

FINANCIAL AGREEMENT

By and Between

THE BOROUGH OF BERNARDSVILLE

and

AR AT BERNARDSVILLE URBAN RENEWAL LLC

Dated: _____, 2023

THIS FINANCIAL AGREEMENT (the “**Agreement**” or “**Financial Agreement**”) is made this ____ day of _____, 2023 (the “**Effective Date**”), by and between **AR AT BERNARDSVILLE URBAN RENEWAL LLC**, a New Jersey limited liability company organized under the laws of the State of New Jersey, having its principal office at 1430 U.S. 206, Suite 100, Bedminster, New Jersey 07921 (the “**Entity**”); and the **BOROUGH OF BERNARDSVILLE**, a municipal corporation of the State of New Jersey with an address at Borough Hall located at 166 Mine Brook Road, Bernardsville, New Jersey 07924 (the “**Borough**”, and together with the Entity, the “**Parties**” or “**Party**”).

WITNESSETH:

WHEREAS, pursuant to the provisions of the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A (the “**Redevelopment Law**”), the Borough designated properties located within the downtown core area of the Borough located at 35-39 Olcott Square and 5 Morristown Road and further identified as Block 125, Lots 1, 2 and 3 (a/k/a Lots 1 and 3) by Borough tax assessment records (the “**Property**”) as “an area in need of redevelopment” without condemnation by Council Resolution #22-185 adopted on September 12, 2022; and

WHEREAS, subsequently Resolution #22-209 adopted by the Borough Council on October 24, 2022 authorized Burgis Associates to prepare a redevelopment plan on its behalf; and

WHEREAS, the redevelopment plan for the Property titled “Palmer Square Redevelopment Plan” was prepared by Burgis Associates and submitted to the Borough Council for review (the “**Redevelopment Plan**”); and

WHEREAS, the Borough Council by Ordinance #2023-1960 adopted the Redevelopment Plan in order to effectuate a plan that is consistent with the goals and objectives of the Borough for the redevelopment of the Property; and

WHEREAS, the Entity has an interest in the Property pursuant to a ground lease between Palmer Enterprises, L.L.C., Lessor, and AR at Bernardsville LLC, Lessee, dated as of November 10, 2021, a memorandum of which is recorded with the Somerset County Office of the Clerk at Book 7400, Page 2403 (the “**Ground Lease**”); and

WHEREAS, an Affiliate of the Entity, AR at Bernardsville LLC, and the Borough entered into a Redevelopment Agreement dated August 29, 2023 (the “**Redevelopment Agreement**”) to provide the terms and conditions for a redevelopment project on the Property generally consisting of (i) a multi-family residential component with a maximum of 68 dwelling units, including approximately 12 one-bedroom units, approximately 47 two-bedroom units, and approximately 9 three-bedroom units, or such other appropriate mix of one-bedroom, two-bedroom, and three-bedroom units as approved by the Parties and in compliance with the Redevelopment Plan; (ii) a minimum of 8,000 square feet of Frontage (as defined in the Redevelopment Plan); (iii) public and privately owned landscaped and hardscaped improvements to be further detailed in the site plan application; (iv) related improvements and amenities (i-iv

collectively, the “**Residential Component**”); and (v) a commercial component with a minimum of 8,000 square feet, located primarily on the ground level (the “**Commercial Component**”), all as further detailed in Section 2.03 of the Redevelopment Agreement (the “**Project**”); and

WHEREAS, on September 20, 2023, the Entity filed an application to the Borough for approval of a tax exemption for the Project (the “**Application**”) pursuant to N.J.S.A. 40A:20-1, et seq., the Long Term Tax Exemption Law (the “**Exemption Law**”), which Application is on file in the Office of the Borough Clerk and incorporated herein by reference as if set forth in full herein; and

WHEREAS, on September [●], 2023, the Mayor submitted the Application and a form of financial agreement to the Borough Council with her recommendation of approval (the “**Mayor’s Recommendation**”), a copy of which is on file with the Borough Clerk; and

WHEREAS, on October [●], 2023, the Borough Council finally adopted an ordinance entitled, “Ordinance of the Borough of Bernardsville, County of Somerset, New Jersey, Granting a Tax Exemption with Respect to Certain Property Identified on the Borough’s Tax Map as Block 125, Lots 1, 2 and 3 (35-39 Olcott Square and 5 Morristown Road) and Authorizing the Execution of a Financial Agreement with AR at Bernardsville Urban Renewal, LLC,” a copy of which is on file in the Office of the Borough Clerk and incorporated herein by reference as if set forth in full herein, which Ordinance also approved the Application (the “**Ordinance**”); and

WHEREAS, in order to set forth the terms and conditions under which the Parties shall carry out their respective obligations with respect to the exemption from taxation, by the Borough, of the Project and with respect to payment, by the Entity, of the Annual Service Charges (as defined herein), in lieu of real property taxes in connection with the Project, the Parties desire to enter into this Agreement; and

WHEREAS, the Borough has made the following findings:

1. The Project will result in substantial benefit to the community by alleviating existing blight conditions of the Property and providing a range of benefits to the public;
2. In addition to the inherent community benefits derived from the Project, the Project will include public components, as set forth in the Redevelopment Agreement;
3. Consistent with the Redevelopment Plan, the Project will further the Redevelopment Plan objectives and contribute to the economic growth of the Borough in general and specifically the Property;
4. The Project will contribute \$1,000,000.00 toward the Borough’s affordable housing trust fund;
5. The Project is anticipated to generate approximately 200 construction jobs and a range of opportunities for small business growth and permanent employment in the Project and generally add to the economic viability of the Borough;
6. The aforesaid benefits of the Project exceed the cost, if any, associated with granting the tax exemption provided by this Agreement; and

7. The assistance provided by this Agreement is a significant and critical inducement to the Entity to proceed with the Project.

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 1

GENERAL PROVISIONS

1.1 **Governing Law.** The provisions of the laws of the State of New Jersey, the Applicable Laws, the Redevelopment Agreement, and the Ordinance approving this Agreement shall govern this Agreement. It is expressly understood and agreed that the Borough expressly relies upon the facts, data, and presentations contained in the Application, including Exhibits, all of which are incorporated herein by reference, in granting this tax exemption.

1.2 **General Definitions.** Unless specifically provided otherwise, when used in this Agreement, the following terms, when capitalized, shall have the meanings set forth below:

(a) **Administrative Fee** - As defined in Section 4.5 hereof.

(b) **Affiliate** - With respect to any Person, any other Person directly or indirectly controlling or controlled by, or under direct or indirect common control with, such Person. For purposes of this definition, the term “control” (including the correlative meanings of the terms “controlled by” and “under common control with”), as used with respect to any Person, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management policies of such Person, whether through the ownership of voting securities or by contract or otherwise.

(c) **Agreement** - As defined in the preamble hereof.

(d) **Allowable Net Profit** - The amount arrived at by applying the Allowable Profit Rate and the Net Profit, as those terms are hereinafter defined.

(e) **Allowable Profit Rate** - The greater of 12% or the percentage per annum arrived at by adding 1¼% to the annual interest percentage rate payable on the Entity’s initial permanent mortgage financing. If the initial permanent mortgage is insured or guaranteed by a governmental agency, the mortgage insurance premium or similar charge, if payable on a per annum basis, shall be considered as interest for this purpose. If there is no permanent mortgage financing, the allowable profit rate shall be the greater of 12% or the percentage per annum arrived at by adding 1¼% per annum to the interest rate per annum which the Borough determines to be the prevailing rate on mortgage financing on comparable improvements in Somerset County, all in accordance with N.J.S.A. 40A:20-3(b).

(f) Annual Service Charge - The amount the Entity has agreed to pay pursuant Section 4.2 hereof, which shall be prorated in the year in which the Annual Service Charge begins and the year in which the Annual Service Charge terminates. The Annual Service Charge shall commence as of the Annual Service Charge Start Date.

(g) Annual Service Charge Start Date - The first day of the month immediately following the Substantial Completion of the Project.

(h) Applicable Laws - All applicable Federal, State and local laws, ordinances, approvals, rules, regulations and requirements, including, but not limited to, the Ordinance, the Redevelopment Law, the Exemption Law, relevant construction codes including construction codes governing people with disability, and such zoning, sanitary, pollution and other environmental safety ordinances, laws and such rules and regulations thereunder.

(i) Application - As defined in the recitals hereof.

(j) Annual Gross Revenue - Pursuant to N.J.S.A. 40A:20-3(a), the annual gross revenue, gross shelter rent, or annual gross rents, as appropriate, and other income, monies or charges paid to the Entity generated from the Project.

(k) Annual Report - A complete, certified annual financial statement outlining the financial status of the Entity as it relates to the Project and reporting the Annual Gross Revenue, Net Profit and Total Project Cost as defined herein, the contents of which have been prepared in a manner consistent with the current standards of the Financial Accounting Standards Board and which fully details all financial items required to determine that the Entity is complying with the Law and this Agreement and which has been certified as to its conformance with the current standards of the Financial Accounting Standards Board by a certified public accountant, who is licensed to practice that profession in the State of New Jersey.

(l) Borough - As defined in the preamble hereof.

(m) Certificate of Occupancy - The document, whether temporary or permanent, issued by the Borough pursuant to N.J.S.A. 52:27D-133 authorizing occupancy of a building, in whole or in part.

(n) Commercial Component - As defined in the recitals hereof.

(o) Cure Period - As defined in Section 9.3 hereof.

(p) DCA - The New Jersey State Department of Community Affairs, to which the Entity shall report in accordance with the Law.

(q) Default - The failure of the Entity or Borough to perform any obligation imposed by the terms of this Agreement, or under the Exemption Law, beyond any applicable grace or cure periods.

(r) Default Notice - As defined in Section 9.3 hereof.

(s) Effective Date - As defined in the preamble hereof.

(t) Entity - As defined in the preamble hereof.

(u) Exemption Law - As defined in the recitals hereof.

(v) Financial Agreement - As defined in the preamble hereof.

(w) Governmental Body - Any federal, state, county or local agency, department, commission, authority, court, or tribunal and any successor thereto, exercising executive, legislative, judicial, or administrative functions of or pertaining to government, and any public utility, including, without limitation, the Borough and the State of New Jersey or any other quasi-governmental agency having jurisdiction of the subject matter.

(x) Ground Lease - As defined in the recitals hereof.

(y) Improvements - The structural components of the Project described in the Recitals hereof and as further described in and permitted by the Redevelopment Agreement.

(z) In Rem Tax Foreclosure - A summary proceeding by which the Borough may enforce the lien for taxes due and owing by a tax sale, under N.J.S.A. 54:5-1 et seq.

(aa) Interest Holders - As defined in Section 5.2(c) hereof.

(bb) Land - The real property, but not the Improvements, known as Block 125, Lots 1, 2 and 3 as set forth on the tax maps of the Borough, and more particularly described by the metes and bounds description set forth as **Exhibit A** to this Agreement.

(cc) Land Tax Credit - As defined in Section 4.4(b) hereof.

(dd) Land Taxes - The amount of conventional real estate taxes assessed on Land (but not the Improvements) during the term of this Agreement.

(ee) Land Tax Payments - Payments made on the quarterly due dates for Land Taxes as determined by the Tax Assessor and the Tax Collector.

(ff) Material Conditions – As defined in Section 4.6 hereof.

(gg) Mayor's Recommendation - As defined in the recitals hereof.

(hh) Minimum Annual Service Charge - The Minimum Annual Service Charge shall be the amount of the total taxes levied against the Land and existing improvements in the last full tax year in which the Land and existing improvements were subject to taxation. Notwithstanding any provision of the Agreement to the contrary, the Annual Service Charge shall never be reduced below the Minimum Annual Service Charge through any tax appeal on the Land and/or Improvement or any other legal proceeding regarding the Project during the period that this Agreement is in force and effect. See Section 4.03 hereof.

(ii) Net Profit - The Annual Gross Revenue of the Entity less all operating and non-operating expenses of the Entity, all determined in accordance with generally accepted accounting principles and the provisions of N.J.S.A. 40A:20-3(c). Included in expenses shall be an amount sufficient to amortize the Total Project Cost over the life of the Project, which period the Parties agree is 30 years, pursuant to the Law.

(jj) Notice of Termination - As defined in Section 10.1 hereof.

(kk) Ordinance - As defined in the recitals hereof.

(ll) Party and Parties - As defined in the preamble hereof.

(mm) Person - Any individual, sole proprietorship, corporation, partnership, joint venture, limited liability company or corporation, trust, unincorporated association, institution, public or Governmental Body, or any other entity.

(nn) Project - As defined in the recitals hereof.

(oo) Property - As defined in the recitals hereof.

(pp) Redevelopment Agreement - As defined in the recitals hereof.

(qq) Redevelopment Law - As defined in the recitals hereof.

(rr) Redevelopment Plan - As defined in the recitals hereof.

(ss) Residential Component - As defined in the recitals hereof.

(tt) Secured Party(ies) - As defined in Section 7.1.3(a) hereof.

(uu) Security Arrangements - As defined in Section 7.1.3(a) hereof.

(vv) Substantial Completion shall mean the date upon which the Borough issues the Certificate of Occupancy.

(ww) Termination - Any act or omission which by operation of the terms of this Agreement shall cause the Entity to relinquish its tax exemption in accordance with the Exemption Law. Upon termination or expiration, all affected property shall be assessed and subject to taxation as are other taxable properties in the Borough. After termination or expiration, restrictions and limits on the Entity shall terminate upon the Entity's rendering a final accounting to and with the Borough pursuant to N.J.S.A. 40A:20-12.

(xx) Total Project Cost or Total Project Unit Cost - The Entity's good faith estimate of the total cost of constructing the Project through the date of issuance of a Certificate of Occupancy, as more specifically defined in N.J.S.A. 40A:20-3h.

(yy) Transferee Agreement - As defined in Section 7.1(b) hereof.

1.3 **Incorporation of Recitals.** The Recitals (including the defined terms set forth therein) set forth at the beginning of this Agreement are hereby incorporated into this Agreement by reference and made a part of this Agreement as if set forth at length herein.

1.4 **Exhibits and Schedules Incorporated.** All Exhibits referred to in this Agreement and are attached hereto are incorporated herein and made a part hereof.

ARTICLE 2

APPROVAL OF AGREEMENT, USE, OPERATION, MANAGEMENT AND FINANCIAL PLAN OF PROJECT

2.1 **Approval of Tax Exemption.** The Borough has granted and does hereby grant its approval for a tax exemption for the Project in accordance with the provisions of the Exemption Law. Pursuant to the Ordinance, the Improvements to be constructed and maintained by the Entity shall be exempt from taxation as provided for herein.

2.2 **Approval of the Entity.** Approval is granted to the Entity based on its representation that its Certificate of Formation attached as **Exhibit B** contains all the requisite provisions of law, has been reviewed and approved by the Commissioner of DCA, and has been filed with, as appropriate the Department of Treasury, all in accordance with N.J.S.A. 40A:20-5.

2.3 **Use, Operation and Management of Project.** The Entity covenants and represents pursuant to N.J.S.A. 40A:20-9 that it shall cause the Project to be constructed and shall manage and operate the Property by leasing the units of the Project. The Improvements shall be those authorized by the Redevelopment Agreement, implemented in accordance with all permits and approvals and pursuant to the schedule agreed upon by the Borough and the Entity.

2.4 **Financial Plan**

(a) The method for computing gross revenue for the Entity, the plans for financing the Project, the source of funds, the interest rates to be paid on the construction financing, the source and amount of paid-in capital, and the rental schedules and lease terms to be used in the Project are set forth in the Application.

(b) The Entity's good faith estimate of the Total Project Cost is set forth in **Exhibit C** attached hereto.

2.5 **Construction Schedule**

The Entity agrees to diligently undertake to commence construction and complete the Project in accordance with the Redevelopment Project Schedule, attached as Exhibit B to the Redevelopment Agreement.

ARTICLE 3
DURATION OF AGREEMENT

3.1 **Term.** This Agreement is effective on the Effective Date. So long as there is compliance with the Exemption Law and this Agreement, it is understood and agreed by the Parties that this Agreement, including the obligation to pay Annual Service Charges under Article 4 and the tax exemption granted and referred to in Section 2.01 hereof, shall remain in effect until the earlier of (i) thirty-five (35) years from the date of the Effective Date or (ii) thirty (30) years from the Annual Service Charge Start Date for the Project.

At the expiration of the term hereof, the tax exemption for the Project shall expire and the Land and Improvements shall thereafter be taxed according to the general law, applicable to other nonexempt property in the Borough. Upon Termination, all restrictions and limitations upon the Entity shall terminate upon the Entity's rendering and the Borough's acceptance of its final accounting, pursuant to N.J.S.A. 40A:2013. Notwithstanding the above, the Borough may terminate this Agreement for the entity's failure to comply with the Redevelopment Project Schedule as set forth in Article 2 above.

ARTICLE 4
EXEMPTION AND ANNUAL SERVICE CHARGE

4.1 **Exemption.** The Borough agrees that an Annual Service Charge shall be levied on the Improvements which shall be exempt from traditional real property taxation, as provided in the Exemption Law, from the Annual Service Charge Start Date to and through the date calculated under Section 3.1 hereof. Prior to the date calculated under Section 3.1 hereof, the Entity shall pay the otherwise applicable real estate taxes on the Property consistent with its Ground Lease.

4.2 Payment of Annual Service Charge

(a) In consideration of the Borough granting the Entity the tax exemption set forth in Section 4.1 hereof, the Entity shall make payment to the Borough for municipal services, as provided in the Exemption Law, by payment to the Borough of the Annual Service Charge pursuant to the schedule set forth in Section 4.2(d) hereof.

(b) The Annual Service Charge shall first begin to accrue on the Annual Service Charge Start Date. In the event the Entity fails to timely pay the Annual Service Charge, 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, and the Borough shall have the same rights and remedies to collect such charges as provided by law for collection of general municipal taxes.

(c) The Annual Service Charge shall not be in lieu of sewer charges, water charges, connection fees, or other special assessments imposed in accordance with Applicable Law.

(d) Payment of the Annual Service Charge shall be made to the Borough on a quarterly basis on February 1, May 1, August 1, and November 1 after the Annual Service Charge Start Date in accordance with the Borough's tax collection schedule, subject, nevertheless, to adjustment for over or underpayment within thirty (30) days after the close of each calendar year. The obligation to pay the Annual Service Charge shall continue until the Termination of this Agreement.

(e) In accordance with the Exemption Law, specifically N.J.S.A. 40A:20-12, in the event of any change in the tax-exemption status as provided herein during any tax year, including but not limited to any Termination, the procedure for the apportionment of any taxes and/or Annual Service Charge, as the case may be, shall be the same as in the case of other changes in tax exemption status to any other property located within the Borough during the tax year, in accordance with Applicable Law.

4.3 Calculation of Annual Service Charge.

(a) Pursuant to N.J.S.A. 40A:20-12, the Parties agree that commencing upon the Annual Service Charge Start Date and continuing for a period of ten (10) years, through and inclusive of the tenth (10th) year, the Annual Service Charge for the Project shall be an amount

equal to the greater of ten percent (10%) of Annual Gross Revenue; or (ii) the Minimum Annual Service Charge;

(b) Commencing in the eleventh (11th) year after the Annual Service Charge Start Date and continuing for a period of five (5) years, through and inclusive of the fifteenth (15th) year after the Annual Service Charge Start Date, the Annual Service Charge shall be an amount equal to the greater of (i) eleven percent (11%) of Annual Gross Revenue; or (ii) the Minimum Annual Service Charge;

(c) Commencing in the sixteenth (16th) year after the Annual Service Charge Start Date and continuing for a period of five (5) years, through and inclusive of the twentieth (20th) year after the Annual Service Charge Start Date, the Annual Service Charge shall be an amount equal to the greater of (i) eleven percent (11%) of Annual Gross Revenue; (ii) the Minimum Annual Service Charge; or (iii) twenty percent (20%) of the amount of taxes otherwise due on the value of the Improvements and the Land;

(d) Commencing in the twenty-first (21st) year after the Annual Service Charge Start Date and continuing for a period of one (1) year, the Annual Service Charge shall be an amount equal to the greater of (i) twelve percent (12%) of Annual Gross Revenue; (ii) the Minimum Annual Service Charge; or (iii) twenty percent (20%) of the amount of taxes otherwise due on the value of the Improvements and the Land;

(e) Commencing in the twenty-second (22nd) year after the Annual Service Charge Start Date and continuing for a period of four (4) years, through and inclusive of the twenty-fifth (25th) year after the Annual Service Charge Start Date, the Annual Service Charge shall be an amount equal to the greater of (i) twelve percent (12%) of Annual Gross Revenue; (ii) the Minimum Annual Service Charge; or (iii) forty percent (40%) of the amount of taxes otherwise due on the value of the Improvements and the Land;

(f) Commencing in the twenty-sixth (26th) year after the Annual Service Charge Start Date and continuing for a period of two (2) years, through and inclusive of the twenty-seventh (27th) year after the Annual Service Charge Start Date, the Annual Service Charge shall be an amount equal to the greater of (i) twelve percent (12%) of Annual Gross Revenue; (ii) the Minimum Annual Service Charge; or (iii) sixty percent (60%) of the amount of taxes otherwise due on the value of the Improvements and the Land;

(g) Commencing in the twenty-eighth (28th) year after the Annual Service Charge Start Date and continuing for a period of three (3) years, through and inclusive of the thirtieth (30th) year after the Annual Service Charge Start Date, the Annual Service Charge shall be an amount equal to the greater of (i) twelve percent (12%) of Annual Gross Revenue; (ii) the Minimum Annual Service Charge; or (iii) eighty percent (80%) of the amount of taxes otherwise due on the value of the Improvements and the Land.

(h) The Parties agree that the Minimum Annual Service Charge for the Project shall not be reduced through any tax appeal on the Land and/or Improvements during the period this Agreement is in force and effect.

4.4 **Land Tax Exemption; Land Taxes and Land Tax Credit.**

(a) The Residential Component shall be exempt from Land Taxes from the Annual Service Charge Start Date through the expiration or Termination date in accordance with N.J.S.A. 40A:20-12.

(b) The Entity shall be obligated to make payment of Land Taxes on the Commercial Component according to the general laws applicable to all other tax ratables. Land Taxes on the Commercial Component shall be separately assessed in accordance with Applicable Law. The payment for Land Taxes on the Commercial Component made after the Effective Date shall be applied as a credit against the Annual Service Charge for the subsequent year (the “**Land Tax Credit**”). The Land Tax Credit for the calendar year in which the Annual Service Charge Start Date occurs shall be based on the Land Taxes on the Commercial Component paid in the full year preceding the Annual Service Charge Start Date and shall be pro-rated based on the remaining number of days in such calendar year. 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 credits against the Annual Service Charge. The Entity is required to make payment of both the Annual Service Charge and the Land Taxes on the Commercial Component. The Entity is required to pay the full Land Taxes on the Commercial Component in any given year and no credits will be applied against the Annual Service Charge for partial payment of the Land Taxes. The Entity’s failure to make the requisite Annual Service Charge payment and/or the requisite Land Taxes payment on the Commercial Component in a timely manner shall constitute a violation and breach of this Agreement.

4.5 **Fees.** The Entity shall pay a fee of Five Thousand Dollars (\$5,000.00) to the Borough on the Effective Date to offset the costs and expenses of the Borough associated with this Agreement and the application and analysis and other costs related to the same. The Entity shall also pay annually an administrative fee to the City in addition to the Annual Service Charge. The “**Administrative Fee**” shall be computed as two percent (2%) of the greater of the Annual Service Charge or Minimum Annual Service Charge required pursuant to Section 4.3 hereof. The Administrative Fee shall be payable and due on or before December 31st of each year and collected in the same manner as the Annual Service Charge. In the event the Entity fails to pay the Administrative Fee when due and owing, the amount unpaid shall bear the highest rate of interest permitted under applicable New Jersey law in the case of unpaid taxes or tax liens until paid.

4.6 **Material Conditions.** It is expressly agreed and understood that all payments of Annual Service Charges and any interest payments, penalties or costs of collection due thereon, Land Taxes, and the Administrative Fee are material conditions of this Agreement (the “**Material Conditions**”). If any other term, covenant or condition of this Agreement as 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 held invalid or unenforceable, shall not be affected thereby, and each remaining term, covenant or condition of this Agreement shall be valid and enforced to the fullest extent permitted by Applicable Law.

4.7 **No Reduction in Payment of the Annual Service Charge.** Neither the amounts nor dates established for payment of the Annual Service Charge, as provided in the preceding sections shall be reduced, amended or otherwise modified during the Term of this Agreement.

4.8 **Annual Service Charge as Municipal Lien.** In accordance with the provisions of the Exemption Law, the Annual Service Charge shall be and constitute a continuous municipal lien on the Property and the Improvements.

ARTICLE 5

ANNUAL REPORTS

5.1 **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 pursuant to the Law.

5.2 **Periodic Reports**

(a) **Total Project Cost Report:** Within 90 days after Substantial Completion of the Project, the Entity shall submit to the Borough a report of Total Project Costs, substantially in the form attached hereto as **Exhibit C**, and certify as to actual construction which said certification shall be substantially in the form attached as **Exhibit D** and included in the Annual Report.

(b) **Annual Report:** Annually, within 90 days after the close of each calendar year during the period that this Agreement shall continue in effect, the Entity shall submit to the Borough and the New Jersey Division of Local Government Services within the DCA, its Annual Report for the preceding calendar year in accordance with N.J.S.A. 40A:20-9(d).

(c) **Disclosure Statement:** Within 30 days of each anniversary date of the Parties' execution of this Agreement, if there has been a change in any person or entity owning more than 10% of the Entity, the Entity shall submit to the Borough a Disclosure Statement listing all persons and other entities having a 10% or greater ownership interest in the Project ("**Interest Holders**"), and the extent of the ownership interest held by each.

(d) **Termination of Obligations:** The Entity's obligations under this Section 5.2 shall terminate at the end of the tax exemption period, or upon earlier termination, if any, of this Agreement. Upon termination or expiration, all affected property shall be assessed and subject to taxation as are other taxable properties in the Borough. After termination or expiration, restrictions and limits on the Entity shall terminate, upon the Entity's rendering a final accounting to and with the Borough pursuant to N.J.S.A. 40A:20-12.

5.3 **Inspection.** The Entity shall permit the inspection of its property, equipment, buildings and other facilities of the Entity and shall also permit, upon request, examination and audit of its books, contracts, records, documents and papers by duly authorized representatives of the Borough and the State of New Jersey. Such examination or audit shall be made upon no less than 7 days written notice during regular business hours, in the presence of an officer or agent designated by the Entity. To the extent

reasonably possible, the examination, inspection or audit will not materially interfere with the construction or operation of the Project.

ARTICLE 6
LIMITATION OF PROFITS AND RESERVES

6.1 Limitation of Profits and Reserves.

During the period of this Agreement as provided herein, the Entity shall be subject to a limitation of its profits and, in the case of a corporation, the dividends payable by it, pursuant to the provisions of N.J.S.A. 40A:20-15. Pursuant to N.J.S.A. 40A:20-3(c), this calculation is completed in accordance with generally accepted accounting principles.

The Entity shall have the right to establish a reserve against vacancies, unpaid rentals, and reasonable contingencies in an amount up to ten percent (10%) of the Annual Gross Revenues of the Entity for the last full fiscal year preceding the year and may retain such 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. The reserve shall be noncumulative.

There is expressly excluded from calculation of Annual Gross Revenue and from Net Profit as set forth in N.J.S.A. 40A:20-3 for the purpose of determining compliance with N.J.S.A. 40A:20-15 or N.J.S.A. 40A:20-16, any gain realized by the Entity on the sale of all or a portion of the Project, whether or not taxable under Applicable Laws.

6.2 Annual Payment of Excess Net Profit.

In the event the Net Profits of the Entity, in any fiscal year, shall exceed the allowable Net Profits for such period, then in accordance with N.J.S.A. 40A:20-15, the Entity, within 90 days after the end of such fiscal year, shall pay such excess Net Profits to the Borough as an “**Additional Annual Service Charge**”, provided, however, that the Entity may maintain a reserve as determined pursuant to the aforementioned Section 6.1. The calculation of Net Profit and Allowable Net Profit shall be made in the manner required pursuant to N.J.S.A. 40A:20-3(c) and 40A:20-15.

6.3 Payment of Reserve/Excess Net Profit

Upon Termination, Expiration or Sale. The date of the termination of this Agreement, expiration of this Agreement or the sale of the Project shall be considered to be the close of the fiscal year of the Entity. Within 90 days after such date, the Entity shall pay to the Borough the amount of the reserves, if any, maintained by it pursuant to this Section and the excess Net Profit, if any.

ARTICLE 7

ASSIGNMENT AND/OR ASSUMPTION

7.1 **Approval.** Except with the Borough's

written consent, as set forth in Section 7.1(a) hereof, the Entity may not sell, convey, grant, bargain, assign, or otherwise transfer its interest in the Project, or any part thereof, or any direct or indirect interest in the Entity, or permit the Project, or any part thereof, to be sold, conveyed, granted, bargained, assigned, or otherwise transferred, except for the transfer of ownership

interest in the Entity to any Affiliate of the Entity, or related entity or Affiliate, to which transfer the Borough hereby consents, as set forth in Section 7.1(a) hereof, subject to the conditions set forth therein. Notwithstanding anything to the contrary in this Section, (i) a transfer of ownership interests that occurs by inheritance, devise or bequest or by operation of law to the spouse, child, grandchild, or other descendants of Interest Holders, or a trust established for the benefit of such a spouse, child, grandchild, or other descendants; or (ii) a conveyance by the Entity to the ultimate users or tenants of any portion of the Project or the Improvements constructed as a component of the Project shall not be a violation of this restriction.

(a) It is understood and agreed that the Borough, on written application by the Entity, shall not unreasonably withhold, delay or condition its written consent to a transfer of the Project authorized by the Exemption Law.

(b) As permitted by N.J.S.A. 40A:20-10(c), it is understood and agreed, on written application by the Entity after the Annual Service Charge Start Date has occurred, that the Borough will consent to a sale to another urban renewal entity purchasing the Project in fee simple and the transfer of the tax exemption by this Agreement, reflected in a new financial agreement incorporating all the terms of this Agreement for the period remaining on the tax exemption (the “**Transferee Agreement**”), provided: (i) the transferee entity does not own or lease any other Project subject to long term tax exemption at the time of transfer; (ii) the transferee entity is formed and eligible to operate under the Exemption Law; (iii) the Entity is not then in Default of this Agreement or the Exemption Law; (iv) the Entity’s obligations under this Agreement are fully assumed by the transferee entity in the Transferee Agreement; and (v) the transferee entity agrees to all terms and conditions of this Agreement in the Transferee Agreement. Accordingly, the applicable Annual Service Charge will be paid by the transferee entity pursuant to the Transferee Agreement. In the event the transfer contemplated in this Section is for less than the whole of the Project, the Annual Service Charge to be paid each by the Entity and the transferee entity after the transfer shall be pro-rated based on the land area being transferred compared to the total land area for the Project. The Entity shall pay an administrative transfer fee equal to two percent (2%) for the then applicable Annual Service Charge for that portion of the Project being transferred for processing any such application by the Entity.

(c) It is expressly understood and agreed that the Entity has the right, to the extent permitted by the Exemption Law and the Redevelopment Agreement, to encumber and/or assign its interest in the Property and/or Improvements for purposes of: (i) financing the design, development, and construction of the Property, (ii) obtaining mortgage financing, and/or (iii) refinancing a mortgage, and that any such encumbrance or assignment shall not be deemed to be a violation of this Agreement.

(d) The Borough acknowledges that the Entity intends to obtain secured financing. The Borough agrees that the Entity may assign, pledge, hypothecate, or otherwise transfer its applicable rights under this Agreement and/or its interest in the Property to one or more secured parties or any agents therefor (each, a “**Secured Party**” and collectively, the “**Secured Parties**”) as security for obligations of the Entity, and/or its Affiliates and/or its Transferees, incurred in connection with such secured financing (collectively, the “**Security Arrangements**”). The Entity or Affiliate or Transferee, as applicable, shall give the Borough

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 Borough hereunder to provide any notice of Default or notice of intent to enforce its remedies under this Agreement.

(e) If the Entity shall Default in any of its obligations hereunder, the Borough shall give written notice of such Default to the Secured Parties and the Borough agrees that, in the event such Default is not waived by the Borough 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 Borough will provide the Secured Parties not less than fifteen (15) calendar days from the date of such written notice to the Secured Parties with regard to a payment Default by the Entity, and ninety (90) calendar days from the date the Entity was required to cure any other Default.

(f) To the extent permitted by the Long Term Tax Exemption Law, in the absence of a Default by the Entity, the Borough agrees to consent to any collateral assignment by the Entity to any Secured Party or Secured Parties of its interests in this Agreement as they relate to the Property 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 Borough'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.

ARTICLE 8

COMPLIANCE AND REPRESENTATIONS

8.1 Compliance. The Entity hereby agrees at all times prior to the expiration or Termination of this Financial Agreement to remain bound by the provisions of Applicable Laws and any lawful ordinances and resolutions of the Borough, including, but not limited to, the Exemption Law. The Entity's failure to substantially comply in all material respects with such statutes or ordinances shall constitute a violation and breach of this Agreement.

The Borough represents that it has fully and properly approved this Agreement and the Application of the Entity in accordance with all Applicable Laws, including the Exemption Law. If there is any actual or alleged defect, deficiency, error, mistake or improper exercise of authority with regard to the approval and/or content of this Agreement, the Borough shall take all necessary actions to rectify same and to ensure that this Agreement is effective and shall remain in place, including adoption of any ordinance, resolution or any other rule, regulation or official action; execution of any documents necessary to ensure that same complies with the Exemption Law, as amended; and any other action necessary to cure any alleged defect so that the terms of this Agreement remain in place as agreed upon between the Borough and the Entity. This Section shall survive the expiration or Termination of this Agreement.

ARTICLE 9

DISPUTE/DEFAULT

9.1 **Dispute.** In the event of a breach or Default of this Agreement by either of the Parties or a dispute arising between the Parties in reference to the terms and provisions as set forth herein, then either Party may apply to the Superior Court of New Jersey, Somerset County by an appropriate proceeding, to settle and resolve such dispute in such fashion as will tend to accomplish the purposes of this Agreement under Applicable Law.

9.2 **Default.** Default shall be failure of the Entity or Borough to conform to the terms of this Agreement beyond the notice, cure and grace periods set forth in Section 9.3 hereof.

9.3 **Cure Upon Default.** Should a Party be in Default, the non-defaulting Party shall send written notice to the defaulting Party of the Default (the “**Default Notice**”). The Default Notice shall set forth with particularity the basis of the Default. The defaulting Party or a Party acting on its behalf shall have 15 days from receipt of the Default Notice (the “**Cure Period**”), to cure any monetary Default and a 60-day Cure Period to cure any non-monetary Default. However, if the Default is a non-monetary Default of a nature that cannot be cured within the Cure Period, using reasonable diligence, the time to cure the Default shall be extended beyond the Cure Period for the time period required in order to allow the defaulting Party to cure the Default such period shall not exceed one hundred twenty (120) days, provided that the defaulting Party continues using reasonable diligence to cure the Default. The Parties may extend the Cure Period beyond one hundred twenty (120) days upon mutual agreement of the Parties. Upon the expiration of the Cure Period, or any extension thereof, and providing that the Default is not cured, the non-defaulting Party shall be permitted to invoke the remedies set forth in Section 9.4 hereof.

9.4 **Remedies Upon Default.**

(a) The Entity’s failure to make the requisite Annual Service Charge payment, Land Tax Payment, reserve payment, and/or sewer and water charge payments within the Cure Period or any extensions thereof shall constitute a breach of this Agreement by the Entity, and the Borough shall, among its other remedies, have the right to proceed against the Property pursuant to the In Rem Tax Foreclosure Act, N.J.S.A. 54:55-1 et seq. Whenever the word “Taxes” appears or is implied to mean taxes or municipal liens on land, such statutory provisions shall be read, as far as is pertinent to this Agreement, as if the Annual Service Charges were taxes or municipal liens on land. In addition, the Borough may terminate this Agreement as to the Entity pursuant to Section 10.1 hereof.

(b) All of the remedies provided in this Agreement, and all rights and remedies granted by Law and equity shall be cumulative and concurrent. No termination of any provision within this Agreement shall deprive either Party of any of its remedies in accordance with Law or any action by the Borough against the Entity because of its failure to pay Taxes, Annual Service Charges, Land Taxes, reserve payments, and/or water and sewer charges with interest payments. The bringing of any action for any Taxes, Annual Service Charges, or other charges due hereunder, or in connection with another Default hereunder, or the resort to any other remedy herein provided for the recovery of such Taxes, any Annual Service Charges, Land Taxes, reserve payments, and/or water and sewer charges or other charges due hereunder, shall

not be construed as a waiver of the right to terminate the exemption granted hereby or proceed with an In Rem Tax Foreclosure or any other remedy as provided for in this Agreement or by Law.

ARTICLE 10 **TERMINATION**

10.1

Termination Upon Default of the Entity.

In the event the Entity or a Party acting on its behalf fails to cure or remedy the Default within the Cure Period as provided in Section 9.2, the Borough may terminate this Agreement upon 30 days written notice to the Entity (the “**Notice of Termination**”) or may apply to the Superior Court of New Jersey, Somerset County by an appropriate proceeding to seek specific performance.

10.2

Voluntary Termination by the Entity.

The Entity may, after the expiration of one year from the Substantial Completion of the Project, notify the Borough in writing that, as of a date certain designated in such Notice, it relinquishes its status as an Urban Renewal Entity. As of such date, continuation of the tax exemption, the Annual Service Charges hereunder, and the profit and dividend restriction shall terminate, and Section 10.3 hereof shall control. A final accounting pursuant to N.J.S.A. 40A:20-12 shall be a requirement of termination.

10.3

Conventional Taxes.

Upon the termination or expiration of this Agreement and thereafter, the Land and Improvements shall be assessed and conventionally taxed according to the general law applicable to other taxable property within the Borough, and the Entity is bound by this Agreement and by the Law until expiration or Termination shall occur.

ARTICLE 11 **NOTICE**

11.1

Certified Mail.

Any notice required hereunder to be sent by either Party to the other shall be sent by certified or registered mail, return receipt requested or by recognized overnight courier, with proof of delivery.

11.2

Sent by Borough.

When sent by the Borough to the Entity, it shall be addressed to:

AR at Bernardsville Urban Renewal LLC
c/o Advance Realty Investors
1430 U.S. 206, Suite 100
Bedminster, New Jersey 07921

Attn: Peter J, Cocoziello, Jr (peterjohnnc@advancere.com and General Counsel
(richc@advancere.com)

WITH A COPY TO:

John P. Inglesino, Esq.
Inglesino Taylor, LLC
600 Parsippany Road, Suite 204
Parsippany, New Jersey 07054

Unless prior to giving of notice, the Entity shall have notified the Borough in writing otherwise. In addition, provided the Borough is sent a formal written notice in accordance with this Agreement, of the name and address of Entity's mortgagee, the Borough agrees to provide such mortgagee with a copy of any notice required to be sent to the Entity.

11.3 **Sent by Entity.** When sent by the Entity to the Borough, it shall be addressed to:

Borough of Bernardsville
Attn: Mayor and Borough Clerk
Borough Hall, 166 Mine Brook Road
Bernardsville, New Jersey 07924

WITH A COPY TO:

Matthew D. Jessup, Esq.
McManimon Scotland & Baumann, LLC
75 Livingston Avenue, 2nd Floor
Roseland, New Jersey 07068

The notice to the Borough shall fully identify the Project to which it relates, including the full name of the Entity and the Property's Block and Lot numbers.

ARTICLE 12
MISCELLANEOUS

12.1 **Severability.** If any term, covenant or condition of this Agreement, Ordinance or the Application shall be judicially declared to 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 Agreement shall be valid and be enforced to the fullest extent permitted by law.

12.2 **Construction.** This Agreement shall be construed and enforced in accordance with the laws of the State of New Jersey, except for those provisions governing choice of law, and without regard to or aid of any presumption or other rule requiring construction against the Party drawing or causing this Agreement to be drawn since counsel for both the Entity and the Borough have combined in their review and approval of same.

12.3 **Captions.** The marginal captions after the Article, Section and Paragraph numbers of this Agreement are for convenience of reference

purposes only and do not in any way define, limit or amplify the terms of this Agreement and are to be given no weight in its interpretation.

12.4 **Oral Representations.** There have been no oral representations made by either of the Parties hereto which are not contained in this Agreement. This Agreement including all Exhibits, the Ordinance authorizing this Agreement, and the Application including all Exhibits, shall constitute the entire Agreement between the Parties, and there shall be no modifications thereto other than by a written instrument approved and executed by and delivered to each.

12.5 **Remittance to County.** The Borough shall remit to the County of Somerset on a quarterly basis, five percent (5%) of the Annual Service Charge received from the Entity in accordance with N.J.S.A. 40A:20-12(b).

12.6 **Compliance with Laws.** The Entity represents and warrants that this Agreement complies with N.J.S.A. 40A:20-1 et. seq. and applicable regulations. The Land and Improvements shall be subject to any and all laws promulgated by the State of New Jersey with respect to tax assessments.

12.7 **Amendments.** Any amendments or modifications to this Agreement made after the Effective Date shall be by mutual consent of the Borough and the Entity and shall be subject to written approval in accordance with the Law.

12.8 **Certification.** The Borough Clerk shall certify to the Tax Assessor, pursuant to N.J.S.A. 40A:20-12, that a financial agreement with an urban renewal entity, i.e., the Entity, for the development of the Property, has been entered into and is in effect as required by the Exemption Law. Delivery by the Borough Clerk to the Tax Assessor of a certified copy of the Ordinance shall constitute the required certification. Upon certification as required hereunder, the Tax Assessor shall implement the exemption and continue to enforce that exemption without further certification by the Borough Clerk until the expiration of the entitlement to exemption by the terms of this Agreement or until the Tax Assessor has been duly notified by the Borough Clerk that the exemption has been terminated. Further, within ten (10) days of the execution of this Agreement, the Borough Clerk shall provide a copy of this Agreement and the Ordinance authorizing the same to the Somerset County Counsel and the Somerset County Chief Financial Officer for informational purposes in accordance with N.J.S.A. 40A:20-12.

ARTICLE 13

INDEMNIFICATION

13.1 **Indemnification.** It is understood and agreed that in the event the Borough shall be named as a party in any action brought against the Borough or Entity by allegation of any breach, Default or a violation of any of the provisions of this Agreement and/or the provisions of the Exemption Law or any other Applicable Law, the Entity shall indemnify and hold the Borough harmless from and against all liability, losses, damages, demands, costs, claims, actions or reasonable expenses (including reasonable attorneys' fees and expenses) of every kind, character and nature arising out of or resulting from the action or inaction of the Entity and/or by reason of any breach, Default or a violation of any of the provisions of this Agreement, the provisions of

the Exemption Law and/or any other Applicable Law by the Entity, except for any gross negligence or willful misconduct by the Borough or any of its officers, officials, employees or agents, and the Entity shall defend the suit at its own expense. [To the extent practical and ethically permissible, the Entity's attorneys shall jointly defend and represent the interests of the Borough and the Entity as to all claims indemnified in connection with this Agreement. Notwithstanding the foregoing and if deemed necessary in the reasonable discretion of the Borough, the Borough maintains the right to retain its own counsel to defend the Borough or to intervene, if not already a party, with the expense thereof to be borne by the Entity.]

ARTICLE 14 **EXHIBITS AND SCHEDULES**

The following Exhibits and Schedules are attached hereto and incorporated herein as set forth at length herein:

Exhibit A - Land Description

Exhibit B - Certificate of Formation of Entity

Exhibit C - Entity's Estimate of Total Project Cost

Exhibit D - Form of Certification of Final Construction Cost

{SIGNATURES ON FOLLOWING PAGE}

Witness/Attest:

By: _____
Name: _____
Title: _____

4876-0748-9150, v. 5

Exhibit A

Land Description

ALL that certain lot, parcel or tract of land, situate and lying in the Borough of Bernardsville, County of Somerset, State of New Jersey, and being more particularly described as follows:

TRACT I

BEGINNING at an old concrete monument in the Northerly line of lands of the Erie Lackawanna Railway Company (now Conrail) at the Southwesterly corner of the former "Parsonage lot", later belonging to Liddy, and now Palmer, and running thence

(1) along the Railroad lands, South 75 degrees 36 minutes West 68.17 feet to a point in Mt. Airy Road (formerly road leading from Bernardsville to Liberty Corner); thence

(2) along said lot North 2 degrees 58 minutes West 180.18 feet to a point in New Jersey State Highway Route #202 (formerly Route #32 and earlier known as Route #16); thence

(3) along said highway, North 50 degrees 12 minutes East 144.87 feet to a point in said highway; thence

(4) South 8 degrees 00 minutes West 2.38 feet to a point; thence

(5) South 77 degrees 21 minutes 20 seconds East 95.57 feet to a point; thence

(6) along line of lands of David C. and Peter S. Palmer to the east, South 3 degrees 30 minutes West 218.46 feet to a concrete monument in the northerly right of way of Erie Lackawanna Railway Company, now Conrail, (said course 24.98 feet from its beginning passes over a railroad spike on line); thence

(7) along said railway company right of way South 82 degrees 53 minutes 40 seconds West 116.40 feet to the point and place of BEGINNING.

FOR INFORMATIONAL PURPOSES ONLY: Also known as Lot 1, formerly Lots 1 & 2, in Block 125 on the Borough of Bernardsville Tax Map.

TRACT II

BEGINNING at a point in the center of Morristown Road (Route 202), being the northeast corner of lands formerly Arthur A. Palmer, Jr.; thence

(1) South 73 degrees 46 minutes East 94.52 feet to a point in Morristown Road; thence

(2) South 06 degrees 44 minutes West along line of lands of Craftman's Club Masonic Lodge 181.51 feet to an iron pipe set in the northerly right of way line of the Erie Lackawanna Railway Co. (now Conrail); thence

(3) along said Railway Co. South 79 degrees 06 minutes West 84.62 feet to a concrete monument set in the most southeasterly corner of lands formerly of Arthur A. Palmer, Jr.; thence

(4) along lands formerly of Arthur A. Palmer, Jr. North 03 degrees 30 minutes East 223.10 feet to the point and place of BEGINNING.

FOR INFORMATIONAL PURPOSES ONLY: Also known as Lot 3 in Block 125 on the Borough of Bernardsville Tax Map.

Being further described in accordance with an ALTA/NSPS Land Title Survey prepared by PS&S dated September 3, 2021 as follows:

BEGINNING AT A POINT IN THE SOUTHERLY RIGHT-OF-WAY OF MORRISTOWN ROAD (U.S. ROUTE 202) (66 FOOT WIDE RIGHT-OF-WAY) SAID POINT BEING THE INTERSECTION OF THE WESTERLY LINE OF LOT 4, BLOCK 125 WITH SAID SOUTHERLY RIGHT-OF-WAY, AND RUNNING, THENCE;

1. ALONG SAID WESTERLY LINE, SOUTH 02°39'12" EAST A DISTANCE OF 149.85 FEET TO A POINT IN THE NORTHERLY RIGHT-OF-WAY OF THE ERIE-LACKAWANNA RAILROAD COMPANY (VARIABLE WIDTH RIGHT-OF-WAY), THENCE, THE FOLLOWING THREE (3) COURSES ALONG SAID RIGHT-OF-WAY;

2. SOUTH 69°42'48" WEST A DISTANCE OF 84.62 FEET TO A POINT; THENCE

3. SOUTH 73°30'28" WEST A DISTANCE OF 116.40 FEET TO A POINT; THENCE

4. SOUTH 66°12'48" WEST A DISTANCE OF 36.99 FEET TO A POINT OF CUSP IN THE EASTERLY RIGHT-OF-WAY OF MT. AIRY ROAD (VARIABLE WIDTH RIGHT-OF-WAY), THENCE, THE FOLLOWING FOUR (4) COURSES ALONG SAID EASTERLY RIGHT-OF-WAY;

5. ON A CURVE TO THE RIGHT HAVING A RADIUS OF 775.00 FEET, AN ARC LENGTH OF 92.14 FEET, A CENTRAL ANGLE OF 06°48'43", WHOSE CHORD BEARS NORTH 14°15'58" WEST A CHORD DISTANCE OF 92.09 FEET TO A POINT OF TANENCY; THENCE

6. NORTH 10°51'37" WEST A DISTANCE OF 19.35 FEET TO A POINT; THENCE

7. SOUTH 82°15'33" WEST A DISTANCE OF 2.52 FEET TO A POINT; THENCE

8. NORTH 07°44'27" WEST A DISTANCE OF 62.96 FEET TO A POINT IN THE SOUTHERLY RIGHT-OF-WAY OF MORRISTOWN ROAD (U.S. ROUTE 202), THENCE, THE FOLLOWING THREE COURSES ALONG SAID SOUTHERLY RIGHT-OF-WAY;

9. NORTH 46°28'16" EAST A DISTANCE OF 62.17 FEET TO A POINT OF CURVATURE; THENCE

10. ON A CURVE TO THE RIGHT HAVING A RADIUS OF 97.00 FEET, AN ARC LENGTH OF 82.61 FEET, A CENTRAL ANGLE OF $48^{\circ}47'45''$, WHOSE CHORD BEARS NORTH $70^{\circ}52'09''$ EAST A CHORD DISTANCE OF 80.14 FEET TO A POINT OF TANGENCY, THENCE

11. SOUTH $84^{\circ}43'57''$ EAST A DISTANCE OF 134.99 FEET TO THE POINT OF BEGINNING.

Exhibit B

Certificate of Formation of Entity

Exhibit C

Entity's Estimate of Total Project Cost

Exhibit C, note that all of the information that is in Exhibit C is also in NW's PILOT Report

Development Budget				
Line Item	Amount	Per Building GSF	Per GSF (Componentized)	Narrative
Land Acquisition	\$4,000,000	\$24.12		Land acquisition costs
Site Work and Offsite Improvements	\$3,000,000	\$18.09		Site demolition, site clearing, site work, offsite improvements
Total Land Costs	\$7,000,000	\$42.22		
Hard Costs - Retail	\$1,624,800	\$9.80	\$200.00	\$200 per SF for retail component (new space and renovation space)
Hard Costs - Residential	\$23,798,500	\$143.52	\$250.00	\$250 per SF for residential component
Hard Costs - Parking	\$6,255,000	\$37.72	\$45,000	\$45,000 per parking stall
Total Hard Costs	\$31,678,300	\$191.04		
Architectural & Engineering Costs	\$1,326,528	\$8.00		Architecture (General, Structural, Mechanical, Civil), Interior Design, Etc
Furniture, Fixtures, and Equipment	\$688,136	\$4.15		Building Furniture, Exercise Equipment, Amenity Area Furniture, Etc
Insurance, Taxes, and Admin Costs	\$1,202,166	\$7.25		OCIP, Real Estate Taxes, Offsite bonds, Etc
Affordable Housing Trust Fund Contribution	\$1,000,000	\$6.03		
Leasing and Marketing Costs	\$1,019,768	\$6.15		Lease Up Operating Reserve, Marketing Costs, Brokerage Commissions, Etc
Legal Costs	\$257,015	\$1.55		General, Entitlement, Environmental
Permits & Fees Costs	\$1,160,712	\$7.00		Sewer Connection Fees, Building Permits, Etc
Developer Fee	\$1,875,256	\$11.31		4% on all development costs except Land Acquisition
Contingency	\$2,232,447	\$13.46		5.0% on all soft costs except Land and Developer Fee
Total Soft Costs	\$10,762,029	\$64.90		
Financing Costs	\$3,316,320	\$20.00		60% LTC/LTV for Construction and Permanent Financing, SOFR + 350, Tsy +185, 2.50% closing costs
Total Investment	\$52,756,649	\$318.16		

Exhibit D

Form of Certification of Final Construction Cost

Palmer Site Redevelopment Project
Bernardsville, New Jersey

I, _____, do certify the following:

I am the _____ of _____, for the _____
Project in _____.

2. To the extent that I have been involved in the construction of the _____
Project and based on those records and contracts that have been supplied to me by
_____, I certify that the total construction cost forth above referenced project
is \$_____.

I hereby certify that the foregoing statements made by me are true. I am aware that if any
of the foregoing statements are willfully false, I am subject to punishment.

Date: _____