

**Application for Long Term Tax Exemption**  
**City of Englewood**

In accordance with the requirements of the Long Term Exemption Law, N.J.S.A. 40A:20-1, et seq., (hereinafter referred to as the "Exemption Law"), **SHG ENGLEWOOD SOUTH V URBAN RENEWAL, LLC** (hereinafter referred to as the "Applicant" or the "Entity") respectfully submits to the City of Englewood (hereinafter referred to as the "City") this Application for Long Term Tax Exemption along with those documents attached and annexed hereto.

Applicant's Name and Address:

**SHG Englewood South V Urban Renewal, LLC**  
c/o The S.Hekemian Group  
10 Sterling Boulevard, Suite 401  
Englewood, NJ 07631  
201.587.0800

Project Name: Englewood South Phase III Redevelopment Project

**1. Identification of Project Premises:**

The Project Premises is located within the Flatrock Square Project aka Englewood South and consists of property containing approximately 4.01 acres of real property. This property is identified upon the City Tax Map as Tax Block 2602, Lots 3.01, 3.02 and 3.03. The address of the Project Premises is 125, 175 and 225 Sterling Boulevard.

**2. General Statement of Nature of Redevelopment Project:**

The proposed Redevelopment Project consists of a mixed used redevelopment that shall include a minimum of 40,000 sf of office/retail space and up to 220 multi-family residential units, with associated parking and such common area amenities, infrastructure improvements and ancillary uses as are commonly associated with mixed-use projects of this nature (hereinafter referred to as the "Project").

**3. Type of Tax Exemption:**

While the Entity seeks a long-term tax exemption for the Project, pursuant to Section 3.E of the Settlement Agreement dated July 30, 2019 by and among the City and the Entity's affiliates, ERA South, LLC, SHG Englewood South I, LLC, SHG Englewood South II, LLC, SHG Englewood South III, LLC, SHG Englewood South IV, LLC and Flatrock Residential Community Association, Inc. attached hereto as Exhibit A, the terms and conditions of the long term tax exemption were pre-determined and agreed to by the. The Annual Service Charge tax for the overall Project is to be calculated and is fixed as Ten and Three Quarters (10.75%) percent of the Annual Gross Revenue for years 1 through 10, Twelve and One-Half (12.50%) percent of the Annual Gross Revenue for years 11 through 15 and Fifteen (15.00%) percent of the Annual Gross Revenue for years 16 through 20. The initial estimate of Annual Gross Revenues for the Project as determined by the Entity is \$8,511,012.

**4. Term of Exemption:**

As noted in Section 3. above, the terms and conditions of the long term tax exemption were agreed to by the parties in the Settlement Agreement. The term of the long-term tax exemption shall be for a period of Twenty (20) years from the date of the Town's issuance of the Certificate of Completion for the Project, but in no event later than Twenty-Five (25) years from the effective date of the Financial Agreement.

**5. Financial Agreement:**

The proposed Financial Agreement between the City and the Entity is attached and annexed hereto as Exhibit B.

**6. Estimated Total Project Cost:**

Pursuant to the Exemption Law, at N.J.S.A 40A:20-3(h), the estimated Total Project Cost for the Project is \$58,000,000. This estimated Total Project Cost is inclusive of hard, soft and land costs.

**7. Estimated Construction Schedule:**

The estimated construction schedule for the Project is approximately twenty-four (24) months from commencement of piling driving.

**8. Financial Plan:**

Construction, lease-up and stabilization of a luxury rental mid-rise project, with ground floor retail use(s), and a stand-alone boutique office building. The Financial Plan is to hold the building for roughly five to ten years, after which the owner will consider selling the asset. The Applicant hereby sets forth that the Financial Plan presents figures and information that may be subject to modification.

**9. Sources of Financing for Project:**

The Applicant will finance the development and construction of each phase of the Project through a combination of private funding sources, including but not limited to equity contributions, primary and mezzanine lending arrangements.

**10. Applicant's Relationship to Project Premises:**

The Applicant's affiliate, ERA South, LLC is the current owner of the Project Premises. Upon receiving all necessary approvals with local and state governing authorities, the current owner will convey the parcel to the Applicant. The applicant shall serve as owner and developer of the Project Premises.

**11. Good Faith Estimate of Initial Sales Price (if applicable):**

This is not applicable as the intended use of the residential component is luxury rental, not condominium.

**12. Zoning Information:**

The Project Premises is situated within the ERA South Redevelopment Area, a designated area in need of redevelopment designated as such pursuant to the Local Redevelopment and Housing Law. The redevelopment of the Project Premises is subject to the terms, conditions and restrictions contained within the ERA South Redevelopment Plan, as adopted by the City Council and as may be subsequently amended and the Redeveloper Agreement to be entered into by the City and the Redeveloper.

**13. Real Estate Taxes:**

The Project Premises currently generates an aggregate of \$109,573.88 in annual real estate taxes.

**14. Compliance with State Law:**

The Project Premises, Tax Block 2602, Lots 3.01, 3.02 and 3.03, is situated within the ERA South Redevelopment Area. As such the Project Premises meets the requirements of the Exemption Law for consideration for long term tax exemption. In addition, it is further certified that the Applicant is lawfully established as an urban renewal entity and approved as such by the Commissioner of the State of New Jersey Department of Community Affairs. As a result thereof, it is or will be entitled to receive the benefits of the long term tax exemption under the Exemption Law. The proposed Project will be developed and constructed in accordance with the guidelines, goals and objectives set forth in the ERA South Redevelopment Plan.

**15. Certificate of Formation:**

Attached and annexed hereto as Exhibit C is a true copy of the filed Certification of Formation of SHG Englewood South V Urban Renewal, LLC.

**16. Exhibits:**

The following exhibits are attached and annexed to this Application for Long Term Tax Exemption and are hereto incorporated herein:

Exhibit A: Settlement Agreement

Exhibit B: Financial Agreement

Exhibit C: Certificate of Formation

Exhibit D: Conceptual Site and Architectural Plans for the Project.

I hereby certify to the best of my knowledge and belief, that all of the information contained in this application is true and correct and that I have made a diligent inquiry to confirm the accuracy of all such information.

SHG ENGLEWOOD SOUTH V URBAN RENEWAL, LLC

By:  \_\_\_\_\_

Name: Peter Hekemian

Title: Authorized Signatory

EXHIBIT A- SETTLEMENT AGREEMENT

**SETTLEMENT AGREEMENT**

**BY AND AMONG**

**ERA SOUTH LLC; SHG ENGLEWOOD SOUTH I, LLC; SHG ENGLEWOOD SOUTH II, LLC; SHG ENGLEWOOD SOUTH III, LLC; SHG ENGLEWOOD SOUTH IV, LLC; AND FLATROCK RESIDENTIAL COMMUNITY ASSOCIATION, INC.**

**AND**

**CITY OF ENGLEWOOD AND MAYOR AND COUNCIL OF THE CITY OF ENGLEWOOD**

**WHEREAS**, ERA SOUTH LLC; SHG ENGLEWOOD SOUTH I, LLC; SHG ENGLEWOOD SOUTH II, LLC; SHG ENGLEWOOD SOUTH III, LLC; SHG ENGLEWOOD SOUTH IV, LLC; AND FLATROCK RESIDENTIAL COMMUNITY ASSOCIATION, INC. (hereinafter "PLAINTIFFS" or "ERA PARTIES") and CITY OF ENGLEWOOD AND MAYOR AND COUNCIL OF THE CITY OF ENGLEWOOD (hereinafter "DEFENDANTS" or "CITY" or "ENGLEWOOD") are parties (collectively "Parties") to the consolidated lawsuits captioned ERA South, LLC, et al. v. The Mayor and Council of the City of Englewood, et al., Docket No. BER-L-3930-12 and Flatrock 3, LLC. v. The Mayor and Council of the City of Englewood, et al., Docket No. BER-L-4091-12 challenging a Special Assessment District (the "SAD Litigation"); and

**WHEREAS**, the SAD Litigation involved a special assessment in the amount of Eight Million Five Hundred Thirty-Five Thousand (\$8,535,000.00) Dollars, as assigned and confirmed by Englewood

to be borne by ten properties, including nine properties owned by the ERA Parties (the "ERA Properties"); and

**WHEREAS**, the trial court granted Englewood's motion for summary judgment and dismissed the ERA Parties' action in the SAD Litigation; and

**WHEREAS**, the ERA Parties appealed the decision of the trial court to the Appellate Division in an action bearing Docket No. A-0533-14T3; and

**WHEREAS**, the Appellate Division reversed the trial court's dismissal and remanded the matter to the Superior Court of New Jersey, Law Division, Bergen County in accordance with its December 6, 2016 decision; and

**WHEREAS**, the SAD litigation implicates the appropriate uses of the ERA Properties; and

**WHEREAS**, the Parties are mutually desirous of settling the SAD Litigation, without the cost, burden, and risk of further litigation; and

**WHEREAS**, it is the intention of the Parties to fully resolve the disputes between the ERA Parties and Englewood Parties as set forth in the SAD Litigation including the permitted uses of the ERA Properties; and

**NOW, THEREFORE**, the parties agree as follows:

1. Definitions. Unless expressly used otherwise, these terms have the following meanings for purpose of this Settlement Agreement:

A. "Prior Settlement Agreement" means the Settlement Agreement entered into by the parties in 2011, as amended, in the matter *ERA South LLC et al v. City of Englewood et. al.*, Dkt. BER-L-233-09.

B. The "Property" means a) the property located on the south side of New Jersey State Highway Route 4, designated on Englewood's Official Tax Map as Block 2602, Lot 3.03 and sometimes identified in the Prior Settlement Agreement as the "Hotel Pad" and (b) the property located on the south side of New Jersey State Highway Route 4, designated on Englewood's Official Tax Map as Block 2602, Lots 3.01 and 3.02 and sometimes identified in Prior Settlement Agreement as the "Office Pad."

C. "Project" means the uses provided for in paragraph 4 below.

2. Effective date. This Settlement Agreement shall become effective upon execution. Provided the ERA Parties have executed this Settlement Agreement on or prior to \_\_\_\_\_, 2019, they shall have the right to withdraw their acceptance of, and terminate, this Settlement Agreement if the City of Englewood



does not approve and execute the Settlement Agreement by \_\_\_\_\_, 2019.

3. Redevelopment. Defendants shall take the following steps:

A. Diligently take all steps necessary to designate the Property as a non-condemnation area in need of redevelopment in accordance with N.J.S.A. 40A:12A-5 and 12A-6.

B. Provided that the Property meets the statutory criteria for designation as a non-condemnation area in need of redevelopment, adopt a redevelopment plan permitting the construction of the Project on the Property in accordance with N.J.S.A. 40A:12A-7 within ninety (90) days of such designation, including adoption of development regulations substantially identical to those set forth in Exhibit A to as an overlay zoning district.

C. Designate the ERA Parties, or entity designated by the ERA Parties as the Redeveloper of the Property in accordance with N.J.S.A. 40A:12A-8.

D. Negotiate in good faith a Redevelopment Agreement.

E. Negotiate in good faith a twenty (20) year long-term tax exemption pursuant to N.J.S.A. 40A:20-1, et. seq. and a Financial Agreement to govern the associated Payment in Lieu of

Taxes ("PILOT"), the amount of which shall be calculated as follows:

i. 10.75% of the Project's annual gross revenue for years 1 through 10;

ii. 12.5% of the Project's annual gross revenue for years 11 through 15; and

iii. 15% of the Project's annual gross revenue for years 16 through 20.

4. The Project. Plaintiffs shall be permitted, by way of the Redevelopment Plan provided for in paragraph 3 above, to construct the following uses on the Property, together with all associated infrastructure and accessory uses:

A. Up to 220 multifamily residential units in one or more buildings of which 15 percent shall be rental units reserved for, and affordable to, low and moderate income households developed in accordance with the standards set forth in Uniform Housing Affordable Controls, N.J.A.C. 5:80-1 et. seq. ("UHAC") or such regulations as may be promulgated by the State of New Jersey to supplant those standards; and

B. Office or commercial uses, or both, in one or more buildings, totaling at least 40,000 gross square feet in area.

C. A parking garage or parking garages which may provide parking for the residential uses or the office and commercial

uses or both and which may be a part of, or attached to, the any of the other buildings of the Project.

5. Project Standards.

A. Residential uses and commercial and office uses may, in the sole discretion of Plaintiffs, be provided in separate buildings or mixed use buildings.

B. The maximum permitted building height for structures shall be 9 stories and 96 feet. There shall be no other bulk standards.

C. The building or buildings containing residential units may include amenities such as courtyards, a swimming pool, and other common areas;

D. Parking shall be provided at a ratio of 1.65 spaces per residential unit and 3.28 spaces for every 1,000 square feet of gross floor area of office and commercial uses, provided that up 25 percent of the parking for office and commercial uses may be parking that is shared with residential uses.

E. Parking for any of the permitted uses may, in the sole discretion of Plaintiffs, be provided as surface parking, structured parking within residential or commercial and office buildings, or a separate garage structure.

F. Building materials shall complement the adjacent buildings within the existing Flat Rock Square development.

G. In addition to any signage permitted by any other zoning provisions governing the Property, the following signage shall be permitted:

i. A pylon sign along the eastbound side of New Jersey State Highway Route 4.

ii. Identification signs on the frontage of the buildings.

iii. Signs mounted on the buildings for the benefit of tenants.

H. Pylon sign shall not exceed 20 feet in height and may have letters up to 24 inches high. Pylon sign may be internally illuminated. The location of the pylon sign shall be subject to the reasonable approval of the Planning Board;

I. If there is one building, identification signs on the frontage of the building shall be permitted on the north, east and west facades. If there are two or more buildings, identification signs on the frontage of the building shall be permitted on the north and east facades of the northernmost building and on the north and west facades of the other buildings. Such signs may have letters up eight feet in height. Such signs may be internally illuminated.

J. Signs mounted on the building for the benefit of tenants shall be permitted at any location in the sole

discretion of Plaintiffs. Such signs may have letters up to 24 inches high.

K. Plaintiffs may seek development approvals to construct the Project in phases and may construct the residential uses and the office and commercial uses in any sequence. The right to construct any portion of the permitted development shall not be dependent upon prior or simultaneous construction of any other portion of the development, except that low and moderate income residential units shall be phased with market priced residential units in accordance with the UHAC standards.

L. Without limiting any other modifications contemplated by the above provision, the Plaintiffs may, in their sole discretion, opt to construct a greater amount of commercial space and a fewer number of residential units, provided that the minimum parking ratios set forth above are satisfied.

M. The parties have agreed that a shuttle service and other municipal projects may be instituted by the City to service the Flatrock Square neighborhood in which the Project is located, along with other neighborhoods of the City. Plaintiffs have agreed that upon receipt from the City of evidence as to the reasonable cost to institute the shuttle service and other municipal initiatives, Plaintiffs will make a payment not to exceed \$150,000.00 for the actual costs of initiating the

shuttle service and said municipal projects. The payments shall be made as follows. Payment in an amount not to exceed \$100,000.00 shall be made upon the receipt of all necessary and unappealable governmental approvals and consents as well as the full satisfaction of any and all preconditions for construction of the proposed Project, resulting in the issuance of a municipal building permit. The remaining payment, which shall not exceed an additional \$50,000.00, shall be made twelve (12) months after the issuance of a certificate of occupancy for any portion of the Project.

6. Timetable. Plaintiffs may terminate this Settlement Agreement if Defendants fail to have duly accomplished any of the agreed upon implementation actions on or before each of the following dates:

- | <u>Action</u>   | <u>Date</u>  |
|---|--|
| a. City Council adopts a resolution directing Planning Board to conduct investigation to determine whether the Property should be designated a non-condemnation area in need of redevelopment | 45 day after the execution of this Settlement Agreement  |
| b. Planning Board makes a recommendation as to whether the Property should be designated a non-condemnation area in need of redevelopment   | 60 days after adoption of City Council directing Planning Board to conduct investigation referred to in subparagraph (a) |
| c. City Council adopts a  | 30 days after receipt of the   |

- |    |  |  |
|----|--|--|
|    | resolution formally designating the Property as a non-condemnation area in need of redevelopment   | recommendation by the Planning Board referred to in subparagraph (b)   |
| d. | City Council introduces by ordinance on first reading, and refer to the Planning Board by resolution for review and recommendations a Redevelopment Plan authorizing the Project and containing development standards substantially identical with those set forth in Exhibit A as an overlay zoning district. | 30 days after adoption of the resolution formally designating the Property as a non-condemnation area in need of redevelopment referred to in subparagraph (c)                       |
| e. | City Council adopts the Redevelopment Plan authorizing the Project and containing development standards substantially identical with those set forth in Exhibit A as an overlay zoning district by ordinance on second reading   | 60 days from receipt of the Planning Board's recommendation on adoption of the Redevelopment Plan or 15 days from the of the passing of the ordinance adopted the Redevelopment Plan |
| f. | City Council adopts resolutions (i) designating Plaintiffs or their designee the Redeveloper of the Property; and (ii) approving a Redevelopment Agreement acceptable to the Redeveloper   | 45 days after adoption of the ordinance adopting the Redevelopment Plan referred to in subparagraph (e)  |
| g. | City Council adopts (i) a resolution approving application by Plaintiffs for long term tax exemption pursuant to N.J.S.A. 40A:20-1 et seq. and (ii) an ordinance approving execution of a financial agreement acceptable to the Redeveloper for such long  | 60 days after submission of an application by the Plaintiffs or an entity designated by the Plaintiffs   |

term tax.

7. Stay of litigation. Within ten (10) days of the execution of this Settlement Agreement by all Parties, the Parties shall jointly submit to the Court a request that the SAD Litigation be placed on a "hold" or similar status so that no further proceedings will occur while the above steps are being undertaken in order to implement this Settlement Agreement.

8. Dismissal of SAD litigation. Upon the satisfaction of all settlement requirements set forth in paragraphs 3 and 6 above, and the expiration of the periods for appeal, the Parties shall execute and submit to the Court a Stipulation of Settlement and Dismissal with Prejudice with respect to any and all claims and rights they may have had against one another in connection with the SAD Litigation.

9. Payment of SAD. Upon entry of the Stipulation of Settlement and Dismissal, the Plaintiffs shall be deemed to have accepted 100% responsibility for the payment of their portion of the special assessment (i.e., everything except Flatrock 3, LLC, Block 2605, Lot 2.03). Plaintiffs shall continue to make payments in the normal course until the special assessment is paid in full.

10. Postponement and waiver of Defendants' right to acquire the former "Hotel Pad."



A. The date upon which the City may acquire the so-called "Hotel Pad" (Block 2602, Lot 3.03) from the Plaintiffs provided for by Paragraph 11(B) of the Prior Settlement Agreement is hereby postponed until the earlier of (i) the waiver by the Defendants of that right as provided for in subparagraph (B) or (ii) a date 90 days after the termination of this Settlement Agreement, provided that if a site plan application for construction of a hotel has been filed with the Planning Board within 90 days after termination of the Settlement Agreement, the date upon which the City may acquire the so-called "Hotel Pad" shall continue to be postponed while the developer diligently pursues site plan approval and construction of a hotel on the so-called "Hotel Pad." During the period of this postponement, Defendants shall not take any steps to exercise the City's right to acquire the "Hotel Pad."

B. Upon execution of the Redevelopment Agreement and the Financial Agreement provided for in paragraphs 3 and 6, the Defendants shall execute a written waiver of the City's rights to acquire the so called "Hotel Pad" (Block 2602, Lot 3.03) from the Plaintiffs provided for by Paragraph 11(B) of the prior Settlement Agreement among the parties. Defendants shall execute any and all documents and take any and all actions as reasonably necessary to evidence such waiver. If the Defendants contend

that the Plaintiffs are in default of the Agreement at the time the Waiver is executed, the Waiver shall be held in escrow until such default is cured.

C. In connection with Defendants' waiver of the City's right to acquire the so-called "Hotel Pad" (Block 2602, Lot 3.03), Plaintiffs shall pay \$3,500,000 to Defendants in two installments: (i) \$250,000 upon execution by Defendants of the written waiver by Defendants' rights to acquire the so-called "Hotel Pad" and (ii) \$3,250,000 upon the Defendants' issuance of a final certificate of occupancy for the last of the units of inclusionary multi-family residential development permitted under the terms development approvals for the Project granted by the Planning Board.

11. Prior Inconsistent Approvals. The parties stipulate that the Property was the subject of a number of site plan and subdivision approvals, which are memorialized in resolutions adopted by the City of Englewood Planning Board and incorporated into subdivision deeds. To the extent that this Settlement Agreement or the Redevelopment Plan adopted pursuant to this Settlement Agreement authorize development on the Property that is different from, or inconsistent with, those prior approvals, Plaintiffs may apply for, and receive development approvals, regardless of whether the new development approvals are

different from or inconsistent with those prior approvals. The terms of the new approvals resolution shall supersede prior different or inconsistent approvals or resolutions. Plaintiffs may record superseding or amendatory deeds conforming to the new approvals, including any new subdivision approvals.

12. Prior inconsistent agreements. The parties stipulate that the Property was the subject of a number of agreements between Plaintiffs or their predecessors in interest and Defendants, in addition to the Prior Settlement, including both Settlement Agreements and developer agreements. To the extent that this Settlement Agreement or the Redevelopment Plan adopted pursuant to this Settlement Agreement authorize development on the Property that is different from, or inconsistent with, those prior agreements, Plaintiffs may apply for, and receive development approvals, regardless of whether the new development approvals are different from or inconsistent with that authorized by prior agreements. The terms of this Settlement Agreement and the Redevelopment Plan adopted pursuant to this Settlement Agreement supersede all prior different or inconsistent agreements without the need for further documentation.

13. Development approvals.

A. Upon written request by the Plaintiffs, Defendants shall request the Planning Board to consider on an expedited basis Plaintiffs' application for development approvals, including preliminary and final site plan approval with respect to the Project.

B. Plaintiffs may elect to seek preliminary and final site plan approval for all of the components of the Project simultaneously or may instead submit separate applications with respect to the various components. Plaintiffs may also seek development approvals allowing the development of Project in phases.

C. Applications for development approvals shall be governed by the standards for inclusionary development established by the courts and those set forth in N.J.A.C. 5:93-10.1 et. seq. and N.J.A.C. 5:97-10.1 et. seq.

14. Cooperation.

A. Provided that Plaintiffs are not in default of this Agreement, i.e., a default which has been noticed under Paragraph 19 and remains uncured, Defendants shall not during the term of this Settlement Agreement adopt or amend any ordinance which would alter the terms upon which the Project could be developed as of the date of the adoption of the

Redevelopment Plan without the written consent of the Plaintiffs.

B. The City and all officers, employees, and agents of the City shall not take any steps to, hinder, deter or retard development of the Property but shall cooperate with the efforts by Plaintiffs to develop the Property in accordance with this Settlement Agreement.

C. Defendants will cooperate with efforts by Plaintiffs to secure in an expeditious fashion any county and state permits, approvals, licenses, waivers, exceptions, variations and variances reasonably necessary for the development of the Property in accordance with this Settlement Agreement.

D. Defendants will cooperate with efforts by Plaintiffs to such secure all required municipal permits, approvals, licenses, waivers, exceptions, variations and variances in an expeditious fashion, provided such variations and variances are consistent with the intent and purpose of this Settlement Agreement.

E. In connection with the adoption of any ordinance or resolution, execution or endorsement of any document, entry into any agreement by the City other than, or in addition to, those expressly provided for in this Settlement Agreement as necessary to effectuate or implement this Settlement Agreement, the City

shall, consistent with established procedures and legal requirements, accommodate any requests by the Plaintiffs to take such actions.

15. Timely response to Plaintiffs' submission.

A. All City agencies, consultants, and professionals shall make reasonable efforts to respond in an expeditious fashion to all submissions, requests for information, and requests for permits and approvals after submission by the Plaintiffs.

B. Provided all required information is timely and properly submitted by Plaintiffs, Defendants will take all actions within their lawful power to secure determination by the Englewood construction official of requests for temporary and final certificates of occupancy for structures on the Property within twenty (20) days of application. Such actions shall include, without limitation, providing to the construction official and to the Plaintiffs all information and reports within the control of Defendants and their agents and employees required or requested by the construction official in sufficient time for him or her reasonably to make a determination within that time period.

16. Third party challenges. Upon the filing of any third party legal challenge to, or appeal from, the City's

contemplated designation of the Property as an area in need of redevelopment, its adoption of a redevelopment plan with respect to the Property, its designation of a Redeveloper with respect to the Property and execution of a Redevelopment Agreement and Financial Agreement with such Redeveloper, any other ordinance adopted pursuant to this Settlement Agreement, and any action taken by the City or Planning Board in implementation of this Settlement Agreement:

A. Plaintiffs and Defendants agree to jointly defend against the challenge, but Plaintiffs will take the lead in defending against the challenge;

B. All parties will be responsible for their own legal costs in any such defense, but Plaintiffs will reimburse Defendants for 40 percent of their reasonable expenses, which may include attorney fees; and

C. The following of Plaintiffs' obligations shall be tolled until favorable resolution of the challenge:

- i. Plaintiffs' obligation under Paragraph 9;
- ii. Plaintiffs' obligation under Paragraph 11 to make payments in connection with Defendants' waiver of the City's right to acquire the so-called "Hotel Pad."

D. For purposes of this Paragraph, "favorable resolution" means a final, nonappealable decision upholding in its entirety

the challenged designation of the Property as an area in need of redevelopment, adoption of a redevelopment plan with respect to the Property, designation of a Redeveloper with respect to the Property, Redevelopment Agreement, Financial Agreement, or other ordinance or action.

E. If the decision is not a "favorable decision," Plaintiffs may exercise their remedial rights under Paragraph 6 or Paragraph 19, whichever may be applicable.

17. Duration of Agreement. Unless terminated earlier pursuant to paragraphs 2 or 6 or by voluntary agreement by the parties, this Settlement Agreement will expire when the Project is completed or when the Financial Agreement expires, whichever is later.

18. Default. If any party fails to perform any obligation required to be performed by this Settlement Agreement, such failure shall constitute a violation of this Settlement Agreement. A party for whose benefit such obligation is intended shall give written notice of the claimed violation to the party claimed to have violated the Settlement Agreement and shall allow that party twenty (20) days to cure the alleged violation. If the violation has not been cured within that period, any party for whose benefit such obligation is intended may enforce this Settlement Agreement by motion in aid of litigants' rights



or any other remedy available at law or equity, provided, however, that the obligations established in Sections 2 and 6 may be enforced only by the remedies established in those Sections.

19. Effect of termination. If this Settlement Agreement is terminated under the terms of paragraphs 2 or 6 or by voluntary agreement by the parties,

A. Any party may submit a request to the Court that the SAD Litigation be restored to active status; and

B. The date upon which the City can acquire the so-called "Hotel Pad" (Block 2602, Lot 3.03), as provided for in paragraph 11(B) of the Prior Settlement Agreement, shall be postponed to a date 90 days after the termination of this Settlement Agreement, provided that if a site plan application for construction of a hotel has been filed with the Planning Board within 90 days after termination of the Settlement Agreement, the date upon which the City may acquire the so-called "Hotel Pad" shall continue to be postponed while the developer diligently pursues site plan approval and construction of a hotel on the so-called "Hotel Pad." During the period of this postponement, Defendants shall not take any steps to exercise the City's right to acquire the "Hotel Pad."

C. Upon request by the Plaintiffs, any funds paid to the City in connection with waiver of the right to acquire the so-called "Hotel Pad" (Block 2602, Lot 3.03) shall be returned.

20. Waiver. Any waiver of any provision of this Settlement Agreement will be effective only if made in writing. Failure to enforce any of the provisions of this Settlement Agreement by any of the parties shall not constitute a waiver of these provisions.

21. Entire Agreement. This Settlement Agreement and the Exhibit attached hereto contain the entire agreement between the parties. No representative, agent or employee of any party has been authorized to make any representations or promises with reference to this Agreement or to vary, alter or modify the terms hereof except as stated herein. No additions, changes or modifications, renewals or extensions hereof, shall be binding unless reduced to writing and signed by the parties hereto.

22. Covenants running with the land. It is the intention of the parties that this Settlement Agreement shall run with the land and inure to the benefits of and be binding upon the parties, their successors in interest and assigns.

23. Delegation. Wherever this Settlement Agreement places an obligation or duty upon Plaintiffs, that obligation may be

performed by one or more third parties. Such performance shall satisfy the obligation or duty placed upon Plaintiffs.

24. Successors and assigns. Wherever this Agreement refers to the Plaintiffs, that reference shall also mean the successors in interest and assigns of the Plaintiffs.

25. Notice. The parties agree to provide each other with immediate notice of any lawsuits, action or governmental declaration threatened or pending of which they are actually aware which may affect the provisions of this Settlement Agreement or implementation thereof.

26. Construction. The parties acknowledge that this Settlement Agreement was prepared jointly by counsel for all parties and, therefore, this Settlement Agreement shall be construed on parity among the parties.

27. Partial Invalidity. In the event that any provision of this Settlement Agreement is held to be invalid, void, or unenforceable by a court of competent jurisdiction, the same shall be deemed severable from the remainder of this Agreement and shall in no way affect any other covenant or condition herein contained. If such provision is held to be invalid, void or unenforceable due to its scope or breadth, such provision shall be deemed valid to the extent of the scope or breadth permitted by law.

28. Law. This Settlement Agreement has been entered into and shall be construed, governed and enforced in accordance with the laws of the State of New Jersey and any disputes with regard to the same shall be resolved in the Superior Court, County of Bergen, State of New Jersey.

29. Means of notice. All written notices required under this Settlement Agreement shall be given by Certified Mail, Return Receipt Requested or by Federal Express as follows:

Plaintiffs:

Douglas M. Cohen, Esq.  
General Counsel  
The S.Hekemian Group, LLC  
10 Sterling Blvd., Suite 301  
Englewood, N.J. 07631

with a copy to:

Louis L. D'Arminio, Esq.  
Price, Meese, Shulman & D'Arminio, P.C.  
50 Tice Boulevard, Suite 380  
Woodcliff Lake, NJ 07677

Defendants:

Mayor and Council of the City of Englewood  
2-10 North Van Brunt Street  
Englewood, NJ 07631

City of Englewood  
c/o Yancy Wazirmas, City Clerk  
2-10 North Van Brunt Street  
Englewood, NJ 07631

with a copy to:

William J. Bailey, Esq.  
Huntington Bailey, LLP

373 Kinderkamack Road  
Westwood, New Jersey 07675

30. Authority. Each of the Parties represents that it has authority to execute this Settlement Agreement. Each Party shall provide legally sufficient documentation of its authority to execute this Settlement Agreement upon request by any other Party or a Court.

31. Compliance with procedural requirements. Nothing in this Settlement Agreement is intended to operate in derogation of the obligation of the Defendants to comply with the procedural requirements of the Municipal Land Use Law, the Local Redevelopment and Housing Law, the Long Term Tax Exemption Law, the Open Public Meetings Act, other statutory provisions governing the adoption of municipal ordinances or the consideration by the Planning Board of applications for development approvals or the amendment of such development approvals, or to diminish the rights of members of public protected by those statutes.

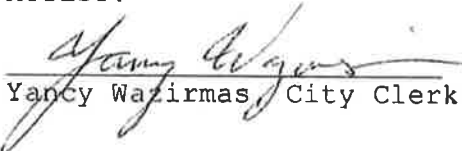
32. Subsequent rights of defendants. Nothing in this Settlement Agreement shall be deemed to restrict any otherwise lawful exercise of powers of the Defendants to amend or repeal any ordinance or redevelopment plan amendment adopted pursuant to this Settlement Agreement following termination or expiration

of this Settlement Agreement. Defendants' exercise of any such powers shall not affect the validity of development approvals previously granted.


IN WITNESS WHEREOF, the Parties hereto have caused this Settlement Agreement to be signed and attested by their proper officers or representatives as of the day and year written below.

Dated: 7-30-19

ATTEST:


  
Yancy Wazirmas, City Clerk

CITY OF ENGLEWOOD

By   
Name:  
Title: City Manager

ERA SOUTH, LLC  
SHG ENGLEWOOD SOUTH I, LLC  
SHG ENGLEWOOD SOUTH II, LLC  
SHG ENGLEWOOD SOUTH III, LLC  
SHG ENGLEWOOD SOUTH IV, LLC  
FLATROCK RESIDENTIAL  
COMMUNITY ASSOCIATION, INC.

WITNESS:

  
Douglas M. Cohen


By   
Name: Peter Hekemian  
Title: Authorized Signatory

EXHIBIT A

DEVELOPMENT REGULATIONS FOR ENGLEWOOD SOUTH REDEVELOPMENT AREA  
OVERLAY ZONE DISTRICT

1. The Englewood South Redevelopment Area Zone District governs the entire Englewood South Redevelopment Area, namely Block 2602, Lot 3.03 and Block 2602, Lots 3.01 and 3.02 as shown on the official tax map of the City of Englewood.
  - a. The uses permitted in this District and the terms and conditions upon which those uses are permitted are in addition to any other uses and terms and conditions otherwise permitted by the land development ordinances of the City. Property in this District may be developed in accordance with these regulations even if such development would be forbidden by, or inconsistent with, the terms of other zoning provisions governing such property.
  - b. This ordinance does not supplant or supersede any other zoning ordinance governing this district. Notwithstanding the establishment of this District, property in this District may be developed in accordance with the terms of other zoning provisions governing such property even if such development would be forbidden by, or inconsistent with, the terms of this District
2. Permitted Uses
  - a. Multi-family residential uses
  - b. Office and commercial uses
  - c. Parking structures
3. Accessory Uses
  - a. Parking
  - b. Amenities appropriate to multi-family housing, including but not limited to, as loading areas, areas and facilities for trash disposal, maintenance facilities, management offices, courtyards, recreational facilities, community rooms, laundry facilities, a swimming pool, and other common areas
  - c. Amenities appropriate to commercial and office uses
4. Multi-family uses
  - a. No more than 220 multifamily residential units
  - b. Units may be located in one or more buildings
  - c. 15 percent of the units shall rental units be reserved for, and affordable to low and moderate income households developed in accordance with the standards set forth in Uniform Housing Affordable Controls, N.J.A.C. 5:80-1 et seq. or such regulations as may be promulgated by the State of New Jersey to supplant those standards
5. Office or commercial uses
  - a. Not less than 40,000 square feet in gross area.
  - b. Office uses may include, without limitation, general purpose offices, special purpose offices, medical offices, hospital offices, professional offices, and governmental offices.

- c. Commercial uses may include, without limitation, retail uses, rental or sales of goods or services, professional offices, medical uses, hospital uses, health care facilities, restaurants, and exercise facilities.

6. Parking

- a. Parking shall be provided at a ratio of 1.65 spaces per residential unit and 3.28 spaces for every 1,000 square feet of gross floor area of office and commercial uses, provided that up to 25 percent of the parking for office and commercial uses may be parking that is shared with residential uses.
- b. Parking for any of the permitted uses may, in the sole discretion of the developer, be provided as surface parking, structured parking within residential or commercial and office buildings, or a separate garage structure
- c. Parking may be provided in one or more parking garages which may provide parking for the residential uses or the office and commercial uses or both, and which may be a separate structure or a part of, or attached to, another building.
- d. Parking spaces shall be 9 feet in width and 18 feet in length

7. Bulk standards

- a. The maximum permitted building height shall be 9 stories and 96 feet.
- b. No other bulk standards.

8. General standards

- a. Residential uses and commercial and office uses may, in the sole discretion of the developer, be provided in separate buildings or mixed use buildings.
- b. Building materials shall complement the adjacent buildings within the existing development.
- c. The developer may secure development approvals in phases and may construct residential uses and office and commercial uses in any sequence. The right to construct any portion of permitted development shall not be dependent upon prior or simultaneous construction of any other portion of the development, except that low and moderate income residential units shall be phased with market priced residential units in accordance with the UHAC standards.

9. Signage

- a. In addition to any signage permitted by any other zoning provisions governing the property, the following signage shall be permitted:
  - i. A pylon sign along the eastbound side of New Jersey State Highway Route 4
  - ii. Identification signs on the frontage of the buildings
  - iii. Signs mounted on the buildings for the benefit of tenants.
- b. Pylon sign shall not exceed 20 feet in height and may have letters up to 24 inches high. Pylon sign may be internally illuminated. The location of the pylon sign shall be subject to the reasonable approval of the Planning Board;
- c. If there is one building, identification signs on the frontage of the building shall be permitted on the north, east and west facades. If there are two or more buildings, identification signs on the frontage of the building shall be permitted on



the north and east facades of the northernmost building and on the north and west facades of the other buildings. Such signs may have letters up eight feet in height. Such signs may be internally illuminated.

- d. Signs mounted on the building for the benefit of tenants shall be permitted at any location in the sole discretion of the developer. Such signs may have letters up to 24 inches high.

EXHIBIT B- FINANCIAL AGREEMENT

## **EXHIBIT B: PILOT**

Record and Return to:

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Louis L. D'Arminio, Esq.  
Price, Meese, Shulman & D'Arminio, P.C.  
50 Tice Boulevard, Suite 380  
Woodcliff Lake, New Jersey 07677

### **FINANCIAL AGREEMENT**

**THIS FINANCIAL AGREEMENT** (hereinafter "Agreement" or "Financial Agreement"), made this \_\_\_<sup>th</sup> day of \_\_\_\_\_, 2021 by and between **SHG ENGLEWOOD SOUTH V URBAN RENEWAL, LLC**, a New Jersey limited liability company qualified as an urban renewal entity in accordance with the Long Term Tax Exemption Law of 1992, constituting Chapter 431 of the Pamphlet Laws of 1991 of the State of New Jersey (the "State"), and the acts amendatory thereof and supplemental thereto (the "Tax Exemption Law", as codified in N.J.S.A. 40A:20-1 et seq.), including any successors and assigns (the "Redeveloper") and the **CITY OF ENGLEWOOD**, a municipal corporation in the County of Bergen and the State of New Jersey (the "City").

### **WITNESSETH:**

**WHEREAS**, the Governing Body of the City of Englewood (the "City Council") previously adopted Resolution No. 196-08-20-19 directing the Planning Board of the City of Englewood (the "Planning Board") to undertake a preliminary investigation to determine whether those parcels identified on the City's tax map as Block 2602, Lots 3.01, 3.02 and 3.03, which are located south of Route 4 in the vicinity of Sterling Boulevard (hereinafter the "Study Area"), met the statutory criteria to be designated as a non-condemnation "Area in Need of Redevelopment" pursuant to the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-3 et seq. (the "LRHL"); and

**WHEREAS**, as part of its preliminary investigation of the Study Area to determine whether it should be designated as a non-condemnation redevelopment area, the Planning Board authorized its consulting planner, Benecke Economics, to prepare an area of redevelopment investigation study; and

**WHEREAS**, Benecke Economics prepared a written report, which included the Study Area, entitled "Redevelopment Investigation Report" dated December 26, 2019; and

**WHEREAS**, in addition to the Redevelopment Investigation Report, Benecke Economics prepared a map showing the boundaries of the proposed redevelopment area and locations of the parcels of property included therein, along with a statement setting forth the basis for its investigation in accordance with the LRHL; and

**WHEREAS**, the Planning Board held a public hearing on January 9, 2020 with notice having been properly given pursuant to N.J.S.A. 40A:12A-6(b)(3); and

**WHEREAS**, at the January 9, 2020 public hearing the Planning Board reviewed the area in need study, the map and associated documents and heard testimony from Benecke Economics; and

**WHEREAS**, at the January 9, 2020 public hearing, members of the general public were given an opportunity to be heard and to address questions to the Planning Board concerning the potential designation of the Study Area as a non-condemnation redevelopment area; and

**WHEREAS**, after completing its investigation and public hearing on the matter, the Planning Board concluded that there was sufficient credible evidence to support findings that satisfy the criteria set forth in the LRHL, particularly, N.J.S.A. 40A:12A-5 et seq. for designating the Study Area as a non-condemnation redevelopment area and that said designation is necessary for the effective redevelopment of the area comprising the Study Area; and

**WHEREAS**, on January 14, 2020 the Planning Board transmitted its recommendation that the City Council designate the Study Area as a non-condemnation redevelopment area pursuant to the LRHL; and

**WHEREAS**, the City Council considered the Planning Board's recommendation and adopted Resolution No. 072-02-18-20 on February 18, 2020 designating the Study Area as a non-condemnation redevelopment area in accordance with the Planning Board's recommendation and the LRHL; and

**WHEREAS**, the City Council has adopted an ordinance approving and adopting the Redevelopment Plan entitled Redevelopment Plan Block 2602, Lots 3.01, 3.02 and 3.03 (the "Redevelopment Plan") 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 together with the Tax Exemption Law, the "Acts"); and

**WHEREAS**, the Redevelopment Plan relates to certain properties within the City, specifically Block 2602, Lots 3.01, 3.02 and 3.03 on the office tax map of the City of Englewood, New Jersey (collectively the "Redevelopment Area"); and

**WHEREAS**, on October 27, 2020, the City Council adopted Resolution No. 220-10-27-20 authorizing the execution of a redevelopment agreement; and

**WHEREAS**, the Redeveloper has been designated as redeveloper of the Redevelopment Area; and

**WHEREAS**, on \_\_\_\_\_, 2020, the City and the Redeveloper entered into that certain agreement (the “Redevelopment Agreement”) governing the redevelopment of the Redevelopment Area; and

**WHEREAS**, pursuant to and in accordance with the provisions of the Tax Exemption Law, the City is authorized to provide for tax abatement within a redevelopment area and for payments in lieu of taxes; and

**WHEREAS**, the Redeveloper has submitted an application to the City for the approval of an urban renewal project, as such term is used in the Tax Exemption Law, all in accordance with N.J.S.A. 40A:20-8 (the “Exemption Application”, a copy of which is attached hereto as Exhibit A); and

**WHEREAS**, on \_\_\_\_\_, 2021, the City Council finally adopted Ordinance No. \_\_\_\_\_ granting the long term tax exemption requested by the Redeveloper, subject to the terms and conditions of this Financial Agreement and authorizing the execution and delivery of this Financial Agreement (the “Ordinance”, a copy of which is attached hereto as Exhibit B); and

**WHEREAS**, the City and the Redeveloper have reached agreement with respect to, among other things, the terms and conditions relating to the Annual Service Charges, as such term is defined herein, and desire to execute this Financial Agreement.

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

## **ARTICLE I GENERAL PROVISIONS**

### **SECTION 1.01      General Definitions**

(a)      The following terms shall have the respective meanings ascribed to such terms in the preambles:

Acts  
Agreement  
City  
Exemption Application  
Financial Agreement  
Ordinance  
Redeveloper  
Redevelopment Agreement  
Redevelopment Area  
Redevelopment Law  
Tax Exemption Law

(b) The following terms as used in this Financial Agreement shall, unless the context clearly requires otherwise, have the following meanings:

Allowable Net Profit – The annual amount of Net Profit not otherwise in excess of the Allowable Profit Rate.

Allowable Profit Rate - The annual percentage rate as set forth in N.J.S.A. 40A:20-3(b).

Annual Service Charge - The annual amount of payments in lieu of taxes due and payable by the Redeveloper or other Owner of the Redevelopment Area to the City as calculated in accordance with the terms hereof. The term Annual Service Charge shall have the same meaning, purpose, force and effect, as the term “Annual Service Charge” shall have in accordance with the Acts.

Auditor’s Report - A complete financial statement, the contents of which have been prepared in a manner consistent with GAAP and that fully details all items as required by the Tax Exemption Law, including without limitation, (a) the terms and interest rate on any mortgage(s) associated with the Redevelopment Area, and/or any Improvements related thereto, (b) the Net Profit for the period shown, including the calculation thereof, and (c) such details as may relate to the financial affairs of the Owner and to its operation and performance hereunder, and that has been certified as to its conformance with such standards by a certified public accountant who is, or whose firm is, licensed to practice that profession in the State.

Certificate of Occupancy - The document issued by the City in accordance with the New Jersey Administrative Code, authorizing the occupancy of a building or structure, or a portion thereof, on the Redevelopment Area.

Cumulative Allowable Net Profit – In accordance with the calculation set forth in the Tax Exemption Law, including without limitation N.J.S.A. 40A:20-15(a) with respect to the Redeveloper, as the Owner as of the date hereof, an amount equal to the sum of the Allowable Net Profit in each year from and including the year that any Improvement is completed up to and including the year for which the Cumulative Allowable Net Profit is being calculated, and (b) with respect to any subsequent Owner, an amount equal to the sum of the Allowable Net Profit of such subsequent Owner from and including the year that such subsequent Owner purchased, or otherwise obtained, title to the Redevelopment Area up to and including the year for which the Cumulative Allowable Net Profit is being calculated.

Cumulative Net Profit – In accordance with the calculation set forth in the Tax Exemption Law, including without limitation N.J.S.A. 40A:20-15(a) with respect to the Redeveloper, as the Owner as of the date hereof, an amount equal to the sum of the Net Profit of the Redeveloper in each year from and including the year that any Improvement is completed up to and including the year for which the Cumulative Net Profit is being calculated, and (b) with respect to any subsequent Owner, an amount equal to the sum of the Net Profit of such subsequent Owner from and including the year that such subsequent Owner purchased, or otherwise obtained, title to the Redevelopment Area up to and including the year for which the Cumulative Net Profit is being calculated.

Excess Net Profit – In any given year, an amount equal to the sum of (a) the Cumulative Net Profit, minus (b) the Cumulative Allowable Net Profit.

GAAP - Generally Accepted Accounting Principles as in effect from time to time in the United States of America.

Gross Revenue – Shall have the meaning applied to such term in, and shall be calculated in accordance with, the Tax Exemption Law, specifically N.J.S.A. 40A:20-3(a), Section 4.05, and Article VII hereof.

Improvements – Shall mean, individually or collectively, as the case may be, the improvements approved by the City to be constructed and/or renovated on, in or under the Redevelopment Area in accordance with the Redevelopment Agreement.

In Rem Tax Foreclosure - A summary proceeding by which the City may enforce the lien for taxes or other municipal charges due and owing by a tax sale, all in accordance with the Tax Sale Law.

Land – The land upon which the Project shall be located, identified as Block 2602, Lots 3.01, 3.02 and 3.03.

Land Taxes - The taxes assessed on the value of the land portion, exclusive of the value of any Improvements related thereto, of the Redevelopment Area in accordance with generally applicable law.

Material Condition – Shall have the meaning applied to such term as set forth in Section 4.06 hereof.

Minimum Annual Service Charge – The minimum annual service charge shall be the amount of the total taxes levied against all real property in the area covered by the Project in the last full tax year prior to the date of this Agreement. The Minimum Annual Service Charge shall be paid in each year in which the Annual Service Charge would be less than the Minimum Annual Service Charge.

Net Profit – The annual Gross Revenue of the Owner less all annual operating and non-operating expenses of the Owner, all determined in accordance with GAAP and the Tax Exemption Law, specifically N.J.S.A. 40A:20-3(c).

Owner – Shall mean any person, company or entity that shall obtain, accept or claim fee title ownership of the Redevelopment Area and the Improvements whether by sale, grant, award, gift, transfer or otherwise, it being hereby expressly acknowledged by the parties hereto that as of the date hereof the Redeveloper is the Owner.

Project – Shall have the meaning ascribed to such term in the Exemption Application and the Redevelopment Agreement.

Project Agreements - Shall mean, individually or collectively, as the case may be, the Redevelopment Agreement and any and all other agreements by and between the Redeveloper, and/or the Owner, and the City.

Project Completion Date - The date on which the Improvements shall be completed as set forth in the Construction Schedule attached hereto as Exhibit E.

Tax Assessor - The tax assessor for the City.

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

Total Project Cost – The project costs for the Project included in each of the categories set forth in N.J.S.A. 40A:20-3(h), exclusive of the permitted exclusions included therein, provided that the Redeveloper shall deliver to the City a certification by an independent and qualified architect or engineer of such permitted excluded costs.

Urban Renewal Entity – Shall have the meaning as such term is defined, used and applied in the Tax Exemption Law.

## **SECTION 1.02** Exhibits Incorporated

All exhibits and schedules referred to in this Financial Agreement and attached hereto are incorporated herein and made part hereof. Such exhibits and schedules include:

### Schedules

Schedule 1	Metes and bounds description of all real property located within the Redevelopment Area
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### Exhibits

Exhibit A	Exemption Application
Exhibit B	Ordinance
Exhibit C	Gross Revenue Schedule
Exhibit D	Formation Documents of the Redeveloper, as the Owner as of the date hereof
Exhibit E	Construction Schedule



## **ARTICLE II**

### **APPROVAL**

#### **SECTION 2.01**      City Approval of Tax Exemption

(a) Pursuant to the Ordinance, effective with the date of this Agreement, any and all Improvements shall be exempt from taxation as provided for herein and in the Tax Exemption Law. In accordance with the Tax Exemption Law, including without limitation N.J.S.A. 40A:20-12, such tax exemption shall constitute a single continuing exemption from local property taxation for the duration of this Financial Agreement. The Project shall be as described in the Exemption Application and the Redevelopment Agreement and the Owner hereby expressly covenants, warrants and represents that the Redevelopment Area, including any Improvements related thereto, shall be used, managed and operated for the purposes set forth in the Exemption Application and in accordance with the Redevelopment Agreement and the Acts. Prior to the Project Completion Date, the Land within the Redevelopment Area, excluding any and all Improvements related thereto, shall be assessed and taxed according to the general law applicable to all other non-exempt property located within the City.

#### **SECTION 2.02**      City Approval of Project to be Undertaken by the Owner

Approval is hereby granted by the City to the Redeveloper for the development, financing, acquisition, construction, management and operation of the Project, which shall in all respects comply and conform to the Redevelopment Agreement and all applicable statutes of the State, and the lawful regulations made pursuant thereto, governing land, building(s) and the use thereof. Attached hereto as Exhibit D is a true copy of the certificate of formation of the Redeveloper, as the Owner of the Redevelopment Area as of the date hereof.

#### **SECTION 2.03**      Improvements to be Constructed

The Redeveloper hereby covenants, warrants and represents that it will construct and/or renovate the Redevelopment Area in accordance with the Redevelopment Agreement.

#### **SECTION 2.04**      Construction Schedule

The Redeveloper covenants, warrants and represents to diligently undertake construction and complete the Project in accordance with the Construction Schedule attached hereto as Exhibit E, provided, however, that the Construction Schedule may be amended by mutual written consent, which may not be unreasonably withheld by the City if the Redeveloper demonstrates that compliance therewith is not feasible due to unforeseen circumstances.

**ARTICLE III**  
**DURATION OF AGREEMENT**

**SECTION 3.01**      Term

(a) It is hereby expressly understood and agreed by the parties that this Agreement, including the obligation to pay the Annual Service Charges required under Article IV hereof and the tax exemption granted and referred to in Section 2.01 hereof, shall, provided that there shall not be a default under this Financial Agreement or the Project Agreements, remain in effect, for a period of twenty years (20) years from the Project Completion Date, but in no event longer than twenty-five (25) years from the date of this Agreement. Upon the expiration of the tax exemption granted and provided for herein, the Redevelopment Area, including any Improvements related thereto, shall thereafter be assessed and taxed according to the general law applicable to all other non-exempt property located within the City.

(b) If at any time during the term of this Financial Agreement there shall be a default by the Owner of any or all of the provisions of this Financial Agreement or the Project Agreements, which default shall not have otherwise been cured or remedied in accordance with the terms hereof or thereof, this Financial Agreement shall automatically terminate and the Redevelopment Area, including any Improvements related thereto, shall thereafter be assessed and taxed according to the general law applicable to all other non-exempt property located within the City.

(c) Upon the expiration of the tax exemption provided for herein, all restrictions and limitations of this Financial Agreement imposed upon an Owner and the Redevelopment Area, including the Improvements related thereto, including (i) the requirement to make payment of any Annual Service Charge due and owing hereunder, (ii) the requirement to make payment to the City of any reserves, Net Profit, or Excess Net Profit, if applicable, in accordance with Article VII hereof, and (iii) any and all related and available remedies of the City shall terminate upon the end of the fiscal year of the Owner, including but not limited to the payments of Annual Service Charges, in accordance with N.J.S.A. 40A:20A-13, provided however, that the Owner has rendered, and the City has accepted, the Owner's final accounting in accordance with N.J.S.A. 40A:20A-12.

**SECTION 3.02**      Voluntary Termination

(a) In accordance with the Tax Exemption Law, including without limitation N.J.S.A. 40A:20-9(g) and 13, at any time after one (1) year from the Project Completion Date, an Owner may voluntarily terminate this Financial Agreement and relinquish its status under the Acts which Voluntary Termination shall be deemed as the end of the Term hereof, as described in paragraph 3.01, above.

(b) Notwithstanding anything contained in this Financial Agreement to the contrary, in the event that an Owner may voluntarily terminate this Financial

Agreement, all in accordance with Section 3.02(a) hereof, the tax exemption provided for in this Financial Agreement shall no longer be applicable to the Redevelopment Area or any Improvements related thereto, and the Redevelopment Area, including any and all of Improvements related thereto, shall thereafter be assessed and taxed according to the general law applicable to all other non-exempt property located within the City, with the later no longer being obligated to make payments for Annual Services Charges.

(c) Notwithstanding anything contained in this Financial Agreement to the contrary, in the event that an Owner shall voluntarily terminate this Financial Agreement, all in accordance with Section 3.02(a) hereof, the date of such termination shall be deemed the close of the fiscal year of the Owner, all in accordance with the Tax Exemption Law, including without limitation N.J.S.A. 40A:20-13.

### **SECTION 3.03      Apportionment**

Notwithstanding anything contained in this Financial Agreement to the contrary, in the event that this Financial Agreement shall be terminated, the procedure for the apportionment of any taxes and/or Annual Service Charges, as applicable, shall be the same as would otherwise be applicable to, in accordance with the laws of the State, any other property located within the City upon a change in the exemption or tax status of such property except taxes shall be due only for the tax year in which the Exemption has been terminated under Section 3 of this Agreement and there shall be no look back, omitted, added, rollover or partial assessments for any time prior to the Exemption termination.

## **ARTICLE IV ANNUAL SERVICE CHARGE**

### **SECTION 4.01      Commencement of Annual Service Charge**

The Redeveloper shall make payment of the Annual Service Charge commencing on the Project Completion Date.

### **SECTION 4.02      Payment of Annual Service Charge**

(a) The Annual Service Charge shall be due and payable in equal quarterly installments on each November 1, February 1, May 1 and August 1 after the Project Completion Date. The Annual Service Charge shall be prorated in the year in which the Project Completion Date begins and the year in which this Financial Agreement shall terminate. In the event that the Owner fails to timely pay any installment, the amount past due shall bear the highest rate of interest permitted under applicable State law in the case of unpaid taxes or tax liens on land until paid.

(b) Each installment payment of the Annual Service Charge is to be made to the City and shall be clearly identified as "Annual Service Charge Payment for the \_\_\_\_\_ Urban Renewal Project".

(c) If any installment of the Annual Service Charge is not paid to the City in accordance with this Financial Agreement on the date and in the full amount scheduled to be paid, the Owner hereby expressly waives any objection or right to challenge the use by the City of the enforcement of remedies to collect such installment of the Annual Service Charge as are afforded the City by law, including without limitation the Tax Sale Law.

#### **SECTION 4.03      Annual Service Charge**

(a) In consideration of the aforesaid exemption from taxation on the Improvements, the Redeveloper shall make payment to the City of the Annual Service Charge. The City and the Redeveloper hereby agree that the Annual Service Charge shall be calculated as follows in accordance with the Gross Revenue Schedule attached as Exhibit C, or the Minimum Annual Service Charge, whichever is greater:

(i) Commencing on the Project Completion Date and for years 1 through 10, 10.75% of the Project's Annual Gross Revenue;

(ii) For years 11 through 15, 12.5% of the Project's Annual Gross Revenue.

(iii) For years 16 through 20, 15% of the Project's Annual Gross Revenue.

(b) The Annual Service Charge for the Project shall be calculated from the first day of the month following the issuance by the City of a Certificate of Occupancy for the Project and shall be adjusted from time to time based upon the submission by the Redeveloper of an annual certified financial audit. The Minimum Annual Service Charge shall not be reduced through any tax appeal on the Land during the period that this Agreement shall be in force;

(c) The Redeveloper expressly agrees that the aforesaid Annual Service Charge shall be made 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 City's receipt of the Redeveloper's Annual. In the event that the Redeveloper fails to so pay, the amount unpaid shall bear the highest rate of interest permitted in the case of unpaid taxes or liens until paid.

(d) In accordance with the Tax Exemption Law, including without limitation, N.J.S.A. 40A:20-12, each year during the life of this Agreement, the Owner shall be entitled to a credit against the Annual Service Charge equal to the amount, without interest, of the Land Taxes paid by it during the period encompassed in the Annual Service Charge.

(e) As set forth in the Tax Exemption Law, including without limitation N.J.S.A. 40A:20-12, and notwithstanding anything contained in this Financial Agreement to the contrary, the Annual Service Charge shall in no event be less than the total taxes levied against the Redevelopment Area, including any Improvements related thereto, if any, in the last full tax year in which the Redevelopment Area, including any Improvements related thereto, was subject to taxation (i.e. the last year proceeding the execution of this Agreement).

#### **SECTION 4.04      Municipal Charges**

The Owner hereby expressly acknowledges, understands, and agrees that, in addition to Land Taxes and Annual Service Charges, it shall be responsible for the payment (without any credit whatsoever hereunder) of all other applicable municipal charges that may, from time to time, be lawfully and equitably assessed upon the Redevelopment Area, including, without limitation, any and all special benefit assessments, water and sewer charges, and other municipal charges, whether presently existing or hereinafter imposed, and that the City may enforce such assessments and charges in any manner (including, but not limited to, foreclosure or tax sale) permitted by applicable law. This shall not include that portion of the Annual Service Charge which the City must submit to the County of Bergen, which shall be paid from the Annual Service Charge paid by Redeveloper and not be a separate charge to Redeveloper.

#### **SECTION 4.05      Gross Revenue**

Gross Revenue for the Redeveloper shall be calculated utilizing the revenue projections and percentage deductions set forth in the Gross Revenue Schedule attached hereto as Exhibit C. The parties hereby acknowledge and agree that the method for calculating Gross Revenue set forth in Exhibit C shall be the basis for determining annual Gross Revenue during the term of the exemption but based on actual revenues received. The Gross Revenue Schedule includes percentages and estimated figures that may be adjusted based on the actual revenue and costs of the Project.

#### **SECTION 4.06      Material Conditions**

It is expressly agreed and understood that (a) all payments of Land Taxes, Annual Service Charges and other municipal charges, and any interest payments, penalties or costs of collection due thereon, and (b) compliance with the Project Agreements are material conditions of this Agreement ("Material Conditions"). If any other term, covenant or condition of this Financial Agreement or the Exemption Application, as to any person or circumstance shall, to any extent, be determined to be invalid or unenforceable by virtue of a non-appealable order of a court of competent jurisdiction, 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 remaining term, covenant or condition of this Financial Agreement shall be valid and enforced to the fullest extent permitted by law.

### **ARTICLE V CERTIFICATE OF OCCUPANCY**

#### **SECTION 5.01      Certificate of Occupancy**

It is understood and agreed that the Redeveloper shall remain obligated to make application for and make all good faith efforts which are reasonable to obtain Certificate(s) of Occupancy in a timely manner for the Redevelopment Area and the Improvements related thereto.

**SECTION 5.02      Filing of Certificate of Occupancy**

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

**ARTICLE VI**  
**CITY DETERMINATIONS**

**SECTION 6.01      Benefits and Importance of Tax Exemption**

In accordance with the Tax Exemption Law, including without limitation N.J.S.A. 40A:20-11, the City hereby finds and determines that this Financial Agreement is to the direct benefit of the health, welfare and financial well-being of the City and its citizens because:

**ARTICLE VII**  
**ANNUAL AUDITS**

**SECTION 7.01      Accounting System**

The Owner hereby expressly covenants and agrees to maintain a system of accounting and internal controls established and administered in accordance with GAAP consistently applied, and as otherwise prescribed in the Tax Exemption Law, during the term of this Agreement.

**SECTION 7.02      Periodic Reports**

In accordance with the Tax Exemption Law, including without limitation N.J.S.A. 40A:20-9(d), the Owner shall submit, on an annual basis and within ninety (90) days after the close of the calendar year or the Owner's fiscal year, depending upon the Owner's accounting basis, its Auditor's Report certified by an independent certified public accountant for the preceding fiscal or calendar year to the Mayor, the City Council and the City Clerk, who shall advise those municipal officials required to be advised, and to the Director of the Division of Local Government Services in the New Jersey Department of Community Affairs.

### **SECTION 7.03      Inspection**

In accordance with the Tax Exemption Law, including without limitation N.J.S.A. 40A:20-9(c), upon the request of the City or the State, the Owner shall permit the inspection of the Redevelopment Area, including any Improvements related thereto, by the requesting party or its agents. It also shall permit, upon request of the City or the State, reasonable examination and audit of its books, contracts, records, documents and papers by representatives duly authorized by the City or the State. Such inspection, examination or audit shall be made during the hours of the business day, in the presence of any officer or agent of the Owner. To the extent reasonably possible, the inspection will not materially interfere with the construction or operation of the Project. Further, the Redeveloper shall be entitled to withhold from examination or review information or documentation which it deems to be proprietary in the operation of its business so long as the information provided to the City is in reasonable detail so as to permit the City to examine and verify those financial items relevant to payments being made under the terms of this Agreement, including but not limited to the Annual Service Charge and any Excess Net Profit

### **SECTION 7.04      Payment of Dividends and Profits**

In accordance with the Tax Exemption Law, including without limitation N.J.S.A. 40A:20-9(a) and 15, during the period of tax exemption as provided herein, an Owner that is a limited dividend entity, shall not make any distribution of profits, or pay or declare any dividend or other distribution on any shares of any class of its stock, unless, after giving effect thereto, the Cumulative Allowable Net Profit preceding the date of the proposed dividend or distribution would otherwise equal or exceed the amount of all dividends and other distributions paid or declared on any shares of its stock since its incorporation or establishment.

### **SECTION 7.05      Limitation on Profits and Reserves**

(a) During the term of the tax exemption provided for herein, the Owner's profits shall be limited according to the provisions of N.J.S.A. 40A:20-15 of the Tax Exemption Law and the definitions set forth therein. For any one accounting period in which the Owner's Net Profit exceeds the Allowable Net Profit, the Excess Net Profit shall be paid to the City as an additional Annual Service Charge within one hundred twenty (120) days of the close of the Owner's fiscal year.

(b) During the term of this Financial Agreement, the Owner may maintain a separate reserve against vacancies, unpaid rents and other contingencies in an amount not to exceed the Owner's annual Gross Revenues for the last full fiscal year and the Owner may retain such part of the Excess Net Profit as is necessary to eliminate any deficiency in the reserve as provided in the Tax Exemption Law (N.J.S.A. 40A:20-15). Such 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 the preceding year's Gross Revenue.

**ARTICLE VIII**  
**SALE AND/OR TRANSFER OF PARCEL**

**SECTION 8.01**      Approval

(c) Upon the completion of the Project and provided the Owner is not in default of this Financial Agreement or any Project Agreement, an Owner may sell, transfer, lease, or otherwise convey all of the Redevelopment Area, including any Improvements related thereto, provided that (i) such sale, transfer, lease, or other conveyance is to a purchaser, transferee or lessee that is an Urban Renewal Entity (ii) such transferee Urban Renewal Entity has expressly assumed, in writing, all of the obligations set forth in this Financial Agreement, (iii) such transferee Urban Renewal Entity has submitted an application to the City Council in accordance with the Tax Exemption Law, including without limitation N.J.S.A. 40A:20-8 and the City Council shall have approved such application, which such approval shall not be unreasonably withheld, delayed or conditional, and (iv) such sale, transfer, lease or other conveyance would not otherwise result in the Redevelopment Area, and the Improvements related thereto, being no longer subject to local property taxation in accordance with generally applicable law and this Financial Agreement. Any purported sale, transfer, conveyance or lease of a Parcel, including any Improvement related thereto, in violation of this Section 8.01(a) shall be void *ab initio*.

(b) In accordance with the Tax Exemption Law, including without limitation N.J.S.A. 40A:20-6, 15, in the event of any sale or other transfer of fee title ownership, in accordance with subsection (a) above, by an Owner that is a limited dividend entity, such Owner shall no longer be subject to, bound by, or otherwise governed by this Financial Agreement, provided however, that within ninety (90) days after the date of the end of the Owner's fiscal year in which such sale or other transfer of fee title occurred, such Owner shall pay to the City any reserves it was authorized to maintain, if any, and any and all Excess Net Profits, if any, all in accordance with Section 7.05(a) hereof.

(c) In accordance with the Tax Exemption Law, including without limitation N.J.S.A. 40A:20-6, 16, in the event of any sale or other transfer of fee title ownership, in accordance with subsection (a) above, by an Owner that is a nonprofit entity, such Owner, shall no longer be subject to, bound by, or otherwise governed by this Financial Agreement, provided however, that within ninety (90) days after the date of the end of the Owner's fiscal year in which such sale or transfer occurred, such Owner shall pay to the City any reserves it was authorized to maintain, if any, and any and all Net Profits, if any, all in accordance with Section 7.05(b) hereof.

(d) Prior to any such sale or transfer as may be permitted in accordance with subsection (a) above, the City may levy an administrative fee equal to the then applicable Annual Service Charge upon such transferee Urban Renewal Entity for processing the tax exemption application to be submitted to the City by such transferee Urban Renewal Entity in accordance with Section 8.01(a)(iv) above.



**SECTION 8.02**      Prohibitions

The Owner hereby expressly covenants, warrants and represents that it shall not, without the prior written consent of the City, in the City's sole discretion, convey, mortgage or transfer, all or a part of the Redevelopment Area so as to sever, disconnect or divide the Improvements from the Land.

**SECTION 8.03**      Subordination of Fee Title

It is expressly acknowledged, understood and agreed that the Owner has the right, subordinate to the lien, as a matter of law, of the Annual Service Charge, and to the rights of the City hereunder, to encumber the fee title to the Redevelopment Area, including any Improvements related thereto, and that any such subordinate encumbrance shall not be deemed to be a violation of this Financial Agreement.

**SECTION 8.04**      Operation of Project

At all times during the term of this Agreement, the Redevelopment Area, including any Improvements related thereto, shall be operated in accordance with all applicable laws.

**ARTICLE IX**

**WAIVER**

**SECTION 9.01**      Waiver

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

**ARTICLE X**

**NOTICE**

**SECTION 10.01**      Notice

Any notice required hereunder to be sent by any party to another party shall be sent to all other parties hereto simultaneously by certified or registered mail, return receipt requested, hand delivery, or reputable overnight delivery service for next business day delivery, as follows:

(d) When sent to the Redeveloper, as the Owner as of the date hereof, it shall be addressed as follows:

SHG Englewood South V Urban Renewal, LLC  
10 Sterling Blvd., Suite 401  
Englewood, N.J. 07631  
Attn: Douglas M. Cohen, Esq.  
General Counsel

With copy to:

Louis L. D'Arminio, Esq.  
Price, Meese, Shulman & D'Arminio, P.C.  
50 Tice Boulevard, Suite 380  
Woodcliff Lake, New Jersey 07677

(b) When sent to an Owner other than the Redeveloper, it shall be addressed to such Owner's address as set forth in the tax records of the City;

(c) If to the City:

City of Englewood  
2-10 North Van Brunt Street  
Englewood, New Jersey 07631  
Attn: City Manager

## **ARTICLE XI** **COMPLIANCE**

### **SECTION 11.01     Statutes and Ordinances**

The Owner hereby expressly agrees at all times prior to the expiration or other termination of this Financial Agreement to remain bound by the provisions of the Project Agreements, if applicable, and all federal and State law, including without limitation, the Acts and any lawful ordinances and resolutions of the City. The Owner's failure to comply with the Project Agreements, if applicable, and such statutes, ordinances or resolutions shall constitute a violation and breach of this Financial Agreement.

## **ARTICLE XII** **CONSTRUCTION**

**SECTION 12.01**      Construction

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

**ARTICLE XIII**  
**INDEMNIFICATION**

**SECTION 13.01**      Indemnification

(a) It is hereby expressly acknowledged, understood and agreed that in the event the City shall be named as party defendant in any action by reason of any breach, default or a violation of any of the provisions of this Financial Agreement or any challenge to the validity of this Financial Agreement or the Project Agreements, it being hereby expressly acknowledged that as of the date hereof the Redeveloper is the Owner of the Redevelopment Area and any and all Improvements related thereto, the Owner shall indemnify and hold the City harmless from and against all liability, losses, damages, demands, costs, claims, actions or expenses (including reasonable attorneys' fees and expenses) arising out of or resulting from the action or inaction of the Owner and/or by reason of any breach, default or a violation of any of the provisions of this Financial Agreement, the provisions of the Project Agreements and/or any challenge to the validity of this Financial Agreement or the Project Agreements. It is understood that the obligation to indemnify and hold the City harmless shall not apply to the intentional acts of the City or any of its employees, agents or servants.

(b) In the event the Owner alone is named a party defendant to any action of the type set forth in subsection (a) above, the City maintains the right to intervene as a party thereto, to which intervention the Owner hereby expressly consents, and to carry out their own defense, the reasonable cost of which shall be borne by the Owner.

**ARTICLE XIV**  
**DEFAULT**

**SECTION 14.01**      Default

A default hereunder shall be deemed to have occurred if the Owner fails to conform to the terms of this Financial Agreement, the Project Agreements, if applicable, or fails to perform any obligation imposed upon the Owner by statute, ordinance or lawful regulation, it being hereby expressly acknowledged and understood by the parties hereto that in the event of a default by an Owner which default shall not otherwise be

cured or remedied in accordance with the terms of this Financial Agreement or the Project Agreements, as applicable, the tax exemption granted herein shall immediately cease and shall have no further force and effect and the Redevelopment Area and the Improvements shall thereafter be assessed and taxed according to the general law applicable to all other non-exempt property located within the City.

#### **SECTION 14.02**      Cure Upon Default

Should the Owner be in default of any obligation under this Agreement, the City shall notify the Owner in writing of said default. Said notice shall set forth with particularity the basis of said default. Except as otherwise limited by law, the Owner shall have one hundred twenty days (120) days to cure any default. In the case of a default which cannot with diligence be remedied or cured, or the remedy or cure of which cannot be commenced, within the time periods set forth herein, the Owner shall have such additional time as reasonably necessary to remedy or cure such default provided that the Owner shall at all times act be acting with diligence, and in good faith, to remedy or cure such default as soon as practicable. In the event Owner fails to correct said default in accordance with the provisions set forth herein, then The City shall have the right to pursue all rights and remedies available to it in law.

#### **SECTION 14.03**      Remedies

In the event of a default of this Agreement by any of the parties hereto or a dispute arising between the parties in reference to the terms and provisions as set forth herein, other than those items specifically included as Material Conditions herein, any party may apply to the Superior Court of New Jersey, Bergen County Vicinage by an appropriate proceeding, to settle and resolve said dispute in such fashion as will tend to accomplish the purposes of the Acts. In the event the Superior Court shall not entertain jurisdiction or, in the event of a breach of Material Condition, 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 a fashion to accomplish the purpose of said laws. Costs for said arbitration shall be borne equally by the parties involved in the arbitration. In the event of a default on the part of the Owner to pay any installment of the Land Taxes or the Annual Service Charge required by Article IV hereof, the City, in addition to its other remedies, specifically and without limitation, reserves the right to proceed against the Land and premises, in the manner provided by law, including without limitation, the Tax Sale Law, and any act supplementary or amendatory thereof. Notwithstanding paragraph 14.04, *infra*, in the event that the grounds of default is solely based upon the nonpayment of land taxes and or the Annual Service Charge, and the City seeks to collect any past due land taxes or Annual Service Charges under the New Jersey Tax Sale law and subsequent tax sale certificate issuance and foreclosure proceedings, it shall be the exclusive methodology under which the City may collect same and it shall waive its right to proceed in any form by arbitration or other means once selected. Whenever the word "Taxes" appears, or is applied, directly or implied, to mean taxes or municipal liens on land, such statutory provisions shall be read, as far as it is pertinent to this Agreement, as if the Annual Service Charge were taxes or

municipal liens on land. In either case, however, the Owner does not waive any defense it may have to contest the rights of the City to proceed in the above-mentioned manner.

**SECTION 14.04      Remedies Upon Default Cumulative; No Waiver**

Subject to the provisions of Section 14.03 hereof and the other terms and conditions of this Agreement, all of the remedies provided in this Financial Agreement to the City, and all rights and remedies granted to it by law and equity shall be cumulative and concurrent and no determination of the invalidity of any provision of this Financial Agreement shall deprive the City of any of their remedies or actions against the Owner or the Redevelopment Area, including any Improvements related thereto, because of the Owner's failure to pay Land Taxes, the Annual Service Charge and/or any applicable municipal service charges and interest payments. This right shall only apply to arrearages that are due and owing at the time, and the bringing of any action for Land Taxes, Annual Service Charge or other charges, or for breach of covenant or the resort of any other remedy herein provided for the recovery of Land Taxes, Annual Service Charges or other charges shall not be construed as a waiver of the right to proceed with an In Rem Foreclosure action consistent with the terms and provisions of the Tax Sale Law and this Agreement. In addition to all of its other rights and remedies, in the event of a default of this Financial Agreement, the City may terminate this Financial Agreement and the tax exemption granted herein shall immediately cease and shall have no further force and effect and the Redevelopment Area and the Improvements shall thereafter be assessed and taxed according to the general law applicable to all other non-exempt property located within the City.

**ARTICLE XV  
FORCE MAJEURE**

**SECTION 15.01      Force Majeure**

Neither party shall be liable to the other for failure to perform its obligations under this Financial Agreement due to fire, flood, strikes, or other industrial disturbances, accidents, war, riot, insurrection, or other causes beyond the reasonable control of the parties.

**ARTICLE XVI  
MISCELLANEOUS**

**SECTION 16.01      Conflict**

(a) The parties agree that in the event of a conflict between the Exemption Application and this Financial Agreement, the language in this Financial Agreement shall govern and prevail.

(b) The parties agree that in the event of a conflict between the Project Agreements and this Financial Agreement, the language in the Project Agreements shall govern and prevail.

(c) The parties agree that in the event of a conflict between this Financial Agreement and the Tax Exemption Law, the Tax Exemption Law shall govern and prevail.

#### **SECTION 16.02**      Oral Representations

There have been no oral representations made by any of the parties hereto which are not contained in this Financial Agreement. This Financial Agreement, the Ordinance, the Exemption Application, and the Project Agreements constitute the entire agreement between the parties and there shall be no modifications thereto other than by a written instrument executed by the parties hereto and delivered to each of them. Notwithstanding anything contained herein to the contrary, no waiver of any rights granted hereunder and no modification or amendment to this Financial Agreement shall be effective, or otherwise have any force and effect without the express written consent of the parties hereto.

#### **SECTION 16.03**      Owner's Consent

The Owner hereby acknowledges, consents and agrees (a) to the amount of the Annual Service Charge and to the liens established in this Financial Agreement, (b) that it shall not contest the validity or amount of any such lien, and (c) that its remedies shall be limited to those specifically set forth herein and otherwise provided by law.

#### **SECTION 16.04**      Financing Matters

The financial information required by the final paragraph of N.J.S.A. 40A:20-9 is set forth in the Exemption Application.

#### **SECTION 16.05**      Filing with Local Government Services

In accordance with N.J.S.A. 40A:20-12, upon execution of this Financial Agreement, the City shall cause this Financial Agreement and the Ordinance to be filed with the Director of the Division of Local Government Services in the Department of Community Affairs of the State.

#### **SECTION 16.06**      Estoppel Certificate

Within thirty (30) days following a written request therefor by the Redeveloper, any other Owner, or any mortgagee, purchaser, tenant or other party having an interest in the Project, the City shall issue a signed estoppel certificate in reasonable form stating that (a) this Financial Agreement is in full force and effect, (b) to the best of the City's knowledge, no default has occurred under this Financial Agreement (nor any event

which, with the passage of time and the giving of notice would result in the occurrence of a default) or stating the nature of any default, and (c) stating any such other reasonable information as may be requested. In the event the estoppel certificate discloses a default, it shall also state the manner in which such default may be cured.

#### **SECTION 16.07      Recording**

This entire Agreement and the Ordinance shall be filed and recorded with the Bergen County Clerk such that this Financial Agreement and the Ordinance shall be reflected upon the land records of the County of Bergen as a municipal lien upon and a covenant running with the Redevelopment Area, including any Improvements related thereto. Upon the submission of the actual certified Total Project Costs by the Redeveloper to the City in accordance with Section 4.05 hereof, the Gross Revenue Schedule set forth in Exhibit C attached hereto shall be automatically updated and replaced with the actual certified Total Project Costs and such updated Exhibit C shall be deemed to be a part of this Agreement as if originally set forth herein.

#### **SECTION 16.08      Delivery to Tax Assessor**

The Clerk of the City shall deliver to the Tax Assessor a certified copy of the Ordinance along with an executed copy of this Financial Agreement. Such delivery by the City Clerk to the Tax Assessor shall constitute the certification as required in accordance with the Tax Exemption Law, including without limitation N.J.S.A. 40A:20-12. Upon such delivery, the Tax Assessor shall abide by its terms and implement the tax exemption granted and provided herein and shall continue to enforce the tax exemption, without further certification by the City Clerk, until the expiration of the tax exemption in accordance with the terms hereof.

#### **SECTION 16.09      Amendments**

This Agreement may not be amended, changed, modified, altered or terminated without the written consent of the parties hereto. In the event that the Local Finance Board, in accordance with the Tax Exemption Law, specifically N.J.S.A. 40A:20-18, shall implement a financial plan that shall require modification of this Financial Agreement, the City hereby expressly covenants, warrants and represents that it shall not approve any modification if such modification would alter, adjust, amend, revise or otherwise change (a) any Annual Service Charge due hereunder, or the calculation thereof or (b) the date on which any Annual Service Charge shall be due hereunder.

#### **SECTION 16.10      Good Faith**

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

#### **SECTION 16.11      Entire Document**

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

**SECTION 16.12**     Counterparts

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

**SIGNATURES FOLLOW ON NEXT PAGE**

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

**WITNESS:**

**REDEVELOPER**

**SHG Englewood South V Urban Renewal,  
LLC**



\_\_\_\_\_

By: \_\_\_\_\_  
**Peter Hekemian, Managing Member**

**ATTEST:**

**CITY OF ENGLEWOOD**

\_\_\_\_\_  
**Yancy Wazirmas, City Clerk**  
**City Clerk**

By: \_\_\_\_\_  
**Edward H. Hynes**  
**City Manager**

**[SEAL]**

STATE OF NEW JERSEY    )

)

COUNTY OF BERGEN        )

The foregoing instrument was acknowledged before me this \_\_\_\_<sup>th</sup> day of \_\_\_\_\_, 2021, by SHG Englewood South V Urban Renewal, LLC, a New Jersey limited liability company (the “Redeveloper”), by \_\_\_\_\_, on behalf of SHG Englewood South V Urban Renewal, LLC.

---

Notary Public

Commission Expiration: \_\_\_\_\_

STATE OF NEW JERSEY )

)

COUNTY OF BERGEN )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by the City of Englewood (the "City"), a municipal corporation of the State of New Jersey, by \_\_\_\_\_, its City Manager, on behalf of the City.

---

Attorney at Law  
State of New Jersey

**SCHEDULE 1**  
**METES AND BOUNDS DESCRIPTION**  
**OF REDEVELOPMENT AREA**

**EXHIBIT A**  
**Exemption Application**

**EXHIBIT B**

**Ordinance**

**EXHIBIT C**

**Gross Revenue Schedule**

**I need to see this**

**EXHIBIT D**  
**Certificate of Formation**



**EXHIBIT E**  
**Construction Schedule**

### **Annual Service Charge Schedule**

- (i) Stage One:
  - (a) Commencing on the Project Completion Date and for years 1 through 10, 10.75% of the Project's Annual Gross Revenue;
- (ii) Stage Two:
  - (b) For years 11 through 15, 12.5% of the Project's Annual Gross Revenue
- (iii) Stage Three:
  - (c) For years 16 through 20, 15% of the Project's Annual Gross Revenue

EXHIBIT C- CERTIFICATE OF FORMATION

DEPARTMENT OF THE TREASURY  
Division of Revenue and Enterprise Services  
Business Support Services, Commercial Recording  
P.O. Box 308  
Trenton, NJ 08646  
Session Number: 3115269

Acknowledgement Printed: 02/04/2021

SHIP TO:

PRICE MEESE SHULMAN & D'ARMINIO P C  
50 TICE BOULEVARD STE 380  
WOODCLIFF LAKE, NJ 07675

Thank you for your recent work request. The following information summarizes all work requests processed and the associated fees.

If your work was rejected, it is imperative that you include this form or a copy when resubmitting corrected documents or if you are requesting a refund.

This will assist us in verifying payment and the original date the work request was submitted. Call us at (609) 292-9292 if you have any questions regarding this notice.

- 
1. Customer Number: 344950
  2. Account Number:
  3. Session Number: 3115269 , Session Date: 02/04/2021
  4. User ID: 222
  5. Comments On Work Request:

6. Received Date: 01/28/2021

7. Number of Rejected Jobs: 0

Method of Payment: Credit Card

---

Job 1 :

Job Completion Status: C CLOSED (JOB OR SESSION)

Session Number: 3115269

Work Description: FORMDT CERTIFICATION OF AMENDMENT AND FORMATION

Job Number: 5464705

Filing Number: 600471527

Processed Date: 04-FEB-21

Entity Name: SHG ENGLEWOOD SOUTH V URBAN RE

Comments On Job:

Continued on next page ...

OFFICIAL RECEIPT \*\*\* THIS IS NOT A BILL \*\*\*

\* Please retain a copy for your records to verify check and credit card billing.

DEPARTMENT OF THE TREASURY  
Division of Revenue and Enterprise Services  
Business Support Services, Commercial Recording  
P.O. Box 308  
Trenton, NJ 08646  
Session Number: 3115269

FEE CODE	FEE DESCRIPTION	FEE	QTY	TOTAL
CERT_2	CERTIFICATE OF INC	125.00	1	\$125.00
CPCHRG	FAX COPY TRANSMITTAL CHARGES	1.00	3	\$3.00
LLPEX2	EXPEDITED INCREMENT - LLC/LLP	25.00	1	\$25.00
JOB TOTAL:				\$153.00

COMPLETED JOB TOTAL: \$153.00

OFFICIAL RECEIPT \*\*\* THIS IS NOT A BILL \*\*\*

\* Please retain a copy for your records to verify check and credit card billing.

FILED

JAN 28 2021

STATE TREASURER

## CERTIFICATE OF FORMATION

OF

SHG ENGLEWOOD SOUTH V URBAN RENEWAL LLC

PURSUANT TO N.J.S.A. 42:2C-1 ET SEQ. AND N.J.S.A. 40A:20-1 ET SEQ.

The undersigned, being authorized to execute and file this Certificate of Formation, for the purpose of forming a limited liability company pursuant to the provisions of Title 42:2C, the New Jersey Limited Liability Company Act, and N.J.S.A. 40A:20-1 et seq., the New Jersey Long Term Tax Exemption Law, as amended, hereby certifies that:

**FIRST:** The name of the limited liability company is: SHG Englewood South V Urban Renewal LLC (hereinafter the "Company").

**SECOND:** The name and address of the registered agent and registered office of the Company in this State is Peter S. Hekemian, c/o The S.Hekemian Group, 10 Sterling Boulevard, Suite 401, Englewood, New Jersey 07631.

**THIRD:** (a) The purposes 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 any part of one or more redevelopment area, or low and moderate income housing projects and, when authorized by financial agreement with the City of Englewood (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 improvements 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 the 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 and formed to serve a public purpose. The Company's 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; and (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.). The Company shall be subject to regulation by the Municipality, and to a limitation or prohibition, as appropriate, on profits or dividends for so long as the Company 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 ten percent (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 the New Jersey Department of Community Affairs to such transfer, with the exception of transfer to another urban renewal entity as approved by the Municipality, which other urban renewal entity shall assume all contractual obligations of the Company under the financial agreement with the Municipality. The Company shall file annually with the governing body of the Municipality a disclosure of the persons having an ownership in the project, and the extent of the ownership interest held by each. Nothing herein shall prohibit any transfer of the ownership interest in the Company itself, provided that the transfer, if greater than ten percent (10%), is disclosed to the governing body of the Municipality 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 shall be subject to the provisions of §18 of P.L. 1991, c.431 (C.40A:20-18) respecting the powers of the Municipality to alleviate financial difficulties of the Company or to perform actions on behalf of the Company 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 in accordance with rules adopted by, the Commissioner of the New Jersey Department of Community Affairs.

**FOURTH:** The term of the Company shall be perpetual unless otherwise terminated in accordance with the provisions of the Company's Operating Agreement.

IN WITNESS WHEREOF, I have signed this Certificate of Formation this 23<sup>rd</sup> day of November, 2020.

  
Charles M. Cohen  
Authorized Person

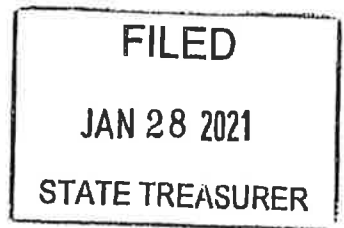
01/28/2021 THU 12:51 FAX



State of New Jersey  
DEPARTMENT OF COMMUNITY AFFAIRS  
LOCAL PLANNING SERVICES  
101 SOUTH BROAD STREET  
PO Box 813  
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PHILIP D. MURPHY  
Governor

LT. GOVERNOR SHIRLEY Y. OLIVER  
Commissioner



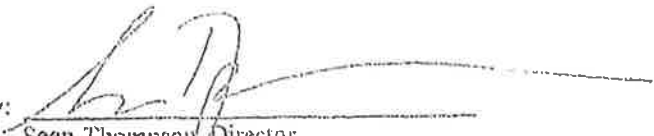
## DEPARTMENT OF COMMUNITY AFFAIRS

TO: State Treasurer  
RE: SHG ENGLEWOOD SOUTH V URBAN RENEWAL LLC  
File # 2927  
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 27 day of January 2021 at Trenton, New Jersey.

DEPARTMENT OF COMMUNITY AFFAIRS

By:   
Sean Thompson, Director  
Local Planning Services



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EXHIBIT D - CONCEPTUAL SITE AND ARCHITECTURAL PLANS

# ENGLEWOOD SOUTH



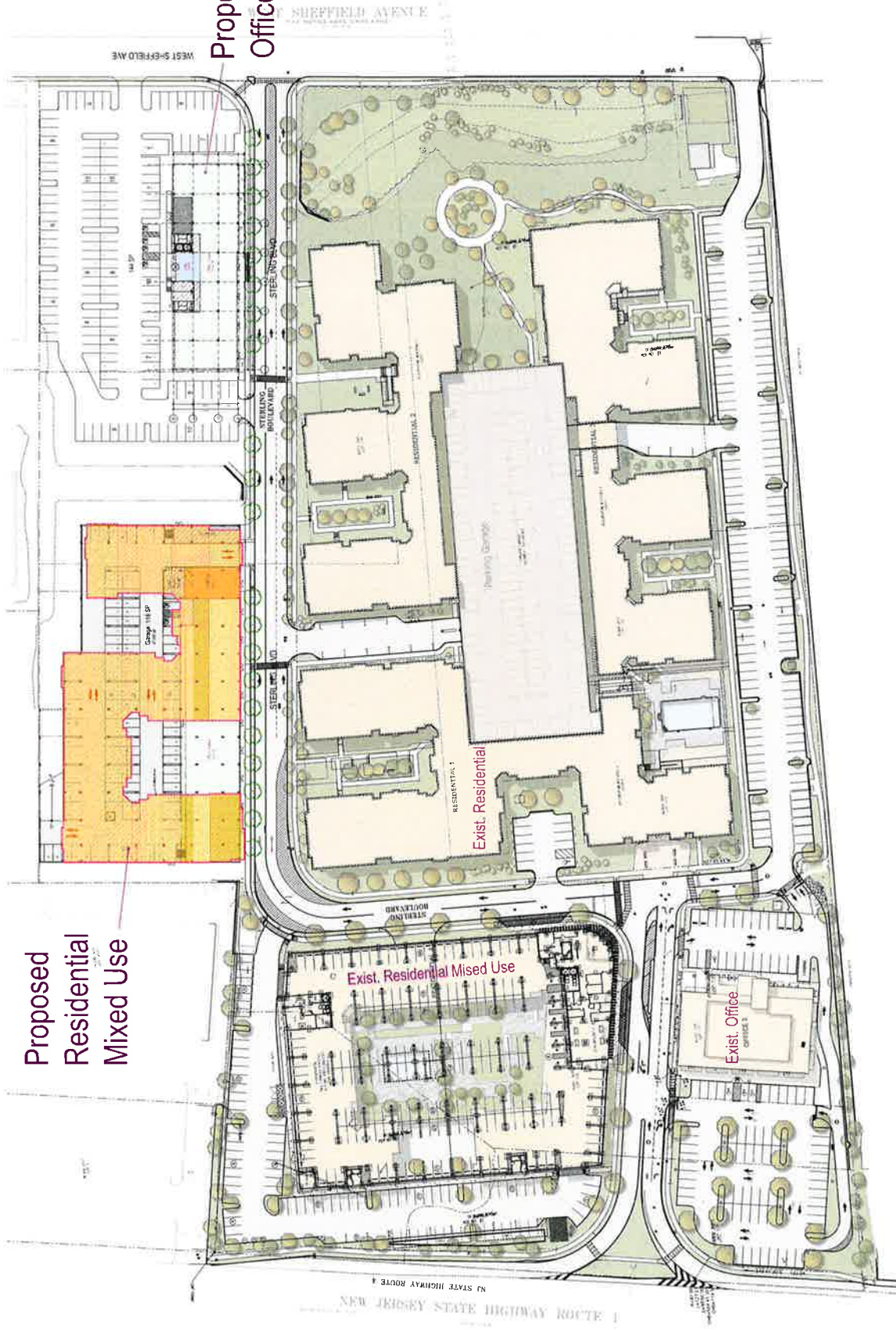
## List of drawings

General	Lot 3.03 (Residential Mixed Use)	Lot 3.01 (Office)	Perspective
G01 Cover Sheet	A1.1 Elevations	A2.1 Elevations	A3.1 Aerial Perspective
G02 Tabulation	A1.2 Elevations	A2.2 Ground Floor Plan	A3.2 Residential mixed use perspective
G03 Site Plan	A1.3 Ground Floor Plan	A2.3 Typical Floor Plan	A3.3 Office Perspective
	A1.4 2nd Floor Plan	A2.4 Sections	
	A1.5 3rd Floor Plan		
	A1.6 4th Floor Plan / R1		
	A1.7 Typical Floor Plan/R2-R5		
	A1.8 Sections		



Proposed  
Residential  
Mixed Use

Proposed  
Office / Retail







1. Sterling Boulevard Elevation

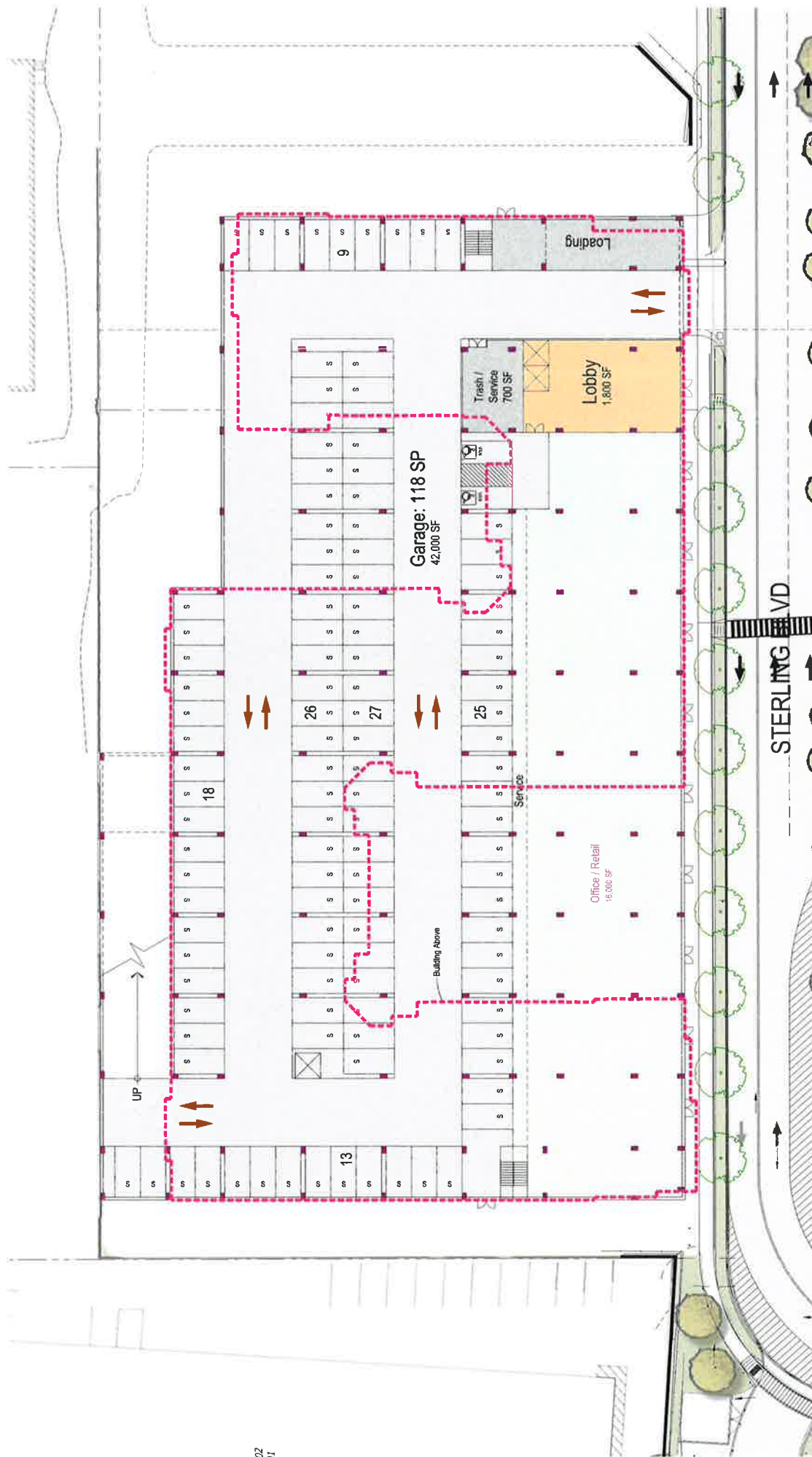


2. South Elevation

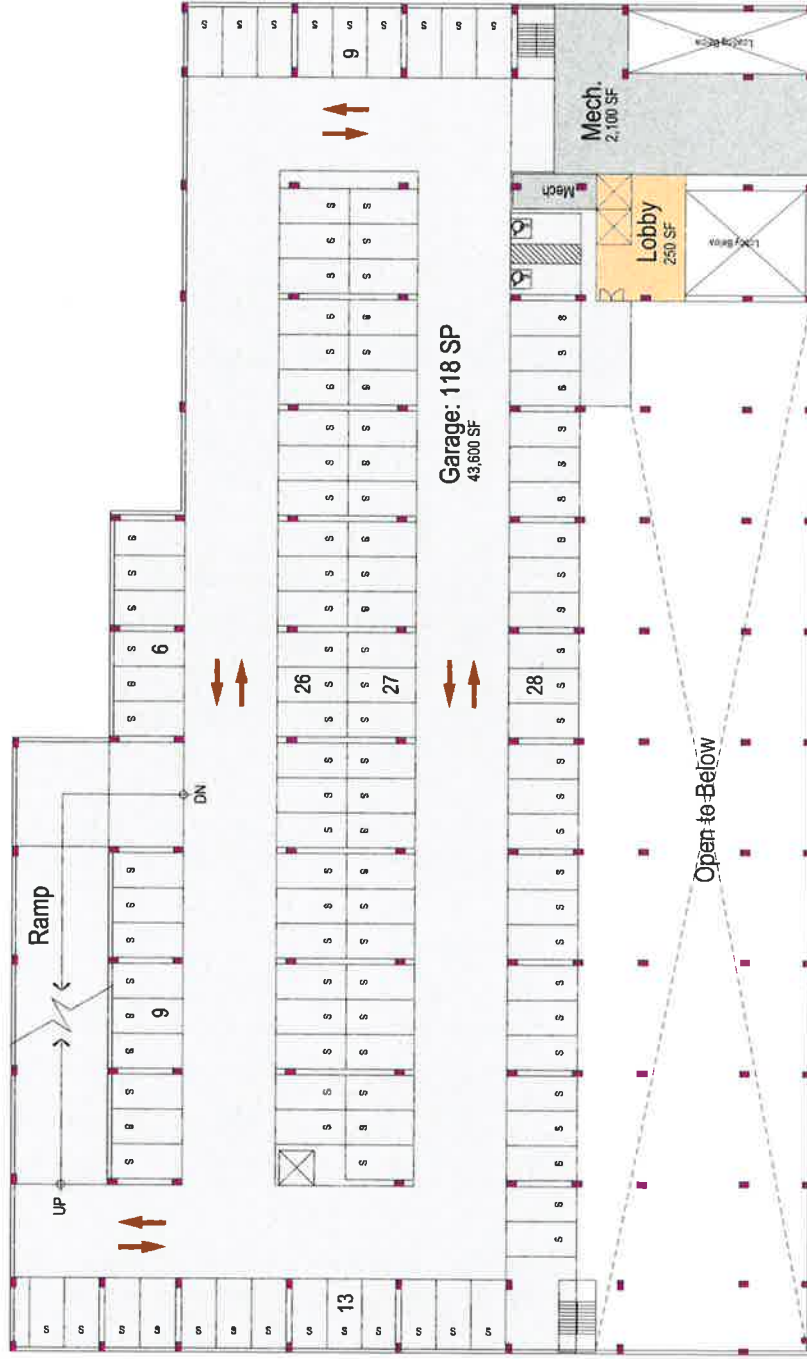




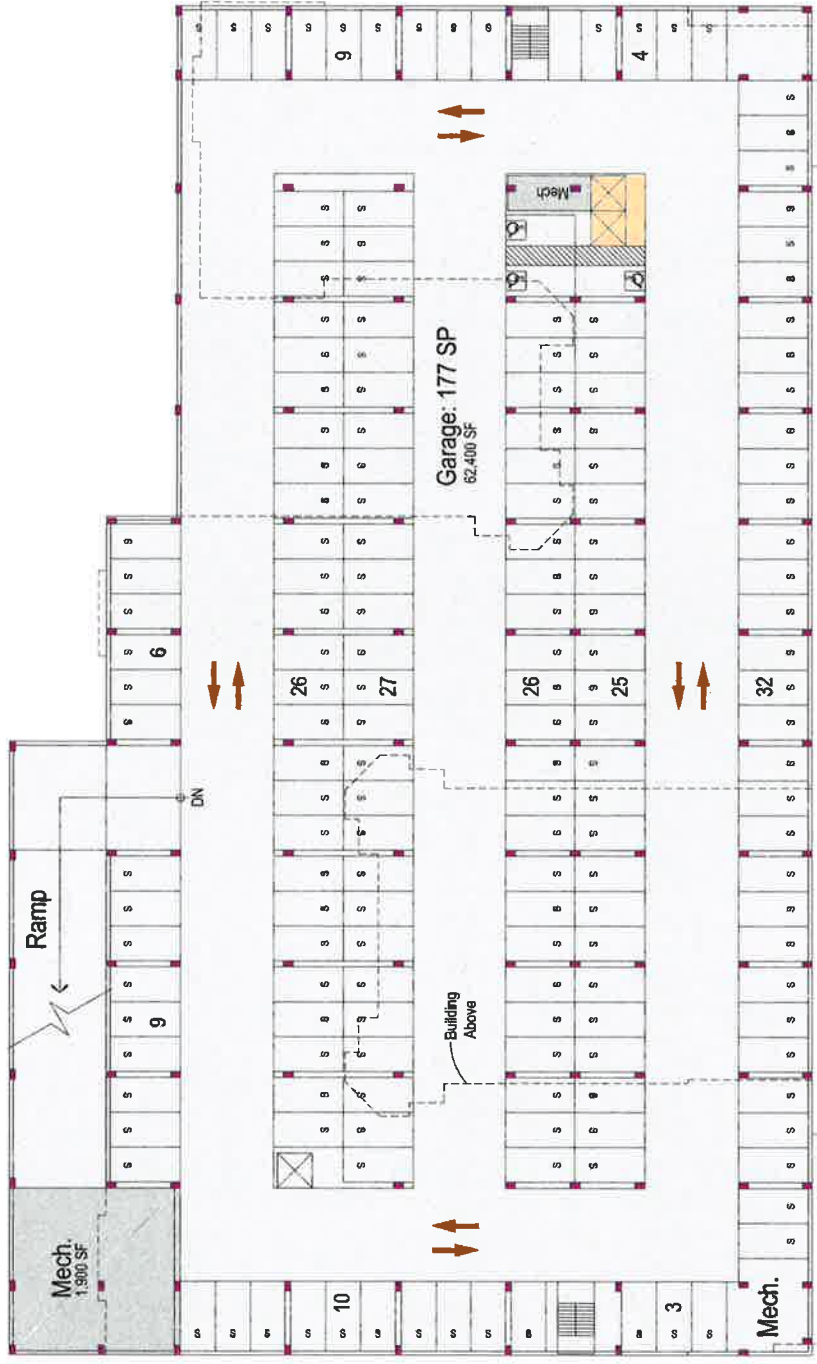




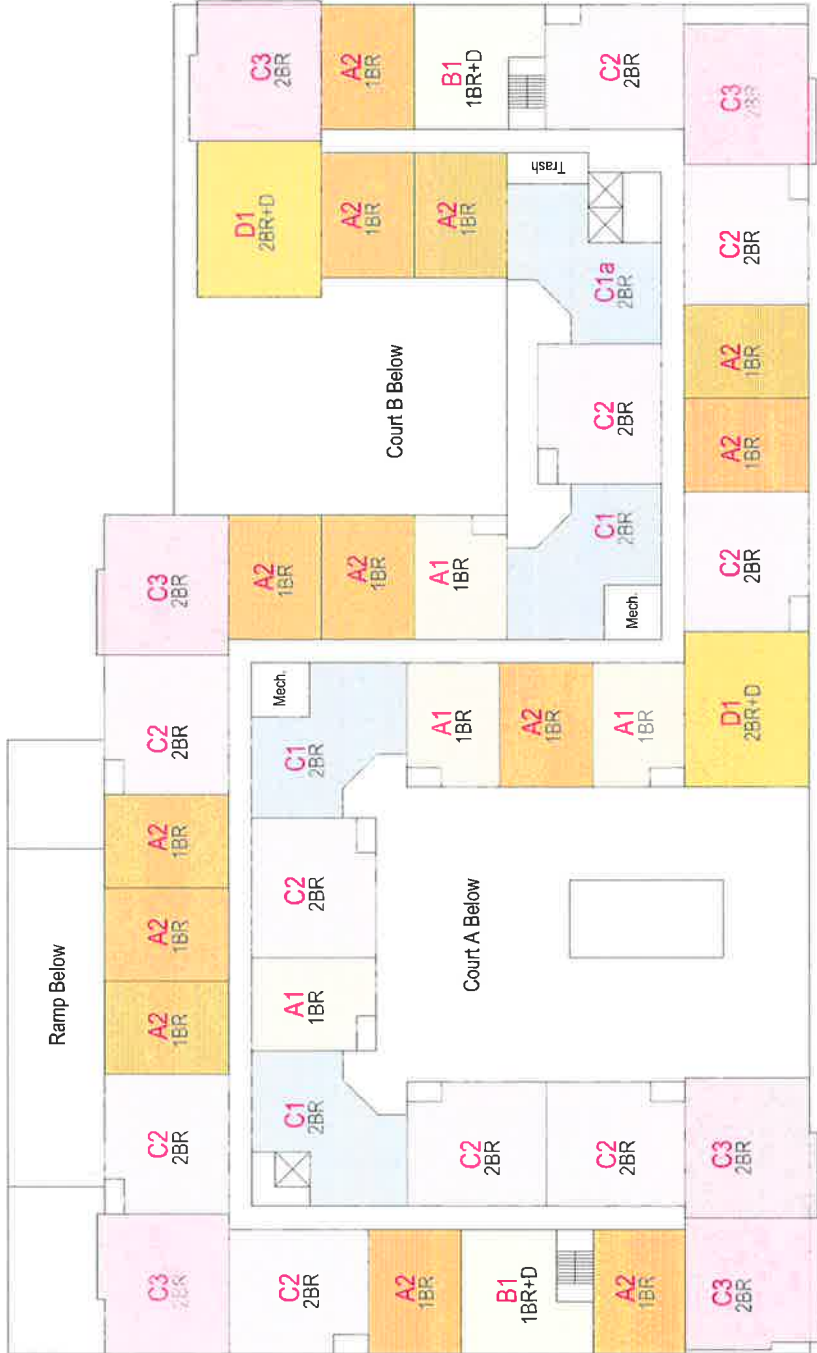
22  
11











## Typical Floor Plan / R2-R5

Lot 3.03

NOT TO SCALE. DIMENSIONS ARE APPROXIMATE. THIS PLAN IS FOR INFORMATIONAL PURPOSES ONLY. IT IS NOT TO BE USED FOR CONSTRUCTION OR ANY OTHER PURPOSE. THE ARCHITECT ASSUMES NO LIABILITY FOR ANY ERRORS OR OMISSIONS. THE ARCHITECT'S RESPONSIBILITY IS LIMITED TO THE DESIGN OF THE BUILDING. THE ARCHITECT DOES NOT WARRANT THE ACCURACY OF THE INFORMATION PROVIDED HEREON.

ENGLEWOOD SOUTH PHASE-II  
Englewood, New Jersey

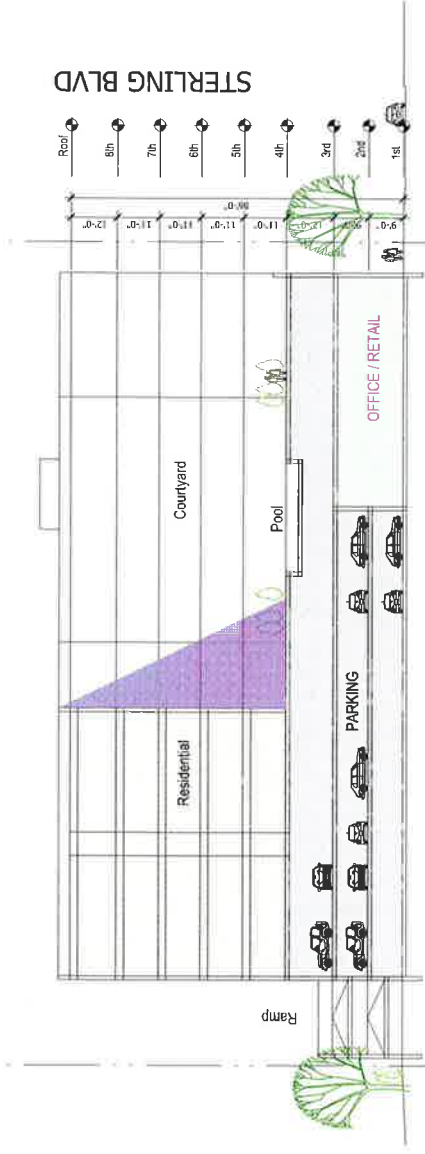
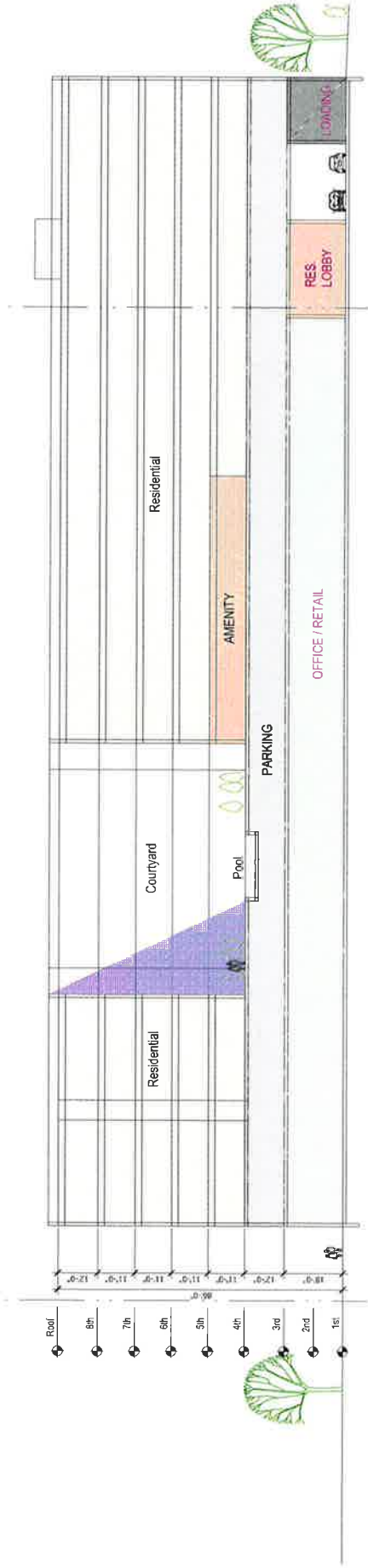
APR 24, 2018  
SHG 0148

A1.7

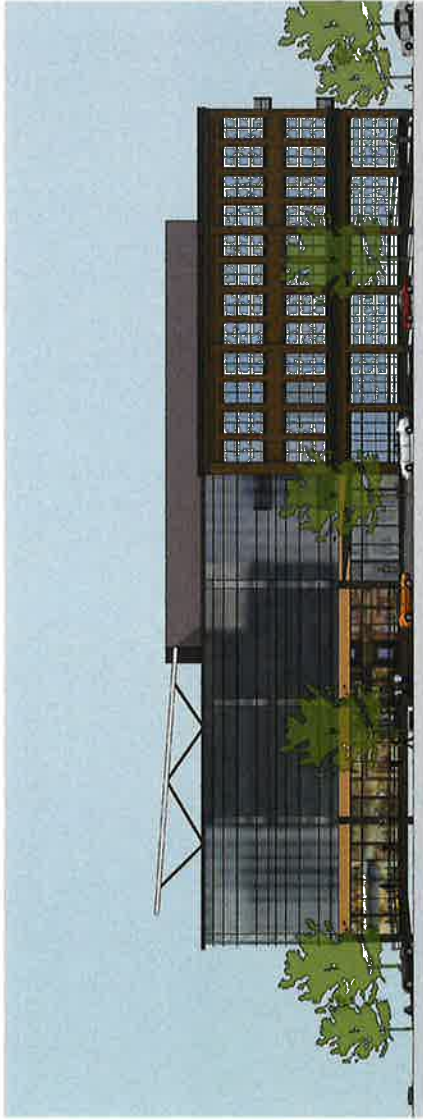


The S.Hekemian Group









1. Sterling Blvd Elevation



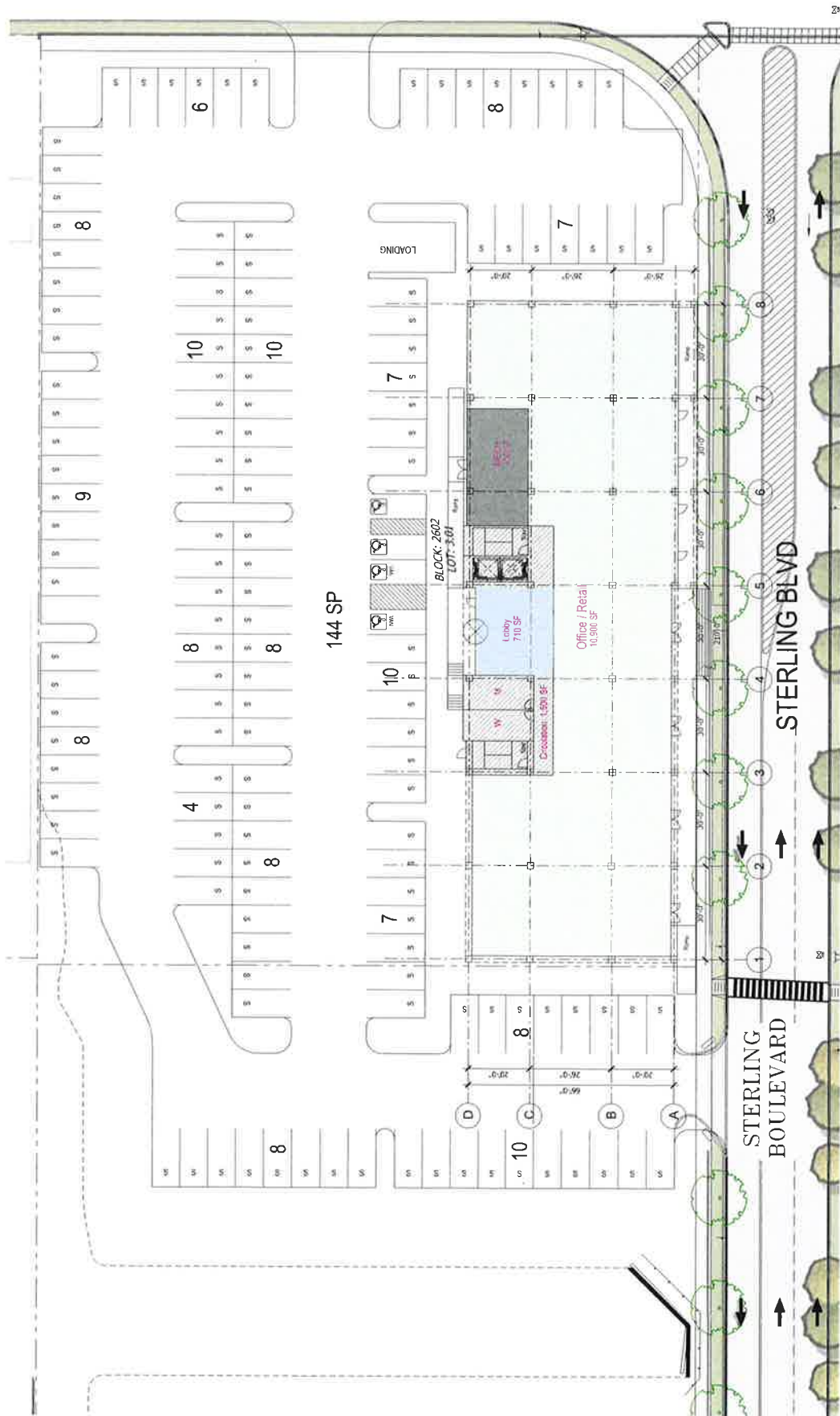
2. W. Sheffield Ave. Elevation



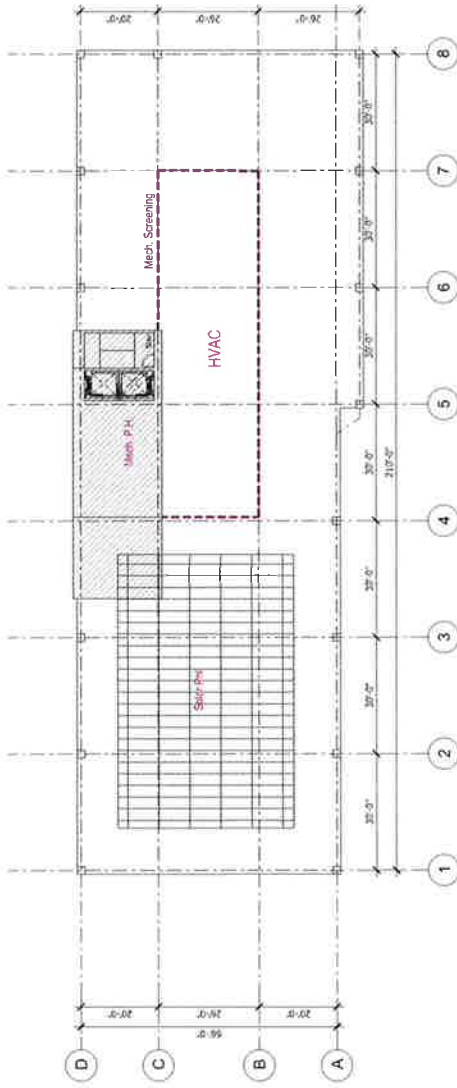
3. Southeast Elevation



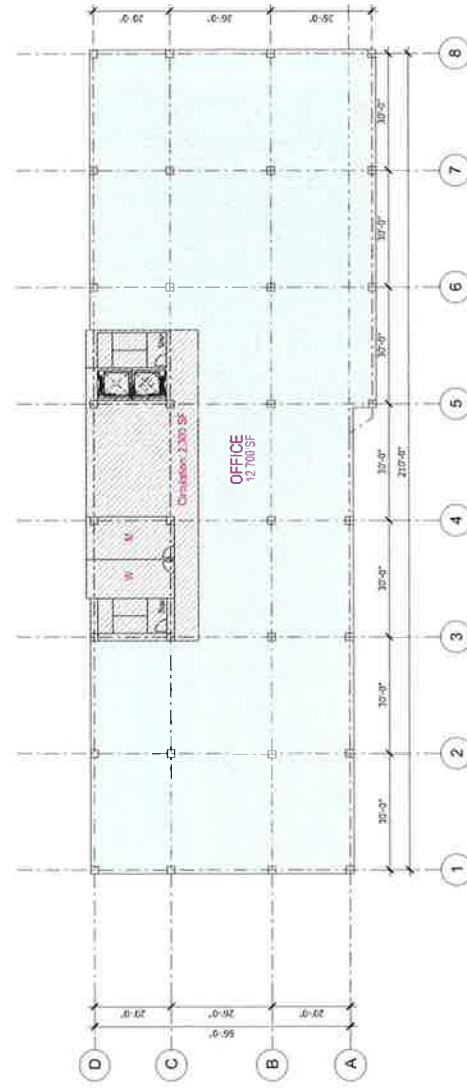
4. Northeast Elevation



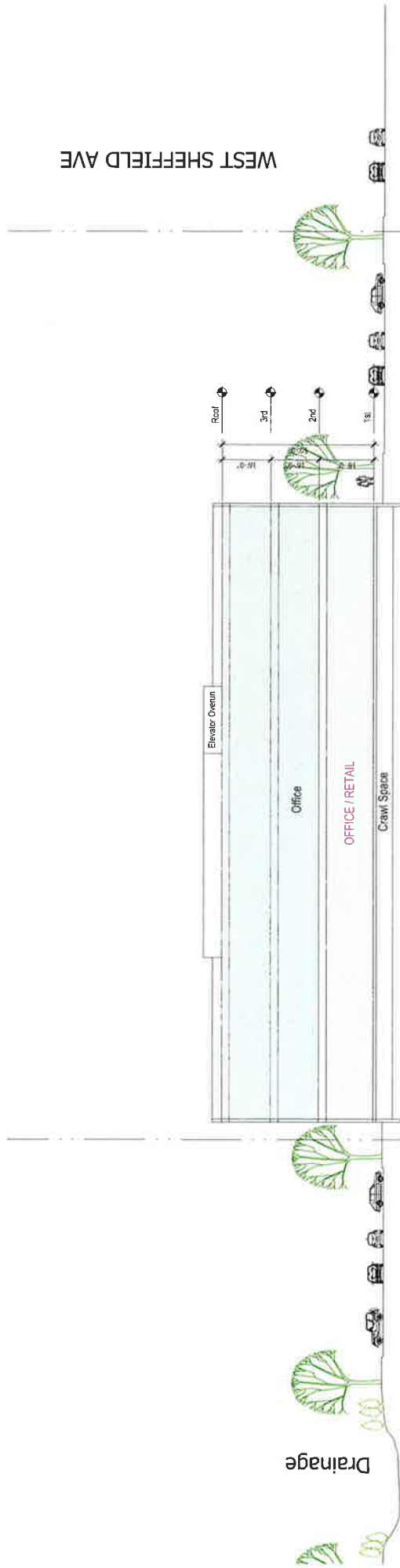
WEST SHEFFIELD AVE



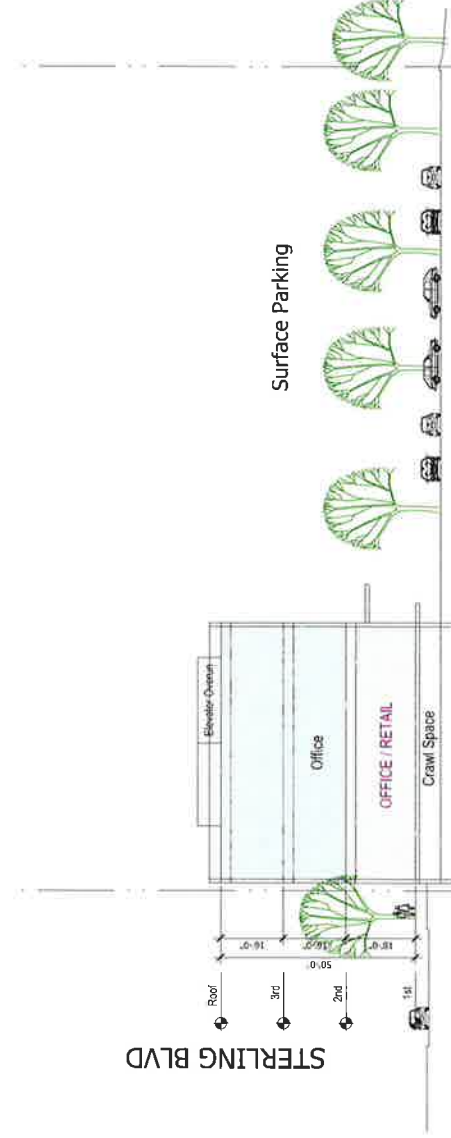
1. Roof Plan



2. 2nd & 3rd Floor Plan



1. Longitudinal Section



2. Cross Section







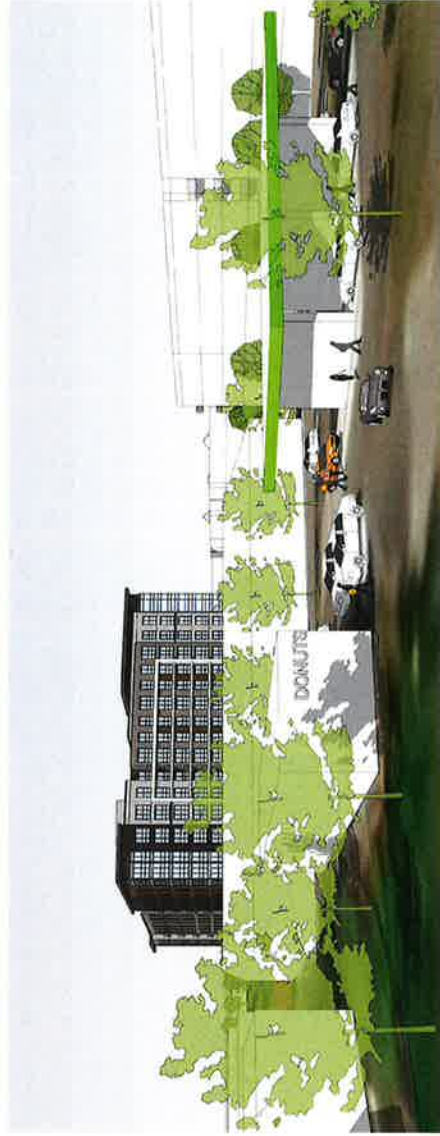
Sterling Blvd & W. Sheffield Ave. Aerial view



Sterling Blvd. Residential / Parking Entry



North Aerial View



RT. 4 Highway View





Sterling Blvd. Perspective



Court A

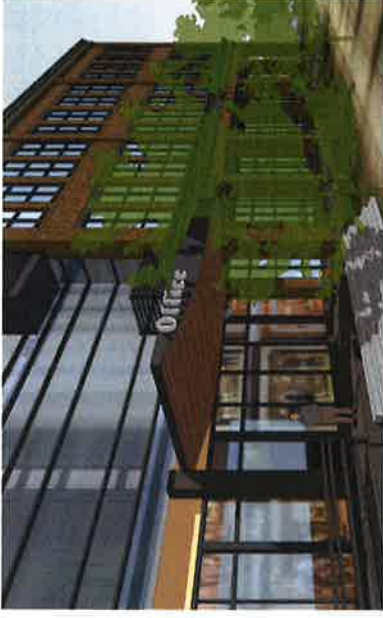


Court B

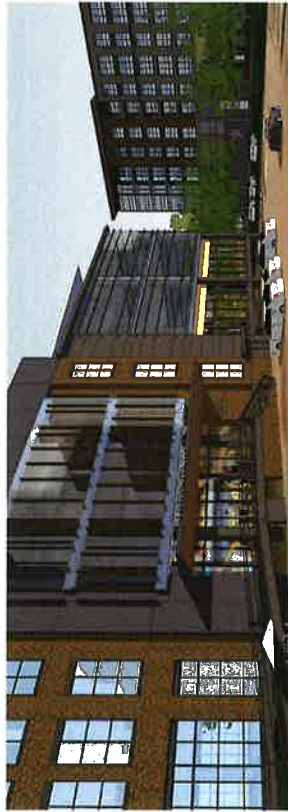




Sterling Blvd & W. Sheffield Ave.



Sterling Blvd Entry



East Entry



East Pedestrian View