

**BOROUGH OF BERNARDSVILLE  
ORDINANCE #2022-1931**

**APPROVING THE APPLICATION AND FINANCIAL AGREEMENT FOR A TAX  
EXEMPTION PURSUANT TO THE LONG TERM TAX EXEMPTION LAW OF  
MINE BROOK ROAD URBAN RENEWAL ASSOCIATES, LP FOR THE  
CONSTRUCTION OF A RESIDENTIAL PROJECT LOCATED AT 18 MOUNT  
AIRY ROAD (BLOCK 124, LOT 1), MINE BROOK ROAD (BLOCK 80, LOT 15.38)  
AND 63 BERNARDS AVENUE(BLOCK 102, LOT 12)**

**WHEREAS**, pursuant to the provisions of the Long Term Tax Exemption Law of 1992, N.J.S.A. 40A:20-1 et seq., as amended and supplemented, the Borough of Bernardsville (the **“Borough”**) is permitted to enter into Long Term Tax Exemption Financial Agreements for qualified projects; and

**WHEREAS**, Mine Brook Road Urban Renewal Associates, LP (the **“Entity”**) is a duly formed urban renewal entity qualified to do business under the provisions of the Long Term Tax Exemption Law of 1992, N.J.S.A. 40A:20-1 et seq., as amended and supplemented, and approved by the Department of Community Affairs; and

**WHEREAS**, the Entity will be the contract purchaser of the property from the Borough identified on the Tax Maps of the Borough as Block 291, Lot 15.01 and Block 292, Lot 2 (the **“Property”**), commonly known as 18 Mount Airy Road (Block 124, Lot 1), Mine Brook Road (Block 80, Lot 15.38) and 63 Bernards Avenue(Block 102, Lot 12); and

**WHEREAS**, N.J.S.A. 55:14K-37 provides that, “The governing body of any municipality in which a housing project financed or to be financed by the [New Jersey Housing and Mortgage Finance] Agency is or is to be located may by ordinance or resolution, as appropriate, provide that such project shall be exempt from real property taxation, if the housing sponsor enters into an agreement with the municipality for payments to the municipality in lieu of taxes for municipal services.” ; and

**WHEREAS**, in furtherance of the development and construction of the Project, the Borough and Developer entered into that certain Development Agreement dated September 30, 2020; and

**WHEREAS**, pursuant to and in accordance with N.J.S.A. 40A:20-8, the Developer submitted to the Borough Mayor an application for the approval of a long term tax exemption and the execution of a Financial Agreement pursuant to the Long Term Exemption Law (the **“Application”**); and

**WHEREAS**, the Entity submitted an application to the Borough for the approval of an exemption for the Project pursuant to the Long Term Tax Exemption Law (the **“Application”**), which Application is attached hereto; and

**WHEREAS**, the Application contains certified project costs and revenue projections for the Project, that set forth the total gross revenue to be received and costs to be expended by the Developer from the operation of the Project, as estimated by the Entity; **WHEREAS**, the

Borough has made the following findings with respect to the Project:

- A. Relative Benefits of the Project: The Project will result in the creation of 60 units of affordable housing in accordance with the Borough's Housing Element and Fair Share Plan.
- B. Assessment of the Importance of the Tax Exemption: The Tax Exemption is important for development of the Project and influencing the locational decisions of probable occupants. Without the exemption, the Project would not be economically viable.

**WHEREAS**, based on the relative benefits of the Project and the importance of the tax exemption, the Borough Administrator and the Chief Financial Officer (the "Borough Administration") have reviewed and submitted the Application and Financial Agreement to the Borough Committee with a recommendation of approval (the "**Borough Administration's Recommendation**"), which recommendation is attached hereto; and

**WHEREAS**, the Borough Council has reviewed the Application, Financial Agreement, and the Borough Administration's Recommendation, and has determined that it is in the best interest of the Borough to grant a tax abatement to the Entity pursuant to the terms set forth in the Financial Agreement attached hereto;

**NOW, THEREFORE, BE IT ORDAINED** by the Borough Committee of the Borough of Bernardsville:

1. An exemption from property taxation in accordance with the Long Term Tax Exemption Law of 1992, N.J.S.A. 40A:20-1 et seq., as amended and supplemented, pursuant to the terms set forth in the Financial Agreement, attached hereto, is hereby granted to the Entity, with respect to the Project;
2. The term of the Financial Agreement is thirty (30) years from substantial completion of the Project;
3. The Entity shall, from the time the Annual Service Charge becomes effective under the Financial Agreement, pay the Annual Service Charge based on the following schedule:
  - a. The Annual Service Charge for the initial fifteen (15) years of the Financial Agreement shall be an amount equal to 6.28 percent of the Annual Gross Revenue, or the Minimum Annual Service Charge, whichever is greater.
  - b. The Annual Service Charge for years sixteen (16) through nineteen (19) of the Financial Agreement shall be equal to the greater of (i) 6.28 percent of the Annual Gross Revenue; (ii) twenty (20%) percent of the amount of taxes otherwise due on the value of the Land and Improvements; or (iii) the Minimum Annual Service Charge, whichever is greater;
  - c. The Annual Service Charge for years twenty (20) through twenty-

- three (23) of the Financial Agreement shall be equal to the greater of (i) 6.28 percent of the Annual Gross Revenue; (ii) forty (40%) percent of the amount of taxes otherwise due on the value of the Land and Improvements; or (iii) the Minimum Annual Service Charge, whichever is greater;
- d. The Annual Service Charge for years twenty-four (24) through twenty-seven (27) of the Financial Agreement shall be equal to the greater of (i) 6.28 percent of the Annual Gross Revenue; (ii) sixty (60%) percent of the amount of taxes otherwise due on the value of the Land and Improvements; or (iii) the Minimum Annual Service Charge, whichever is greater;
  - e. The Annual Service Charge for years twenty-eight (28) through thirty (30) of the Financial Agreement shall be equal to the greater of (i) 6.28 percent of the Annual Gross Revenue; (ii) eighty (80%) percent of the amount of taxes otherwise due on the value of the Land and Improvements; or (iii) the Minimum Annual Service Charge, whichever is greater. Thereafter, the Project would be taxed as a regular assessment pursuant to applicable law.
  - f. In no event shall the Annual Service Charge, excluding taxes on the Land, in any year after the Annual Service Charge Start Date be less than the Minimum Annual Service Charge. The Minimum Annual Service Charge shall not be reduced through any tax appeal on Land and/or Improvement during the period the Agreement is in force and effect.
4. 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 for the subsequent year. The Entity shall be entitled to a credit for the amount, without interest, of the Land Tax Payments made in the last four preceding quarterly installments against the Annual Service Charge. In any year that the Entity fails to make any Land Tax Payments if and 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. In addition, the Borough shall have, among this remedy and other remedies, the right to proceed against the Property pursuant to the Tax Sale Law and/or to declare a Default.
5. Payment of the Annual Service Charge shall be paid to the Borough on a quarterly basis on February 1, May 1, August 1, and November 1 after the Annual Service Charge Start Date, subject, nevertheless, to adjustment for over or underpayment within thirty (30) days after the close of each calendar year. In the event that the Entity fails to timely pay any installment, the amount past due shall bear the rate of interest permitted under applicable New Jersey law and then being assessed by the Borough against other delinquent taxpayers in the case of unpaid taxes or tax liens on the land until paid.

6. The Borough shall pay 5% of the Annual Service Charge to the County of Somerset pursuant to N.J.S.A. 40A:20-12;
7. The Mayor and/or Borough Administrator, in consultation with the Borough Attorney, are hereby authorized to execute the Financial Agreement in substantially the form attached hereto as Exhibit C and any other agreements or documents necessary to effectuate this ordinance;
8. The executed copy of the Financial Agreement and this ordinance shall be certified by the Borough Clerk and filed with the Tax Assessor for the Borough;
9. The Borough Clerk shall forward a copy of the Financial Agreement, after execution by the Entity, to the Director of the Division of Local Government Services in the Department of Community Affairs;
10. Within ten (10) calendar days following the later of the effective date of the ordinance or the execution of the Financial Agreement by the Entity, the Borough Clerk shall transmit a certified copy of the ordinance and financial agreement to the Chief Financial Officer of the County of Somerset and the County Counsel for informational purposes, pursuant to N.J.S.A. 40A:20-12;
11. The Project shall conform to all federal and state law and ordinances and regulations of the Borough relating to its construction and use, including the Redevelopment Plan, and the Financial Agreement;
12. This ordinance shall take effect in accordance with all applicable laws.

#### **EXHIBIT A**

Borough Administration's Recommendation

#### **EXHIBIT B**

Application for Long Term Tax Exemption by Mine Brook Road Urban Renewal Associates, LP

#### **EXHIBIT C**

Financial Agreement

Borough Administration's Recommendation

EXHIBIT A



## **EXHIBIT B**

## Financial Agreement

### **EXHIBIT C**