TOWNSHIP OF LOWER, COUNTY OF CAPE MAY, STATE OF NEW JERSEY

ORDINANCE #2019-13

Title: AN ORDINANCE AUTHORIZING THE EXECUTION OF A FINANCIAL AGREEMENT BETWEEN THE TOWNSHIP OF LOWER AND THE COUNTY OF CAPE MAY PURSUANT TO THE NEW JERSEY LONG TERM TAX EXEMPTION LAW FOR THE PROPERTY IDENTIFIED AS BLOCK 410.01, LOT 36.01, ALSO KNOWN AS THE CAPE MAY COUNTY TECH VILLAGE.

WHEREAS, the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq. (the "Redevelopment Law") allows municipalities to authorize and participate in the redevelopment and improvement of areas deemed to be in need of redevelopment; and

WHEREAS, on June 5, 2017, in order to stimulate rehabilitation and redevelopment within the Township, specifically at the Cape May County Airport, the Township Council of the Township of Lower (hereinafter "Council") adopted Resolution 2017-199, designating a portion of Block 410, Lots 36, specifically Lot 36.01, as a Redevelopment Area ("Redevelopment Area") pursuant to the Redevelopment Law; and

WHEREAS, on July 16, 2018, Council, pursuant to Ordinance No. 2018-12, adopted the "Cape May County Airport Tech Village Redevelopment Plan," dated June 2018 (the "Redevelopment Plan"); and

WHEREAS, pursuant to the Redevelopment Law, the County, entered into a redevelopment agreement (the "Redevelopment Agreement"), designating the Atlantic County Improvement Authority (hereinafter "Entity") as the redeveloper of the Redevelopment Area identified as Block 410.01, Lot 36.01 on the Official Tax Map of the Township (hereinafter "Property"), and outlining the terms and conditions pursuant to which the Property was to be redeveloped; and

WHEREAS, the Redevelopment Plan and the Redevelopment Agreement contemplated that the Township and the County would enter into a financial agreement pursuant to the Long Term Tax Exemption Law, N.J.S.A. 40A:20-1 et seq., and the County has formally requested that the Township authorize the approval of a long term tax exemption for the Cape May County Airport Tech Village redevelopment project; and

WHEREAS, the provisions of the Long Term Tax Exemption Law, the Local Redevelopment and Housing Law, the Redevelopment Area Bond Financing Law, and such other statutes as may be sources of relevant authority, if any, authorize the Township to accept, in lieu of real property taxes, an annual service charge paid by the County to the Township as set forth in such laws; and

WHEREAS, in accordance the Long Term Tax Exemption Law, N.J.S.A. 40A:20-1 et seq., the Township and the County negotiated a thirty (30) year Financial Agreement, a copy of which is attached hereto as **Exhibit A**, which sets forth the rights and obligations of the parties and which details the annual service fee that the County will pay to the Township in lieu of taxes for this Project; and

NOW, THEREFORE, BE IT ORDAINED by the Township Council of the Township of Lower, County of Cape May, State of New Jersey, as follows:

Section 1. The Township Council of the Township of Lower hereby approves the form and content of the Financial Agreement attached hereto as **Exhibit A**. Township Council finds that the execution of the attached Financial Agreement is in the best interests of the Township as the Project is beneficial to the overall community, it achieves the goals and objectives of the Redevelopment Plan, it will help revitalize the Redevelopment Area, and it will enhance economic development within the Township.

Section 2. The Mayor is hereby authorized to execute the Financial Agreement attached hereto as **Exhibit A**;

Section 3. The Township Clerk is hereby authorized and directed, upon the execution of the Financial Agreement by the Mayor, to attest to the signature of the Mayor and to affix the official seal of the Township to said Financial Agreement;

Section 4. The Township Clerk shall deliver a certified copy of this Ordinance and Financial Agreement to the Township Tax Assessor;

Section 5. Within ten (10) calendar days following the later of the effective date of an ordinance following its final adoption by the governing body approving the tax exemption or the execution of the financial agreement by the urban renewal entity, the municipal clerk shall transmit a certified copy of the ordinance and financial agreement to the chief financial officer of the County and to the County Counsel for informational purposes.

Section 6. If any section or provision of this Ordinance shall be held invalid in any Court of competent jurisdiction, the same shall not affect the other sections or provisions of this Ordinance, except so far as the section or provision so declared invalid shall be inseparable from the remainder or any portion thereof;

Section 7. All ordinances or parts of ordinances which are inconsistent herewith are hereby repealed to the extent of such inconsistency.

Section 8. This Ordinance shall take effect in accordance with all applicable laws.

Erik Simonsen, Mayor

Frank Sippel, Deputy Mayor

Thomas Conrad, Councilmember

David Perry, Councilmember

ABSENT
Roland Roy, Jr., Councilmember

First Reading: Aug 19, 2019

Adopted: September 4, 2019

Attest: Julie A Picard
Julie A Picard, Township Clerk

FINANCIAL AGREEMENT

BY AND BETWEEN

THE TOWNSHIP OF LOWER

AND

THE COUNTY OF CAPE MAY

DATED

Sept 4, 2019

A FINANCIAL AGREEMENT BETWEEN THE TOWNSHIP OF LOWER AND THE COUNTY OF CAPE MAY PURSUANT TO THE LONG TERM TAX EXEMPTION LAW, N.J.S.A. 40A:20-1 et seq., FOR BLOCK 410.01, LOT 36.01 IN THE TOWNSHIP OF LOWER

FINANCIAL AGREEMENT
FOR BLOCK 410.01, LOT 36.01

THIS FINANCIAL AGREEMENT (hereinafter "Agreement"), is made this 4th day of September, 2019 (the "Effective Date") by and between the **TOWNSHIP OF LOWER** (hereinafter "Township"), a municipal corporation of the State of New Jersey whose administrative offices are located at 2600 Bayshore Road, Villas, New Jersey 08251 and the **COUNTY OF CAPE MAY** (hereinafter "County"), a body corporate and politic of the State of New Jersey whose administrative offices are located at 4 Moore Road, DN-101, Cape May Court House, New Jersey 08210, and who may collectively be referred to herein as the "Parties," and each may be called, separately, a "Party."

WITNESSETH:

WHEREAS, the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq. (the "Redevelopment Law") allows municipalities to authorize and participate in the redevelopment and improvement of areas deemed to be in need of redevelopment; and

WHEREAS, on June 5, 2017, in order to stimulate rehabilitation and redevelopment within the Township, specifically at the Cape May County Airport, the Township Council of the Township of Lower (hereinafter "Council") adopted Resolution 2017-199, designating a portion of Block 410, Lots 36, specifically Lot 36.01, as a Redevelopment Area ("Redevelopment Area") pursuant to the Redevelopment Law; and

WHEREAS, on July 16, 2018, Council, pursuant to Ordinance No. 2018-12, adopted the "Cape May County Airport Tech Village Redevelopment Plan," dated June 2018 (the "Redevelopment Plan"); and

WHEREAS, pursuant to the Redevelopment Law, the County, entered into a redevelopment agreement (the "Redevelopment Agreement"), designating the Atlantic County Improvement Authority (hereinafter "Entity") as the redeveloper of the Redevelopment Area identified as Block 410.01, Lot 36.01 on the Official Tax Map of the Township (hereinafter "Property"), and outlining the terms and conditions pursuant to which the Property was to be redeveloped; and

WHEREAS, the Redevelopment Plan and the Redevelopment Agreement contemplated that the Township and the County would enter into a financial agreement pursuant to the Long Term Tax Exemption Law, N.J.S.A. 40A:20-1 et seq., and the County has formally requested that the Township authorize the approval of a long term tax exemption for the Cape May County Airport Tech Village redevelopment project; and

WHEREAS, on Sept 4, 2019, the Township adopted Ord. No. 2019-13, entitled "An Ordinance Authorizing the grant and execution of a Financial Agreement for a Long Term Tax Exemption with the County of Cape May, for Block 410.01, Lot 36.01 on the Official Tax Map of the Township of Lower" (hereinafter "Ordinance"), a copy of which is attached hereto as **Exhibit A**; and

WHEREAS, the provisions of the Long Term Tax Exemption Law, the Local Redevelopment and Housing Law, the Redevelopment Area Bond Financing Law, and such other statutes as may be sources of relevant authority, if any, authorize the Township to accept, in lieu of real property taxes, an annual service charge paid by the County to the Township as set forth in such laws; and

WHEREAS, the Parties have entered into this Financial Agreement to memorialize the terms and conditions by which the County will pay Annual Service Charges to the Township in lieu of real property taxes on the improvements to be made in connection with the Cape May County Airport Tech Village project.

NOW, THEREFORE, in consideration of the mutual covenants herein contained and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties mutually agree as follows:

ARTICLE 1
GENERAL PROVISIONS

SECTION 1.1 GOVERNING LAW

This Financial Agreement shall be governed by the laws of the State of New Jersey, including the provisions of the Long Term Tax Exemption Law, the Local Redevelopment and Housing Law, the Redevelopment Area Bond Financing Law, the Ordinance, and all other applicable law.

SECTION 1.2 DEFINITIONS

The terms defined in the preambles hereto retain the meanings assigned to such terms therein. Unless specifically provided otherwise or the context otherwise requires, the following terms when used in this Financial Agreement shall have the following meanings:

Allowable Net Profit - The amount arrived at by applying the Allowable Profit Rate to Total Project Cost pursuant to the provisions of N.J.S.A. 40A:20-3(b).

Allowable Profit Rate - The Allowable Profit Rate for the purpose of this Financial Agreement will be calculated as set forth in N.J.S.A. 40A:20-3(b). The provisions of N.J.S.A. 40A:20-3(b) are incorporated herein by reference.

Annual Gross Revenue – Pursuant to N.J.S.A. 40A:20-3(a), the annual gross revenue shall be calculated as all income, monies or revenues generated or derived by or through the County (or by or through any assignee, lessee, tenant, licensee or other space occupant of County) that arise out of or are in connection with or attributable to the Cape May County Airport Tech Village from any source and before deductions for any costs or expenses, excepting therefrom any gain realized by the County on the sale of any unit in fee simple, whether or not taxable under Federal or State law.

Annual Service Charge - The amount the County has agreed to pay the Township, or its designee, for municipal services supplied to the Project, which sum, after appropriate credit for

Land Taxes, is in lieu of any taxes on the Improvements to the property, which amount shall be prorated in the year in which the Annual Service Charge begins and the year in which the Annual Service Charge terminates.

Applicable Law – All federal, State and local laws, ordinances, approvals, rules, regulations and requirements applicable thereto including, but not limited to, the Local Redevelopment and Housing Law, the Long Term Tax Exemption Law, as applicable, relevant construction codes including construction codes governing access for persons with disabilities, and such zoning, sanitary, pollution and other environmental safety ordinances, laws and such rules and regulations thereunder, including all applicable environmental laws, applicable federal and State labor standards and all applicable laws or regulations with respect to the payment of prevailing wages.

Auditor's Report - A complete financial statement outlining the financial status of the Project (for a period of time as indicated by context), which shall also include a certification of Total Project Cost and clear computation of Net Profit as provided in N.J.S.A. 40A:20-3(c). The contents of the Auditor's Report shall have been prepared in conformity with generally accepted accounting principles. The Auditor's Report shall be certified as to its conformance with such principles by a certified public accountant who is licensed to practice that profession in the State of New Jersey.

Certificate of Occupancy - A Temporary or Permanent Certificate of Occupancy, as such term is defined in the New Jersey Administrative Code issued by the Township as authorizing occupancy of a building, in whole or in part, pursuant to N.J.S.A. 52:27D-133.

County – The County of Cape May.

Debt Service - the amount required to make annual payments of principal and interest or the equivalent thereof on any construction mortgage, permanent mortgage or other financing including returns on institutional equity financing and market rate related party debt for a project for a period equal to the term of the tax exemption granted by this Agreement.

Default - A breach or the failure of either Party to perform any obligation imposed upon such Party by the terms of this Agreement, or under Applicable Law, beyond any applicable grace or cure periods after written notice of such failure.

In Rem Tax Foreclosure - A summary proceeding by which the Township may enforce the lien for taxes due and owing by a tax sale in accordance with the provisions of N.J.S.A. 54:5-1 et seq.

In Rem Tax Foreclosure Act – N.J.S.A. 54:5-104.29 et seq., as the same may be amended or supplemented from time to time.

Land – The real property, but NOT the Improvements, known as a portion of Block 410.01, Lot 36.01 on the Official Tax Map of the Township of Lower, New Jersey.

Land Taxes - The amount of taxes assessed on the value of the Land, in the event it is determined that the Land is not exempt, exclusive of the value of any Improvements related thereto, in accordance with Applicable Laws.

Land Tax Payments - Payments made on the quarterly due dates, including approved grace periods, if any, for Land Taxes as determined by the Tax Assessor and the Tax Collector.

Long Term Tax Exemption Law - N.J.S.A. 40A:20-1 et seq., as amended and supplemented.

Minimum Annual Service Charge – The amount of the total taxes levied against the Property (Land and Improvements) in the last full year prior to this agreement. Notwithstanding any provision of the Agreement to the contrary, the Annual Service Charge shall never be reduced below the Minimum Annual Service Charge through any tax appeal on the Land and/or Improvements or any other legal proceeding regarding the Project during the period that this Agreement is in force and effect.

Net Profit – The Annual Gross Revenue of the business pertaining to the Property, less all operating and non-operating expenses of the business, all determined in accordance with generally accepted accounting principles and the provisions of N.J.S.A. 40A:20-3(c), which includes, but is not limited to, the Debt Service and an annual amount sufficient to amortize (utilizing the straight line method-equal annual amounts) the Total Project Cost over the term of the exemption granted pursuant to this Agreement as well as all other expenses permitted under the provisions of N.J.S.A. 40A:20-3(c).

Partial Assessment – Assessment upon a partially completed improvement, that is, an improvement that is partially constructed as of October 1 of the pre-tax year and has not at that time received a temporary or permanent certificate of occupancy allowing the start of the exemption period and the Annual Service Charge under this agreement.

Project - As defined herein and in the Redevelopment Agreement, which qualifies as a "project" as defined in N.J.S.A. 40A:20-3(e). Any reference in the Redevelopment Agreement to the "Project," to the extent such reference is applicable to this Financial Agreement, shall refer to the Project.

Property – Block 410.01, Lot 36.01 on the Official Tax Map of the Township of Lower

State – The State of New Jersey.

Tax Assessor – The Township tax assessor.

Tax Collector – The Township tax collector.

Tax Sale Law – N.J.S.A. 54:5-1 et seq., as the same may be amended or supplemented from time to time.

Termination – Expiration of the term of this Agreement or any action or omission which by operation of the terms of this Agreement shall cause the County to relinquish or forfeit the tax exemption granted pursuant to this Agreement.

Total Project Cost – The total cost of construction and/or rehabilitation of the Project through the date a Certificate(s) of Occupancy is issued for the entire Project, which categories of cost are as defined in N.J.S.A. 40A:20-3(h). There shall be included in Total Project Cost the actual costs incurred to construct the Improvements which are specifically described in the Application.

Township - The Township of Lower, County of Cape May, State of New Jersey.

SECTION 1.3 INTERPRETATION AND CONSTRUCTION

In this Agreement, unless the context otherwise requires:

A. The terms "hereby", "hereof", "hereto", "herein", "hereunder" and any similar terms, as used in this Agreement, refer to this Agreement, and the term "hereafter" means after, and the term "heretofore" means before the date of delivery of this Agreement.

B. Words importing a particular gender mean and include correlative words of every other gender and words importing the singular number mean and include the plural number and vice versa.

C. Words importing persons mean and include firms, associations, partnerships (including limited partnerships), trusts, corporations, limited liability companies and other legal entities, including public or governmental bodies, as well as natural persons.

D. Any headings preceding the texts of the several Articles and Sections of this Agreement, and any table of contents or marginal notes appended to copies hereof, shall be solely for convenience of reference and shall not constitute a part of this Agreement, nor shall they affect its meaning, construction or effect.

E. Unless otherwise indicated, all approvals, consents and acceptances required to be given or made by any person or Party hereunder shall not be unreasonably withheld, conditioned, or delayed.

F. All notices to be given hereunder and responses thereto shall be given, unless a certain number of days is specified, within a reasonable time, which shall not be less than ten (10) days nor more than twenty (20) days, unless the context dictates otherwise.

G. All exhibits referred to in this Agreement and attached hereto are incorporated into this agreement and made a part hereof by reference, provided however, in the event of a conflict between the language and/or provisions of a referenced exhibit and the language and/or provisions of the body of this agreement, the language of the body of this agreement shall control.

ARTICLE 2
APPROVAL

SECTION 2.1 APPROVAL OF TAX EXEMPTION.

The Township has granted and does hereby grant its approval for a tax exemption for the Project/Property in accordance with the Long Term Tax Exemption Law. Pursuant to the Ordinance, all Project Improvements owned by the County shall be exempt from taxation in accordance with this Financial Agreement.

The Project/Property shall be substantially as described within the Redevelopment Agreement. The County represents and covenants that, effective as of the completion of the Project, the Project shall be financed, used, managed and operated for its intended purposes as outlined within the Redevelopment Plan. It is expressly understood and agreed by the Parties hereto that the Township expressly relies upon the facts, data and presentations contained in the Redevelopment Plan in granting this tax exemption.

SECTION 2.2 APPROVALS.

Approval hereunder is granted to the County for the contemplated Project, which shall in all respects materially comply and conform to: (a) all Applicable Laws; (b) the lawful regulations made pursuant thereto, governing land, building(s) and the use thereof; and (c) any resolutions of the Township Planning Board regarding the Project.

ARTICLE 3
DURATION OF AGREEMENT

SECTION 3.1 TERM.

It is understood and agreed by the Parties that this Financial Agreement, including the obligation to pay Annual Service Charges required under Article 4 hereof and the tax exemption granted and referred to in Section 2.1 hereof, shall remain in effect for a period of thirty (30) years from the Project Completion Date ("Term"). At the expiration of the Term, the tax exemption for the Project shall expire and the Project Improvements shall thereafter be assessed and taxed in accordance with the general law applicable to other non-exempt property located within the Township. After the expiration of the Term, all restrictions and limitations upon the County shall terminate upon the County's rendering and the Township's acceptance of its final accounting, pursuant to N.J.S.A. 40A:20-13.

SECTION 3.2 DATE OF TERMINATION.

Upon any termination of the tax exemption described in this Financial Agreement, the date of such termination shall be deemed to be the end of the calendar year and the tax exemption for the Project contemplated in this Financial Agreement shall remain in effect until the end of said calendar year.

SECTION 3.3 TERMINATION BY COUNTY NOT PERMITTED.

The County shall have no authority to voluntarily terminate this Financial Agreement.

ARTICLE 4
ANNUAL SERVICE CHARGE

SECTION 4.1 ANNUAL SERVICE CHARGE.

Notwithstanding anything herein to the contrary, or the exercise by the Township of any right or remedy provided for herein or otherwise available with respect hereto, so long as this Financial Agreement has not been terminated, the County shall pay an Annual Service Charge to the Township for the duration of the tax exemption provided for in Section 2.1 and 3.1 of this Financial Agreement.

SECTION 4.2 PAYMENT OF ANNUAL SERVICE CHARGE

A. In consideration of the tax exemption, the County shall make payment of the Annual Service Charge commencing on the effective date, in accordance with the Tech Village Pilot Fee Schedule attached hereto as **Exhibit B**, in accordance with the terms and conditions set forth in paragraph 4.3 below.

B. Payment of the Annual Service Charge shall be made to the Township on a quarterly basis on February 1, May 1, August 1, and November 1 after the effective date in accordance with the Township's tax collection schedule, subject, nevertheless, to adjustment for over or underpayment within ninety (90) days after the close of each calendar year. The obligation to pay the Annual Service Charge shall continue until the Termination of this Agreement.

C. In the event that the County fails to pay the Annual Service Charge or any installment thereof within thirty (30) days of the date its due and owing, the amount past due shall bear the highest rate of interest permitted under applicable state law and then being assessed by the Township against other delinquent taxpayers in the case of unpaid taxes or tax liens on land until paid.

D. In accordance with the Long Term Tax Exemption Law, specifically N.J.S.A. 40A:20-12, in the event of any change in the tax-exemption status as provided herein during any tax year, including but not limited to any Termination, the procedure for the apportionment of any taxes and/or Annual Service Charge, as the case may be, shall be the same as in the case of other changes in tax exemption status to any other property located within the Township during the tax year, in accordance with Applicable Law.

SECTION 4.3 ANNUAL SERVICE CHARGE AMOUNT.

Pursuant to N.J.S.A. 40A:20-12, the Annual Service Charge shall be an amount equal to a percentage of annual gross revenues as set forth below, and in accordance with the payment schedule set forth within **Exhibit B**, and as more specifically outlined as follows:

i. Pursuant to the fee schedule outlined within **Exhibit B**, during taxable years one (1) through six (6) of this Agreement, the County shall pay an Annual Service Charge, to the Township, in an amount equal to ten percent (10%) of the projected annual Gross Revenues generated in connection with the project.

ii. Notwithstanding the foregoing, at the conclusion of year six (6) of this agreement the County shall pay an annual service fee, to the Township, in accordance with the following payment schedule, and as set forth within **Exhibit B**:

a. Effective on the first day of year seven (7) through the last day of year twelve (12) of this Agreement, the Annual Service Charge shall be equal to a minimum of twenty percent (20%) of otherwise applicable taxes, agreed upon as Eight Thousand Eight Hundred and Five ($8,805.00) Dollars;

b. Effective on the first day of year thirteen (13) through the last day of year eighteen (18) of this Agreement, the Annual Service Charge shall be equal to forty percent (40%) of otherwise applicable taxes, agreed upon as Seventeen Thousand Six Hundred Ten ($17,610.00) Dollars;

c. Effective the first day of year nineteen (19) through the last day of year twenty-four (24) of this Agreement, the Annual Service Charge shall be equal to a minimum of sixty percent (60%) of otherwise applicable taxes, Twenty Six Thousand Four Hundred Fifteen ($26,415.00) Dollars;

d. Effective the first day of year twenty-five (25) through the last day of year thirty (30) of this Agreement, the Annual Service Charge shall be equal to a minimum of eighty percent (80%) of otherwise applicable taxes, Thirty Five Thousand Two Hundred Twenty ($35,220.00) Dollars.

iii. Effective the first day of year thirty-one (31) following the effective date of this Agreement the Annual Service Charge shall be equal to a minimum of 100% of otherwise applicable taxes at which such time the Annual Service Charge and the terms of this Agreement shall be considered terminated.

iv. The Annual Service Charge shall be due beginning on the Effective Date of this Agreement and paid in year one of the term of this Agreement in the same manner as all applicable tax bills. In the event the County 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 land until paid.

SECTION 4.4 ADMINISTRATIVE FEE.

The County shall pay annually an administrative fee to the Township in addition to the Annual Service Charge. The Administrative Fee shall be computed as two percent (2%) of the Annual Service Charge required pursuant to Section 4.3 above. This fee shall be payable and due on or before December 31st of each year, and collected in the same manner as the Annual Service

Charge. In the event the County fails to pay the Administrative Fee within thirty (30) days of it being due and owed, the amount unpaid shall bear the highest rate of interest permitted under applicable New Jersey law in the case of unpaid taxes or tax liens until paid. Notwithstanding the foregoing, the Township may, in its sole discretion, reduce or waive the Administrative Fee to the extent the County can justify a financial need for a waiver or reduction; provided, that, any reduction or waiver of the Administrative Fee by the Township shall not be deemed to be a reduction or waiver of the County's obligations and required payments pursuant to this Agreement.

SECTION 4.5 MATERIAL CONDITIONS.

It is expressly agreed and understood that all payments of Annual Service Charges and any interest payments, penalties or costs of collection due thereon, Land Taxes, if applicable, and the Administrative Fee are material conditions of this Agreement (the "**Material Conditions**"). If any other term, covenant or condition of this Agreement, as to any person or circumstance shall, to any extent, 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 held invalid or unenforceable, shall not be affected thereby, and each remaining term, covenant or condition of this Agreement shall be valid and enforced to the fullest extent permitted by Applicable Law.

SECTION 4.6 NO REDUCTION IN PAYMENT OF THE ANNUAL SERVICE CHARGE.

Neither the amounts nor dates established for payment of the Annual Service Charge, as provided in the preceding sections shall be reduced, amended or otherwise modified during the Term of this Agreement.

ARTICLE 5
REMEDIES

SECTION 5.1 REMEDIES.

In the event of a breach of this Financial Agreement by any of the Parties hereto, any and all rights and remedies of the Parties may be enforced in the Superior Court of New Jersey, at law or in equity, provided, however, that under no circumstances may any party seek or be entitled to recover any special, consequential, punitive, speculative or indirect damages for any breach of this Financial Agreement. Whenever the word "Taxes" appears, or is implied, directly or indirectly, to mean taxes or municipal liens on land, such statutory provisions shall be read, as far as it is pertinent to this Financial Agreement, as if the Annual Service Charge was a tax or municipal lien on land. If the County fails to make any payment of the Annual Service Charges, or other monetary obligations of the County as set forth in this Financial Agreement, the sole remedy of the Township shall be those provided for collection of taxes under New Jersey Statutes, including but not limited to an In Rem Tax Foreclosure.

ARTICLE 6
CERTIFICATE OF OCCUPANCY

SECTION 6.1 CERTIFICATE OF OCCUPANCY.

It is understood and agreed that the County shall remain obligated to make application for and make all good faith efforts which are reasonable to obtain Certificates of Occupancy for the Project in a timely manner.

SECTION 6.2 FILING OF CERTIFICATE OF OCCUPANCY.

It shall be the primary responsibility of the County to forthwith file with the Tax Assessor, the Tax Collector and the Chief Financial Officer of the Township a copy of such Certificate of Occupancy.

ARTICLE 7
ANNUAL AUDITS

SECTION 7.1 ACCOUNTING SYSTEM.

The County agrees to maintain a system of accounting and internal controls established and administered in accordance with the provisions prescribed by the Division of Local Government Services, Department of Community Affairs, State of New Jersey, and as otherwise prescribed in the Long Term Tax Exemption Law during the term of this Financial Agreement.

SECTION 7.2 PERIODIC REPORTS.

A. Auditor's Report. Annually, within one hundred eighty (180) days after the close of each fiscal or calendar year, depending on the County's accounting basis, that this Financial Agreement shall continue in effect, the County shall submit its Auditor's Report certified by an independent certified public accountant for the preceding fiscal or calendar year to the Mayor and Council, and the Township Clerk, who shall advise those municipal officials required to be advised, and to the Director of the Division of Local Government Services in the New Jersey Department of Community Affairs pursuant to N.J.S.A. 40A:20-9(d). Said Auditor's Report shall identify and calculate the Net Profit for the period shown.

SECTION 7.3 INSPECTION.

Upon the request of the Township or the Division of Local Government Services in the Department of Community Affairs, the County shall permit the inspection of property, equipment, buildings and other facilities of the County by the requesting party or its agents. It also shall permit, upon request of the Township or the Division of Local Government Services in the Department of Community Affairs, reasonable examination and audit of its books, contracts, records, documents and papers by representatives duly authorized by such Township or Division of Local Government Services in the Department of Community Affairs. Requests for such inspection shall be made by way of written notice ten (10) days prior to the proposed inspection. Such inspection, examination or audit shall be made during the hours of the business day, in the presence of any officer or agent

of the County. To the extent reasonably possible, the inspection will not materially interfere with construction or operation of the Project.

SECTION 7.4 LIMITATION ON PROFITS AND RESERVES.

During the period of tax exemption as provided herein, the Allowable Net Profit limitation shall apply to the County, as it relates this Project, pursuant to the provisions of N.J.S.A. 40A:20-1 et seq. Pursuant to N.J.S.A. 40A:20-15, the calculation of Net Profit shall be cumulative for the period commencing at the time of the Project Completion Date. Any gain realized by the County on either (a) the sale of all or a portion of the Project and/or Property, whether or not taxable under Applicable Law, or (b) the refinancing proceeds from financing or refinancing of a mortgage or mortgages encumbering the Project and/or Property or any portion thereof, is expressly excluded from calculation of Annual Gross Revenue and from Net Profit as set forth in N.J.S.A. 40A:20-3 for the purpose of determining compliance with N.J.S.A. 40A:20-15 or N.J.S.A. 40A:20-16.

SECTION 7.5 PAYMENT OF DIVIDEND AND EXCESS PROFIT CHARGE.

Whenever, as it relates to this Project, the Net Profit of the County for the period, taken as one accounting period, commencing upon the Project Completion Date and terminating at the end of the last full fiscal year, shall exceed the Allowable Net Profits for the period, the County shall, within ninety (90) days of the close of that fiscal year, pay the excess Net Profit to the Township as an additional service charge, provided, however, that the County may maintain any reserves permitted by N.J.S.A. 40A:20-3(c)(1) or 40A:20-15.

ARTICLE 8
ASSIGNMENT, ASSUMPTION OR TRANSFER

SECTION 8.1 RESTRICTIONS ON TRANSFERS.

The County shall not, without the prior written consent of the Township: (a) effect or permit any change, directly or indirectly, in the ownership of the Property/Project which affects a 10% or more interest in the Property/Project, (b) assign or attempt to assign this Agreement or any rights herein or in the Property or the Project, or (c) make any total sale, or conveyance of the whole of its interest in the Project or the Property (collectively a "Transfer"). The written consent required pursuant to this Section shall not be unreasonably withheld, delayed or conditioned.

Any Transfer in violation of this Section 8.1 shall be an Event of Default of the County. The Township shall notify the County of such default and provide thirty (30) days in which the County shall have an opportunity to cure such default. Any such Event of Default shall entitle the Township to seek all remedies available under the terms hereof, and those available at law or in equity, including specific performance. In the absence of specific written consent by the Township, no such sale, Transfer, conveyance or assignment of the Property or Project, or any part thereof, shall be deemed to relieve the County from any obligations under this Agreement.

SECTION 8.2 APPROVAL.

The Township hereby consents to the sale by the County of all or a portion of the Project or Property, or both, in the following instances:

(A) The Township hereby consents to the sale of the Project or Property, or both, or any portion thereof that has been devoted to fee simple ownership, to an urban renewal entity organized under and in full compliance with the provisions of the Long Term Tax Exemption Law, including all successors and assigns of any transferee urban renewal entity, all owning no other project at the time of the transfer, provided that the obligations of the County under this Financial Agreement are, to the extent those obligations relate to the portion of the Property, acquired by the transferee. Further, the Township consents that upon assumption by the transferee urban renewal entity of the County's obligations, to the extent those obligations relate to the portion of the Property acquired by the transferee under this Financial Agreement, the tax exemption for the Project and Project Improvements shall continue and inure to the transferee urban renewal entity and its respective successors or assigns.

(B) Nothing herein shall prohibit transfer of the ownership interest in the County itself, or require any consent to such transfer, provided that the transfer, if greater than ten percent (10%), is disclosed to the Township in the annual Auditor's Report or in correspondence sent to the Township in advance of the annual Auditor's Report.

SECTION 8.3 OPERATION OF PROJECT.

The County is hereby empowered to plan, develop, construct, maintain and operate the Project in accordance with this Financial Agreement and the Redevelopment Agreement during the Term of this Financial Agreement. The Project shall be planned, developed, constructed, maintained and operated in accordance with all Applicable Law. The terms of the Redevelopment Agreement are incorporated herein as if fully set forth herein.

SECTION 8.4 SUBORDINATION OF FEE TITLE.

It is expressly understood and agreed that the County has the right, subordinate to the lien of the Annual Service Charges and to the rights of the Township, to encumber or assign, or both, the lease to the Land or Project Improvements or both, and that any such encumbrance or assignment shall not be deemed to be a violation of this Financial Agreement.

ARTICLE 9
WAIVER

SECTION 9.1 WAIVER.

Nothing contained in this Financial Agreement or otherwise shall constitute a waiver or relinquishment by the Township or the County of any rights and remedies provided by law except for the express waiver herein of certain rights of acceleration and certain rights to terminate this Financial Agreement and tax exemption for violation of any of the conditions provided herein. Nothing herein shall be deemed to limit any right of recovery that the Township or the County has under law, in equity, or under any provision of this Financial Agreement.

ARTICLE 10
NOTICE

SECTION 10.1 NOTICE.

Any notice required hereunder to be sent by any party to another party shall be sent to all other parties hereto simultaneously by certified or registered mail, return receipt requested, or by commercial overnight delivery service with package tracking capabilities and for which proof of delivery is available, as follows:

If to the Township, to:

Julie Picard, Municipal Clerk
Township of Lower
2600 Bayshore Road
Lower Township, New Jersey 08251

With a copy to:
David Stefankiewicz, Esq.
Stefankiewicz and Belasco, LLC
111 E. 17th Avenue – Suite 100
North Wildwood, New Jersey 08260

If to the County, to:
Clerk of the Board
4 Moore Road, DN 107
Cape May Court House, New Jersey 08210

With a copy to:
County Counsel
4 Moore Road, DN 104
Cape May Court House, New Jersey 08210

ARTICLE 11
COMPLIANCE

SECTION 11.1 STATUTES AND ORDINANCES.

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

ARTICLE 12
CONSTRUCTION

SECTION 12.1 CONSTRUCTION.

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

ARTICLE 13
INDEMNIFICATION

SECTION 13.1 INDEMNIFICATION.

It is understood and agreed that the Parties agree to protect, defend, indemnify and save harmless each other and all of each Party's officers, agents and employees from any and all losses, claims, actions, costs, expenses and judgments arising out of or resulting from willful misconduct or sole or gross negligence of the other Party or any of its officers, agents and employees. .

ARTICLE 14
DEFAULT

SECTION 14.1 DEFAULT.

A Default shall be deemed to have occurred if a Party fails to conform to the terms of this Financial Agreement or the Redevelopment Agreement, or fails to perform any obligation imposed upon it by statute, ordinance or lawful regulation beyond any applicable notice, cure or grace period.

SECTION 14.2 CURE UPON DEFAULT.

Should a Party be in Default of any obligation under this Financial Agreement, the Party shall be notified in writing of said Default. Said notice shall set forth with particularity the basis of said Default. Except as otherwise limited by law, the Party shall have sixty (60) days to cure any Default (other than a default in payment of any installment of the Annual Service Charge in which case the default must be cured within thirty (30) days from the date of the County's receipt of the notice described herein), provided such cure can reasonably be effected within such sixty (60) day period. If a cure cannot reasonably be effected within the sixty (60) day period, the Party shall have such additional time to cure as reasonably necessary to effect same. Subsequent to the remedy periods set forth in this Section, the Party shall have the right to proceed pursuant to Applicable Law, subject to Section 5.1 hereof.

No Default hereunder by either Party shall terminate the long term tax exemption described herein or Annual Service Charges set forth herein, which shall continue in effect for the duration of this Financial Agreement.

SECTION 14.3 REMEDIES UPON DEFAULT CUMULATIVE; NO WAIVER.

Subject to all other terms and conditions of this Financial Agreement, all of the remedies provided in this Financial Agreement to the Parties and all rights and remedies granted to them by law and equity shall be cumulative and concurrent and no determination of the invalidity of any provision of this Financial Agreement shall deprive the Parties of any of their remedies or actions against the other. Under no circumstances may any party seek or be entitled to recover any special, consequential, punitive, speculative or indirect damages for any breach of this Agreement.

SECTION 14.4 FINAL ACCOUNTING.

Within ninety (90) days after the date of Termination, the County shall provide a final accounting and pay to the Township the reserve, if any, pursuant to the provisions of N.J.S.A. 40A:20-13 and 15 as well as any excess Net Profits. 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 County.

SECTION 14.5 CONVENTIONAL TAXES.

Upon Termination or expiration of this Financial Agreement, the tax exemption for the Project shall expire and the Land and the Improvements thereon shall thereafter be assessed and conventionally taxed according to the general law applicable to other nonexempt taxable property in the Township.

ARTICLE 15
MISCELLANEOUS

SECTION 15.1 CONFLICT.

The Parties agree that in the event of a conflict between the Redevelopment Plan/Agreement and this Financial Agreement, the language in this Financial Agreement shall govern and prevail.

SECTION 15.2 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, and the Redevelopment Agreement constitute the entire agreement between the parties and there shall be no modifications thereto other than by a written instrument executed by the parties hereto and delivered to each of them.

SECTION 15.3 ENTIRE DOCUMENT.

All conditions in the Ordinance are incorporated in this Financial Agreement and made a part hereof.

SECTION 15.4 GOOD FAITH.

In their dealings with each other, the Parties agree that they shall act in good faith.

SECTION 15.5 MUNICIPAL SERVICES.

The County shall make payments for municipal services, including water and sewer charges and any services that create a lien on a parity with or superior to the lien for the Land Taxes and Annual Service Charges, as required by law. Nothing herein is intended to release County from its obligation to make such payments.

SECTION 15.6 FINANCING MATTERS.

The financial information required by the final paragraph of N.J.S.A. 40A:20-9 is set forth in the Redevelopment Plan/Agreement.

SECTION 15.7 COUNTERPARTS.

This Financial Agreement may be simultaneously executed in counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

SECTION 15.8 AMENDMENTS.

This Financial Agreement may not be amended, changed, modified, altered or terminated without the written consent of the parties hereto.

SECTION 15.9 SEVERABILITY.

If any one or more of the covenants, agreements or provisions herein contained shall be held to be illegal or invalid in a final proceeding, then any such covenants, agreements or provisions shall be null and void and shall be deemed separable from the remaining covenants, agreements or provisions and shall in no way affect the validity of any of the other provisions hereof.

[SIGNATURES BEGIN ON THE NEXT PAGE]

RES. NO. 624-19
8/24/19

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement the date first above written.

ATTEST:

Julie Picard, Township Clerk

TOWNSHIP OF LOWER

Erik Simonsen, Mayor

ATTEST:

Elizabeth Bozzelli, Board Clerk

COUNTY OF CAPE MAY

Gerald Thornton, Freeholder Director

BOARD OF CHOSEN FREEHOLDERS
CAPE MAY COUNTY, NEW JERSEY
RESOLUTION

No. 624-19

RESOLUTION AUTHORIZING EXECUTION OF A FINANCIAL AGREEMENT BETWEEN THE COUNTY OF CAPE MAY AND TOWNSHIP OF LOWER

WHEREAS, the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq. (the "Redevelopment Law") allows municipalities to authorize and participate in the redevelopment and improvement of areas deemed to be in need of redevelopment; and

WHEREAS, on June 5, 2017, in order to stimulate rehabilitation and redevelopment within the Township, specifically at the Cape May County Airport, the Township Council of the Township of Lower (hereinafter "Council") adopted Resolution 2017-199, designating a portion of Block 410, Lots 36, specifically Lot 36.01, as a Redevelopment Area ("Redevelopment Area") pursuant to the Redevelopment Law; and

WHEREAS, on July 16, 2018, Council, pursuant to Ordinance No. 2018-12, adopted the "Cape May County Airport Tech Village Redevelopment Plan," dated June 2018 (the "Redevelopment Plan"); and

WHEREAS, pursuant to the Redevelopment Law, the County, entered into a redevelopment agreement (the "Redevelopment Agreement"), designating the Atlantic County Improvement Authority (hereinafter "Entity") as the redeveloper of the Redevelopment Area identified as Block 410.01, Lot 36.01 on the Official Tax Map of the Township (hereinafter "Property"), and outlining the terms and conditions pursuant to which the Property was to be redeveloped; and

WHEREAS, the Redevelopment Plan and the Redevelopment Agreement contemplated that the Township and the County would enter into a financial agreement pursuant to the Long Term Tax Exemption Law, N.J.S.A. 40A:20-1 et seq., and the County has formally requested that the Township authorize the approval of a long term tax exemption for the Cape May County Airport Tech Village redevelopment project; and

WHEREAS, the Township intends to adopt "An Ordinance Authorizing the grant and execution of a Financial Agreement for a Long Term Tax Exemption with the County of Cape May, for Block 410.01, Lot 36.01 on the Official Tax Map of the Township of Lower; and

BOARD OF CHOSEN FREEHOLDERS
CAPE MAY COUNTY, NEW JERSEY
RESOLUTION
No. 624-19

NOW, THEREFORE, BE IT RESOLVED by the Board of Chosen Freeholders for the County of Cape May as follows:

1. All of the above recitals are incorporated herein by this reference as if repeated verbatim.

2. The appropriate officers of the Board, to wit the Freeholder Director and the Clerk of the Board, are hereby authorized and directed to execute the Financial Agreement attached hereto as Exhibit "A".

STATEMENT

This Resolution authorizes execution of a PILOT Agreement with Lower Township for the commercial units comprising "Tech Village"

cc: Department of Law
Department of Finance & Purchasing

STATE OF NEW JERSEY } ss.:
COUNTY OF CAPE MAY }

I, Elizabeth Bozzelli, Clerk of the Board of Chosen Freeholders of the County of Cape May, State of New Jersey, do hereby certify that the foregoing is a correct and true copy of a resolution adopted by the Board at a meeting duly held on the 13th day of August, 20 19.

Signed: Elizabeth Bozzelli
Clerk of the Board

RECORD OF VOTE						
Freeholders	Ayes	Nayes	Abstain	Absent	Moved	Second
Mr. Desiderio	✓					
Ms. Hayes	✓					
Mr. Morey	✓				✓	
Mr. Pierson	✓					✓
Mr. Thornton	✓					
V - Indicates Vote Moved-Resolution Offered Second-Resolution Seconded						