

The Williams Center
15 Sylvan Street, Rutherford, New Jersey
Block 147, Lot 1

PREAMBLE

THIS FINANCIAL AGREEMENT, (“Agreement”) is made the 11th day of September, 2023 (the “Effective Date”) by and between **Native Development Urban Renewal, LLC**, 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 “Long Term Tax Exemption Law”), having its principal office at 92 Park Avenue, Rutherford, New Jersey (“Entity”), and the **Borough of Rutherford**, a Municipal Corporation of the State of New Jersey, having its principal office at 176 Park Avenue, Rutherford, New Jersey 07070 (“Borough”).

RECITALS

WITNESSETH:

WHEREAS, the Borough functions as an instrumentality pursuant to the provisions of the Local Redevelopment and Housing Law, as amended and supplemented, N.J.S.A. 40A:12A-1, et seq. (the “Local Redevelopment and Housing Law”) with responsibility for implementing redevelopment plans and carrying out redevelopment projects in the Borough of Rutherford; and

WHEREAS, on June 28, 2021, the Mayor and Council adopted an ordinance, as amended by ordinance adopted on June 27, 2022, approving and adopting a redevelopment plan for the Redevelopment Area, entitled “Theater District Redevelopment Plan Area A Sylvan-Walkway/Spring Dell/Glen Road/Orient Way & Ettrick Terrace Parking Area” (as amended, the “Theater District Redevelopment Plan”); and

WHEREAS, the Entity acquired title to the property designated as Block 147, Lot 1 (the “Williams Theater Property” or the “Project Premises”) from the Borough on October 1, 2021, subject to certain rights of the Borough as set forth in the deed from the Borough to the Redeveloper (the “Original Deed”); and

WHEREAS, Entity as Redeveloper will redevelop the Williams Theater Property with a 7-story mixed-use building consisting of the construction of 80 residential units, including 68 market rate units (the “Market Rate Component”) and 12 Affordable Units (the “Affordable Component” and, together with the Market Rate Component, the “Residential Component”) and 5,839 square feet of retail space (the “Retail Component”); rehabilitation, and operation of a black box theatre, a cinema (movie) theater (together the “Williams Center Theater Component” and, together with the Residential Component and the Retail Component, the “Project”) including significant upgrades and renovations to the existing building, as well as improvements to landscaping surrounding the site in accordance with the Redevelopment Plan, and

WHEREAS, in accordance with the provisions of the Local Redevelopment and Housing Law, the Borough has undertaken efforts to develop a program for the redevelopment of the Redevelopment Area; and

WHEREAS, the Redevelopment Plan includes the Williams Theater Property and Block 145, Lot 10.01 (the “Parking Lot” and, together with the Williams Theater Property, the “Redevelopment Parcels”), on the Borough’s official tax map; and

WHEREAS, the Local Redevelopment and Housing Law authorizes the Borough to arrange or contract with a redeveloper for the planning, construction or undertaking of any project or redevelopment work in an area designated as an area in need of redevelopment; and

WHEREAS, by Resolution No. 147-2021 and Resolution No. 148-2021, adopted on August 9, 2021, the Mayor and Council designated Redeveloper as the “conditional redeveloper” of the Williams Theater Property which said designation is no longer “conditional”; and

WHEREAS, on September 11, 2023, the Redeveloper and the Borough entered into a Redevelopment Agreement relating to the redevelopment of the Redevelopment Parcels (the “Redevelopment Agreement”); and

WHEREAS, the Entity filed an application with the Borough for a long term tax exemption for the Project, a copy of which is attached hereto as Exhibit 1 (the “Application”);

WHEREAS, by way of Ordinance 3651-23, adopted on June 12, 2023, a copy of which Ordinance is attached hereto as Exhibit 2 (the “Ordinance”), the Borough Council made the following findings:

- A. The Project represents a desired use of the Project Premises and will result in the substantial betterment of underutilized property within the Borough;
- B. The Project and the tax exemption authorized pursuant to the Ordinance will result in a net economic benefit to the Borough;
- C. The Project will create an estimated one hundred fifty (150) construction jobs which will circulate through the timing of the construction period and an estimated forty-four (44) permanent full time equivalent jobs;
- D. The Project should stabilize and contribute to the economic growth of existing local business and to the creation of new business, which will serve the entire community.
- E. The Project will further the redevelopment objectives of the Redevelopment Plan;
- F. The tax exemption authorized by the Ordinance is necessary for the successful completion of the Project because, among other reasons, (1) the relative stability and predictability of the annual service charges will make the Project more attractive to investors and lenders needed to finance the Project, and (2) the relative stability and predictability of the service charges will allow the owner to stabilize

its operating budget, allowing a high level of maintenance of the buildings over the life of the Project, which will insure the likelihood of the success of the Project and insure that it will have a positive impact on the surrounding area; and

- G. The Project would not be constructed without the tax exemption authorized by the Ordinance.

WHEREAS, by the adoption of the Ordinance, the Borough Council approved the above findings and tax exemption Application and authorized the execution of this Agreement.

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 Long Term Tax Exemption Law and the Ordinance, which authorized the execution of this Agreement. The Borough expressly relies upon the facts, data, and representations contained in the Application, attached hereto as Exhibit 1, in granting this tax exemption.

Section 1.2 General Definitions

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

(i) Aggregate Annual Service Charge. The total Annual Service Charge paid for the buildings comprising the Project.

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

(iii) Allowable Profit Rate - The greater of 12% or the percentage per annum arrived at by adding 1.25% to the annual interest percentage rate payable on the Entity's initial permanent mortgage financing. If the initial permanent mortgage is insured or guaranteed by a governmental agency, the mortgage insurance premium or similar charge, if payable on a per annum basis, shall be considered as interest for this purpose. If there is no permanent mortgage financing, or if the financing is internal or undertaken by a related party, the Allowable Profit Rate shall be the greater of 12% or the percentage per annum arrived at by adding 1.25% per annum to the interest rate per annum which the municipality determines to be the prevailing rate on mortgage financing on comparable improvements in Bergen County. The provisions of N.J.S.A. 40A:20-3(b) are incorporated herein by reference.

(iv) Application. That certain application filed by the Entity, seeking a tax exemption for the Project pursuant to the Long Term Tax Exemption Law, attached hereto as Exhibit 1.

(v) Annual Gross Revenue. The annual gross rents and other income of the Entity from the Project. Any operating and maintenance expenses paid by a tenant of the Project to the Entity other than operating expenses for the Parking Lot that would ordinarily be paid by the Entity, as landlord, shall be included in Annual Gross Revenue. However, notwithstanding anything contained herein to the contrary, (i) any gain of the Entity realized by the sale of the Project or any portion thereof in fee simple or leasehold interest, and (ii) proceeds from the financing or refinancing of a mortgage or mortgages encumbering the Project Premises or any portion thereof, are not included in Annual Gross Revenue.

(vi) Annual Service Charge - The amount the Entity has agreed to pay the Borough, with respect to the project, for municipal services supplied to the Project, which sum is in lieu of any taxes on the Improvements, pursuant to N.J.S.A. 40A:20-12, as defined in Section 4.01(a) herein, subject to adjustment pursuant to Section 4.2.

(vii) 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. The contents of the Auditor's Report shall have been prepared in conformity with generally accepted accounting principles and shall contain at a minimum the following: a balance sheet, a statement of income, a statement of cash flows, descriptions of accounting policies, notes to financial statements and appropriate schedules and explanatory material results of operations, cash flows and any other items required by Law. The Auditor's Report shall be certified as to its conformance with such principles by a certified public accountant that is licensed to practice that profession in the State of New Jersey.

(viii) Certificate of Occupancy - As defined in the Uniform Construction Code at N.J.A.C. 5:23-1.4, and as may be issued by the Borough relative to one or more buildings in the Project.

(ix) County. The County of Bergen in the State of New Jersey.

(x) 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 the Project for a period equal to the term of this Agreement.

(xi) Default - Shall be a breach of or the failure of a Party to perform any obligation imposed upon such Party by the terms of this Agreement, or under the Law, beyond any applicable grace or cure periods.

(xii) Entity - The term Entity within this Agreement shall mean Native Development Urban Renewal, LLC, which Entity is formed and qualified pursuant to N.J.S.A. 40A:20-5. It shall also include any subsequent purchasers or successors in interest of the Project, provided they are formed and operate under the Law.

(xiii) Force Majeure - Any delay caused by governmental action, or lack thereof (including, without limitation, delays in providing inspections, approvals or certificates); shortages or unavailability of materials; epidemic or pandemics; labor disputes (including, but not limited to, strikes, slowdowns, job actions, picketing and/or secondary boycotts); fire, explosion or other

casualty; delays in transportation; delays due to adverse weather conditions, acts of God; directives or requests by any governmental entity, authority, agency or department; any court or administrative orders or regulations; adjustments of insurance; acts of declared or undeclared war, warlike conditions in this or any foreign country, acts of terrorism, public disorder, riot or civil commotion; change in law detrimental to the Project; legal action challenging the validity of this Agreement, or the issuance or grant of any governmental approval; condemnation of the Project Premises or any portion thereof; or failure to procure financing for the Project or delays in procuring financing for the Project, provided that good faith effort was made to obtain said financing; or by anything else beyond the reasonable control of a party, as the case may be.

(xiv) Improvements - Any building, structure or fixture of the Project permanently affixed to the raw land of the project and to be constructed and tax exempted under this Agreement.

(xv) In Rem Tax Foreclosure or Tax Foreclosure - A summary proceeding by which the Borough may enforce a lien for taxes due and owing by tax sale, under N.J.S.A. 54:5-1 to 54:5-129 et seq.

(xvi) Land - The raw land comprising Block 147, Lot 1, as if undeveloped and unimproved.

(xvii) Land Taxes - The amount of taxes assessed on the value of the Land, on which the Project is located. Land Taxes on the portions of the Land allocable to the Retail Component and the Williams Center Theater Component (such portions of the Land are, hereafter together, the "Commercial Land") are not exempt from payment; however, Land Taxes are applied as a credit against the Annual Service Charge. Land Taxes on the portions of the Land constituting the Residential Land are exempt from payment.

(xviii) 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.

(xix) Law - Law shall refer to the Long Term Tax Exemption Law, as amended and supplemented, N.J.S.A. 40A:20-1, et seq.; and the Ordinance, which authorized the execution of this Agreement and all other relevant Federal, State or Borough statutes, ordinances, resolutions, rules and regulations.

(xx) Minimum Annual Service Charge - The Minimum Annual Service Charge shall be the amount of the total taxes levied against the Project Premises in the last full tax year in which the Project Premises was subject to taxation.

(xxi) Net Profit - The Annual Gross Revenues of the Entity less all operating and non-operating expenses of the Entity, all determined in accordance with generally accepted accounting principles, but:

(a) there shall be included in expenses: (i) all Annual Service charges paid pursuant to N.J.S.A. 40A:20-12; (ii) all payments to the Borough of excess profits pursuant to N.J.S.A. 40A:20-15 or N.J.S.A. 40A:20-16; (iii) an annual amount sufficient to amortize (utilizing the straight line method-equal annual amounts) the Total Project Cost and all

other capital costs determined in accordance with generally accepted accounting principles, of any other entity whose revenue is included in the computation of excess profits over the term of this agreement; (iv) all reasonable annual operating expenses of the Entity and any other entity whose revenue is included in the computation of excess profits including the cost of all management fees, brokerage commissions, insurance premiums, all taxes or service charges paid, legal, accounting, or other professional service fees, utilities, building maintenance costs, building and office supplies and payments into repair or maintenance reserve accounts; (v) all payments of rent including but not limited to ground rent by the Entity; (vi) all Debt Service; and

(b) there shall not be included in expenses either depreciation or obsolescence, interest on debt, except interest which is part of debt service, income taxes or salaries, bonuses or other compensation paid, directly or indirectly to directors, officers and stockholders of the entity, or officers, partners or other persons holding a proprietary ownership interest in the entity.

(xxii) Party - Either the Entity or the Borough or, when used in the plural “Parties”, both such entities.

(xxiii) Residential Land – the portion of the Land allocable to the Residential Component.

(xxiv) Substantial Completion - The determination by the Borough with advice from the Entity that the Project is ready for the use intended, which ordinarily shall mean the date on which the Project receives, or is eligible to receive, a Certificate of Occupancy for the entire Project.

(xxv) Temporary Certificate of Occupancy: A temporary Certificate of Occupancy as defined in the Uniform Construction Code at N.J.A.C. 5:23-1.4, and as may be issued by the Borough relative to one or more buildings in the Project.

(xxvi) Term. As described in Section 3.1.

(xxvii) Termination. - Any act or omission which by operation of the terms of this Agreement shall cause the Entity to relinquish its tax exemption.

(xxviii) Total Project Cost - The total cost of constructing the Project through the date a Certificate(s) of Occupancy is issued for the entire Project, which categories of cost are set forth in N.J.S.A. 40A:20-3(h). There shall be included in Total Project Cost the actual costs incurred by the Entity and certified by an independent and qualified architect or engineer, which are associated with site remediation and cleanup of environmentally hazardous materials or contaminants in accordance with State or Federal Law and any extraordinary costs incurred including the cost of demolishing structures, relocation or removal of public utilities, cost of relocating displaced residents or buildings and the clearing of title. The Entity agrees that final Total Project Cost shall not be less than its estimated Total Project Cost.

ARTICLE II - APPROVAL

Section 2.1 Approval of Tax Exemption

The Borough hereby grants its approval for a tax exemption for the Residential Land and all the Improvements to be constructed and maintained in accordance with the terms and conditions of this Agreement and the provisions of the Law.

Section 2.2 Approval of Entity

Approval is granted to the Entity whose Certificate of Formation is attached hereto as Exhibit 4. The Entity represents that its Certificate contains all the requisite provisions of the Law; has been reviewed and approved by the Commissioner of the Department of Community Affairs; and has been filed with, as appropriate, the Office of the State Treasurer or Office of the Bergen County Clerk, all in accordance with N.J.S.A. 40A:20-5.

Section 2.3 Improvements to be Constructed

The Entity represents that it will construct the Project comprised of a mixed-use building containing residential rental units, retail space, and theater space, all in conformance with the Redevelopment Agreement.

Section 2.4 Construction Schedule

The Entity agrees to undertake to commence construction and complete the Project in accordance with the requirements of the Redevelopment Agreement.

Section 2.5 Ownership, Management and Control

The Entity represents that it is, or will be, prior to the commencement of any work on the Project is the owner of the Project Premises will manage and control the Project in a manner consistent with Law and the Redevelopment Agreement. The Borough acknowledges that the Entity may enter into a management agreement for the Project and may pay management fee for any Project component. The Borough acknowledges that the Entity may enter into future management agreements. Subject to the provisions of Section 8.1, the Entity may sell the Project or any portion thereof to another urban renewal entity.

Section 2.6 Financial Plan

The Entity represents that the Improvements shall be financed substantially in accordance with the Financial Plan attached as Exhibit 1 of the Application, hereto as Exhibit 1. The Plan sets forth estimated Total Project Cost, the amortization rate on the Total Project Cost-which is the term of the Project, the estimated source of funds, the estimated interest rates to be paid on construction financing, the source and amount of paid-in or equity capital, and the terms of any mortgage amortization.

Section 2.7 Statement of Rental Schedules and Lease Terms

The Entity represents that its good faith projections of the initial rental schedules and lease terms are set forth in Exhibit A of the Application, attached hereto as Exhibit 1.

ARTICLE III - DURATION OF AGREEMENT

Section 3.1 Term

The term of this Agreement (the "Term"), including the obligation to pay the Annual Service Charge and the tax exemption granted hereby, shall commence on the date of the Substantial Completion of the Project and shall remain in effect for thirty (30) years from the date of the Substantial Completion of the Project, but in no event later than thirty-five (35) years from the Effective Date, whichever shall occur earlier, 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 the Long Term Tax Exemption Law (the "Term"). Upon expiration of the Term, all restrictions and limitations upon the Entity, arising out of or resulting from this Agreement, shall terminate upon the Entity's rendering and the Borough's acceptance of the Entity's final accounting.

ARTICLE IV - ANNUAL SERVICE CHARGE

Section 4.1 Annual Service Charge

(A) In consideration of the tax exemption, the Entity shall pay to the Borough an annual amount equal to the greatest of: (i) the Minimum Annual Service Charge; or (ii) (a) in years 1 through 15 of the Term, 10% of Annual Gross Revenue or (b) in years 16 – 30 of the Term, 11% of Annual Gross Revenue.

(B) The Annual Service Charge shall commence on the first day of the month following Substantial Completion of the Project and shall be payable as set forth in Section 4.4 of this Agreement. The Annual Service Charge shall initially be billed based upon the Entity's estimate of Annual Gross Revenue which shall not be less than the estimate of Annual Gross Revenue as set forth in its Financial Plan, attached as Exhibit A of the Application, attached hereto as Exhibit 1. For each such year, the total amount due shall be trued up upon the submission, by the Entity, of the applicable Audit Report. However, upon the completion of two full years following Substantial Completion the Annual Service Charge shall be paid as set forth in Section 4.1 A of this Agreement.

(C) In the event the Entity fails to timely pay the Annual Service Charge, the unpaid amount shall bear the highest rate of interest currently charged by the Borough in the case of unpaid taxes or tax liens on land until paid.

(D) The Borough shall pay to the County an amount equal to 5% of the Annual Service Charge upon receipt of that charge.

Section 4.2 Staged Adjustments

The Annual Service Charge shall be adjusted, in stages over the Term of the Agreement in accordance with N.J.S.A. 40A:20-12(b) as follows:

(A) Stage One: From the 1st of the month following Substantial Completion of the Project until the last day of the 15th year of the Term, the Annual Service Charge shall be as set forth in Section 4.1(A) above;

(B) Stage Two: Beginning on the 1st day of the 16th year following Substantial Completion of the Project until the last day of the 21st year of the Term, an amount equal to the greater of the Annual Service Charge set forth in Section 4.01(A) and 20% of the amount of the taxes otherwise due on the value of the Land and Improvements comprising the Project;

(C) Stage Three: Beginning on the 1st day of the 22nd year following the Substantial Completion of the Project until the last day of the 24th year of the Term, an amount equal to the greater of the Annual Service Charge set forth in Section 4.01(A), and 40% of the amount of the taxes otherwise due on the value of the land and Improvements comprising the Project;

(D) Stage Four: Beginning on the 1st day of the 25th year following Substantial Completion of the Project until the last day of the 25th year of the Term, an amount equal to the greater of the Annual Service Charge or 60% of the amount of the taxes otherwise due on the value of the land and Improvements comprising the Project; and

(E) Final Stage: Beginning on the 1st day of the 26th year following Substantial Completion of the Project through the last day of the Term, an amount equal to the greater of the Annual Service Charge or 80% of the amount of the taxes otherwise due on the value of the land and Improvements comprising the Project.

Section 4.3 Credits

(A) The Entity is required to pay both the Annual Service Charge and the Land Tax Payments, to the extent applicable in connection with the Commercial Land. All Land Taxes shall be separately assessed for the Land, and shall be assessed only on the Land without regard to any Improvements or increase in value to the Land because of the Improvements or because of approvals related to the Improvements.

(B) In any year that the Entity fails to make any Land Tax Payments when due and owing, such delinquency shall render the Entity ineligible for any Land Tax credits against the Annual Service Charge. The Entity is obligated to make timely Land Tax Payments, prior to the date of delinquency, in order to be entitled to a Land Tax credit against the Annual Service Charge for the subsequent year. The Entity shall be entitled to a credit for the amount, without interest, of the Land Tax Payments made in the last four preceding quarterly installments against the Annual Service Charge, commencing with the first year after Substantial Completion. In any quarter that the Entity fails to make any Land Tax Payments, such delinquency shall render the Entity ineligible for any Land Tax Payment credits against the Annual Service Charge for that quarter. No credit will be applied against the Annual Service Charge for partial payments of Land Taxes. In addition, the Borough shall have, among this remedy and other remedies, the right to proceed against the

property pursuant to the In Rem Tax Foreclosure Act, N.J.S.A. 54:5-1, et seq. and/or declare a Default and terminate this Agreement.

(C) In the event the exemption of the Residential Land required under N.J.S.A. 40A:20-12 is invalidated by a court of competent jurisdiction, the Parties agree that this Financial Agreement shall remain valid and in full force and effect, and shall be reformed to provide that Land Taxes are assessed on the Residential Land. In such case, the payment for Residential Land Taxes shall be applied as a credit against the Annual Service Charge for the subsequent year.

Section 4.4 Quarterly Installments/Proration

The Entity expressly agrees that the Annual Service Charge shall be made in quarterly installments on those dates when real estate tax payments are due; subject, nevertheless, to adjustment for over or underpayment as calculated within fourteen (14) days following the Entity's annual submission of its audit report required pursuant to Section 6.2 of this Agreement. In the event that the Entity fails to pay the Annual Service Charge prior to the date of delinquency, the unpaid amount shall bear the highest rate of interest currently charged by the Borough in the case of unpaid taxes or tax liens on the Land until paid. The Annual Service Charge will be prorated in the years in which Substantial Completion occurs and this Agreement terminates.

Section 4.5 Material Conditions

It is expressly agreed and understood that the timely payments of Land Taxes, Minimum Annual Service Charge, Annual Service Charge, including adjustments thereto, and any interest thereon, are Material Conditions of this Agreement.

Section 4.6 Administrative Fee

Following Substantial Completion and during the Term, the Entity shall pay to the Borough an annual administrative fee as permitted by N.J.S.A. 40A:20-9, in an amount of two percent (2%) for the duration of the term of the Annual Service Charge for the calendar year in question, to be paid within thirty (30) days after the final quarterly installment of the Annual Service Charge for such year.

ARTICLE V - CERTIFICATE OF OCCUPANCY

Section 5.1 Certificate of Occupancy

It is understood and agreed that, subject to Force Majeure delays, it shall be the obligation of the Entity to obtain all Certificates of Occupancy in a timely manner so as to complete construction in accordance with the construction schedule set forth in the Redevelopment Agreement.

Section 5.2 Filing of Certificate of Occupancy

It shall be the primary responsibility of the Entity to forthwith file with both the Tax Assessor and the Tax Collector a copy of each Certificate of Occupancy.

ARTICLE VI - ANNUAL REPORTS

Section 6.1 Accounting System

The Entity agrees to maintain a system of accounting and internal controls established and administered in accordance with generally accepted accounting principles.

Section 6.2 Periodic Reports

An Auditor's Report: Within ninety (90) days after the close of each fiscal or calendar year, depending on the Entity's accounting basis, the Entity shall submit to the Mayor and Borough Council its Auditor's Report for the preceding fiscal or calendar year. The Auditor's Report shall include, but not be limited to: the terms and interest rate on any mortgages associated with the purchase or construction of the Project and such details as may relate to the financial affairs of the Entity and to its operation and performance hereunder, pursuant to the Law and this Agreement. The Report shall clearly identify and calculate the Net Profit for the Entity during the previous year.

Section 6.3 Inspection/Audit

The Entity shall permit the inspection of its property, equipment, buildings and other facilities of the Project by representatives duly authorized by the Borough. 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.

ARTICLE VII - LIMITATION OF PROFITS AND RESERVES

Section 7.1 Limitation of Profits and Reserves

During the Term, the Entity shall be subject to a limitation of its profits pursuant to the provisions of N.J.S.A. 40A:20-15. The Entity shall have the right to establish a reserve against vacancies, unpaid rentals, and reasonable contingencies in an amount equal to ten percent (10%) of the Annual 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. The reserve is to be non-cumulative, it being intended that no further credits thereto shall be permitted after the reserve shall have attained the allowable level of ten percent (10%) of the preceding year's Annual Gross Revenue.

Section 7.2 Annual Payment of Excess Net Profit

In the event the Net Profits of the Entity, in any fiscal year, shall exceed the Allowable Net Profits for such period, then the Entity, within one hundred and twenty (120) days after the end of such fiscal year, shall pay such excess Net Profits to the Borough as an additional Annual Service Charge; provided, however, that the Entity may maintain a reserve as determined pursuant to Section 7.1. The calculation of the Entity's excess Net Profits shall include those Project costs directly attributable to site remediation and cleanup expenses and any other costs excluded in the definition of Total Project Cost in Section 1.2(xxvi) of this Agreement even though those costs

may have been deducted from the Project costs for purposes of calculating the Annual Service Charge. In addition, in determining whether Net Profits for a fiscal year exceeds Allowable Net Profits for such fiscal year, as provided in N.J.S.A. 40A:20-15, Excess Net Profits shall be calculated annually but on a cumulative basis.

Section 7.3 Payment of Reserve/Excess Net Profit Upon Termination, Expiration or Sale

The date of expiration of the Term, date of earlier termination of this Agreement, or sale of the Project Premises pursuant to the terms of this Agreement, shall be considered to be the close of the fiscal year of the Entity. Within ninety (90) days after such date, the Entity shall pay to the Borough the excess Net Profits, if any, and the amount, if any, of those portions of the reserve maintained by the Entity pursuant to Section 7.1 of this Agreement that would, if they had been included in the Net Profits in the year in which they were paid into the reserve, been payable to the Borough as excess profits pursuant to N.J.S.A. 40A:20-15 or N.J.S.A. 40A:20-16.

ARTICLE VIII - ASSIGNMENT AND/OR ASSUMPTION

Section 8.1 Assignment

The Entity may assign its rights under this Agreement only with the prior written consent of the Borough, which it will not unreasonably withhold. Notwithstanding the foregoing, the Borough hereby consents, without the need for further application or consent, to any transfer provided (a) the new entity is an urban renewal entity formed pursuant to the Long Term Tax Exemption Law, (b) at the time of such assignment, the new entity is fee owner or ground lease tenant of the Project Premises and has agreed in writing to undertake construction and completion of the Project; (c) the new entity does not own any other project subject to a long term tax exemption at the time of transfer; (d) the Entity is not then in default of this Agreement or the Law; and (e) the Entity's obligations under this Agreement are fully assumed by the new entity.

Upon the initial sale of the Project, provided such initial sale occurs during the first twenty (20) years after the Effective Date of this Agreement, the Entity shall remit to the Borough, in addition to then-current Annual Service Charge, if any, an amount equal to two (2%) percent of the amount by which the total sale price exceeds Twenty Five Million Dollars (\$25,000,000.00); provided, however, that such fee shall not exceed Two Hundred Thousand Dollars (\$200,000.00). For purposes of this paragraph, the "initial sale" shall mean the first to occur of the following transactions: (i) the transfer of fee simple ownership of the Project by the Entity; or (ii) the transfer by the Entity of more than fifty (50%) percent of its ownership interests to an unaffiliated third party; provided, however, that conveyance of the Project in connection with a foreclosure or deed in lieu or taking by power of eminent domain or in lieu of a taking by eminent domain shall not be considered an "initial sale."

Section 8.2 Subordination of Fee Title

Notwithstanding anything in this Agreement, the Entity shall have the right to encumber the fee title to the Project Premises and may encumber or assign for security purposes the Entity's interest in this Agreement, and any such encumbrance or assignment shall not be deemed a Default under this Agreement.

Section 8.3 No Restriction on Rental of Units

Notwithstanding anything in this Agreement, the Entity shall have the right to rent any residential or commercial units to tenants of the Entity's choosing and charge such tenants, in addition to rent, additional rent that may include a portion of the Annual Service Charge due on the Project, to be calculated at the Entity's discretion. The Entity shall also have the right to enter into a Master Lease or Sublease agreement.

ARTICLE IX - COMPLIANCE

Section 9.1 Compliance with Law

During the term of this Agreement, the Project shall be maintained and operated in accordance with the provisions of the Law. The Entity's failure to substantially comply with the Law shall constitute a Default under this Agreement.

ARTICLE X - DEFAULT

Section 10.1 Default

Default shall be failure of a Party to conform to the material terms of this Agreement or failure of such Party to perform any obligation imposed by the Law, beyond any applicable notice, cure or grace period.

Section 10.2 Cure Upon Default

Should either Party be in Default (the "Defaulting Party"), the other Party (the "Non-Defaulting Party") shall send written notice to the Defaulting Party of the Default ("Default Notice"). The Default Notice shall set forth with particularity the basis of the alleged Default. Other than as set forth below, the Defaulting Party shall have ninety (90) days from receipt of the Default Notice (the "Cure Period") to cure any Default. However, if the Default cannot be cured within the Cure Period using reasonable diligence, the Cure Period shall be extended to a period of one hundred eighty (180) days. If the Default is not cured within the Cure Period, as it may be extended, the Non-Defaulting Party shall have the right to terminate this Agreement in accordance with Section 11.1, as well as other rights and remedies provided herein. **Notwithstanding anything herein to the contrary, any Default relating to the payment of the Annual Service Charge, Minimum Annual Service Charge or Land Taxes must be cured within ten (10) days of receipt of notice of such Default.**

Section 10.3 Remedies Upon Default

In the event of a Default on the part of the Entity in payment of any sum due hereunder beyond the Cure Period, the Borough shall, among its other remedies, have the right to proceed against the property pursuant to the In Rem Tax Foreclosure Act, N.J.S.A. 54:5-1, et seq. and may exercise other rights set forth in this Agreement. In the event of a Default on the part of the Entity for anything other than payment of any sum due hereunder, the Borough shall have all rights and remedies available to it under law or equity, including specific performance or termination of this Agreement.

In the event of a Default on the part of the Borough that remains uncured beyond the Cure Period, the Entity shall have all rights and remedies available to it under law or equity, including specific performance or (without limitation of its right under Section 11.2) termination of this Agreement.

All of the remedies provided in this Agreement with respect to both Parties, and all rights and remedies available to each Party by law or equity, shall be cumulative and concurrent. No termination of any provision of this Agreement shall deprive either Party of any of its remedies or rights. This right shall apply to arrearages that are due and owing at the time or which, under the terms hereof, would in the future become due as if there had been no termination.

ARTICLE XI - TERMINATION

Section 11.1 Termination Upon Default

In the event a Defaulting Party fails to cure or remedy a Default within the Cure Period, the Non-Defaulting Party may terminate this Agreement upon thirty (30) days written notice to the Defaulting Party. If the Defaulting Party cures the default within such thirty (30) day period, the Non-Defaulting Party's termination shall be deemed null and void.

Section 11.2 Voluntary Termination by the Entity

The Entity may terminate this Agreement in writing and notify the Borough that as of a certain date designated in the notice, it relinquishes its status as a tax exempt Project. As of the date so set, the tax exemption, the Annual Service Charges, and the profit and dividend restrictions shall terminate.

Section 11.3 Final Accounting

Within ninety (90) days after the date of expiration of the Term or earlier termination of this Agreement, the Entity shall provide a final accounting and pay to the Borough 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 Agreement shall be deemed to be the end of the fiscal year for the Entity.

Section 11.4 Conventional Taxes

Upon termination or expiration of this 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 Borough.

ARTICLE XII - DISPUTE RESOLUTION

Section 12.1 Arbitration

In the event of a breach of the within Agreement by either of the Parties hereto or a dispute arising between the Parties in reference to the terms and provisions as set forth herein, either party may apply to the Superior Court of New Jersey by an appropriate proceeding, to settle and resolve

the dispute in such fashion as will tend to accomplish the purposes of the Law. In the event the Superior Court shall not entertain jurisdiction, then the parties shall submit the dispute to the American Arbitration Association in New Jersey to be determined in accordance with its rules and regulations in such it fashion to accomplish the purpose of the Long Term Tax Exemption Law. The cost for the 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 either Party of any rights and remedies, including, without limitation, the right to terminate the Agreement and tax exemption for violation of any of the conditions provided herein. Nothing herein shall be deemed to limit any right of recovery of any amount which the Borough has under law, in equity, or under any provision of this Agreement.

ARTICLE XIV - NOTICE

Section 14.1 Certified Mail

Any notice required hereunder to be sent by either party to the other shall be sent by 1) certified or registered mail, return receipt requested or 2) overnight delivery.

Section 14.2 Sent by Borough

When sent by the Borough to the Entity the notice shall be addressed to:

If to the Borough:
Borough of Rutherford
Municipal Building
176 Park Avenue
Rutherford, New Jersey 07070
Attn: Borough Clerk

with a copy to:
Kevin P. McManimon, Esq.
McManimon, Scotland & Baumann, LLC
75 Livingston Avenue, 2nd Floor
Roseland, New Jersey 07068

If to the Entity:

Charles Olivo
Native Development Urban Renewal, LLC
c/o Native Center Development, LLC
92 Park Avenue
Rutherford, New Jersey 07070

with a copy to:
Jason Tuvell, Esq.
Prime & Tuvell
1 University Plaza Drive
Suite 500
Hackensack, New Jersey 07601

In addition, provided the Borough is sent a formal written notice in accordance with this Agreement, of the name and address of Entity's Mortgagee, the Borough agrees to provide such Mortgagee with a copy of any notice required to be sent to the Entity.

ARTICLE XV - SEVERABILITY

Section 15.1 Severability

If any term, covenant or condition of this Agreement or the Application, except a Material Condition, shall be judicially declared to be invalid or unenforceable, the remainder of this Agreement or the application of such term, covenant or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term, covenant or condition of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

If a Material Condition shall be judicially declared to be invalid or unenforceable and provided the Entity is not in Default of this Agreement, the parties shall cooperate with each other to take the actions reasonably required to restore the Agreement in a manner contemplated by the parties and the Law. This shall include, but not be limited to, the authorization and re-execution of this Agreement in a form reasonably drafted to effectuate the original intent of the parties and the Law. However, the Borough and the Entity shall not be required to restore the Agreement if it would modify a Material Condition, the amount of the periodic adjustments or any other term of this Agreement which would result in any economic reduction or loss to the Borough.

ARTICLE XVI - MISCELLANEOUS

Section 16.1 Construction

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

Section 16.2 Conflicts

The parties agree that in the event of a conflict between the Application and the language contained in the Agreement, the Agreement shall govern and prevail. In the event of conflict between the Agreement and the Law, the Law shall govern and prevail.

Section 16.3 Oral Representations

There have been no oral representations made by either of the parties hereto not contained in this Agreement. This Agreement, the Ordinance, and the Application constitute the entire Agreement between the parties, and there shall be no modifications thereto other than by a written instrument approved and executed by both parties and delivered to each party.

Section 16.4 Entire Document

This Agreement and all conditions in the Ordinance of the Borough Council approving this Agreement are incorporated in this Agreement and made a part hereof

Section 16.5 Good Faith

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

Section 16.6 Force Majeure

Neither the City nor the Entity shall be considered to be in breach of, or in default of, its obligations under this Agreement in the event that any delay in the performance of such obligations is due to a Force Majeure event, subject to the reasonable demonstration, by the non-performing party, of the applicability of the Force Majeure event to the unmet obligation. In the event of the occurrence of any such delay, the time or times for performance of the obligations of the City or the Entity shall be extended by the period of the delay.

ARTICLE XVII - RESERVED

ARTICLE XVIII - EXHIBITS

Section 18.1 Exhibits

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

1. The Application for Long Term Exemption with Exhibits;
2. Site Plan - Indicating Metes and Bounds description of the Project;
3. Ordinance of the Borough authorizing the execution of this Agreement; and
4. Certificate of Formation of the Entity.

[Signature Page to Follow]

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

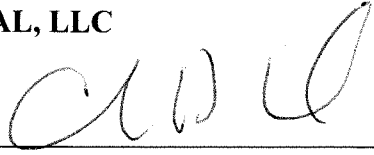
ATTESTED OR WITNESSED:

Victoria Lotorto
VICTORIA LOTORTO
NOTARY PUBLIC OF NEW JERSEY
ID # 50130175
My Commission Expires June 29, 2025

ATTESTED OR WITNESSED:

Margaret Scanlon
Rutherford Municipal Clerk

**NATIVE DEVELOPMENT URBAN
RENEWAL, LLC**

By: 
Name: Charles Olivo
Title: Authorized Representative

BOROUGH OF RUTHERFORD

By: _____
Frank Nunziato
Mayor

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

ATTESTED OR WITNESSED:

**NATIVE DEVELOPMENT URBAN
RENEWAL, LLC**


By: _____
Name: Charles Olivo
Title: Authorized Representative

ATTESTED OR WITNESSED:

BOROUGH OF RUTHERFORD



Margaret Scanlon
Rutherford Municipal Clerk

By: 

Frank Nunziato
Mayor

Exhibit 1
to Financial Agreement

The Application for Long Term Exemption with Exhibits

PILOT APPLICATION

NATIVE DEVELOPMENT URBAN RENEWAL, LLC
PROPOSED WILLIAMS CENTER
REDEVELOPMENT
BLOCK 147, LOT 1 & BLOCK 145, LOT 10.01
15 SYLVAN STREET & 5 ETTRICK TERRACE
BOROUGH OF RUTHERFORD
BERGEN COUNTY, NEW JERSEY

August 18, 2022
Updated October 3, 2022
FINAL May 19, 2023

FISCAL PLAN

TERM SHEET

Payment in lieu of taxes program. N.J.S.A. 40A:20-1 et seq.

BENECKE ECONOMICS

Mayor Frank Nunziato
Borough of Rutherford
Municipal Building
176 Park Avenue
Rutherford,
New Jersey
07070

Dear Mayor Nunziato:

The following is the PILOT application (Fiscal Plan which is made a part of the formal Borough PILOT application) of Native Development Urban Renewal, LLC and/or a related entity or entities (“Native” or “URE”). This PILOT Fiscal Plan reflects the financial structure to undertake the redevelopment of the Williams Center property in the Borough of Rutherford (“Borough”). The theater will be redeveloped into a cinema section and an open theater space-which the Borough commonly refers to as a “black box”, preserving the arts in Rutherford and southern Bergen County. The property is located at Block 147, Lot 1 and Block 145, Lot 10.01 in the Borough.

In addition to redeveloping the Williams Center as a state-of-the-art theater, the redevelopment project will include 80 residential units, of which twelve are affordable units to be built and occupied in accordance with UHAC. The inclusion of twelve affordable units causes the project to lose \$373,211 in annual rental revenue compared to the market units.

The project will also include approximately 5,839 square feet of retail space. In addition, a roof top amenity area, including a restaurant will be built and open to the public (weather permitting).

Considered a separate but related to the project is the provision of expanded parking assets at the Ettrick Terrace parking facility.

The investment in the Williams Center project is estimated at \$30 million-see Figure 2.

1-A unit mix with expected market rents has been prepared.

Figure 1. Residential-Retail Unit Matrix.

	Number of Units	Typical Unit Size	Monthly Rent	Component Gross Monthly Rent	Project Total
				-	
2 Bedroom Mkt	9	1,067	3,380	365,057	
1 Bedroom Mkt	35	735	2,329	978,155	
Studio Mkt	24	509	1,696	488,320	
Subtotal	68		7,405	1,831,531	
Affordable					
3 Bedroom	3	1,067	1,245	44,814	
2 Bedroom	6	785	916	65,940	
1 Bedroom	3	635	741	26,670	
Subtotal				137,424	
Residential Rent					1,968,955
Retail Rent		5,839		145,975	
Project Total					2,114,930

Note: The above project scope including estimated rents excludes the theater component.

2-The preliminary estimated construction budget (total project costs- "TPC"). Per N.J.S.A. 40A:20-3 h.

Figure 2. William Center Redevelopment-TPC Statutory Categories. (Residential-Retail.)

Statutory Cost Category	Amount
2, 3-Architect, engineer, attorney and surveying	\$1,500,500
4-Insurance, interest and finance costs during construction	\$562,688
5-Construction (Site and Hard) Costs	\$18,756,250
Sub-total-Project Cost for Values Purposes.	\$20,819,438
Interest Reserves	\$375,125
7-Commissions	\$624,583
8-Real estate taxes.	-
Sub-total-TPC without developer's overhead.	\$21,819,146
9-Developers Overhead-Statutory	\$981,862
Total Project Cost w/developer's fee(s).	\$22,801,007
Retail Construction (Add on)	\$1,167,800
Theater Construction (Add on)	5,427,840
Total Cost Williams Center Project	\$29,396,647

Note: The above excludes furniture, fixtures and equipment ("FF&E") and roof restaurant fit out.

BENECKE ECONOMICS

The combined project components carry a total investment of approximately \$30,000,000, including the excluding the parking lot. This PILOT application modifies the earlier proposal for the Borough to build or finance a 195-space parking garage which is off the table. The Entity will rehabilitate the Ettrick Terrace parking facility providing 88 surface parking spaces and outfitted with a mechanical/automated lift system providing up to 44 additional space-a total of 132 parking spaces. The parking management plan is attached.

2. Residential/Retail TPC. The total project costs (TPC) will be financed by a strong equity commitment by the project sponsor and loans. The project sponsor will be exploring arts grant funding and other equity/lending sources. The following is a breakdown of the estimated project investment sources.

Figure 3. Financing Sources.

Project Component	TPC	Equity	Private Debt
Residential-Retail	\$23,980,567	\$6,731,917	\$17,248,650
Theater	\$5,427,840	\$1,356,960	\$4,070,880
Total Project	\$29,408,407	\$8,088,877	\$21,319,530

Figure 4. Financial Proforma – Residential-Retail-Theater.

Combined Project Proforma	ALL Numbers are estimates and subject to market conditions.		
	Residential-Retail	Theatre	Total
AGR	\$1,870,507	\$1,185,600	\$3,056,107
OpEx	\$402,826	\$711,360	\$1,114,186
PILOT-10% AGR 30 year term-80% OAT in years 28, 29, 30	\$187,051	\$118,560	\$305,611
NOI	\$1,280,631	\$355,680	\$1,636,311
DS	\$1,054,169	\$262,240	\$1,316,409
NOI Levered	\$226,462	\$93,440	\$319,901
Retail Net Revenue-5,839 s.f. at \$25 per s.f.	\$138,676		\$138,676
NOI	\$365,138	\$93,440	\$458,577
Retail DS	\$56,421		\$56,421
NOI	\$308,717	\$93,440	\$402,156
Total DS	\$1,110,590	\$262,240	\$1,372,830
Amount Financed 75%	\$17,240,209	\$4,070,880	\$21,311,089
TPC	\$23,968,807	\$5,427,840	\$29,396,647
Equity	\$6,728,598	\$1,356,960	\$8,085,558

BENECKE ECONOMICS

3-Attached is our Fiscal Plan, detailed Project Proforma and related schedules with our proposed schedule of proposed PILOT payments. The accompanying Fiscal Plan includes the following schedules:

Schedule 1-Proforma and Statistics.

Schedule 2-Fiscal Plan-Baseline. (30 Year Projections.)

4-Proposed PILOT term is for 30 years-three years lease up. The URE reserves the right to create additional UREs as warranted.

5-Number of residences: 80-of which 68 are market units and 12 are affordable units.

6-Retail Space: s.f. ~5,839.

7-General PILOT Terms:

1-Annual Service Charge for the residential and retail components. Year 1 through Year 30-10% of Annual Gross Revenue.
2-No minimum annual service charge will apply to this PILOT program.

The 2% PILOT administration fee begins at year 6.

Attached is the proposed financial agreement which includes the estimated number of employees (jobs) generated during construction and the number of employees (jobs) generated after project completion.

The estimated total project costs shall be certified by an engineer/architect.

BENECKE ECONOMICS

At stabilization the following is the estimated annual project revenues, reserves.				
8/15/2022 Fiscal Plan Pursuant to N.J.S.A. 40A:20-8				
Rutherford, NJ				
BE Residential & Retail Pro Forma and Statistics-Rutherford				
Project Name: Native Development Williams Center Redevelopment Apartment (Mixed Use) Analysis		80 Residential Units		Date: 15-Aug-22
				# Residential Rental Units 80
				# Market Resi 68
				# AH Units 12
Estimated Resi. Rental Income (Stabilized):	\$1,968,955	\$24,612		Total Res Building Area 71,025
Parking, Fitness Etc Income		\$0		Total AH 9,816
Less: Parking Management Cost		\$0		Total Mkt Area Rentable 47,556
Rent Concessions-NONE		\$0		Total Est Total Rental S.F. 57,372
Gross Potential Income/Rent	\$1,968,955	\$24,612		Parking Bldg Area 114,488
Vacancy/Doubtful Payments Etc.-5%	(\$98,448)	(\$1,231)		Total Rentable Area sf 57,372
Adjusted Gross Income-GOI	\$1,870,507	\$23,381		Avg Monthly Rent/Unit \$26,934
Annual Operating Expenses:				Average Unit Size-sf ~ 699
Insurance	\$32,000	\$400		Gross Rent Per Unit/Yr. \$26,934
Utilities	\$57,372	\$717		Rent Per SF-Blended \$39
Professional Services	\$25,000	\$313		Project Market Gross Rent \$1,831,531
Garbage and Trash	\$28,000	\$350		Project AH Gross Rent \$137,424
Repairs & Maintenance	\$20,000	\$250		Annual Gross Rent \$1,968,955
Landscaping/Snow Control/Pest	\$15,000	\$188		GOI-Cash Flow \$1,870,507
Marketing/Advertising Expenses	\$49,224	\$615		Annual Expense % 21.54%
Security-Concierge-Superintendent		\$0		As a % of gross rental income
Management -annual 6%	\$112,230	\$1,403		Project ROI-Yield-Levered 0.99%
Total Expenses	\$338,826	\$4,235		
Reserves- expense recovery for exterior and site.	\$64,000	\$800		
Total Costs	\$402,826	\$5,035		Building Volume-S.F. 76,864
Net Operating Income-EBITDA	\$1,467,681	\$18,346		
Property Tax-PILOT 10%	\$187,051	\$2,338		Estimated Development Cost (Budget)
Adjusted NOI	\$1,280,631			Construction:
Debt Service-30 yr. am/5%	1,054,169			Retail Residential \$ 18,756,250
Cash Flow=Adjusted NOI -RESIDENTIAL	\$226,462			Retail Component \$ 1,167,800
Retail Rents-AGR	\$145,975			
Management Cost Factor	\$138,676	PILOT		
RETAIL DS	\$56,421	14,598		Soft costs, including legal. \$ 2,687,771
Retail NOI	\$82,255			Land \$ -
Total Project NOI	\$308,717	PILOT		
		201,648		Total Development Budget \$ 22,611,821
Cash on cash ROI	1.3%			Developers Overhead \$ 981,862
Total PILOT		\$201,648		Interest Reserves \$ 375,125
				Total Project Costs (TPC) \$ 23,968,807
RENTAL UNIT VALUE ESTIMATES				Amount Financed \$ 17,240,209
Assessed Value @ Gross 8% Cap Rate	\$18,346,017	\$458,650	OAT	Equity Investment \$ 6,728,598
Economic Value Year 1 @ 5.0% Cap Rate	\$29,353,626			TPC Proof \$ 23,968,807
Value/Residential Unit: 5.0% Cap	\$366,920			Cost per SF-Resi + Retail \$ 289
Add: Unlevered Retail Annual NOI	\$138,676	\$58,937		
Retail Economic Value at 6.5% cap rate.	\$2,133,481			
Project Total Value	\$31,487,107			

BE

16-Aug-22

N.J.S.A. 40A:20-1 et seq.
Williams Center

Fiscal Plan
Rutherford Redevelopment, NJ

Residential and Retail Component

Year	Resi	ASC/MASC	Land Tax	Net PILOT	County Share	School	Muni Pilot	Muni Tax	Annual Total	Muni Total
2022	\$403,296	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
2023	\$1,008,241	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
2024	\$1,613,186	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
2025	\$2,016,482	\$201,648	\$0	\$201,648	\$10,082	\$0	\$191,566	\$0	\$201,648	\$191,566
2026	\$2,031,080	\$216,246	\$0	\$216,246	\$10,812	\$0	\$205,433	\$0	\$216,246	\$205,433
2027	\$2,071,701	\$220,571	\$0	\$220,571	\$11,029	\$0	\$209,542	\$0	\$220,571	\$209,542
2028	\$2,113,135	\$224,982	\$0	\$224,982	\$11,249	\$0	\$213,733	\$0	\$224,982	\$213,733
2029	\$2,155,398	\$229,482	\$0	\$229,482	\$11,474	\$0	\$218,008	\$0	\$229,482	\$218,008
2030	\$2,198,506	\$234,071	\$0	\$234,071	\$11,704	\$0	\$222,368	\$0	\$234,071	\$222,368
2031	\$2,242,476	\$238,753	\$0	\$238,753	\$11,938	\$0	\$226,815	\$0	\$238,753	\$226,815
2032	\$2,287,326	\$243,528	\$0	\$243,528	\$12,176	\$0	\$231,351	\$0	\$243,528	\$231,351
2033	\$2,333,072	\$248,398	\$0	\$248,398	\$12,420	\$0	\$235,978	\$0	\$248,398	\$235,978
2034	\$2,379,734	\$253,366	\$0	\$253,366	\$12,668	\$0	\$240,688	\$0	\$253,366	\$240,688
2035	\$2,427,328	\$258,434	\$0	\$258,434	\$12,922	\$0	\$245,512	\$0	\$258,434	\$245,512
2036	\$2,475,875	\$263,602	\$0	\$263,602	\$13,180	\$0	\$250,422	\$0	\$263,602	\$250,422
2037	\$2,525,392	\$268,874	\$0	\$268,874	\$13,444	\$0	\$255,431	\$0	\$268,874	\$255,431
2038	\$2,575,900	\$274,252	\$0	\$274,252	\$13,713	\$0	\$260,539	\$0	\$274,252	\$260,539
2039	\$2,627,418	\$279,737	\$0	\$279,737	\$13,987	\$0	\$265,750	\$0	\$279,737	\$265,750
2040	\$2,679,967	\$285,332	\$0	\$285,332	\$14,267	\$0	\$271,065	\$0	\$285,332	\$271,065
2041	\$2,733,566	\$291,038	\$0	\$291,038	\$14,552	\$0	\$276,486	\$0	\$291,038	\$276,486
2042	\$2,788,237	\$296,859	\$0	\$296,859	\$14,843	\$0	\$282,016	\$0	\$296,859	\$282,016
2043	\$2,844,002	\$302,796	\$0	\$302,796	\$15,140	\$0	\$287,656	\$0	\$302,796	\$287,656
2044	\$2,900,882	\$308,852	\$0	\$308,852	\$15,443	\$0	\$293,410	\$0	\$308,852	\$293,410
2045	\$2,958,900	\$315,029	\$0	\$315,029	\$15,751	\$0	\$299,278	\$0	\$315,029	\$299,278
2046	\$3,018,078	\$321,330	\$0	\$321,330	\$16,066	\$0	\$305,263	\$0	\$321,330	\$305,263
2047	\$3,078,439	\$327,756	\$0	\$327,756	\$16,388	\$0	\$311,369	\$0	\$327,756	\$311,369
2048	\$3,140,008	\$334,312	\$0	\$334,312	\$16,716	\$0	\$317,596	\$0	\$334,312	\$317,596
2049	\$3,202,808	\$340,998	\$0	\$340,998	\$17,050	\$0	\$323,948	\$0	\$340,998	\$323,948
2050	\$3,266,864	\$347,818	\$0	\$347,818	\$17,391	\$0	\$330,427	\$0	\$347,818	\$330,427
2051	\$7,097,300	\$7,128,064	\$0	\$7,128,064	\$356,403	\$0	\$6,771,661	\$0	\$7,128,064	\$6,771,661

Resi	\$187,051
Retail	\$14,598
Total	\$201,648

PILOT

**Application for
Long Term Tax Exemption**

**The Williams Center
Native Development Urban Renewal, LLC
Rutherford, New Jersey**

Please refer to the attached Fiscal Plan Referenced herein.

**August 24, 2022
Revised October 3, 2022
Final May 19, 2023**

Overview of application contents:

- Section I - General instructions regarding the completion of the application
- Section II - Identification of the applicant
- Section III - Detailed description of the Project
- Section IV - Type of exemption and term requested
- Representations and certifications required by statute
- Signature by the applicant
- Exhibits

I. Instructions:

Please complete this application in its entirety and attach all required supporting documentation. Incomplete applications will be returned and may significantly delay the tax exemption authorization process or cause the application to be denied.

Important notes:

- 1) Certain documents required in this application must be prepared by qualified professionals other than the applicant. In particular, survey documents must be signed and sealed by a licensed surveyor, site plan documents must be signed and sealed by a professional engineer and detailed cost estimates must be certified by a licensed engineer or architect.
- 2) Under New Jersey law, applicants for long-term exemption must be organized as an Urban Renewal Entity as certified by the New Jersey Department of Community Affairs.
- 3) The application must be accompanied by a proposed form of financial agreement. Please ensure that the financial agreement attached to this application is appropriate to the type of project for which you are seeking an exemption.

Completed applications should be submitted to:

Frank Nunziato, Mayor
Borough of Rutherford
176 Park Avenue
Rutherford, NJ 07070

If you have any questions regarding the application or the tax exemption process, please contact:

Kevin P. McManimon, Esq.
McManimon, Scotland & Baumann, LLC
75 Livingston Avenue, 2nd Floor
Roseland, NJ 07068
(973) 622-4869
kmcmanimon@msbnj.com

II. Developer Identification:

A. Name of Applicant:

Native Development Urban Renewal, LLC

B. Principal Address:

**92 Park Avenue
Rutherford, NJ
07070**

C. Type of Entity (check one)

Corporation LLC XXXXX LLP Partnership Other (please specify)

D. Contact Information

1.) Name of Primary Contacts:

Charles Olivo
Native Development Urban Renewal, LLC
92 Park Avenue
Rutherford, New Jersey 07070

Robert Benecke
Benecke Economics
8410 Sanctuary Boulevard
Riverdale, New Jersey 07457

2.) Contact Numbers:

- a. Phone:** Oliva-908-461-3518 or Benecke-239-877-4807
- b. Fax:** N/A
- c. Email:** colivo@stonefieldeng.com, or rbenecke@beneckeeconomics.com

E. Name and Address of Statutory Agent:

Please list the name and address of the entity upon whom a legal process can be served:

Jason Tuvel, Esq.
Prime & Tuvel
1 University Plaza Drive
Suite 500
Hackensack, New Jersey 07601

F. Federal Tax Identification Number:

To be provided.

G. Disclosure of Ownership:

New Jersey law (NJSA 52:25-24.2) requires that all corporations and partnerships seeking a public contract submit a list of the names and addresses of all principals who own more than 10% of any class of stock, or 10% or more of the total stock (if a corporation), or 10% or more of the partnership. In addition, if the Developer has, as one or more of its owners, a corporation or partnership, the ownership of those entities must be similarly disclosed, and that process shall continue down the entire chain of ownership until the names and addresses of every unincorporated stockholder and/or individual partner is disclosed.

Please provide the necessary information utilizing the form provided with Exhibit 1 of this application.

H. Certificates of Incorporation and Approval:

Please provide a copy of the approved certificate of incorporation or formation by the State of New Jersey for the entity applying for the exemption. Attach the certificate as Exhibit 2.

Also include a copy of the certificate of approval of the urban renewal entity issued by the State of New Jersey Department of Community Affairs. Attach that certificate as Exhibit 3. (The only projects exempt from this requirement are low and moderate income housing projects located outside a designated redevelopment area.)

I. Authorization to Submit Application:

Please provide a certified copy, bearing the seal of the urban renewal entity, of a company resolution authorizing submission of the application in the form provided as Exhibit 4 of this application.

III. Project Description:

A. Applicant’s Ownership Interest in the Project:

XX Conventional (Fee Simple)

B. Project Type (Please check all that apply):

XX Residential; XX Retail; ___ Office; ___ Manufacturing; ___ Distribution Facility; ___ Hotel;

Other (Specify): **Theater**

If the project involves more than one type of usage, indicate the percentage that each usage bears to the overall project measured using square feet of gross area:

71.4% Residential; 6% Retail; ___% Office; ___% Manufacturing; ___% Distribution Facility;

___% Hotel; **22.6% Other (Theater)** the s.f. does not include the parking structure.
Please see the attached Fiscal Plan.

C. Marketing Expectation:

For Sale For Lease XXXX Both

D. Project Location:

1. Provide all street addresses by which the project site is currently known:

Address #1: 15 Sylvan Street-Williams Theater

Address #2: 5 Etrick Terrace-Parking Structure-to be retained in the ownership by the Borough and leased to the Entity.

2. Provide all tax lots that comprise the project site. Designate lots as they appear on the official maps of the Tax Assessor as of the date of this application (i.e. prior to any subdivision associated with the project):

Block 147 Lots: 1-Williams Theater

Block 145 Lots: 10.01-Parking Structure

3.-4 Metes and Bounds Description and Survey:

Please the Preliminary and Final Major Site Plan, dated July 29, 2022 on file with the Borough of Rutherford, Planning Office.

E. Deed or Lease Agreement:

Please attach a copy of the deed or lease agreement for the property as Exhibit 7 confirming that the project is under the control of the applicant.

F. Purpose of Project:

Please check all that apply:

1. This project is located within an officially designated "area in need of redevelopment."
XX Yes ___ No
2. This project is located within an Urban Enterprise Zone.
No
3. This Project is intended to provide housing to low and/or moderate income households:
XX Yes ___ No

Please indicate the number of units of each type listed below, as appropriate.

Number of units for low income households ~6
Number of units for moderate income households ~6
Number of market rate units 68
Total number of residential units 12

4. This Project is intended to provide housing to households relocated as a result of a redevelopment project: Yes XX

5. This Project is intended as a means to implement the objectives set forth in an adopted Redevelopment Plan: XX Yes.

6. If the answer to questions 3 through 5 of this section was "No", please indicate the purpose of the Project:

NA

H. Narrative Description of Project:

Provide a brief narrative description of the project, including the height and bulk of proposed improvements, type of construction materials to be used and expected square foot area of each proposed use. Please see the aforementioned site plan. (**Attached are the first three (3) pages of the site plan.**) Indicate the number and type of each unit to be constructed as part of the project and there will be **NO restricted group or groups on the basis of age or income-except twelve units will exclude higher income households.** Include maps, renderings, floor plans and other graphic materials if available. Attach this description as Exhibit 8 of this application.

I. Current Conditions:

1. Provide a brief description of any improvements that are in place currently on the project site and indicate which if any are expected to be reused as part of the project. Attach extra pages as needed. **The principal property is the abandoned, obsolete, unmarketable, deleterious and deteriorating Williams Theater.**

2. Provide a list with the current tax assessment and the current real property tax levy for each lot included within the project site. Attach extra pages as needed.

Block	Lot	Current Tax Assessment	Current Real Property Tax Levy
NONE			

3. Provide a list showing the current status of all municipal fees and charges which are currently levied against each lot located within the project site, including, without limitation water charges, sewer charges, permit or license fees, fines and/or penalties. Attach extra pages as needed.

Block Lot Current Status of Municipal Fees and Charges (specify type)
ALL Current.

J. Site Plan Approval:

Provide a copy of the site plan approved by the Planning Board for the Project. **The site plan was approved on August 18, 2022, by the Rutherford Planning Board.** Also provide a copy of the resolution of the Planning Board providing final site plan approval for the project-in process. Attach the site plan as Exhibit 9 of this application and the resolution as Exhibit 10 of this application.

K. Project Cost Estimates

1. Provide a detailed cost breakdown for the project, including both hard and soft costs. The estimate should be prepared by a licensed architect or engineer. Attach the completed estimate for the entire Project as Exhibit 11 of this application. **SEE FISCAL PLAN ATTACHED.**

L. Project Pro-Forma:

Provide a detailed projection of the estimated revenues and expenses for the project. The projections for all rental projects and for the rental component of mixed-use projects should cover the full exemption period. Projections involving the sale of units should be for the period expected to be needed to complete all sales activity. Attach the projection as Exhibit 13 of this application. **SEE FISCAL PLAN ATTACHED.**

M. Project Financing Plan:

1. Provide a detailed explanation of the expected method by which the project will be financed, indicating the amount of equity to be contributed and its source, all public loans and/or grants that are to be used and all private sources of capital. Attach this explanation as Exhibit 14 of this application. **SEE FISCAL PLAN ATTACHED.**

2. Private Financing Commitments: Provide certified copies of any and all letters from public or private sources of capital indicating a commitment to make funds available for the project. Attach these letters as Exhibit 15 of this application. **To be provided upon execution of the redevelopment agreement and the approval of the PILOT application.**

N. Explanation of the Need for Tax Exemption:

Provide an explanation of why the applicant believes that a long term tax exemption is necessary to make this project economically feasible. Attach the explanation as Exhibit 16 of this application. **The project is financially tenuous and cannot be built without a PILOT and other financial considerations.**

O. Project Schedule:

Attach a detailed schedule of the key milestone dates in the approval, construction and leasing or sale of the project as Exhibit 17 of the application.

P. Statement of Project Benefits:

Provide a detailed description of the public benefits that would result from the project. The turnaround of a deleterious and decaying area of the Borough of Rutherford. At a minimum, include a projection of the number and type of construction jobs to be created, the number and type of permanent jobs to be created and the amount of municipal revenue to be generated by the project through the payment of taxes, payments in lieu of taxes, water and sewer fees and any other municipal payments. Attach the description as Exhibit 18 of the application.

IV. Exemption Information:

A. Annual Service Charge to be based on:

Annual Gross Revenue (Non-condominium)

B. Term Requested:

30 Years

C. Proposed Rates and Phases:

<u>Starting Year</u>	<u>Ending Year</u>	<u>Rate</u>
30	10%	AGR

D. Form of Financial Agreement:

Attach the proposed form of the financial agreement as Exhibit 19 of the application. The correct form for your project type should be attached to this application. Please note that the final financial agreement provides that a sealed certification by the project architect as to the final project cost must be submitted so that it can be added to the agreement within 60 days after the issuance of the Certificate of Occupancy for the project.

Representations and Certifications:

In submitting the application, the Developer certifies that all of the information is true and accurate to the best of his or her knowledge and further certifies to the following:

A. The project conforms to the Redevelopment Plan that is in effect for the area that includes the project site and with any Redevelopment Agreement as may be in place between the Municipality and the Developer.

B. The Project either 1) conforms to the Master Plan of the Municipality; or 2) to the extent that the Redevelopment Plan is inconsistent with the Master Plan, the Project conforms to the Redevelopment Plan and the Municipal Council, in adopting the Redevelopment Plan, set forth its reasons for adopting a Redevelopment Plan with such inconsistencies.

C. The project will conform to and the applicant(s) agrees to comply with all Federal and State laws and to all applicable municipal ordinances.

D. Construction of the project has not commenced as of the time of the submission of this application. The applicant understands that the Municipal Council is under no obligation to approve this tax exemption application. Any work done on the assumption of receipt of a tax exemption following the submission of the application and before final approval is undertaken at the risk of the developer. **Note that under no circumstances will an exemption be granted for a project that has already reached substantial completion.**

F. No officer or employee of the Municipality has any interest, directly or indirectly, in the project that is the subject of this application.

Signatures

By my signature below, I hereby submit this application on behalf of the Developer. I certify that all of the information is true and accurate to the best of my knowledge and belief. I am aware that if any of the information provided is willfully false, that I am, subject to prosecution.

For the Developer:

Robert L. Benecke

Robert Benecke

Date: August 24, 2022

May 19, 2023

Title: Owner's Representative

EXHIBITS

The following is a check-list of required exhibits that must be attached to the application, all have been filed with the Borough:

<u>Exhibit #</u>	<u>Description</u>	<u>Included?</u>
1	Disclosure of Ownership	___
2	Certificate of Incorporation	___
3	Certificate of DCA Approval of Urban Renewal Entity	___
4	Resolution Authorizing Submission of Application	___
5	Metes and Bounds Description	___
6	Survey	___
7	Copy of Deed or Lease Agreement	___
8	Narrative Description of Project	___
9	Site Plan as Approved by Planning Board	___
10	Site Plan Approval Resolution	___
11	Total Project Cost Estimate	___
12	Cost Estimates for Each Unit Type	___
13	Project Pro-Forma	___
14	Project Financing Plan	___
15	Private Financing Commitments	___
16	Explanation of the Need for Tax Exemption	___
17	Project Schedule	___
18	Summary of Project Benefits	___
19	Form of Financial Agreement	___

DISCLOSURE OF OWNERSHIP

Instructions:

New Jersey law (NJSA 52:25-24.2) requires that all corporations and partnerships seeking a public contract submit a list of the names and addresses of all principals who own more than 10% of any class of stock, or 10% or more of the total stock (if a corporation), or 10% or more of the partnership. In addition, if the Developer has as one or more of its owners a corporation or partnership, the ownership of those entities must be similarly disclosed, and that process shall continue down the entire chain of ownership until the names and addresses of every unincorporated stockholder and/or individual partner with more than a 10% interest is disclosed.

This information must be provided on the forms following these instructions entitled "Disclosure of Ownership." Separate forms should be used for each corporation or partnership included in the chain of ownership. Each form must be signed by an officer of the corporation and be attested to by the secretary (if a corporation) or by all partners (if a partnership). Partnership forms must be notarized as well.

Failure to properly complete this disclosure statement or to submit it as part of the application will be grounds for the application to be rejected.

DISCLOSURE OF OWNERSHIP
(for use by Partnerships)

I. Partners

<u>Name</u>	<u>Home Address</u>	<u>Signature</u>

Name of Partnership

Signature of Notary as to Signatures Date

DISCLOSURE OF OWNERSHIP
(for use by Corporations)

I. Principals (list all owners of 10% or more of stock)

<u>Name</u>	<u>Home Address</u>	<u>Title</u>	<u>%Owned</u>
-------------	---------------------	--------------	---------------

_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

By: _____
Name of Corporation
Signature of Officer Date

Attested by: _____
Secretary of Corporation Date

(Affix Corporate Seal)

APPLICANTS DISCLOSURE STATEMENT

Pursuant to the New Jersey Municipal Land Use Law, N.J.S.A. 40:55D-48.1 and 48.2, a corporation, partnership or other business entity that makes application for a subdivision of land into six or more lots, or site plan approval for commercial purposes, or a variance to construct a multiple dwelling of 25 or more family units, must disclose the name(s) and address(es) of all persons, stockholders, or individual partners owning at least 10% of the stock in the corporation or at least 10% of the interest in the partnership or other entity.

The names and addresses of all persons, stockholders, or individual partners owning at least ten percent (10%) interest in the corporation, partnership, or applicant are as follows:

NAME	ADDRESS
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

DATE

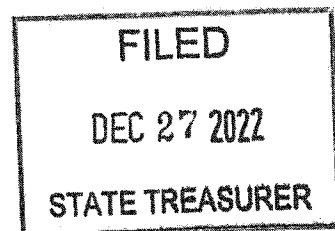
APPLICANTS SIGNATURE

APPLICANT (PRINT FULL NAME)

CERTIFICATE OF INCORPORATION

Please attach a copy of the approved certificate of incorporation of the entity applying for the exemption to this sheet.

**CERTIFICATE OF FORMATION
OF
NATIVE DEVELOPMENT URBAN RENEWAL LLC**



This Certificate of Formation dated is being filed by the undersigned for the purposes of forming a limited liability company pursuant to the Revised Uniform Limited Liability Company Act, N.J.S.A. 42:2C-1 et seq. (the "Act").

FIRST: The name of the limited liability company is

NATIVE DEVELOPMENT URBAN RENEWAL LLC

SECOND: The name and address of the limited liability company's initial registered office and agent is:

Charles Olivo
204 Jackson Avenue
Rutherford, New Jersey 07070

THIRD: The duration of the limited liability company's existence shall be perpetual.

- FOURTH:**
- a. The purpose for which the Company is formed shall be to operate under P.L. 1991, c. 431 (c. 40A:20-1, et seq.) and to initiate and conduct projects for the redevelopment of a redevelopment area pursuant to a redevelopment plan, or projects necessary, useful, or convenient for the relocation of residents displaced or to be displaced by the redevelopment of all or part of one or more redevelopment areas, or low and moderate income housing projects, and, when authorized by financial agreement with the municipality, to acquire, plan, develop, construct, alter, maintain or operate housing, senior citizen housing, business, industrial, commercial, administrative, community, health, recreational, educational or welfare projects, or any combination of two or more of these types of improvement in a single project, under such conditions as to use, ownership, management and control as regulated pursuant to P.L. 1991, c. 431 (c. 40A:20-1 et. seq.).
 - b. So long as the Company is obligated under a financial agreement with a municipality made pursuant to P.L. 1991, c. 431 (c. 40A:20-1 et. seq.), it shall engage in no business other than the ownership, operation and management of the project.
 - c. The Company has been organized to serve a public purpose, and its operations shall be directed toward: (1) the redevelopment of redevelopment areas, the facilitation of the relocation of residents displaced or to be displaced by redevelopment, or the conduct of


low- and moderate-income housing projects: (2) the acquisition, management and operation of a project, redevelopment relocation housing project, or low- and moderate-income housing project under P.L. 1991, c. 431 (c. 40A:20-1 et. seq.); and (3) shall be subject to regulation by the municipality in which its project is situated, and to a limitation or prohibition, as appropriate, on profits or dividends for so long as it remains the owner of a project subject to P.L. 1991, c. 431 (c. 40A:20-1 et. seq.).

- d. The Company shall not voluntarily transfer more than 10% of the ownership of the project or any portion thereof undertaken by it under P.L. 1991, c. 431 (c. 40A:20-1 et. seq.), until it has first removed both itself and the project from all restrictions of P.L. 1991, c. 431 (c. 40A:20-1 et. seq.) in the manner required by P.L. 1991, c. 431 (c. 40A:20-1 et. seq.) and, if the project includes housing units, has obtained the consent of the Commissioner of Community Affairs to such transfer; with the exception of transfer to another urban renewal entity, as approved by the municipality in which the project is situated, which other urban renewal entity shall assume all contractual obligations of the transferor entity under the financial agreement with the municipality. The Company shall file annually with the municipal governing body a disclosure of the persons having an ownership interest in the project, and of the extent of the ownership interest of each. Nothing herein shall prohibit any transfer of the ownership interest in the Company itself provided that the transfer, if greater than 10 percent, is disclosed to the municipal governing body in the annual disclosure statement or in correspondence sent to the municipality in advance of the annual disclosure statement referred to above.
- e. The Company is subject to the provisions of section 18 of P.L. 1971, C.199 (c. 40A:12-18) respecting the powers of the municipality to alleviate financial difficulties of the urban renewal entity or to perform actions on behalf of the entity upon a determination of financial emergency.
- f. Any housing units constructed or acquired by the Company shall be managed subject to the supervision of, and rules adopted by, the Commissioner of Community Affairs.”

FIFTH: The limited liability company has one or more members.

This certificate complies with the requirements of the Act. The undersigned person represents that he is authorized to sign this form on behalf of the Company.

Dated: 11-10-22

By: 
Charles Olivo, Authorized Representative

NEW JERSEY DEPARTMENT OF COMMUNITY AFFAIRS
OFFICE OF LOCAL PLANNING SERVICES
PO BOX 813
TRENTON, NEW JERSEY 08625-0813

URBAN RENEWAL ENTITIES
DISCLOSURE INFORMATION

Instructions for Completion: You have filed an application for approval of an urban renewal entity pursuant to the Long Term Tax Exemption Law (N.J.S.A. 40A:20-1 et seq.). In order for us to process the application, we require that you provide the following information and forward this form to the above address or fax it to (609) 633-6056. This form must be completed prior to DCA approval of the entity. If you have any questions, please call Pamela Weintraub at (609) 913-4456 or email Pamela.Weintraub@dca.nj.gov.

Name of Urban Renewal Entity: Native Development Urban Renewal LLC

SECTION 1: TYPE OF APPROVAL REQUESTED (check one):

- Original Certificate (of incorporation, limited partnership, formation, etc.)
 Amendment to original certificate (of incorporation, limited partnership, formation, etc.). Note: In the case of amendments, please forward a copy of original certificate marked "filed, State Treasurer" or "filed, Secretary of State" with this form.
 Other (please specify) _____

SECTION 2: PROJECT INFORMATION

Project Name: Williams Center Revopment

Project Street Address: 15 Sylvan Street and 5 Etrrick Terrace

Project Block Number(s) 147
145

Project Lot Number(s) 1
10.01

Municipality in which the Project is located Borough of Rutherford

County in which the Project is located County of Bergen

SECTION 3 (For project listed in SECTION 2. Check one.)

- This project is solely a commercial project (with no housing units) developed in a redevelopment area pursuant to a municipal redevelopment plan.
 2. This project consists solely of market rate housing units developed in a redevelopment area pursuant to a municipal redevelopment plan.
 3. The project consists of low and moderate income housing units, which may include senior citizen low and moderate income housing units.
 4. This project consists of mixed uses (Specify type).
 Market rate and low and moderate income housing.
 Commercial and market rate housing.
 Commercial and low and moderate income housing.
 Other (please describe). Commercial and both market rate and low and moderate housing.

NOTE: If you checked 1 or 2, complete **SECTIONS 4, 6, and 7**.
If you checked 3, complete **SECTION 5, 6, and 7**.
If you checked 4, complete **SECTIONS 4, 5, 6, and 7**.

-next-

SECTION 4: REDEVELOPMENT PLAN INFORMATION

Name of Municipal Redevelopment Agency Borough of Rutherford

Citation of municipal ordinance adopting the redevelopment plan Ord. 3562-21, Amended Ord. 3618-22

For housing projects, complete the following:

Specify type and number of units as applicable:

- Condominium units _____
- Market rate rental 68
- Low and moderate income in mixed use projects 12
- Senior citizen in mixed use projects _____
- Other (please specify) _____

Total number of units 80

SECTION 5: PROJECT FUNDING SOURCES

The low and moderate income housing project will be financed or insured by which of the following (check all applicable):

- Private funds (Please specify) Commercial banking institution
- State or Federal financing or insuring agencies (Please specify below)
- Other (Please specify) _____

State or Federal Financing or Insuring Agencies for the Project (check all that apply):

NJ Department of Community Affairs:

- Neighborhood Preservation Balanced Housing
- HOME – CHDO Production (Community Housing Development Organizations) Program
- HOME – Housing Production Investment Fund
- National Housing Trust Fund

NJ Redevelopment Authority:

- NJ Urban Site Acquisition Program

US Department of Housing and Urban Development (HUD):

- Section 811 Supportive Housing for Persons with Disabilities
- Section 202 Supportive Housing for the Elderly
- HOPE VI Grants
- HOME Program

US Department of Agriculture:

- Rural Resources Administration (formerly Farmers' Home Administration)

Other (Please specify):

NJ Housing and Mortgage Finance Agency:

- NJ Community Housing Demo Program (developmental disabilities)
- NJ Supportive Housing Connection Program
- CHOICE Program
- Special Needs Housing Partnership Program
- Multifamily Rental Housing Program
- Multifamily Conduit Bond Program
- Public Housing Construction and Permanent Loan Program
- Sandy Special Needs Housing Fund
- Rental Housing Incentive Finance Fund
- 100% Mortgage Program
- Urban Home Ownership Recovery Program
- Low-Income Housing Tax Credit Allocation Program
- Money Follows the Person Housing Partnership Program
- Section 811 Project Based Rental Assistance Program
- Fund for Restoration of Multifamily Housing (FRM)
- Fund for restoration of Multifamily Housing -Public Housing Authority Set -Aside

List the information of the State or Federal financing or insuring agency's contact person:

Name: _____

Title: _____

Department/Agency: _____

Address: _____

Telephone Number: _____

-next-

SECTION 6: PROJECT CONSTRUCTION/OWNERSHIP (check all that apply)

- 1. The project is new construction.
- 2. An existing project is being rehabilitated.
If rehab, specify name of individual, entity, etc. who is the current owner of the project.

- 3. Ownership of an existing project is being transferred to the new urban renewal entity.
If transfer, specify name of individual, entity, etc. from whom the project is being or has been transferred.

Is the transferor entity a limited dividend corporation or association, established pursuant to the Limited Dividend and Non Profit Housing Corporations and Associations Law, N.J.S.A. 55:16-1 et seq.? (yes or no) _____
Is the transferor entity a limited dividend corporation or association, established pursuant to the Limited Dividend and Nonprofit Housing Corporations and Associations Law, N.J.S.A.55:16-1 et seq.? (yes or no) _____
Has the project ever been subject to a deed restriction, as a limited dividend project, pursuant to the Limited Dividend and Nonprofit Housing Corporations and Associations Law, N.J.S.A.55:16-1 et seq.? (yes or no) _____
Is the transferor entity an existing urban renewal entity established pursuant to the Long Term Tax Exemption Law, N.J.S.A. 40A:20-1 et seq.? (yes or no) _____
- 4. Has this project caused or will this project cause displacement of individuals or businesses? (yes or no) _____

SECTION 7: CERTIFICATION

NOTE: This certification must be completed by an individual authorized to execute the certificate of incorporation (incorporator), the certificate of limited partnership (general partner), or other similar certificate or statement as may be required by law.

CERTIFICATION

I attest that the information stated herein is truthful and accurate to the best of my knowledge and understand that failure to fully and accurately disclose any information may delay processing the application while the Department investigates the application and project. Further, I understand that any project of the urban renewal entity may be subject to additional Department review and approval, pursuant to the requirements of the Limited Dividend and Nonprofit Corporations or Associations Law, N.J.S.A. 55:16-1 et seq., the Long Term Tax Exemption Law, N.J.S.A. 40A:20-1 et seq., and/or rules governing Limited Dividend and Nonprofit Housing Corporations and Associations and Urban Renewal Entities, N.J.A.C. 5:13-1 et seq.

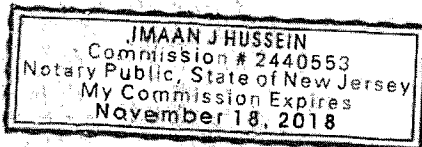
Sworn to me and subscribed before me this day of
(mo/day/year)

11/10/2022

[Signature]
(notary public/attorney)

x [Signature]
(authorized individual's signature)

Charles D Olivo
(print name of authorized individual)



Rev. 07/2022



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
LOCAL PLANNING SERVICES
101 SOUTH BROAD STREET
PO BOX 813
TRENTON, NJ 08625-0813
(609) 292-3000 • FAX (609) 633-6056

PHILIP D. MURPHY
Governor

LT. GOVERNOR SHEILA Y. OLIVER
Commissioner

DEPARTMENT OF COMMUNITY AFFAIRS

TO: State Treasurer
RE: NATIVE DEVELOPMENT URBAN RENEWAL LLC
File # 3515
An Urban Renewal Entity

This is to certify that the attached CERTIFICATE OF FORMATION OF AN URBAN RENEWAL ENTITY has been examined and approved by the Department of Community Affairs, pursuant to the power vested in it under the "Long Term Tax Exemption Law," P.L. 1991, c.431.

Done this 15th day of December 2022 at Trenton, New Jersey.

DEPARTMENT OF COMMUNITY AFFAIRS

By: *Keith Henderson*
Keith Henderson, PP/AICP
Acting Director
Local Planning Services

Certificate of Approval of Urban Renewal Entity from the New Jersey Department of
Community Affairs (DCA)

Please attach a copy of DCA's certificate of approval of the applicant as an Urban Renewal entity to this sheet. (Low and moderate income housing projects to be constructed outside an approved redevelopment area are exempt from this requirement.)

RESOLUTION AUTHORIZING SUBMISSION OF APPLICATION

Please attach a notarized resolution that follows the format below:

FORM OF CERTIFIED CORPORATE RESOLUTION

PLEASE TAKE NOTICE that a meeting of the Board of Directors of the

_____ was held at _____ A.M. on _____
(Name of Corporation) P.M. (Date)
at

_____ (Address)
at which time the following RESOLUTION was unanimously adopted:

RESOLVED that this Corporation is authorized to submit an application to the Municipality for the provision of a long term tax exemption.

BE IT FURTHER RESOLVED that if this Corporation's application is accepted by the Municipality, the President of this Corporation is authorized to execute and deliver on its behalf, a contract with the Municipality, substantially in the form attached to the application, with such changes thereto as may be negotiated by the parties.

The undersigned Secretary of this Corporation hereby certifies that the foregoing Resolution was lawfully adopted by the Board of Directors of this Corporation on the date set forth above, that the foregoing Resolution is a true, accurate and complete copy of the Resolution so adopted and placed in the Corporation's records, and that they are in full force and effect as of the date hereof.

Secretary

Date

(Affix Corporate Seal)

METES AND BOUNDS DESCRIPTION

SURVEY

Attach survey of the project. If a survey has not yet been completed, a plotting on the official tax map may be provided at this time. A certified survey will be required prior to execution of any financial agreement.

Exhibit 7

COPY OF DEED, PURCHASE AND SALE AGREEMENT OR LEASE AGREEMENT

Please attach evidence that applicant has legal control over site(s) included in the proposed project.

RECORD AND RETURN TO:
Paul Gregory, Esq.
Gregory Legal Group
52 Maple Avenue
Morristown, New Jersey 07960

Prepared by:
Michele J. Perrotta, Esq.

DEED

This Deed is dated as of October 1, 2021,

BETWEEN

Borough of Rutherford, a public body corporate and politic of the State of New Jersey having its address at 176 Park Avenue, Rutherford, NJ 07070, referred to as the “**Grantor**”,

and,

Native Center Development, LLC a limited liability company organized under the laws of the State of New Jersey, having its address at 92 Park Avenue, Rutherford, New Jersey, 07070, referred to as the “**Grantee**”.

The words "Grantor" and "Grantee" shall mean all Grantors and all Grantees listed above.

1. Transfer of Ownership. The Grantor grants and conveys all of its rights, interest and ownership in the property (the “**Property**”) described below to the Grantee. This transfer is made for the sum of **ONE and 00/100 DOLLARS (\$1.00) (the “Purchase Price”)**. The Grantor acknowledges receipt of this money.

2. Tax Map Reference. (N.J. S.A. 46:15-1.1) Municipality of the Borough of Rutherford, County of Bergen, New Jersey, Block 147, Lots 1.

3. Property. The Property consists of the land and all the buildings and structures on the land in the **Borough of Rutherford, County of Bergen, and State of New Jersey**. The legal description of the Property is:

annexed hereto as *Schedule A* and made a part hereof.

BEING the same premises conveyed to the Borough of Rutherford under Deed from the County of Bergen, a body politic and corporate, dated August 10, 2021 and recorded in the Bergen County Clerk’s Office on August 28, 2021 in Deed Book V4340, Page 1198.

FURTHER BEING the same premises conveyed to County of Bergen, a body politic and corporate of the State of New Jersey under Deed from William Carlos Williams Center for the Performing Arts, Inc., dated September 17, 1987, recorded in the Bergen County Clerk’s Office on October 19, 1987 in Deed Book 7153, Page 535.

The within sale and purchase is subject to all current and future zoning requirements as imposed by the Borough of Rutherford as well as all easements, setbacks, encroachments, restrictions of record and such state of facts as an accurate survey may disclose as well as all municipal, County, State and Federal regulations governing the use of the Property. Grantor makes no representation as to the current or future state of any of the above items or as to what type of development is or will be permitted relative to the Property.

The address of the Property is: 15 Sylvan Street, Rutherford, New Jersey 07070

4. Local Redevelopment and Housing Law. This conveyance is made in accordance with the provisions of the New Jersey Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 *et seq.*

5. Deed Restrictions.

- A. Reverter.** The subject Property is being transferred to the Grantee with the limitation that said land or buildings shall be used only for Public Purposes (as defined below) of the Municipality, which may include but not be limited to, affordable housing units, along with other residential and/or commercial units and for cultural uses and that if said land or buildings are not used in accordance with said limitation, title thereto shall revert back to the Grantor without any entry or reentry made thereon on behalf of the Grantor, on notice from the Grantor to the Grantee with an opportunity for the Grantee to cure.
- B. Failure to rehabilitate or operate the Williams Center Theater.** The Property is located in an area within the Borough of Rutherford identified and designated as “area in need of redevelopment” pursuant to the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 *et seq.* (the “**Redevelopment Law**”). The Williams Center Theater (the “**Williams Center Theater**”), which currently consists of a black box theater, a cinema complex, and the Williams Center Theatre, is situated upon the Property. The Grantee has long desired to rehabilitate the Williams Center Theater as a catalyst for the economic and artistic renaissance of the Borough of Rutherford. The within conveyance is being made with the understanding that Grantee will redevelop the Property pursuant to the Redevelopment Law and in accordance with the “Theater District Redevelopment Plan Area A Sylvan-Walkway/Spring Dell/Glen Road/Orient Way & Ettrick Terrace Parking Area Borough of Rutherford”, dated December 2020 (the “**Redevelopment Plan**”), by constructing thereon a redevelopment project in a 7-story building consisting of (1) residential units, and retail space (the “**Residential/Retail Component**”), and (2) partial or total rehabilitation and preservation of the Williams Center Theater to make the theater an unparalleled arts and film destination in the region, which will include major upgrades and comprehensive renovations to the building, as well as improvements to landscaping surrounding the site and after rehabilitation, the Borough will fully operate and maintain the Williams Center Theater as a black box theater, a cinema complex, and the Williams Center Theatre, which shall be open to the public (the “**Theater Component**” and together with the Residential/Retail Component, collectively, the “**Project**” or the “**Public Purposes**”). Grantee’s proposed, and anticipated, rehabilitation and operation of the Williams Center Theater through the Theater Component of the Project was a material inducement for the Grantor to convey the Property to Grantee, and said inducement is reflected in the Purchase Price of the Property. If Grantee, its successors, heirs, assigns or transferees: (a) fail to complete the Theater Component within five (5) years from the effective date of this Deed, or (b) if, for a period greater than six (6) continuous months (the only exception being the construction of, or pre-development in connection with the construction of the Theater Component pursuant to a validly executed Redevelopment Agreement by and between the Grantor and the Grantee), due solely to the actions or omissions of Grantee (and not to the failure of the Borough or any tenant or occupant to operate same as required) the Williams Center Theater ever ceases to (i) function as a black box theater, a cinema complex, and the Williams Center Theatre for a period greater than six (6) continuous months, absent force majeure or such other factors outside the reasonable control of Purchaser, including, without limitation, casualties and a pandemic (collectively “**Force Majeure Events**”), or (ii) be open for use and enjoyment by the public for a period greater than six (6) continuous months, absent Force Majeure Events; then the Grantor will have suffered immeasurable loss, by and through the loss of said use and enjoyment to the community, and in such an event, Grantee, its successors, heirs, assigns, and transferees agree to pay the Grantor the sum of ONE MILLION AND 00/100 DOLLARS (\$1,000,000.00) (the “**Theater Liquidated Damages Amount**”) as liquidated damages and not as penalty. The Grantor and Grantee agreed that Grantor’s damages resulting from Grantee’s, its successors’, heirs’, assigns’, or transferees’ failure to construct the Theater Component and operate the Williams Center are difficult, if not impossible, to determine and the Theater Liquidated Damages Amount is a fair and reasonable estimate of those damages which has been agreed to by the Grantor and Grantee in an effort to cause the amount of such damages to be certain. The

Grantor shall be entitled to Attorney fees and costs from Grantee, its successors, heirs, assigns or transferees, if any, that the Grantor incurs in connection with any effort to recover the Theater Liquidated Damages Amount. The Theater Liquidated Damages Amount will be adjusted on an annual basis, as of the anniversary of the date hereof, to account for inflation. The adjustment to the Theater Liquidated Damages Amount will be made on the basis of the United States Department of Labor, Bureau of Labor Statistics "Consumer Price Index" for All Urban Consumers (CPI-U), "all items" not seasonally adjusted (the "**Index**") and in accordance with the Consumer Price Index (CPI) Inflation Calculator, as described in U.S. Bureau of Labor Statistics, https://www.bls.gov/data/inflation_calculator.htm (the "**Calculator**"). In the event that the Bureau of Labor Statistics no longer maintains the Index or Calculator, a comparable index or calculator, as applicable, measuring or calculating inflation, as applicable, published by a responsible financial periodical or recognized authority, as reasonably determined by Grantor, shall be used. There will be no decrease to the dollar amounts in the case of deflation. **The Theater Liquidated Damages Amount is in addition to and not in limitation of any re-sale amount due to the Grantor upon future sale of the Property as set forth herein.**

- C. The within restrictive use covenants shall run with the land and shall be binding upon and shall inure to the benefit of the Grantor and Grantee, and their respective subsidiaries, affiliates, legal representatives, heirs, successors and assigns, as applicable.
- D. The intention of the Grantor is that the covenants and restrictions herein are intended to last in perpetuity.

6. Restrictive Covenant. In the event that the Property, at any time prior to the completion of construction of the Project, is sold by the Grantee to another Party for an amount greater than \$1,000.00 the Grantee shall be obligated to pay Seller in accordance with the following schedule:

Sale price	Amount Due Seller Upon Sale
\$1,001.00 to \$999,999.99	Fifty (50%) Percent of the Sale Price
\$1,000,000.00 to \$1,999,999.99	\$500,000.00
\$2,000,000.00 to 3,999,999.99	\$750,000.00
\$4,000,000.00 or more	\$1,000,000.00

This within restrictive re-sale covenant shall be binding upon and shall inure to the benefit of the Parties, their subsidiaries, Affiliates, legal representatives, heirs, successors and assigns, as applicable, only but shall not apply to any third party successor of interest who acquires such interest after completion of the Project. **The amounts set forth in this section are in addition to, and not in limitation of, any Theater Liquidated Damages Amount due to the Grantor as set forth herein.**

7. Promises by Grantor. The Grantor promises that the Grantor has done no act to encumber the Property. This promise is called a "covenant as to grantor's acts" (N.J.S.A. 46:4-6). This promise means that the Grantor has not allowed anyone else to obtain any legal rights which affect the Property (such as by making a mortgage or allowing a judgment to be entered against the Grantor).

8. Signatures. The Grantor signs this Deed as of the date at the top of the first page.

[SIGNATURES TO FOLLOW ON NEXT PAGE]

WITNESS OR ATTEST:

By: Margaret Scanlon
Name: Margaret Scanlon
Title: Borough Clerk

BOROUGH OF RUTHERFORD

By: Frank Nunziato
Frank Nunziato, Mayor

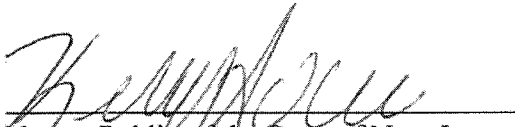
STATE OF NEW JERSEY

: ss

COUNTY OF BERGEN

I CERTIFY that on this 13 day of September, 2021, came before me, Margaret Scanlon, and acknowledged under oath, to my satisfaction, that:

- a) She is the Municipal Clerk of the Borough of Rutherford (the "**Borough**"), the Municipal Corporation named in the attached Deed;
- b) She is the attesting witness to the signing of this Deed by the proper Municipal Officer, who is Frank Nunziato, the Mayor of the Borough;
- c) This Deed was signed and delivered by the Borough as its voluntary act;
- d) She knows the proper seal of the Borough which is affixed to this Deed;
- e) The Borough made this Deed for ONE DOLLAR (\$1.00) as the full and actual consideration paid or to be paid for the transfer of title (Such consideration is defined in N.J.S.A. 46:15-5); and,
- f) She signed this proof to attest to the truth of these facts.



Notary Public of the State of New Jersey

KELLY ADAMCIK
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires Aug. 1, 2024

SCHEDULE A
DESCRIPTION OF THE PROPERTY

**DEED DESCRIPTION
BLOCK 147 LOT 1
BOROUGH OF RUTHERFORD
BERGEN COUNTY, NEW JERSEY**

BEGINNING at a point being the intersection of the northeasterly line of Spring Dell (60' wide as per Filed Map No. 188) and the southeasterly line of Sylvan Street (60' wide as per Filed Map No. 188) as marked by a Mag Nail with washer and running, thence:

- 1) Along said southeasterly line of Sylvan Street, North 29°24'20" East, a distance of 100.56 feet to a point marked by a cross-cut; thence
- 2) Along the rear line of lots fronting on Glen Road (60' wide as per tax map), South 66°38'40" East, a distance of 246.70 feet to a point marked by a Mag Nail with washer; thence
- 3) South 23°21'20" West, a distance of 100.00 feet to a point marked by a cross-cut on the aforementioned northeasterly line of Spring Dell; thence
- 4) Along said northeasterly line, North 66°38'40" West, a distance of 257.30 feet to the point of BEGINNING.

Parcel contains 25,200 S.F. or 0.5785 acres, more or less.

NARRATIVE DESCRIPTION OF PROJECT

Including the height and bulk of proposed improvements, type of construction materials to be used and expected square foot area of each proposed use. Describe each type of unit to be constructed as part of the project as well as any restrictions relating to age or income. Include maps, renderings, floor plans and other graphic materials if available.

SITE PLAN APPROVAL BY PLANNING BOARD

SITE PLAN APPROVAL RESOLUTION

TOTAL PROJECT COST ESTIMATE

Please fill out the form included below or attach a form substantially similar in its level of detail. This estimate must be certified by a licensed architect or engineer.

	Amount	<u>Amount Per Square Foot</u>
Land Costs		
Construction Costs		
Demolition		
Site Remediation Costs		
Building Construction		
Parking Construction		
Site work and Landscaping		
Other Construction Costs		
Total Hard Costs		
Soft Costs	Amount	% of Hard Costs
Architects and Engineers		
Legal Fees		
Commissions		
Construction Financing Costs		
Project Management Fees		
Developer Overhead		
Taxes (during construction period)		
Insurance		
Other Soft Costs		
Total Soft Costs		
Contingency		
Total Development Costs		

COST ESTIMATE FOR EACH UNIT TYPE

Attach a summary of the estimated total costs for each unit, broken down by type of unit. This information can be presented in summary form, not at the level of detail required in Exhibit 11. However, this estimate must also be certified by a licensed architect or engineer.

PROJECT PRO FORMA

PROJECT FINANCING PLAN

Attach a detailed explanation of the expected method by which the project will be financed, indicating the amount of equity to be contributed and its source, all public loans and/or grants that are to be used and all private sources of capital.

PRIVATE FINANCING COMMITMENTS

Attach certified copies of any and all letters from public or private sources of capital indicating a commitment to make funds available for the project.

EXPLANATION OF NEED FOR TAX EXEMPTION

Attach an explanation of why the applicant believes that a long term tax exemption is necessary to make this Project economically feasible. Include specific figures where possible to explain any financing gaps.

PROJECT SCHEDULE

Attach a detailed schedule of the key milestone dates in the approval, construction and leasing or sale of the project.

SUMMARY OF PROJECT BENEFITS

Attach a summary of all the public benefits associated with this project, including, at a minimum, the number and type of construction jobs anticipated, the number and type of permanent jobs to be created and the amount of municipal revenue to be generated by the project through the payment of taxes, payments in lieu of taxes, water and sewer fees and any other municipal payments.

FORM OF FINANCIAL AGREEMENT

The appropriate form of Financial Agreement should be attached to this application.

The Williams Center
15 Sylvan Street, Rutherford, New Jersey
Block 147, Lot 1

PREAMBLE

THIS FINANCIAL AGREEMENT, (“Agreement”) is made the ____ day of _____, 2023 (the “Effective Date”) by and between **Native Development Urban Renewal, LLC**, 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 “Long Term Tax Exemption Law”), having its principal office at 92 Park Avenue, Rutherford, New Jersey (“Entity”), and the **Borough of Rutherford**, a Municipal Corporation of the State of New Jersey, having its principal office at 176 Park Avenue, Rutherford, New Jersey 07070 (“Borough”).

RECITALS

WITNESSETH:

WHEREAS, the Borough functions as an instrumentality pursuant to the provisions of the Local Redevelopment and Housing Law, as amended and supplemented, N.J.S.A. 40A:12A-1, et seq. (the “Local Redevelopment and Housing Law”) with responsibility for implementing redevelopment plans and carrying out redevelopment projects in the Borough of Rutherford; and

WHEREAS, on June 28, 2021, the Mayor and Council adopted an ordinance, as amended by ordinance adopted on June 27, 2022, approving and adopting a redevelopment plan for the Redevelopment Area, entitled “Theater District Redevelopment Plan Area A Sylvan-Walkway/Spring Dell/Glen Road/Orient Way & Etrick Terrace Parking Area” (as amended, the “Theater District Redevelopment Plan”); and

WHEREAS, the Entity acquired title to the property designated as Block 147, Lot 1 (the “Williams Theater Property” or the “Project Premises”) from the Borough on October 1, 2021, subject to certain rights of the Borough as set forth in the deed from the Borough to the Redeveloper (the “Original Deed”); and

WHEREAS, Entity as Redeveloper will redevelop the Williams Theater Property with a 7-story mixed-use building consisting of the construction of 80 residential units, including 68 market rate units (the “Market Rate Component”) and 12 Affordable Units (the “Affordable Component”) and, together with the Market Rate Component, the “Residential Component”) and 5,839 square feet of retail space (the “Retail Component”); rehabilitation, and operation of a black box theatre, a cinema (movie) theater (together the “Williams Center Theater Component”) and, together with the Residential Component and the Retail Component, the “Project”) including significant upgrades and renovations to the existing building, as well as improvements to landscaping surrounding the site in accordance with the Redevelopment Plan, and

WHEREAS, in accordance with the provisions of the Local Redevelopment and Housing Law, the Borough has undertaken efforts to develop a program for the redevelopment of the Redevelopment Area; and

WHEREAS, the Redevelopment Plan includes the Williams Theater Property and Block 145, Lot 10.01 (the “Parking Lot” and, together with the Williams Theater Property, the “Redevelopment Parcels”), on the Borough’s official tax map; and

WHEREAS, the Local Redevelopment and Housing Law authorizes the Borough to arrange or contract with a redeveloper for the planning, construction or undertaking of any project or redevelopment work in an area designated as an area in need of redevelopment; and

WHEREAS, by Resolution No. 147-2021 and Resolution No. 148-2021, adopted on August 9, 2021, the Mayor and Council designated Redeveloper as the “conditional redeveloper” of the Williams Theater Property which said designation is no longer “conditional”; and

WHEREAS, on _____, 2023, the Redeveloper and the Borough entered into a Redevelopment Agreement relating to the redevelopment of the Redevelopment Parcels (the “Redevelopment Agreement”); and

WHEREAS, the Entity filed an application with the Borough for a long term tax exemption for the Project, a copy of which is attached hereto as Exhibit 1 (the “Application”);

WHEREAS, by way of Ordinance [____], adopted on June ____, 2023, a copy of which Ordinance is attached hereto as Exhibit 2 (the “Ordinance”), the Borough Council made the following findings:

- A. The Project represents a desired use of the Project Premises and will result in the substantial betterment of underutilized property within the Borough;
- B. The Project and the tax exemption authorized pursuant to the Ordinance will result in a net economic benefit to the Borough;
- C. The Project will create an estimated one hundred fifty (150) construction jobs which will circulate through the timing of the construction period and an estimated forty-four (44) permanent full time equivalent jobs;
- D. The Project should stabilize and contribute to the economic growth of existing local business and to the creation of new business, which will serve the entire community.
- E. The Project will further the redevelopment objectives of the Redevelopment Plan;
- F. The tax exemption authorized by the Ordinance is necessary for the successful completion of the Project because, among other reasons, (1) the relative stability and predictability of the annual service charges will make the Project more attractive to investors and lenders needed to finance the Project, and (2) the relative stability and predictability of the service charges will allow the owner to stabilize

its operating budget, allowing a high level of maintenance of the buildings over the life of the Project, which will insure the likelihood of the success of the Project and insure that it will have a positive impact on the surrounding area; and

- G. The Project would not be constructed without the tax exemption authorized by the Ordinance.

WHEREAS, by the adoption of the Ordinance, the Borough Council approved the above findings and tax exemption Application and authorized the execution of this Agreement.

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 Long Term Tax Exemption Law and the Ordinance, which authorized the execution of this Agreement. The Borough expressly relies upon the facts, data, and representations contained in the Application, attached hereto as Exhibit 1, in granting this tax exemption.

Section 1.2 General Definitions

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

(i) Aggregate Annual Service Charge. The total Annual Service Charge paid for the buildings comprising the Project.

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

(iii) Allowable Profit Rate - The greater of 12% or the percentage per annum arrived at by adding 1.25% to the annual interest percentage rate payable on the Entity's initial permanent mortgage financing. If the initial permanent mortgage is insured or guaranteed by a governmental agency, the mortgage insurance premium or similar charge, if payable on a per annum basis, shall be considered as interest for this purpose. If there is no permanent mortgage financing, or if the financing is internal or undertaken by a related party, the Allowable Profit Rate shall be the greater of 12% or the percentage per annum arrived at by adding 1.25% per annum to the interest rate per annum which the municipality determines to be the prevailing rate on mortgage financing on comparable improvements in Bergen County. The provisions of N.J.S.A. 40A:20-3(b) are incorporated herein by reference.

(iv) Application. That certain application filed by the Entity, seeking a tax exemption for the Project pursuant to the Long Term Tax Exemption Law, attached hereto as Exhibit 1.

(v) Annual Gross Revenue. The annual gross rents and other income of the Entity from the Project. Any operating and maintenance expenses paid by a tenant of the Project to the Entity other than operating expenses for the Parking Lot that would ordinarily be paid by the Entity, as landlord, shall be included in Annual Gross Revenue. However, notwithstanding anything contained herein to the contrary, (i) any gain of the Entity realized by the sale of the Project or any portion thereof in fee simple or leasehold interest, and (ii) proceeds from the financing or refinancing of a mortgage or mortgages encumbering the Project Premises or any portion thereof, are not included in Annual Gross Revenue.

(vi) Annual Service Charge - The amount the Entity has agreed to pay the Borough, with respect to the project, for municipal services supplied to the Project, which sum is in lieu of any taxes on the Improvements, pursuant to N.J.S.A. 40A:20-12, as defined in Section 4.01(a) herein, subject to adjustment pursuant to Section 4.2.

(vii) 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. The contents of the Auditor's Report shall have been prepared in conformity with generally accepted accounting principles and shall contain at a minimum the following: a balance sheet, a statement of income, a statement of cash flows, descriptions of accounting policies, notes to financial statements and appropriate schedules and explanatory material results of operations, cash flows and any other items required by Law. The Auditor's Report shall be certified as to its conformance with such principles by a certified public accountant that is licensed to practice that profession in the State of New Jersey.

(viii) Certificate of Occupancy - As defined in the Uniform Construction Code at N.J.A.C. 5:23-1.4, and as may be issued by the Borough relative to one or more buildings in the Project.

(ix) County. The County of Bergen in the State of New Jersey.

(x) 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 the Project for a period equal to the term of this Agreement.

(xi) Default - Shall be a breach of or the failure of a Party to perform any obligation imposed upon such Party by the terms of this Agreement, or under the Law, beyond any applicable grace or cure periods.

(xii) Entity - The term Entity within this Agreement shall mean Native Development Urban Renewal, LLC, which Entity is formed and qualified pursuant to N.J.S.A. 40A:20-5. It shall also include any subsequent purchasers or successors in interest of the Project, provided they are formed and operate under the Law.

(xiii) Force Majeure - Any delay caused by governmental action, or lack thereof (including, without limitation, delays in providing inspections, approvals or certificates); shortages or unavailability of materials; epidemic or pandemics; labor disputes (including, but not limited to, strikes, slowdowns, job actions, picketing and/or secondary boycotts); fire, explosion or other

casualty; delays in transportation; delays due to adverse weather conditions, acts of God; directives or requests by any governmental entity, authority, agency or department; any court or administrative orders or regulations; adjustments of insurance; acts of declared or undeclared war, warlike conditions in this or any foreign country, acts of terrorism, public disorder, riot or civil commotion; change in law detrimental to the Project; legal action challenging the validity of this Agreement, or the issuance or grant of any governmental approval; condemnation of the Project Premises or any portion thereof; or failure to procure financing for the Project or delays in procuring financing for the Project, provided that good faith effort was made to obtain said financing; or by anything else beyond the reasonable control of a party, as the case may be.

(xiv) Improvements - Any building, structure or fixture of the Project permanently affixed to the raw land of the project and to be constructed and tax exempted under this Agreement.

(xv) In Rem Tax Foreclosure or Tax Foreclosure - A summary proceeding by which the Borough may enforce a lien for taxes due and owing by tax sale, under N.J.S.A. 54:5-1 to 54:5-129 et seq.

(xvi) Land - The raw land comprising Block 147, Lot 1, as if undeveloped and unimproved.

(xvii) Land Taxes - The amount of taxes assessed on the value of the Land, on which the Project is located. Land Taxes on the portions of the Land allocable to the Retail Component and the Williams Center Theater Component (such portions of the Land are, hereafter together, the "Commercial Land") are not exempt from payment; however, Land Taxes are applied as a credit against the Annual Service Charge. Land Taxes on the portions of the Land constituting the Residential Land are exempt from payment.

(xviii) 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.

(xix) Law - Law shall refer to the Long Term Tax Exemption Law, as amended and supplemented, N.J.S.A. 40A:20-1, et seq.; and the Ordinance, which authorized the execution of this Agreement and all other relevant Federal, State or Borough statutes, ordinances, resolutions, rules and regulations.

(xx) Minimum Annual Service Charge - The Minimum Annual Service Charge shall be the amount of the total taxes levied against the Project Premises in the last full tax year in which the Project Premises was subject to taxation.

(xxi) Net Profit - The Annual Gross Revenues of the Entity less all operating and non-operating expenses of the Entity, all determined in accordance with generally accepted accounting principles, but:

(a) there shall be included in expenses: (i) all Annual Service charges paid pursuant to N.J.S.A. 40A:20-12; (ii) all payments to the Borough of excess profits pursuant to N.J.S.A. 40A:20-15 or N.J.S.A. 40A:20-16; (iii) an annual amount sufficient to amortize (utilizing the straight line method-equal annual amounts) the Total Project Cost and all

other capital costs determined in accordance with generally accepted accounting principles, of any other entity whose revenue is included in the computation of excess profits over the term of this agreement; (iv) all reasonable annual operating expenses of the Entity and any other entity whose revenue is included in the computation of excess profits including the cost of all management fees, brokerage commissions, insurance premiums, all taxes or service charges paid, legal, accounting, or other professional service fees, utilities, building maintenance costs, building and office supplies and payments into repair or maintenance reserve accounts; (v) all payments of rent including but not limited to ground rent by the Entity; (vi) all Debt Service; and

(b) there shall not be included in expenses either depreciation or obsolescence, interest on debt, except interest which is part of debt service, income taxes or salaries, bonuses or other compensation paid, directly or indirectly to directors, officers and stockholders of the entity, or officers, partners or other persons holding a proprietary ownership interest in the entity.

(xxii) Party - Either the Entity or the Borough or, when used in the plural “Parties”, both such entities.

(xxiii) Residential Land – the portion of the Land allocable to the Residential Component.

(xxiv) Substantial Completion - The determination by the Borough with advice from the Entity that the Project is ready for the use intended, which ordinarily shall mean the date on which the Project receives, or is eligible to receive, a Certificate of Occupancy for the entire Project.

(xxv) Temporary Certificate of Occupancy: A temporary Certificate of Occupancy as defined in the Uniform Construction Code at N.J.A.C. 5:23-1.4, and as may be issued by the Borough relative to one or more buildings in the Project.

(xxvi) Term. As described in Section 3.1.

(xxvii) Termination. - Any act or omission which by operation of the terms of this Agreement shall cause the Entity to relinquish its tax exemption.

(xxviii) Total Project Cost - The total cost of constructing the Project through the date a Certificate(s) of Occupancy is issued for the entire Project, which categories of cost are set forth in N.J.S.A. 40A:20-3(h). There shall be included in Total Project Cost the actual costs incurred by the Entity and certified by an independent and qualified architect or engineer, which are associated with site remediation and cleanup of environmentally hazardous materials or contaminants in accordance with State or Federal Law and any extraordinary costs incurred including the cost of demolishing structures, relocation or removal of public utilities, cost of relocating displaced residents or buildings and the clearing of title. The Entity agrees that final Total Project Cost shall not be less than its estimated Total Project Cost.

ARTICLE II - APPROVAL

Section 2.1 Approval of Tax Exemption

The Borough hereby grants its approval for a tax exemption for the Residential Land and all the Improvements to be constructed and maintained in accordance with the terms and conditions of this Agreement and the provisions of the Law.

Section 2.2 Approval of Entity

Approval is granted to the Entity whose Certificate of Formation is attached hereto as Exhibit 4. The Entity represents that its Certificate contains all the requisite provisions of the Law; has been reviewed and approved by the Commissioner of the Department of Community Affairs; and has been filed with, as appropriate, the Office of the State Treasurer or Office of the Bergen County Clerk, all in accordance with N.J.S.A. 40A:20-5.

Section 2.3 Improvements to be Constructed

The Entity represents that it will construct the Project comprised of a mixed-use building containing residential rental units, retail space, and theater space, all in conformance with the Redevelopment Agreement.

Section 2.4 Construction Schedule

The Entity agrees to undertake to commence construction and complete the Project in accordance with the requirements of the Redevelopment Agreement.

Section 2.5 Ownership, Management and Control

The Entity represents that it is, or will be, prior to the commencement of any work on the Project is the owner of the Project Premises will manage and control the Project in a manner consistent with Law and the Redevelopment Agreement. The Borough acknowledges that the Entity may enter into a management agreement for the Project and may pay management fee for any Project component. The Borough acknowledges that the Entity may enter into future management agreements. Subject to the provisions of Section 8.1, the Entity may sell the Project or any portion thereof to another urban renewal entity.

Section 2.6 Financial Plan

The Entity represents that the Improvements shall be financed substantially in accordance with the Financial Plan attached as Exhibit 1 of the Application, hereto as Exhibit 1. The Plan sets forth estimated Total Project Cost, the amortization rate on the Total Project Cost-which is the term of the Project, the estimated source of funds, the estimated interest rates to be paid on construction financing, the source and amount of paid-in or equity capital, and the terms of any mortgage amortization.

Section 2.7 Statement of Rental Schedules and Lease Terms

The Entity represents that its good faith projections of the initial rental schedules and lease terms are set forth in Exhibit A of the Application, attached hereto as Exhibit 1.

ARTICLE III - DURATION OF AGREEMENT

Section 3.1 Term

The term of this Agreement (the "Term"), including the obligation to pay the Annual Service Charge and the tax exemption granted hereby, shall commence on the date of the Substantial Completion of the Project and shall remain in effect for thirty (30) years from the date of the Substantial Completion of the Project, but in no event later than thirty-five (35) years from the Effective Date, whichever shall occur earlier, 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 the Long Term Tax Exemption Law (the "Term"). Upon expiration of the Term, all restrictions and limitations upon the Entity, arising out of or resulting from this Agreement, shall terminate upon the Entity's rendering and the Borough's acceptance of the Entity's final accounting.

ARTICLE IV - ANNUAL SERVICE CHARGE

Section 4.1 Annual Service Charge

(A) In consideration of the tax exemption, the Entity shall pay to the Borough an annual amount equal to the greatest of: (i) the Minimum Annual Service Charge; or (ii) (a) in years 1 through 15 of the Term, 10% of Annual Gross Revenue or (b) in years 16 – 30 of the Term, 11% of Annual Gross Revenue.

(B) The Annual Service Charge shall commence on the first day of the month following Substantial Completion of the Project and shall be payable as set forth in Section 4.4 of this Agreement. The Annual Service Charge shall initially be billed based upon the Entity's estimate of Annual Gross Revenue which shall not be less than the estimate of Annual Gross Revenue as set forth in its Financial Plan, attached as Exhibit A of the Application, attached hereto as Exhibit 1. For each such year, the total amount due shall be trued up upon the submission, by the Entity, of the applicable Audit Report. However, upon the completion of two full years following Substantial Completion the Annual Service Charge shall be paid as set forth in Section 4.1 A of this Agreement.

(C) In the event the Entity fails to timely pay the Annual Service Charge, the unpaid amount shall bear the highest rate of interest currently charged by the Borough in the case of unpaid taxes or tax liens on land until paid.

(D) The Borough shall pay to the County an amount equal to 5% of the Annual Service Charge upon receipt of that charge.

Section 4.2 Staged Adjustments

The Annual Service Charge shall be adjusted, in stages over the Term of the Agreement in accordance with N.J.S.A. 40A:20-12(b) as follows:

(A) Stage One: From the 1st of the month following Substantial Completion of the Project until the last day of the 15th year of the Term, the Annual Service Charge shall be as set forth in Section 4.1(A) above;

(B) Stage Two: Beginning on the 1st day of the 16th year following Substantial Completion of the Project until the last day of the 21st year of the Term, an amount equal to the greater of the Annual Service Charge set forth in Section 4.01(A) and 20% of the amount of the taxes otherwise due on the value of the Land and Improvements comprising the Project;

(C) Stage Three: Beginning on the 1st day of the 22nd year following the Substantial Completion of the Project until the last day of the 24th year of the Term, an amount equal to the greater of the Annual Service Charge set forth in Section 4.01(A), and 40% of the amount of the taxes otherwise due on the value of the land and Improvements comprising the Project;

(D) Stage Four: Beginning on the 1st day of the 25th year following Substantial Completion of the Project until the last day of the 25th year of the Term, an amount equal to the greater of the Annual Service Charge or 60% of the amount of the taxes otherwise due on the value of the land and Improvements comprising the Project; and

(E) Final Stage: Beginning on the 1st day of the 26th year following Substantial Completion of the Project through the last day of the Term, an amount equal to the greater of the Annual Service Charge or 80% of the amount of the taxes otherwise due on the value of the land and Improvements comprising the Project.

Section 4.3 Credits

(A) The Entity is required to pay both the Annual Service Charge and the Land Tax Payments, to the extent applicable in connection with the Commercial Land. All Land Taxes shall be separately assessed for the Land, and shall be assessed only on the Land without regard to any Improvements or increase in value to the Land because of the Improvements or because of approvals related to the Improvements.

(B) In any year that the Entity fails to make any Land Tax Payments when due and owing, such delinquency shall render the Entity ineligible for any Land Tax credits against the Annual Service Charge. The Entity is obligated to make timely Land Tax Payments, prior to the date of delinquency, in order to be entitled to a Land Tax credit against the Annual Service Charge for the subsequent year. The Entity shall be entitled to a credit for the amount, without interest, of the Land Tax Payments made in the last four preceding quarterly installments against the Annual Service Charge, commencing with the first year after Substantial Completion. In any quarter that the Entity fails to make any Land Tax Payments, such delinquency shall render the Entity ineligible for any Land Tax Payment credits against the Annual Service Charge for that quarter. No credit will be applied against the Annual Service Charge for partial payments of Land Taxes. In addition, the Borough shall have, among this remedy and other remedies, the right to proceed against the

property pursuant to the In Rem Tax Foreclosure Act, N.J.S.A. 54:5-1, et seq. and/or declare a Default and terminate this Agreement.

(C) In the event the exemption of the Residential Land required under N.J.S.A. 40A:20-12 is invalidated by a court of competent jurisdiction, the Parties agree that this Financial Agreement shall remain valid and in full force and effect, and shall be reformed to provide that Land Taxes are assessed on the Residential Land. In such case, the payment for Residential Land Taxes shall be applied as a credit against the Annual Service Charge for the subsequent year.

Section 4.4 Quarterly Installments/Proration

The Entity expressly agrees that the Annual Service Charge shall be made in quarterly installments on those dates when real estate tax payments are due; subject, nevertheless, to adjustment for over or underpayment as calculated within fourteen (14) days following the Entity's annual submission of its audit report required pursuant to Section 6.2 of this Agreement. In the event that the Entity fails to pay the Annual Service Charge prior to the date of delinquency, the unpaid amount shall bear the highest rate of interest currently charged by the Borough in the case of unpaid taxes or tax liens on the Land until paid. The Annual Service Charge will be prorated in the years in which Substantial Completion occurs and this Agreement terminates.

Section 4.5 Material Conditions

It is expressly agreed and understood that the timely payments of Land Taxes, Minimum Annual Service Charge, Annual Service Charge, including adjustments thereto, and any interest thereon, are Material Conditions of this Agreement.

Section 4.6 Administrative Fee

Following Substantial Completion and during the Term, the Entity shall pay to the Borough an annual administrative fee as permitted by N.J.S.A. 40A:20-9, in an amount of two percent (2%) for the duration of the term of the Annual Service Charge for the calendar year in question, to be paid within thirty (30) days after the final quarterly installment of the Annual Service Charge for such year.

ARTICLE V - CERTIFICATE OF OCCUPANCY

Section 5.1 Certificate of Occupancy

It is understood and agreed that, subject to Force Majeure delays, it shall be the obligation of the Entity to obtain all Certificates of Occupancy in a timely manner so as to complete construction in accordance with the construction schedule set forth in the Redevelopment Agreement.

Section 5.2 Filing of Certificate of Occupancy

It shall be the primary responsibility of the Entity to forthwith file with both the Tax Assessor and the Tax Collector a copy of each Certificate of Occupancy.

ARTICLE VI - ANNUAL REPORTS

Section 6.1 Accounting System

The Entity agrees to maintain a system of accounting and internal controls established and administered in accordance with generally accepted accounting principles.

Section 6.2 Periodic Reports

An Auditor's Report: Within ninety (90) days after the close of each fiscal or calendar year, depending on the Entity's accounting basis, the Entity shall submit to the Mayor and Borough Council its Auditor's Report for the preceding fiscal or calendar year. The Auditor's Report shall include, but not be limited to: the terms and interest rate on any mortgages associated with the purchase or construction of the Project and such details as may relate to the financial affairs of the Entity and to its operation and performance hereunder, pursuant to the Law and this Agreement. The Report shall clearly identify and calculate the Net Profit for the Entity during the previous year.

Section 6.3 Inspection/Audit

The Entity shall permit the inspection of its property, equipment, buildings and other facilities of the Project by representatives duly authorized by the Borough. 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.

ARTICLE VII - LIMITATION OF PROFITS AND RESERVES

Section 7.1 Limitation of Profits and Reserves

During the Term, the Entity shall be subject to a limitation of its profits pursuant to the provisions of N.J.S.A. 40A:20-15. The Entity shall have the right to establish a reserve against vacancies, unpaid rentals, and reasonable contingencies in an amount equal to ten percent (10%) of the Annual 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. The reserve is to be non-cumulative, it being intended that no further credits thereto shall be permitted after the reserve shall have attained the allowable level of ten percent (10%) of the preceding year's Annual Gross Revenue.

Section 7.2 Annual Payment of Excess Net Profit

In the event the Net Profits of the Entity, in any fiscal year, shall exceed the Allowable Net Profits for such period, then the Entity, within one hundred and twenty (120) days after the end of such fiscal year, shall pay such excess Net Profits to the Borough as an additional Annual Service Charge; provided, however, that the Entity may maintain a reserve as determined pursuant to Section 7.1. The calculation of the Entity's excess Net Profits shall include those Project costs directly attributable to site remediation and cleanup expenses and any other costs excluded in the definition of Total Project Cost in Section 1.2(xxvi) of this Agreement even though those costs

may have been deducted from the Project costs for purposes of calculating the Annual Service Charge. In addition, in determining whether Net Profits for a fiscal year exceeds Allowable Net Profits for such fiscal year, as provided in N.J.S.A. 40A:20-15, Excess Net Profits shall be calculated annually but on a cumulative basis.

Section 7.3 Payment of Reserve/Excess Net Profit Upon Termination, Expiration or Sale

The date of expiration of the Term, date of earlier termination of this Agreement, or sale of the Project Premises pursuant to the terms of this Agreement, shall be considered to be the close of the fiscal year of the Entity. Within ninety (90) days after such date, the Entity shall pay to the Borough the excess Net Profits, if any, and the amount, if any, of those portions of the reserve maintained by the Entity pursuant to Section 7.1 of this Agreement that would, if they had been included in the Net Profits in the year in which they were paid into the reserve, been payable to the Borough as excess profits pursuant to N.J.S.A. 40A:20-15 or N.J.S.A. 40A:20-16.

ARTICLE VIII - ASSIGNMENT AND/OR ASSUMPTION

Section 8.1 Assignment

The Entity may assign its rights under this Agreement only with the prior written consent of the Borough, which it will not unreasonably withhold. Notwithstanding the foregoing, the Borough hereby consents, without the need for further application or consent, to any transfer provided (a) the new entity is an urban renewal entity formed pursuant to the Long Term Tax Exemption Law, (b) at the time of such assignment, the new entity is fee owner or ground lease tenant of the Project Premises and has agreed in writing to undertake construction and completion of the Project; (c) the new entity does not own any other project subject to a long term tax exemption at the time of transfer; (d) the Entity is not then in default of this Agreement or the Law; and (e) the Entity's obligations under this Agreement are fully assumed by the new entity.

Upon the initial sale of the Project, provided such initial sale occurs during the first twenty (20) years after the Effective Date of this Agreement, the Entity shall remit to the Borough, in addition to then-current Annual Service Charge, if any, an amount equal to two (2%) percent of the amount by which the total sale price exceeds Twenty Five Million Dollars (\$25,000,000.00); provided, however, that such fee shall not exceed Two Hundred Thousand Dollars (\$200,000.00). For purposes of this paragraph, the "initial sale" shall mean the first to occur of the following transactions: (i) the transfer of fee simple ownership of the Project by the Entity; or (ii) the transfer by the Entity of more than fifty (50%) percent of its ownership interests to an unaffiliated third party; provided, however, that conveyance of the Project in connection with a foreclosure or deed in lieu or taking by power of eminent domain or in lieu of a taking by eminent domain shall not be considered an "initial sale."

Section 8.2 Subordination of Fee Title

Notwithstanding anything in this Agreement, the Entity shall have the right to encumber the fee title to the Project Premises and may encumber or assign for security purposes the Entity's interest in this Agreement, and any such encumbrance or assignment shall not be deemed a Default under this Agreement.

Section 8.3 No Restriction on Rental of Units

Notwithstanding anything in this Agreement, the Entity shall have the right to rent any residential or commercial units to tenants of the Entity's choosing and charge such tenants, in addition to rent, additional rent that may include a portion of the Annual Service Charge due on the Project, to be calculated at the Entity's discretion. The Entity shall also have the right to enter into a Master Lease or Sublease agreement.

ARTICLE IX - COMPLIANCE

Section 9.1 Compliance with Law

During the term of this Agreement, the Project shall be maintained and operated in accordance with the provisions of the Law. The Entity's failure to substantially comply with the Law shall constitute a Default under this Agreement.

ARTICLE X - DEFAULT

Section 10.1 Default

Default shall be failure of a Party to conform to the material terms of this Agreement or failure of such Party to perform any obligation imposed by the Law, beyond any applicable notice, cure or grace period.

Section 10.2 Cure Upon Default

Should either Party be in Default (the "Defaulting Party"), the other Party (the "Non-Defaulting Party") shall send written notice to the Defaulting Party of the Default ("Default Notice"). The Default Notice shall set forth with particularity the basis of the alleged Default. Other than as set forth below, the Defaulting Party shall have ninety (90) days from receipt of the Default Notice (the "Cure Period") to cure any Default. However, if the Default cannot be cured within the Cure Period using reasonable diligence, the Cure Period shall be extended to a period of one hundred eighty (180) days. If the Default is not cured within the Cure Period, as it may be extended, the Non-Defaulting Party shall have the right to terminate this Agreement in accordance with Section 11.1, as well as other rights and remedies provided herein. **Notwithstanding anything herein to the contrary, any Default relating to the payment of the Annual Service Charge, Minimum Annual Service Charge or Land Taxes must be cured within ten (10) days of receipt of notice of such Default.**

Section 10.3 Remedies Upon Default

In the event of a Default on the part of the Entity in payment of any sum due hereunder beyond the Cure Period, the Borough shall, among its other remedies, have the right to proceed against the property pursuant to the In Rem Tax Foreclosure Act, N.J.S.A. 54:5-1, et seq. and may exercise other rights set forth in this Agreement. In the event of a Default on the part of the Entity for anything other than payment of any sum due hereunder, the Borough shall have all rights and remedies available to it under law or equity, including specific performance or termination of this Agreement.

In the event of a Default on the part of the Borough that remains uncured beyond the Cure Period, the Entity shall have all rights and remedies available to it under law or equity, including specific performance or (without limitation of its right under Section 11.2) termination of this Agreement.

All of the remedies provided in this Agreement with respect to both Parties, and all rights and remedies available to each Party by law or equity, shall be cumulative and concurrent. No termination of any provision of this Agreement shall deprive either Party of any of its remedies or rights. This right shall apply to arrearages that are due and owing at the time or which, under the terms hereof, would in the future become due as if there had been no termination.

ARTICLE XI - TERMINATION

Section 11.1 Termination Upon Default

In the event a Defaulting Party fails to cure or remedy a Default within the Cure Period, the Non-Defaulting Party may terminate this Agreement upon thirty (30) days written notice to the Defaulting Party. If the Defaulting Party cures the default within such thirty (30) day period, the Non-Defaulting Party's termination shall be deemed null and void.

Section 11.2 Voluntary Termination by the Entity

The Entity may terminate this Agreement in writing and notify the Borough that as of a certain date designated in the notice, it relinquishes its status as a tax exempt Project. As of the date so set, the tax exemption, the Annual Service Charges, and the profit and dividend restrictions shall terminate.

Section 11.3 Final Accounting

Within ninety (90) days after the date of expiration of the Term or earlier termination of this Agreement, the Entity shall provide a final accounting and pay to the Borough 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 Agreement shall be deemed to be the end of the fiscal year for the Entity.

Section 11.4 Conventional Taxes

Upon termination or expiration of this 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 Borough.

ARTICLE XII - DISPUTE RESOLUTION

Section 12.1 Arbitration

In the event of a breach of the within Agreement by either of the Parties hereto or a dispute arising between the Parties in reference to the terms and provisions as set forth herein, either party may apply to the Superior Court of New Jersey by an appropriate proceeding, to settle and resolve

the dispute in such fashion as will tend to accomplish the purposes of the Law. In the event the Superior Court shall not entertain jurisdiction, then the parties shall submit the dispute to the American Arbitration Association in New Jersey to be determined in accordance with its rules and regulations in such it fashion to accomplish the purpose of the Long Term Tax Exemption Law. The cost for the 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 either Party of any rights and remedies, including, without limitation, the right to terminate the Agreement and tax exemption for violation of any of the conditions provided herein. Nothing herein shall be deemed to limit any right of recovery of any amount which the Borough has under law, in equity, or under any provision of this Agreement.

ARTICLE XIV - NOTICE

Section 14.1 Certified Mail

Any notice required hereunder to be sent by either party to the other shall be sent by 1) certified or registered mail, return receipt requested or 2) overnight delivery.

Section 14.2 Sent by Borough

When sent by the Borough to the Entity the notice shall be addressed to:

If to the Borough:
Borough of Rutherford
Municipal Building
176 Park Avenue
Rutherford, New Jersey 07070
Attn: Borough Clerk

with a copy to:
Kevin P. McManimon, Esq.
McManimon, Scotland & Baumann, LLC
75 Livingston Avenue, 2nd Floor
Roseland, New Jersey 07068

If to the Entity:

Charles Olivo
Native Development Urban Renewal, LLC
c/o Native Center Development, LLC
92 Park Avenue
Rutherford, New Jersey 07070

with a copy to:
Jason Tuvel, Esq.
Prime & Tuvel
1 University Plaza Drive
Suite 500
Hackensack, New Jersey 07601

In addition, provided the Borough is sent a formal written notice in accordance with this Agreement, of the name and address of Entity's Mortgagee, the Borough agrees to provide such Mortgagee with a copy of any notice required to be sent to the Entity.

ARTICLE XV - SEVERABILITY

Section 15.1 Severability

If any term, covenant or condition of this Agreement or the Application, except a Material Condition, shall be judicially declared to be invalid or unenforceable, the remainder of this Agreement or the application of such term, covenant or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term, covenant or condition of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

If a Material Condition shall be judicially declared to be invalid or unenforceable and provided the Entity is not in Default of this Agreement, the parties shall cooperate with each other to take the actions reasonably required to restore the Agreement in a manner contemplated by the parties and the Law. This shall include, but not be limited to, the authorization and re-execution of this Agreement in a form reasonably drafted to effectuate the original intent of the parties and the Law. However, the Borough and the Entity shall not be required to restore the Agreement if it would modify a Material Condition, the amount of the periodic adjustments or any other term of this Agreement which would result in any economic reduction or loss to the Borough.

ARTICLE XVI - MISCELLANEOUS

Section 16.1 Construction

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

Section 16.2 Conflicts

The parties agree that in the event of a conflict between the Application and the language contained in the Agreement, the Agreement shall govern and prevail. In the event of conflict between the Agreement and the Law, the Law shall govern and prevail.

Section 16.3 Oral Representations

There have been no oral representations made by either of the parties hereto not contained in this Agreement. This Agreement, the Ordinance, and the Application constitute the entire Agreement between the parties, and there shall be no modifications thereto other than by a written instrument approved and executed by both parties and delivered to each party.

Section 16.4 Entire Document

This Agreement and all conditions in the Ordinance of the Borough Council approving this Agreement are incorporated in this Agreement and made a part hereof

Section 16.5 Good Faith

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

Section 16.6 Force Majeure

Neither the City nor the Entity shall be considered to be in breach of, or in default of, its obligations under this Agreement in the event that any delay in the performance of such obligations is due to a Force Majeure event, subject to the reasonable demonstration, by the non-performing party, of the applicability of the Force Majeure event to the unmet obligation. In the event of the occurrence of any such delay, the time or times for performance of the obligations of the City or the Entity shall be extended by the period of the delay.

ARTICLE XVII - RESERVED

ARTICLE XVIII - EXHIBITS

Section 18.1 Exhibits

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

1. The Application for Long Term Exemption with Exhibits;
2. Site Plan - Indicating Metes and Bounds description of the Project;
3. Ordinance of the Borough authorizing the execution of this Agreement; and
4. Certificate of Formation of the Entity.

[Signature Page to Follow]

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

ATTESTED OR WITNESSED:

**NATIVE DEVELOPMENT URBAN
RENEWAL, LLC**

By: _____
Name: Charles Olivo
Title: Authorized Representative

ATTESTED OR WITNESSED:

BOROUGH OF RUTHERFORD

Margaret Scanlon
Rutherford Municipal Clerk

By: _____
Frank Nunziato
Mayor

Exhibit 2
to Financial Agreement

Site Plan - Indicating Metes and Bounds description of the Project

For Site Plan See Exhibit 9 to PILOT Application

SCHEDULE A
DESCRIPTION OF THE PROPERTY

**DEED DESCRIPTION
BLOCK 147 LOT 1
BOROUGH OF RUTHERFORD
BERGEN COUNTY, NEW JERSEY**

BEGINNING at a point being the intersection of the northeasterly line of Spring Dell (60' wide as per Filed Map No. 188) and the southeasterly line of Sylvan Street (60' wide as per Filed Map No. 188) as marked by a Mag Nail with washer and running, thence:

- 1) Along said southeasterly line of Sylvan Street, North 29°24'20" East, a distance of 100.56 feet to a point marked by a cross-cut; thence
- 2) Along the rear line of lots fronting on Glen Road (60' wide as per tax map), South 66°38'40" East, a distance of 246.70 feet to a point marked by a Mag Nail with washer; thence
- 3) South 23°21'20" West, a distance of 100.00 feet to a point marked by a cross-cut on the aforementioned northeasterly line of Spring Dell; thence
- 4) Along said northeasterly line, North 66°38'40" West, a distance of 257.30 feet to the point of BEGINNING.

Parcel contains 25,200 S.F. or 0.5785 acres, more or less.

Exhibit 3
to Financial Agreement

Ordinance of the Borough authorizing the execution of this Agreement

ORDINANCE NO. 3651-23

ORDINANCE OF THE BOROUGH OF RUTHERFORD, COUNTY OF BERGEN, STATE OF NEW JERSEY, APPROVING THE APPLICATION OF, AND EXECUTION OF FINANCIAL AGREEMENT WITH NATIVE DEVELOPMENT URBAN RENEWAL LLC IN CONNECTION WITH THE REDEVELOPMENT OF 15 SYLVAN STREET (BLOCK 147, LOT 1) AND 5 ETTRICK TERRACE (BLOCK 145, LOT 10.01)

WHEREAS, the governing body (the “**Borough Council**”) of the Borough of Rutherford (the “**Borough**”) is authorized to determine whether certain property located within the Borough is in need of redevelopment under the New Jersey Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 *et seq.* (the “**Redevelopment Law**”); and

WHEREAS, pursuant to the Redevelopment Law, on August 22, 2016, the Mayor and Borough Council (the “**Mayor and Council**”) adopted Resolution No. 182-2016 designating the properties identified as Block 128, Lots 1, 2.01, 2.02, 2.03, and 5, Block 145, Lots 10 and 10.01, Block 146, Lots 1, 1.02, 2, 3, 4, and 5, and Block 147, Lots 1, 4, 9, 10, 14, 15, 16, 17.02, 19.01, 20 and 21, on the tax maps of the Borough (collectively, the “**Redevelopment Area**”) as a “non-condemnation area in need of redevelopment/rehabilitation” with a condition that any rehabilitation of the Williams Center Site (Block 147) is to include a theatre aspect; and

WHEREAS, on June 28, 2021, the Mayor and Council adopted an ordinance, as amended by ordinance adopted on June 27, 2022, approving and adopting a redevelopment plan for the Redevelopment Area, entitled “Theater District Redevelopment Plan Area A Sylvan-Walkway/Spring Dell/Glen Road/Orient Way & Ettrick Terrace Parking Area” (as amended, the “**Redevelopment Plan**”); and

WHEREAS, pursuant to *N.J.S.A.* 40A:12A-4, the Borough has determined to act as the “Redevelopment Entity” (as such term is defined at *N.J.S.A.* 40A:12A-3) for the Redevelopment Area, which includes 15 Sylvan Way, Block 147, Lot 1 (formerly Lots 1, 1.01, 2 & 3) on the Borough’s official tax maps (the “**Williams Theater Property**”); and to exercise the powers set forth in the Redevelopment Law; and

WHEREAS, the Borough acquired the Williams Theater Property from the County of Bergen and thereafter conveyed same to Native Center Development, LLC (“**Native**”); and

WHEREAS, the Borough and Native are entering into a redevelopment agreement (the “**Redevelopment Agreement**”), pursuant to which Native will redevelop the Williams Theater Property with a 7-story mixed-use building consisting of the construction of 80 residential units, including 68 market rate units (the “**Market Rate Component**”) and 12 Affordable Units (the “**Affordable Component**”) and, together with the Market Rate Component, the “**Residential Component**”) and approximately 5,839 square feet of retail space (the “**Retail Component**”); rehabilitation, preservation, and operation of a black box theatre, a cinema complex and the Williams Center Theatre (the “**Williams Center Theater**”) including major upgrades and comprehensive renovations to the existing building, as well as improvements to landscaping

surrounding the site in accordance with the Redevelopment Plan and with an aim towards making the Williams Theater Property an unparalleled arts and film destination in the region, and after rehabilitation of the Williams Center Theater is complete, the Redeveloper will fully and continuously operate and maintain the Williams Center Theater, which shall be open to the public (the “**Theater Component**”) together with certain related on-site and off-site improvements, including without limitation, roof top amenities, in accordance with the Redevelopment Plan (collectively, the “**Project**”); and

WHEREAS, Native obtained site plan approval from the Borough Planning Board for the Project on August 18, 2022; and

WHEREAS, Native Development Urban Renewal, LLC (the “**Entity**”), an affiliate of Native, proposes to undertake the financing and development of the Project; and

WHEREAS, despite the Entity’s investment of equity and borrowed funds, such amounts are insufficient to feasibly pay for all of the costs associated with the development and construction of the Project; and

WHEREAS, the provisions of the Long Term Tax Exemption Law, N.J.S.A. 40A:20-1 *et seq.* (the “**Long Term Tax Exemption Law**”) authorize the Borough to accept, in lieu of real property taxes, an annual service charge with respect to the Project; and

WHEREAS, the Entity submitted to the Mayor an application (the “**Application**”), which is on file with the Borough Clerk, for approval of a long term tax exemption for the Project; and

WHEREAS, the Entity also submitted to the Mayor a form of financial agreement (the “**Financial Agreement**”), a copy of which is attached as an exhibit to the Application, establishing the rights, responsibilities and obligations of the Entity; and

WHEREAS, pursuant to the terms of the Financial Agreement, in lieu of real property taxes on the Project, the Entity will pay an annual service charge (the “**Annual Service Charge**”) to the Borough; and

WHEREAS, the Mayor submitted the Application and Financial Agreement to the Borough Council along with his recommendation for approval, a copy of which recommendation is on file with the Borough Clerk; and

WHEREAS, the Borough Council has determined that the Project represents an undertaking permitted by the Long Term Tax Exemption Law, and hereby finds that the relative benefits of the Project justify the long term tax exemption requested in the Application,

NOW, THEREFORE, BE IT ORDAINED by the Mayor and Borough Council of the Borough of Rutherford, County of Bergen, New Jersey, as follows:

1. The aforementioned recitals are incorporated herein as if fully set forth at length.

2. The Application and form of Financial Agreement are hereby approved.

3. The Mayor is hereby authorized and directed to execute the Financial Agreement with the Entity in substantially the same form as that contained within the Application, subject to minor modification or revision, as deemed necessary and appropriate after consultation with counsel.

4. Executed copies of the Financial Agreement shall be certified by and be filed with the Office of the Borough Clerk. The Clerk shall file certified copies of this ordinance and the Financial Agreement with the Tax Assessor of the Borough, and County Counsel and the Chief Financial Officer of Bergen County within ten (10) days of the execution of the Financial Agreement.

5. This ordinance shall take effect in accordance with law.

ATTEST:

BOROUGH OF RUTHERFORD


Margaret M. Scanlon, Borough Clerk


Frank Nunziato, Mayor

I hereby certify that this is a true and exact copy
of an ordinance adopted by the Mayor and
Council of the Borough of Rutherford on the


12 day of JUNE, 2023

Margaret M. Scanlon
Borough Clerk

Exhibit 4
to Financial Agreement

Certificate of Formation of the Entity

See Exhibit 2 to PILOT Application