

A RESOLUTION AUTHORIZING THE ISSUANCE OF REDEVELOPMENT AREA BONDS OF THE BOROUGH OF WHARTON IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$225,000 (WHARTON MAIN STREET PROJECT)

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

WHEREAS, on July 16, 2018, pursuant to Resolution No. R-100-18, the Wharton Borough Council (the “Borough Council”) designated that certain property then identified as Block 1317, Lots 1 through 22 (which Lot 22 includes Lot 23 as Lot 23 is shown on the Borough Tax maps as a distinct lot but the Borough Tax records have incorporated Lot 23 into adjacent 22) on the official tax map of the Borough as a non-condemnation area in need of redevelopment (the “Redevelopment Area”) in accordance with the Redevelopment Law; and

WHEREAS, on October 15, 2018, pursuant to Ordinance No. O-17-18, the Borough Council adopted that certain “Main Street Redevelopment Plan Block 1317, Lots 1-23” for the Redevelopment Area (as may be amended from time to time, the “Redevelopment Plan”); and

WHEREAS, pursuant to the Redevelopment Law, including Section 8 thereof (*N.J.S.A. 40A:12A-8*), a municipality is permitted to contract with a redeveloper to undertake redevelopment projects pursuant to a redevelopment plan within the area designated in that plan; and

WHEREAS, in order to implement the Redevelopment Plan, pursuant to Resolution R-51-20 adopted on February 3, 2020, the Borough Council duly designated Wharton CHA Urban Renewal, LLC (the “Entity”) as redeveloper of the Redevelopment Area and has entered into a Redevelopment Agreement dated as of February 4, 2020 and a First Amendment to Redevelopment Agreement dated as of May 4, 2020 with the Entity (collectively, the “Redevelopment Agreement”); and

WHEREAS, the Redevelopment Agreement sets forth the terms and conditions by which the Entity will undertake to redevelop a portion of the Redevelopment Area, known as Block 1317, Lots 1, 2, 3 and 9 (including former Lot 8) through 12 by demolishing existing buildings thereon and constructing thereon a mixed-use development consisting of approximately 50 rental residential units, 3 units of which shall be affordable to very low, low, and moderate income households in accordance with the Redevelopment Plan and Redevelopment Agreement, approximately 6,900 square feet of commercial uses (as defined in the Redevelopment Agreement), and 16 residential townhome-style rental units, along with associated amenities and site improvements including all required on-site parking (collectively, and as more fully set forth in the Redevelopment Agreement, the “Project”); and

WHEREAS, pursuant to and in accordance with the provisions of the Long Term Tax Exemption Law of 1992, constituting Chapter 431 of the Pamphlet Laws of 1991 of the State of New Jersey, and the acts amendatory thereof and supplemental thereto (the “Tax Exemption Law,” as codified in *N.J.S.A. 40A:20-1 et seq.*), and the New Jersey Redevelopment Area Bond Financing Law, constituting Chapter 310 of the Pamphlet Laws of 2001 of the State of New Jersey, and the acts amendatory thereof and supplemental thereto (the “Bond Financing Law,” as codified in *N.J.S.A. 40A:12A-64 et seq.*, and together with the Redevelopment Law and the Tax Exemption Law, the “Acts”), the Borough is authorized to provide for and accept, in lieu of real property taxes, an annual service charge paid by the Entity to the Borough; and

WHEREAS, on March 9, 2020, the Borough Council finally adopted Ordinance No. 05-20, entitled, “An Ordinance of the Borough of Wharton, in the County of Morris, New Jersey Approving an Application For a Long-Term Tax Exemption and Authorizing the Execution of a Financial Agreement with Wharton CHA Urban Renewal, LLC” (the “Ordinance”), which Ordinance authorized the hereinafter defined Financial Agreement; and

WHEREAS, in accordance with the Tax Exemption Law, the Borough and the Entity entered into that certain Financial Agreement, dated as of April 2, 2020 (the “Financial Agreement”), in order to, *inter alia*, finance the acquisition, development and construction of the Project and to provide for the payment of an Annual Service Charge (as defined in the Financial Agreement) to be made by the Entity to the Borough and further provides for a pledge of a portion of such Annual Service Charge to the debt service on and other amounts due and owing with respect to the Bonds (as defined herein) issued to fund a portion of the cost of the Project (as more fully set forth in the Financial Agreement, the “Pledged Annual Service Charge”); and

WHEREAS, pursuant to the Bond Financing Law, a municipality may issue bonds to finance redevelopment projects pursuant to a redevelopment plan within an area in need of redevelopment, which bonds may be secured by an annual service charge; and

WHEREAS, to defray some of the costs of the Project thereby making the Project viable, the Borough will issue the hereinafter defined Bonds in one or more series, on a tax-exempt and/or federally taxable basis in an aggregate principal amount not to exceed \$225,000 pursuant to the Bond Financing Law; and

WHEREAS, (i) pursuant to the Financial Agreement, the Entity will pay to the Borough the Annual Service Charge and (ii) pursuant to a Pledge and Assignment Agreement (the “Pledge Agreement”), between the Borough and the Trustee named in the hereinafter defined Indenture (the “Trustee”), the Borough will assign all of its right, title and interest in and to the Pledged Annual Service Charge to the Trustee; and

WHEREAS, the Borough, in furtherance of the purposes of the Redevelopment Law and the Bond Financing Law and to assist in financing the cost of the Project, proposes to issue its Redevelopment Area Bonds (Wharton Main Street Project), in one or more series, on a tax-exempt and/or federally taxable basis (the “Bonds”), to be secured by a pledge of

the Pledged Annual Service Charge payable under the Financial Agreement, pursuant to an Indenture of Trust by and between the Borough and the Trustee (the “Indenture of Trust”) and a First Supplemental Indenture of Trust by and between the Borough and the Trustee (as the same may be amended and supplemented from time to time, the “First Supplemental Indenture” and, together with the Indenture of Trust, the “Indenture”), which pledge and assignment are hereby declared to further secure the payment of the principal of and interest on the Bonds; and

WHEREAS, the Bonds shall not be in any way a debt or liability of the Borough other than to the limited extent set forth in the Indenture, and neither the full faith and credit nor taxing power of the Borough shall be pledged to the payment of the principal or redemption price, if any, of or interest on the Bonds,

NOW, THEREFORE, BE IT RESOLVED BY THE BOROUGH COUNCIL AS FOLLOWS:

Section 1. Determination to Issue. To accomplish the purposes and objectives of the Redevelopment Law and the Bond Financing Law, the Borough hereby determines to finance the Project. In order to finance the Project, the Bonds are hereby authorized to be issued in the aggregate principal amount not to exceed \$225,000. The Bonds shall be issued in one or more series, on a tax-exempt and/or taxable basis. The Bonds shall be bear interest at a rate or rates per annum set forth in the Indenture and will be payable on the interest payment dates set forth in the Indenture, through maturity or prior redemption. The Bonds shall be dated their date of delivery. The Bonds shall be issued in the form, shall mature, shall be subject to redemption prior to maturity and shall have such other details and provisions as are prescribed by the Indenture.

Section 2. Bonds to Constitute Limited Obligations. The Bonds shall be limited obligations of the Borough, payable solely out of the Pledged Annual Service Charge payable pursuant to the Financial Agreement, as set forth in the Indenture. The payment of the principal of, premium, if any, and interest on the Bonds shall be secured by a pledge and assignment of the Pledged Annual Service Charge pursuant to the Pledge Agreement, as set forth in the Indenture. Neither the members of Borough Council nor any person executing the Bonds issued pursuant to this resolution, the Redevelopment Law and the Bond Financing Law shall be liable personally on the Bonds by reason of the issuance thereof. The Bonds shall not be in any way a debt or liability of the Borough other than to the limited extent set forth in the Indenture. Neither the full faith and credit nor taxing power of the Borough is pledged to the payment of the principal or redemption price, if any, of or interest on the Bonds.

Section 3. Authorization of Bonds. (a) The Bonds shall mature no later than 30 years from their date of issuance. The Bonds shall accrue interest at a rate or rates of interest which shall not exceed the lesser of seven percent (7%) per annum or the maximum interest rates approved by the Local Finance Board in the Division of Local Government Services in the Department of Community Affairs.

(b) The Mayor and the Borough Business Administrator (each an “Authorized Officer”) are each hereby authorized to execute and deliver on behalf of the Borough a contract of purchase, term sheet or other agreement memorializing the terms of the purchase of the Bonds (the “Contract of Purchase”) with an affiliate of the Entity or other purchaser approved by the Borough (collectively, the “Purchaser”) to be determined by a certificate of award executed by an Authorized Officer (the “Award Certificate”) as determined by an Authorized Officer in consultation with counsel, approval thereof to be evidenced by such Authorized Officer's execution thereof, for the purchase of all, but not less than all, of the Bonds. The Bonds may be sold pursuant to a negotiated sale. A copy of the Contract of Purchase shall be filed upon execution with the records of the Borough.

Section 4. Execution and Authentication. The Bonds shall be executed and authenticated in accordance with the Indenture and shall be issued in registered form qualifying for book entry registration or as otherwise set forth in the Indenture.

Section 5. Delivery of Bonds. Following execution of the Bonds, the Authorized Officers are each hereby authorized to deliver the Bonds to the Trustee for authentication and, after authentication, to deliver the Bonds to the Purchaser against receipt of the purchase price or unpaid balance thereof.

Section 6. Approval of Indenture and Related Agreements. The form of (i) the Indenture of Trust presented to this meeting (a copy of which is on file with the records of the Borough), and all instruments to be attached thereto or executed in conjunction therewith, (ii) the First Supplemental Indenture presented to this meeting (copies of which are on file with the records of the Borough), and all instruments to be attached thereto or executed in conjunction therewith, (iii) the Contract of Purchase (a copy of which shall be on file with the records of the Borough), and (iv) the Pledge Agreement (a copy of which shall be on file with the records of the Borough), are each hereby approved and the Authorized Officers are each hereby authorized to execute, acknowledge and deliver, and the Borough Clerk is hereby authorized to affix and attest the seal of the Borough to the Indenture, the Contract of Purchase, and the Pledge Agreement in substantially such forms, with such changes therein as counsel may advise and the officers executing the same may approve, such approval to be evidenced by their execution thereof.

Section 7. Incidental Action. The Authorized Officers are hereby authorized to execute and deliver such other papers, instruments, certificates, opinions, affidavits, documents and agreements, and to take such other action as may be necessary or appropriate in order to carry out the purposes of this resolution, including effectuating the execution and delivery of the Indenture, the Contract of Purchase, and the Pledge Agreement and the issuance and sale of the Bonds, all in accordance with the foregoing sections hereof. The Authorized Officers are hereby authorized to appoint a Trustee for the Bonds.

Section 8. Construction. In case any one of more of the provisions of this resolution, the Indenture, the Contract of Purchase, the Pledge Agreement or the Bonds issued hereunder shall for any reason be held illegal or invalid, such illegality or invalidity shall not affect any other provision of this resolution of the Indenture, the Contract of

Purchase, the Pledge Agreement, and the Bonds shall be construed and enforced as if such illegal or invalid provision had not been contained therein.

Effective Date. This resolution shall take effect immediately upon adoption.

Adopted: November 9, 2020

BOROUGH OF WHARTON

ATTEST:

**_____
WILLIAM J. CHEGWIDDEN,
MAYOR**

**_____
Gabrielle Evangelista,
Borough Clerk**