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Tom Hastie, Esq.
CITY ATTY
ST. JAMES URBAN Renewal

FINAL EXECUTION DRAFT

THIS AMENDED AND RESTATED FINANCIAL AGREEMENT, ("Agreement") is made this 20th day of April, 2010, by and between **ST. JAMES URBAN RENEWAL ASSOCIATES, LLC** (the "**Entity**"), an urban renewal entity formed and qualified to do business under the provisions of the Long Term Tax Exemption Law of 1992, as amended and supplemented, *N.J.S.A. 40A:20-1 et seq.*, (the "**LTTE**") having its principal office located at 1100 Ocean Avenue, Asbury Park, New Jersey 07712 and the City of Asbury Park, a municipal corporation in the County of Monmouth, and the State of New Jersey, having its principal office located at 1 Municipal Plaza, Asbury Park, New Jersey 07712 (the "**City**" together with the Entity, the "**Parties**").

RECITALS

WHEREAS, on June 5, 2002 the Mayor and City Council of the City of Asbury Park (the "**City Council**") adopted Ordinance No. 2607 entitled "Ordinance Adopting Amended Waterfront Redevelopment Plan for the City of Asbury Park" (the "**Plan Ordinance**"); and

WHEREAS, on October 28, 2002 the City Council and Asbury Partners, L.L.C., ("**Asbury Partners**") entered into the "Amended and Restated Redeveloper and Land Acquisition Agreement" as amended from time to time (the "**Redeveloper Agreement**"); and

WHEREAS, Section 10.1 of the Redeveloper Agreement provides that the City would adopt a standard form of tax abatement agreement for use by Subsequent Developers (as such term is defined in the Redeveloper Agreement); and

WHEREAS, on August 18, 2004, the City Council finally adopted an ordinance (the "**Waterfront Tax Abatement Ordinance**") approving a standard form of tax abatement agreement and application for use by the Master Developer and Subsequent Developers; and

WHEREAS, on January 8, 2003, the City Council approved Wesley Lake Building Associates, L.L.C. (together with an urban renewal entity created pursuant to the hereinafter defined act and known as Wesley Lake Phase One Urban Renewal, L.L.C., ("**Wesley Lake**") as a Subsequent Developer, subject to the satisfaction of certain criteria which were subsequently satisfied and memorialized in the execution of a Subsequent Developer Agreement between the City of Asbury Park and Wesley Lake for the Project (as such term is defined in the Subsequent Developer Agreement); and

WHEREAS, pursuant to Section 8 of the Long Term Tax Exemption Law, N.J.S.A. 40A:20-8 (the "**LTTE**") and the Waterfront Tax Abatement Ordinance, on October 14, 2004, Wesley Lake filed an application for tax exemption (the "**Application**") and a form of financial agreement in conformance with the standard form of tax abatement agreement adopted by the City Council; and

WHEREAS, Wesley Lake and the City entered into a Subsequent Developer Agreement on or about December 17, 2003 (the "**Subsequent Developer Agreement**") providing, among other things, for the development of 91 condominium units arranged in one building (the "**Project**") on Blocks 129.01 and 129.02 within the City (the "**Property**"), subject to the terms and conditions set forth in the Subsequent Developer Agreement; and

WHEREAS, in April 2005, the City and Wesley Lake entered into a certain financial agreement for the Project (the "**Initial Financial Agreement**") under which the Project improvements would be exempt from taxation and Wesley Lake and its permitted successors and assigns would pay to the City payments in lieu of taxes ("**PILOT**") calculated in accordance with the terms of the Financial Agreement; and

WHEREAS, on or about December 31, 2007, St. James at Wesley Lake LLC, a Delaware limited liability company (which company through merger on February 5, 2008 became St. James Urban Renewal Associates LLC, a New Jersey limited liability company) took ownership and control of the Property and the Project through assignment from Wesley Lake; and

WHEREAS, while some Units of the Project have been constructed and sold to condominium purchasers ("Current Unit Owners"), 24 units remain in a state of incomplete construction and have not been sold or occupied (the "Unoccupied Units"); and

WHEREAS, the Initial Financial Agreement has failed to provide the tax benefit incentive intended by the Agreement and the LTTE upon which Current Unit Owners relied in their decision to purchase the Units and the existing payments being made by the Current Owners may be greater than the taxes that would be due under the general tax rate; and

WHEREAS, this anomalous and unintended result of PILOT being greater than taxes that would otherwise be due has not only deprived the Current Unit Owners of the benefit of the bargain of the Initial Financial Agreement, but has also rendered the Unoccupied Units difficult to market, as few potential buyers will purchase an Unoccupied Unit knowing that he or she may be paying greater than the general tax rate; and

WHEREAS, the City has experienced similar circumstances where construction of projects had been partially completed and large portions remained vacant and unsold, having a detrimental impact upon the economic, social and aesthetic welfare of the community; and

WHEREAS, if a major portion of the Project remains vacant and unoccupied, additional vacancies will likely occur, resulting in a downward spiral until the Project will return to a blighted state, contrary to the goals that were sought to be accomplished under the

Redevelopment Plan and as contemplated by the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1, *et seq.*; and

WHEREAS, it is against the interest of not only the Entity and the Current Unit Owners to permit this unintended and erroneous situation to continue, but it is against the interest of the general public and community and the continued vacancy of Unoccupied Units will be detrimental to the welfare of the community generally; and

WHEREAS, the City and the Entity have presented this Amended and Restated Financial Agreement to the Current Unit Owners, who will be impacted by the adoption of this Amended and Restated Financial Agreement, and each Current Unit Owner has acknowledged that this Amended and Restated Financial Agreement will have a positive impact upon his or her interest and has provided to the Condominium Association and the Entity his or her express acknowledgment of the execution of this Financial Agreement and adoption of the PILOT pursuant thereto; and

WHEREAS, the City and the Entity now wish to amend and restate the terms of the Initial Financial Agreement; and

WHEREAS, the LTTE requires that financial agreements entered into or amended pursuant to its terms be approved by a municipal ordinance; and

WHEREAS, on January 20, 2010, the City Governing Body finally adopted Ordinance No. 2927 (the "**Ordinance**") approving this Amended and Restated Financial Agreement, a copy of which is attached hereto as **Exhibit A**.

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

ARTICLE I - GENERAL PROVISIONS

Section 1.1 Governing Law

This Agreement shall be governed by the provisions of the LTTE and the Local Redevelopment and Housing Law, *N.J.S.A. 40A:12A-1 et seq.* (the “**LRHL**”), and any other applicable State or Federal law (“**Applicable Law**”). This Agreement shall be amended automatically to incorporate any future amendments to the LTTE that are made retroactive. This Agreement shall also be governed by the Ordinance, pursuant to which the City Governing Body approved the Annual Service Charge, the Minimum Annual Service Charge, and authorized the execution of this Agreement.

Section 1.2 General Definitions

The following terms shall have the meaning assigned to such terms in the preambles hereof:

Wesley Lake	Property
Initial Financial Agreement	Redeveloper Agreement
LTTE	Subsequent Developer Agreement
Plan Ordinance	Waterfront Tax Abatement Ordinance
Project	Wesley Lake
Current Unit Owners	Unoccupied Units

Unless specifically provided otherwise or the context otherwise requires, when used in this Agreement, the following terms shall have the following meanings:

Administrative Fee – the annual fee paid to the City by all Unit Owners or occupants as set forth in Section 71.1.

Allowable Net Profit (or “ANP”) - The Net Profit of the Entity that does not exceed the Allowable Profit Rate, pursuant to the provisions of *N.J.S.A. 40A:20-3 (c)*.

Allowable Profit Rate (or "APR") – The Allowable Profit Rate for the purpose of this Agreement is the greater of 12% or 1.25% over permanent financing for the Project in accordance with *N.J.S.A. 40A:20-3(b)*.

Annual Service Charge or ASC - The annual amount the Entity has agreed to pay the City in lieu of full taxation on the Improvements on the Project pursuant to *N.J.S.A. 40A:20-12* and as further set forth in Section 4.1.

Annual Service Charge Start Date – as defined in Section 4.1(a).

Annual Service Charge Reformation Date – as defined in Section 4.1(a).

Applicable Law - Any and all federal, State and local laws, rules, regulations, statutes and ordinances applicable to the Project.

Auditor's Report – A complete financial statement outlining the financial status of the Project (for a period of time as indicated by context), the contents of which have been prepared in a manner consistent with the current standards of the Financial Accounting Standards Board, and which fully details all times as required by all state statutes, which has been certified as to its conformance with such standards by a certified public account who is, or whose firm is, licensed to practice that provision in the State of New Jersey.

Certificate of Occupancy - A document, whether temporary or permanent, issued by the City authorizing the occupancy of a building, in whole or in part, pursuant to *N.J.S.A. 52:27D-133* and any other Applicable Law.

Certificate of Substantial Completion - A determination by the City made with respect to the entire Project, the construction activities entailed are completed in all material respects and that the entire Project is ready for its intended use. The date for issuance of the

Certificate of Substantial Completion shall ordinarily mean the date upon which the Project receives, or is eligible to receive, its last temporary or permanent Certificate of Occupancy.

Construction Period Payments- Any amounts due or payable on the Property during the construction period of the Project prior to Substantial Completion pursuant to the Initial Financial Agreement, for which amounts Entity will no longer be liable and which payments shall be deemed fully-satisfied, as specified herein.

County – the County of Monmouth.

County Portion - Five percent (5%) of the Annual Service Charge.

Default – The failure of the Entity or the City to perform any obligation imposed upon the Entity or the City by the terms of this Financial Agreement following the expiration of any applicable grace, notice or cure period established under this Agreement.

Effective Date – is the date this Agreement is executed by the Parties.

Entity - St. James Urban Renewal Associates, LLC, a New Jersey limited liability company established and operated pursuant to the laws of the State of New Jersey with offices located at 1100 Ocean Avenue, Asbury Park, New Jersey 07712, or any successor in interest of the Project in whole or in part, provided such successor(s) in interest is formed and is operated under Applicable Law and the form utilized is qualified by the State of New Jersey Department of Community Affairs to be an Urban Renewal Entity and, if required, the transfer has been duly approved by the City.

Financial Agreement – this financial agreement by and between the City of Asbury Park and St. James Urban Renewal Associates, L.L.C.

Gross Revenue - Any and all revenue derived by the Entity in connection with the Project as defined by *N.J.S.A. 40A:20-3*.

Improvements - Any building, structure or fixture permanently affixed to the land or any structure or fixture affixed to the Property and to be constructed as part of the Project.

Initial Annual Service Charge – as defined in Section 4.1(b).

In Rem Tax Foreclosure or Tax Foreclosure - A summary proceeding by which the City may enforce a lien for real estate taxes due and owing by tax sale, under *N.J.S.A. 54:5-1 et seq.* and/or any other Applicable Law.

Land Taxes - The amount of taxes assessed on the value of land on which the Improvements are located.

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

Minimum Annual Service Charge – The amount the Entity has agreed to pay the City in lieu of full taxation of the Improvements prior to receipt of a Certificate of Substantial Completion as further set forth in Section 4.5.

Net Profit - The Gross Revenue of the Entity, less all operating and non-operating expenses of the Entity for the Project, all determined in accordance with generally accepted accounting principles and the provisions of *N.J.S.A. 40A:20-3(c)*.

Owner – each and every owner, whether in fee simple or otherwise, of any portion of the Property or any Improvement related thereto, including any Unit, regardless of whether such owner shall be the Entity, a subsequent Urban Renewal Entity, as the same is defined in the LTTE and pursuant to the terms set forth herein, a Unit Purchaser or any other company, entity or person.

Term – is defined in Section 3.1.

Termination – the expiration of the term of this Agreement in accordance with Section 3.1 or Section 11.1 hereof which by operation of the terms of this Financial Agreement shall cause the relinquishment of the tax exemption applicable to any Improvement, including any Unit.

Unit – one of the residential units built or to be built as part of the Project, the tax exemption upon which shall continue and inure to the benefit of any Owner, its successor and assigns in accordance with the terms hereof.

Unit Purchaser – the buyer of a Unit to whom the tax exemption for that Unit will be transferred and who will be responsible pursuant to this Agreement to pay the applicable portion of the Annual Service Charge.

ARTICLE II – APPROVAL

Section 2.1 Approval of Tax Exemption.

The City hereby grants its approval for this amended Financial Agreement and the Long-Term Tax Exemption for the existing and additional Improvements to be constructed upon the Property, in accordance with the terms and conditions of this Financial Agreement and the provisions of the LTTE.

Section 2.2 Approval of Entity.

Approval is hereby granted to the Entity whose Certificate of Formation is attached and annexed hereto as **Exhibit B**. The Entity represents that its Certificate of Formation contains all the requisite provisions of Applicable Law, has been reviewed and approved by the Commissioner of the State of New Jersey Department of Community Affairs and has been filed with, as appropriate, the State of New Jersey Department of Treasury, all in accordance with *N.J.S.A. 40A:20-5*.

Section 2.3 Improvements to be Constructed; Redevelopment Agreement.

The Entity represents that it will construct and complete the Project in accordance with the terms and conditions of the Subsequent Developer Agreement.

Section 2.4 Ownership, Management and Control.

The Entity represents that it is the owner of the Property upon which the Project has been or will be constructed and the Current Unit Owners have provided the Condominium Association and the Entity with their express acknowledgment of the Entity's execution this Financial Agreement.

ARTICLE III - DURATION OF AGREEMENT

Section 3.1 Term.

So long as there is compliance with the LTTE and this Agreement, this Agreement shall remain in effect for fifteen (15) years from the Annual Service Charge Start Date for the Property, subject to the further limitations and agreements contained herein, and shall only be effective and in force during the period while the Improvements are owned by an "Urban Renewal Entity" formed pursuant to *N.J.S.A. 40A:20-5* and Title 15A of the New Jersey Statutes, or by a Unit Purchaser pursuant to this Agreement (the "Term"). After the expiration of the Term or termination by the Entity or Unit Purchaser pursuant to *N.J.S.A. 40A:20-13*: (i) the exemption for the Improvements shall expire and the Property and the Improvements shall thereafter be assessed and taxed according to the general law applicable to other non-exempt property in the City, and (ii) all restrictions and limitations upon the Entity or Unit Purchaser shall terminate. In the event of a termination by the Entity, such termination shall be subject to the Entity rendering, and the City's acceptance of the Entity's final accounting.

The Parties acknowledge that *N.J.S.A. 40A:20-13* permits the Entity, as a urban renewal entity under the Act, to provide notice and terminate the terms and conditions of this, and prior Agreements, and have the Property become subject to taxation as are all other taxable properties

within the City. Any such termination or opt out would end the requirement to pay subsequent Annual Service Charges under this Agreement and would result in the Property and the Project being assessed and subject to taxation as are all other taxable properties within the City. Certain Current Unit Owners have asserted the existence of a right to opt out, or terminate the effect of this Agreement, individually, as applied to their individual units, rather than as the Entity for the entire Project. The City does not agree that such an individual right exists. The Parties acknowledge that the execution of this Agreement shall not be construed as waiving, effecting or settling the rights applicable to the issue of a termination of this Agreement by an individual unit owner.

ARTICLE IV - ANNUAL SERVICE CHARGE

Section 4.1 Annual Service Charge

In consideration of the aforesaid exemption from taxation on Improvements, Entity or the Unit Owner, as the case may be, shall make payment to the City of the Annual Service Charge set forth in this Section 4.1.

(a) The Annual Service Charge for the Property shall commence and be calculated from the first day of the month following the issuance by the City of a Certificate of Occupancy for the Unoccupied Units (provided such Units are unoccupied as of the Effective Date (the “**Annual Service Charge Start Date**”), or January 1, 2009 (the “**Annual Service Charge Reformation Date**”) for all Current Unit Owners (provided such Units are occupied as of the Effective Date of this Agreement). If the Annual Service Charge Date occurs during the last quarter of a calendar year, the first payment shall be *pro rated* based upon the first year payment set forth below. If the Annual Service Charge Start Date occurs during the first through third quarters of the calendar year, the first quarterly payments shall be pro rated based upon the first year payment set forth

below, and the first year of the term of this Agreement shall be deemed to commence on the first day of the following quarter.

(b) The Annual Service Charge shall be equal to \$12.00 per every \$1,000 of the actual sale or resale price for each individual Unit (the “**Initial Annual Service Charge**”) subject to annual increases pursuant to Section 4.2, *provided however*, that the Initial Annual Service Charge shall be not less than 10% of conventional taxes otherwise applicable to the Project or any individual Unit, and the City shall have the right to restate this Agreement if the Initial Annual Service Charge is calculated as set forth above is less than 10% of conventional taxes otherwise applicable to the Project or any individual Unit. The Parties agree and acknowledge that the anticipated target amount of the Annual Service Charge set forth above is reasonable, accomplishes the objectives of the LTTE, and is crucial to the feasibility of the completion of the Project and, accordingly, the Parties shall work cooperatively to achieve such anticipated Annual Service Charge amount, pursuant to applicable law.

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

Section 4.2 Annual Service Charge Stages

The Annual Service Charge shall increase annually from the Annual Service Charge Date or the Annual Service Charge Reformation Date equivalent to the percentage change in the tax levy.

Section 4.3 Land Tax Credit

The Entity, Current Unit Owners, and Unit Owners shall be entitled to a credit against the Annual Service Charge for the amount, without interest, of the Land Tax Payments made in the last four (4) preceding quarterly installments. The credit shall be allowed against the first quarter annual payment of ASC in any calendar year and, if not depleted after being applied against the first quarter ASC, shall be allowed against each subsequent quarter annual payment as it comes due, until no credit remains.

Section 4.4 Quarterly Installments

The Entity expressly agrees that the Annual Service Charge shall be paid in quarterly installments on those dates when ad valorem real estate tax payments are due; subject, nevertheless, to an adjustment for over or underpayment within thirty (30) days after the close of each calendar year.

Section 4.5 Minimum Annual Service Charge/Construction Period Charges

During the period after commencement of construction and prior to the Substantial Completion of the Project and/or Unit(s), the Entity shall make a Minimum Annual Service Charge and Construction Period Payment as follows:

(a) The Parties agree that for purposes of computing the Minimum Annual Service Charge and Construction Period Payments, the Total Project Cost of the completed Project is \$15,687,378.00, as set forth in the Architect Certification, attached hereto as **Exhibit C**. For purposes of this Agreement, it is assumed that costs relating to environmental remediation and extraordinary costs associated with the remediation of blight conditions that might be excluded from the Total Project Cost calculation, pursuant to N.J.S.A. 40A:20-3(h), have been excluded

and that future financial agreements entered by the City shall contain provisions for the exclusion of such costs, pursuant to N.J.S.A. 40A_20-3(h). The Minimum Annual Service Charge shall be 2% of the Total Project Cost, which shall be pro rated for each Unsold Unit. The Parties agree that as of December 15, 2009, there are 24 Unsold Units. Thus, the Minimum Annual Service Charge as of January 1, 2010, shall be \$82,746.61 (2% of Total Project Cost [\$313,747.56] divided by 91 Total Units [\$3,447.78], multiplied by 24 Unsold Units). For each Unit sold after the Effective Date, the Parties agree that the per-unit value is \$3,447.78 and that this amount shall be deducted from the Minimum Annual Service Charge effective at a per diem rate as of the date of sale of the Unit. From this amount, the Entity shall be entitled to deduct a credit against the land tax actually paid on the Property in the proceeding tax year (or such prorated amounts allocable to the units initially unsold).

(b) The City will bill the Minimum Annual Service Charge Payment in quarterly increments due on February 1, 2010, May 1, 2010, August 1, 2010 and October 1, 2010.

(c) The Entity shall continue to make the Minimum Annual Service Charge Payment under this Section 4.5 for each year, if on October 1 of the previous year, any units remain initially unsold within the Project. The methodology for the calculation of such payment shall be the methodology set forth in Section 4.5(a) of this Agreement; provided that in no year shall that amount due be less than zero dollars nor greater than the estimated Annual Service Charge for the entire Project.

(d) For payments due under this Section 4.5 that remain unpaid past their due dates, the Entity acknowledges that the City will have the right to institute collection through a tax lien sale pursuant to *N.J.S.A. 54:5-1 et seq.*, if such amounts remain unpaid and further that such payments shall accrue interest.

(e) Construction Period Payments- The City agrees and acknowledges that Construction Period Payments due or payable under the Initial Financial Agreement for the period up to April 1, 2008, have been fully-satisfied, pursuant to an agreement between the parties entered March 19, 2008. The parties agree and acknowledge that any remaining obligation for Construction Period Payments under the Initial Financial Agreement shall be fully-satisfied pursuant to this Agreement and Entity and its successors, assigns, affiliates, shall have no further liability for Construction Period Payments. The method of calculation for determining the Minimum Annual Service Charge set forth in Section 4.5(a) above shall apply to calculate the Construction Period Payments due from the period April 1, 2008 through the December 31, 2009, as set forth below.

Unsold Units as of July 1, 2008, \$58,612.60	68, multiplied by \$861.95 (quarterly payment) =
Unsold Units as of October 1, 2008, \$48,269.20	56, multiplied by \$861.95 (quarterly payment) =
Unsold Units as of January 1, 2009, \$47,407.25	55, multiplied by \$861.95 (quarterly payment) =
Unsold Units as of April 1, 2009, \$45,683.35	53, multiplied by \$861.95 (quarterly payment) =
Unsold Units as of July 1, 2009, \$45,683.35	53, multiplied by \$861.95 (quarterly payment) =
Unsold Units as of October 1, 2009, \$40,511.65	47, multiplied by \$861.95 (quarterly payment) =
Unsold Units as of December 31, 2009, \$29,306.13	34, multiplied by \$861.95 (quarterly payment) =

Change to 34 units per unit for unsold units

Total: \$315,471.87

Minus \$117,807.51, credit for land tax payments made between the period April 1, 2008 and December 31, 2009.

Total Construction Period Payments Due: \$197,664.36

Entity Agrees to make the Total Construction Period Payments set forth above in one lump sum payment on or before March 1, 2010.

ARTICLE V – CERTIFICATE OF OCCUPANCY

Section 5.1 Certificate of Occupancy

It shall be the obligation of the Entity to make application for and make all commercially reasonable efforts to obtain all Certificates of Occupancy in a timely manner. It shall be the primary responsibility of the Entity to forthwith file with the Tax Assessor, the Tax Collector and the Chief Financial Officer of the City a copy of any Certificate of Occupancy.

ARTICLE VI - ANNUAL REPORTS and AUDITS

Section 6.1 Accounting System

For so long as the Entity owns the Building constructed as a part of the Project, the Entity agrees to calculate its “net profit” pursuant to *N.J.S.A. 40A:20-3(c)* and in this Financial Agreement.

Section 6.2 Periodic Reports

(a) **Auditor’s Report -** For so long as the Entity owns any of the Units constructed as a part of the Project and within ninety (90) days after the close of each fiscal or calendar year, depending on the Entity’s accounting basis that this Financial Agreement shall continue in effect, the Entity shall submit to the City Governing Body, the City Collector and the City Clerk, who shall advise those municipal officials required to be advised, and the Division of Local Government Services in the State of New Jersey Department of Community Affairs, its Auditor’s Report for the preceding fiscal or calendar year. The Report shall clearly identify and

calculate the Net Profit for the Entity during the previous year. The Entity assumes all costs associated with the preparation of these periodic reports. It is expressly agreed to by and between the parties that the Entity shall only be responsible for submitting to the City the above-described Audits during periods of time in which it holds ownership interest in any part of this Project.

(b) **Disclosure Statement** - For so long as the Entity owns any part of the Project, the Entity shall submit to the City Governing Body a Disclosure Statement listing the persons having an ownership interest in the Project and the extent of ownership interest of each.

Section 6.3 Examination of Records

Until the earlier of such time as the Entity no longer holds an interest in any part of the Project or the expiration of the term of this Agreement, the Entity shall permit the inspection of the Premises, equipment, buildings and other facilities of the Project, if deemed appropriate or necessary, by representatives duly authorized by the City and the State of New Jersey Division of Local Government Services in the Department of Community Affairs. It shall also permit, upon request, examination and audit of its books, contracts, records, documents and papers. Such examination or audit shall be made during the reasonable hours of the business day, in the presence of an officer or agent designated by the Entity. Such inspection, examination or audit shall be made upon twenty-one (21) days notice during the Entity's 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 shall not materially interfere with construction or operation of the Project.

ARTICLE VII - LIMITATION OF PROFITS AND RESERVES

Section 7.1 Limitation of Profits and Reserves

During the period of tax exemption as provided herein, the Entity shall be subject to a limitation of its profits pursuant to the provisions of N.J.S.A. 40A:20-15. Pursuant to N.J.S.A. 40A:20-3(c), this calculation shall be completed in accordance with GAAP and the definitions of the phrases "Net Profit" and "Gross Revenue" set forth in the Definitions of this Financial Agreement.

The Entity shall have the right to establish a reserve against vacancies, unpaid rentals and contingencies in an amount up to ten (10%) percent of the Gross Revenue 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*.

Section 7.2 Annual Payment of Excess Profit:

If the Net Profits of the Entity, in any fiscal year in which it holds an interest in the Project, shall exceed the Allowable Net Profits for such period, then the Entity, within one hundred twenty (120) days after the end of such fiscal year, shall pay such excess Net Profits to the City as an additional service charge; provided, however, that the Entity may maintain a reserve as determined pursuant to aforementioned Section 7.1, hereof. 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)*, *N.J.S.A. 40A:20-15* and this Financial Agreement.

Section 7.3 Payment of Reserve upon Termination Expiration or Sale:

Within ninety (90) days after termination of this Agreement, the Entity shall pay to the City the amount of the reserve, if any.

ARTICLE VIII - SALE OF PROJECT

Section 8.1 Approval

As permitted by *N.J.S.A.* 40A:20-10(a), the City, upon written notice of the Entity, will consider sale of the Project or any portion thereof and will consent to the transfer of this Financial Agreement provided that: (a) the transferee does not own any other project subject to long term tax exemption at the time of transfer; (b) the new Entity is formed and eligible to operate as an urban renewal entity under the LTTE, (c) the Entity's obligations under this Financial Agreement are fully assumed by the transferee on a going forward basis and (d) the new Entity abides by all terms and conditions of this Agreement including, without limitation, the filing of an application pursuant to *N.J.S.A.* 40A:20-8. The City shall levy an administrative fee, not to exceed two percent (2%) of the Annual Service Charge, for the processing of any application to transfer ownership of the Project in accordance with this Section and the LTTE.

ARTICLE IX-COMPLIANCE

Section 9.1 Operation:

During the term of this Financial Agreement, the Project shall be maintained and operated in accordance with the provisions of the Applicable Law.

ARTICLE X - DEFAULT

Section 10.1 Cure Upon Default:

If any party to this Financial Agreement breaches the terms or conditions contained in this Financial Agreement, then the aggrieved party shall send a written default notice to the other party ("Default Notice"). The Default Notice shall set forth with particularity the basis of the alleged default. The party in breach shall have sixty (60) days, from receipt of the Default Notice, to cure any default. However, if the default cannot be cured within sixty (60) days using reasonable

diligence, in the reasonable opinion of the party in breach, then and in that event the time to cure shall automatically be extended by a time period that is reasonable under the circumstances. Upon the expiration of the sixty (60) day cure period set forth above, or upon the expiration of any extension period, the aggrieved party shall have the right to terminate this Financial Agreement in accordance with Article XI hereof.

ARTICLE XI-TERMINATION

Section 11.1 Termination Upon Default

In the event that the defaulting party fails to cure or remedy a default within the time period provided in Section 10.1, hereof, the aggrieved party may terminate this Financial Agreement upon thirty (30) days written notice to the party in breach.

Section 11.2 Modifications Due to Tax Reform

In the event the State legislature of the State of New Jersey passes property tax reform such that the local property tax rate no longer consists of the three-part municipal, school and county components, the parties hereby agree to renegotiate and amend this Financial Agreement, provided no such amendment shall adversely affect the Entity's rights or obligations under this Agreement.

Section 11.3 Termination and Final Accounting

Within ninety (90) days after the date of termination, whether by affirmative action of the Entity or by virtue of the provisions of the Applicable Law or pursuant to the terms of this Financial Agreement, the Entity shall provide a final accounting and pay to the City excess Net Profits, if any, payable as of that date. For purposes of rendering a final accounting the termination of the Financial Agreement shall be deemed to be the end of the fiscal year for the Entity.

Section 11.4 Taxes after Termination Date:

After the termination date, the tax exemption for the Project shall expire and the Land and the Improvements shall thereafter be assessed and conventionally taxed according to the Applicable Law regarding other nonexempt taxable property in the City.

ARTICLE XII - DISPUTE RESOLUTION

Section 12.1 Arbitration

In the event of a dispute arising between the parties in reference to the terms and provisions of this Financial Agreement, either party shall submit the dispute to the American Arbitration Association to be resolved in accordance with its rules and regulations in such fashion as to accomplish the purposes of the LTTE and this Financial Agreement. The costs of arbitration shall be borne equally by the parties.

ARTICLE XIII - WAIVER

Section 13.1 Waiver

Nothing contained in this Financial Agreement or otherwise shall constitute a waiver or relinquishment by an aggrieved party of any rights and remedies, including, without limitation, the right to terminate the Financial Agreement subject to the qualifications set forth elsewhere in this Financial Agreement for violation of any of the obligations provided herein. Nothing herein shall be deemed to limit any right of recovery of any amount which the aggrieved party has under any Applicable Law, or in equity, or under any provision of this Financial Agreement.

ARTICLE XIV - INDEMNIFICATION

Section 14.1 Right to Indemnification

It is understood and agreed that in the event the City shall be named as party defendant in any action challenging the validity of this Financial Agreement (other than an action commenced by the Entity, Current Unit Owner or the Condominium Association, or any Unit Purchaser alleging any breach, default or a violation of any of the provisions of this Agreement and/or the provisions of *N.J.S.A. 40A:20-1 et seq.* by the City) the Entity shall indemnify and hold the City harmless, and the Entity agrees to defend itself and the City in the action at its own expense. This Agreement shall not create any duty or obligation as between the Entity and any Unit Purchaser, Current Unit Owners, or the Condominium Association, and Entity shall not be liable to any Unit Purchasers, Current Unit Owners, or the Condominium Association in any manner with respect to this Agreement.

ARTICLE XV - NOTICE

Section 15.1 Notices:

Any notice required hereunder to be sent by either party to the other shall be sent by national overnight delivery service such as Federal Express, certified or registered mail, return receipt requested, addressed as follows:

- a) When sent by the City to the Entity:

St. James Urban Renewal Associates, LLC
2001 Pennsylvania Avenue, 10th Floor
Washington, DC 20006

with a copy to:

Tannenbaum Helpert Syracuse & Hirschtritt LLP,
900 Third Avenue,
New York, New York 10022,
Attention: Roger M. Roisman, Esq.

- b) When sent by the Entity to the City:

City of Asbury Park
1 Municipal Plaza
Asbury Park, New Jersey 07712
Attn.:

with a copy to: McManimon & Scotland, LLC.
137 Raymond Boulevard, Suite 400
Newark, New Jersey 07102-5408
Attn.: Thomas J. Hastie, Jr., Esq.

Notice shall be deemed received upon actual receipt evidenced by a delivery receipt or, if delivery is refused, upon first attempted delivery. Either party shall have the right to change the persons and location of notices to be sent to it by notice sent in accordance with this Agreement.

ARTICLE XVI - SEVERABILITY

Section 16.1 Severability:

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

(b) If any provision of this Financial Agreement shall be judicially declared to be invalid or unenforceable, and provided that a default has not been declared that has continued uncured after notice and expiration of the grace period provided in this Agreement, the parties and each of them shall cooperate with each other to take the actions reasonably required to

restore the Financial Agreement in a manner contemplated by the parties. This shall include, but not be limited to the authorization and re-execution of this Financial Agreement in a form reasonably drafted to effectuate the original intent of the parties.

ARTICLE XVII – ADMINISTRATIVE FEE

Section 17.1 Defined

The Entity acknowledge and agree that, in addition to the payment of the Annual Service Charge, an annual administrative fee (the “**Administrative Fee**”) shall be payable to the City. This Agreement shall be included in all deeds to Unit Purchasers. The Annual Administrative Fee shall be \$187.50 per year for the Entity and shall be 2% of the Annual Service Charge for Current Unit Owners and Unit Purchasers. The Administrative Fee shall be due and payable on or before December 31st of each year with interest accruing for late payments in accordance with the standards applicable to the Annual Service Charge.

Section 17.2 Submission of Deeds

The Entity or the Owner shall submit filed copies of all deeds certified to be true copies within (30) days of a closing to the City’s Tax Assessor.

ARTICLE XVIII - MISCELLANEOUS

Section 18.1 Construction

This Financial Agreement shall be governed, construed and enforced in accordance with the LTTE and other Applicable Laws of the State of New Jersey and without regard to or aid of any presumption or other rule requiring construction against the party drawing or causing this Financial Agreement to be drawn since counsel for both the Entity and the City, respectively have combined in review and approval of same.

Section 18.2 Conflicts

The parties agree that in the event of a conflict between the Application for Long-Term Tax Exemption and the language contained in this Financial Agreement, this Financial Agreement shall govern and prevail. In the event of conflict between this Financial Agreement and the LTTE, the LTTE shall govern and prevail.

Section 18.3 Oral Representations

There have been no oral representations made by either of the parties hereto which are not contained in this Financial Agreement. This Financial Agreement, the Ordinance authorizing the execution of the Financial Agreement, and the Application for Long-Term Tax Exemption constitute the full agreement between the parties.

Section 18.4 Modification

There shall be no modification of this Financial Agreement except by virtue of a written instrument(s) executed by and between both parties and approved by ordinance.

Section 18.5 Entire Agreement

This Financial Agreement and all conditions in the Resolutions of the Planning Board granting site plan approval and the City Governing Body approval of this Financial Agreement are incorporated into this Financial Agreement and made a part hereof.

Section 18.6 Good Faith

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

Section 18.7 Certification

The City Clerk shall certify to the City Tax Assessor, pursuant to *N.J.S.A. 40A:20-12*, that a Financial Agreement with an urban renewal entity, for the development of the Premises,

has been entered into and is in effect as required by *N.J.S.A. 40A:20-1 et seq.* Delivery by the City Clerk to the City Tax Assessor of a certified copy of the Ordinance adopted by the City Governing Body approving the tax exemption described herein and this Financial Agreement shall constitute the required certification. Upon the delivery of the certification as required hereunder, the City Tax Assessor shall implement the exemption and continue to enforce that exemption without further certification by the City Clerk until the expiration of the entitlement to exemption by the terms of this Financial Agreement or until the City Tax Assessor has been duly notified by the City Clerk that the exemption has been terminated.

Further, upon the adoption of this Financial Agreement, a certified copy of the Ordinance adopted by the City Governing Body approving the tax exemption described herein and this Financial Agreement shall be transmitted to the Director of the Division of Local Government Services State of New Jersey Department of Community Affairs by the City Clerk.

ARTICLE XVIII - EXHIBITS

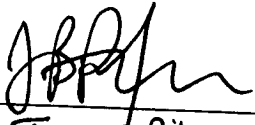
Section 18.1 Exhibits:

The following exhibits are annexed to and made a part of this Agreement:

- Exhibit A Ordinance of the City authorizing the execution of this Agreement;
- Exhibit B Certificate of the Entity;
- Exhibit C Architect's Certification of Actual Construction Costs

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

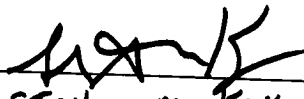
Witness:

By: 
Tyson Pitzer

ST. JAMES URBAN RENEWAL ASSOCIATES, LLC

By: 
Gary Mottola, Executive Vice President

Witness:

By: 
Stephen M. Kay
City Clerk

CITY OF ASBURY PARK

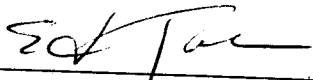
By: 
Mayor
Ed Johnson

Exhibit A

Following page(s).

ORDINANCE AUTHORIZING THE MAYOR AND CITY COUNCIL OF THE CITY OF ASBURY PARK, IN THE COUNTY OF MONMOUTH, NEW JERSEY TO ENTER INTO A REVISED FINANCIAL AGREEMENT BETWEEN THE CITY OF ASBURY PARK AND ST. JAMES URBAN RENEWAL ASSOCIATES LLC FOR CERTAIN PROPERTY WITHIN THE WATERFRONT REDEVELOPMENT AREA

WHEREAS, on June 5, 2002 the Mayor and City Council of the City of Asbury Park (the "**City Council**") adopted Ordinance No. 2607 entitled "Ordinance Adopting Amended Waterfront Redevelopment Plan for the City of Asbury Park" (the "**Plan Ordinance**"); and

WHEREAS, on October 28, 2002 the City Council and Asbury Partners, L.L.C., ("**Asbury Partners**") entered into the "Amended and Restated Redeveloper and Land Acquisition Agreement" as amended from time to time (the "**Redeveloper Agreement**"); and

WHEREAS, Section 10.1 of the Redeveloper Agreement provides that the City would adopt a standard form of tax abatement agreement for use by Subsequent Developers (as such term is defined in the Redeveloper Agreement); and

WHEREAS, on August 18, 2004, the City Council finally adopted an ordinance (the "**Waterfront Tax Abatement Ordinance**") approving a standard form of tax abatement agreement and application for use by the Master Developer and Subsequent Developers; and

WHEREAS, on January 8, 2003, the City Council approved Wesley Lake Building Associates, L.L.C. (together with an urban renewal entity created pursuant to the hereinafter defined act and known as Wesley Lake Phase One Urban Renewal, L.L.C., ("**Wesley Lake**") as a Subsequent Developer, subject to the satisfaction of certain criteria which were subsequently satisfied and memorialized in the execution of a Subsequent Developer Agreement between the City of Asbury Park and Wesley Lake for the Project (as such term is defined in the Subsequent Developer Agreement); and