

TOWNSHIP OF VERONA  
COUNTY OF ESSEX, STATE OF NEW JERSEY

ORDINANCE No. 2021-21

**AUTHORIZING AND APPROVING A FINANCIAL AGREEMENT WITH  
VERONA SUNSET URBAN RENEWAL, LLC FOR PROPERTY IDENTIFIED  
ON THE VERONA TAX MAPS AS BLOCK 303, LOT 4 PURSUANT TO THE  
LONG TERM TAX EXEMPTION LAW (N.J.S.A. 40A:20-1 ET SEQ.)**

**WHEREAS**, the Township of Verona ("**Township**") is a municipal entity organized and existing under the laws of the State of New Jersey and located in the County of Essex; and

**WHEREAS**, pursuant to the Redevelopment Law, on August 19, 2019 the Township Council ("**Township Council**") of the Township of Verona, in the County of Essex, New Jersey (the "**Township**"), duly adopted Resolution No. 2019-140 designating the property identified on the tax maps of the Township as Block 303, Lot 4 (the "**Property**") as a "non-condemnation area in need of redevelopment" (the "**Redevelopment Area**"); and

**WHEREAS**, in order to effectuate the redevelopment of the Redevelopment Area, and pursuant to the authority granted under the Redevelopment Law, the Township caused Benecke Economics to prepare a redevelopment plan for the Redevelopment Area entitled, "The Sunset Avenue Redevelopment Area Redevelopment Plan" dated February 22, 2021 (the "**Redevelopment Plan**"); and

**WHEREAS**, the Redevelopment Plan has also been prepared in order to effectuate the Township's obligations under the New Jersey Fair Housing Act, *N.J.S.A. 52:27D-301 et. seq.*, and satisfy the Township's obligation as set forth in the First Amended and Restated Settlement Agreement dated January 2020 with Spectrum 360, LLC, dated January 31, 2020 (the "**Settlement Agreement**"); and

**WHEREAS**, the Township has designated the Township Council as the "Redevelopment Entity" (as such term is defined in the Redevelopment Law) for the purpose of implementing the Redevelopment Plan; and

**WHEREAS**, Verona Sunset Urban Renewal, LLC (the "**Entity**") is the contract purchaser of the Property and on June 7, 2021, the Township Council, by Resolution No. 2021-082 appointed the Entity as the redeveloper of the Property; and

**WHEREAS**, the Entity proposes to develop the Property with 200 residential units, of which 15 units will be affordable to very low, low, and moderate income households, together with associated parking, public areas, and amenities (collectively, the "**Redevelopment Project**"); and

**WHEREAS**, in order to implement the development, financing, construction, operation and management of the Redevelopment Project, the Township and the Entity are entering into a redevelopment agreement simultaneously herewith (the "**Redevelopment Agreement**"), which Redevelopment Agreement will specify the rights and responsibilities of the Township and the Entity with respect to certain aspects of the Redevelopment Project, all in accordance with the Redevelopment Plan; and

**WHEREAS**, the Long Term Tax Exemption Law of New Jersey, *N.J.S.A. 40A:20-1 et seq.* ("**Long Term Tax Exemption Law**") permits a municipality to enter into a financial agreement exempting real property from tax assessment and accepting payments in lieu of taxes where the property is qualified; and

**WHEREAS**, in accordance with the Long Term Tax Exemption Law and in order to ensure the financial feasibility of the Redevelopment Project, the Entity has submitted a written application ("**Application**") to the Township for approval of a tax exemption for the Redevelopment Project; and

**WHEREAS**, the Entity has represented to the Township that the Redevelopment Project would not be feasible in its intended scope but for the provision of financial assistance by the Township; and

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

**WHEREAS**, after review of the Application, the Township Council now desires to approve the Application and to authorize the execution of the proposed form of financial agreement in substantially the form attached hereto as Exhibit A, (the "**Financial Agreement**"); and

**WHEREAS**, the Township Council hereby determines that the assistance provided to the Redevelopment Project pursuant to the Financial Agreement will be a significant inducement for the Entity to proceed with the Redevelopment 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 Council of the Township of Verona, in the County of Essex, New Jersey, as follows:

1. The aforementioned recitals are incorporated herein as though fully set forth at length.
2. The Application, which has been recommended for approval by the Township Manager, is hereby accepted and approved.
3. The Township Manager is hereby authorized to execute the Financial Agreement, substantially in the form as it has been presented to the Council, and attached hereto as Exhibit A, subject to modification or revision deemed necessary or appropriate by the Township in consultation with counsel.
4. The Township Clerk is hereby authorized and directed, upon the execution of the Financial Agreement in accordance with the terms of paragraph 3 hereof, to attest to the signature of the Township Manager upon such document and is hereby further authorized and directed to affix the corporate seal of the Township upon such document.
5. Within ten calendar days following the later of the effective date of this Ordinance or the execution of the Financial Agreement by the Entity, the Township Clerk shall transmit a certified copy of this Ordinance and the Financial Agreement to the chief financial officer of the County of Essex and to the Essex County Counsel for informational purposes, as well as to the Tax Assessor of the Township.
6. The Township Council makes such determinations and findings by virtue of and pursuant to and in conformity with the Long Term Tax Exemption Law.
7. If any part of this Ordinance shall be deemed invalid, such parts shall be severed and the invalidity thereby shall not affect the remaining parts of this Ordinance.
8. A copy of this Ordinance shall be available for public inspection at the offices of the Township.
9. This Ordinance shall take effect according to law.



ATTEST:  
*Jennifer Kiernan*  
JENNIFER KIERNAN

**I HEREBY CERTIFY THAT THE AFOREMENTIONED ORDINANCE WAS PUBLISHED IN THE STAR LEDGER, A NEWSPAPER PUBLISHED IN THE COUNTY OF ESSEX AND CIRCULATED IN THE TOWNSHIP OF VERONA, IN THE ISSUE OF JUNE 10, 2021 AND JUNE 25, 2021.**

**JENNIFER KIERNAN  
MUNICIPAL CLERK**

INTRODUCTION: May 3, 2021  
PUBLIC HEARING: June 21, 2021  
EFFECTIVE DATE: July 11, 2021

**FINANCIAL AGREEMENT**

**By and Between**

**THE TOWNSHIP OF VERONA**

**and**

**VERONA SUNSET URBAN RENEWAL LLC**

**Dated:** \_\_\_\_\_

**THIS FINANCIAL AGREEMENT**, (the “**Agreement**”) made this \_\_\_\_ day of July, 2021 (the “**Effective Date**”), by and between **VERONA SUNSET URBAN RENEWAL LLC** (“**Entity**”), an urban renewal entity qualified to do business under the provisions of the Long-Term Tax Exemption Law of 1992, as amended and supplemented, N.J.S.A. 40A:20-1 et seq. (the “**Law**”), having its principal office at C/O BNE Real Estate Group, 16 Microlab Road, Livingston, NJ 07039 and the **TOWNSHIP OF VERONA**, a Municipal Corporation in the County of Essex and the State of New Jersey, having its principal office at 600 Bloomfield Avenue, Verona, NJ 07044 (the “**Township**”). The Township and Entity are each a “**Party**” and sometimes hereinafter referred to jointly as the “**Parties**”.

## RECITALS

### WITNESSETH:

**WHEREAS**, the Entity is the contract purchaser and designated Redeveloper of a parcel of land, located in the Township, currently shown and designated as Lot 4, Block 303 on the Tax and Assessment Map of the Township, as generally shown on **Exhibit A**, attached hereto and made a part hereof (the “**Land**”); and

**WHEREAS**, the Land is located within the boundaries of a designated redevelopment area within the Township (the “**Redevelopment Area**”), duly designated by Resolution No. 2019-140, for which the Township adopted the “The Sunset Avenue Redevelopment Area Redevelopment Plan” dated February 22, 2021, adopted pursuant to Ordinance No. 2021-01, finally adopted on March 8, 2021, as amended and supplemented from time to time (the “**Redevelopment Plan**”); and

**WHEREAS**, the Redeveloper entered into a Redevelopment Agreement between it and the Township dated \_\_\_\_\_ as may be further amended and supplemented from time to time (the “**Redevelopment Agreement**”) to provide for a redevelopment project on the Land, consisting of a 4-story building wrapped around a 4-story parking deck consisting of 200 apartments including 15 apartments set aside for affordable housing, approximately 10,000 square feet of amenity space, a pool, and landscaped courtyards (with the Land, the “**Project**”), which Project is consistent with the Redevelopment Plan; and

**WHEREAS**, the Entity has been formed by the Redeveloper with the intention that the Entity acquire, own and develop the Project; and

**WHEREAS**, on or about January 31, 2020 the Township entered into an amended and restated settlement agreement (“**Settlement Agreement**”) with Spectrum including, inter alia, provisions relating to the Township’s affordable housing obligations; and

**WHEREAS**, pursuant to Section 10 of the Settlement Agreement, the Township was obligated to enter into a financial agreement with Spectrum wherein Spectrum, or its assignee, would remit an annual service charge equal to: (a) 10% of gross revenues generated by the Project in years 1 through 15 after the Annual Service Charge Commencement Date, as defined herein; and (b) 11% of gross revenues generated by the Project in years 16 through 30 after the Annual Service Charge Commencement Date, as defined herein; and

**WHEREAS**, pursuant to Section 7 of the Settlement Agreement, Spectrum set forth its intention to assign its rights under the Settlement Agreement to the designated redeveloper of the Sunset Avenue Redevelopment Area; and

**WHEREAS**, Spectrum intends to assign and transfer to Entity its rights under the Settlement Agreement for the purpose of allowing the Entity to construct the Improvements (as defined herein); and

**WHEREAS**, the Parties agree and acknowledge that without this Agreement and the financial incentives created hereby, the Parties cannot feasibly effectuate the terms of the Settlement Agreement or construct the Project; and

**WHEREAS**, the Entity filed an Application for a Financial Agreement with the Township on May 20, 2021 (the “**Application**” as defined in Section 1.2(d) herein), in accordance with N.J.S.A. 40A:20-8, pursuant to the Law and this Agreement between the Entity and the Township, seeking approval of this Agreement providing for exemption from municipal taxation for the Improvements as aforesaid, for a period of the lesser of 30 years from “Substantial Completion” of the Project, as that term is hereinafter defined, or 35 years from the execution of this Agreement and for payment in lieu of taxes of an Annual Service Charge; and

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

**WHEREAS**, the Township has made the following findings:

1. That the aggregate Annual Service Charge projected for the Project in the first fully stabilized year of operation is estimated to be \$682,302 for 200 units;
2. Of said 200 units, 15 units shall be set aside for low- and middle-income individuals and families with said units complying with the Uniform Housing Affordability Controls, N.J.A.C. 5:80-26.1 et seq. (“**UHAC**”);
3. The Project will result in substantial benefit to the community by alleviating existing blight conditions of the Redevelopment Area and providing instead a range of housing opportunities within the Township;
4. The Project, and affordable units to be reserved for low- and middle-income individuals and families pursuant thereto, will be crucial toward allowing the Township to meet its third-round “Mt. Laurel” affordable housing obligations;
5. In addition to the inherent community benefits derived from the Project, the Project will include public components, as set forth in the Redevelopment Agreement, as amended;
6. 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;
7. The aforesaid benefits of the Project exceed the cost, if any, associated with granting the tax exemption provided by this Agreement; and
8. The assistance provided by this Agreement is a significant and critical inducement to the Entity to proceed with the Project, but for which the Entity represents that the Project cannot be developed.

**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 Law, the Redevelopment Agreement, 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 Essex County, all in accordance with N.J.S.A. 40A:20-3(b).

(c) Annual Administrative Fee - As defined in Section 4.6 hereof.

(d) 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 that the Annual Service Charge exceeds the Minimum Annual Service Charge.

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

(f) Application - the application that the Entity will 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, the Redevelopment Agreement 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 - The structural components of the Project described in the Recitals hereof and as further described in and permitted by the Redevelopment Agreement.

(n) 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).

(o) 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.

(p) Interest Holders - As defined in Section 5.2.3 hereof.

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

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

(s) 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.



(t) 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.

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

(v) Pronouns - He or it shall mean the masculine, feminine or neuter gender, the singular, as well as the plural, as the context requires.

(w) Secured Party(ies) – As defined in Section 7.1.3(a) hereof.

(x) Security Arrangements – As defined in Section 7.1.3(a) hereof.

(y) Substantial Completion shall mean the date upon which the Township issues of the initial Certificate of Occupancy.

(z) 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 Entity pursuant to N.J.S.A. 40A:20-12.

(aa) 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 in all respects comply and conform 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 individual residential 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. The operation and management of all low- and moderate- income residential units shall be in accordance with the Uniform Housing Affordability Controls set forth in N.J.A.C. 5:80-26.1, et seq.

2.4 **Financial Plan**

(a) The method for computing gross revenue for the Entity, the method of determining insurance, operating and maintenance expenses paid by a tenant which are ordinarily paid by a landlord, the plans for financing the Project, the amortization rate on the Total Project Cost, the source of funds, the interest rates to be paid on the construction financing, the source and amount of paid-in capital, the terms of mortgage amortization or payment of principal on any mortgage, a good faith projection of initial sales prices of any condominium units and expenses to be incurred in promoting and consummating such sales, 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 remain in effect for the lesser of 30 years from the Annual Service Charge Start Date or 35 years from the Effective Date. This Agreement shall continue in force only while the Project is owned by an urban renewal entity formed and operating pursuant to the Law. This Agreement shall be fully performed by the Parties

hereto within 30 years from the Substantial Completion, and in no event more than 35 years from the date of execution of this Agreement, pursuant to N.J.S.A. 40A:20-13.

**ARTICLE 4**  
**EXEMPTION AND ANNUAL SERVICE CHARGE**

4.1 **Exemption.** The Township agrees that an Annual Service Charge shall be levied on the Improvements which shall be exempt from traditional real property taxation, as provided in the Law, from the Annual Service Charge Start Date to and through the date that is consistent with Section 3.1 above. From the date that the Entity takes title to the Property until the end of said calendar year, the Entity shall pay the otherwise applicable real estate taxes on the Property. Notwithstanding the provisions of any law, in consideration for, among other things, the granting of the tax exemption herein, the Entity agrees to waive the Township's obligation to provide municipal services to the Project for electric, sanitation, and snow removal, and the Entity shall assume the responsibility, financial or otherwise, for the provision of the same for the term 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 Commencement 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 shall be an amount equal to the greater of: (a) (i) 10% of Annual Gross Revenues for years 1 through 15 after the Annual Service Charge Commencement Date; and (ii) 11% of the Annual Gross Revenues for years 16 through 30 after the Annual Service Charge Commencement Date; or (b) the Minimum Annual Service Charge; or (c) the staged adjustments to the Annual Service Charge as set forth in Section 4.3 below.

4.3 **Schedule of Staged Adjustments to Annual Service Charge.** Pursuant to N.J.S.A. 40A:20-12(b), the Annual Service Charge shall be adjusted as follows:

4.3.1 **Stage One:** Commencing on the Annual Service Charge Commencement 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.** The Entity shall be entitled to a credit against the Annual Service Charge for the amount, without interest, of the real estate taxes on land paid by the Entity in the 4 preceding quarters provided such payments were made when due and owing.

4.6 **Administrative Fee.** In addition to the Annual Service Charge, 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 E** certified as to actual construction costs by the Entity's architect which said certification shall be 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% of 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. The calculation of the Entity's Excess Net Profits shall include those Project costs directly attributable to site remediation and cleanup expenses and any other costs excluded in this Agreement, as provided for in the Law, even though those costs may have been deducted from the Total Project Cost for the purpose of calculating the Annual Service Charge.

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**". Gross Revenue and Net Profit for the purposes hereof shall be determined pursuant to N.J.S.A. 40A:20-3 a. and c. in the following manner. For each year during the term of this Agreement, the Entity's (a) Gross Revenue shall be the total amount of annual gross rents the Entity actually collects from the Property during each such year and (b) Net Profits shall be (i) the Gross Revenue of the Entity less (ii) all operating and non-operating expenses of the Entity determined in accordance with generally accepted accounting principles, including without limitation those items required by N.J.S.A. 40A:20-3(c)(1) and (2).

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 7.1.2 hereof, the Entity may not sell, convey, grant, bargain, assign, or otherwise transfer its fee title 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 2.2 herein, subject to the conditions set forth therein. Notwithstanding anything to the contrary in this Section, a transfer of ownership interests that occurs by inheritance, devise or bequest or by operation of law to the spouse, child or grandchild of Interest Holders, or a trust established for the benefit of such a spouse, child or grandchild 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 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. If such written application is made, simultaneously therewith, the Entity shall pay a transfer fee to the Township of 2% of the Annual Service Charge plus an Additional Annual Service Charge equal to 3% of the gross sales proceeds in excess of 150% of the Total Project Costs set forth in the Total Project Cost Report described in Section 5.2.1 or the Application if the total Project Cost Report is not available.

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 completion for the Project without further notice to, or consent from, the Township and shall not be subject to the fee set forth in Section 7.1.1 above.

7.1.3 It is expressly understood and agreed that the Entity has the right, to the extent permitted by the Exemption Law and the Redevelopment Agreement, to encumber and/or assign the fee title to portions of the Property and/or Improvements for purposes of: (i) financing the design, development, and construction of the Property, (ii) obtaining permanent mortgage financing relating to the Property, and/or (iii) refinancing a permanent mortgage relating to the Property, 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 in connection with the acquisition, development, and construction of the Property. The Town 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 Town 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 Town 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 Town shall give written notice of such Default to the Secured Parties and the Town agrees that, in the event such Default is not waived by the Town 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 Town 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 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 Town'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**

8.1 **Compliance.** During the term of this Agreement, the Project shall be maintained and operated in accordance with the provisions of the Law.

## **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, Essex 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 5 days from receipt of the Default Notice (the “**Cure Period**”), to cure any monetary Default and a 60-day Cure Period to cure any non-monetary default. However, if the Default is a non-monetary Default of a nature that cannot be cured within the Cure Period, using reasonable diligence, the time to cure the Default shall be extended beyond the Cure Period for the time period required in order to allow the defaulting Party to cure the Default, 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 Essex County by an appropriate proceeding to settle and resolve said dispute in such fashion as will tend to accomplish the purposes of the Law. In the event the Superior Court shall not entertain jurisdiction, then the Parties shall submit the dispute to the American Arbitration Association in New Jersey to be determined in accordance with its rules and



regulations in such a fashion to accomplish the purpose of the Law. Costs for said arbitration shall be borne equally by the Parties.

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, any administrative fee levied, 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, administrative fees, 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, administrative fees, 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:

BNE Acquisitions, LLC  
16 Microlab Road, Suite A  
Livingston, New Jersey 07039  
Attn: Jonathan Schwartz

**WITH A COPY TO:**

John P. Inglesino, Esq.  
Inglesino, Webster, Wyciskala & Taylor, LLC  
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:

Mathew Cavallo, Township Manager  
Township of Verona  
600 Bloomfield Avenue  
Verona, New Jersey 07044

**WITH A COPY TO:**

Joseph P. Baumann, Esq.  
McManimon, Scotland & Baumann, LLC  
75 Livingston Avenue, 2nd Floor  
Roseland, NJ 07068

The notice to the Township shall fully identify the Project to which it relates, including the full name of the Entity and the Land'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.** Either this entire Agreement, or a memorandum of this Agreement in form and substance approved in writing by the Township, will be recorded with the Essex County Clerk by the Entity, at no cost to the Township.

12.6 **Remittance to County.** The Township shall remit to the County of Essex 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 Application with all Exhibits;

**Exhibit C** - Ordinance of the Township Authorizing Execution of this 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 Verona Sunset Urban Renewal LLC

*[SIGNATURES ON FOLLOWING PAGE]*

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**IN WITNESS WHEREOF**, the Parties hereto have caused this to be executed, all as of the date first above written.

Witness/Attest:

**TOWNSHIP OF VERONA**  
a public body corporate and politic

\_\_\_\_\_  
Jennifer Kiernan, Township Clerk

By: \_\_\_\_\_  
Matthew Cavallo, Township Manager

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

Witness/Attest:

**VERONA SUNSET URBAN RENEWAL  
LLC**

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

By: \_\_\_\_\_  
Jonathan Schwartz, Member

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

**Exhibit A**

**Land Description**

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**Exhibit B**

**Executed Application with All Exhibits**

[see parent submission]

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**Exhibit C**

**Ordinance of the Township Authorizing Execution of this**

[attached]

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**Exhibit D**

**Entity's Estimate of Total Project Cost<sup>1</sup>**

Hard Costs:	\$44,650,000.00
Soft Costs and Land Acquisition:	\$30,845,000.00
Total:	\$75,495,000.00

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<sup>1</sup> The Parties acknowledge that the amounts of the project costs and reductions set forth above are preliminary estimates that will be refined as project design 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**

BNE Spectrum360 Project  
Verona Township, New Jersey

I, \_\_\_\_\_, do certify the following:

I am the \_\_\_\_\_ of \_\_\_\_\_, the architects for the  
\_\_\_\_\_ Project in \_\_\_\_\_.

2. To the extent that our firm has been involved in the design and construction of the  
\_\_\_\_\_ Project and based on those records and contracts that have been supplied to us by  
\_\_\_\_\_, we 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: \_\_\_\_\_

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**Exhibit F**

**Certificate of Formation of Verona Sunset Urban Renewal LLC**

[attached]

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