

Record and return to:

FINANCIAL AGREEMENT

THIS FINANCIAL AGREEMENT (hereinafter “Agreement” or “Financial Agreement”), made this _____ day of _____, 2018, by and between Somerset Woolwich Urban Renewal, LLC, an urban renewal entity formed and qualified to do business under the provisions of the Long Term Tax Exemption Law of 1992, as amended and supplemented, *N.J.S.A. 40A:20-1, et seq.* (the “Long Term Tax Exemption Law”), with offices at 1230 Blackwood Clementon Road, Clementon, NJ 08021 (along with its successors and/or assigns, the “Entity”) and the Township of Woolwich, a municipal corporation in the County of Gloucester and the State of New Jersey (“Township”, as hereinafter defined), with offices at 120 Village Green Drive, Woolwich, NJ 08085.

WITNESSETH:

WHEREAS, the property located at Block 4, Lot 4 with a street address of 1080 Auburn Road, Woolwich, NJ (the “Property”) on the tax map of the Township, along with other property (collectively, the “Redevelopment Area”), was designated to be an area in need of redevelopment in Woolwich Township, by Township Resolution #2018-21; and

WHEREAS, the Township Committee adopted a Redevelopment Plan on October 1, 2018 (the “Weatherby Town Center Redevelopment Plan”) by Ordinance 2018-16 whose purpose was to implement and promote the redevelopment of the Redevelopment Area; and

WHEREAS, the Township Committee adopted Ordinance 2018-17 on November 19, 2018 which amended the Weatherby Town Center Redevelopment Plan (together with the Weatherby Town Center Redevelopment Plan, the “Redevelopment Plan”); and

WHEREAS, the Township Committee, by Resolution R-2018-283 adopted on December 3, 2018, designated Somerset-Swedesboro, LLC as developer for the Property, and authorized the Township Committee to negotiate a Redevelopment Agreement which will be assigned to the Entity; and

WHEREAS, the Entity proposes the construction and operation of a supermarket consisting of approximately 76,966 square feet (the “Project”) at the Property; and

WHEREAS, prior to execution of this Agreement, the Entity will be the owner of the Property which is located within the Redevelopment Area; and

WHEREAS, in order to enhance the economic viability of and opportunity for a successful project, the Township will enter into this agreement (the “Financial Agreement” or

“Agreement”) with the Entity, governing payments made to the Township in lieu of real estate taxes on the Project pursuant to the Long Term Tax Exemption Law; and

WHEREAS, the provisions of the Long Term Tax Exemption Law authorize the Township to accept, in lieu of real property taxes, an annual service charge paid by Entity to the Township based on the enumerated formulas set forth in such law; and

WHEREAS, the Entity has agreed to make payment of the Annual Service Charge (as defined herein) to the Township to be used by the Township for any lawful purpose in the exercise of the Township’s sole discretion; and

WHEREAS, on November 27, 2018, the Entity filed an Application attached hereto as Exhibit A, with the Township for approval of a long term tax exemption for the Improvements; and

WHEREAS, the Township made the following findings:

A. Relative Benefits of the Project:

- i. The Project will provide necessary commercial development of a vacant property.
- ii. The Project will provide up to 150 plus construction jobs and 240 permanent jobs in the Project and generally add to the economic viability of the Township.
- iii. The Township will benefit from the payment in lieu of tax being made by the Entity during the term of this Agreement.

B. Assessment of the Importance of the Tax Exemption in obtaining development of the Project and influencing the locational decisions of probable occupants:

- i. Exemption permits better use of property, completion of significant infrastructure improvements and improvement of the Township.

WHEREAS, the Township Committee on December 17, 2018 adopted Ordinance 2018-20 attached as Exhibit C, approving the Application and this Financial Agreement, including the Annual Service Charge, and authorized the execution of this Financial Agreement; and

WHEREAS, in order to set forth the terms and conditions under which Entity and the Township (the “Parties”) shall carry out their respective obligations with respect to payment of the Annual Service Charge (as defined herein) by the Entity, in lieu of real property taxes, the Parties have determined to execute 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 Long Term Tax Exemption Law and Application

This Agreement shall be governed by the provisions of the Long Term Tax Exemption Law as amended and supplemented (N.J.S.A. 40A:20-1, et seq.). The Township expressly relies upon the facts, data, and presentations contained in the Application in granting the tax exemption as set forth herein. The Entity represents that the facts and data contained in the application are true in all material respects as of the date hereof.

Section 1.2 General Definitions

(a) The following terms shall have the respective meanings ascribed to such terms in the preambles or Section 1.3 hereof:

- Agreement
- Annual Service Charge
- Application
- Entity
- Financial Agreement
- Improvements
- Long Term Tax Exemption Law
- Ordinance
- Project
- Property
- Redevelopment Area
- Redevelopment Law
- Redevelopment Plan
- State
- Township

Section 1.3 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 Net Profit of the Entity that does not exceed the Allowable Profit calculated pursuant to the provisions of N.J.S.A. 40A:20-3(c).
- (b) Allowable Profit Rate - The Allowable Profit Rate for the purpose of this Agreement is the greater of 12% or 1.25% over permanent financing for Project in accordance with N.J.S.A. 40A:20-3b.
- (c) Annual Service Charge - The payment by the Entity pursuant to Article IV herein, which amount the Entity has agreed to pay in part for municipal services supplied to the Project, which sum is in lieu of any taxes on the Improvements, which amount shall be pro rated in the year in which the Annual Service Charge Start Date occurs and the year in which the Annual Service Charge terminates.
- (d) Annual Service Charge Start Date – The Annual Service Charge Start Date shall commence as of the first of the month following Substantial Completion.
- (e) Application Fee – The Township and the Entity agree there will be no Application Fee in regard to this Long Term Tax Exemption Law Application.
- (f) 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 have been prepared in a manner consistent with the GAAP, and which fully details all items as required by the Long Term Tax Exemption Law, which has been certified as to its conformance with such standards by a certified public accountant who is, or whose firm is, licensed to practice that profession in the State of New Jersey.
- (g) Certificate of Occupancy - The document issued by the Township authorizing occupancy of a building, in whole or in part, pursuant to N.J.S.A. 52:27D-133.
- (h) County – The County of Gloucester, New Jersey.
- (i) County Amount – In accordance with the Long Term Tax Exemption Law, specifically, N.J.S.A. 40A:20-12, five percent (5%) of any Annual Service Charge received by the Township.
- (j) Cumulative Allowable Net Profit – In accordance with the calculation set forth in the Long Term Tax Exemption Law, specifically N.J.S.A. 40A:20-15, (a) with respect to the Entity, an amount equal to the sum of the Allowable Net Profit of the Entity in each year from and including the year that any Improvement is completed up to and including the year for which the Cumulative Allowable Net Profit is being calculated, and (b) with respect to any subsequent Owner, an amount equal to the sum of the Allowable Net Profit of such subsequent Owner from and including the year that such subsequent Owner purchased, or otherwise obtained, title to the Parcel up to and including the year for which the Cumulative Allowable Net Profit is being calculated.
- (k) Cumulative Net Profit – In accordance with the calculation set forth in the Long Term Tax Exemption Law, specifically N.J.S.A. 40A:20-15, (a) with respect to the Entity, an amount equal to the sum of the Net Profit of the Entity in each year

from and including the year that any Improvement is completed up to and including the year for which the Cumulative Net Profit is being calculated, and (b) with respect to any subsequent Owner, an amount equal to the sum of the Net Profit of such subsequent Owner from and including the year that such subsequent Owner purchased, or otherwise obtained, title to the Parcel up to and including the year for which the Cumulative Net Profit is being calculated.

- (l) Debt Service – The amount required to make annual payments of principal and interest or the equivalent thereof on any construction mortgage, permanent mortgage of other financing including returns on institutional equity financing and market rate related party debt for a project for a period equal to the term of the tax exemption granted by a financial agreement.
- (m) Default - The failure of the Entity or the Township to perform any obligation imposed upon the Entity or the Township by the terms of this Financial Agreement following the expiration of any applicable grace, notice or cure period established under this Agreement.
- (n) Entity – Somerset Woolwich Urban Renewal, LLC, and any successors or assigns duly qualified and approved pursuant to the Long Term Tax Exemption Law and all purchasers, subsequent purchasers or successors in interest of the Project duly qualified and approved pursuant to the Long Term Tax Exemption Law, who shall engage in no other business other than the ownership, operation and management of the Project so long as such entity is bound by and enjoying the benefits of this Agreement.
- (o) Financial Agreement – as defined in the recitals hereto.
- (p) Financial Plan – as set forth in Exhibit B of this Agreement.
- (q) GAAP – Generally accepted accounting principles as in effect from time to time in the United States of America.
- (r) Gross Revenue and Annual Gross Revenue – Shall have the meaning applied to such term and shall be calculated by the Entity as provided in accordance with N.J.S.A. 40A:20-3(a). Pursuant to N.J.S.A. 40A:20-3(a), any gain realized by the Entity on the sale of the Project, whether or not taxable under federal or state law, shall not be included in computing Gross Revenue.
- (s) Improvements - the construction of buildings, structures, fixtures, site work and municipal improvements permanently affixed to the Property, consistent with the Redevelopment Plan.
- (t) In Rem Tax Foreclosure - A summary proceeding by which the Township may enforce the lien of taxes due and owing by a tax sale. Said foreclosure is governed by N.J.S.A. 54:5-1 et seq.
- (u) Land - The land, but not the Improvements, known as part of Block 4, Lot 4, more commonly known as the street address of 1080 Auburn Road, Woolwich, NJ, and more particularly described by the metes and bounds description as set forth in Exhibit A of this Agreement.
- (v) Land Taxes - The amount of taxes assessed on the value of Land on which the Project is located, and more particularly described by the metes and bounds description as set forth in Exhibit A of this Agreement. Land Tax payments shall be applied as a credit against the Annual Service Charge.

- (w) Land Tax Payments - Payments made on the quarterly due dates for land taxes on the real property as determined by the applicable Tax Assessor and/or Tax Collector of the Township.
- (x) Material Conditions - As defined in Section 4.6 herein.
- (y) Minimum Annual Service Charge - 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 pursuant to N.J.S.A. 40A:20-12b(2)(e); or (ii) ten percent (10%) of the Annual Gross Revenue of the Entity with increases in years sixteen (16) through thirty (30) as set forth in Section 4.2 herein; or (iii) \$165,000 in year one (1) with increases as set forth in Section 4.2 herein.
- (z) Net Profit - The Annual Gross Revenue of the Entity less all operating and non-operating expenses of the Entity, all determined in accordance with GAAP and the provisions of the Long Term Tax Exemption Law, specifically, N.J.S.A. 40A:20-3(c). Calculation of the net profit is cumulative as provided in N.J.S.A. 40A:20-3(c).
- (aa) Ordinance - Ordinance No. _____ adopted by the Township on December __, 2018, attached herein as Exhibit C adopting the tax exemption.
- (bb) Project – The Land and Improvements thereon which are the subject of this Agreement as defined in N.J.S.A. 40A:20-3(e) and as defined in the recitals of this Agreement.
- (cc) Property - the Land as defined in the recitals of this Agreement.
- (dd) Redevelopment Area - as defined in the recitals of this Agreement.
- (ee) Redevelopment Law - as defined in the recitals of this Agreement.
- (ff) Redevelopment Plan - as defined in the recitals of this Agreement.
- (gg) Substantial Completion - The determination by the Township that the Project is ready for the use intended, which ordinarily shall mean the date on which the Project receives, or is eligible to receive any Certificate of Occupancy for each Unit.
- (hh) Tax Sale Law - N.J.S.A. 54:5-1 et seq.
- (ii) Termination - Any act or omission which by operation of the terms of this Agreement shall cause the Entity to relinquish its long term tax exemption.
- (jj) Township - The Township of Woolwich.
- (kk) Transferee Agreement – as defined in Section 8.1.
- (ll) Urban Renewal Entity – Shall have the meaning as such term is defined, used and applied in the Long Term Tax Exemption Law.

Section 1.4 Exhibits Incorporated

All Exhibits which are referred to in this Agreement and are attached hereto are incorporated herein and made a part hereof.

Article II - Approval

Section 2.1 Approval of Tax Exemption

Pursuant to the Ordinance (attached hereto as Exhibit C), the Township has approved and does hereby grant a tax exemption from real estate taxes for all the Improvements, constructed or acquired by the Entity pursuant to the Long Term Tax Exemption Law. The Entity represents and covenants that, effective upon completion of the Improvement, the Entity shall make application for a Certificate of Occupancy for the Improvement.

Section 2.2 Approval of Entity

Entity represents that its Certificate of Formation as attached hereto as Exhibit D contains all the requisite provisions of the Long Term Tax Exemption Law, has been reviewed and approved by the Commissioner of the Department of Community Affairs, and has been filed with, as appropriate, the Department of Treasury, all in accordance with N.J.S.A. 40A:20-5.

Section 2.3 Improvements to be Constructed

The Entity agrees to construct the Improvements in accord with the Redevelopment Plan as more specifically described in the Application (attached hereto as Exhibit A).

Section 2.4 Construction Schedule

The Entity agrees to diligently undertake to commence construction and complete the Improvements subject to and consistent with the terms of the Redevelopment Agreement, the Redevelopment Plan and this Agreement.

Section 2.5 Ownership, Management and Control

The Entity represents that it will be the owner of the Project which is the subject of this Agreement prior to commencement of construction of the Improvements.

Section 2.6 Statement of Rental Schedules and Lease Terms

The Entity represents that its good faith projections of the initial rental schedule and lease terms are set forth in Exhibit E attached hereto.

Section 2.7 Financial Plan

The Entity represents that the Improvements shall be financed in accordance with the Financial Plan attached hereto as Exhibit B. The Plan sets forth estimated Total Project Cost, amortization rate on Total Project Cost, the source of funds, the interest rates to be paid on construction financing, the source and amount of paid-in capital, and the terms of any mortgage amortization.

Article III - Duration of Agreement

Section 3.1 Term

So long as there is compliance with the Long Term Tax Exemption Law and this Agreement, this Agreement shall remain in effect for thirty (30) years from the Annual Service Charge Start Date, but in no event later than thirty-five (35) years from date of this Agreement, whichever shall occur earlier, subject to the further limitations and agreements contained herein, and shall only be effective and in force during the period while the Improvements are owned by an "Urban Renewal" entity formed pursuant to N.J.S.A. 40A:20-5 of the New Jersey Statutes (the "Term"). After the expiration of the Term or termination by the Entity pursuant to N.J.S.A. 40A:20-13: (i) the tax exemption for the Improvements shall expire and the Property and the Improvements shall thereafter be assessed and taxed according to the general law applicable to other non-exempt property in the Township, and (ii) all restrictions and limitations upon the Entity shall terminate upon the Entity's rendering and the Township's acceptance of the Entity's final accounting, pursuant to N.J.S.A. 40A:20-13.

Article IV - Annual Service Charge

Section 4.1 Annual Service Charge

(a) In consideration of the tax exemption, the Entity shall make payment to the Township an amount equal to the greater of: the Minimum Annual Service Charge as provided in Section 1.3 or an Annual Service Charge as provided for in Section 4.2.

(b) The Minimum Annual Service Charge or Annual Service Charge shall commence and be calculated from the Annual Service Charge Start Date. The Annual Service Charge or Minimum Annual Service Charge will be prorated as of the Annual Service Charge Start Date. The Annual Service Charge or Minimum Annual Service Charge will also be prorated in the year this Agreement terminates.

Section 4.2 Calculation of Annual Service Charge

(a) Annual Service Charge

As of the Annual Service Charge Start Date the Annual Service Charge shall be an amount of \$165,000, prorated as stated in Section 4.1. Beginning in year six (6) and through year ten (10) the Annual Service Charge shall be \$201,000. Beginning in year eleven (11) and through year twenty six (26) the Annual Service Charge shall increase by four percent (4%) over the prior year's Annual Service Charge. Beginning in year twenty seven (27) and through year thirty (30) the Annual Service Charge shall increase by three percent (3%) over the prior year's Annual Service Charge. Beginning in the sixteenth (16th) year following the Annual Service Charge Start Date, the Annual Service Charge shall further increase as set forth in (b) below.

(b) Schedule of Staged Adjustments

The Annual Service Charge as provided in Section 4.2(a) shall be adjusted in Stages over the term of the tax exemption in accordance with N.J.S.A. 40A:20-12(b) as follows:

i. Stage One: Notwithstanding the Annual Service Charge set forth above, commencing in the 16th year after the Annual Service Charge Start Date and continuing for a period of five (5) years (years 16-20 inclusive) (or until termination of the Agreement), the Annual Service Charge shall be (i) the amount stated in Section 4.2(a), or twenty (20%) percent of the amount of taxes otherwise due to the Township on the value of the Improvements that remain subject to the exemption in this Agreement, whichever shall be greater.

ii: Stage Two: Notwithstanding the Annual Service Charge set forth above, commencing in the 21st year after the Annual Service Charge Start Date and continuing for a period of five (5) years (years 21-25 inclusive) (or until termination of the Agreement), the adjusted Annual Service Charge shall be (i) the amount stated in Section 4.2(a), or forty (40%) percent of the amount of taxes otherwise due to the Township on the value of the Improvements that remain subject to the exemption in this Agreement, whichever shall be greater.

iii. Stage Three: Notwithstanding the Annual Service Charge set forth above, commencing in the 26th year after the Annual Service Charge Start Date and continuing for a period of two (2) years (years 26-27 inclusive) (or until termination of this Agreement), the Annual Service Charge shall be (i) the amount stated in Section 4.2(a) or sixty (60%) percent of the amount of taxes otherwise due to the Township on the value of the Improvements that remain subject to the exemption in this Agreement, whichever shall be greater.

iv. Stage Four: Notwithstanding the Annual Service Charge set forth above, commencing in the 28th year after the Annual Service Charge Start Date and continuing through termination of this Agreement (year 30 inclusive), the adjusted Annual Service Charge shall be (i) the amount stated in Section 4.2(a) or eighty (80%) percent of the amount of taxes otherwise due to the Township on the value of the Improvements that remain subject to the exemption in this Agreement, whichever shall be greater. Nothing in this Section alters the understanding of the parties that this Agreement shall be in effect for not more than thirty (30) years from the Annual Service Charge Start Date or for more than thirty-five (35) years from the execution date of this Agreement.

Section 4.3 Payment to Gloucester County

From the Annual Service Charge paid by the Entity, the Township shall annually remit five percent (5%) of the payment received to the County of Gloucester in accordance with the provisions of N.J.S.A. 40A:20-12.

Section 4.4 Quarterly Installments

The Entity expressly agrees that upon commencement of the Annual Service Charge(s), payments of the Annual Service Charge shall be made in quarterly installments on those dates when real estate tax payments are due; subject, nevertheless, to adjustment for over or under payment after close of the Township's fiscal year. In the event that the Entity fails to timely pay any quarterly installment, the amount unpaid shall bear the highest rate of interest permitted in the case of unpaid taxes or tax liens on the Property until paid.

Section 4.5 Land Tax Credit

Pursuant to N.J.S.A. 40A:20-12(b)(2)(e) the Entity shall, in each subsequent year after the Annual Service Charge Start Date, be entitled to a credit against the Annual Service Charge for the amount, without interest, of the Land Tax Payments paid by it for the entire Project, in the last four preceding quarterly installments for which an Annual Service Charge has been paid.

Section 4.6 Material Conditions

All payments of Land Tax Payments, Annual Service Charges (including the methodology of computation thereof), water and sewer charges, and any interest payments due, are material conditions of this Agreement. The Township relies exclusively on this Agreement in determining the Annual Service Charge payable to the Township over the term of this Agreement.

The Entity's failure to make the requisite Annual Service Charge payment and/or sewer and water charge payments in a timely manner shall constitute a breach of this Agreement and the Township shall, among its other remedies, have the right to proceed against the Property pursuant to the In Rem Tax Foreclosure Act, N.J.S.A. 54:5-1, *et seq.*

Article V - Dispute Resolution

Section 5.1 Dispute Resolution

All disputes between the parties arising out of this Agreement shall be resolved by binding arbitration by a single arbitrator in accordance with the rules of the American Arbitration Association for commercial arbitrations. Any award rendered in any such arbitration shall be final and binding on the parties and judgment thereon may be entered in a court of competent jurisdiction. The costs of such arbitration shall be borne by each party.

Article VI - Certificate of Occupancy

Section 6.1 Certificate of Occupancy

It shall be the obligation of the Entity to make application for and make all commercially reasonable efforts to obtain all Certificates of Occupancy in a timely manner as identified in the Application.

Section 6.2 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 Township a copy of any Certificate of Occupancy.

Article VII - Annual Audits - Profit Limitations

Section 7.1 Accounting System

The Entity agrees to maintain a system of accounting and internal controls established and administered in accordance with generally accepted accounting principles and as otherwise prescribed in the Long Term Tax Exemption Law while this Agreement is in effect.

Section 7.2 Periodic Reports

Within ninety (90) days after the close of each fiscal or calendar year, depending on the Entity's accounting basis, that this 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 (i) to the Clerk of the Township (or any other representative of the Township as may be designated in a notice to the Entity), who shall advise those municipal officials required to be advised, and (ii) to the Director of the Division of Local Government Services in the Department of Community Affairs, as required under N.J.S.A. 40:A:20-9(d). Said Auditor's Report shall include, but not be limited for the fiscal or calendar year covered by such Auditor's Report, Gross Revenue of the Entity, the terms and interest rate on any mortgage(s) associated with the Project, the Allowable Net Profit and such details as may relate to the financial affairs of the Entity and to its operation and performance hereunder as required by the Long Term Tax Exemption Law.

After completion of the Project, the Entity agrees to submit a report of the total cost for the Project within ninety (90) days.

Section 7.3 Inspection

The Entity shall permit the inspection of the Project by the Township. It also shall permit, upon request, examination and audit of its books, contracts, records, documents and papers that are relevant to the Project by representatives duly authorized by the Township. Such

examination or audit shall be made following reasonable advance written notice, during reasonable hours of the business day, in the presence of an officer or agent of the Entity. To the extent reasonably possible, the examination or audit will not materially interfere with the construction or operation of the improvements.

Section 7.4 Limitation of Profits and Reserves

During the period of tax exemption as provided herein, the Entity shall be subject to limitation of its profits payable pursuant to the provisions of N.J.S.A. 40A:20-15. The Township and the Entity acknowledge that such limitation shall apply solely to the Gross Revenue received by the Entity.

The Entity shall have the right, but not the obligation, to establish a reserve against unpaid rentals, reasonable contingencies and/or vacancies in an amount not exceeding ten (10%) percent of the Gross Revenue of the Entity for the fiscal year preceding the year in which a determination is being made with respect to permitted Net Profit as provided in N.J.S.A. 40A:20-15, it being intended that no further credits thereto shall be permitted after the reserve shall have attained the allowable level of ten (10%) percent of the preceding year's gross revenues as set forth above.

Section 7.5 Payment of Dividend and Excess Profit Charge

In the event the Net Profit of the Entity should at any time exceed the Cumulative Allowable Net Profits, the Entity shall, within ninety (90) days after the end of such fiscal year, pay such excess profit to the Township as an additional service charge hereunder; provided, however, that the Entity may maintain any reserves permitted by N.J.S.A. 40A:20-3(b)(1) or 40A:20-15.

Article VIII - Assignment and/or Assumption

Section 8.1 Sale of Project

The Entity shall be permitted to transfer all or any portion of the Project as follows:

(a) As permitted by N.J.S.A. 40A:20-10(a), it is understood and agreed that the Township, on written application by the Entity, shall consent to a sale of the Project and the transfer of this Agreement provided: 1) the transferee entity does not own any other Project subject to long term tax exemption at the time of transfer; 2) the transferee entity is formed and eligible to operate under the Long Term Tax Exemption Law; 3) the Entity is not then in Default of this Agreement or the Long Term Tax Exemption Law; 4) the Entity's obligations under this Agreement are fully assumed by the transferee entity; and 5) the transferee entity abides by all terms and conditions of this Agreement. Nothing herein shall prohibit any transfer of ownership interest in the Entity provided that the transfer, if greater than 10%, is disclosed to the municipal governing body in the annual disclosure statement or in correspondence sent to the municipality in advance of the annual disclosure statement.

(b) The Township may levy an administrative fee of two percent (2%) of the Annual Service Charge for the sale of the Project for the processing of a request to transfer as set forth in Section 8.1(a).

Section 8.2 Operation of Project

At all times while this Agreement is in effect, the Project shall be operated in accordance with the provisions of the Long Term Tax Exemption Law.

Section 8.3 Subordination of Fee Title

Solely for the purpose of arranging financing to design, develop, construct or permanently finance the Project, the Entity shall have the right to encumber the fee title to the Property and may encumber or assign for security purposes the Entity's interest in this Agreement, and any such encumbrance or assignment shall not be deemed to be a Default under this Agreement.

Article IX - No Waiver By Township

Section 9.1 No Waiver By Township

Nothing contained in this Agreement or otherwise shall constitute a waiver or relinquishment by the Township of any rights and remedies. Nothing herein shall be deemed to limit any right of recovery of any amount which the Township has under law, in equity, or under any provisions of this Agreement.

Article X – Notice

Section 10.1 Notice

Any notice required hereunder to be sent by either party to the other shall be sent by certified or registered mail, return receipt requested, addressed as follows:

(a) When sent by the Township to the Entity it shall be addressed as follows:

Somerset Woolwich Urban Renewal, LLC
1230 Blackwood Clementon Road
Clementon, NJ 08021

With copy to:

Susan A. Feeney, Esq.
McCarter & English, LLP
Four Gateway Center
100 Mulberry Street
Newark, NJ 07102-4056

(b) When sent by the Entity to the Township, it shall be addressed to:

Township Clerk
Township of Woolwich
120 Village Green Drive
Woolwich, NJ 08085

and

Mark B. Shoemaker, Esq.
66 Euclid Street, Suite B
Woodbury, NJ 08096

with copies sent to the Municipal Attorney, Tax Collector, Tax Assessor, and the Chief Financial Officer for the Township, unless prior to the giving of notice the Township shall have notified the Entity otherwise.

Any party may change the address for notices hereunder by a notice sent in accordance with this Article X.

Article XI - Compliance

Section 11.1 Statutes and Ordinances

The Entity hereby agrees at all times prior to the expiration or termination of this Agreement to remain bound by the provisions of all applicable state statutes and municipal ordinances and regulations including, but not limited to, the Long Term Tax Exemption Law. The Entity's failure to comply with such statutes or ordinances shall constitute a Default under this Agreement.

Article XII - Construction

Section 12.1 Construction

This 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 Agreement to be drawn, since counsel for both the Entity and the Township have combined in their review and approval of same.

Article XIII - Indemnification

Section 13.1 Indemnification

In the event the Township 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

Agreement and/or the provisions of the Long Term Tax Exemption Law, the Entity shall indemnify and hold harmless the Township, and the Entity agrees to defend the suit at its own expense.

Article XIV - Default

Section 14.1 Event of Default

Default by the Entity or the Township shall be failure of the Entity or the Township to conform with the terms of this Agreement herein and failure of the Entity or the Township to perform any material obligation imposed upon the Entity or the Township by statute, ordinance or lawful regulation provided however, that Entity or the Township shall not be deemed to be in Default if the Entity or the Township diligently contests, in good faith and by appropriate proceedings, such compliance with any such material obligation imposed by statute, ordinance or lawful regulation.

Section 14.2 Cure Upon Default

Should the Entity or the Township be in Default, the Township or the Entity shall notify the Entity or the Township in writing of said Default, stating with specificity the basis of said Default. The Entity or the Township shall have thirty (30) days to cure any Default, provided such Default is capable of cure within thirty (30) days. If the Default is not capable of cure within thirty (30) days, the Entity or the Township shall have a reasonable period of time to cure such Default, not to exceed ninety (90) days (the “**Cure Period**”). Subsequent to the expiration of the Cure Period, the Township or the Entity will give final notice of Default requiring the Entity or the Township to cure the Default within twenty (20) days (“**Final Notice Period**”). If the Default is not cured after the Final Notice Period, the Township shall have the right to proceed against the Property pursuant to In Rem Tax Foreclosure. In addition, after notice and expiration of the Final Notice Period, if the Default for which notice was given remains uncured, the Township or the Entity may terminate this Agreement. In such event, however, the Entity does not waive any defense it may have to contest the right of the Township to proceed in the above mentioned manner by conventional or In Rem Tax Foreclosure just as it would have if the Entity were subject to municipal taxes.

Section 14.3 Remedies Upon Default Cumulative; No Waiver

All of the remedies granted to the Township or the Entity by this Agreement, or available by law and in equity, shall be cumulative and concurrent. No determination of invalidity of any provision within this Agreement shall deprive the Township or the Entity of any of their remedies or actions against the Entity or the Township because of its Default (after the expiration of any applicable grace, notice or cure period) under this Agreement. The bringing of an action for collection of Land Tax Payments, Annual Service Charges, or other charges, or for any other Default hereunder, or the resort to any other remedy for the recovery of Land Tax Payments, Annual Service Charges, water and sewer charges, or other charges, shall not be construed as a

waiver of the right to terminate the tax exemption or proceed with In Rem Foreclosure action or any other remedy.

Article XV - Final Accounting

Section 15.1 Final Accounting

Upon any termination of the tax exemption provided by this Agreement, whether by affirmative action of the Entity, by virtue of the provisions of the Long Term Tax Exemption Law, or pursuant to the terms of this Agreement, the date of such termination shall be deemed to be the end of the fiscal year of the Entity. At the end of the period of tax exemption granted, the Property shall be assessed and taxed according to general law, like other property in the Township. At the same date, all restrictions and limitations upon the Entity shall terminate upon the Entity's rendering its Final Accounting with the Township, and the Township's acceptance thereof, pursuant to N.J.S.A. 40A:20-13.

Article XVI – Miscellaneous

Section 16.1 Conflict

The parties agree that in the event of a conflict between the Application and this Agreement, the provisions of this Agreement shall govern and prevail.

Section 16.2 Oral Representations

There have been no oral representations made by either of the parties hereto which are not contained in this Agreement. This Agreement, the Ordinance authorizing this Agreement, and the Application constitute the entire Agreement between the parties, and there shall be no modification thereto other than by a written instrument executed by all parties and delivered to each.

Section 16.3 Entire Document

This Agreement and all conditions in the Ordinance of the Governing Body of the Township approving this Agreement are incorporated in this Agreement and made a part hereof.

Section 16.4 Good Faith

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

Section 16.5 Grammatical

The bracketing of the letter(s) at the end of a word such as unit(s) shall mean the singular or plural, as proper meaning requires, and all related verbs and pronouns shall be made to correspond.

Section 16.6 Filing with Local Government Services

In accordance with this Agreement, the Township shall cause this Agreement and the Ordinance to be filed with the Director of Local Government Services in the Department of Community Affairs of the State.

Section 16.7 Recording

Either this entire Agreement or a memorandum hereof may be filed and recorded with the Clerk of Gloucester County by any of the parties.

Section 16.8 Financing Matters

The plans for financing the Project are as follows:

The Total Project Cost as defined in the statute is estimated to be \$29,688,500 as set forth in Exhibit F, which may be financed by debt instruments as determined by the Entity and the Total Project Costs are amortized over thirty (30) years. The source of the balance of the funds for the Project are as detailed in Exhibit B.

Section 16.9 Municipal Determinations

Pursuant to N.J.S.A. 40A:20-11, the Township hereby finds and determines that this Agreement is to the direct benefit of the health, welfare and financial well-being of the Township because it allows for redevelopment of the Property into productive, useful and job-creating property; and further:

- a. The costs associated with the tax exemption granted herein are minimal compared to the Total Project Cost of \$29,688,500 and the benefit by the creation of permanent new jobs and potential for additional new jobs over the life of this Agreement.
- b. The tax exemption granted herein provides mutual benefits to the Township and the Entity.

Section 16.10 Invalidity

If any term, covenant or condition of this Financial Agreement or the Application shall, to any extent, be invalid or unenforceable, the remainder of this Agreement or the application of

such term, covenant or condition to persons or circumstances other than those as to which 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 Long Term Tax Exemption Law.

Section 16.11 Counterparts

This Agreement may be simultaneously executed in counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 16.12 Amendments

This Agreement may not be amended, changed, modified, altered or terminated without the written consent of each party hereto.

Section 16.13 Headings

The section headings in this Agreement are for convenience only, and shall not be deemed to add or subtract to the meaning of the text of this Agreement.

IN WITNESS WHEREOF, the parties have caused this Financial Agreement to be executed the day and year first above written.

A T T E S T:

**SOMERSET WOOLWICH
URBAN RENEWAL, LLC**

BY: _____

A T T E S T:

TOWNSHIP OF WOOLWICH

, Township Clerk

BY: _____
Mayor

APPROVED AS TO FORM AND LEGALITY

By: _____
Municipal Attorney

EXHIBITS

Exhibit “A”	Application
Exhibit “B”	Financial Plan
Exhibit “C”	Township’s Ordinance of Approval
Exhibit “D”	Certificate of Formation for Entity
Exhibit “E”	Rental/Lease to Operator
Exhibit “F”	Estimated Total Project Costs

Exhibit A

Application

Exhibit B

Financial Plan

See financial plan information attached to application.

Exhibit C

Township's Ordinance Approving Exemption and
Authorizing Execution of Financial Agreement

Exhibit D

Certificate of Formation for Entity

Exhibit E

Rental/Lease to Operator

Somerset Woolwich Urban Renewal, LLC will lease the project to an operating entity. The operating entity will collect the actual revenue from the project. The operating entity will pay rent to the urban renewal entity in an amount equal to the Annual Service Charge, Land taxes and debt service for the project.

Exhibit F

Estimated Total Project Costs

See attached

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