

O-14-19

ORDINANCE OF THE BOROUGH OF WHARTON, COUNTY OF MORRIS AUTHORIZING THE EXECUTION OF AN AMENDED AND RESTATED FINANCIAL AGREEMENT WITH AVANATH CENTENNIAL COURT URBAN RENEWAL, LP URBAN RENEWAL LLC AND GRANTING A CONTINUED TAX EXEMPTION ON REAL PROPERTY LOCATED AT BLOCK 903, LOT 1

WHEREAS, under and pursuant to Section 37 of the New Jersey Housing and Mortgage Finance Agency Law of 1983, as amended (N.J.S.A. 55:14K-1 et seq.) (the “HMFA Law”), a municipality is authorized to grant a tax exemption to projects which meet or will meet an existing housing need in the municipality, provided that the municipality adopts a resolution determining such need and that the entity owning such a housing project pay to the municipality an annual service charge in lieu of conventional property taxes for municipal services supplied to such project; and

WHEREAS, pursuant to the authority set forth in Section 37 of the HMFA Law and a resolution of the Borough Council dated September 25, 1995, and with the approval of the New Jersey Housing and Mortgage Finance Agency (the “HMFA”), the Borough entered into an Agreement for Payment in Lieu of Taxes dated November 20, 1995 (the “1995 Agreement”) with Wharton Senior Citizen Housing Inc., a New Jersey nonprofit corporation (the “Sponsor”) with respect to the property located at Block 903, Lot 1 on the Official Tax Map of the Borough and commonly known as 100 North Main Street, Wharton, New Jersey (the “Property”); and

WHEREAS, Sponsor was the General Partner of Wharton Senior Citizen Housing Limited Partnership, a New Jersey limited partnership, which developed, owned, managed and operated a 100-unit affordable senior citizen housing project at the Property (the “Project”); and

WHEREAS, the Project remained subject to the HMFA regulatory oversight and controls under the HMFA Law and regulations (the “HMFA Oversight”); and

WHEREAS, on December 22, 2017, Wharton Senior Citizen Housing Limited Partnership (“Wharton Senior”) sold the Property and the Project to Avanath Centennial Court, LP (“Avanath”), a Delaware limited partnership to acquire, own, renovate, improve, and operate the Project in accordance with the existing HMFA Oversight; and

WHEREAS, upon the purchase of the Project, Avanath assumed all of the existing loan and regulatory obligations of Wharton Senior and the Project and Avanath became a “housing sponsor” pursuant to Section 3 of the HMFA Law, qualified to enter into an agreement for payment in lieu of taxes with a municipality for the payment of an annual service charge in lieu of taxes; and

WHEREAS, in connection with the sale of the Property and the Project, and the assumption of the existing HMFA mortgage financing, Avanath assumed the rights and obligations of Wharton Senior under the 1995 Agreement, including the obligation to make annual service charge payments thereunder under the Assignment and Assumption of Tax Abatement Agreement dated December 22, 2017;

WHEREAS, on October 18, 2018 Avanath changed its name to Avanath Centennial Court Urban Renewal, LP and qualified as an urban renewal entity pursuant to the Long Term Tax Exemption Law;

WHEREAS, pursuant to N.J.S.A. 40A:20-4 a municipality may enter into a Financial Agreement for a low and moderate income housing project and the project does not need to be in an area in need of redevelopment;

WHEREAS, in order to improve the feasibility of the rehabilitation, operation and maintenance of the Project, on October 23, 2018, the Entity filed an application for an amended and restated Financial Agreement and annual service charge pursuant to the Long Term Tax Exemption Law;

WHEREAS, on August 20, 2019 the Entity filed an amended application (the “Application”) for an amended and restated Financial Agreement (the “Financial Agreement”) and annual service charge pursuant to the Long Term Tax Exemption Law which Application is on file with the Borough Clerk;

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

WHEREAS, after review of the Application, the Mayor recommended that the Application be approved on such terms as set forth in a proposed form of financial agreement (the “Financial Agreement”) substantially in the form attached hereto as Exhibit A, and by this reference incorporated herein, as may be modified in consultation with counsel as set forth herein, and

WHEREAS, the Borough Council has reviewed the Application and the terms of the Financial Agreement, and wishes to approve the Application on such terms; and

WHEREAS, the Borough hereby finds that the relevant benefits of the Project to the rehabilitation and continued operation and maintenance of the 100 senior citizen low income housing units in the Borough outweigh the costs, if any, associated with the tax exemption, which relevant benefits are further described in the Application and the Financial Agreement; and

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

NOW, THEREFORE, BE IT ORDAINED AND ENACTED by the Governing Body of the Borough of Wharton, in the County of Morris, State of New Jersey as follows:

I. GENERAL

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

II. EXECUTION OF FINANCIAL AGREEMENT AUTHORIZED

(a) The Mayor is hereby authorized and directed to execute the Financial Agreement, substantially in the form as it has been presented to the Borough Council, and attached hereto as Exhibit A, subject to additions, deletions, modifications, or revisions deemed necessary and appropriate in consultation with counsel.

(b) The Clerk of the Borough is hereby authorized and directed, upon the execution of the Financial Agreement in accordance with the terms of Section II (a) hereof, to attest to the signature of the Mayor upon such document and is hereby further authorized and directed to affix the corporate seal of the Borough upon such document.

(c) The Borough Clerk shall file certified copies of this ordinance and the Financial Agreement with the Tax Assessor of the Borough. In accordance with P.L. 2015, c. 247, within ten calendar days following the later of the effective date of this Ordinance or the execution of the Financial Agreement by the Entity, the Borough Clerk also shall transmit a certified copy of this Ordinance and the Financial Agreement to the chief financial officer of Morris County and to the Morris County Counsel for informational purposes.

III. SEVERABILITY

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

IV. ACTION REGARDING FINANCIAL AGREEMENT

The Mayor is hereby authorized and directed to determine all matters and terms in connection with the Financial Agreement, all in consultation with the counsel to the Borough, and the manual or facsimile signature of the Mayor upon any documents shall be conclusive as to all such determinations. The Mayor, the Chief Financial Officer, the Borough Clerk and any other Borough official, officer or professional, including but not limited to, redevelopment counsel, bond counsel, the financial advisor and the auditor to the Borough, are each hereby authorized and directed to execute and deliver such documents as are necessary to facilitate the transactions contemplated hereby, and to take such actions or refrain from such actions as are necessary to facilitate the transactions contemplated hereby, in consultation with, as applicable, redevelopment counsel, bond counsel, the financial advisor and the auditor to the

Borough, and any and all actions taken heretofore with respect to the transactions contemplated hereby are hereby ratified and confirmed.

V. AVAILABILITY OF THE ORDINANCE

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

VI. EFFECTIVE DATE

This Ordinance shall take effect according to law.

**First Reading: September 9, 2019
Second Reading: September 23, 2019**

ATTEST:

BOROUGH OF WHARTON

**Gabrielle Evangelista,
Borough Clerk**

**WILLIAM J. CHEGWIDDEN,
MAYOR**

EXHIBIT A

Financial Agreement