

## **BOROUGH OF EATONTOWN – NOTICE OF ORDINANCE ADOPTION**

NOTICE is hereby given that **Ordinance 22-2023** - Ordinance of the Borough of Eatontown Entitled "Ordinance Of The Borough Of Eatontown Approving Thirty (30) Year Tax Exemptions For, And The Execution Of Financial Agreements With, (I) Monmouth V Urban Renewal, LLC, (II) Monmouth V R1 Urban Renewal, LLC, (III) Monmouth V R2 Urban Renewal, LLC And (IV) Monmouth V R3 Urban Renewal, LLC, In Connection With A Redevelopment Project To Be Undertaken By Such Entities, And Affiliates, And Authorizing Pledge Agreements And Other Documents In Connection With The Issuance By The Borough Of Its Redevelopment Area Bonds In An Amount Not To Exceed \$3,000,000 To Finance A Portion Of The Costs Of Such Redevelopment Project, And Determining Various Other Matters In Connection Therewith." was passed after a public hearing at the regular meeting of August 23, 2023 by the Governing Body of the Borough of Eatontown, at 47 Broad Street, Eatontown, NJ 07724. Borough of Eatontown - Julie Martin, RMC, Borough Clerk

### **ORDINANCE 22-2023**

#### **BOROUGH OF EATONTOWN**

#### **COUNTY OF MONMOUTH, STATE OF NEW JERSEY**

**THIS ORDINANCE SECURES BONDS OR OTHER OBLIGATIONS ISSUED IN ACCORDANCE WITH THE PROVISIONS OF THE "REDEVELOPMENT AREA BOND FINANCING LAW" AND THE LIEN HEREOF IN FAVOR OF THE OWNERS OF SUCH BONDS OR OTHER OBLIGATIONS IS A MUNICIPAL LIEN SUPERIOR TO ALL OTHER NON-MUNICIPAL LIENS HEREINAFTER RECORDED.**  
**ORDINANCE OF THE BOROUGH OF EATONTOWN APPROVING THIRTY (30) YEAR TAX EXEMPTIONS FOR, AND THE EXECUTION OF FINANCIAL AGREEMENTS WITH, (i) MONMOUTH V URBAN RENEWAL, LLC, (ii) MONMOUTH V R1 URBAN RENEWAL, LLC, (iii) MONMOUTH V R2 URBAN RENEWAL, LLC AND (iv) MONMOUTH V R3 URBAN RENEWAL, LLC, IN CONNECTION WITH A REDEVELOPMENT PROJECT TO BE UNDERTAKEN BY SUCH ENTITIES, AND AFFILIATES, AND AUTHORIZING PLEDGE AGREEMENTS AND OTHER DOCUMENTS IN CONNECTION WITH THE ISSUANCE BY THE BOROUGH OF ITS REDEVELOPMENT AREA BONDS IN AN AMOUNT NOT TO EXCEED \$3,000,000 TO FINANCE A PORTION OF THE COSTS OF SUCH REDEVELOPMENT PROJECT, AND DETERMINING VARIOUS OTHER MATTERS IN CONNECTION THEREWITH.**

**WHEREAS**, in order to stimulate redevelopment, Borough Council of the Borough of Eatontown, in the County of Monmouth, New Jersey (the "Borough"), by Resolution No. 208-2021 adopted on April 14, 2021, designated certain properties within the Borough commonly known as the Monmouth Mall and identified as Block 2201, Lots 1.01, 1.02, 2, 3, 4 and 5 and Block 2202, Lot 1 as a non-condemnation area in need of redevelopment (the "Redevelopment Area") in accordance with the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq., as amended and supplemented (the "Redevelopment Law"); and

**WHEREAS**, by Ordinance No. 05-2023 finally adopted April 26, 2023, the Borough Council adopted the Monmouth Mall Redevelopment Plan dated January 2023, setting forth the plan for the redevelopment of the Redevelopment Area (as amended from time to time, the "Redevelopment Plan"); and

**WHEREAS**, the Borough expects to enter into a Redevelopment Agreement (the "Redevelopment Agreement") with Monmouth Square NJ LLC (the "Redeveloper") to undertake, with its affiliates, a redevelopment project on a portion of the Redevelopment Area identified as Block 2201, Lots 1.01, 1.02, 2, 3, 4 and 5 (the "Project Site"), which redevelopment project (the "Project") is expected to be undertaken in multiple phases, and will include the development, design, financing, permitting, demolition of certain existing improvements on the Project Site, site preparation, construction, implementation and cohesive redevelopment of the Project Site with a project comprised of a mixture of complementary residential, retail, commercial and medical office uses, including (i) up to approximately one thousand (1,000) non-age restricted residential rental units, with twelve and one-half percent (12.5%) of the actual number of units build to be set aside for very low-, low- and moderate-income households in furtherance of the Borough's Settlement Agreement with Fair Share Housing Center, dated December 17, 2018 (the "FSHC Settlement"), (ii) approximately 900,000 square feet of total commercial and retail space, and (iii) public spaces, strategically placed parking, and a safe and efficient circulation system; and

**WHEREAS**, pursuant to the Long-Term Tax Exemption Law, N.J.S.A. 40A:20-1 et seq. (the "Tax Exemption Law"), the Borough is authorized to provide for tax exemptions within a redevelopment area and for payments in lieu of taxes in accordance with the applicable provisions thereof; and

**WHEREAS**, pursuant to and in accordance with the provisions of the Redevelopment Area Bond Financing Law, N.J.S.A. 40A:12A-64 et seq. (the "Redevelopment Bond Law", and together with the Redevelopment Law and the Tax Exemption Law, the "Acts"), specifically N.J.S.A. 40A:12A-66(a), the Borough is authorized to provide for such tax exemptions and

payments in lieu of taxes in a manner that deviates from the structure otherwise established under the Tax Exemption Law, if the redevelopment project is to be financed with bonds issued in accordance with the Redevelopment Bond Law; and **WHEREAS**, the Borough has received an Application for Long Term Tax Exemption (the "Exemption Application") from (i) Monmouth V Urban Renewal, LLC, (ii) Monmouth V R1 Urban Renewal, LLC, (iii) Monmouth V R2 Urban Renewal, LLC and (iv) Monmouth V R3 Urban Renewal, LLC (collectively, the "Entities"), requesting long term tax exemptions under the provisions of the Tax Exemption Law and the Redevelopment Bond Law in connection with each entity's respective portion of the Project and Project Site, located within the portion of the Project Site identified as Block 2201, Lots 1.01, a portion of 1.02, 2 and 5; and

**WHEREAS**, the Exemption Application contemplates future partial assignments by Monmouth V Urban Renewal, LLC of the requested Financial Agreement to Monmouth V B Urban Renewal, LLC, Monmouth V WF Urban Renewal, LLC, and/or Monmouth V Urban Renewal, LLC; and

**WHEREAS**, the Exemption Applications contain documentation evidencing financial responsibility and capability with respect to the proposed development; estimated total development costs; estimated time schedule for start and completion of the proposed development; and conceptual plans; and

**WHEREAS**, the Borough evaluated the Exemption Application according to criteria which included financial capabilities, experience, expertise, and project concept descriptions; and

**WHEREAS**, in order to enhance the economic viability of and opportunity for a successful project, the Borough will enter into a Financial Agreement (as hereinafter defined) with each Entity governing payments made to the Borough in lieu of real estate taxes on the portion of the Project allocable to such Entity, all pursuant to the Tax Exemption Law, and

**WHEREAS**, to finance a portion of the cost of the Project, the Borough will issue bonds, in multiple tranches, in a combined aggregate principal amount of up to \$3,000,000 (the "Redevelopment Area Bonds") pursuant to the Redevelopment Bond Law; and

**WHEREAS**, funds for the payment of debt service on each tranche of the Redevelopment Area Bonds will be derived from the pledge and assignment by the Borough to the trustee for the Redevelopment Area Bonds of the Pledged Annual Service Charge, as such term is defined in the respective Financial Agreement, relating to the applicable portion of the Project; and

**WHEREAS**, the Unpledged Annual Service Charge, as such term is defined in each Financial Agreement, relating to the applicable portion of the Project, shall be retained by the Borough for its use in its sole discretion, following payment of the required share to the County of Monmouth, as required by N.J.S.A. 40A:20-12; and

**WHEREAS**, the Borough made the following findings:

In accordance with the Tax Exemption Law, specifically N.J.S.A. 40A:20-11, the Borough hereby finds and determines that the Financial Agreements are to the direct benefit of the health, welfare and financial well-being of the Borough and its citizens because it allows for the development of a property that has fallen into disrepair into a productive, useful and job-creating property, and further:

(a) The Project will help revitalize and/or repurpose underutilized land, will invigorate the Project Site and surrounding community, will create approximately three hundred fifty (350) construction jobs and three hundred (300) new permanent jobs in connection with the operation of the Project, will improve the quality of life in the community, and will enhance the economic development of the Borough. In addition, 12.5% of the rental units actually built (approximately 125 units, which count may vary depending on the actual number of residential units built) will be deed restricted for very low-, low- and moderate-income households in furtherance of the FSCHC Settlement; and

(b) Without the tax exemption granted herein it is highly unlikely that the Project would otherwise be undertaken, as a source of funding all or a portion of the costs thereof, other than from the proceeds of the Redevelopment Area Bonds, would not otherwise be available; and

**WHEREAS**, the Borough has determined to authorize the execution and delivery of the Financial Agreements in order to set forth the terms and conditions under which the respective Entities and the Borough (collectively, the "Parties") shall carry out their respective obligations with respect to (a) payment of the Annual Service Charge, as that term is defined in the respective Financial Agreement, by the respective Entity, in lieu of real property taxes, and (b) issuance of the respective tranches of Redevelopment Area Bonds by the Borough and provision for repayment thereof by the respective Entities; and

**WHEREAS**, each of the Entities either owns or will own its respective portion of the Project Site, each is qualified to do business under the provisions of the Tax Exemption Law, and each has joined in the submission to the Mayor of the Exemption Application, which is on file with the Office of the Borough Clerk, requesting a tax exemption for the Project; and

**WHEREAS**, the Borough wishes to approve the execution and delivery of a Financial Agreement, each pertaining to a specific portion of the Project and the Project Site and one or more specific tranches of the Redevelopment Area Bonds, with each Entity (collectively, the "Financial Agreements"), forms of which are on file in the office of the Borough Clerk (capitalized terms not defined herein shall have the meaning assigned to such terms in the Financial Agreements); and

**WHEREAS**, the Mayor has submitted the Exemption Applications (including forms of the requested Financial Agreements) to the Borough Council, together with his written recommendation of approval (the "Mayor's Recommendation"), a copy of which is on file in the office of the Borough Clerk; and

**WHEREAS**, the Borough further wishes to approve the execution and delivery of one or more Pledge and Assignment Agreements with the Borough's bond trustee(s) (each, a "Pledge Agreement"), a form of which is on file in the office of the Borough Clerk, which Pledge Agreement(s) will provide for, inter alia, the pledge and assignment of the Pledged Annual Service Charge allocable to each portion of the Project to the Borough's bond trustee(s), as security for the payment of debt service on the allocable tranche of Redevelopment Area Bonds; and

**WHEREAS**, the terms of any bond resolution or trust indenture to be entered into by the Borough in connection with the issuance of each tranche of the Redevelopment Area Bonds will provide terms and provisions relating to the disbursement of proceeds of such Redevelopment Area Bonds to the respective Entity or its agent.

**NOW, THEREFORE, BE IT ORDAINED BY THE BOROUGH COUNCIL OF THE BOROUGH OF EATONTOWN, IN THE COUNTY OF MONMOUTH, NEW JERSEY, AS FOLLOWS:**

1. The Entities are hereby designated to act, together with or on behalf of the Redeveloper, as redevelopers for their respective portions of the Project, in accordance with the Redevelopment Plan, the Redevelopment Agreement and the plans and specifications contained in the Exemption Applications, subject to the conditions and as more fully set forth in the forms of Financial Agreement, copies of which have been presented to this meeting and are on file in the office of the Borough Clerk.

2. The Borough Council hereby finds and determines that the Financial Agreements are to the direct benefit of the health, welfare and financial well-being of the Borough and its citizens because they allow for the development of a property that has fallen into disrepair into a productive, useful and job-creating property, and further (a) the Project will help revitalize and/or repurpose underutilized land, will invigorate the Project Site and surrounding community, will create approximately three hundred fifty (350) construction jobs and three hundred (300) new permanent jobs in connection with the operation of the Project, will improve the quality of life in the community, and will enhance the economic development of the Borough, (b) 12.5% of the rental units actually built (approximately 125 units, which count may vary depending on the actual number of residential units built) will be deed restricted for very low-, low- and moderate-income households in furtherance of the FSHC Settlement, and (c) without the tax exemption granted herein it is highly unlikely that the Project would otherwise be undertaken, as a source of funding all or a portion of the costs thereof, other than from the proceeds of the Redevelopment Area Bonds, would not otherwise be available.

3. An exemption from taxation is hereby granted to each Entity with respect to the Improvements (as defined in the respective Financial Agreement) and, in the case of the residential component of the Project only, the Land (as defined in the respective Financial Agreement), in respect of such Entity's portion of the Project, located within the portion of the Project Site identified as Block 2201, Lots 1.01, portion of 1.02, 2 and 5, as more fully set forth in the respective Financial Agreement. Such exemption shall extend to each subsequent Owner (as defined in the respective Financial Agreement), and shall commence and terminate on such dates as set forth in the respective Financial Agreement, but in no event shall the tax exemption commence until the ASC Commencement Date (as such term is defined in the respective Financial Agreement), nor extend beyond the earlier of (i) thirty (30) years from the ASC Commencement Date or (ii) such number of years from the date of execution of the respective Financial Agreement (not forty-five (45) years) as specified therein, and only so long as the respective Owner remains subject to and complies with the respective Financial Agreement and the Tax Exemption Law. To the extent of any inconsistency with any prior Borough ordinance and/or Municipal Code provision governing the granting of long-term tax exemptions, including, inter alia, procedures for application, review and approval, required terms of the financial agreement, required conditions and covenants, limits on duration, means of enforcement, and all other matters whatsoever, such prior Borough ordinances and/or Municipal Code provisions are hereby waived (or, alternatively, shall be deemed to be amended and/or superseded by this ordinance) to the extent of such inconsistency, but only with respect to this Ordinance.

4. The Financial Agreements, in substantially the forms presented to this meeting and on file in the office of the Borough Clerk, are hereby approved. The Mayor and the Business Administrator of the Borough (each, an

“Authorized Officer”) are each hereby authorized to execute and deliver, on the Borough’s behalf, a Financial Agreement with each Entity in respect of each specific portion of the Project, in substantially such forms, with such changes as the Authorized Officers shall determine, in consultation with the Borough’s Redevelopment Counsel, such determination to be conclusively evidenced by their execution of such Financial Agreement. The Borough Clerk is hereby authorized and directed to attest to the execution of the Financial Agreements by the Authorized Officers of the Borough as determined hereunder and to affix the corporate seal of the Borough thereto.

5. To the extent provided in the Financial Agreements, the Authorized Officers are each hereby authorized to execute and deliver, on the Borough’s behalf, such agreements, documents and instruments (including one or more replacement or successor agreements) as may be necessary or useful in connection with any partial or complete assignment of any Financial Agreements, including specifically and partial assignments to Monmouth V B Urban Renewal, LLC, Monmouth V WF Urban Renewal, LLC and/or Monmouth V Urban Renewal, LLC as contemplated by Section 9.01(c) of the Financial Agreement to be entered into by Monmouth V Urban Renewal, LLC.

6. Pursuant to the provisions of the Redevelopment Bond Law, specifically N.J.S.A. 40A:12A-67(c) and, if applicable, N.J.S.A. 40A:12A-69, the Borough hereby assigns, as security for each tranche of the Redevelopment Area Bonds, all of the Borough’s right, title and interest in and to the Pledged Annual Service Charges pertaining to such portion of the Project. The Pledge Agreement, in substantially the form presented to this meeting and on file with the Borough Clerk, is hereby approved. The Authorized Officers, or either of them, are each hereby authorized to execute and deliver, on the Borough’s behalf, a Pledge Agreement in respect of each specific portion of the Project and each specific tranche of Redevelopment Area Bonds, in substantially such form, with such changes as the Authorized Officers shall determine, in consultation with the Borough’s Redevelopment Counsel, such determination to be conclusively evidenced by their execution of such Pledge Agreement. The Borough Clerk is hereby authorized and directed to attest to the execution of the Pledge Agreements by the Authorized Officers of the Borough as determined hereunder and to affix the corporate seal of the Borough thereto.

7. Executed copies of the Financial Agreements and the Pledge Agreements shall be certified by the Borough Clerk and filed with the Office of the Borough Clerk. The Office of the Borough Clerk shall also forthwith file certified copies of this ordinance and the Financial Agreements with the Director of the Division of Local Government Services pursuant to N.J.S.A. 40A:20-12.

8. Upon the execution of the Financial Agreements as contemplated herein, the Authorized Officers and the Borough Clerk are each hereby severally authorized and directed to file and record this ordinance and the Financial Agreements with the Monmouth County Clerk such that the Financial Agreements and this ordinance shall be reflected upon the land records of the County of Monmouth as a lien upon and a covenant running with each and every parcel of land constituting the Parcels. Pursuant to and in accordance with the provisions of the Redevelopment Bond Law, specifically N.J.S.A. 40A:12A-68(c), and notwithstanding any other law to the contrary, upon recordation of both this ordinance and the Financial Agreements, the lien thereof shall be perfected for all purposes in accordance with law and the lien shall thereafter be superior to all non-municipal liens thereafter recorded or otherwise arising, without any additional notice, recording, filing, continuation filing or action, until payment of all of the Redevelopment Area Bonds.

9. The Authorized Officers of the Borough are hereby further severally authorized and directed to (i) execute and deliver, and the Borough Clerk is hereby further authorized and directed to attest to such execution and to affix the corporate seal of the Borough to, any document, instrument or certificate deemed necessary, desirable or convenient by the Authorized Officers or the Borough Clerk, as applicable, in their respective sole discretion, after consulting with the Borough’s Redevelopment Counsel, to be executed in connection with the execution and delivery of the Financial Agreements and the Pledge Agreements and the consummation of the transactions contemplated thereby, which determination shall be conclusively evidenced by the execution of each such certificate or other document by the party authorized hereunder to execute such certificate or other document, and (ii) perform such other actions as the Authorized Officers deem necessary, desirable or convenient in relation to the execution and delivery thereof.

10. This ordinance shall take effect upon final passage and publication in accordance with the laws of the State of New Jersey.

## **STATEMENT**

This Ordinance grants long-term exemptions and approves the execution of financial agreements with (i) Monmouth V Urban Renewal, LLC, (ii) Monmouth V R1 Urban Renewal, LLC, (iii) Monmouth V R2 Urban Renewal, LLC and (iv) Monmouth V R3 Urban Renewal, LLC, in connection with portions of a redevelopment

project to be constructed on property commonly known as the Monmouth Mall, which portion is identified as identified as Block 2201, Lots 1.01, portion of 1.02, 2, and 5. The redevelopment project is expected to be undertaken in multiple phases, and will include the development, design, financing, permitting, demolition of certain existing improvements on the project site, site preparation, construction, implementation and cohesive redevelopment of the project site with a project comprised of a mixture of complementary residential, retail, commercial and medical office uses, including (a) up to approximately one thousand (1,000) non-age restricted residential rental units, with twelve and one-half percent (12.5%) of the actual number of units build to be set aside for very low-, low- and moderate-income households in furtherance of the Borough's Settlement Agreement with Fair Share Housing Center, dated December 17, 2018, (b) approximately 900,000 square feet of total commercial and retail space, and (c) public spaces, strategically placed parking, and a safe and efficient circulation system. This Ordinance also authorizes pledge agreements and other documents in connection with the issuance by the Borough of Eatontown of its Redevelopment Area Bonds in an amount of up to \$3,000,000 (to be secured by an assignment of certain pledged annual service charges under the respective financial agreements) and determines various other matters in connection therewith.