

R-052-21

**A RESOLUTION AUTHORIZING THE ISSUANCE OF A
NON-RECOURSE REDEVELOPMENT AREA BOND
(WHARTON MAIN STREET PROJECT) OF THE
BOROUGH OF WHARTON, IN THE COUNTY OF MORRIS,
NEW JERSEY IN AN AGGREGATE PRINCIPAL AMOUNT
OF \$225,000 AND REPEALING AND RESCINDING
RESOLUTION R-126-20**

WHEREAS, pursuant to the Local Redevelopment and Housing Law, *N.J.S.A. 40A:12A-1 et seq.* (the “**Redevelopment Law**” or the “**Act**”), and that certain redevelopment plan adopted on October 15, 2018 (as the same may be amended from time to time, the “**Redevelopment Plan**”) by Ordinance No. O-17-18 of the Council (the “**Borough Council**”) of the Borough of Wharton, a municipal corporation in the County of Morris and the State of New Jersey (the “**Borough**”), the Borough and Wharton CHA Urban Renewal, LLC (the “**Entity**”) entered into that certain Redevelopment Agreement dated February 4, 2020, as amended by that certain First Amendment to Redevelopment Agreement dated May 4, 2020 (as amended and as the same may be further amended from time to time, the “**Redevelopment Agreement**”) with respect to property 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) (the “**Redevelopment Area**”) and designated by Resolution R-100-18 of the Borough Council as a non-condemnation area in need of redevelopment in accordance with the Redevelopment Law; and

WHEREAS, pursuant to the Redevelopment Agreement, 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, the provisions of the Long Term Tax Exemption Law of 1992, *N.J.S.A. 40A:20-1 et seq.* (the “**Exemption Law**”), and such other statutes as may be sources of relevant authority, authorize the Borough to accept, in lieu of real property taxes, annual service charges paid by the Entity to the Borough as set forth in such laws (the “**Annual Service Charge**”); and

WHEREAS, in accordance with the provisions of the Exemption Law, the Entity filed an application with the Borough seeking a tax exemption in connection with the Project, which was approved by Ordinance No. 05-20, finally adopted by the Borough Council on March 9, 2020, which authorized the hereinafter defined Financial Agreement; and

WHEREAS, in accordance with the 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 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 Redevelopment Area Bond Financing Law, *N.J.S.A.* 40A:12A-64 *et seq.* (the “**RAB 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, pursuant to *N.J.S.A.* 40A:12A-29(a)(3) and *N.J.S.A.* 40A:12A-67(g), the Borough Council authorized by Resolution R-70-20 the application to the Local Finance Board (the “**Application**”) for the Borough’s issuance of a \$225,000 **Non-Recourse** Redevelopment Area Bond in support of the Project; and

WHEREAS, on May 13, 2020, the Local Finance Board met, reviewed and approved the Application; and

WHEREAS, on November 9, 2020, the Borough Council adopted Resolution R-126-20 (the “**Prior Bond Resolution**”), which, in furtherance of the purposes of the Act and RAB Law, authorized the issuance of a Non-Recourse Redevelopment Area Bond (Wharton Main Street Project), in the principal amount of \$225,000, in one series (the “**Bond**”) as an inducement to the Entity to construct the Project; and

WHEREAS, the Prior Bond Resolution contemplated that the Bond would be issued in accordance with a trust indenture and administered by a corporate trustee or financial institution as bond trustee; and

WHEREAS, the Entity has determined that the fees and expenses that would be incurred by the structure contemplated by the Prior Bond Resolution would make the Project cost-prohibitive and has requested that the Borough serve as paying agent for the Bond and that the Borough Council repeal and rescind the Prior Bond Resolution in its entirety, and that the Borough Council authorize and issue the Bond on the terms set forth herein; and

WHEREAS, the Borough Council desires to repeal and rescind the Prior Bond Resolution and adopt this Resolution, which authorizes the Bond to be issued and executed and secured by a pledge of the Pledged Annual Service Charge for the payment of the principal of the Bond.

NOW, THEREFORE, BE IT RESOLVED BY THE BOROUGH COUNCIL OF THE BOROUGH OF WHARTON, NEW JERSEY AS FOLLOWS:

Section 1. Incorporation of Recitals. The recitals to this resolution are hereby incorporated as if set forth in full herein.

Section 2. Repeal of Prior Bond Resolution. The Borough hereby repeals and rescinds the Prior Bond Resolution in its entirety, and such Prior Bond Resolution is no longer in full force or effect.

Section 3. Determination to Issue. To accomplish the purposes and objectives of the Act and the RAB Law, the Borough hereby determines to finance a portion of the costs associated with the Project. To finance a portion of the Project, the Bond is hereby authorized to be issued in the principal amount of \$225,000. The net proceeds from the sale of the Bond shall be paid to the Redeveloper for the Project. The Bond shall be issued in one series, shall be dated its date of delivery, shall not bear interest and shall be payable as to principal as set forth therein. The Bond shall be issued in the form, shall mature and shall have such other details and provisions as are set forth in the form of the Bond attached hereto as Exhibit A. The first principal payment on the Bond shall be on a date which is after the payment of four (4) quarterly Annual Service Charge payments.

Section 4. Bond Constitutes a Special, Limited Obligation. The Bond shall be a special, limited obligation of the Borough, payable solely out of the Pledged Annual Service Charge and all such Pledged Annual Service Charge is hereby irrevocably pledged to the payment of the Bond. The payment of the principal of the Bond shall be secured by the pledge of the Pledged Annual Service Charge and certain rights of the Borough as provided in the Financial Agreement. Neither the members of the Borough Council nor any person executing the Bond issued pursuant to this Resolution, the Act and the RAB Law shall be liable personally for the Bond by reason of the issuance thereof. The Bond shall not be in any way a debt or liability of the Borough other than to the limited extent set forth herein. **NEITHER THE FULL FAITH AND CREDIT NOR TAXING POWER OF THE BOROUGH IS PLEDGED TO THE PAYMENT OF THE PRINCIPAL OF THE BOND.**

Section 5. Authorization and Execution of Bond. (a) The Bond shall mature not more than 30 years from the date of its issuance and, in any event, not prior to the termination of the Financial Agreement, and shall be issued in an aggregate principal amount of \$225,000. The Bond shall not bear interest. A certificate evidencing the terms of the sale of the Bond to the purchaser (the “**Purchaser**”) shall be executed by the Chief Financial Officer (the “**Award Certificate**”).

(b) The Mayor, Clerk, Deputy Clerk and Chief Financial Officer (each an “**Authorized Officer**”) are each hereby authorized to execute and deliver the Bond on behalf of the Borough. The Bond shall be executed by the Mayor, the Chief Financial Officer and the Clerk or Deputy Clerk and shall be issued in the form of one physical certificate registered in the name of the Purchaser.

Section 6. Delivery of the Bond. Following execution of the Bond, each Authorized Officer is hereby authorized to deliver the Bond to the Purchaser against receipt of the purchase price or unpaid balance thereof (the “**Closing**”). At the Closing, the Borough shall distribute the

net proceeds from the sale and issuance of the Bond to the Redeveloper in order to pay costs associated with the Project.

Section 7. Conditions Precedent to Issuance of the Bonds. The obligations of the Borough and the Purchaser to consummate the transactions contemplated hereby are subject to (i) the execution and delivery of the Bond, the Financial Agreement, the Redevelopment Agreement and any instruments executed in connection herewith or therewith, and all amendments and modifications thereto, which shall be in full force and effect on and as of the date of issuance of the Bond and shall be in form and substance satisfactory to the Borough and the Purchaser and no default or event of default (however denominated) shall exist under any such documents and (ii) such financing statements, legal opinions, certificates and other documents as the Purchaser and bond counsel to the Borough may reasonably deem necessary to evidence compliance by the Borough and the Purchaser with the Bond, Financial Agreement and Redevelopment Agreement.

Section 8. Transfer of Bond. The Bond may only be transferred to (a) an affiliate of the Purchaser, (b) a trust or custodial arrangement established by the Purchaser or one of its affiliates, the owners of the beneficial interests in which are limited to qualified institutional buyers, as defined in Rule 144A promulgated under the Securities Act of 1933, as amended, or (c) to a Person that is a qualified institutional buyer and a commercial bank having capital and surplus of \$5,000,000,000 or more; each of which has executed and delivered to the Borough an Investor Letter in the form of Exhibit B attached hereto.

Section 9. Limitations of Liability of Borough. The Borough shall not incur any responsibility with respect to the Bond other than in connection with the duties or obligations explicitly set forth herein, in the Bond and in the Financial Agreement. No provision of this Resolution, the Bond, the Financial Agreement or any agreement, document, instrument or certificate executed, delivered or approved in connection with the issuance, sale, delivery or administration of the Bond shall require the Borough to expend or risk its own general funds, the obligations and liabilities of the Borough hereunder being payable solely from the Pledged Annual Service Charge.

In the event of any default by the Borough hereunder, the liability of the Borough to any person who shall be the registered owner of the Bond (the “**Bondholder**”) shall be enforceable only against the Pledged Annual Service Charge that may be made available for such purposes under the RAB Law, and there shall be no other recourse for damages by the Bondholder against the Borough, its officers, members, agents and employees, or any of the property now or hereafter owned by it or them.

Section 10. Certain Actions of the Borough. The Borough covenants to take such action as the Bondholder shall reasonably request, in order that the Bondholder may realize the benefits of the right to receive the Pledged Annual Service Charge; such actions may include, but shall not be limited to, conducting an *in rem* tax foreclosure action in accordance with the provisions of *N.J.S.A. 54:5-1 et seq.*

Upon the happening and continuance of any Default as defined in the Financial Agreement, upon receipt of the written request of the Bondholder, the Borough shall proceed to protect and enforce its rights and the rights of the Bondholder under the laws of the State of New Jersey and

the terms of the Financial Agreement, by such suits, actions or special proceedings in equity or at law, including, without limitation, directing the Borough to commence an *in rem* tax foreclosure pursuant to the Financial Agreement or mandamus, or by proceedings in the office of any board or office having jurisdiction, either for the specific performance of any covenant, condition or agreement contained in the Bond or the Financial Agreement or for the enforcement of any proper legal or equitable remedy. Only the Borough can undertake the sale of tax sale certificates, and in the same manner, and at the same time, as generally applicable for unpaid taxes due and owing to the Borough, subject to all applicable laws (including bankruptcy laws) necessary to realize the collection of the Pledged Annual Service Charge remaining unpaid in accordance with the Financial Agreement.

If the Bondholder shall have proceeded to enforce the rights of the Bondholder under the Bond and the Financial Agreement and such proceedings shall have been discontinued or abandoned for any reason or shall have been determined adversely to the Bondholder, then the Bondholder shall be restored to its position and rights hereunder, and all rights, remedies and powers of the Bondholder shall continue as though no such proceedings had taken place.

Section 11. Incidental Action. Each Authorized Officer is hereby authorized to execute and deliver such other papers, instruments, certificates, opinions, affidavits and documents, and to take such other action as may be necessary or appropriate in order to carry out the purpose of this Resolution, including effectuating the execution and delivery of any closing certificates required in connection with the issuance of the Bond, and the issuance and sale of the Bond, all in accordance with the foregoing sections hereof.

Section 12. Independent Determination by Purchaser. The Bond authorized herein is being issued to the Purchaser with the understanding that it is being held for the Purchaser's own account and that the Purchaser has made its own independent investigation and judgment about the credit and security for the payment of such Bond. Any sale or assignment by the Purchaser of such Bond shall be on the same terms and conditions as set forth herein. The Borough will act as the paying agent for the Bond. Pursuant to the terms of the Financial Agreement, the Borough will collect the Annual Service Charge in quarterly installments on February 1, May 1, August 1 and November 1 and, on each date and upon receipt of each such quarterly installment, will deposit one-fourth of the principal amount of the Bond due on the next succeeding principal payment date into a separate trust account for the benefit of the Purchaser or subsequent Bondholder, as the case may be. The Borough shall make payment to the Purchaser, or subsequent Bondholder, as the case may be, of the principal amount of the Bond due, out of the Pledged Annual Service Charge. In the event of a Default (as defined in the Financial Agreement) resulting from the failure of the Entity to pay the Annual Service Charge payment then due and owing in full, the Borough will first apply the Annual Service Charge paid to the "Net Annual Service Charge to Borough" as listed in Schedule 1 of the Financial Agreement, and second, any remainder to the Pledged Annual Service Charge; subject to payment of the County Share (as such term is defined in the Financial Agreement).

Section 13. Construction. If any one of more of the provisions of this Resolution or the Bond issued hereunder shall for any reason be held illegal or invalid, such illegality or invalidity shall not affect any other provision of this Resolution, and the Bond shall be construed and enforced as if such illegal or invalid provision had not been contained therein.

Section 14. Effective Date. This Resolution shall take effect immediately upon adoption.

Exhibit A

Form of Bond

**BOROUGH OF WHARTON, NEW JERSEY
REDEVELOPMENT AREA BONDS
(WHARTON MAIN STREET PROJECT), SERIES 2021
(NON-RECOURSE)**

No. R-1

\$225,000

REGISTERED OWNER: [_____]

PRINCIPAL AMOUNT: TWO HUNDRED TWENTY-FIVE THOUSAND DOLLARS
(\$225,000)

DATED DATE: [_____]

THE BOROUGH OF WHARTON, a public body corporate and politic and political subdivision of the State of New Jersey, existing under and by virtue of the Constitution and the laws of the State of New Jersey (the “**Borough**”), for value received, hereby promises to pay, but only from the Pledged Annual Service Charge (as defined in the hereinafter defined Resolution) and other amounts pledged to such payment under the Resolution, to the REGISTERED OWNER or registered assigns or legal representative, the principal sums on the dates and in the amounts set forth on Schedule A attached hereto and made a part hereof, without interest thereon.

The principal of this bond is payable in lawful money of the United States of America or by check payable in such money. If any payment of the principal of this bond shall be due on a day other than a business day, such payment shall be made on the next business day with like effect as if made on the originally scheduled date.

As provided in the Act (defined herein), this bond is a special, limited obligation of the Borough payable solely from the Pledged Annual Service Charge and does not constitute a general obligation debt of the Borough or pledge of the full faith and credit or taxing power of the Borough, the State of New Jersey or any political subdivision thereof.

No transfer of this bond shall be valid unless made on the registration books of the Borough kept for that purpose and by surrender of this bond (together with a written instrument of transfer duly executed by the registered owner or by his or her duly authorized attorney) and the issuance of a new bond or bonds in the same form and tenor as the original bond except for the differences in the name of its registered owner, the denominations and the Date of Authentication. The owner of any bond or bonds may surrender same (together with a written instrument of transfer duly executed by the registered owner or by his or her duly authorized attorney), in exchange for an equal aggregate principal amount of bonds of any authorized denominations.

This bond is one of a duly authorized series of bonds of the Borough designated “Redevelopment Area Bonds (Wharton Main Street Project) Series 2021 (NON-RECOURSE)”, aggregating Two Hundred Twenty-Five Thousand Dollars (\$225,000) in principal amount, dated as of the DATED DATE, and duly issued by the Borough under and pursuant to (i) the provisions of the Long Term Tax Exemption Law of 1992, constituting Chapter 431 of the Pamphlet Laws of 1991 of 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.) and the Redevelopment Area Bond Financing Law, constituting Chapter 310 of the Pamphlet Laws of 2001 of the State, and the acts amendatory thereof and supplemental thereto (the “**Act**”, as codified in N.J.S.A. 40A:12A-64 et seq., and together with the Tax Exemption Law, the “**Acts**”), and (ii) certain proceedings of the Borough, including a Resolution adopted by the Borough on February 8, 2021, entitled “A RESOLUTION AUTHORIZING THE ISSUANCE OF A NON-RECOURSE REDEVELOPMENT AREA BOND (WHARTON MAIN STREET PROJECT) OF THE BOROUGH OF WHARTON, IN THE COUNTY OF MORRIS, NEW JERSEY IN AN AGGREGATE PRINCIPAL AMOUNT OF \$225,000 AND REPEALING AND RESCINDING RESOLUTION R-126-20” (the “**Resolution**”). The terms of this bond include those stated in the Resolution, and this bond is subject to all such terms. Capitalized terms used herein and not otherwise defined have the meanings set forth in the Resolution. By the acceptance of this bond, the holder hereof assents to all of the provisions of the Resolution. Certified copies of the Resolution are on file at the office of the Borough.

In the Resolution, the Borough has pledged the Pledged Annual Service Charge to pay the principal of the Bond.

This bond is not subject to redemption prior to its stated maturity.

The Borough may deem and treat the person in whose name this bond is registered as the absolute owner hereof (whether or not this bond shall be overdue and notwithstanding any notation of ownership or other writing hereon made by anyone other than the Borough) for the purpose of receiving payment of or on account of the principal of this bond, and for all other purposes, and the Borough shall not be affected by any notice to the contrary. All such payments so made to any such registered owner, or upon his order, shall be valid and, to the extent of the sum or sums so paid, effectual to satisfy and discharge the liability for moneys payable under this bond.

This bond shall be and is deemed to be for all purposes a negotiable instrument subject only to the provisions for registration and registration of transfer stated herein.

This bond shall be governed by and construed in accordance with the laws of the State of New Jersey.

All acts, conditions and things required by the Constitution and laws of the State of New Jersey and the rules and regulations of the Borough to happen, exist and be performed precedent to and in the issuance of this bond have happened, exist and have been performed as so required.

No recourse shall be had for the payment of the principal of this bond or for any claims based thereon against any member or other officer of the Borough or any person executing this bond, all such liability, if any, being expressly waived and released by the registered owner of this bond by the acceptance of this bond.

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IN WITNESS WHEREOF, the Borough of Wharton has caused this bond to be executed in its name by the manual or facsimile signature of its Mayor and Chief Financial Officer and its corporate seal (or a facsimile thereof) to be hereunto affixed, imprinted, engraved or otherwise reproduced, attested by the manual or facsimile signature of the Clerk or Deputy Clerk, all as of the Dated Date.

[SEAL]

Attest

**BOROUGH OF WHARTON, NEW
JERSEY**

By: _____

Clerk

By: _____

Mayor

By: _____

Chief Financial Officer

Schedule A

Year (_____ 1)		Amount		Year (_____ 1)		Amount
		\$7,500				\$7,500
		\$7,500				\$7,500
		\$7,500				\$7,500
		\$7,500				\$7,500
		\$7,500				\$7,500
		\$7,500				\$7,500
		\$7,500				\$7,500
		\$7,500				\$7,500
		\$7,500				\$7,500
		\$7,500				\$7,500
		\$7,500				\$7,500
		\$7,500				\$7,500
		\$7,500				\$7,500
		\$7,500				\$7,500
		\$7,500				\$7,500
		\$7,500				\$7,500
		\$7,500				\$7,500

EXHIBIT B
INVESTOR LETTER

[•], 2021

Mayor and Council
of the Borough of Wharton, New Jersey

Re: \$225,000 Borough of Wharton Redevelopment Area Bonds
(Wharton Main Street Project), Series 2021 (NON-RECOURSE)

Ladies and Gentlemen:

[•] (the “Purchaser”) has agreed to purchase the above-referenced bond (the “Bond”) in the amount of \$225,000 which was issued in the original aggregate principal amount of \$225,000 by the Borough of Wharton, New Jersey (the “Issuer”) bearing interest at the rate or rates set forth in the Award Certificate dated of [•], 2021 (the “Award Certificate”), executed by the Issuer. All capitalized terms used herein, but not defined herein, shall have the respective meanings set forth in the resolution adopted by the Issuer on February 8, 2021. The undersigned, an authorized representative of the Purchaser, hereby represents to you that:

1. The Purchaser has sufficient knowledge and experience in financial and business matters, including purchase and ownership of municipal and other tax-exempt obligations, to be able to evaluate the risks and merits of the investment represented by the purchase of the Bond.
2. The Purchaser has authority to purchase the Bond and to execute this letter and any other instruments and documents required to be executed by the Purchaser in connection with the purchase of the Bond.
3. The undersigned is a duly appointed, qualified and acting representative of the Purchaser and is authorized to cause the Purchaser to make the certifications, representations and warranties contained herein by execution of this letter on behalf of the Purchaser.
4. The Purchaser is (a) an affiliate of Wharton CHA Urban Renewal, LLC, (b) a trust or other custodial arrangement established by Wharton CHA Urban Renewal, LLC or one of its affiliates, the owners of the beneficial interests in which are limited to “qualified institutional buyers” as defined in Rule 144A promulgated under the Securities Act of 1933, as amended (the “1933 Act”) or (c) a qualified institutional buyer that is a commercial bank with capital and surplus of \$5,000,000,000 or more and is able to bear the economic risks of the investment.
5. The Purchaser understands that no official statement, prospectus, offering circular, or other comprehensive offering statement is being provided with respect to the Bond. The Purchaser has made its own inquiry and analysis with respect to the Issuer, the Project, the Bond

and the security therefor, and other material factors affecting the security for and payment of the Bond.

6. The Purchaser acknowledges that it has either been supplied with or been given access to information, including financial statements and other financial information, to which a reasonable investor would attach significance in making investment decisions, and has had the opportunity to ask questions and receive answers from knowledgeable individuals concerning the Issuer, the Project, the Bond and the security therefor, so that as a reasonable investor, it has been able to make its decision to purchase the Bond.

7. The Purchaser understands that the Bond (i) is not registered under the 1933 Act and is not registered or otherwise qualified for sale under the “Blue Sky” laws and regulations of any state, (ii) is not listed on any stock or other securities exchange, and (iii) carries no rating from any credit rating agency.

8. The Bond is being acquired by the Purchaser for investment for its own account and not with a present view toward resale or distribution; provided, however, that the Purchaser reserves the right to sell, transfer or redistribute the Bond, but agrees that any such sale, transfer or distribution by the Purchaser shall be to a Person which executes an investor letter substantially in the form hereof and which shall be:

- (a) an affiliate of Wharton CHA Urban Renewal, LLC;
- (b) a trust or other custodial arrangement established by Wharton CHA Urban Renewal, LLC or one of its affiliates, the owners of any beneficial interest in which are limited to qualified institutional buyers; or
- (c) a qualified institutional buyer and a commercial bank having capital and surplus of \$5,000,000,000 or more.

[●], as Purchaser

By: _____
[Name],
[Title]