

# TOWNSHIP OF MAPLEWOOD



## ORDINANCE

# 2776-15

### AN ORDINANCE

#### AUTHORIZING THE EXECUTION OF A FINANCIAL AGREEMENT WITH MAPLEWOOD URBAN RENEWAL, LLC AND GRANTING A TAX EXEMPTION

*"Interpretive Statement"*

*This ordinance will authorize an In-Lieu Tax Agreement with the Developer of the PSE&G Site.*

**WHEREAS**, the Maplewood Township Committee ("**Township Committee**"), pursuant to the provisions of the *Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq.* (the "**Act**") and based upon the report and recommendation of the Maplewood Planning Board ("**Planning Board**") designated the property commonly known as Block 44.02, Lot 2 on the tax maps of the Township as an area in need of redevelopment ("**Redevelopment Area**"); and

**WHEREAS**, pursuant to *N.J.S.A. 40A:12-7*, the Township Committee, in accordance with the applicable provisions and requirements of the Act, oversaw the preparation of a redevelopment plan for the Redevelopment Area and by Ordinance 2738-13 approved and adopted such redevelopment plan (the "**Redevelopment Plan**"); and

**WHEREAS**, Maplewood Urban Renewal, LLC (the "**URE**") is the contract purchaser of the Redevelopment Area; and

**WHEREAS**, the URE presented a plan to the Township for the redevelopment of the Redevelopment Area consisting of the construction of approximately 235 multi-family rental housing units (six of which will be affordable units) and related parking and other site improvements in accordance with the terms and conditions of the Redevelopment Plan (the "**Project**"); and

**WHEREAS**, in order to improve the feasibility of the construction, operation and maintenance of the Project, the URE made application to the Township requesting a long term tax exemption and financial agreement with respect to the Redevelopment Area (the "**Application**") pursuant to the *Long Term Tax Exemption Law, N.J.S.A. 40A:20-1 et seq.* (the "**LTTE Law**"), which Application is on file with the Township Clerk; and

**WHEREAS**, the URE is qualified to do business as an urban renewal entity under the provisions of the LTTE Law, and was created for the development, operation and maintenance of the Project; and

**WHEREAS**, the URE has represented to the Township that the Project would not be feasible in its intended scope but for the provision of financial assistance by the Township in the form of the grant of a long term tax exemption; and

**WHEREAS**, after review of the Application, the Mayor recommended that the Application be approved; and

**WHEREAS**, the Township Committee has reviewed the terms of a proposed financial agreement (the "**Financial Agreement**"), a copy of which has been filed with the Township Clerk and which is attached hereto as Exhibit A and by this reference incorporated herein; and

**WHEREAS**, the Township hereby finds that the relevant benefits of the Project to the redevelopment of the Redevelopment Area outweigh the loss, if any, of property tax revenue in granting the long term tax exemption for the Project; and

**WHEREAS**, the Township hereby determines that the assistance provided to the Project pursuant to the Financial Agreement will be a significant inducement for the URE to proceed with the Project and that based on information set forth in the Application, the Project would not be feasible without such assistance.

**NOW, THEREFORE, BE IT ORDAINED**, by the Township Committee of the Township of Maplewood, County of Essex, State of New Jersey as follows:

**I. GENERAL**

The aforementioned recitals are incorporated herein as though fully set forth at length.

**II. APPLICATION FOR EXEMPTION APPROVED**

The Application, which is on file with the Township Clerk and which has been recommended for approval to the Township Committee by the Mayor, is hereby accepted and approved.

**III. EXECUTION OF FINANCIAL AGREEMENT AUTHORIZED**

(a) The Mayor is hereby authorized to execute the Financial Agreement, substantially in the form as it has been presented to the Township Committee, subject to modification or revision as deemed necessary and appropriate in consultation with counsel.

(b) The Clerk of the Township is hereby authorized and directed, upon the execution of the Financial Agreement in accordance with the terms of Section III (a) hereof, to attest to the signature of the Mayor upon such document and to thereupon affix the corporate seal of the Township.

(c) The Township Clerk shall file certified copies of this Ordinance and the Financial Agreement with the Tax Assessor of the Township and the Director of the Division of Local Government Services within the Department of Community Affairs in accordance with Section 12 of the LTTE Law.

**IV. SEVERABILITY**

If any section, paragraph, subparagraph, clause or provision of this Ordinance shall be adjudged invalid, such adjudication shall apply only to the specific section, paragraph, subparagraph, clause or provision so adjudged and the remainder of the Ordinance shall be deemed valid and effective.

**V. AVAILABILITY OF THE ORDINANCE**

A copy of this Ordinance shall be available for public inspection at the offices of the Township.

**VI. REPEAL OF PRIOR ORDINANCES**

Ordinances or parts of Ordinances inconsistent with the provisions of this Ordinance be and the same are hereby repealed to the extent of any such inconsistencies.

**VII. EFFECTIVE DATE**

This Ordinance shall take effect after final passage and publication and as provided by law.

**PUBLIC NOTICE** is hereby given that the foregoing proposed Ordinance was introduced and read by title at a meeting of the Township Committee of the Township of Maplewood, held on March 3, 2015, and that the Township Committee met again on March 17, 2015, at the Municipal Building, 574 Valley Street, Maplewood, New Jersey, at which time and place the Township Committee held a hearing and proceeded to consider the said Ordinance on final reading and final passage.

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**ELIZABETH J. FRITZEN, R.M.C.**  
Township Clerk

**EXHIBIT A**

Financial Agreement

**[ On File with the Township Clerk ]**

**FINANCIAL AGREEMENT FOR  
LONG TERM TAX EXEMPTION**

by and between

**TOWNSHIP OF MAPLEWOOD**

and

**MAPLEWOOD  
URBAN RENEWAL, LLC**

**THIS FINANCIAL AGREEMENT** is made this \_\_\_\_ day of \_\_\_\_\_, 2015 (hereinafter this "Agreement" or "Financial Agreement") between **MAPLEWOOD URBAN RENEWAL, LLC** (hereinafter referred to as the "Entity") a Delaware limited liability company having an office at 517 Route One South, Fifth Floor - Suite 5500, Iselin, New Jersey 08830, Attention: Ronald S. Ladell, Vice President of Development; and the **TOWNSHIP OF MAPLEWOOD**, a public body corporate with offices located at 574 Valley Street, Maplewood, New Jersey 07040 (the "Township"; and together with the Entity, the "Parties" or "Party").

**WITNESSETH:**

**WHEREAS**, on September 17, 2013, pursuant to Resolution No. 170-13, the Maplewood Township Committee (the "Governing Body") designated that certain property identified as Block 44.02, Lot 2 on the official Tax Maps of the Township as "an area in need of redevelopment" (the "Redevelopment Area") in accordance with the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq., as amended and supplemented (the "Redevelopment Law"); and

**WHEREAS**, on December 17, 2013, pursuant to Ordinance No. 2738-13, the Governing Body adopted a redevelopment plan for the Redevelopment Area (the "Redevelopment Plan"); and

**WHEREAS**, on [\_\_\_\_], 2015, the Township and the Entity entered into that certain redevelopment agreement, which was approved by the Governing Body on [\_\_\_\_], 2015 pursuant to Resolution [\_\_\_\_] (the "Redevelopment Agreement"); and

**WHEREAS**, the Entity is or will be the owner of the Redevelopment Area consisting of Block 44.02, Lot 2, as more particularly described on Exhibit A annexed hereto (the "Property"); and

**WHEREAS**, the Redevelopment Agreement sets forth the terms and conditions by which the Entity will redevelop the Property with approximately 235 multi-family rental housing units (six of which will be affordable units), approximately 353 parking spaces, and other amenities and site improvements (collectively, the "Project"); and

**WHEREAS**, the Entity applied to the Governing Body for a long term tax exemption pursuant to the Exemption Law pursuant to the application annexed hereto as Exhibit B (the "Application"); and

**WHEREAS**, by Ordinance dated [\_\_\_\_] (the "Ordinance"), a copy of which is annexed hereto as Exhibit C, the Governing Body granted the Long Term Tax Exemption (as defined below) requested by the Entity, subject to the terms and conditions of this Financial Agreement; and

WHEREAS, pursuant to this Financial Agreement, the Township and the Entity desire to set forth in detail their mutual rights and obligations with respect to the Long Term Tax Exemption; and

WHEREAS, the Governing Body has reviewed the Application and has made the following findings:

A. **Benefits of Project v. Costs.**

i. The development and construction of the Project, including infrastructure improvements as set forth in the Redevelopment Agreement and Redevelopment Plan will be beneficial to the overall community; will achieve the goals and objectives of the Redevelopment Plan; will help revitalize the Property; will improve the quality of life for the community; will serve as a catalyst for further private investment in areas surrounding the Property and will enhance the economic development of the Township.

ii. It is anticipated that the development of the Project will create approximately 300 construction jobs over the duration of the construction of the Project, as well as approximately 6 permanent jobs in connection with the operation of the Project.

iii. The Project will create six new affordable housing units, and will subsidize the rehabilitation of other housing units through a significant contribution to the Township's affordable housing fund, as set forth in the Redevelopment Agreement.

iv. The Project includes the environmental remediation of the Property and its return to productive use.

v. In 2014, the Property, including the improvements thereon, generated \$311,399.50 in total real estate taxes to all government units. Pursuant to this Financial Agreement, the Project is projected to generate revenue for the Township in excess of the municipal revenue generated by ad valorem taxes in 2014, with the Annual Service Charge (as defined below) in the first year after commencement thereof estimated to be \$616,094, prior to the application of the land tax credit, as described herein. The Township's authorized officers and employees have determined that the benefits to the Township accruing as a result of the Project will substantially outweigh the costs to the Township resulting from the long term tax exemption granted herein.

B. **Importance of Long Term Tax Exemption.**

The Governing Body's approval of the Long Term Tax Exemption set forth herein is essential to the success of this Project because:

i. The relative stability and predictability of the Annual Service Charge associated with the Project will make it more attractive to financial institutions whose participation is necessary in order to finance the Project.

ii. The relative stability and predictability of the Annual Service Charge will allow the Entity to provide a high level of maintenance for the Property and will have a positive impact on the surrounding area and community.

iii. The financial benefit conferred by the Long Term Tax Exemption assists in the undertaking of environmental remediation and affordable housing as a part of the Project.

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements set forth herein, and for other good and valuable consideration, the Parties to this Agreement mutually covenant and agree as follows:

## **ARTICLE I- GENERAL PROVISIONS**

### **Section 1.1 Governing Law**

This Financial Agreement shall be governed by the provisions of the Long Term Tax Exemption Law, **N.J.S.A. 40A:20-1 et seq.**, as amended and supplemented (the "Exemption Law"), the Redevelopment Law, the Ordinance, and all other Applicable Laws, as defined below. It is expressly understood and agreed that the Township relied upon the facts, data, and representations contained in the Application in its granting of the Long Term Tax Exemption and the Application is hereby incorporated into this Financial Agreement by reference.

### **Section 1.2 General Definitions and Construction**

The recitals and Exhibits to this Agreement are hereby incorporated by reference herein as if set forth at length. Unless specifically provided otherwise or the context otherwise requires, when used in this Agreement, the following terms and phrases shall have the following respective meanings:

- i. **Agreement or Financial Agreement** – Shall have the meaning specified in the preamble hereof.
- ii. **Allowable Net Profit (also referred to as "ANP")** – The amount arrived at by multiplying the Allowable Profit Rate by the Total Project Cost pursuant to the Exemption Law.
- iii. **Allowable Profit Rate (also referred to as the "APR")** - The greater of twelve (12%) percent or the percentage per annum arrived at by adding one and one-quarter (1.25%) percent to the annual interest percentage rate payable on the Entity's initial permanent mortgage financing for the Project. 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 or if the financing is internal or undertaken by a related party, the APR shall be the greater of twelve (12%) percent or the percentage per annum arrived

at by adding one and one-quarter (1.25%) percent to the prevailing per annum interest rate on mortgage financing on comparable residential rental projects within Essex County.

- iv. **Annual Gross Revenue (also referred to as the “AGR”)** – Annual gross revenue for the Project, as determined pursuant to the Exemption Law and the terms of this Financial Agreement. Annual Gross Revenue shall include insurance, operating and maintenance expenses paid by a tenant if those expenses are ordinarily paid by a landlord.
- v. **Annual Service Charge (also referred to as the “ASC”)** – The total annual amount that the Entity has agreed to pay the Township for municipal services supplied to the Project, which sum is in lieu of any taxes on the Improvements pursuant to the Exemption Law. The Annual Service Charge shall be calculated pursuant to Article IV hereof.
- vi. **Annual Audited Statement** - Shall mean a complete financial statement outlining the financial status of the Project, which shall also include a computation of the Total Project Cost, Net Profit, Allowable Net Profit, and Annual Gross Revenue, prepared annually by the Entity’s certified public accountant. The contents of each Annual Audited Statement shall be prepared in conformity with Generally Accepted Accounting Principles, the Exemption Law, and this Financial Agreement.
- vii. **Applicable Law**: Shall mean any and all federal, state and local laws, rules, regulations, rulings, court orders, statutes and ordinances applicable to the Project, the Redevelopment Area and the Long Term Tax Exemption.
- viii. **Application** – Shall have the meaning specified in the preamble of this Financial Agreement.
- ix. **ASC Commencement Date** – The date of issuance of any Certificate of Occupancy for the Project or portion thereof, in accordance with Section 4.9 hereof.
- x. **Certificate of Occupancy** - A temporary or permanent certificate of occupancy issued by the appropriate Township official, pursuant to **N.J.S.A. 52:27D-133**, authorizing the occupancy of a building or any portion thereof.
- xi. **Days** - Whenever the word “Days” is used to denote time, it shall mean calendar days.
- xii. **Debt Service** – The amount required to make annual payments of principal and interest or the equivalent thereof on any construction mortgage, permanent mortgage or other financing including returns on institutional equity financing and market rate related party debt for the Project for the Exemption Term.

- xiii. **Default** - A breach or failure of the Township or the Entity to perform any obligation imposed by the terms of this Financial Agreement, or under the Exemption Law, beyond any applicable grace or cure periods set forth in this Financial Agreement.
- xiv. **Effective Date** – The date upon which all of the following has occurred: i) both parties have executed this Agreement; and ii) the Entity has acquired the Property.
- xv. **Entity** – Shall mean the entity specified in the preamble of this Financial Agreement, which shall be qualified as an urban renewal entity under the Exemption Law. Unless the context provides otherwise, it shall also include any Transferee, which shall also be qualified as an urban renewal entity under the Exemption Law as set forth in Section 8.1 hereof.
- xvi. **Excess Net Profits** - The amount of Net Profits that exceeds the Allowable Net Profits (ANP) for the applicable accounting period as determined in accordance with the Exemption Law.
- xvii. **Exemption Law** - Shall have the meaning specified in Section 1.1 of this Financial Agreement.
- xviii. **Exemption Term** – The period beginning on the ASC Commencement Date and ending on the Termination Date.
- xix. **Governing Body**- Shall have the meaning specified in the preamble of this Financial Agreement.
- xx. **Improvements** - Shall mean any building, structure or fixture permanently affixed to the Property to be constructed and exempt under this Agreement.
- xxi. **Land Taxes** – Shall mean the amount of real estate taxes levied on the Property, exclusive of any Improvements related thereto.
- xxii. **Land Tax Payments** – Quarterly payments made on the due dates, including approved grace periods, if any, for the Land Taxes as determined by Applicable Law.
- xxiii. **Long Term Tax Exemption** – The long term tax exemption granted in accordance with the Exemption Law pursuant to this Financial Agreement.
- xxiv. **Minimum Annual Service Charge** – 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. The Parties acknowledge and agree that 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 was \$311,399.50.
- xxv. **Net Profit** - Annual Gross Revenue (AGR) less all operating and non-operating expenses and costs of the Entity, all determined in accordance with Generally Accepted

Accounting Principles and the provisions of the Exemption Law, but: (1) there shall be included in expenses: (a) all annual service charges paid pursuant to N.J.S.A. 40A:20-12; (b) all payments to the municipality of excess profits pursuant to N.J.S.A. 40A:20-15 or N.J.S.A. 40A:20-16; (c) an annual amount sufficient to amortize the Total Project Cost and all capital costs determined in accordance with generally accepted accounting principles, of any other entity whose revenue is included in the computation of excess profits, over the term of the abatement as set forth in this Financial Agreement; (d) all reasonable annual operating expenses of the Entity and any other entity whose revenue is included in the computation of Excess Profits, including the cost of all management fees, brokerage commissions, insurance premiums, all taxes or service charges paid, legal, accounting, or other professional service fees, utilities, building maintenance costs, building and office supplies, and payments into repair or maintenance reserve accounts; (e) all payments of rent including, but not limited to, ground rent by the Entity; (f) all debt service; and (2) there shall not be included in expenses either depreciation or obsolescence, interest on debt, except interest which is part of debt service, income taxes, or salaries, bonuses or other compensation paid, directly or indirectly to directors, officers and stockholders of the Entity, or officers, partners or other persons holding any proprietary ownership interest in the Entity.

- xxvi. **Ordinance** – Shall have the meaning specified in the preamble of this Financial Agreement.
- xxvii. **Party or Parties** – Shall have the meaning specified in the preamble of this Financial Agreement.
- xxviii. **Project** - Shall have the meaning specified in the preamble of this Financial Agreement.
- xxix. **Redevelopment Area** – Shall have the meaning specified in the preamble of this Financial Agreement.
- xxx. **Redevelopment Agreement**- Shall have the meaning specified in the preamble of this Financial Agreement.
- xxxi. **Redevelopment Law** – Shall have the meaning defined in the preamble of this Financial Agreement.
- xxxii. **Redevelopment Plan** – Shall have the meaning defined in the preamble of this Financial Agreement.
- xxxiii. **Rental Units** – A unit of space within the Project designed to be used as a home or residence and made available for rent to the public.
- xxxiv. **Reserve** – Shall have the meaning defined in Section 6.2 of this Financial Agreement.

- xxxv. **Secured Party or Secured Parties** – Shall have the meaning defined in Section 8.3(a) of this Financial Agreement.
- xxxvi. **Security Arrangements** – Shall have the meaning defined in Section 8.3(a) of this Financial Agreement.
- xxxvii. **Tenant** – Any tenant of the Rental Units.
- xxxviii. **Termination Date** – The earlier to occur of (i) the thirty-fifth (35<sup>th</sup>) anniversary of the Effective Date; (ii) the thirtieth (30<sup>th</sup>) anniversary date of the ASC Commencement Date; or (iii) such other date as this Financial Agreement may terminate pursuant to the terms hereof or pursuant to Applicable Law.
- xxxix. **Total Project Cost (also referred to as “TPC”)**- The total cost of developing the Project, as calculated in accordance with Section 3(h) of the Exemption Law.
- xl. **Township** – Shall have the meaning specified in the preamble of this Financial Agreement.
- xli. **Transfer** – Shall have the meaning specified in Section 8.1 of this Financial Agreement.
- xlii. **Transferee** – Shall have the meaning specified in Section 8.1 of this Financial Agreement.

## **ARTICLE II- PROJECT AND PROPERTY**

### **Section 2.1. Township’s Findings**

Pursuant to the Exemption Law, the Township finds that the Long Term Tax Exemption granted pursuant to this Financial Agreement will benefit the Township and the community by assuring the success of the redevelopment of the Property, which has exhibited the statutorily recognized redevelopment criteria for several years. The benefits of granting the Long Term Tax Exemption will substantially outweigh the costs, if any, associated with the Long Term Tax Exemption. The Long Term Tax Exemption is important to the Township, the Entity and the Tenants because without the incentive of the Long Term Tax Exemption, it is unlikely that the Project would be undertaken. The Long Term Tax Exemption is expected to attract future occupants to the Project and it will help to offset the extraordinary costs of developing and constructing the Project. The high costs associated with the development and construction of the Project and the real estate taxes that would otherwise be levied upon the Project would operate as a disincentive to the redevelopment of the Property, and would therefore frustrate the objectives and goals of the Redevelopment Plan and would make the Project materially less competitive in the marketplace.

### **Section 2.2 Approval of Agreement**

The Township hereby approves a Long Term Tax Exemption for the Project, which is to be constructed and maintained on the Property in accordance with the terms and conditions set forth herein, the provisions of the Exemption Law, and other Applicable Law.

**Section 2.3 Approval of the Entity**

The Township hereby approves of the Entity in reliance upon the Entity's representation that its Certificate of Formation attached to the Application as **Exhibit D** contains all the requisite provisions of 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 2.4 Redevelopment of the Property**

The Entity represents that it will develop and construct the Project in accordance with the terms of the Redevelopment Agreement and the Redevelopment Plan.

**Section 2.5 Entity's Relationship to Property**

The Property is or will be owned in fee simple by the Entity.

**ARTICLE III – OWNERSHIP, MANAGEMENT AND CONTROL**

**Section 3.1 Entity's Representation**

The Entity represents that it shall remain the owner of record of the Property throughout the development and construction of same, subject to its right of Transfer in accordance with Section 8.1 hereof and the terms of the Redevelopment Agreement.

**Section 3.2 Estimated Rents**

The Entity has set forth its good faith projections of gross revenue, including rents to be generated by the Rental Units, in its Application for long term tax exemption attached and annexed to this Financial Agreement as **Exhibit B**.

**ARTICLE IV- TAX EXEMPTION**

**Section 4.1 Duration of Tax Exemption**

The Improvements proposed for development and construction within the Project shall be exempt from taxation during the Exemption Term.

**Section 4.2 Calculation of Annual Service Charge**

In consideration of the Township granting the Entity the exemption set forth in Section 4.1 of this Financial Agreement, during the Exemption Term, the Entity shall pay to the Township for municipal services supplied to the Project, as provided in the Exemption Law, an Annual Service Charge as follows:

(a) **Stage One:** From the ASC Commencement Date until the fifteenth (15<sup>th</sup>) anniversary of the ASC Commencement Date, the Annual Service Charge shall be 10% of AGR;

(b) **Stage Two:** From the first day after the fifteenth (15<sup>th</sup>) anniversary of the ASC Commencement Date until the twenty-first (21<sup>st</sup>) anniversary of the ASC Commencement Date, the Annual Service Charge shall be equal to the greater of 10% of AGR or twenty (20%) percent of the amount of the taxes otherwise due on the value of the Property and the Improvements;

(c) **Stage Three:** From the first day after the twenty-first (21<sup>st</sup>) anniversary of the ASC Commencement Date until the twenty-seventh (27<sup>th</sup>) anniversary of the ASC Commencement Date, the Annual Service Charge shall be equal to the greater of 10% of AGR or forty (40%) percent of the amount of the taxes otherwise due on the value of the Property and the Improvements;

(d) **Stage Four:** From the first day after the twenty-seventh (27<sup>th</sup>) anniversary of the ASC Commencement Date until the twenty-ninth (29<sup>th</sup>) anniversary of the ASC Commencement Date, the Annual Service Charge shall be equal to the greater of 10% of AGR or sixty (60%) percent of the amount of the taxes otherwise due on the value of the Property and the Improvements;

(e) **Final Stage:** From the first day after the twenty-ninth (29<sup>th</sup>) anniversary of the ASC Commencement Date until the thirtieth (30<sup>th</sup>) anniversary of the ASC Commencement Date, the Annual Service Charge shall be equal to the greater of 10% of AGR or eighty (80%) percent of the amount of the taxes otherwise due on the value of the Property and the Improvements.

#### **Section 4.3 Minimum Annual Service Charge**

Notwithstanding anything to the contrary in this Financial Agreement, including, without limitation, Section 4.2 hereof, the Annual Service Charge for the Project (after applying the Land Tax Credit as described at Section 4.4, below) shall not be less than the Minimum Annual Service Charge.

#### **Section 4.4 Land Tax Credit Against Respective Annual Service Charges**

The Entity, or its Transferee, shall pay the Annual Service Charge or the Minimum Annual Service Charge in accordance with the terms of this Financial Agreement. In accordance with N.J.S.A. 40A:20-12, the Entity, or its Transferee, shall be entitled to a credit against the Annual Service Charge for the amount, without interest, of the pro rata portion of the Land Tax payments made by it in the last four (4) preceding quarterly installments.

**Section 4.5 Quarterly Installments**

The Annual Service Charge or the Minimum Annual Service Charge, as the case may be, shall be paid in quarterly installments on those dates when ad valorem real estate tax payments on other properties within the Township are due, subject to adjustment for over payment or underpayment within thirty (30) days after the close of each calendar year.

**Section 4.6 Rights and Obligations Related to Long Term Tax Exemption**

(a) All Annual Service Charge or Minimum Annual Service Charge payments, as the case may be, made pursuant to this Financial Agreement shall be in lieu of taxes and the Township shall have the rights and remedies of tax enforcement granted to a municipality by Applicable Law, including those of in rem tax foreclosure pursuant to N.J.S.A. 54:5-1, just as if said payments constituted regular real property tax obligations on other real properties within the Township.

(b) If the ASC Commencement Date occurs on a date other than the last day of a quarter, the amount of the ASC for such period shall be based on the per diem assessment for such quarter.

(c) Any lease of a Rental Unit to a Tenant shall be subject to the terms of this Financial Agreement and shall not require the consent or approval of the Township. Upon the lease of the subject Rental Unit, the Entity, or the Tenant, if required by the terms of its lease agreement, shall be responsible for the payment of the applicable Annual Service Charge or Minimum Service Charge calculated pursuant to this Financial Agreement.

**Section 4.7 Remittance to County**

The Township shall remit to the County of Essex five percent (5%) of the Annual Service Charge received each year from the Entity, pursuant to N.J.S.A. 40A:20-12(b)(2)(e).

**Section 4.8 Administrative Fee**

The Entity shall pay to the Township no later than December 31 of each year an administrative fee in an amount equal to one percent of the Annual Service Charge for that year, which is permitted by N.J.S.A. 40A:20-9.

**Section 4.9 Payments During Construction**

The parties agree that to the extent property taxes are due from time to time in accordance with Applicable Law, from the Effective Date until the ASC Commencement Date, the Entity shall pay 1) the Land Taxes and 2) until asbestos remediation commences, conventional taxes on the Improvements existing on the date of this Agreement. (In other words, once asbestos remediation commences, such Improvements shall be excluded from calculation of the property tax assessment on the Project.) Subject to Force Majeure, demolition shall be completed on or the date which is twelve (12) months from commencement of asbestos remediation. Upon

issuance of any Certificate of Occupancy for the Project, the ASC Commencement Date shall occur, and the Entity shall thereupon solely pay Land Taxes and Annual Service Charge calculated based on the Annual Gross Revenue derived from that portion of the Project for which a Certificate of Occupancy has been issued ("Portion"). The Annual Service Charge paid with respect to such Portion shall be in lieu of the conventional taxes which would otherwise be imposed pursuant to a partial assessment on such Portion. In accordance with Applicable Law, payment of Land Taxes shall be credited against the Annual Service Charge once the Annual Service Charge has commenced.

## **ARTICLE V- DISPUTE RESOLUTION**

### **Section 5.1 Agreement to Arbitrate**

If the Township or the Entity breaches this Financial Agreement, or a dispute arises between the Parties regarding the terms and provisions set forth herein, then the Parties shall submit the dispute to the American Arbitration Association in the State of New Jersey, to be resolved in accordance with its rules and regulations in such fashion as to accomplish the purposes of the Exemption Law and this Financial Agreement. The costs of arbitration shall be borne equally by the Parties involved in the arbitration. The award rendered by the arbitrator(s) shall be final, and judgment may be entered upon it in accordance with Applicable Law in any court having jurisdiction. Notwithstanding anything to the contrary set forth in this Agreement, and in accordance with Section 4.6(a), above, the Township shall be entitled to collect any overdue payments of Land Taxes or Annual Service Charge in the same manner as it collects overdue payments of generally applicable real estate taxes, and shall not be required to submit such matters to arbitration.

### **Section 5.2 Covenant to Make Payments**

The Entity agrees that the timely payment of the Land Taxes, and the Minimum Annual Service Charge or the Annual Service Charge, to the Township, as well as continued compliance with the Applicable Laws, are material conditions of this Financial Agreement. The failure to make any of the aforesaid payments in timely fashion shall constitute both a breach of this Financial Agreement and a tax payment delinquency under Applicable Law.

### **Section 5.3 Notification of Breach Required**

Other than with respect to the nonpayment of Land Taxes, Annual Service Charge or Minimum Annual Service Charge (any of the foregoing a "Payment Default"), the Township shall notify the Entity in writing of any breach relating to the terms of this Financial Agreement. If the Entity fails to cure a Payment Default within thirty (30) days of its occurrence, or a breach identified within thirty (30) Days after the actual delivery of such notice by the Township, or within any additional periods to which the Parties may agree to, in writing, the Township may move to invalidate the Long Term Tax Exemption upon thirty (30) Days final written notice to the Entity, which shall inform the Entity that the Long Term Tax Exemption shall terminate due to the breach of the terms of this Financial Agreement. The Township shall not unreasonably

refuse to grant a reasonable extension of the cure period, not to exceed one hundred twenty (120) days after the Notice unless the Township in its sole discretion shall agree to a longer cure period.

#### **Section 5.4 Township's Remedies Upon Default**

The Township's remedies upon its declaration of default shall be cumulative and concurrent. No determination under this Financial Agreement shall deprive the Township of its right to proceed against the Entity for the nonpayment of the applicable Land Taxes, Minimum Annual Service Charge or Annual Service Charge, as the case may be, including any arrearage that would accrue in the absence of such determination.

#### **Section 5.5 Force Majeure**

Neither Party shall be liable to the other for failure to perform its obligations under this Agreement due to causes that are beyond the reasonable control and not substantially due to the fault or negligence of the party seeking to excuse delay or failure of performance of an obligation hereunder by reason thereof, including, but not limited to, declarations of public emergency; acts of nature (as to weather-related events, limited to severe and unusual events or natural occurrences such as hurricanes, tornadoes, earthquakes, and floods); acts of the public enemy; acts of terrorism; acts of war; fire; epidemics; quarantine restrictions; blackouts, power failures, or energy shortages; governmental embargoes; strikes or similar labor action by equipment or material suppliers or transporters, or unavailability of necessary building materials. Notwithstanding the foregoing, the payment of Land Taxes, Annual Service Charge and Minimum Annual Service Charge are Material Conditions of this Agreement which shall not be excused by the occurrence of a Force Majeure event.

## ARTICLE VI- LIMITATION ON PROFITS

### **Section 6.1 Entity's Covenant of Limitation on Profits**

During the Exemption Term, the Entity's profits shall be limited, according to the provisions of the Exemption Law and the definitions set forth therein. In accordance with Section 15 of the Exemption Law, for any period, taken as one accounting period, commencing on the ASC Commencement Date, and terminating at the end of the last full fiscal year of the Exemption Term, in which the Entity's Net Profits exceed the Allowable Net Profit, the Excess Net Profits shall be paid to the Township as an additional Annual Service Charge within One Hundred Twenty (120) Days of the close of the Entity's fiscal year.

### **Section 6.2 Permitted Reserves**

In accordance with Section 15 of the Exemption Law, during the term of this Financial Agreement, the Entity may maintain a separate reserve against vacancies, unpaid rents and other contingencies in an amount not to exceed ten (10%) percent of the Entity's Annual Gross Revenues (AGR) for the last full fiscal year and the Entity may retain such part of the Excess Net Profits as is necessary to eliminate any deficiency in that reserve as provided in the Exemption Law (hereinafter referred to as the "Reserve").

## ARTICLE VII- TERMINATION OF AGREEMENT AND INSPECTIONS

### **Section 7.1 Voluntary Termination of the Financial Agreement by Entity**

Pursuant to the Exemption Law, the Entity or any Transferee may at any time after the expiration of one (1) year from the ASC Commencement Date, notify the Township that, as of a certain date designated in the notice, it relinquishes its status as an urban renewal entity under the Exemption Law and that the Entity, or Transferee, has obtained the consent of the Commissioner of the Department of Community Affairs, if required by Applicable Law. As of that date, all of the obligations and requirements contained in this Financial Agreement shall terminate. Notwithstanding the foregoing, such relinquishment shall not impact the obligation of the Entity or the Transferee, as applicable, to make payment of any Land Taxes, Annual Service Charge, or Minimum Annual Service Charge that has accrued up to and including the date of Termination, or the obligation of the Entity or the Transferee, as applicable, to perform the final accounting required by the Exemption Law and Section 7.2 below.

### **Section 7.2 Termination and Final Accounting**

Within Ninety (90) Days after the Termination Date, whether by affirmative action of the Entity or by virtue of the provisions of the Applicable Law or pursuant to the terms of this Financial Agreement, the Entity shall provide a final accounting and pay to the Township the Reserve, if any, pursuant to N.J.S.A. 40A:20-15, as well as any Excess Net Profits, if any payable as of that date. For purposes of rendering a final accounting, the termination of the Financial Agreement shall be deemed to be the end of the fiscal year for the Entity.

### **Section 7.3 Taxes After Termination Date**

After the Termination Date, the Long Term Tax Exemption shall expire, and the relevant portion of the Property and the Improvements constructed thereupon shall thereafter be assessed and conventionally taxed according to Applicable Law as other real property in the Township.

### **Section 7.4 Rights of Inspection**

Pursuant to a written request, the Entity shall authorize the Township or its representatives to examine the Entity's contracts, records and documents, related to the Project. Such examination shall be made during reasonable business hours, in the presence of a member or agent of the Entity. The Parties agree that Ten (10) Days written notice shall constitute a reasonable request for inspection. Notwithstanding the foregoing, the Entity may request an extension of time for such examination, up to ten (10) Days. Except to the extent required by Applicable Law, all information and documentation provided hereunder shall remain confidential and not subject to public disclosure.

## **ARTICLE VIII- SALE OR LEASE OF PROJECT**

### **Section 8.1 Conveyance of Project**

The Township and the Entity acknowledge and agree that the Entity shall have the right to transfer the Project to another urban renewal entity, qualified and organized under the Exemption Law (hereinafter referred to as a "Transferee"), provided such Transferee owns no other project subject to the Exemption Law at the time of the transfer, and provided that the Transferee assumes the Entity's obligations under this Financial Agreement (a "Transfer"), provided however that any such Transfer shall comply with the provisions of Article 3 of the Redevelopment Agreement, to the extent that such provisions apply at the time of Transfer. A Transfer under this Section 8.1 shall not include the leasing of any Rental Units to any third-party. Upon a Transferee's assumption of the Entity's obligations under this Financial Agreement, the Long Term Tax Exemption shall continue to the benefit of the Transferee and any of its Transferees.

### **Section 8.2 Obligations of Entity and Transferee After Conveyance**

If the Entity Transfers the Project to a Transferee pursuant to Section 8.1 hereof, then the Entity shall be absolutely discharged from any further obligations regarding the Project and shall be qualified to undertake another project pursuant to the Exemption Law. Within ninety (90) Days after the date of a Transfer, the Entity shall pay to the Township any Reserve maintained by it pursuant to this Financial Agreement, as well as any Excess Net Profits payable to the Township pursuant to this Financial Agreement and the Exemption Law.

### **Section 8.3 Collateral Assignment**

It is expressly understood and agreed that the Entity has the right to encumber and/or assign the fee title to the Property and/or Improvements for purposes of (i) financing the design, development and construction of the Project and (ii) permanent mortgage financing.

(a) The Township acknowledges that the Entity and/or its affiliates intend to obtain secured financing in connection with the acquisition, development and construction of the Project. The Township agrees that the Entity and or its affiliates may, subject to compliance with Article 7 of the Redevelopment Agreement and the Exemption Law, assign, pledge, hypothecate or otherwise transfer its rights under this Agreement and/or its interest in the Project to one or more secured parties or any agents therefore (each, a "Secured Party" and collectively, the "Secured Parties") as security for obligations of the Entity, and/or its affiliates, incurred in connection with such secured financing (collectively, the "Security Arrangements"). The Entity shall give the Township 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 Township hereunder to provide any notice of Default or notice of intent to enforce its remedies under this Agreement.

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

(c) Subject to compliance with Article 3 and Article 7 of the Redevelopment Agreement, in the absence of a Default by the Entity, the Township agrees to consent to any collateral assignment by the Entity to any Secured Party or Secured Parties of its interests in this Agreement and to permit each Secured Party to enforce its rights hereunder and under the applicable Security Arrangement and shall, upon request of the Secured Party, execute such documents as are typically requested by secured parties to acknowledge such consent. This provision shall not be construed to limit the Township'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 IX- ENTITY'S COVENANTS AND REPRESENTATIONS**

### **Section 9.1 Management and Operation**

Subject to its right to Transfer pursuant to Section 8.1 of this Financial Agreement, the Entity represents and covenants that the Entity will manage the Project or will contract with a third party management company. The Entity shall be free to enter into leases for the Rental Units, without the consent of the Township.

### **Section 9.2 Computation of Gross Revenue**

The Entity shall calculate the Annual Gross Revenue in accordance with the Exemption Law and this Financial Agreement and the computation of Annual Gross Revenue shall be shown on the Entity's Annual Audit Statement.

### **Section 9.3 Annual Audit Report**

For so long as the Entity owns the Project and within ninety (90) Days after the close of each fiscal or calendar year (depending on the Entity's accounting basis) that this Financial Agreement shall continue in effect, the Entity shall submit to the Mayor of the Township, the Governing Body and the New Jersey Division of Local Government Services within the New Jersey Department of Community Affairs, its Annual Audited Statement for the preceding fiscal or calendar year in accordance with the Exemption Law. The report shall clearly identify and calculate the Net Profit for the Entity during the previous fiscal year. The Entity assumes all costs associated with preparation of the Annual Audited Statements. Except to the extent required by Applicable Law, all financial information provided hereunder shall remain confidential and not subject to public disclosure.

### **Section 9.4 Total Project Cost Audit**

Within ninety (90) days after a final Certificate of Occupancy is issued for the Project, the Entity shall submit to the Mayor and Governing Body, an audit of Total Project Cost, certified as to actual construction costs by the Entity's architect.

## **ARTICLE X - MISCELLANEOUS PROVISIONS**

### **Section 10.1 Governing Law**

This Financial Agreement shall be governed by the provisions of Applicable Law including but not limited to the Exemption Law.

### **Section 10.2 Oral Representation**

Neither Party hereto has made any oral representation that is not contained in this Financial Agreement. This Financial Agreement and the Application, including all of the Exhibits attached and annexed thereto, constitute the entire Financial Agreement by and between the Parties.

### **Section 10.3 Modification**

There shall be no modification of this Financial Agreement except by virtue of a written instrument executed by and between both Parties.

### **Section 10.4 Notices**

All notices required hereunder shall be sent by certified mail, return receipt requested, or by recognized overnight courier, with proof of delivery, addressed as follows:

a) When sent by the Township to the Entity:

Maplewood Urban Renewal, L.L.C.  
517 Route One South  
Fifth Floor - Suite 5500  
Iselin, New Jersey 08830  
Attention: Ronald S. Ladell

with copies to:

AvalonBay Communities, Inc.  
51 Sleeper Street, Suite 750  
Boston, Massachusetts 02210  
Attention: William McLaughlin, Executive Vice President

AvalonBay Communities, Inc.  
Ballston Tower  
671 N. Glebe Road, Suite 800  
Arlington, Virginia 22203  
Attention: General Counsel

Carl Kempf, Esq.  
6 Hampshire CT  
Springfield, NJ 07081

b) When sent by the Entity to the Township:

Honorable Mayor Victor De Luca  
Township of Maplewood  
574 Valley Street  
Maplewood Township, New Jersey 07040

with copies to:

Roger Desiderio, Esq.  
Bendit Weinstock, P.A.  
80 Main Street  
West Orange, New Jersey 07052

Jennifer L. Credidio, Esq.  
McManimon, Scotland & Baumann, LLC  
75 Livingston Avenue, 2<sup>nd</sup> Floor  
Roseland, New Jersey 07068

In addition, if the Entity delivers formal written notice to the Township in accordance with this Agreement, of the name and address of Entity's mortgagee, then the Township shall provide such mortgagee with a copy of any notice required to be sent to the Entity. Any notice given by an attorney for a party shall be effective for all purposes.

#### **Section 10.5 Severability**

If any term, covenant or condition of this Financial Agreement shall be judicially declared to be invalid or unenforceable, the remainder of this Financial Agreement or the application of such term, covenant or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term, covenant or condition of this Financial Agreement shall be valid and be enforced to the fullest extent permitted by Applicable Law.

If any portion of this Financial Agreement shall be judicially declared to be invalid and unenforceable and provided that a default has not been declared pursuant to this Financial Agreement, the Parties shall cooperate with each other to take the actions reasonably required to restore the Financial Agreement in a manner contemplated by the Parties, including, but not limited to the authorization and amendment of this Financial Agreement in a form reasonably drafted to effectuate the original intent of the Parties.

#### **Section 10.6 Good Faith**

The Entity and the Township agree to act in good faith in all of their dealings with each other.

#### **Section 10.7 Certification**

The Township Clerk shall certify to the Township Tax Assessor, pursuant to the Exemption Law, that this Financial Agreement entered into by the Township and the Entity has been entered into and is in effect pursuant to the Exemption Law. The delivery by the Township Clerk to the Township Tax Assessor of a certified copy of the Ordinance shall constitute the required certification. Upon the delivery of the certification as required hereunder, the Township Tax Assessor shall implement the Long Term Tax Exemption and continue to enforce the Long Term Tax Exemption without further certification by the Township Clerk until the Termination Date. Further, upon the adoption of this Financial Agreement, the Ordinance shall be transmitted to the Director of the Division of Local Government Services State of New Jersey Department of Community Affairs by the Township Clerk.

#### **Section 10.8 Exhibits**

This Financial Agreement in its proposed form appears as an attachment to the Application for Long Term Tax Exemption as **Exhibit B**. This Financial Agreement along with each Exhibit attached and annexed hereto is incorporated into the Application.

**Section 10.9 Recording**

This Agreement, or a memorandum of this Agreement, may be filed and recorded with the Essex County Register by the Entity, and same may be discharged by the Entity or the Township upon the Termination Date.

**Section 10.10 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 10.11 Estoppel Certificate**

Within thirty (30) days following written request therefore by the Entity, or any mortgagee, purchaser, tenant or other party having an interest in the Project, the Township shall issue a signed estoppel certificate in reasonable form stating that (i) this Financial Agreement is in full force and effect, (ii) to the best of the Township's knowledge, no default has occurred under this Agreement (nor any event which, with the passage of time and/or the giving of notice would result in the occurrence of a default) or stating the nature of any default, and (iii) stating any such other reasonable information as may be requested. In the event the estoppel certificate discloses a default, it shall also state the manner in which such default may be cured.

*[Signature Page Follows]*

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

**MAPLEWOOD URBAN RENEWAL, LLC,**  
a Delaware limited liability company

By: AvalonBay Communities, Inc., its sole member

By: \_\_\_\_\_  
Name: Ronald S. Ladell  
Title: Senior Vice President

**TOWNSHIP OF MAPLEWOOD**

\_\_\_\_\_  
Victor De Luca, Mayor

ACKNOWLEDGEMENT

STATE OF                    )  
                                  )  
COUNTY OF                )        SS.:

Be it remembered that on the \_\_\_\_ day of \_\_\_\_\_, 2015, Ronald S. Ladell personally appeared before me, and this person acknowledged under oath, to my satisfaction that:

- (a) he is the Senior Vice President of AvalonBay Communities, Inc., the sole member of Maplewood Urban Renewal, LLC, the limited liability company named as Entity in the attached Financial Agreement;
- (b) he is authorized to execute the attached Financial Agreement on behalf of the Entity;
- (c) he executed the attached Financial Agreement on behalf of and as the act of the Entity; and
- (d) the attached Financial Agreement was signed and made by the Entity as its duly authorized and voluntary act.

\_\_\_\_\_

ACKNOWLEDGEMENT

STATE OF                    )  
                                  )  
COUNTY OF                )        SS.:

Be it remembered that on the \_\_\_\_\_, day of \_\_\_\_\_, 2015, Victor De Luca personally appeared before me, and this person acknowledged under oath, to my satisfaction that:

- (a) he is the Mayor of the Township of Maplewood New Jersey, the Township in the attached Financial Agreement;
- (b) he is authorized to execute the attached Financial Agreement on behalf of the Township;
- (c) he executed the attached Financial Agreement on behalf of and as the act of the Township; and
- (d) the attached Financial Agreement was signed and made by the Township as its duly authorized and voluntary act.

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**EXHIBIT A – PROPERTY DESCRIPTION**

[Exhibit A to the Application, which is on file with the Township Clerk.]

**EXHIBIT B – APPLICATION**

[On file with the Township Clerk.]

**EXHIBIT C – ORDINANCE**

[The pending ordinance to which this form of Agreement is attached.]

**EXHIBIT D – CERTIFICATE OF FORMATION**

[On file with the Township Clerk.]