

**FINANCIAL AGREEMENT PURSUANT TO THE LONG TERM TAX EXEMPTION LAW, N.J.S.A. 40A:20-1, ET SEQ. BETWEEN THE BOROUGH OF MERCHANTVILLE AND CITADEL WELLWOOD URBAN RENEWAL, LLC**

**THIS FINANCIAL AGREEMENT** (hereinafter, the "Agreement"), made this \_\_\_\_ day of \_\_\_\_\_, 2013, between Citadel Wellwood Urban Renewal, LLC, an urban renewal limited liability company of the State of New Jersey having its principal office at c/o DePetro Real Estate Organization, LLC, 201 Union Lane, Suite B, Brielle, New Jersey, herein designated as the "Entity," and the Borough of Merchantville, a municipal corporation in the County of Camden, and the State of New Jersey, hereinafter designated as the "Borough."

**WITNESSETH:**

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

1. Pursuant to N.J.S.A. 40A:20-9(h), at all times this Agreement shall be subject to and governed by the provisions of the Long Term Tax Exemption Law, as amended and supplemented, N.J.S.A. 40A:20-1, et seq., (the "LTTE"). It being expressly understood and agreed that the Borough relies upon the facts, data, and representations of the Redeveloper of the Wellwood Manor project for Tax Abatement pursuant to the Long Term Tax Exemption Law, 40A:20-1, et seq., (hereinafter, the "Application") attached hereto. The Entity shall at all times prior to the expiration or other termination of this Agreement remain bound by the provisions of the LTTE. Operation under this Agreement shall be terminable by the Entity in the manner provided by the LTTE.

2. The Borough has granted and does hereby grant its approval for an urban renewal project, the nature, magnitude and description of which is disclosed in the Facilities Assessment Report and Addendum thereto, to be redeveloped under the provisions of the LTTE on the land

described as and commonly known on the Official Tax Map of the Borough of Merchantville as Block 9, Lots 2 and 3 at 606 West Maple Avenue, Merchantville, New Jersey (hereinafter, the "Project"). The Borough finds that the redevelopment of the Project creates a substantial benefit to the Borough, when compared to costs, if any, associated with the tax exemption granted herein and, further, finds that such tax exemption is of significant importance in obtaining the development of the Project and in influencing the locational decisions of probable occupants of the Project.

(a) The Project is a fifty-four (54) unit housing project, comprised of studio, one and two bedroom apartments. The existing building will be rehabilitated and no existing tenants will be displaced.

(b) The project is part of the West Maple Redevelopment Area in Merchantville, and Citadel Wellwood Urban Renewal, LLC has been named Redeveloper of the Project. The subject property is in a state of disrepair and has been so for many years, and is a blighting influence on the neighborhood. The Project will preserve the building and return it to productive use for the community.

(c) The Project's proposed sources and uses are set forth in Exhibit A, attached hereto and made a part hereof.

(d) The proposed rents and the proposed operating expenses are set forth in Exhibits B and C, respectively, attached hereto and made a part hereof.

3. Approval hereunder is granted to the Entity for the undertaking of the Project on the lands referred to above, which shall in all respects comply and conform to all applicable statutes and municipal ordinances, and the lawful regulations made pursuant thereto, governing land, building(s) and the use thereof, and which Project is more particularly described in the accompanying Application.

4. Pursuant to N.J.S.A. 40A:20-9(b), the Project to be redeveloped by the Entity shall be exempt from taxation on improvements in accordance with the provisions of the LTTE and in the manner provided by this Agreement beginning on the date hereof and for a term of fifteen (15) years from the completion of the entire Project, with options to renew this tax exemption for three (3) separate option stages, that being for years 16 through 20 (first option stage), for years 21 through 25 (second option stage), and for years 26 through 30 (third option stage), but not more than thirty-five (35) years from the execution of this Agreement, and only so long as the Entity and its Project remain subject to the provisions of the LTTE and complies with this Agreement.

5. Pursuant to N.J.S.A. 40A:20-9(c), and in consideration of the aforesaid exemption from taxation on improvement(s), the Entity, its successors and assigns shall make payment to the Borough for municipal services supplied to the Project of an annual service charge (hereinafter, the "Annual Service Charge") of a sum equal to seven percent (7.00%) of the annual gross revenue determined pursuant to N.J.S.A. 40A:20-1, et seq., calculated from the first day of the month following the substantial completion of the Project. This sum shall be in an amount not less than the sum indicated in Exhibit D of this Agreement as the "Minimum PILOT Payment" for that particular calendar year. There is hereby established a schedule of Annual Service Charges to be paid over the term of the fifteen (15) year exemption period, and the three (3) respective five (5) year optional exemption periods, which shall be in stages as follows:

(a) For the first exemption period, fifteen (15) years, commencing from the date of substantial completion of the Project, the Entity shall pay the Borough an Annual Service charge equal to seven percent (7.00%) of the annual gross revenue, as set forth in and subject to the provisions of Section 5, above.

(b) Within six (6) months of the termination of this first exemption period, the

Entity may make application to the Borough for extension of the LTTE for three (3), respective five (5) year optional exemption periods, at which time the Borough may extend in any or all of the stages, as set forth below. Pursuant to N.J.S.A. 40A:20-10(d), the Borough shall be entitled to an administrative fee of two (2%) percent of the then-existing Annual Service charge, for the processing of any such request for the continuation of the LTTE. In the optional exemption periods, the Annual Service Charge shall be determined as follows:

(1) For the first option stage, which shall be for years sixteen (16) through twenty (20) of the optional exemption period, the Entity shall pay the Borough an amount equal to either the amount determined pursuant to Paragraph 5(a) of this Agreement, subject to the provisions of Section 5, above, or sixty percent (60%) of the amount of taxes otherwise due on the value of the land and improvements whichever shall be greater;

(2) For the second option stage, which shall be for years twenty-one (21) through twenty-five (25) of the optional exemption period, the Entity shall pay the Borough an amount equal to either the amount determined pursuant to Paragraph 5(a) of this Agreement, subject to the provisions of Section 5, above, or seventy percent (70%) of the amount of taxes otherwise due on the value of the land and improvements, whichever shall be greater;

(3) For the third option stage, the Entity shall pay the Borough as follows:

(a) for years twenty-six (26) through twenty-eight (28) of the optional exemption period, the Entity shall pay the Borough an amount equal to either the amount determined pursuant to Paragraph 5(a) of this Agreement, subject to the provisions of Section 5, above, or eighty percent (80%) of the amount of taxes otherwise due on the value of the land and improvements whichever shall be greater; and

(b) for years twenty-nine (29) through thirty (30) of the optional

exemption period, the Entity shall pay the Borough an amount equal to either the amount determined pursuant to Paragraph 5(a) of this Agreement, subject to the provisions of Section 5, above, or ninety percent (90%) of the amount of taxes otherwise due on the value of the land and improvements, whichever shall be greater.

The Annual Service Charge shall be paid to the Borough on a quarterly basis in a manner consistent with the Borough's tax collection schedule. In addition to the Annual Service Charge, and pursuant to N.J.S.A. 40A:20-10, the Borough shall be entitled to an annual administrative fee of two (2%) percent of the then-existing Annual Service charge.

For the purposes of subsections (b) through (e) of Paragraph 5, above, "the amount of taxes otherwise due on the value of the land and improvements" for calculation of the minimum Annual Service Charge, shall be the amount of the total taxes in that tax year which would have been levied against the land and improvements covered by the Project had the property been subject to *ad valorem* taxation, should the amount determined pursuant to Paragraph 5(a) of this Agreement be less than the minimum Annual Service Charge.

6. The Annual Service Charge for the first year of tax exemption shall be on a pro rata basis, from the date of commencement of the exemption to the close of the calendar year, and, for the last calendar year of the tax exemption, from the first day of the calendar year to the date of termination of the exemption. Upon the termination of the exemption granted pursuant to the provision of the LTTE, the Project, all affected parcels, and all improvements made thereto shall be assessed and subject to taxation as are other taxable properties in the Borough. After the date of termination, all restrictions and limitations upon the Entity shall terminate and be at an end upon the Entity's rendering its final accounting to and with the Borough.

7. Pursuant to N.J.S.A. 40A:20-9(f), in the event of a breach of the Agreement by either

of the parties hereto, or a dispute arising between the parties in reference to the terms and provisions as set forth herein, either party may submit the matter to the American Arbitration Association for resolution by arbitration or any other alternative dispute resolution recognized by the Superior Court of New Jersey to settle and resolve said dispute in such fashion as will tend to accomplish the purposes of the LTTE.

In the event of a default on the part of the Entity pursuant to its obligation to pay the Annual Service Charge as defined in Paragraph 6 above, the Borough may terminate the tax exemption if the default is not remedied within sixty (60) days of the due date of the Annual Service Charge and may proceed against the Entity's land and improvements that are the subject of this Agreement, in the manner provided by N.J.S.A. 54:5-1 to 54:5-129 and any act supplementary or amendatory thereof, it being understood and agreed by the parties hereto that throughout N.J.S.A. 54:5-1 to 54:5-129 and any act supplementary or amendatory thereof, whenever the word "taxes" appears, or is applied, directly or impliedly to mean taxes or municipal liens on land, such statutory provision shall be read, as far as is pertinent to this Agreement, as if the Annual Service Charge were taxes or municipal liens on land. In any event, however, the Entity does not waive any defense it may have to contest the right of the Borough to proceed in the above-mentioned manner by conventional or in rem tax foreclosure.

8. Pursuant to N.J.S.A. 40A:20-9(g), it is agreed between the parties that the Entity, at any time after the expiration of one (1) year from the completion of the Project, may notify the Borough Council of the Borough that, as of a certain date designated in the notice, it relinquishes its status under the LTTE, and that the entity has obtained the consent of the Commissioner of the Department of Community Affairs to such a relinquishment. As of that date, the tax exemption, the service charges, and the profit and dividend restrictions shall terminate. The date of termination of

the tax exemption, whether by relinquishment by the Entity or by terms of this Agreement, shall be deemed the close of the fiscal year of the Entity. Within sixty (60) days of that date, the Entity shall pay to the Borough the amount of reserve, if any maintained, pursuant to Section 15 or 16 of the LTTE, as well as the excess net profits, if any, payable as of that date.

9. Pursuant to N.J.S.A. 40A:20-9(a), the Entity shall be subject, during the period of this Agreement and tax exemption under the LTTE, to a limitation of its profits and in addition, in the case of a corporation, of the dividends payable by it. Whenever the net profits of the Entity for the period, taken as one accounting period, commencing on the date on which the construction of the Project is completed and terminating at the end of the last full fiscal year, shall exceed the allowable net profits for the period, the Entity shall, within sixty (60) days of the close of the fiscal year, pay the excess net profits to the Borough as an additional service charge. From the excess profits, the Entity may maintain during the term of this Agreement a reserve against vacancies against unpaid rentals, reasonable contingencies and/or vacancies in an amount not exceeding ten percent (10%) of the gross annual revenues of the Entity for the fiscal year preceding the year in which a determination is being made with respect to permitted net profits as provided in N.J.S.A. 40A:20-15.

10. Within sixty (60) days after the date of such termination, the Entity shall pay the Borough a sum equal to the amount of the reserve, if any, maintained pursuant to N.J.S.A. 40A:20-15 and 40A:20-16, as well as the excess net profits, if any, payable as of that date.

11. Pursuant to N.J.S.A. 40A:20-9(d), the Entity shall submit annually, within ninety (90) days after the close of each of its fiscal years, its auditor's reports of income and expenses related to the Project to the Mayor and Borough Council of the Borough and to the Director of Local Government Services in the Department of Community Affairs having a mailing address of CN-805,

Trenton, NJ 08625-0805.

12. Pursuant to N.J.S.A. 40A:20-9(e), the Entity shall, upon request, permit inspection of the property, equipment, buildings and other facilities of the Entity by authorized representatives of the Borough or the State. The Entity shall also permit examination and audit of its books, contracts, records, documents and papers by authorized representatives of the Borough or the State at the Entity's expense. Such inspection or examination shall be made during the reasonable hours of the business day, in the presence of an officer or agent of the Entity.

13. Pursuant to N.J.S.A. 40A:20-9(e), after examination of the books, contracts, etc. as set forth Paragraph 12, the Borough, in its reasonable discretion, may, within ninety (90) days after the close of any fiscal or calendar year (depending on the Entity's accounting basis) in which this Agreement remains in effect, require the Entity to submit an auditor's report for the preceding fiscal or calendar year, certified by a certified public accountant, to the Mayor, the Borough Council, the Borough's Chief Financial Officer and the Clerk of the Borough. Said auditor's report shall include, but not be limited to, such details as may be related to the Project's cost and to the financial affairs of the Entity and to its operation and performance hereunder, pursuant to the LTTE, as amended and supplemented, and this Agreement, and shall be prepared in a manner consistent with the current standards of the Financial Accounting Standards Board. Said auditor's report shall be submitted to the representatives of the Borough mentioned above within 90 days of receipt by the Entity of the Borough's request for said auditor's report.

14. Pursuant to N.J.S.A. 40A:20-9(g), the failure on the part of the Entity to make timely payment of all municipal obligations, taxes, fees and charges arising out of this Agreement or in any way arising out of the affected Project, its land and/or improvements, or failure on the part of the Entity to comply with the requirements of the aforementioned audit, or with any other substantive

condition of this Agreement shall permit the Borough to exercise such remedies as may be provided by the LTTE or this Agreement provided that this Entity shall have received from the Borough a Notice of Default and Intent to Terminate in which case the Entity shall have sixty (60) days in which to cure any default and avoid such termination. In the event of any dispute between the parties matters in controversy shall be resolved by arbitration as provided in this Agreement.

15. Any notice required hereunder to be sent by either party to the other, shall be sent by certified mail, return receipt requested, or by a nationally recognized overnight delivery service, addressed as follows:

(a) When sent by the Borough to the Entity it shall be addressed to: Citadel Wellwood Urban Renewal Co., LLC, 201 Union Lane, Suite B, Brielle, New Jersey 08730, unless prior to giving such notice the Entity shall have notified the Borough otherwise in writing.

(b) When sent by the Entity to the Borough, it shall be addressed to the Borough Clerk, One West Maple Avenue, Merchantville, New Jersey 08109, unless prior to giving such notice the Borough shall have notified the Entity otherwise in writing.

16. In further consideration for this Agreement, the Entity specifically agrees not to make application to the Borough for the collection of the trash and recycling generated by the property, or make application for reimbursement of trash and recycling services contracted by the Entity, pursuant to N.J.S.A.40:67-23.2 et seq.

17. It is understood and agreed that in the event the Borough shall be named as a party defendant in any action brought against the Entity by reason of any breach, default, or a violation of any of the provisions of the within Agreement and/or the provisions of N.J.S.A. 40A:20-1, et seq., the Entity shall indemnify and hold the Borough harmless and shall, further, defend any such action at its own expense. The Borough maintains the right to intervene as a party thereto, to which

intervention the Entity consents, the expense thereof to be borne by the Borough.

18. The Entity shall have and may exercise such of the powers conferred by law on limited partnerships as shall be necessary for the operation of the business of the Entity and as shall be consistent with the provisions of the LTTE, and, in addition, shall have and may exercise the powers set forth in the LTTE, but only so long as this Agreement, together with any amendments thereto, is in effect with the Borough pursuant to the LTTE.

19. The Borough specifically enters into this Agreement for the benefit of the Project with Citadel Wellwood Urban Renewal, LLC, and its managing member, Richard DePetro. The sale of the Project by the Entity, or the sale of the interests of the managing member of the Entity, the sale of the Entity, or the sale of the majority interest in the Entity, shall render this Agreement null and void, unless the assumption of the terms, conditions and obligations of this Agreement by the transferee urban renewal entity person, partnership and/or corporation, is approved by Resolution of the Borough Council of the Borough of Merchantville, upon whose approval this Agreement and its then remaining obligations and the tax exemption of the improvements shall continue, and inure to the benefit of the transferee urban renewal entity.

It is understood and agreed that the Borough may, on written application by the Entity, consent to a sale of the Project and the transfer of the Agreement to an urban renewal person, partnership and/or corporation eligible to function under the law provided the Entity is not in default as respects any performance required of it hereunder and full compliance with the terms and conditions of N.J.S.A. 40A:20-1, et seq. has occurred and the Entity's obligation under this Agreement with the Borough is assumed by the transferee.

If the Entity has, with the consent of the Borough in which the Project is located, transferred its Project to another urban renewal entity which has assumed the then remaining contractual

obligations of the transferor entity with the Borough, the transferor entity shall be discharged from any further obligation under this Agreement, and shall be qualified to undertake another Project with the same or a different municipality.

Pursuant to N.J.S.A. 40A:20-10(d), the Borough shall be entitled to an administrative fee of two (2%) percent of the then-existing Annual Service charge, for the processing of any such request for the transferred its Project to another urban renewal entity.

The Borough recognizes and acknowledges that the Entity is a New Jersey limited partnership and as such intends to sell limited partnership interests in the Entity through syndication. The Borough specifically recognizes and consents to such syndication and sale or resale of limited partnership interests in the Entity.

20. Where approval or consent of the Borough is sought for an assignment of the Agreement, either the Entity or its assignee shall be required to pay to the Borough a reasonable fee for the legal services of the Borough's Attorney, as determined by the Borough Attorney, related to the review, preparation, and/or submission of papers to the Borough Council for its appropriate action on the request assignment.

21. Reference to the Long Term Exemption Law shall mean N.J.S.A. 40A:20-1, et seq., as amended and supplemented.

22. The Entity shall, from the time the Annual Service Charge becomes effective, and on the same due dates as scheduled for the payment of land taxes, pay the Borough the estimated one-quarter (1/4) of the Annual Service Charge on improvements until the correct amount due from the Entity as the Annual Service Charge on improvements is determined after any review and examination by the Borough of the Entity's books and records and for submission to Borough of any auditor's reports pursuant to Paragraphs 12 and 13, above.

Within sixty (60) days after the correct amount due and from the Entity as the Annual Service Charge on Improvements has been determined by the Borough's Chief Financial Officer and notice of same given to the Entity, the Borough and the Entity will adjust and pay any over or under payment so made, or needed to be made.

23. All conditions in the Ordinance of the Borough Council approving this Agreement are hereby incorporated in this Agreement and made a part hereof.

**IN WITNESS WHEREOF**, the parties have caused these presents to be executed the date and year first above written.

**ATTEST:**

**Citadel Wellwood Urban Renewal, LLC**

\_\_\_\_\_

**By:** \_\_\_\_\_  
**Richard DePetro, Managing Member**

**ATTEST:**

**BOROUGH OF MERCHANTVILLE, a  
Municipal Corporation**

\_\_\_\_\_

**By:** \_\_\_\_\_

**Denise Brouse, Borough Clerk**

**Frank M. North, Mayor**

EXHIBIT A

PROPOSED SOURCES AND USES OF FUNDS

EXHIBIT B

PROPOSED RENTS

	<u>GROSS</u>	<u>UTILITY ALLOW.</u>	<u>NET</u>
STUDIOS (21)	\$678	\$46	\$632
ONE BEDROOMS (26)	\$726	\$60	\$666
TWO BEDROOMS (6)	\$872	\$74	\$798

EXHIBIT C  
PROJECTED OPERATING EXPENSES

## EXHIBIT D

### Minimum Guaranteed Annual Payments in Lieu of Taxes

#### Minimum PILOT Payment – 3% Growth

Year 1	\$	32,100
Year 2	\$	33,063
Year 3	\$	34,055
Year 4	\$	35,077
Year 5	\$	36,129
Year 6	\$	37,213
Year 7	\$	38,329
Year 8	\$	39,479
Year 9	\$	40,663
Year 10	\$	41,883
Year 11	\$	43,140
Year 12	\$	44,434
Year 13	\$	45,767
Year 14	\$	47,140
Year 15	\$	48,554
Year 16	\$	50,011
Year 17	\$	51,511
Year 18	\$	53,057
Year 19	\$	54,648
Year 20	\$	56,288
Year 21	\$	57,976
Year 22	\$	59,716
Year 23	\$	61,507
Year 24	\$	63,352
Year 25	\$	65,253
Year 26	\$	67,210
Year 27	\$	69,227
Year 28	\$	71,304
Year 29	\$	73,443
Year 30	\$	75,646