SUMMARY OF THE "NJ ASPIRE" REDEVELOPMENT INCENTIVE PROGRAM

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Developers of *redevelopment* projects continue to struggle with unique added construction costs that are not commonplace in greenfield development—from brownfield remediation to structured parking. Long-term tax exemptions and bond-financing proceeds help but don't always close project financing gaps or deliver reasonable rates of return. This has been especially true in emerging municipalities where rents are subpar, yet construction costs remain comparable.

Enter the newly enacted "NJ Aspire" incentive, a transferable/pledgeable state tax credit. The incentive is not meant to be a substitute for conventional debt financing or equity investments; in fact, developers should generally have their primary sources of funds in place before applying. Applications will undergo a rigorous analysis of the sources and uses of funds, construction costs and projected revenues.

WHAT PROJECTS ARE ELIGIBLE? – A "redevelopment project" is eligible to apply for the award of tax credits if:

- Project "is not economically feasible" without the incentive award;

- A "project financing gap" exists or the New Jersey Economic Development Authority ("NJEDA") determines that the project "will generate a below market rate of return";

- Project is located in a qualifying "incentive area" (except film studios, which can be located anywhere in the State); and

- Construction has not commenced at the project, except for demolition and site remediation activities (NOTE: A faltering project is exempt from this requirement if NJEDA determines that it "would not be completed otherwise").

WHAT IS THE MAXIMUM AMOUNT OF TAX CREDITS PER PROJECT?

The maximum tax credit amount for a qualifying redevelopment project is:

- $60,000,000 per redevelopment project if located in a "qualified incentive tract," "government-restricted municipality," or municipality with a Municipal Revitalization Index distress score of at least 50, or

- $42,000,000 for any other redevelopment project

The tax credit amount is based on the documented project financing gap, not to exceed the applicable cap below:

- "Residential project" that consist of new construction and receive an allocation of 4% LIHTCs - tax credits up to 60% of "total project cost";

- "Commercial project" located in a government-restricted municipality - tax credits up to 50% of total project cost;

- "Transformative project" - tax credits up to 40% of total project cost, the total value of the project financing gap, or $350,000,000, whichever is less.

- **All other projects** - tax credits up to 45% of total project cost;

Tax credits are paid out over a number of years, not to exceed 10 years.

WHAT ARE THE KEY PROGRAM REQUIREMENTS?

- **Additional program details/requirements for <u>all projects</u>:**

  - All Aspire applications must be submitted prior to March 1, 2027;

  - Applications will be considered based on the order in which they are deemed complete (available funds are limited in each year of the program);

- "Developer" must contribute equity equal to at least 20 percent of the total project cost (except projects located in Government Restricted Municipalities only have to contribute 10%);

- Developer must comply in most cases with "minimum environmental and sustainability standards," affirmative action and prevailing wage requirements regarding construction work and "building services"; in addition, any project having a total project cost equal to or in excess of $10 Million must enter into a community benefits agreement, and certain projects may also be subject to a labor harmony agreement;

- Project must be completed, and certificate of occupancy must be issued, within 4 years after incentive grant agreement is executed;

- At the end of 7 years after the project has been placed in service, NJEDA will determine whether the project financing gap is smaller than the gap determined at NJEDA board approval; it will evaluate the developer's cash flow and compare that cash flow to the projected cash flow at the time of board approval
    - If there is a smaller gap, NJEDA will **reduce** the amount of the tax credit amount on a pro rata basis
    - If no gap is found, the entire tax credit amount must be **forfeited**
    - If the actual cash flow on a <u>commercial project</u> exceeds the projected cash flow at the time of board approval by more than 15%, the NJEDA shall require the developer to **reimburse** the State for up to 20% of the amount of the excess
    - If the actual cash flow on a <u>residential project</u> exceeds the projected cash flow at the time of board approval, the developer's return on investment shall be **subject to any restrictions on rates of return** set by the New Jersey Housing & Mortgage Finance Agency ("NJHMFA") from time to time for housing projects assisted with a loan from NJHMFA.

➢ **Additional program details/requirements for <u>residential projects</u> only:**

- Project must have a total project cost of at least:
    - $17,500,000 if located in Newark or Jersey City

        - $10,000,000 if located in a municipality with a population less than 200,000
        - $5,000,000 if located in a qualified incentive tract or government-restricted municipality; and

    - If project consists of newly-constructed residential units, developer must reserve at least 20% of the units for low- and moderate-income households with affordability controls as required under the Fair Housing Act.

- **Additional program details/requirements for <u>commercial projects</u> only:**

    - Developer must obtain a letter "evidencing support" for the project from the governing body of the host municipality;

    - NJEDA will "conduct a fiscal impact analysis to ensure that the overall public assistance provided to the project will result in a net positive benefit to the State…equaling an amount determined by NJEDA through regulation that exceeds the requested tax credit amount" (such excess amount for a project in a government-restricted municipality may be up to 35% lower than the net benefit requirement set by NJEDA for all other redevelopment projects)

- **Additional program requirements for <u>transformative projects</u> only:**

    - Project must be located in a "distressed municipality," government-restricted municipality, or "transit hub municipality" (not applicable to film studio projects);

    - Not more than 2 transformative projects will be approved in each eligible municipality;

    - Only 10 transformative projects will be approved over the life of the Aspire program;

    - Developer must obtain a letter "evidencing support" for the project from the governing body of the host municipality;
    - Not more than 50% of the project may be used for point-of-sale retail;

- If project consists of 1,000 or more new residential units, developer must reserve at least 25% of the units for affordable housing in either of the combinations set forth above;

- Criteria to be developed by NJEDA for this type of project will include consideration of "the extent to which the proposed transformative project would create modern facilities that enhance the State's competitiveness in attracting targeted industries"; and

- NJEDA will conduct a fiscal impact analysis to ensure that the overall public assistance provided to the project will result in a positive net benefit to the State as detailed above; however, a "predominantly residential" transformative project will be excluded from the calculation of the net benefit test.

KEY STATUTORY DEFINITIONS USED IN THIS SUMMARY:

"Building services" means any cleaning or routine building maintenance work, including but not limited to sweeping, vacuuming, floor cleaning, cleaning of rest rooms, collecting refuse or trash, window cleaning, securing, patrolling, or other work in connection with the care or securing of an existing building, including services typically provided by a door-attendant or concierge. "Building services" shall not include any skilled maintenance work, professional services, or other public work for which a contractor is required to pay the "prevailing wage" as defined in section 2 of P.L.1963, c.150 (C.34:11-56.26)."

"Commercial project" means a redevelopment project, which is predominantly commercial and contains 100,000 or more square feet of office and retail space, industrial space, or film studios, professional stages, television studios, recording studios, screening rooms, or other infrastructure for film production, for purchase or lease. A commercial project may include a parking component, provided that the square footage for the parking component shall not count toward the required minimum square feet and when determining if a project is a commercial or residential project, a parking component shall not constitute either a residential or commercial use.

"Developer" means a person who enters or proposes to enter into an incentive award agreement pursuant to the provisions of section 60 of P.L. 2020, c. 156 (N.J.S.A. 34:1B¬328), including, but not limited to, a lender that completes a redevelopment project, operates a redevelopment project, or completes and operates a redevelopment project. [EDITORIAL NOTE: Developer may include a lender that completes a project.]

"**Developer contributed capital**" means equity contributed by the developer.

"Distressed municipality" means a municipality that is qualified to receive assistance under P.L.1978, c.14 (C.52:27D-178 et seq.), a municipality under the supervision of the Local Finance Board pursuant to the provisions of the "Local Government Supervision Act (1947)," P.L.1947, c.151 (C.52:27BB-1 et seq.), a municipality identified by the Director of the Division of Local Government Services in the Department of Community Affairs to be facing serious fiscal distress, a SDA municipality, or a municipality in which a major rail station is located.

"**Equity**" means developer contributed capital that may consist of cash, deferred development fees, costs for project feasibility incurred within the 12 months prior to application, property value less any mortgages when the developer owns the project site, and any other investment by the developer in the project deemed acceptable by the Authority. Property value shall be valued at the lesser of: the purchase price, provided the property was purchased pursuant to an arm's length transaction within 12 months of application; or the value as determined by a current appraisal acceptable to the Authority. Equity shall include Federal or local grants and tax credits, including, but not limited to, the Historic Rehabilitation Tax Credit, 26 U.S. Code § 47, Low-Income Housing Credit, 26 U.S. Code § 42, and New Market Tax Credit, 26 U.S. Code § 45D. Equity shall not include State grants or tax credits. For a residential project utilizing Low-Income Housing Tx Credits awarded by the New Jersey Housing and Mortgage Financing Agency, equity means the portion of the developer's fee that is delayed for a minimum of five years.

"Government-restricted municipality" means a municipality in this State with a municipal revitalization index distress score of at least 75, that met the criteria for designation as an urban aid municipality in the 2019 State fiscal year, and that, on the effective date of P.L. 2020, c. 156 (N.J.S.A. 34:1B-269 et seq.), is subject to financial restrictions imposed pursuant to the Municipal Stabilization and Recovery Act, P.L. 2016, c. 4 (N.J.S.A. 52:27BBBB-1 et seq.), or is restricted in its ability to levy property taxes on property in that municipality as a result of the State of New Jersey owning or controlling property representing at least 25 percent of the total land area of the municipality or as a result of the federal government of the United States owning or controlling at least 50 acres of the total land area of the municipality, which is dedicated as a national natural landmark.

"Incentive area" means an area designated pursuant to the "State Planning Act," P.L.1985, c.398 (C.52:18A-196 et seq.), as Planning Area 1 (Metropolitan), Planning Area 2 (Suburban), or a Designated Center, , provided an area designated as Planning Area 2 (Suburban) or a Designated Center shall be located within a one-half mile radius of the mid-point, with bicycle and pedestrian connectivity, of a New Jersey Transit Corporation, Port Authority Transit Corporation, or Port Authority Trans-Hudson Corporation rail, bus, or ferry station, including all light rail stations, or a high frequency bus stop as certified by the New Jersey Transit Corporation.

"Low-income housing" means housing affordable according to federal Department of Housing and Urban Development or other recognized standards for home ownership and rental costs and occupied or reserved for occupancy by households with a gross household income equal to 50 percent or less of the median gross household income for households of the same size within the housing region in which the housing is located.

"Minimum environmental and sustainability standards" means standards established by the authority in accordance with the green building manual prepared by the Commissioner of Community Affairs pursuant to section 1 of P.L.2007, c.132 (C.52:27D-130.6), regarding the use of renewable energy, energy-efficient technology, and non-renewable resources to reduce environmental degradation and encourage long-term cost reduction.

"Moderate-income housing" means housing affordable according to federal Department of Housing and Urban Development or other recognized standards for home ownership and rental costs and occupied or reserved for occupancy by households with a gross household income equal to more than 50 percent, but less than 80 percent, of the median gross household income for households of the same size within the housing region in which the housing is located.

"Project cost" or "**total project cost**" means the sum of the costs incurred in connection with a redevelopment project by a developer until the earlier of the issuance of a permanent certificate of occupancy and the certification of costs pursuant to N.J.A.C. 19:23-8(f), or until such other time specified by the Authority, based upon such other documentation evidencing project completion as set forth in the incentive award agreement, for a specific investment or improvement, including the costs relating to lands, buildings, improvements, real or personal property, or any interest therein, including leases discounted to present value, including lands under water, riparian rights, space rights, and air rights acquired, owned, developed or redeveloped, constructed, reconstructed, rehabilitated, or improved, any environmental remediation costs, plus soft costs of an amount not to exceed 20 percent of the total costs and the cost of infrastructure improvements, including ancillary infrastructure projects. Project cost shall not include the cost of acquiring land. Project cost shall include otherwise qualifying costs incurred by an affiliate of the developer. The fees paid by the developer or any co-applicant to the Authority associated with the application or administration of an incentive award under sections 54 through 67 of P.L. 2020, c. 156 (N.J.S.A. 34:1B-322 through 34:1B-335) shall not constitute a project cost.

"Project financing gap" means the part of the total project cost, including reasonable and appropriate return on investment, that remains to be financed after all other sources of capital have been accounted for, including, but not limited to, developer contributed capital, which shall not be less than 20 percent of the total project cost, and investor or financial entity capital or loans for which the developer, after making all good faith efforts to raise additional capital, certifies that additional capital cannot be raised from other sources on a non-recourse basis; provided, however, that for a redevelopment project located in a government-restricted municipality, the developer contributed capital shall not be less than 10 percent of the total project cost.

"Qualified incentive tract" means (i) a population census tract having a poverty rate of 20 percent or more; or (ii) a census tract in which the median family income for the census tract does not exceed 80 percent of the greater of the Statewide median family income or the median family income of the metropolitan statistical area in which the census tract is situated.

"**Reasonable and appropriate return on investment**" or "**reasonable and appropriate rate of return on investment**" means the discount rate at which the present value of the future cash flows of an investment equal the cost of the investment. For a residential project utilizing federal tax credits under the Low-Income Housing Tax Credit Program awarded by the New Jersey Housing and Mortgage Finance Agency, the reasonable and appropriate return on investment shall be based on the approval of deferred developer fees pursuant to N.J.A.C. 5:80-33. For purposes of the analysis of the reasonable and appropriate return on investment, an investment shall not include any federal, State, or local tax credits.

"Redevelopment project" means a specific construction project or improvement undertaken by a developer, owner or tenant, or both, and any ancillary infrastructure project. A redevelopment project may involve construction or improvement upon lands, buildings, improvements, or real and personal property, or any interest therein, including lands under water, riparian rights, space rights, and air rights, acquired, owned, developed or redeveloped, constructed, reconstructed, rehabilitated, or improved.

"Residential project" means a redevelopment project that is predominantly residential, intended for multi-family residency, and may include a parking component. When determining if a project is a residential or commercial project, a parking component shall not constitute either a residential or commercial use.

"**Soft costs**" means costs not directly related to construction, including capitalized interest paid to third parties, all costs associated with financing, design, engineering, legal, or real estate commissions, including, but not limited to, architect fees, permit fees, loan origination and closing costs, construction management, and freight and shipping delivery, but not including early lease termination costs, air fare, mileage, tolls, gas, meals, packing material, marketing, temporary signage, incentive consultant fees, Authority fees, loan interest payments, escrows, or other similar costs. Soft costs shall include costs for benefits and services provided under the community benefits agreement that are not directly related to construction of the project, subject to the limitations of N.J.A.C. 19:31-23.8(e)9.

"Transformative project" means a redevelopment project that has a project financing gap, that has a total project cost of at least $100,000,000, and that includes 500,000 or more square feet of new or substantially renovated industrial, commercial, or residential space or that includes 250,000 or more square feet of film studios, professional stages, television studios, recording studios, screening rooms, or other infrastructure for film production and which is of special economic importance as measured by the level of new jobs, new capital investment, opportunities to leverage leadership in a high-priority targeted industry, or other state priorities as determined by the authority pursuant to rules and regulations promulgated to implement this section.

"Transit hub municipality" means a Transit Village or a municipality: a. which qualifies for State aid pursuant to P.L.1978, c.14 (C.52:27D-178 et seq.), or which has continued to be a qualified municipality thereunder pursuant to P.L.2007, c.111; and b. in which 30 percent or more of the value of real property was exempt from local property taxation during tax year 2006. The percentage of exempt property shall be calculated by dividing the total exempt value by the sum of the net valuation which is taxable and that which is tax exempt."

"Workforce housing" means housing that is affordable according to federal Department of Housing and Urban Development or other recognized standards for home ownership and rental costs, and occupied or reserved for occupancy by households with a gross household income of more than 80 percent, but less than 120 percent, of the median gross household income for households of the same size within the housing region in which the housing is located.

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