

**FINANCIAL AGREEMENT PURSUANT TO THE FIVE YEAR
TAX EXEMPTION AND ABATEMENT LAW**

THIS FINANCIAL AGREEMENT PURSUANT TO THE FIVE YEAR TAX EXEMPTION AND ABATEMENT LAW (this “Financial Agreement”), made this ___ day of _____, 2020 between **VICTORIA ROSE CONDOMINIUMS, LLC**, a Limited Liability Company of the State of New Jersey, having its principal office c/o 60-70 Dexter Plaza, Pearl River, NY 10965 and qualified to do business under the provisions of the Five Year Tax Exemption Law (N.J.S.A. 40A:21-1 et seq.), (hereinafter referred to as "Entity") and the **BOROUGH OF BEACH HAVEN**, a Municipal Corporation of the State of New Jersey, having its offices located at 300 Engleside Avenue, Beach Haven, NJ 08008 (hereinafter referred to as the "Borough").

WITNESSETH:

WHEREAS, the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1, et seq., as amended and supplemented (“LRHL”), provides a process for municipalities to participate in the rehabilitation, redevelopment and improvement of areas in need of rehabilitation and/or redevelopment; and

WHEREAS, pursuant to the provisions of the LRHL the Borough determined that Block 167, Lot 1 (the “Property”), within the Borough of Beach Haven, County of Ocean, State of New Jersey, is an “Area in Need of Rehabilitation” in accordance with the criteria set forth in the LRHL and has so designated the Property a Rehabilitation Area pursuant to N.J.S.A. 12A-14; and

WHEREAS, the Borough Council adopted the “Redevelopment Plan for Block 167, Lot 1, Borough of Beach Haven” (the “Redevelopment Plan”) dated February 2018 which sets forth, inter alia, plans for the development, redevelopment, and rehabilitation of the Property; and

WHEREAS, the Entity has acquired fee simple title to the Property; and

WHEREAS, Section 8(f) of the LRHL authorizes the Borough to arrange or contract with an Entity for the planning, construction or undertaking of any project or redevelopment work in an area designated as an area in need of rehabilitation and/or redevelopment; and

WHEREAS, the Borough and Entity entered into a Redevelopment Agreement, dated August 2, 2018, with regard to development, redevelopment, and rehabilitation of the Property for the construction of twenty (20) residential units, four (4) of which will be Affordable Housing units, and 5 commercial units on the first level, with residential amenities partially under the second floor residential units with forty-three (43) parking spaces and related improvements (the “Project Improvements”); and

WHEREAS, the Borough has determined that the Project Improvements will result in significant economic and other benefits and that such benefits are far greater to the Borough than the cost, if any, associated with this Financial Agreement; and

WHEREAS, the Borough recognizes that the assistance provided to the Entity pursuant to this Financial Agreement has been a significant inducement to the Entity to undertake the rehabilitation of the Property and in the Entity's decision to proceed with the Project Improvements; and

WHEREAS, the Borough has determined that pursuant to the Redevelopment Agreement and in order to provide appropriate incentives to effectuate the Redevelopment Plan, the Project Improvements shall be granted tax exemptions as set forth herein; and

WHEREAS, the Entity will, pursuant to the Exemption Law and Section 3.1 of the Redevelopment Agreement, apply to the Borough for tax exemption with respect to Project Improvements on the Property; and

WHEREAS, to facilitate the completion of the Project Improvements, the Borough determines it to be in the Borough's best interest to enter into a Financial Agreement under the provisions of the Five-Year Exemption and Abatement Law set forth at N.J.S.A. 40A:21-1, *et seq.* (the "Exemption Law"), to provide for exemption and abatement of local real property taxes, for a limited time, for the Project Improvements; and

WHEREAS, the Borough Council approves the tax exemption requested by the Entity in conformance with Section 3.1 of the Redevelopment Agreement subject to the terms and conditions of this Financial Agreement, and the Parties desire to set forth in detail their mutual rights and obligations with respect to the tax exemption applicable to the Project Improvements.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein, and for other good and valuable consideration, the Parties to this Financial Agreement mutually covenant and agree as follows:

1. Definitions. Any term not defined in this Financial Agreement shall have the meanings ascribed to it in N.J.S.A. 40A:21-3.

a. "Application for Exemption" shall mean that form and process as defined in N.J.S.A. 40A:21-16.

b. "Completion" shall mean substantially ready for the intended use for which a building or structure is constructed, improved, or converted and approved by the Department of Community Affairs to sell the Condominium Units. For purposes of this definition, the Project Improvements shall be presumed completed upon the issuance of a Certificate of Occupancy.

c. "Condominium Unit" shall mean each individual fee simple commercial unit or residential dwelling unit constructed and completed as part of the Project Improvements.

d. "Current Taxes" shall mean the land taxes applicable to the Property after the filing of the Master Deed which creates the Condominium Units and shall also mean the property tax attributable to the Property prior to the creation of Condominium Units as applicable.

e. “End User” shall mean the person purchasing an individual Condominium Unit in fee simple from Entity or successor entity. It shall also mean the person purchasing an individual Condominium Unit in fee simple from another End User.

f. “Tax Year” shall mean the annual period, as said term is defined in N.J.S.A. 40A:21-4(q), beginning on January 1st following the date of Completion of the applicable Condominium Unit.

g. “Term” shall mean, for each Condominium Unit, the date the exemption commences and the date when such Condominium Unit shall become subject to full taxation.

2. Borough’s Findings. The Borough makes the following findings with respect to the tax exemption granted in this Financial Agreement:

a. The exemption will benefit the Borough and its inhabitants by furthering the rehabilitation and redevelopment of the subject Property and the neighborhood surrounding the subject Property. Rehabilitation and redevelopment of the subject Property will prevent further decline in the condition and value of the Property and the surrounding area, permitting the Borough to rely more on the Property and the surrounding area as a source of future tax revenue, thereby enhancing the long-term value of the Property to the Borough. These benefits are expected to outweigh substantially any costs to the municipality associated with the tax exemption.

b. The tax exemption to be granted under this Financial Agreement is important to the Borough. Because of the cost of rehabilitation and redevelopment of the subject Property, it is likely that the work would not be undertaken without the incentive of the tax exemption granted under this Financial Agreement.

3. Tax Exemption.

a. Each Condominium Unit constructed in the Project, upon Completion by Entity, and upon the filing of an Application for Exemption within thirty (30) days of Completion, shall be granted an exemption from taxation in accordance with the provisions of the Exemption Law in the manner provided by this Financial Agreement, for a period of five (5) Tax Years beginning January 1st of the year following the date of Completion of said Condominium Unit (the “Term”). Nothing herein shall be construed to prevent the filing of an application before Completion.

b. The Borough hereby consents to a sale of the individual Condominium Units in fee simple to an End User who shall continue to use the Condominium Unit pursuant to the conditions which qualified the Property for the exemption, and that upon assumption by the End User of the Entity’s obligations under this Financial Agreement as to the Condominium Unit so transferred, the tax exemption of the Condominium Unit shall apply and inure to the End User, his respective successors or assigns.

c. Notwithstanding the exemption granted herein, Entity and/or End User shall be required to pay, in addition to the Annual Service Charge (defined below), the Current

Taxes otherwise due on the Property or Condominium Unit, as applicable.

4. Annual Service Charge.

a. In consideration of the aforesaid exemption from taxation on Project Improvements, the Entity, or End User upon transfer of a Condominium Unit and assumption of this Financial Agreement by the End User for said Condominium Unit, shall make payment to the Borough of an Annual Service Charge (“ASC”) for municipal services supplied to the Condominium Unit in lieu of full property tax payments. The Borough has determined that the ASC shall be based on a tax phase-in basis, in accordance with N.J.S.A. 40A:21-10(c).

b. The ASC and the Current Taxes shall be paid in quarterly installments on those dates when real estate tax payments are due, subject, nevertheless, to adjustment for overpayment or underpayment within thirty (30) days after the close of each calendar year.

c. The ASC for the Project Improvements shall accrue as set forth in Paragraph 3.a. above.

d. Entity and/or each End User, as applicable, shall pay to the Borough the ASC in lieu of the full property tax payments on the Condominium Unit on the Property in an amount equal to a percentage of taxes otherwise due on the Condominium Unit, according to the following schedule:

- (1) In the first full Tax Year after Completion, an amount equal to 0% of the taxes otherwise due on the Condominium Unit;
- (2) In the second Tax Year, an amount equal to 20% of taxes otherwise due on the Condominium Unit;
- (3) In the third Tax Year, an amount equal to 40% of the taxes otherwise due on the Condominium Unit;
- (4) In the fourth Tax Year, an amount equal to 60% of taxes otherwise due on the Condominium Unit;
- (5) In the fifth Tax Year, an amount equal to 80% of taxes otherwise due on the Condominium Unit.

e. Unless otherwise terminated earlier, at the expiration of the Term hereof, the Tax Exemption for the Condominium Unit shall expire, and the Condominium Unit shall thereafter be assessed and taxed according to the general law applicable to other non-exempt property in the Borough.

f. This Financial Agreement shall constitute evidence of a lien securing such payment obligation, which lien shall survive any termination hereof.

5. Non-Payment. In the event that the Entity fails to timely pay any quarterly installment of either the ASC or Current Taxes, the amount past due shall bear the highest rate of interest permitted under State law in the case of unpaid taxes or tax liens on the land until paid. All remedies provided in this Financial Agreement and available at law and in equity are available to the Borough and all said rights and remedies shall be cumulative and concurrent and

no determination of invalidity of any provision of this Financial Agreement shall deprive the Borough of any of their remedies or actions against the Entity, as applicable who has failed to make a payment required hereunder. Nothing herein shall deprive the Borough of the right to bring of any action to collect such payments or charges due hereunder, nor shall any provision herein be construed as a waiver of the right to proceed with an In Rem Tax Foreclosure action against the Entity who has failed to make a payment required hereunder.

For each Condominium Unit transferred in accordance with Paragraph 3.b. above, a default by any End User shall not constitute a default against any other End User or Entity with respect to the individual Condominium Unit so transferred.

6. Termination of Agreement.

a. Termination for Default by Entity. A payment of either the ASC or Current Taxes more than sixty (60) days late shall be grounds for termination of this Financial Agreement in the sole discretion of the Borough for the portion of the Project for which payment is overdue. It shall not constitute default or breach hereunder if the Entity fails to perform its obligations hereunder if such failure is due to (a) a change pursuant to a written agreement between the Borough and Entity, provided that the Entity is performing in accordance with the new written agreement; or (b) a change in any law, statute, code, ordinance, order, rule or regulation with regard to tax exemptions or abatements or financial agreements which prohibits or impedes performance hereunder, provided that the Entity is otherwise complying with such law, statute, code, ordinance, order, rule or regulation so changed.

b. Termination upon Sale of Property. If during any Tax Year prior to the termination of this Financial Agreement, the End User or, except as otherwise provided in Paragraph 3.b. above, the Entity disposes of the Condominium Units or the Property, then the taxes which would have otherwise been payable shall become immediately due and payable from the Entity and/or End User as if no exemption or abatement had been granted. The governing body of the Borough shall notify the End User and/or the Entity, the Tax Collector and Tax Assessor forthwith and the Tax Collector shall within 15 days thereof notify the End User and/or Entity, as owner of the Property, of the amount of taxes due. However, with respect to the disposal of a Condominium Unit or the Property, where it is determined that the End User will continue to use the Condominium Unit pursuant to the conditions which qualified the Condominium Unit and/or where the Entity or a successor entity owner of the Property will continue to use the Property pursuant to the conditions which qualified the Property, no tax shall be due, the exemption and the abatement shall continue, and the Financial Agreement shall remain in effect.

c. Termination upon Filing of a Tax Appeal. Termination upon Filing of a Tax Appeal. If during any Tax Year prior to the termination of this Financial Agreement, the Entity or End User files a tax appeal, at the option of the Borough, this Agreement, as to the Entity or End User filing the tax appeal, may be terminated. Should the Borough determine to exercise this option, it shall notify the Tax Collector and Tax Assessor, along with the Entity and or End User, as applicable, then the exemption will be retroactively removed and taxes which would have otherwise been payable from the commencement of the term of this agreement shall become immediately due and payable from the Entity and/or End User as if no exemption or

abatement had been granted. The Tax Collector shall within 15 days thereof notify the End User and/or Entity, as owner of the Property, of the amount of taxes due.

d. At the termination of this Financial Agreement, the Property shall be assessed and taxed according to the general law applicable to other non-exempt property in the Borough.

7. Governing Law and Conflicts. This Financial Agreement shall be governed by the provisions of the Exemption Law and the laws of the State of New Jersey. The parties agree that in the event of a conflict between this Financial Agreement and the Application, the language contained in this Financial Agreement shall govern and prevail.

8. Oral Representations. Neither party hereto has made any oral representation that is not contained in this Financial Agreement. This Financial Agreement, the Borough's Ordinance authorizing this Financial Agreement and the Application constitute the entire agreement between the parties.

9. Modification. There shall be no modification of this Financial Agreement except by written instrument executed by both parties.

10. No Assignment or Assumption. This Financial Agreement and the Tax Exemption granted pursuant to this Financial Agreement shall not be assigned or assumed by any person or entity without the express written consent of the Borough. This Financial Agreement and the Tax Exemption shall not be assigned by operation of law.

11. Notices. Unless prior to giving any notice required under this Financial Agreement, either party shall have notified the other to the contrary, all notices shall be sent by certified mail, return receipt requested, addressed as follows:

If to Entity: Thomas Bertussi, Managing Member
Victoria Rose Condominiums, LLC
c/o 60-70 Dexter Plaza
Pearl River, NY 10965
Phone: (845) 735-5588
Fax: (845) 735-1636
tbertussi@bertussis.com
mquintana@bertussiplumbing.com

With a Copy to: Nicholas F. Talvacchia, Esq.
c/o Cooper Levenson
1125 Atlantic Avenue
Atlantic City, NJ 08401
Phone: (609) 344-3161
Fax: (609) 344-0939
NTALVACCHIA@cooperlevenson.com

If to the Borough: Borough Clerk
Borough of Beach Haven
300 Engleside Avenue
Beach Haven, NJ 08008

With a copy to: Emily K. Givens, Esq.
Maley Givens
A Professional Corporation
1150 Haddon Avenue, Suite 210
Collingswood, New Jersey 08108
(856) 854-1515
egivens@maleygivens.com

12. Enforcement. This Financial Agreement may only be enforced by the Parties hereto or the successors or assigns and no third party shall have standing to enforce the terms of this Agreement.

13. Arbitration. In the event of a dispute (other than: (1) one arising from the failure of the Entity to make payments due hereunder; (2) one arising from the determination of the amount of the ASC; or (3) one arising from the determination of the amount of the Current Taxes; all such disputes shall be governed by New Jersey's Tax Laws found in Title 54 of the New Jersey Statutes) arising in reference to the terms and provisions of this Financial Agreement, either party shall submit the dispute to the American Arbitration Association to be resolved in accordance with its rules and regulations in such fashion as to accomplish the purposes of the Tax Exemption Law and this Financial Agreement. The costs of arbitration shall be borne equally by the parties.

14. Waiver. Nothing contained in this Financial Agreement or otherwise, nor any action or inaction by the Parties shall constitute a waiver or relinquishment by the Borough or the Entity of any rights and remedies provided by law except for an express written waiver of said rights. Nothing herein shall be deemed to limit any right of recovery that the Borough or the Entity has under law, in equity or under any provision of this Financial Agreement.

15. Severability. If any term, covenant or condition of this Financial Agreement shall be judicially declared to be invalid or unenforceable, the remainder of this Financial Agreement and 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.

16. Counterparts. This Financial Agreement may be executed in counterparts. All such counterparts shall be deemed to be originals and together shall constitute but one and the same instrument.

17. Exhibits. Any and all Exhibits annexed to this Financial Agreement are hereby made a part of this Financial Agreement by this reference thereto.

[SIGNATURES TO FOLLOW]

IN WITNESS WHEREOF, the parties have caused this Financial Agreement to be executed the day and year first above written.

ATTEST:

THE BOROUGH OF BEACH HAVEN

Sherry Mason, Borough Clerk

Nancy Taggart Davis, Mayor

WITNESS:

VICTORIA ROSE CONDOMINIUMS, LLC

By: _____
THOMAS BERTUSSI, Managing Member

