligation) equal to 6.9% of the Annual Gross Revenue generated from the Project. In no event shall the Annual Service Charge be less than the “Minimum Annual Service Charge” (i.e., 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). As permitted by the provisions of the RAB Law, the Annual Service Charge will not be subject to staged minimum payments based on a percentage of the amount of taxes otherwise due on the value of the land and improvements for the Project.


In addition, the Applicant will be required to pay all land taxes levied against the Property (the “Land Taxes”), but the Applicant will be entitled to a credit for Land Taxes paid during the last four (4) preceding quarterly installments.

The annual service charges projected to be received by the City under the Financial Agreement have been projected to be sufficient to cover the projected debt service on the RAB Bonds and the required 5% share required to be paid to the County of Essex. To offset the City’s administrative costs incurred in connection with the management of the Annual Service Charges and the RAB Bonds, the Applicant will be required to pay a separate annual administrative fee equal to 2% of the total Annual Service Charge.

After reviewing the Application, I am confident that the Project 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. The Applicant has also committed to certain provisions governing local and minority hiring during Project construction.

Based on all the information provided to me, I believe this project is a desirable improvement in our City. Therefore, I recommend that the Financial Agreement and the associated long term tax exemption be favorably considered by the Municipal Council, subject to satisfaction of all legal prerequisites.

Very truly yours,


DWAYNE D. WARREN, ESQ.
MAYOR

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, the “**Financial Agreement**”) made this _____ day of _____ 2024 by and between Morrow Street 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 5308 13th Avenue, Brooklyn, New York 11219 (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:

A. In accordance with the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq., as amended from time to time (the “**Redevelopment Law**”), the governing body of the City (the “**City Council**”) has heretofore designated certain properties within the City, including but not limited to property located at 566-588 Morrow Street and 507-515 South Jefferson Street in the City of Orange Township identified on the City tax map as Block 6003, Lots 5, 6, 7, 8, 11, 12, 13, 14, 27, 28, 29 & 30 (collectively, the “**Property**”), as an “area in need of redevelopment” known as the Central Valley Redevelopment Area, - District 2 Zone (the “**Redevelopment Area**”).

B. In accordance with the Redevelopment Law, the City has heretofore adopted a redevelopment plan known as the Central Valley Redevelopment Plan for the Redevelopment Area on the basis of its designation as an area in need of redevelopment (as may be amended from time to time, the “**Redevelopment Plan**”).

C. The Entity proposes to undertake a project on the Property consisting of the demolition of the existing structures on the Property and the construction of a six-story multifamily mixed-use development, consisting of two (2) separate buildings to be connected via a second floor skybridge containing amenity space, and the buildings to contain a total of two hundred and two (202) residential units, approximately two thousand (2,000) square feet of commercial space, and parking areas containing 202 parking spaces, all as set forth within the hereinafter-defined Application (collectively, the “**Project**”).

D. The Project includes the construction of various infrastructure improvements to the Property and the streets abutting the Property that are required as a result of the construction of the Project, including but not limited to curb replacements, street resurfacing, and construction of sidewalks, street lighting, landscaping, crosswalks and similar improvements, all consistent with the Entity’s approved site plan, to be determined in consultation with the City Planner (collectively, the “**Infrastructure Improvements**”); and

E. The City and the Entity have entered into that certain Redevelopment Agreement dated [_____] (the “**Redevelopment Agreement**”), approved on [_____] 2024 by Resolution No. [_____] of the City Council, to effectuate the redevelopment of the Redevelopment

Area and specify the respective rights and responsibilities of the parties with respect to the Project.

F. Pursuant to and in accordance with the provisions of the Long Term Tax Exemption Law, as amended and supplemented, (N.J.S.A. 40A:20-1 et seq.) (the “**Exemption Law**”) and the New Jersey Redevelopment Area Bond Financing Law, constituting Chapter 310 of the Pamphlet Laws of 2001 of the State of New Jersey, and the acts amendatory thereof and supplemental thereto (the “**RAB Law**”, as codified in N.J.S.A. 40A:12A-64 et seq.), the City is authorized to provide for and accept, in lieu of real property taxes, an Annual Service Charge (as hereinafter defined) paid by the Entity to the City.

G. The Entity has applied for a long-term tax exemption for the improvements to be constructed in connection with the Project 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**”).

H. The City Council has reviewed the Application and has made the following findings:

1. 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.

2. 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.

(ii) The relative stability and predictability of the Annual Service Charges (as defined herein) 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.

(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.

I. On [____], 2024, by Ordinance No. [____] attached hereto as **Exhibit B** (the “**Ordinance**”), the City Council approved the Application, subject to the terms and conditions of this Financial Agreement and authorized the execution of this Financial Agreement.

J. Pursuant to the RAB Law, specifically N.J.S.A. 40A:12A-68, the Annual Service Charge (as such term is defined herein) shall, upon the recordation of this Financial Agreement and the Ordinance, constitute a municipal lien superior to all non-municipal liens thereafter recorded, on the Land and the Improvements (each as hereinafter defined) of the Project within the meaning of applicable law.

K. Pursuant to and in accordance with the provisions of the RAB Law, and particularly N.J.S.A. 40A:12A-67(a), the City may issue one or more series of bonds and/or bond anticipation notes in order to finance certain eligible costs of the portion of the Project comprising the Infrastructure Improvements (one or more series in an amount not to exceed \$250,000.00, the proceeds of which shall finance, or provide reimbursement for, such costs, the “**Bonds**”) in accordance with the terms and provisions of a Funding Agreement (the “**Funding Agreement**”), to be executed by and between the City and the Entity prior to or simultaneous with the issuance of the Bonds.

L. The Bonds shall be general obligations of the City, and shall not be secured by a pledge of any portion of the Annual Service Charge (as defined herein). The Bonds shall be issued on either a tax-exempt or taxable basis.

M. As conditions precedent to the issuance of any and all of the Bonds and in accordance with all applicable law, including without limitation, N.J.S.A. 40A:12A-29(a)(3) and N.J.S.A. 40A:12A-67(g), (i) the City shall submit an application to the Local Finance Board in the Division of Local Government Services of the State of New Jersey’s Department of Community Affairs (the “**Local Finance Board**”) for the Local Finance Board’s approval of the issuance of and the potential private sale of the Bonds; (ii) the Local Finance Board, pursuant to a resolution duly adopted at a meeting of the Local Finance Board shall have issued all necessary statutory findings and approvals relating to the Ordinance, the Bond Ordinance (hereinafter defined), this Financial Agreement and the transactions related thereto, including, without limitation, its findings that the issuance of the Bonds shall not adversely impact the financial stability of the City; and (iii) the City Council shall have adopted a bond ordinance authorizing the issuance of the Bonds (the “**Bond Ordinance**”).

N. 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 Exemption Law and 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 1.1 General Definitions

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

- a. 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).
- b. 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.
- c. Annual Service Charge - The total annual amount that the Entity has agreed to pay the City for municipal services supplied to the Project, which sum is in lieu of full taxation on the Improvements pursuant to the Exemption Law, and which is subject to verification and review by the City. The Annual Service Charge shall be calculated pursuant to Article IV hereof.
- d. 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**.
- e. 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.
- f. Bonds – Shall be as defined in Recital K hereof. The Bonds shall be issued on either a tax-exempt or taxable basis and shall amortize over a period of thirty (30) years.
- g. Bond Ordinance – Shall be as defined in Recital M hereof.
- h. Bond Resolution – Each resolution of the City authorizing the issuance of a series of Bonds, whether in the form of bonds or bond anticipation notes.

- i. Certificate of Occupancy - A temporary or permanent certificate of occupancy as defined in the applicable section of the municipal code of the City and the applicable provisions of the New Jersey Uniform Construction Code, N.J.A.C. 5:23-1 et seq.
- j. City - The City of Orange Township, New Jersey.
- k. City Council – Shall be as defined in Recital A hereof.
- l. Days – Shall mean calendar days.
- m. Default - Shall be the failure of the Entity to perform any obligation imposed upon the Entity by the terms of this Financial Agreement.
- n. Entity – Shall mean Morrow Street Urban Renewal, LLC, a New Jersey limited liability company qualified to do business under the provisions of the Exemption Law, and any lawful assignees as authorized under this Financial Agreement.
- o. Exemption Law – The term “Exemption Law” shall refer to the Long-Term Tax Exemption Law, as amended and supplemented N.J.S.A. 40A: 20-1, et. seq.
- p. Funding Agreement – Shall be as defined in Recital K hereof.
- q. 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. Gross Revenue shall exclude, without limitation, any gain realized by the Entity on the sale of the Project, the proceeds of any condemnation or casualty awards, insurance proceeds, proceeds of any financing or refinancing, and the deposition of a partner or partner’s equity interest in the Entity.
- r. Improvements - Any building, structure or fixture permanently affixed to the Land.
- s. 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.
- t. In Rem Tax Foreclosure Act – Shall be as defined in Section 15.3 hereof.
- u. Job Referral Center – Shall be as defined in Section 2.3(a) hereof.
- v. Land – The portion of the Property consisting of the land located on Block 6003, Lots 5, 6, 7, 8, 11, 12, 13, 14, 27, 28, 29 & 30 and not the Improvements.
- w. Land Tax Credit – Shall be as defined in Section 4.6(b).

x. Land Taxes – The amount of any real estate taxes levied on the value of the Land, exclusive of the value of any Improvements related thereto. Land assessments are not abated and shall remain a lien on the Land.

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

z. Law – Shall refer, collectively, to the Redevelopment Law, the Exemption Law and the RAB Law.

aa. Local Finance Board – Shall be as defined in Recital L hereof.

bb. 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) \$125,693.00.

cc. 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).

dd. 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 demolition of the existing structures on the Property and the construction of a six-story multifamily mixed-use development, consisting of two (2) separate buildings to be connected via a second floor skybridge containing amenity space, and the buildings to contain a total of two hundred and two (202) residential units, approximately two thousand (2,000) square feet of commercial space, and ground level parking garage containing 202 parking spaces, all as set forth within the Application.

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

ff. Property - The Land and the Improvements thereon located at 566-588 Morrow Street and 507-515 South Jefferson Street in the City of Orange Township identified on the City tax map as Block 6003, Lots 5, 6, 7, 8, 11, 12, 13, 14, 27, 28, 29 & 30.

gg. RAB Law – The term “RAB Law” shall refer to the Redevelopment Area Bond Financing Law, as codified in N.J.S.A. 40A:12A-64 et seq.

hh. Redevelopment Agreement – Shall be as defined in Recital D hereof.

ii. Redevelopment Area – Shall be as defined in Recital A hereof.

jj. Redevelopment Plan – Shall be as defined in Recital B hereof.

kk. Secured Party or Secured Parties – Shall be as defined in Section 9.5(a) hereof.

ll. Security Arrangements – Shall be as defined in Section 9.5(a) hereof.

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

nn. Substantial Completion - The determination by the City that the Project is ready for the use intended, as further defined in Section 7.2 of this Financial Agreement.

oo. Termination – The expiration of the term of this Financial Agreement in accordance with Section 3.1 hereof, or 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.

pp. Total Project Cost – The total project cost of the Project calculated as set forth in N.J.S.A. 40A:20-3(h).

Section 1.2 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 Improvements to be acquired, developed and to be maintained under the provisions of the Exemption Law on the premises described in the Application effective as of the date of Substantial Completion. 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 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 2.3 in any contract for sale or transfer of the Property or any structure constructed as part of the Project to any other person or entity and to explicitly provide within such contract that these terms shall survive the closing and that the City shall be a third party beneficiary as to the enforcement of these terms.

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

Section 2.4 Affirmative Action

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

(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 2.3 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 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 2.3 and 2.4.

Failure to comply with the requirements of Sections 2.3, 2.4 or 2.5 shall constitute a Default within the meaning of Section 15.1, as to which the provisions of Section 15.2 and 15.3 (but not Section 16.1) 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 performance.

Article III – Duration of Financial Agreement

Section 3.1 Term

So long as there is compliance with the Exemption Law and this Financial Agreement, and except as provided in Section 16.1 hereof, it is understood and agreed by the parties hereto that this Financial Agreement shall remain in effect for a term of twenty-three (23) 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 Exemption Law; provided, however, that in no case shall this Financial Agreement remain in effect longer than twenty-eight (28) 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 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.

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 Exemption 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 so long as any Bonds remain outstanding.

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 or free rent periods 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. 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, 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 years one (1) through twenty-three (23) of this Financial Agreement shall be the amount equivalent to six and nine-tenths percent (6.9%) of the Gross Revenue generated from the Project.

(d) 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). As provided in the Funding Agreement, certain eligible costs of the portion of the Project comprising the Infrastructure Improvements will be financed by the Bonds.

(e) In no event shall the Annual Service Charge, excluding taxes on the Land, in any year 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 this Financial 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. The first year of the Annual Service Charge shall be billed based on the Entity's estimated Annual Gross Revenues for the first full year of operation as estimated in the Application, which amount shall be adjusted when the Auditor's Report is completed for such first 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 Annual Service Charges payable by the Entity after the date such Auditor's Report is filed; and (ii) any deficiency owing to the City as a result of an underpayment revealed by such calculation shall be paid by the Entity within thirty (30) days of the date such Auditor's Report is filed.

Section 4.3 Remittance to County

The City shall remit five percent (5%) of the Annual Service Charge to the County of Essex in accordance with N.J.S.A. 40A:20-12(b)(2)(e).

Section 4.4 Land Taxes

(a) The Entity hereby expressly acknowledges, understands and agrees that the tax exemption provided for herein shall only apply to Improvements and that Land Taxes shall be separately assessed by the City on the Property in accordance with applicable law. 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.

(b) The Entity is required to pay both the Annual Service Charge and the Land Tax Payments. The Entity is obligated to make timely Land Tax Payments in order to be entitled to a Land Tax credit against the Annual Service Charge. 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 (the "**Land Tax Credit**") against the Annual Service Charge, commencing with the first year after Substantial Completion. For purposes of clarification, the amount of the Land Tax Credit shall equal $\frac{1}{4}$ of the total Land Tax Payments paid by it in the last four preceding quarterly

installments. In any year that the Entity fails to make any Land Tax Payments when due and owing, such delinquency shall render the Entity ineligible for any Land Tax Payment credits against the Annual Service Charge for that year. No credit will be applied against the Annual Service Charge for partial payments of Land Taxes.

Section 4.5 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 Financial Agreement or the application of such term, covenant or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term, covenant or condition of this Financial Agreement shall be valid and be enforced to the fullest extent permitted by law.

Section 4.6 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 – Entity's Consent

Section 5.1 Entity's Consent

The Entity hereby acknowledges, consents, and agrees (a) to the amount of the Annual Service Charge and (b) that its remedies shall be limited to those specifically set forth herein and otherwise provided by applicable law.

If any installment of the Annual Service Charge is not paid in accordance with this Financial Agreement on the date and in the full amount scheduled to be paid, the Entity hereby expressly waives any objection or right to challenge the use by the City of the enforcement of remedies to collect such installment of the Annual Service Charge as are afforded the City by law, including the In Rem Tax Foreclosure Act; provided, however, that in no event shall there be any acceleration of any amounts due and owing to repay the Bonds, and such remedies shall be limited solely to the collection of delinquent and unpaid amounts past due for payment, including interest, penalties, and costs of collection provided for by the In Rem Tax Foreclosure Act.

Article VI - Dispute Resolution

Section 6.1 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 Exemption 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 Exemption 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 Land Taxes and/or 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 VII – Certificate of Occupancy

Section 7.1 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 7.2 Substantial Completion

The Annual Service Charge is to commence from the first day of the month following the Substantial Completion of the Project.

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 7.3 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 upon its issuance by the City.

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 VIII - Annual Audits

Section 8.1 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 Exemption Law during the term of the tax exemption.

Section 8.2 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 Exemption 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 8.3 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 8.4 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 8.5 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 8.4.

Article IX - Assignment and/or Assumption

Section 9.1 Approval

(a) Except as otherwise set forth herein, 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. The Entity shall make written application to the City for approval of any proposed transferee prior to the date of Substantial Completion, which approval may be granted or withheld at the City's discretion and on such conditions as the City may require, subject to the Entity obligation under this Financial Agreement being fully assumed by the transferee. 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 following Substantial Completion to an urban renewal entity eligible to operate under the Exemption Law provided that the Entity is not in default regarding any performance required of it hereunder and full compliance with the Exemption Law has occurred and the Entity obligation under this Financial Agreement with the City is fully assumed by the transferee. Each application for approval (whether prior to or following Substantial Completion) shall be accompanied by payment of an application fee equal to two percent (2%) of the Annual Service Charge.

Any other transfer, including, without limitation, any transfer of a portion of the Project, shall be deemed a Default hereunder.

Section 9.2 Operation of Project

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

Section 9.3 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 Exemption 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.

Section 9.4 Permitted Transfers

Notwithstanding anything herein to the contrary, it is expressly understood and agreed that the Entity is permitted, without the prior approval of the City, to effect the following transfers with respect to the Project:

- A. Encumber the Project, e.g., mortgage financing, development easements, etc., provided that any such encumbrance is subordinate to the lien of the Annual Service Charges.
- B. Transfer the ownership interest in the Entity to an affiliate.
- C. Transfer of membership interests in the Entity between or among existing members of the Entity, as set forth in the Application.
- D. Transfer of membership interests in the Entity of less than ten percent (10%).
- E. Lease any portion of the Project to an end user, with such user not being required to be an entity eligible to operate under the Exemption Law.

Section 9.5 Collateral Assignment

It is expressly understood and agreed that the Entity has the right, to the extent permitted by the Exemption Law to encumber and/or assign its fee title to the Land and/or Improvements for purposes of (i) financing the design, development and construction of the Project and (ii) permanent mortgage financing with respect to the Project, and that any such encumbrance or assignment shall not be deemed to be a violation of this Financial Agreement.

(a) The City acknowledges that the Entity intends to obtain secured financing in connection with the acquisition, development and construction of the Project. The City agrees that the Entity may, subject to compliance with the Exemption Law, assign, pledge, hypothecate or otherwise transfer its rights under this Financial Agreement and/or its interest in the Project to one or more secured parties or any agents therefore (each, a “**Secured Party**” and collectively, the “**Secured Parties**”) as security for obligations of the Entity incurred in connection with such secured financing (collectively, the “**Security Arrangements**”). The Entity shall give the City written notice of any such Security Arrangements, together with the name and address of the Secured Party or Secured Parties. Failure to provide such notice waives any requirement of the City hereunder to provide any notice of Default or notice of intent to enforce its remedies under this Financial Agreement.

(b) If the Entity shall Default in any of its obligations hereunder, the City shall give written notice of such Default to the Secured Parties and the City agrees that, in the event such Default is not waived by the City or cured by the Entity, its assignee, designee or successor, within the period provided for herein, before exercising any remedy against the Entity hereunder, the City will provide the Secured Parties a reasonable period of time to cure such Default, but in any event

not less than thirty (30) days from the date of such notice to the Secured Parties with regard to a payment Default by the Entity and ninety (90) days from the date the Entity was required to cure any other Default.

(c) In the absence of a Default by the Entity, the City agrees to consent to any collateral assignment by the Entity to any Secured Party or Secured Parties of its interests in this Financial Agreement and to permit each Secured Party to enforce its rights hereunder and under the applicable Security Arrangement and shall, upon request of the Secured Party, execute such documents as are typically requested by secured parties to acknowledge such consent. This provision shall not be construed to limit the City's right to payment from the Entity, nor shall the priority of such payments be affected by the Secured Party exercising its rights under any applicable Security Arrangement.

(d) Notwithstanding anything to the contrary contained herein, and in addition to all other rights and remedies of Secured Parties set forth in this Financial Agreement, the provisions of N.J.S.A. 55:17-1 to -11 shall apply to this Financial Agreement to protect the interests of any Secured Party. Notwithstanding this statutory protection of the Secured Party, any transferee from that Secured Party must qualify as a permitted transferee pursuant to Section 9.1 above.

Article X – Waiver

Section 10.1 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 XI – Notice

Section 11.1 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:

Morrow Street Urban Renewal, LLC
5308 13th Avenue,
Brooklyn, New York 11219

- (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 “Morrow Street Urban Renewal Redevelopment Project” and shall include any assigned tax account numbers. In addition, if the Entity delivers formal written notice to the City of the name and address of any Secured Party, then the City shall provide such Secured Party with a copy of any notice required to be sent to the Entity.

Article XII – Compliance

Section 12.1 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 Exemption 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 XIII – Construction

Section 13.1 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 XIV – Indemnification

Section 14.1 Indemnification

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 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 XV - Default

Section 15.1 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. The Entity’s failure to pay the Land Taxes and/or make the requisite Annual Service Charge payment in a timely manner shall constitute a violation and breach of this Financial Agreement.

Section 15.2 Cure Upon Default

Should the Entity be in default on any obligation other than the obligation to pay the Land Taxes and/or the Annual Service Charge as 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 such default.

Section 15.3 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. 54:5-1, et seq. (the "**In Rem Tax Foreclosure Act**") if the default is the failure to pay the Land Taxes and/or the Annual Service Charge, and/or may take whatever action at law or in equity as may be necessary or desirable to enforce the performance or observance of any rights under this Financial Agreement, including an action for specific performance or damages against the Entity, and (but only if no Bonds then remain outstanding and unpaid) termination of the Financial Agreement. All of the remedies provided in this Financial 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 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 Annual Service Charges, or other charges, or for breach of covenant or the resort of any other remedy herein provided for the recovery of 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 Tax Foreclosure action or any other remedy.

Article XVI – Termination

Section 16.1 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 15.2, the City may cancel this Financial Agreement upon thirty (30) days' notice to the Entity and all Secured Parties of record, subject to the rights of Secured Parties under Section 9.5 hereof. 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 16.2 Voluntary Termination by the Entity

NEITHER THE ENTITY NOR ANY OTHER TRANSFEREE OR PURCHASER MAY TERMINATE THIS FINANCIAL AGREEMENT AT ANY TIME WHILE THE BONDS ARE "OUTSTANDING" WITHIN THE MEANING OF THE BOND RESOLUTION. Once the Bonds are no longer "outstanding" within the meaning of the Bond Resolution, the Entity may after the expiration of one year from the completion date of the Project notify the City Council 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 16.3 Final Accounting

Upon any termination of such exemption, whether by affirmative action of the Entity or by virtue of the provisions of the Exemption 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 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 XVII – Miscellaneous

Section 17.1 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 17.2 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 17.3 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 17.4 Good Faith

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

Section 17.5 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 17.6 Recording

This entire Financial Agreement and the Ordinance, and/or a memorandum thereof, will be filed and recorded with the Essex County Register of Deeds by the Entity.

Section 17.7 Estoppel

Within fifteen (15) days following written request therefor by the Entity, or any Secured Party, purchaser, tenant or other party having an interest in the Project, the City shall issue a signed estoppel certificate in reasonable form stating that (i) this Financial Agreement is in full force and effect, (ii) to the best of the City's knowledge, no Default has occurred under this Financial Agreement (nor any event which, with the passage of time and/or the giving of notice would result in the occurrence of a Default) or stating the nature of any Default, and (iii) stating any such other reasonable information as may be requested. In the event the estoppel certificate discloses a Default, it shall also state the manner in which such Default may be cured.

Article XVIII – Exhibits

Exhibit A – The Morrow Street Urban Renewal, LLC Tax Abatement Application.

Exhibit B – Ordinance

EXHIBIT A

[Long Term Tax Exemption Application]

EXHIBIT B

[Ordinance]