

**ORDINANCE #2023-1983**

**ORDINANCE OF THE BOROUGH OF BERNARDSVILLE, COUNTY OF SOMERSET, NEW JERSEY, GRANTING A TAX EXEMPTION WITH RESPECT TO CERTAIN PROPERTY IDENTIFIED ON THE BOROUGH'S TAX MAP AS BLOCK 125, LOTS 1, 2 AND 3 (35-39 OLCOTT SQUARE AND 5 MORRISTOWN ROAD) AND AUTHORIZING THE EXECUTION OF A FINANCIAL AGREEMENT WITH AR AT BERNARDSVILLE URBAN RENEWAL LLC**

**WHEREAS**, the Local Redevelopment and Housing Law, *N.J.S.A. 40A:12A-1 et seq.*, as amended and supplemented (the “**Redevelopment Law**”), authorizes municipalities to determine whether certain parcels of land in the municipality constitute areas in need of rehabilitation or redevelopment; and

**WHEREAS**, on September 12, 2022, the Borough Council of the Borough of Bernardsville (the “**Borough Council**”) adopted Resolution #22-185 designating certain properties located within the downtown core area of the Borough of Bernardsville (the “**Borough**”) located at 35-39 Olcott Square and 5 Morristown Road and further identified as Block 125, Lots 1, 2 and 3 (a/k/a Lots 1 and 3) (the “**Property**”) as “an area in need of redevelopment” without condemnation; and

**WHEREAS**, subsequently Resolution #22-209 adopted by the Borough Council on October 24, 2022 authorized Burgis Associates to prepare a redevelopment plan on its behalf; and

**WHEREAS**, the Borough Council by Ordinance #2023-1960 adopted the redevelopment plan for the Property titled “Palmer Square Redevelopment Plan” (the “**Redevelopment Plan**”) in order to effectuate a plan that is consistent with the goals and objectives of the Borough for the redevelopment of the Property; and

**WHEREAS**, pursuant to N.J.S.A. 40A:12-4, the Borough is acting as the Redevelopment Entity (as such term is defined in the Redevelopment Law) for the Property; and

**WHEREAS**, an affiliate of AR at Bernardsville Urban Renewal LLC (the “**Entity**”) has an interest in the Property pursuant to a ground lease between Palmer Enterprises, L.L.C. as Lessor, and AR at Bernardsville LLC (the “**Redeveloper**”) as Lessee, dated as of November 10, 2021, a memorandum of which is recorded with the Somerset County Office of the Clerk at Book 7400, Page 2403; and

**WHEREAS**, the Redeveloper and the Borough entered into a redevelopment agreement dated August 29, 2023 (the “**Redevelopment Agreement**”) to provide the terms and conditions for a redevelopment project on the Property generally consisting of (i) a multi-family residential component with a maximum of 68 dwelling units, including approximately 12 one-bedroom units, approximately 47 two-bedroom units, and approximately 9 three-bedroom units, or such other appropriate mix of one-bedroom, two-bedroom, and three-bedroom units as approved by the Parties and in compliance with the Redevelopment Plan; (ii) a minimum of 8,000 square feet

of Frontage (as defined in the Redevelopment Plan); (iii) public and privately owned landscaped and hardscaped improvements to be further detailed in the site plan application; (iv) related improvements and amenities; and (v) a commercial component with a minimum of 8,000 square feet, located primarily on the ground level (the “**Project**”); and

**WHEREAS**, in order to ensure the financial feasibility of the Project, the Entity made application to the Borough requesting a long-term tax exemption and financial agreement pursuant to the Long-Term Tax Exemption Law, *N.J.S.A. 40A:20-1 et seq.*, which application is on file with the Borough Clerk (the “**Application**”); and

**WHEREAS**, upon review of the Application and the Project, the Township has made the following findings:

A. Relative Benefits of the Project:

The Property is currently underutilized and will benefit from the construction of the Project, which will generate revenue and create jobs. Furthermore, the Property currently generates approximately \$67,622 annually in real estate taxes. Upon completion, the Project would generate an initial annual service charge of approximately \$393,000 at stabilization, as well as total annual service charges of more than \$17,400,000.00 over the thirty (30) year term of the tax exemption.

B. Assessment of the importance of the tax exemption in obtaining development of the Project and influencing the locational decisions of probable occupants:

The Entity is making a significant equity contribution toward the cost of the Project. In order to improve the economic viability of the development of the Project so that the Project can compete on an equitable footing with comparable projects within the Borough and surrounding market, the Borough has agreed to provide the tax exemption for the Project pursuant to the Financial Agreement. The stability and predictability of the tax exemption and payment of the annual service charge will make the Project more competitive thereby contributing to the overall success of the Project; and

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

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

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

**WHEREAS**, the Borough hereby determines that the assistance provided to the Project pursuant to the Financial Agreement will be a significant inducement for the Entity to proceed with the Project and that based on information set forth in the Application, the Project would not be feasible without such assistance,

**NOW, THEREFORE, BE IT ORDAINED** by the Municipal Council of the Borough of Bernardsville, in the County of Somerset, New Jersey, as follows:

**I. GENERAL**

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

**II. APPLICATION FOR EXEMPTION APPROVED**

The Application, which is on file with the Borough Clerk and which has been recommended for approval to the Borough Council by the Mayor, is hereby accepted and approved.

**III. EXECUTION OF FINANCIAL AGREEMENT AUTHORIZED**

- (a) The Mayor is hereby authorized to execute the Financial Agreement, substantially in the form attached hereto as **Exhibit A**, subject to modification or revision deemed necessary or appropriate by the Borough in consultation with counsel, and to take all other necessary or appropriate action to effectuate such Financial Agreement.
- (b) The Borough Clerk is hereby authorized and directed, upon the execution of the Financial Agreement in accordance with the terms of Section III(a) hereof, to attest to the signature of the Mayor upon such document and is hereby further authorized and directed to affix the corporate seal of the Borough upon such document.
- (c) In accordance with N.J.S.A. 40A:20-12, within ten (10) calendar days following the later of the effective date of this Ordinance or the execution of the Financial Agreement by the Entity, the Borough Clerk shall transmit a certified copy of this Ordinance and the Financial Agreement to the chief financial officer of Somerset County and to the Somerset County Counsel for informational purposes, as well as to the Tax Assessor of the Borough.

**IV. SEVERABILITY**

If any part of this Ordinance shall be deemed invalid, such parts shall be severed and the invalidity thereby shall not affect the remaining parts of this Ordinance.

**V. AVAILABILITY OF THE ORDINANCE**

A copy of this Ordinance shall be available for public inspection at the offices of the Borough.

**VI. EFFECTIVE DATE**

This Ordinance shall take effect according to law.

**EXHIBIT A**

**Form of Financial Agreement**