

FINANCIAL AGREEMENT

By and Between

THE TOWNSHIP OF PARSIPPANY-TROY HILLS

and

AR AT PARSIPPANY URBAN RENEWAL, LLC

Dated: _____

THIS FINANCIAL AGREEMENT, (the “Agreement” or “Financial Agreement”) made this ____ day of _____, 2023, by and between **AR at Parsippany Urban Renewal, LLC** (“Entity”), a limited liability company organized under the laws of the State of Delaware, and an urban renewal entity recognized in the State of New Jersey, having its principal office at 1430 U.S. Highway 206, Bedminster, New Jersey 07921; and the Township of Parsippany-Troy Hills, a Municipal Corporation in the County of Morris and the State of New Jersey, having its principal office at 1001 Parsippany Blvd, Parsippany, New Jersey 07054 (the “**Township**”; and together with the Entity, the “**Parties**” or “**Party**”).

RECITALS

WITNESSETH

WHEREAS, the Entity is a limited liability company organized under the laws of the State of Delaware, and an urban renewal entity recognized in the State of New Jersey, having its offices at 1430 U.S. Highway 206, Bedminster, New Jersey 07921, and also the designated Redeveloper of a designated redevelopment area within the Township located at Block 737, Lot 3, as shown on the Official Tax Map of the Township of Parsippany-Troy Hills, also known as 249 Pomeroy Road, and more particularly described by the metes and bounds description set forth as **Exhibit A** to this Agreement (“**Redevelopment Area**” and/or “**Property**”), duly designated by Resolution No. R2023-066, for which the Township adopted the Redevelopment Plan on October 17, 2023 pursuant to Ordinance 2023:21 (“**Redevelopment Plan**”); and

WHEREAS, the Entity has been formed with the intention that the Entity redevelop the Property with the development and construction of a warehouse building and related improvements and amenities (the “**Project**”) within the Redevelopment Area as described herein; and

WHEREAS, the Entity filed an Application for a Financial Agreement with the Township, a copy of which is attached hereto as **Exhibit B** (“**Application**”), in accordance with N.J.S.A. 40A:20-8, pursuant to the Law and this Financial Agreement between the Entity and the Township, seeking approval of this Financial Agreement providing for exemption from municipal taxation for the Project and for payment in lieu of taxes of an Annual Service Charge; and

WHEREAS, the Application is in furtherance of the Ordinance authorizing the execution of this Financial Agreement, a copy of which is attached hereto as **Exhibit C** (“**Ordinance**”); and

WHEREAS, the Township has made the following findings:

1. The Project will result in substantial benefit to the community by alleviating existing blight conditions of the Redevelopment Area and providing a range of benefits to the public;
2. Consistent with the Redevelopment Plan, the Project will further the Redevelopment Plan objectives and contribute to the economic growth of the

- Township in general and specifically the Redevelopment Area;
3. The aforesaid benefits of the Project exceed the cost, if any, associated with granting the tax exemption provided by this Agreement; and
 4. The assistance provided by this Agreement is a significant and critical inducement to the Entity to proceed with the Project.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, and for other good and valuable consideration, it is mutually covenanted and agreed as follows:

ARTICLE 1

GENERAL PROVISIONS

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

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

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

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

(c) **Annual Service Charge** - The amount the Entity has agreed to pay pursuant Section 4.2 of this Agreement, which shall be prorated in the year in which the Annual Service Charge begins and the year in which the Annual Service Charge terminates. The Annual Service Charge shall commence as of the date on or after the Annual Service Charge Start Date that the Annual Service Charge exceeds the Minimum Annual Service Charge.

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

(e) **Applicable Laws** - All applicable Federal, State and local laws, ordinances, approvals, rules, regulations and requirements, including, but not limited to, the Ordinance, the

Redevelopment Law, the Long Term Tax Exemption Law, relevant construction codes including construction codes governing people with disability, and such zoning, sanitary, pollution and other environmental safety ordinances, laws and such rules and regulations thereunder.

(f) Application - the application that the Entity filed with the Township in accordance with N.J.S.A. 40A:20-8 of the Law, seeking approval of an urban renewal project pursuant to the Law and this Agreement, a copy of which Application is attached hereto as **Exhibit B**.

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

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

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

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

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

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

(m) Improvements - Any building, structure or fixtures which are permanently affixed to the Land as part of the Project and become incorporated therein, which improvements are recognized and exempted from taxation under this Agreement.

(n) Interim Tax Payments During Construction – For the period commencing with the signing of this Agreement and ending with the date upon which the Township issues the final Certificate of Occupancy of the completed Project the Entity shall remit the quarterly sum of \$_____, which the parties agree constitutes the appropriate total ad valorem taxation on the land and improvements of the Property during construction.

(o) Gross Revenue – Annual gross revenue or gross shelter rent or annual gross rents, as appropriate, and other income, for the Entity, in accordance with N.J.S.A. 40A:20-3(a).

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

- (q) Interest Holders - As defined in Section 5.2.3 hereof.
- (r) Land – The real property, but not the Improvements, known as Block 737, Lot 3 as set forth on the tax maps of the Township, and more particularly described by the metes and bounds description set forth as **Exhibit A** to this Agreement.
- (s) Land Taxes - The amount of conventional real estate taxes assessed on Land (but not the Improvements) during the term of this Agreement.
- (t) Land Tax Payments - Payments made on the quarterly due dates for Land Taxes as determined by the Tax Assessor and the Tax Collector.
- (u) Minimum Annual Service Charge - The amount of the total taxes levied against the Land and existing improvements in the last full tax year in which the Land and existing improvements were subject to taxation.
- (v) Net Profit - The Gross Revenue of the Entity less all operating and non-operating expenses of the Entity, all determined in accordance with generally accepted accounting principles and the provisions of N.J.S.A. 40A:20-3(c). Included in expenses shall be an amount sufficient to amortize the Total Project Cost over the life of the Project, which period the Parties agree is 30 years, pursuant to the Law.
- (w) Notice of Termination - As defined in Section 10.1 hereof.
- (x) Pronouns - He or it shall mean the masculine, feminine or neuter gender, the singular, as well as the plural, as the context requires.
- (y) Secured Party(ies) - As defined in Section 7.1.3(a) hereof.
- (z) Security Arrangements - As defined in Section 7.1.3(a) hereof.
- (aa) Substantial Completion - The date upon which the Township issues the Certificate of Occupancy.
- (bb) 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 in accordance with N.J.S.A. 40A:20-9g. Upon termination or expiration, all affected property shall be assessed and subject to taxation as are other taxable properties in the Township. After termination or expiration, restrictions and limits on the Entity shall terminate upon the Entity's rendering a final accounting to and with the Township pursuant to N.J.S.A. 40A:20-12.
- (cc) Total Project Cost or Total Project Unit Cost - The Entity's good faith estimate of the total cost of constructing the Project through the date of issuance of a Certificate of Occupancy for the entire completed Project, as more specifically defined in N.J.S.A. 40A:20-3h, consisting of, and limited to, the categories of costs set forth in **Exhibit D** annexed, subject to those exclusions from Total Project Cost set forth in **Exhibit D**, which estimated calculations and exclusions have been approved by the Township and the Entity.

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

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

ARTICLE 2
APPROVAL OF AGREEMENT, USE, OPERATION, MANAGEMENT
AND FINANCIAL PLAN OF PROJECT

2.1 **Approval of Agreement.** Upon approval of this Agreement by the Township's governing body in accordance with applicable law, the Township hereby grants its approval of this Agreement for the Project that is to be constructed and maintained in accordance with the terms and conditions set forth herein and the provisions of the Law. The Project shall be constructed on the Land.

2.2 **Approval of the Entity.** Approval hereunder is granted to the Entity for the Project, which Entity shall substantially comply and conform in all material respects to all applicable statutes of the State of New Jersey, lawful regulations, and local ordinances made pursuant thereto, governing land, buildings and the use thereof.

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

2.4 **Financial Plan**

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

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

ARTICLE 3
DURATION OF AGREEMENT

3.1 **Term.** So long as there is compliance with the Law and this Agreement, it is understood and agreed by the Parties hereto that this Agreement shall be fully performed by the Parties hereto for the lessor of 30 years from the Annual Service Charge Start Date, and in no event more than allowable pursuant to N.J.S.A. 40A:20-13.

ARTICLE 4
EXEMPTION AND ANNUAL SERVICE CHARGE

4.1 **Exemption.** The Township agrees that the Project (but not the Land) shall be exempt from real property taxation, as provided in the Law, from the date of Substantial Completion to and through the date that is 30 years from the date of Substantial Completion, consistent with Section 3.1 above. Prior to the Annual Service Charge Start Date, the Entity shall remit the Interim Tax Payments During Construction as set forth in Section 1.2(o) of this Agreement.

4.2 **Annual Service Charge**

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

(b) The Annual Service Charge shall first begin to accrue on the Annual Service Charge Start Date. In the event the Entity fails to timely pay the Annual Service Charge, the amount unpaid shall bear the highest rate of interest permitted in the case of unpaid taxes or tax liens on the land until paid, and the Township shall have the same rights and remedies to collect such charges as provided by law for collection of general municipal taxes.

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

(d) Pursuant to N.J.S.A. 40A:20-12, the Annual Service Charge for the Project is calculated at 10% of Annual Gross Revenues for years 1-20 years; 11% for years 21-25; and 11.5% for years 26-30, commencing from the Annual Service Charge Start Date.

4.3 **Schedule of Staged Adjustments to Annual Service Charge.** Notwithstanding the foregoing, in any given year the Annual Service Charge shall be subject to the staged increases required under N.J.S.A. 40A:20-12(b)(2) as described herein, the Annual Service Charge shall be the greater of 4.2(d) above or:

4.3.1 Stage One: Commencing on the Annual Service Charge Start Date, and for each of the 14 years thereafter, the Annual Service Charge shall be the amount established in accordance with Section 4.2 of this Agreement;

4.3.2 Stage Two: Commencing upon the end of Stage One as defined above, and continuing for the next 6 years, the Annual Service Charge (if applicable) shall be the greater of (i) the amount established in accordance with Section 4.2 or (ii) 20% percent of the amount of real estate taxes otherwise due on the value of the Land and Improvements;

4.3.3 Stage Three: Commencing upon the end of Stage Two as defined above, and

continuing for the next 3 years, the Annual Service Charge (if applicable) shall be the greater of (i) the amount established in accordance with Section 4.2 or (ii) 40% percent of the amount of real estate taxes otherwise due on the value of the Land and Improvements;

4.3.4 **Stage Four:** Commencing upon the end of Stage Three as defined above, and continuing for the next 1 year, the Annual Service Charge (if applicable) shall be the greater of (i) the amount established in accordance with Section 4.2 or (ii) 60% percent of the amount of real estate taxes otherwise due on the value of the Land and Improvements;

4.3.5 **Stage Five:** Commencing upon the end of Stage Four as defined above, and continuing until the end of the Term (as defined in Section 3.1 above) of this Agreement, the Annual Service Charge (if applicable) shall be the greater of (i) the amount established in accordance with Section 4.2 or (ii) 80% percent of the amount of real estate taxes otherwise due on the value of the Land and Improvements.

4.4 **Quarterly Installments.** The Entity expressly agrees that the Annual Service Charge shall be billed in quarterly installments on those dates when real estate tax payments are due, *i.e.*, February 1, May 1, August 1, and November 1; subject nevertheless to adjustment for over or underpayment within 30 days after close of each fiscal or calendar year, as the case may be.

4.5 **Land Tax Credit.**

(a) The Entity, or its Transferee, shall pay the Annual Service Charge or the Minimum Annual Service Charge, as applicable, in accordance with the terms of this Financial Agreement. The Entity is required to pay both the Annual Service Charge and the Land Tax Payments. The Entity is obligated to make timely Land Tax Payments, including any tax on the pre-existing improvements, in order to be entitled to a Land Tax Payment credit against the Annual Service Charge for the subsequent year. 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 in the last four (4) preceding quarterly installments.

(b) In the event the exemption of the Land authorized under N.J.S.A. 40A:20-12 and this Financial Agreement is invalidated by a court of competent jurisdiction, the Parties agree that this Financial Agreement shall remain valid and in full force and effect, and shall be reformed to provide that Land Taxes are assessed on the Land. In such case, the payment for Land Taxes shall be applied as a credit against the Annual Service Charge for the subsequent year. In any year that the Entity fails to make any Land Tax Payments when due and owing, such delinquency shall render the Entity ineligible for any land tax credits against the Annual Service Charge.

(c) In the event the exemption of the Land authorized under N.J.S.A. 40A:20-12 and this Financial Agreement is invalidated as described in Section 4.5(b) hereof, all Land Taxes shall be separately assessed for the Land, and shall be assessed only on the Land without regard to any improvements or increase in value to the Land because of the improvements. In such event, the Entity will be required to make payment of both the Annual Service Charge and the Land Tax Payments. The Entity will be required to pay the full Land Tax Payments in any given year, and no credits will be applied against the Annual Service Charge for partial payment of the Land Taxes.

The Entity's failure to make the requisite Annual Service Charge payment and/or the requisite Land Tax Payment, if any and as applicable, in a timely manner shall constitute a violation and breach of this Financial Agreement. The Township shall, among its other remedies, have the right to proceed against the Land pursuant to the Tax Sale Law and/or declare a Default under this Financial Agreement upon sixty (60) days written notice to the Entity.

4.6 **Terms of Financial Agreement Shall Control**

The Township and the Entity hereby agree that the terms and conditions of this Financial Agreement shall control all matters pertaining to the calculation of the Annual Service Charge, notwithstanding any contrary provision of any other documents or agreements which may exist in connection with the Project.

4.7 **Administrative Fee**

In addition to the Annual Service Charge, pursuant to N.J.S.A. 40A:20-9, the Township shall charge the Entity and the Entity shall pay an annual administrative fee (the "Annual Administrative Fee") in an amount equal to two percent (2%) of the Annual Service Charge. The Annual Administrative Fee shall be due on or before November 1 in each year following the Annual Service Charge Start Date.

ARTICLE 5 **ANNUAL REPORTS**

5.1 **Accounting System.** The Entity agrees to maintain a system of accounting and internal controls established and administered in accordance with Generally Accepted Accounting Principles and pursuant to the Law.

5.2 **Periodic Reports**

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

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

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

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

5.3 **Inspection.** The Entity shall permit the inspection of its property, equipment, buildings and other facilities of the Entity and shall also permit, upon request, examination and audit of its books, contracts, records, documents and papers by duly authorized representatives of the Township and the State of New Jersey. Such examination or audit shall be made upon no less than 7 days written notice during regular business hours, in the presence of an officer or agent designated by the Entity. To the extent reasonably possible, the examination, inspection or audit will not materially interfere with the construction or operation of the Project.

ARTICLE 6

LIMITATION OF PROFITS AND RESERVES

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

The Entity shall have the right to establish a reserve against vacancies, unpaid rentals, and reasonable contingencies in an amount up to ten percent (10%) of the Annual Gross Revenues of the Entity for the last full fiscal year preceding the year and may retain such part of the excess Net Profits as is necessary to eliminate a deficiency in that reserve, as provided in N.J.S.A. 40A:20-15. The reserve shall be noncumulative.

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

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

6.3 **Payment of Reserve/Excess Net Profit Upon Termination, Expiration or Sale.** The date of the termination of this Agreement, expiration of this Agreement or the sale of the

Project shall be considered to be the close of the fiscal year of the Entity. Within 90 days after such date, the Entity shall pay to the Township the amount of the reserves, if any, maintained by it pursuant to this Section and the excess Net Profit, if any. Upon termination or expiration, all affected property shall be assessed and subject to taxation as are other taxable properties in the Township. After termination or expiration, restrictions and limits on the Entity shall terminate upon the Entity's rendering a final accounting to and with the Entity pursuant to N.J.S.A. 40A:20-12.

ARTICLE 7
ASSIGNMENT AND/OR ASSUMPTION

7.1 **Approval.** Except with the Township's written consent, as set forth in Section 7.1.1 hereof, the Entity may not sell, convey, grant, bargain, assign, or otherwise transfer its interest in the Project, or any part thereof, or any direct or indirect interest in the Entity, or permit the Project, or any part thereof, to be sold, conveyed, granted, bargained, assigned, or otherwise transferred, except for the transfer of ownership interest in the Entity to any affiliate of the Entity, or related entity or affiliate, to which transfer the Township hereby consents, as set forth in Section 7.1.1 herein, subject to the conditions set forth therein. Notwithstanding anything to the contrary in this Section, (i) a transfer of ownership interests that occurs by inheritance, devise or bequest or by operation of law to the spouse, child, grandchild, or other descendants of Interest Holders, or a trust established for the benefit of such a spouse, child, grandchild, or other descendants; or ii) a conveyance to the ultimate users or tenants of any portion of the Project or the Improvements constructed as a component of the Project shall not be a violation of this restriction.

7.1.1 It is understood and agreed that the Township, on written application by the Entity, shall not unreasonably withhold, delay or condition its written consent to a transfer of the Project authorized by the Law, or any interest therein, and the assignment of all of the Entity's right, title and interest in and to this Agreement, to an entity eligible to operate under the Law, owning no other "project," as this term is defined in the Law, provided the Entity is not in Default regarding any performance required of it hereunder, full compliance with the Law has occurred, and the Entity's obligations under its Agreement with the Township are fully assumed by the transferee.

7.1.2 Notwithstanding anything to the contrary herein, Entity shall have the right to assign its rights and obligations hereunder to an entity of Entity's choosing following issuance of a Certificate of Occupancy for the Project without further notice to, or consent from, the Township.

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

(a) The Township acknowledges that the Entity and/or Transferees intend to obtain secured financing. The Township agrees that the Entity and/or its Transferees may assign, pledge, hypothecate, or otherwise transfer its applicable rights under this Agreement and/or its interest in the Property to one or more secured parties or any agents therefor (each, a "**Secured Party**") and

collectively, the “**Secured Parties**”) as security for obligations of the Entity, and/or its Affiliates and/or its Transferees, incurred in connection with such secured financing (collectively, the “**Security Arrangements**”). The Entity or Affiliate or Transferee, as applicable, shall give the 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 15 Days from the date of such written notice to the Secured Parties with regard to a payment Default by the Entity, and 90 Days from the date the Entity was required to cure any other Default.

(c) To the extent permitted by the Long Term Tax Exemption Law, 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 as they relate to the Property and to permit each Secured Party to enforce its rights hereunder and under the applicable Security Arrangement and shall, upon request of the Secured Party, execute such documents as are typically requested by secured parties to acknowledge such consent. This provision shall not be construed to limit the 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 8

COMPLIANCE AND REPRESENTATIONS

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

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

ARTICLE 9
DISPUTE/DEFAULT

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

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

9.3 **Cure Upon Default.** Should a Party be in Default, the non-defaulting Party shall send written notice to the defaulting Party of the Default (the “**Default Notice**”). The Default Notice shall set forth with particularity the basis of the Default. The defaulting Party or a Party acting on its behalf shall have 30 days from receipt of the Default Notice (the “**Cure Period**”), to cure any monetary Default and a 90-day Cure Period to cure any non-monetary default. However, if the Default is a non-monetary Default of a nature that cannot be cured within the Cure Period, using reasonable diligence, the time to cure the Default shall be extended beyond the Cure Period for the time period required in order to allow the defaulting Party to cure the Default, provided that the defaulting Party continues using reasonable diligence to cure the Default. Upon the expiration of the Cure Period, or any extension thereof, and providing that the Default is not cured, the non-defaulting Party shall be permitted to invoke the remedies set forth in Section 9.4 below.

9.4 **Remedies Upon Default.**

9.4.1 In the event of any Default not cured within the Cure Period or any extension thereof, a breach of this Agreement by either of the Parties hereto, or a dispute arising between the Parties with respect to the terms and provisions of this Agreement, either Party may apply to the Superior Court of New Jersey of Morris County by an appropriate proceeding to settle and resolve said dispute in such fashion as will tend to accomplish the purposes of the Law.

9.4.2 The Entity’s failure to make the requisite Annual Service Charge payment, Land Tax Payment, reserve payment, Additional Annual Service Charge payment, and/or sewer and water charge payments within the Cure Period or any extensions thereof shall constitute a breach of this Agreement by the Entity, and the 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. 54:55-1, et seq. Whenever the word “Taxes” appears or is implied to mean taxes or municipal liens on land, such statutory provisions shall be read, as far as is pertinent to this Agreement, as if the Annual Service Charges were taxes or municipal liens on land. In addition, the Township may terminate this Agreement as to the Entity pursuant to Section 10.1.

9.4.3 All of the remedies provided in this Agreement, and all rights and remedies granted by Law and equity shall be cumulative and concurrent. No termination of any provision within this Agreement shall deprive either Party of any of its remedies in accordance with Law or any

action by the Township against the Entity because of its failure to pay Taxes, Annual Service Charges, Additional Annual Service Charges, Land Taxes, reserve payments, and/or water and sewer charges with interest payments. The bringing of any action for any Taxes, Annual Service Charges, or other charges due hereunder, or in connection with another Default hereunder, or the resort to any other remedy herein provided for the recovery of such Taxes, any Annual Service Charges Additional Annual Service Charges, Land Taxes, reserve payments, and/or water and sewer charges or other charges due hereunder, shall not be construed as a waiver of the right to terminate the Long Term Tax Exemption granted hereby or proceed with an In Rem Foreclosure Action or any other remedy as provided for in this Agreement or by Law.

ARTICLE 10 **TERMINATION**

10.1 **Termination Upon Default of the Entity.** In the event the Entity or a Party acting on its behalf fails to cure or remedy the Default within the Cure Period as provided in Section 9.2, the Township may terminate this Agreement upon 30 days written notice to the Entity (the “**Notice of Termination**”).

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

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

ARTICLE 11 **NOTICE**

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

11.2 **Sent by Township.** When sent by the Township to the Entity, it shall be addressed to:

AR at Parsippany Urban Renewal, LLC
c/o Advance Realty Investors
1430 US 206, Suite 100
Bedminster, New Jersey 07921
Attn: Peter J. Coccoziello, Jr. (peterjohnc@advancere.com)

AR at Parsippany Urban Renewal, LLC
c/o Advance Realty Investors
1430 US 206, Suite 100
Bedminster, New Jersey 07921
Attn: Richard Crooker, Esq., General Counsel (richc@advancere.com)

WITH A COPY TO:

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

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

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

Township of Parsippany
Attn: Mayor and Township Clerk
Township of Parsippany Municipal Building
1001 Parsippany Blvd
Parsippany, New Jersey 07054

WITH A COPY TO:

Michael B. Lavery, Esq.
Lavery, Selvaggi, Abromitis & Cohen, P.C.
1001 County Rd 517
Hackettstown, New Jersey 07840

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

ARTICLE 12
MISCELLANEOUS

12.1 **Severability.** If any term, covenant or condition of this Agreement or the Application shall be judicially declared to be invalid or unenforceable, the remainder of this Agreement or the Application of such term, covenant or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term, covenant or condition of this Agreement shall be valid and be enforced to the fullest

extent permitted by law.

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

12.3 Captions. The marginal captions after the Article, Section and Paragraph numbers of this Agreement are for convenience of reference purposes only and do not in any way define, limit or amplify the terms of this Agreement and are to be given no weight in its interpretation.

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

12.5 Recording. This entire Agreement will be recorded with the Morris County Clerk by the Entity, at no cost to the Township.

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

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

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

ARTICLE 13 **EXHIBITS AND SCHEDULES**

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

Exhibit A - Land Description

Exhibit B - Executed PILOT Application with all Exhibits;

Exhibit C - Ordinance of the Township Authorizing Execution of this Financial Agreement;

Exhibit D - Entity's Estimate of Total Project Cost;

Exhibit E - Form of Certification of Final Construction Cost;

Exhibit F- Certificate of Formation of AR at Parsippany Urban Renewal, LLC.

EXHIBIT A

Land Description

Block 737, Lot 3

EXHIBIT B

Executed Application with All Exhibits

EXHIBIT C

Ordinance of the Township Authorizing Execution of this Agreement

EXHIBIT D

Entity's Estimate of Total Project Cost¹

\$ _____ total costs

¹ Please note the amount of the total project cost set forth above is a preliminary estimate that may be modified as the project progresses and that to the extent project costs increase or decrease, the allowed reductions and exclusions from project costs will be adjusted to the extent permitted by applicable law.

EXHIBIT E

Form of Certification of Final Construction Cost

Block 737, Lot 3 Redevelopment Project
Parsippany-Troy Hills, New Jersey

I, _____, do certify the following:

I am the _____ of _____, for the Block 737, Lot 3 Redevelopment Project in Parsippany-Troy Hills, New Jersey.

2. To the extent that I have been involved in the construction of the Block 737, Lot 3 Redevelopment Project and based on those records and contracts that have been supplied to me by _____, I certify that the total construction cost forth above referenced Project is \$_____.

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

Date: _____

EXHIBIT F

Certificate of Formation of AR at Parsippany Urban Renewal, LLC