

TOWN OF NEWTON

ORDINANCE 2024-16

AN ORDINANCE OF THE TOWN OF NEWTON AUTHORIZING THE AMENDMENT OF THE FINANCIAL AGREEMENT PREVIOUSLY ENTERED INTO BY THE TOWN OF NEWTON AND WSR I URBAN RENEWAL, LLC AND THE ASSIGNMENT AND ASSUMPTION OF SAID FINANCIAL AGREEMENT TO 123 WATER URBAN RENEWAL, LLC

WHEREAS, by Resolution 69-2018 adopted February 26, 2018, the Town Council (the "**Town Council**") of the Town of Newton (the "**Town**") designated property identified on the official tax map of the Town as Block 10.01, Lot 4, and commonly known as 121 Water Street, as a non-condemnation area in need of redevelopment (the "**Redevelopment Area**" or "**Project Area**") in accordance with the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 *et seq.* (the "**Redevelopment Law**"); and

WHEREAS, by Ordinance 2020-14 adopted July 13, 2020, the Town Council duly adopted a redevelopment plan for the Redevelopment Area, entitled, "121 Water Street Redevelopment Plan", prepared by Topology and dated June 22, 2020 (as the same may be amended and supplemented from time to time, the "**Redevelopment Plan**"); and

WHEREAS, by Resolution 99-2021 adopted on April 12, 2021, the Town Council (a) designated Water Street Holdings, LLC as the redeveloper (the "**Redeveloper**") of the Redevelopment Area; and (b) authorized the Town to enter into a redevelopment agreement setting forth the terms and conditions by which Redeveloper will redevelop the Redevelopment Area for the construction, renovation, operation, and maintenance of the improvements within the Redevelopment Plan (the "**Project**" or "**Redevelopment Project**"); and

WHEREAS, on April 12, 2021, the Town and the Redeveloper entered into a redevelopment agreement setting forth their respective undertakings, rights, and obligations in connection with the development of the Redevelopment Project in accordance with the Redevelopment Plan and applicable law (the "**Redevelopment Agreement**"); and

WHEREAS, Lot 4 was subsequently subdivided into Lots 4.01 (the "**Residential Project Property**") and 4.02 (the "**Retail Project Property**"), both of which are controlled by the Redevelopment Agreement; and

WHEREAS, by Ordinance 2021-5 adopted April 26, 2021, the Town Council authorized the Town to enter into a financial agreement with WSR I Urban Renewal LLC (the "**Entity**"), an affiliate of the Redeveloper, setting forth the long-term tax exemption granted to the Entity concerning the Retail Project Property under the New Jersey Long Term Tax Exemption Law, N.J.S.A. 40A:20-1 *et seq.* (the "**Exemption Law**"); and

WHEREAS, on April 26, 2021, the Town and the Entity entered into a financial agreement (the "**Financial Agreement**") as was authorized by Ordinance 2021-5; and

WHEREAS, by correspondence dated February 20, 2024, counsel for the Entity notified the Town that it is under contract to sell the Retail Project Property to 123 Water Urban Renewal, LLC (the "**Assignee**") , which sale is contingent upon the assignment of the Financial Agreement to the Assignee, and requested the Town Council approve the execution of an agreement by the Town with the Entity and Assignee permitting the proposed assignment of the Financial Agreement to Assignee (the "**Amendment, Assumption and Assignment Agreement**", the form of which is attached hereto as **Exhibit A**); and

WHEREAS, counsel for the Assignee provided proof by correspondence dated April 1, 2024 that Assignee is qualified to accept assignment of the Financial Agreement from the Entity, with Assignee being a limited liability company duly formed under the Revised New Jersey Limited Liability Company Act, N.J.S.A. 42:2C-1 et seq., and certified and approved as an Urban Renewal Entity by the New Jersey Department of Community Affairs on March 25, 2024; and

WHEREAS, the assignment of the Financial Agreement from the Entity to the Assignee is pursuant to the terms of the Amendment, Assignment, and Assumption Agreement to be entered into by and between the Town, the Entity and Assignee, which assignment requires the consent and approval of the Town pursuant to the terms of the Financial Agreement; and

WHEREAS, the Town, the Entity and Assignee also seek to provide for a limited amendment to the Financial Agreement by replacing Exhibit A to the Financial Agreement with an updated written description and an updated survey map of the Retail Project Property which is the property subject to the Financial Agreement; and

WHEREAS, the Town now desires to authorize the execution of the Amendment, Assignment, and Assumption Agreement providing for the limited amendment and assignment of the Financial Agreement as is now being authorized by the adoption of this Ordinance.

NOW, THEREFORE BE IT ORDAINED AND ENACTED, by the Town Council of the Town of Newton, County of Sussex, New Jersey, as follows:

Section 1. The above "WHEREAS" paragraphs are hereby incorporated herein by reference as though specifically set forth herein below.

Section 2. The Newton Town Manager shall be and is hereby authorized and directed to execute and deliver the Amendment, Assignment, and Assumption Agreement on behalf of the Town in substantially the form attached hereto as **Exhibit A**, with such changes as the Newton Town Manager, after consultation with Redevelopment Counsel and any advisors to the Town as may be necessary and appropriate, shall determine, such determination to be conclusively evidenced by the execution of the Amendment, Assignment, and Assumption Agreement by the Newton Town Manager.

The Municipal Clerk shall be and is hereby authorized and directed to attest to the execution of the Amendment, Assignment, and Assumption Agreement by the Newton Town Manager and to affix the corporate seal of the Town to the Amendment, Assignment, and Assumption Agreement.

Section 3. The Newton Town Manager shall be and is hereby further authorized and directed to (i) execute and deliver, and the Municipal Clerk shall be and is hereby further authorized and directed to attest to such execution and to affix the corporate seal of the Town to, any document, instrument or certificate deemed necessary, desirable or convenient by the Newton Town Manager, after consultation with Redevelopment Counsel and any advisors to the Town as may be necessary and appropriate, to be executed in connection with the execution and delivery of the Amendment, Assignment, and Assumption Agreement and the consummation of the transactions contemplated thereby, which determination shall be conclusively evidenced by the execution of each such certificate or other document by the party authorized hereunder to execute such certificate or other document, and (ii) perform such other actions as the Newton Town Manager deems necessary, desirable, or convenient in relation to the execution and delivery thereof.

Section 4. If any section, paragraph, subsection, clause, or provision of this Ordinance shall be adjudged by the courts to be invalid, such adjudication shall apply only to the section, paragraph, subsection, clause, or provision so adjudicated, and the remainder of the Ordinance shall be deemed valid and effective.

Section 5. Any ordinances or parts thereof in conflict with the provisions of this Ordinance are repealed to the extent of such conflict.

Section 6. This Ordinance shall take effect upon final passage and publication as required by law.

Section 7. Upon final adoption hereof, the Municipal Clerk shall forward certified copies of this Ordinance to Douglas F. Doyle, Esq., DeCotiis, FitzPatrick, Cole & Giblin, LLP, Special Redevelopment Counsel to the Town.

NOTICE

TAKE NOTICE that the above Ordinance was introduced at a regular meeting of the Town Council of the Town of Newton conducted on Monday, May 13, 2024. It was adopted, after final reading and public hearing thereon, at a meeting of the Newton Town Council conducted at 7:00 pm on Wednesday, May 29, 2024 in the Council Chambers at the Newton Municipal Building, 39 Trinity Street, Newton, New Jersey, and shall take effect in accordance with law.



Teresa A. Oswin, RMC
Municipal Clerk

EXHIBIT A

Amendment, Assignment, and Assumption Agreement

AMENDMENT, ASSIGNMENT, AND ASSUMPTION OF FINANCIAL AGREEMENT

THIS AMENDMENT, ASSIGNMENT, AND ASSUMPTION OF FINANCIAL AGREEMENT (this “**Agreement**”), dated May 29, 2024 (the “**Effective Date**”) is by and among **WSR I URBAN RENEWAL, LLC** (the “**Assignor**”), a New Jersey Limited Liability Company qualified as an urban renewal entity in accordance with the Long Term Tax Exemption Law of 1992, as amended and supplemented, N.J.S.A. 40A:20-1, et seq. (the “**Long Term Tax Exemption Law**”), its successors and assigns forever, **123 WATER URBAN RENEWAL, LLC** (the “**Assignee**”), a New Jersey Limited Liability Company qualified as an urban renewal entity under the Long Term Tax Exemption Law, having an address at 47 Baltusrol Way, Short Hills, New Jersey 07078, its successors and assigns forever, and the **TOWN OF NEWTON** (the “**Town**”; collectively with Assignor and Assignee, the “**Parties**”), a municipal corporation organized and existing under the laws of the State of New Jersey, having an address of 39 Trinity Street, Newton, New Jersey 07860.

WHEREAS, the Town and Assignor entered into that certain financial agreement pursuant to the Long Term Tax Exemption Law dated as of April 26, 2021 (the “**Financial Agreement**”), pursuant to which the Town granted an exemption from taxation of certain improvements to be constructed (the “**Retail Project**”) on the property identified on the official tax map of the Town as Block 10.01, Lot 4.02 and commonly known as and located at 121 Water Street, Newton, New Jersey (the “**Retail Project Property**”) in accordance with the provisions of the Long Term Tax Exemption law in consideration of the Assignor paying to the Town an annual service charge for municipal services provided to the Project; and

WHEREAS, the Parties have entered into this Agreement in order to, among other things, provide clarification and confirmation as to the Retail Project Property and in furtherance of the assignment of the Financial Agreement from Assignor to Assignee as is permitted by the Financial Agreement; and

WHEREAS, Assignor is transferring to Assignee all of its right, title, and interest in and to the Retail Project and the Retail Project Property and Assignor is transferring all of Assignor’s right, title, and interest in and to the Financial Agreement to the Assignee, subject to the terms of this Agreement; and

WHEREAS, the Parties wish to amend the Financial Agreement subject to and according with the terms of this Agreement;

NOW, THEREFORE, in consideration of One Dollar (\$1.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties do hereby agree as follows:

1. The Project Area as is defined within the Financial Agreement is and shall be the Retail Project Property as more particularly described by the metes and bounds description annexed to this Agreement as Exhibit A and as depicted on the survey map annexed to this Agreement as Exhibit B. It is the intent of this Agreement that the legal description documents

annexed to the Financial Agreement as Exhibit A are to be, and shall be and are hereby, removed and replaced in their entirety with the metes and bounds description annexed to this Agreement as Exhibit A and the survey map annexed to this Agreement as Exhibit B.

2. Assignee represents and warrants that it meets all of the preconditions set forth in Section 8.1(a) of the Financial Agreement, specifically that (i) the Assignee is an Urban Renewal Entity (ii) that does not own any other project, (iii) the Assignee is expressly assuming all of the obligations set forth in the Financial Agreement by way of this Agreement, and (iv) sale, transfer, or other conveyance would not otherwise result in the Retail Project Property, and/or the Improvements constructed thereon, being no longer subject to local property taxation in accordance with generally applicable law and the Financial Agreement.

3. Assignor represents and warrants that (i) it is not in default of its obligations under the Financial Agreement or the Long Term Tax Exemption Law, and (ii) provided that the representations and warranties of Assignee as provided in this Agreement are true and correct, assignment of the Financial Agreement is contingent upon the consent and approval of and by the Town to the assignment and form of this Agreement from by Assignor to Assignee, as evidenced by the Town's signature hereto.

4. The Town has determined there has been no default under the Financial Agreement by Assignor and all conditions required by the Financial Agreement have been satisfied by Assignor and Assignee necessary for Assignor to assign the Financial Agreement to Assignee.

5. Pursuant to Section 8.1(a)(iii) of the Financial Agreement, Assignee hereby accepts the assignment of the Financial Agreement as amended by this Agreement and assumes all of the obligations of the Assignor pursuant to the Financial Agreement.

6. Assignor shall indemnify and hold Assignee harmless, from any and all claims arising out of the Financial Agreement prior to the date hereof. Assignee shall indemnify and hold Assignor harmless, from any and all claims arising out of the Financial Agreement from this date forward.

7. The Town hereby approves the assignment of the Financial Agreement as amended by this Agreement by the Assignor to the Assignee.

8. The terms of Town Ordinance No. 2024-16 authorizing the execution of this Agreement by the Town and assignment of the Financial Agreement by Assignor to Assignee adopted by the municipal council of the Town on May 29, 2024, a copy of which is attached hereto as Exhibit C, are made a part of this Agreement as if more fully set forth herein.

9. Except as expressly set forth herein, all terms, covenants, provisions, and conditions of the Financial Agreement are incorporated herein by reference with the same force and effect as if duly set forth herein and shall be binding upon Assignor and Assignee.

10. Except as specifically modified and amended as set forth in this Agreement, the Financial Agreement shall remain unmodified and in full force and effect.

11. This Agreement embodies the entire agreement and understanding among the Parties relating to the subject matter hereof.

12. The execution and delivery of this Agreement has been duly authorized by all necessary action of each of the Parties and represents the valid and binding act and obligation of each of them, enforceable against each of them in accordance with its terms. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns. None of the terms or provisions hereof may be waived, modified, or amended, except by an instrument in writing executed by the party to be charged therewith.

13. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement and it shall not be necessary in making proof of this Agreement to produce or account for more than a sufficient number of counterparts to evidence the execution of this Agreement by each of the Parties.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK – SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

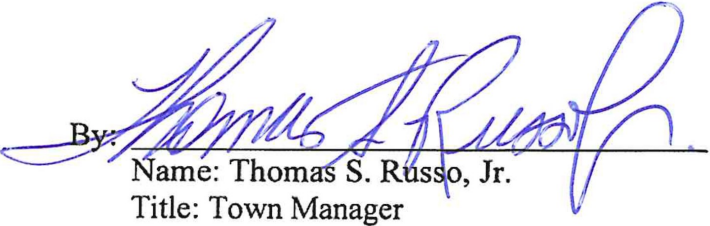
WSR I URBAN RENEWAL, LLC
Assignor

By: _____
Name:
Title:

123 WATER URBAN RENEWAL, LLC:
Assignee

By: _____
Name:
Title:

TOWN OF NEWTON

By:  _____
Name: Thomas S. Russo, Jr.
Title: Town Manager

STATE OF NEW JERSEY :
SS:
COUNTY OF _____:

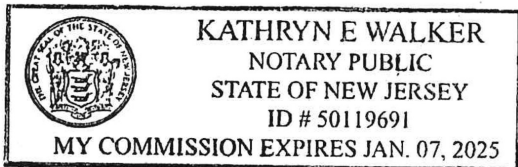
I certify that on _____, 2024, _____, personally came before me and acknowledged under oath, to my satisfaction, that (i) he is the Manager of **WSR I URBAN RENEWAL, LLC**, a New Jersey Limited Liability Company and (ii) this document was signed and delivered by the limited liability company as its voluntary act and deed.

STATE OF NEW JERSEY :
SS:
COUNTY OF _____:

I certify that on _____, 2024, _____, personally came before me and acknowledged under oath, to my satisfaction, that (i) he is the Manager of **123 WATER URBAN RENEWAL, LLC**, a New Jersey Limited Liability Company and (ii) this document was signed and delivered by the limited liability company as its voluntary act and deed.

STATE OF NEW JERSEY :
SS:
COUNTY OF Sussex :

I certify that on May 29, 2024, Thomas S. Russo Jr., personally came before me and acknowledged under oath, to my satisfaction, that (i) he is the Town Manager of the **TOWN OF NEWTON**, a public body corporate of the State of New Jersey and (ii) this document was signed and delivered by the Town as its voluntary act and deed.



Kathryn E. Walker

