

ORDINANCE OF THE TOWNSHIP OF IRVINGTON, NJ

No. MC 3767

Effective Date MAY 18 2021

Dated APRIL 26, 2021

APPROVED AS TO FORM AND LEGALITY ON THE BASIS OF FACTS SET FORTH BY

[Signature]
Legislative Research Officer

COUNCIL MEMBER HUDLEY presents the following Ordinance SECONDED BEASLEY

ORDINANCE OF THE TOWNSHIP OF IRVINGTON, IN THE COUNTY OF ESSEX, AUTHORIZING THE EXECUTION OF AN AMENDED AND RESTATED FINANCIAL AGREEMENT WITH HILLTOP PARTNERS SENIOR URBAN RENEWAL, LLC WITH RESPECT TO THE PORTION OF THE FORMER IRVINGTON GENERAL HOSPITAL SITE IDENTIFIED ON THE OFFICIAL TAX MAPS OF THE TOWNSHIP AS BLOCK 324, LOT 1.05, COMMONLY KNOWN AS 832 CHANCELLOR AVENUE

WHEREAS, the Municipal Council (the "Township Council") of the Township of Irvington (the "Township"), a public body corporate and politic of the State of New Jersey, is authorized pursuant to the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq. (the "Redevelopment Law"), to determine whether certain parcels of land within the Township constitute an area in need of rehabilitation and/or an area in need of redevelopment; and

WHEREAS, the Township Council, by Resolution 94-0809-5 dated August 9, 1994, created the Township Urban Enterprise Zone, (the "UEZ") pursuant to the New Jersey Urban Enterprise Zones Act, N.J.S.A. 52:27H-60 et seq. (the "UEZ Act"); and

WHEREAS, the Township Council designated certain properties within and contiguous to the UEZ as an area in need of rehabilitation (the "UEZ Rehabilitation Area") by Resolution UEZ 07-0227-5, dated February 27, 2007 in accordance with the requirements of N.J.S.A. 40A:12A-14; and

WHEREAS, the Township Council duly adopted a redevelopment plan by Ordinance MC No. 3351 dated September 11, 2007, to govern the redevelopment of the UEZ Rehabilitation Area, (as amended, the "Redevelopment Plan") in accordance with N.J.S.A. 40A:12A-7; and

WHEREAS, pursuant to N.J.S.A. 40A:12A-4, the Township has determined to act as the "redevelopment entity", as such term is defined at N.J.S.A. 40A:12A-3, responsible for carrying out redevelopment projects in the Redevelopment Area in accordance with the Redevelopment Plan, pursuant to N.J.S.A. 40A:12A-4(c); and

WHEREAS, Hilltop Partners Senior Urban Renewal, LLC (the "Entity"), an urban renewal entity pursuant to the Long Term Tax Exemption Law, N.J.S.A. 40A:20-1 et seq. (the "LTTE Law"), is the contract purchaser of certain property located within the UEZ, which property is identified as Block 324, Lot 1.05 on the official tax map of the Township (the "Property"); and

WHEREAS, the Township Council, by Ordinance No. MC 3709 authorized the execution of a Financial Agreement (the "Original Agreement") between the Township and the Entity, pursuant to which the Township granted an exemption from taxation of certain improvements to be constructed upon Block 324, Lots 1.02, 1.05, 1.07, which improvements were to consist of a new approximately 118,334 square foot senior housing complex consisting of approximately ninety-seven (97) apartments units (comprising: approximately eight (8) studio units, eighty-eight (88) one-bedroom units and one (1) two-bedroom superintendent unit), residential amenities, a new approximately 36,485 square foot parking garage with one hundred five (105) parking spaces, four (4) additional outdoor surface parking spaces and associated site improvements (the "Original Project"), as more fully described in the Original Agreement in accordance with the provisions of the LTTE Law in consideration of the Entity paying to the Township an annual service charge for municipal services provided to the Project; and

WHEREAS, the Township and the Entity seek to amend the Original Agreement to provide that the Project shall consist of the design, development, financing, construction and maintenance of a new approximately 118,154 square foot senior housing complex consisting of approximately ninety-six (96) apartments units (comprising: approximately four (4) studio units, ninety-one (91) one-bedroom units and one (1) two-bedroom superintendent unit), residential amenities, a new parking garage with approximately ninety-one (91) parking spaces, seven (7) additional outdoor surface parking spaces and associated site improvements on the Property (the "Project"); and

WHEREAS, the Project will further consist of mixed income units with approximately twenty-seven percent (27%) of the apartment units rented at market rate (and approximately seventy-three percent (73%) of the apartment units rented at a price affordable to those with a household income of 80% of the Area Median Income or less (the "Affordable Units"), nine (9) of which Affordable Units shall be set-aside for special needs individuals; and

WHEREAS, the Township now desires to amend and restate the Original Agreement such that the Amended & Restated Financial Agreement (the "Financial Agreement"), substantially in the form attached hereto as Exhibit A, shall supersede the Original Agreement, and the Parties have determined that an amended and restated agreement is the correct format to memorialize the parties' new and amended rights and obligations,

NOW, THEREFORE, BE IT ORDAINED by the Municipal Council of the Township of Irvington, in the County of Essex, New Jersey, as follows:

I. GENERAL

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

II. EXECUTION OF AMENDMENT AUTHORIZED

(a) The Mayor is hereby authorized to execute the Amended and Restated Financial Agreement, substantially in the form attached hereto as Exhibit A, subject to modification or revision deemed desirable and appropriate by the Township in consultation with counsel.

(b) The Township Clerk is hereby authorized and directed, upon the execution of the Amendment 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 Township upon such document.

(c) The Township Clerk shall file certified copies of this Ordinance and the Amendment with the Tax Assessor of the Township in accordance with Section 12 of the Exemption Law.

(d) In accordance with P.L. 2015, c. 247, within ten (10) calendar days following the later of the effective date of this Ordinance or the execution of the Amendment by the Entity, the Township Clerk shall transmit a certified copy of this Ordinance and the Amendment to the chief financial officer of Union County and to the Union County Counsel for informational purposes.

(e) The Mayor and Township Clerk are hereby authorized to take such action and to execute such other documents, on behalf of the Township, in consultation with counsel, as is necessary to effectuate the terms of the Amendment.

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. AVAILABILITY OF THE ORDINANCE

A copy of this Ordinance and Amendment shall be available for public inspection at the offices of the Township.

V. EFFECTIVE DATE

This Ordinance shall take effect according to law.

RECORD OF COUNCIL VOTE

X = Indicates Vote N.V. = No Vote A.B. = Absent X.O.R. = Indicates Vote to Override Veto

| COUNCIL MEMBER | YES | NO | N.V. | A.B. | COUNCIL MEMBER | YES | NO | N.V. | A.B. |
|----------------|-----|----|------|------|----------------|-----|----|------|------|
| BEASLEY | X | | | | HUDLEY | X | | | |
| COX | X | | | | VICK | X | | | |
| EVANS | X | | | | BURGESS | | | | X |
| FREDERIC | X | | | | | | | | |

Ordinance on First Reading Date APRIL 12, 2021 Council Adopted on Second Reading Date APRIL 26, 2021

MAYOR _____ Date 4/28/2021 Approved X Rejected _____

Reconsidered by Council - Override Yes _____ No _____ Date of Override _____

COUNCIL PRESIDENT Dr. October Hudley MUNICIPAL CLERK Harold E. Thomas

I hereby certify that the foregoing is a true copy of a Resolution duly adopted by the Municipal Council. In witness whereof I have hereunto set my hand and the Corporate Seal of the Township of Irvington.

MUNICIPAL CLERK Harold E. Thomas DATE 4/28/21

ADMINISTRATOR ASSESSOR BLDG CFO COLLECTOR COURT EDGO ENGINEER FIRE~CF HEALTH HOUSING
 INIC JUDGE LEGAL LIBR LICEN MAYOR NPP OCDP PARKS PAYROLL PUBLIC SAFETY~DIR PUBLIC WORKS
 PURCHASING SEC~PB/ZBA TRAFFIC ZONING~OFF DLGS GNCD
 OTHER(S): _____

FINANCIAL AGREEMENT

THIS AMENDED & RESTATED FINANCIAL AGREEMENT (hereinafter “**Agreement**” or “**Financial Agreement**”), is made as of the ____ day of _____, 2021, (the “**Effective Date**”) by and between

The **TOWNSHIP OF IRVINGTON**, a public body corporate and politic of the State of New Jersey, having its offices at Municipal Building, 1 Civic Square, Irvington, New Jersey 07111 in its capacity as a “redevelopment entity” pursuant to *N.J.S.A. 40A:12A-4(c)* (hereinafter referred as the “**Township**”);

AND

HILLTOP PARTNERS SENIOR URBAN RENEWAL, LLC, a New Jersey limited liability company qualified to do business as an urban renewal entity under the provisions of the *Long Term Tax Exemption Law, N.J.S.A. 40A:20-1 et seq.*, as same may be amended and supplemented, (the “**Exemption Law**”) with offices at 334-336 East 110th Street, New York, New York 10029 (hereinafter the “**Entity**”); and together with the Township, the “**Parties**” or, separately, each a “**Party**”).

WITNESSETH:

WHEREAS, the Municipal Council (the “**Township Council**”) of the Township is authorized pursuant to the Local Redevelopment and Housing Law, *N.J.S.A. 40A:12A-1 et seq.* (the “**Redevelopment Law**”), to determine whether certain parcels of land within the Township constitute an area in need of rehabilitation and/or an area in need of redevelopment; and

WHEREAS, the Township Council, by Resolution 94-0809-5 dated August 9, 1994, created the Township Urban Enterprise Zone (the “**UEZ**”) pursuant to the New Jersey Urban Enterprise Zones Act, *N.J.S.A. 52:27H-60 et seq.* (the “**UEZ Act**”); and

WHEREAS, the Township Council designated certain properties within and contiguous to the UEZ as an area in need of rehabilitation (the “**UEZ Rehabilitation Area**”) by Resolution UEZ 07-0227-5, dated February 27, 2007 in accordance with the requirements of *N.J.S.A. 40A:12A-14*; and

WHEREAS, the Township Council duly adopted a redevelopment plan by Ordinance MC No. 3351 dated September 11, 2007, to govern the redevelopment of the UEZ Rehabilitation Area, (as amended, the “**Redevelopment Plan**”) in accordance with *N.J.S.A. 40A:12A-7*; and

WHEREAS, the Entity is the contract purchaser of certain property located within the UEZ, which property is identified as Block 324, Lot 1.05 on the official tax map of the Township and expected to be commonly known as 280 Park Place (Building 2) (collectively, the “**Property**”); and

WHEREAS, in accordance with *N.J.S.A. 40A:12A-5(g)*, a municipality may grant a long term tax exemption to property located within an Urban Enterprise Zone, such as the Property; and

WHEREAS, the Township and the Entity propose to amend that certain Redevelopment and Purchase and Sale Agreement dated October 12, 2012 (as amended by the First Amendment to the Redevelopment and Purchase and Sale Agreement dated as of May 10, 2013, the Second Amendment to the Redevelopment and Purchase and Sale Agreement dated as of May 10, 2013, and the Third Amendment to the Redevelopment and Purchase and Sale Agreement dated as of May 26, 2016, the “**Redevelopment Agreement**”), pursuant to which the Entity will acquire the Property, and to undertake the design, development, financing, construction and maintenance of a new approximately 118,154 square foot senior housing complex consisting of approximately ninety-six (96) apartment units (comprising: approximately four (4) studio units, ninety-one (91) one-bedroom units and one (1) two-bedroom superintendent unit), residential amenities, a new parking garage with approximately ninety-one two (91) parking spaces, seven (7) additional outdoor surface parking spaces and associated site improvements on the Property (the “**Project**”); and

WHEREAS, the Project will consist of mixed income units with approximately twenty-seven percent (27%) of the apartment units rented at market rate (the “**Market Rate Units**”) and approximately seventy-three percent (73%) of the apartment units rented at a price affordable to those with a household income of 80% of the Area Median Income or less (the “**Affordable Units**”), nine (9) of which Affordable Units shall be set-aside for special needs individuals; and

WHEREAS, the Entity is a single purpose urban renewal entity created pursuant to the Exemption Law for the development, operation and maintenance of the Project; and

WHEREAS, in order to improve the feasibility of the Project, the Entity submitted an application (the “**Application**”, attached hereto as Exhibit A) requesting a long-term tax exemption and financial agreement with respect to the Project pursuant to the Exemption Law, which Application is on file with the Municipal Clerk of the Township (the “**Township Clerk**”); and

WHEREAS, as further described herein, the Township has determined that the assistance provided to the Project pursuant to this Agreement will be a significant inducement for the Entity to proceed with the Project and that based on information set forth in the Application, the Project would not be feasible without such assistance; and

WHEREAS, by the adoption of Ordinance MC _____ on _____, 2019 (the “**Ordinance**”), the Township Council approved the Application and authorized the execution of this Agreement, and the Parties hereto desire to set forth in detail their mutual rights and obligations with respect to the tax exemption applicable to this Project; and

WHEREAS, the Township and the Entity enter into this Financial Agreement to memorialize the terms and conditions by which the Entity will pay an Annual Service Charge in lieu of real property taxes on the Project,

NOW, THEREFORE, in consideration of the mutual covenants herein contained and for other good and valuable consideration, it is mutually covenanted and agreed as follows:

ARTICLE I
GENERAL PROVISIONS

SECTION 1.01 Governing Law.

This Agreement shall be governed by and construed by the laws of the State (as defined herein), including (a) the Exemption Law, the Local Redevelopment and Housing Law and such other State statutes as may be sources of relevant authority, (b) the Ordinance, and (c) all other Applicable Laws, without regard to conflict of law principles.

SECTION 1.02 Definitions.

Words that are capitalized, and which are not the first word of a sentence, are defined terms. As used in this Agreement, defined terms shall have the meaning assigned to such terms as set forth below.

(a) The following terms shall have the respective meanings ascribed to such terms in the preambles hereof:

| | |
|-----------------------|-------------------------|
| Affordable Units | Property |
| Application Agreement | Redevelopment Agreement |
| Effective Date | Redevelopment Law |
| Exemption Law | Redevelopment Plan |
| Financial Agreement | Township |
| Market Rate Units | Township Clerk |
| Ordinance | Township Council |
| Parties/Party | UEZ |
| Project | UEZ Act |
| | UEZ Rehabilitation Area |

(b) The following terms as used in this Agreement shall, unless the context clearly requires otherwise, have the following meanings:

Administrative Fee – shall have the meaning given to it in Section 4.07 of this Agreement.

Allowable Net Profit - The amount arrived at by applying the Allowable Profit Rate to Total Project Cost pursuant to the provisions of *N.J.S.A. 40A:20-3(b)*.

Allowable Profit Rate - The greater of (a) twelve percent (12%) or (b) the percentage per annum arrived at by adding one and one-quarter percent (1¹/₄%) to the annual interest percentage rate payable on the Entity's initial permanent mortgage financing. If the initial permanent mortgage is insured or guaranteed by a governmental agency, the mortgage insurance premium or similar charge, if payable on a per annum basis, shall be considered as interest for this purpose. If

there is no permanent mortgage financing, or if the financing is internal or undertaken by a related party, the Allowable Profit Rate shall be the greater of (x) twelve percent (12%) or (y) the percentage per annum arrived at by adding one and one-quarter percent (1¹/₄%) to the interest rate per annum that the Township determines to be the prevailing rate of mortgage financing on comparable improvements in the County. The provisions of *N.J.S.A. 40A:20-3(b)* are incorporated herein by reference.

Annual Gross Revenue – shall be as defined in *N.J.S.A. 40A:20-3(a)* and Section 4.03 of this Agreement.

Annual Service Charge - the amount the Entity has agreed to pay the Township pursuant to Article IV hereof for municipal services supplied to the Project, which sum is in lieu of any real estate taxes on the Improvements and on the Land, all as contemplated pursuant to the Exemption Law, which amount, if applicable, shall be pro-rated in the year in which the Annual Service Charge begins and the year in which the Annual Service Charge terminates.

Annual Service Charge Start Date – the date of the Substantial Completion of the Project.

Applicable Law – All Federal, State and local laws, ordinances, approvals, rules, regulations and requirements applicable thereto including, but not limited to, the Redevelopment Law and the Exemption Law, relevant construction codes including construction codes governing access for persons with disabilities, and such zoning, sanitary, pollution and other environmental safety ordinances, laws and such rules and regulations thereunder, including all applicable environmental laws, and applicable federal and State labor standards and all applicable laws or regulations with respect to the payment of prevailing wages.

Auditor's Report - A complete financial statement outlining the financial status of the Project (for a period of time as indicated by context), which shall also include a certification of Total Project Cost and clear computation of Net Profit as provided in *N.J.S.A. 40A:20-3(c)*. The contents of the Auditor's Report shall have been prepared in conformity with generally accepted accounting principles. The Auditor's Report shall be certified as to its conformance with such principles by a certified public accountant licensed to practice in the State.

Certificate of Occupancy – A document, whether temporary or permanent, issued by the Township authorizing occupancy of a building, in whole or in part, pursuant to *N.J.S.A. 52:27D-133*.

County – The County of Essex, State of New Jersey.

Cumulative Allowable Net Profit – In accordance with the calculation set forth in the Exemption Law, specifically *N.J.S.A. 40A:20-15*, an amount equal to the sum of the Allowable Net Profit of the Entity in each year from and including the year that the Project is completed up to and including the year for which the Cumulative Allowable Net Profit is being calculated.

Cumulative Net Profit – In accordance with the calculation set forth in the Exemption Law, specifically *N.J.S.A. 40A:20-15*, an amount equal to the sum of the Net Profit of the Entity in each

year from and including the year that the Project is completed up to and including the year for which the Cumulative Net Profit is being calculated.

Default - A breach of or the failure of either Party to perform any obligation imposed upon such Party by the terms of this Agreement, beyond any applicable grace or cure periods set forth in this Agreement.

Default Notice - shall have the meaning given to it in Section 14.02 of this Agreement.

Director – The Director of the Department of Economic Development and Grants Oversight.

Disclosure Statement - shall have the meaning given to it in Section 7.02(d) of this Agreement.

Effective Date - The date that this Agreement has been executed and delivered by both Parties and the Property has been acquired by the Entity.

Excess Net Profit – In any given year, an amount equal to the sum of (a) the Cumulative Net Profit, minus (b) the Cumulative Allowable Net Profit

Financial Plan – the financial plan prepared pursuant to *N.J.S.A. 40A:20-8(e)* and provided as an attachment to the Application.

First Source Employment Linkage Program Ordinance – Ordinance No MC 3172, adopted April 24, 2001, and the amendment thereto, Ordinance No. MC 3567, adopted April 21, 2016, as codified in the Township Code.

Improvements - Any building, structure or fixture, permanently affixed to the Land, and any and all other buildings, structures or fixtures to be constructed on, in or under the Land in accordance with the terms hereof.

In Rem Tax Foreclosure - A summary proceeding by which the Township may enforce the lien for taxes due and owing by a tax sale in accordance with the provisions of the In Rem Tax Foreclosure Act and Tax Sale Law.

In Rem Tax Foreclosure Act – *N.J.S.A. 54:5-104.29 et seq.*, as may be amended or supplemented from time to time.

Land - the underlying land, but not the Improvements, designated as Block 324, Lot 1.05 on the tax map of the Township.

Land Taxes – the amount of taxes assessed on the value of the Land, exclusive of the value of any improvements related thereto, in accordance with Applicable Law.

Material Conditions – shall have the meaning given to it in Section 4.08 of this Agreement. Mayor – The mayor of the Township.

Minimum Annual Service Charge - the amount of the total taxes levied against the Property in the last full tax year in which the Property was subject to taxation. The Minimum Annual Service Charge shall be paid in each year in which the Annual Service Charge, calculated pursuant to *N.J.S.A. 40A:20-12(2)* and this Agreement, would be less than the Minimum Annual Service Charge. By way of reference, the taxes assessed on the Property in 2018 were: \$11,002.93.

Minority – shall be as defined by the New Jersey Department of Labor.

Minority Business Enterprise – shall be as defined by the New Jersey Department of Labor.

Net Profit – As defined in *N.J.S.A. 40A:20-3(c)*.

Notice - shall have the meaning given to it in Section 10.01.

Notice of Termination – shall have the meaning given to it in Section 14.04.

Plans - shall mean the plans, including site plans, building floor plans, building elevations, and/or architectural renderings for the Project or any portion thereof. “Plans” shall include, but shall not be limited to, the Site Plan attached hereto as Exhibit B, and the minimum requirements of Applicable Laws or the Redevelopment Plan depending on the context of its use in this Agreement.

Small Business Enterprise – shall be as defined by the New Jersey Department of Labor.

State – The State of New Jersey

Substantial Completion - The determination by the Township that the Project is ready for the intended use. Issuance of any Certificate of Occupancy for the Project shall be conclusive proof that the Project has reached Substantial Completion.

Tax Assessor – The Township tax assessor.

Tax Collector – The Township tax collector.

Tax Sale Law – *N.J.S.A. 54:5-1 et seq.*, as may be amended or supplemented from time to time.

Taxes - shall have the meaning given to it in Section 14.04 of this Agreement.

Termination - Any action or omission which by operation of the terms of this Financial Agreement shall cause the Entity to relinquish or forfeit the tax exemption granted pursuant to this

Agreement.

Total Project Cost - The total cost of constructing the Project, as set forth in *N.J.S.A.* 40A:20-3(h), excluding the actual costs incurred by the Entity, and certified to the Township by an independent and qualified architect or engineer, which are associated with site remediation and cleanup of environmentally hazardous materials or contaminants in accordance with State or federal law.

Township Code - the Municipal Code of the Township

Women's Business Enterprise – shall be as defined by the New Jersey Department of Labor.

SECTION 1.03 Interpretations and Construction.

In this Agreement, unless the context otherwise requires:

(a) The terms “hereby”, “hereof”, “hereto”, “herein”, “hereunder” and any similar terms, as used in this Agreement, refer to this Agreement, and the term “hereafter” means after, and the term “heretofore” means before the Effective Date of this Agreement.

(b) Words importing a particular gender mean and include correlative words of every other gender and words importing the singular number mean and include the plural number and vice versa.

(c) Words importing persons mean and include firms, associations, partnerships (including limited partnerships), trusts, corporations, limited liability companies and other legal entities, including public or governmental bodies, as well as natural persons.

(d) Any headings preceding the texts of the several Articles and Sections of this Agreement, and any table of contents or marginal notes appended to copies hereof, shall be solely for convenience of reference and shall not constitute a part of this Agreement, nor shall they affect its meaning, construction or effect.

(e) Unless otherwise indicated, all approvals, consents and acceptances required to be given or made by any Person or Party hereunder shall not be unreasonably withheld, conditioned, or delayed.

(f) All notices to be given hereunder and responses thereto shall be given, unless a certain number of days is specified, within a reasonable time, which shall not be less than ten (10) days nor more than twenty (20) days, unless the context dictates otherwise.

(g) All exhibits referred to in this Agreement and attached hereto are incorporated herein and made part hereof.

(h) All references to Sections, Articles or Exhibits shall, unless indicated otherwise,

refer to the Sections, Articles or Exhibits in this Agreement.

ARTICLE II
APPROVAL

SECTION 2.01 Approval of Tax Exemption

Pursuant to the Ordinance, the Land and the Improvements to be constructed and maintained by the Entity pursuant to this Agreement shall be exempt from taxation as provided for herein and under the Exemption Law. In accordance with the Exemption Law, specifically *N.J.S.A. 40A:20-12*, such tax exemption shall constitute a single continuing exemption from local property taxation for the duration of this Financial Agreement.

It is expressly understood and agreed that the Township has relied upon the facts, data and representations contained in the Application in granting the tax exemption described in this Agreement.

SECTION 2.02 Approval of the Entity

The Entity represents that its Certificate of Formation, attached hereto as Exhibit C, contains all the requisite provisions of law, has been reviewed and approved by the Commissioner of the New Jersey Department of Community Affairs, and has been filed with, as appropriate, the Department of Treasury, all in accordance with *N.J.S.A. 40A:20-5*.

SECTION 2.03 Improvements to be Constructed

The Entity represents that it shall construct or cause to be constructed the Project in accordance with the approved Plans, the Redevelopment Agreement, the Redevelopment Plan and Applicable Law, the use of which Project is more specifically described in the Application.

SECTION 2.04 Construction Schedule

The Entity agrees to diligently undertake the commencement of construction or cause the commencement of construction, and to complete the Project, or cause the completion of the Project, in accordance with the approved Plans and the Redevelopment Agreement.

SECTION 2.05 Ownership, Management and Control

The Entity represents that it is the contract purchaser of the Property. The Entity covenants that it shall cause the redevelopment of the Property in conformance with the approved Plans, the Redevelopment Agreement, the Redevelopment Plan and all Applicable Laws. No exemption granted under this Agreement shall become effective until and unless the Entity becomes the owner of the Property.

The Entity covenants, warrants and represents that the Property and the Project shall be

used, managed and operated for the purposes set forth in the Application, and in accordance with the Redevelopment Agreement, the Redevelopment Plan and all Applicable Laws.

SECTION 2.06 Project Financing Plan

The Entity represents that the Improvements shall be financed in accordance with the representations set forth in the Financial Plan. The Application and Financial Plan, made a part hereof, set forth the estimated Total Project Cost, amortization rate on Total Project Cost, the source of funds, the interest rates to be paid on construction financing, the source and amount of paid-in capital, the terms of any mortgage amortization, and rental schedules and lease terms, as applicable, in accordance with the Exemption Law.

SECTION 2.07 Findings

In accordance with the Exemption Law, the Township hereby finds and determines that this Agreement is to the direct benefit of the health, welfare and financial well-being of the Township and its citizens because it allows for the rehabilitation of the Property, and further:

(a) *Relative Benefits of the Project:*

i. The development and construction of the Project as set forth in the Application and the Plan will be beneficial to the overall community; will achieve the goals and objectives of the Redevelopment Plan; will help revitalize a long underutilized site; will improve the quality of life for the community; will serve as a catalyst for further private investment in areas surrounding the Property and will enhance the economic development of the Township. In addition, the Project will provide quality and sustainable senior housing with supportive services for the residents that will allow them to age in place.

ii. It is anticipated that the development of the Project will create approximately 200 temporary jobs during the construction of the Project, as well as approximately 2 permanent full-time jobs and 1 permanent part-time job in connection with the operation of the Project.

iii. The Property, including the improvements thereon, generated \$0 in total real estate taxes to the municipality when operated as a non-profit hospital and approximately \$11,000 in real estate taxes in the most recent tax year. Pursuant to this Financial Agreement, the Project is projected to generate revenue for the Township in the aggregate amount of approximately \$3.8 million for the term of this Agreement. The Township's authorized officers and employees have determined that the benefits to the Township accruing as a result of the Project will substantially outweigh any costs to the Township resulting from the long term tax exemption granted herein.

(b) *Assessment of the Importance of the Tax Exemption in Obtaining Development of the Project and Influencing the Locational Decisions of Probable Occupants:*

i. The relative stability and predictability of the Annual Service Charge will make the Project more attractive to investors and lenders whose participation is necessary

in order to finance the Project.

ii. The relative stability and predictability of the Annual Service Charge will allow the Entity to provide a high level of maintenance for the Property which will contribute importantly to the success of the Project and will have a positive impact on the surrounding area and community.

SECTION 2.08 Community Initiatives, Non-Discrimination and Affirmative Action

The Entity must comply with the requirements of all statutes, laws and regulations regarding non-discrimination and affirmative action in the employment of workers, including *N.J.S.A. 10:5-31 et seq.*, (P.L. 1975, c. 127), its attendant regulations at *N.J.A.C. 17:27-1 et seq.*, and shall further comply with the community initiative requirements set forth in Article V.

ARTICLE III

DURATION OF AGREEMENT

SECTION 3.01 Term

It is expressly understood and agreed by the Parties that this Agreement, including the obligation to pay Annual Service Charges required under Article IV hereof and the tax exemption granted and referred to within Section 2.01 hereof, shall commence on the Effective Date and shall remain in effect until the earlier of (a) thirty-five (35) years from the Effective Date, (b) thirty (30) years from the Annual Service Charge Start Date, (c) the Entity's voluntary Termination of this Agreement in accordance with the requirements of Section 3.02, or (d) the occurrence of a Default and resulting Termination as set forth within Article XIV of this Agreement. Upon the Termination of the tax exemption provided for herein, all restrictions and limitations of this Financial Agreement imposed upon the Entity and the Property, including the Improvements related thereto, shall terminate and the Improvements and Land shall thereafter be assessed and taxed according to the general law applicable to other non-exempt property in the Township; provided, however, that (a) the requirement to make payment of any Annual Service Charge due and owing hereunder, (b) the requirement to make payment to the Township of any reserves, Net Profit, or Excess Net Profit, and (c) any and all related remedies available to the Township shall survive the expiration or Termination of this Agreement; and further provided that the Entity has rendered, and that the Township has accepted, the Entity's final accounting in accordance with *N.J.S.A. 40A:20-12*.

SECTION 3.02 Voluntary Termination by Entity

The Entity may at any time after the expiration of one year from the completion of the Project notify the Township that as of a certain date designated in the notice, it relinquishes its status under the Exemption Law; and that the Entity has obtained the consent of the Commissioner of the Department of Community Affairs. The date of Termination shall be deemed to be the close of the fiscal year of the Entity and the procedure for the apportionment of any taxes and/or Annual Service Charges, as applicable, shall be the same as would otherwise be applicable to any other

property located within the Township upon a change in the exemption or tax status of such property.

ARTICLE IV

ANNUAL SERVICE CHARGE

SECTION 4.01 Consent of Entity to Annual Service Charge

The Entity hereby consents and agrees to the amount of the Annual Service Charge and to the liens described in this Agreement, and the Entity shall not contest the validity or amount of any such lawfully imposed lien. Notwithstanding anything herein to the contrary, the Entity's obligation to pay the Annual Service Charge shall be absolute and unconditional and shall not be subject to any defense, set-off, recoupment or counterclaim under any circumstances, including without limitation any loss of the status of the Entity as an urban renewal entity qualified under and as defined in the Exemption Law, or any violation by the Township of any provisions of this Agreement. The Entity's remedies shall be limited to those specifically set forth herein and as otherwise provided by Applicable Law.

SECTION 4.02 Payment of Annual Service Charge

(a) In consideration of the tax exemption, the Entity shall make payment of the Annual Service Charge commencing on the Annual Service Charge Start Date.

(b) Payment of the Annual Service Charge shall be made to the Township on a quarterly basis in accordance with the Township's property tax collection schedule, February 1st, May 1st, August 1st, and November 1st, subject, nevertheless, to adjustment for over or underpayment at the end of a fiscal year within thirty (30) days after the provision of the Auditor's Report pursuant to Section 7.02(a) hereof. The obligation to pay the Annual Service Charge shall continue until the expiration or Termination of the Agreement.

(c) In the event that the Entity fails to timely pay the Annual Service Charge or any installment thereof, the amount past due shall bear interest at the highest rate of interest permitted under the State law in the case of unpaid taxes or tax liens on land until paid.

(d) In accordance with the Exemption Law, specifically *N.J.S.A. 40A:20-12*, in the event of any change in the tax-exemption status as provided herein during any tax year, including but not limited to Termination, the procedure for the apportionment of any taxes and/or Annual Service Charge, as the case may be, shall be the same as in the case of other changes in tax exemption status to any other property located within the Township during the tax year, in accordance with Applicable Law.

SECTION 4.03 Annual Gross Revenue

The Annual Gross Revenue shall mean all revenues without limitation or set-off, and shall

include, but not be limited to: (a) all rental income that would normally be payable to a landlord in the case where the landlord is responsible to pay all costs of operations and maintenance as well as to pay the full cost of the capital required to undertake the Project; and (b) all other income received by the Entity. To the extent that the actual revenues collected by the Entity are less than such amount, due to any reason including without limitation, the payment of expenses by tenants that would normally be paid by the landlord, such as insurance, taxes and or maintenance or the existence of an intermediate entity between the Entity and any tenant, but specifically excluding reductions in revenue due to vacancies within the Project, the Township shall have the right, at its sole discretion, to recalculate the amount that the revenues would have been, without such issues and to utilize the results of its recalculations in all determinations of Annual Service Charges.

SECTION 4.04 Annual Service Charge Schedule

Pursuant to *N.J.S.A. 40A:20-12(b)*, the Parties agree that the Annual Service Charge throughout the term of this Agreement shall be as follows:

(a) Upon the Annual Service Charge Start Date, the Annual Service Charge for the Project shall be an amount equal to the greater of (i) five and one-half percent (5.5%) of Annual Gross Revenue; or (ii) the Minimum Annual Service Charge. The Parties acknowledge that the percentage of Annual Gross Revenue set forth in this Section represents a blended percentage wherein the Market Rate Units and the commercial portion of the Project are paying no less than ten percent (10%) of Annual Gross Revenue, and the Affordable Units are paying no more than ten percent (10%) of Annual Gross Revenue, all in accordance with *N.J.S.A. 40A:20-12*.

(b) Commencing on the sixteenth (16th) anniversary of the Annual Service Charge Start Date, and continuing for a period of six (6) years, the Annual Service Charge for the Project shall be an amount equal to the greater of (i) five and one-half percent (5.5%) of Annual Gross Revenue; (ii) twenty percent (20%) percent of the amount of taxes otherwise due on the value of the Land and Improvements; or (iii) the Minimum Annual Service Charge.

(c) Commencing on the twenty-second (22nd) anniversary of the Annual Service Charge Start Date, and continuing for a period of six (6) years, the Annual Service Charge for the Project shall be an amount equal to the greater of (i) five and one-half percent (5.5%) of Annual Gross Revenue, (ii) forty percent (40%) percent of the amount of taxes otherwise due on the value of the Land and Improvements, or (iii) the Minimum Annual Service Charge;

(d) Commencing on the twenty-eighth (28th) anniversary of the Annual Service Charge Start Date, and continuing for a period of two (2) years, the Annual Service Charge for the Project shall be an amount equal to the greater of (i) five and one-half percent (5.5%) of Annual Gross Revenue; (ii) sixty percent (60%) percent of the amount of taxes otherwise due on the value of the Land and Improvements; or (iii) the Minimum Annual Service Charge;

(e) In the thirtieth (30th) and final year of the term, the Annual Service Charge for the Project shall be an amount equal to the greater of (i) five and one-half percent (5.5%) of Annual Gross Revenue; (ii) eighty percent (80%) percent of the amount of taxes otherwise due on the value of the Land and Improvements; or (iii) the Minimum Annual Service Charge.

(f) The Township shall remit five percent (5%) of the Annual Service Charge it receives each year to the County, in accordance with the provisions of *N.J.S.A. 40A:20-12(b)(2)(e)*.

SECTION 4.05 Minimum Annual Service Charge

(a) The Minimum Annual Service Charge shall be paid in each year in which the Annual Service Charge, as calculated herein, would be less than the Minimum Annual Service Charge.

(b) In accordance with *N.J.S.A. 54:3-21(b)*, except as otherwise provided by Applicable Law, the Annual Service Charge shall never be reduced below the Minimum Annual Service Charge through any tax appeal on the Land and/or Improvements or any other legal proceeding regarding the Project during the period that this Agreement is in force and effect.

SECTION 4.06 Land Taxes, Credits and Other Charges

(a) The Property shall be exempt from Land Taxes from the Annual Service Charge Start Date through the expiration or Termination date of this Agreement in accordance with *N.J.S.A. 40A:20-12*.

(b) The Entity hereby expressly acknowledges, understands, and agrees that, in addition to the Annual Service Charge, it shall be responsible for the payment (without any credit whatsoever) of all other applicable municipal charges that may, from time to time, be lawfully assessed upon the Property, including, without limitation, Land Taxes prior to the Annual Service Charge Start Date, any and all special benefit assessments, water and sewer charges, and other municipal charges, whether presently existing or hereinafter imposed, and that the Township may enforce such assessments and charges in any manner (including, but not limited to, foreclosure or tax sale) permitted by Applicable Law.

SECTION 4.07 Administrative Fee

In addition to the Annual Service Charge, the Entity shall pay to the Township an annual fee of two percent (2%) of the Annual Service Charge in each year, concurrently with or prior to the November Annual Service Charge payment (the "**Administrative Fee**"). In the event the Entity fails to pay the Administrative Fee when due and owing, the amount unpaid shall bear the highest rate of interest permitted under applicable New Jersey law in the case of unpaid taxes or tax liens until paid.

SECTION 4.08 Material Conditions

It is expressly agreed and understood that payment of Annual Service Charges, any other municipal charges or liens, and any interest payments, penalties or costs of collection due with respect to any of the foregoing, are material conditions of this Agreement ("**Material Conditions**"). If any other term, covenant or condition of this Agreement or the Application,

as to any person or circumstance shall, to any extent, be determined to be invalid or unenforceable by virtue of a non-appealable order of a court of competent jurisdiction, the remainder of this Agreement or the application of such term, covenant or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each remaining term, covenant or condition of this Agreement shall be valid and enforced to the fullest extent permitted by law.

SECTION 4.09 No Reduction in Payment of the Annual Service Charge

Neither the amounts nor dates established for payment of the Annual Service Charge, as provided in Section 4.04 hereof shall be reduced, amended or otherwise modified during the term of this Agreement.

SECTION 4.10 Annual Service Charge as Municipal Lien

The Entity hereby expressly acknowledges, understands and agrees, and the Township acknowledges, without making any representation, warranty or covenant, that (i) the Annual Service Charge shall constitute an automatic, enforceable and perfected statutory municipal lien for all purposes, including specifically and without limitation, the Federal bankruptcy code, regardless of whether the amount of the Annual Service Charge has been determined, and (ii) any applicable process, procedure or action of any court, government body or other relevant authority, including without limitation any confirmation hearing, to determine the amount of the Annual Service Charge due shall not affect the commencement or validity of the municipal lien.

ARTICLE V

COMMUNITY INITIATIVES

SECTION 5.01 Equal Employment Opportunity

The Entity agrees that during construction of the Project:

(a) The Entity will not discriminate against any employee of the Entity or applicant for employment because of race, color, religion, sex, or national origin. The Entity will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation and selection for training, including apprenticeship. The Entity agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause and any such notices provided by the Township that are consistent therewith.

(b) The Entity will, in all solicitations or advertisements for employees placed by or on behalf of the Entity, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.

(c) The Entity shall use good faith and commercially reasonable efforts to include qualified and certified Minority Business Enterprises, Women’s Business Enterprises, and Small Business Enterprises as subcontractors and suppliers to the Project wherever possible.

(d) The obligations contained in this Section shall be binding on all contractors and subcontractors to the extent that any work on the Project is done by any contractor or subcontractor, and any contract entered into by the Entity shall so provide.

SECTION 5.02 First Source

(a) The Entity agrees to employ and shall require in each of its contracts with contractors that they and their subcontractors must employ, residents of the Township in the construction of the Project, and in the operation and maintenance of the Project following Completion of Construction for so long as this Financial Agreement remains in effect with respect to the Project. Thirty percent (30%) of billable construction laborer, administrative and clerical hours associated with the Project shall be provided by Township residents consistent with market wages. The Entity will engage in and cooperate with efforts to recruit Township residents for all employment opportunities in connection with the Project, including participation in Township job fairs and utilization of a central employment registry, if the Township maintains such a registry. Prior to the execution of the Financial Agreement, and in accordance with the provisions of the First Source Employment Ordinance, the Parties shall execute a First Source Agreement substantially in the form attached hereto as Exhibit D.

(b) The Entity shall use good faith and commercially reasonable efforts to undertake a program of local preference to facilitate entering into contracts with and/or purchasing good and services from local merchants and businesses located within the Township, including preferences for local retail and restaurant businesses.

SECTION 5.03 Affirmative Action

All contracts entered into by the Entity for the construction of the Project shall contain appropriate language to effectuate this provision. The Entity, during the construction of the Project, covenants that it will comply with and shall provide in its contracts with its contractors and subcontractors, the following:

(a) The Entity shall at all times conform to the laws, regulations, policies of the State, the Federal government, and other governmental bodies with respect to affirmative action and equal employment opportunities requirements, and particularly those which are imposed as a condition to receipt of any government sponsored funding for the Project, notwithstanding any other provision of this Agreement to the contrary.

(b) The Entity shall use good faith and commercially reasonable efforts to undertake a program of preference to facilitate entering into contracts with and/or purchasing goods and services from Minority Business Enterprises, Women’s Businesses Enterprises, and Small

Business Enterprises at a rate of 20%.

SECTION 5.04 Reporting and Enforcement.

The Director shall oversee and monitor the Entity's compliance with the First Source Employment requirements and affirmative action requirements at no cost to the Entity. The Entity agrees to meet periodically with the Director at the Director's request, to discuss the status of the Entity's employment efforts and compliance with the First Source Employment requirement.

(a) The Entity shall submit monthly reports regarding compliance with this Article V as the Township may reasonably require.

(b) Reports submitted by the Entity shall include names, addresses, ethnic origin of those who apply and are interviewed for employment including those denied employment. Reports should also include businesses hired, recruitment efforts including advertisements and letters to community groups advising them of employment and business opportunities.

(c) The Entity covenants to enforce its contracts with its contractors and subcontractors if such parties are not in compliance with this Article V.

(d) The penalties for non-compliance shall be as set forth in the Township Code.

ARTICLE VI

CERTIFICATE OF OCCUPANCY

SECTION 6.01 Certificate of Occupancy

It is understood and agreed that it shall be the obligation of the Entity to take such actions as are necessary under Applicable Laws to obtain Certificates of Occupancy upon Substantial Completion of the Project, or relevant portion thereof, in accordance with the construction schedule referenced in Section 2.04. The Township shall, in good faith, reasonably cooperate with the Entity to support and expedite the review, comment and approval of any complete and compliant application of the Entity seeking a Certificate of Occupancy.

SECTION 6.02 Filing of Certificate of Occupancy

The Entity shall file or cause to be filed with both the Tax Assessor and the Tax Collector a copy of any Certificate of Occupancy promptly upon receipt thereof by the Entity. Failure of the Entity to file or cause to be filed such issued Certificate of Occupancy as required by the preceding paragraph shall not militate against any action or non-action by the Township, including, if appropriate, retroactive billing with interest for any charges determined to be due in the absence of such filing by the Entity.

ARTICLE VII
REPORTS AND AUDITS

SECTION 7.01 Calculation of Net Profit.

For the purposes of this Agreement, the Entity agrees to calculate its “Net Profit” pursuant to *N.J.S.A. 40A:20-3(c)*.

SECTION 7.02 Periodic Reports/Notices

(a) Auditor’s Report: Within ninety (90) days after the close of the Entity’s fiscal year in each year that this Agreement shall continue in effect, the Entity shall submit to the Mayor, Township Council, the Tax Collector and the Township Clerk, who shall advise those municipal officials required to be advised, its Auditor’s Report for the preceding fiscal or calendar year. The Auditor’s Report shall clearly identify and calculate the Net Profit for the Entity during the previous year. The Entity assumes all costs associated with preparation of the periodic reports. The Auditor’s Report must include a calculation of the Gross Revenue as defined in this Financial Agreement.

(b) Affordable Housing Certification: The Entity shall certify on an annual basis, concurrently with the submission of the Auditor's Report, the number of residential units subject to low and moderate income limit controls, which restrictions shall be fully set forth in any residential lease for each Affordable Unit.

(c) Total Project Cost Audit: Within ninety (90) days after the Substantial Completion of the Project, the Entity shall submit to the Mayor, the Council, the Tax Collector and the Township Clerk, who shall advise those municipal officials required to be advised, an audit of Total Project Cost, certified as to actual construction costs by an independent and qualified architect or engineer.

(d) Disclosure Statement: On each anniversary date of the Effective Date of this Agreement, the Entity shall submit to the Mayor, Township Council, the Tax Collector and the Township Clerk, who shall advise those municipal officials required to be advised, a disclosure statement listing the persons having an ownership interest in the Project, and the extent of the ownership interest of each and such additional information as the Township may reasonably request from time to time regarding such ownership interest in the Project (each a “**Disclosure Statement**”).

(e) Accounting System: The Entity agrees to maintain a system of accounting and internal controls established and administered in accordance with generally accepted accounting principles.

SECTION 7.03 Inspection

Upon reasonable request in writing, during normal business hours, the Entity shall permit (a) the inspection of its property, equipment, buildings and other facilities of the Project; and (b) the examination and audit of its books, contracts, records, documents and papers, in each case by representatives duly authorized by the Township and Division of Local Government Services in the New Jersey Department of Community Affairs, provided that such rights of inspection also shall extend to representatives in the Division of Local Government Services in the New Jersey Department of Community Affairs pursuant to *N.J.S.A. 40A:20-9(e)*, duly authorized by the Township, as reasonably deemed necessary and appropriate by the Township. The inspections and examinations shall not in any manner materially interfere with construction or operation of the Project. All costs incurred by the Township to conduct such inspections and/or audits, including reasonable attorneys' fees if appropriate, shall be billed to the Entity and paid to the Township as an additional part of the Entity's Annual Service Charge. Nothing in this section shall be construed to affect, limit or restrict the powers of municipal, county, State or other officials from carrying out those duties or inspections that are generally applicable outside of the Exemption Law context, including, but not limited to, inspections by fire officials, construction code officials, and so on.

SECTION 7.04 Limitation on Profits and Reserves

During the period of tax exemption as provided herein, the Entity shall be subject to a limitation of its profits or dividends pursuant to the provisions of *N.J.S.A. 40A:20-15* and *N.J.S.A. 40A:20-3(c)*. Upon expiration or Termination of the tax exemption, the foregoing limitations on the profits or dividends of the Entity shall be of no further force or effect.

The Entity shall have the right in any year to establish and maintain a reserve against vacancies, unpaid rentals, and reasonable contingencies in an amount up to ten percent (10%) of the Annual Gross Revenues of the Entity for the last full fiscal year preceding the year in which the reserve is established or maintained, and may retain such part of the Excess Net Profits as is necessary to eliminate a deficiency in that reserve, as provided in *N.J.S.A. 40A:20-15*. Upon the expiration or Termination of this Agreement, the amount of reserve, if any, shall be paid to the Township.

There is expressly included in the calculation of "Gross Revenue" and "Net Profit" as set forth in *N.J.S.A. 40A:20-3* for the purpose of determining compliance with *N.J.S.A. 40A:20-15* or *N.J.S.A. 40A:20-16*, the amount of any sale, including any gain realized thereby, by the Entity on the sale of all or any portion of the Project, including a Unit, whether or not taxable under federal or State law, as well as the proceeds of any refinancing undertaken by the Entity during the term of this Agreement.

SECTION 7.05 Prohibition Against Use of Master Leases or Related Techniques

The Entity agrees that the intent of this Agreement is to account for all revenue arising from the Project as if it accrues to the benefit of the Entity. The Entity shall therefore have no right to enter into any lease, contract or other agreement the effect of which is to interpose another person, corporation or other entity between the Entity and the end users of the Project for the

purpose of reducing the amount of revenue accounted for as benefiting the Entity. To the extent that the Township, in its sole discretion, determines that such an arrangement has been put in place, the Township shall have the right to recast the financial statements of the Entity so as to account for the Gross Revenue that would have accrued to the Entity had the arrangement not been in existence, and to require the Entity to make payments of the Annual Service Charge based on such recast financial statements.

SECTION 7.06 Payment of Dividend and Excess Profit Charge

In the event the Net Profits of the Entity (after funding of any reserve described in Section 7.04), in any fiscal year, shall exceed the Allowable Net Profits for such period, then the Entity, within one hundred twenty (120) days after the end of such fiscal year, shall pay such Excess Net Profits to the Township as an additional Annual Service Charge. The calculation of Net Profit and Allowable Net Profit shall be made in the manner required pursuant to *N.J.S.A. 40A:20-3(c)* and *40A:20-15* and this Agreement.

The Parties agree that any Excess Net Profit shall be treated by the Township as additional Annual Service Charge subject to the provisions of this Agreement.

ARTICLE VIII

ASSIGNMENT AND/OR ASSUMPTION

SECTION 8.01 Approval

(a) As permitted by *N.J.S.A. 40A:20-10*, it is understood and agreed that the Township, on written application by the Entity, after Substantial Completion, will consent to a sale of the Project and the transfer of this Agreement provided that the Township is satisfied that: (i) the transferee entity does not own any other Project subject to long term tax exemption at the time of transfer; (ii) the transferee entity is formed and eligible to operate under the Exemption Law; (iii) the Entity is not then in Default of this Agreement or the Exemption Law; (iv) the Entity's obligations under this Agreement are fully assumed by the transferee entity; (v) the transferee entity agrees to abide by all terms and conditions of this Agreement and any other terms and conditions of the Township in regard to the Project; and (vi) the transferee entity and its principals possess the same business reputation, financial qualifications and credit worthiness as the Entity and are otherwise reputable.

(b) Where the consent or approval of the Township is sought for an assignment of the Agreement, the Township may levy an administrative fee of two percent (2%) of the then applicable Annual Service Charge for the review, preparation, and/or submission of documents to the Council for action on the requested assignment.

(c) If the Entity transfers the Project to another urban renewal entity, and the transferee entity has assumed all of the Entity's contractual obligations under this Agreement, then, pursuant to *N.J.S.A. 40A:20-6*, the Entity shall be discharged from any further obligation under this Agreement and shall be qualified to undertake another project pursuant to the Exemption Law.

The date of transfer of title of the Project to a purchasing entity shall be considered to be the close of the fiscal year of the Entity. Within ninety (90) days after the date of the transfer of title, the Entity shall pay to the Township the amount of the reserve, if any, maintained by it, as well as the Excess Net Profit, if any, pursuant to N.J.S.A. 40A:20-15.

(d) A Declaration of Restriction on Transfer will be recorded against the Property in the office of the Essex County Register simultaneously with the recordation of this Agreement.

SECTION 8.02 Operation of Project

The Project shall be operated in accordance with the provisions of the Exemption Law, as may be amended and supplemented. Failure to operate the Project pursuant to the terms of this Financial Agreement and the provisions of *N.J.S.A. 40A:20-1 et seq.*, shall be cause for Termination.

SECTION 8.03 Subordination of Fee Title

It is expressly understood and agreed that the Entity has the right, subordinate to the lien of the Annual Service Charges and to the rights of the Township hereunder, to encumber and/or assign the fee title to the Land and/or Improvements for the sole purpose of obtaining financing for use in the construction or operation of the Project, and that any such encumbrance or assignment shall not be deemed to be a violation of this Agreement. This section shall not prohibit the encumbrance of a mortgage lien on the Property, it being expressly understood that a mortgage lien takes subject to the municipal lien created by the Annual Service Charge under the Exemption Law.

SECTION 8.04 Prohibition against Severing of Improvements from Land

The Entity hereby agrees at all times prior to the expiration or Termination of this Agreement to remain bound by the provisions of *N.J.S.A. 40A:20-1 et seq.*, as amended and supplemented. It is an express condition of the granting of this tax exemption that during its duration, the Entity shall not, without the prior consent of the Township Council, by ordinance, convey, mortgage or transfer, all or part of the Project so as to sever, disconnect, or divide the Improvements from the Lands which are basic to, embraced in, or underlying the exempted Improvements.

ARTICLE IX

WAIVER

SECTION 9.01 No Waiver

Nothing contained in this Financial Agreement or otherwise shall constitute a waiver or relinquishment by the Township or the Entity of any rights and remedies provided by the law. Nothing herein shall be deemed to limit any right of recovery that the Township or the Entity has under law, in equity, or under any provision of this Financial Agreement.

The foregoing addresses may be changed or supplemented by written notice given as above provided. Notice to the Township shall identify the subject with the block and lot numbers, and any other qualifying designation as may apply, of the tax parcels comprising the Property. Any such Notice sent by certified mail shall be deemed to have been received by the addressee on the third (3rd) business day after posting in the United States mail or, if transmitted by messenger or a priority delivery service, on the first (1st) business day after transmittal provided the sender has evidence of delivery. Counsel for a Party may give notice to the other Party with the same effect as if given by the Party.

ARTICLE XI
COMPLIANCE

SECTION 11.01 Statutes and Ordinances

The Entity hereby agrees at all times prior to the expiration or Termination of the tax exemption to remain bound by the provisions of Federal and State law and any lawful ordinances and resolutions of the Township, including, but not limited to, the Exemption Law. The Entity's failure to substantially comply with such statutes or ordinances and the continuation of such noncompliance beyond any applicable notice, grace or cure period provided therein or herein, shall constitute a breach of this Agreement.

ARTICLE XII
CONSTRUCTION

SECTION 12.01 Construction

This Agreement shall be construed and enforced in accordance with the laws of the State, and without regard to or aid or any presumption or other rule requiring construction against the Party drawing or causing this Agreement to be drawn since counsel for both the Entity and the Township have combined in their review and approval of same.

ARTICLE XIII
INDEMNIFICATION

SECTION 13.01 Indemnification

It is understood and agreed that in the event the Township shall be named as a party in any action brought against the Township or the Entity by allegation of any breach, Default or violation of any of the provisions of this Agreement and/or the provisions of the Exemption Law or by allegation, arising from or relating to the Project under any other Applicable Laws, the Entity shall indemnify and hold the Township harmless from and against all liability, losses, damages, demands, costs, claims, actions or expenses (including reasonable attorneys' fees and expenses) of every kind, character and nature arising out of or resulting from the action or inaction of the Entity

and/or by reason of any breach, Default or violation of any of the provisions of this Agreement, the provisions of the Exemption Law and/or any other Applicable Laws; provided, however, that the Entity shall not be required to indemnify the Township for any willful or grossly negligent act, omission or misconduct by the Township or any of its officers, officials, employees or agents. Upon the Township becoming aware of any claim or loss for which indemnification is sought, the Township shall promptly provide the Entity with written notice thereof and demand for indemnification. The Entity shall defend against any such claim or loss at its own expense. The Township maintains the right to intervene as a party thereto, to which intervention the Entity hereby consents, the reasonable expense thereof to be borne by the Entity.

ARTICLE XIV

DEFAULT; REMEDIES; TERMINATION

SECTION 14.01 Default

Default shall be failure of the Entity to make payment of the Annual Service Charge when due hereunder or to otherwise fail to conform to the terms of this Agreement and any failure of the Entity to substantially observe and perform any other obligation imposed upon the Entity by Applicable Laws beyond any applicable notice, cure or grace period.

SECTION 14.02 Cure Upon Default

Should the Entity be in Default of any obligation under this Agreement, the Township shall notify the Entity and any mortgagee of the Entity, in writing of said Default (the “**Default Notice**”). Said Default Notice shall set forth with particularity the basis of said Default. Except as otherwise limited by law, the Entity shall have sixty (60) days to cure any Default (other than a Default in payment of any installment of the Annual Service Charge, or any other municipal charge, any of which the Entity shall have ten (10) days to cure) from the date of its receipt of the Default Notice; provided, however, that if any non-payment Default is not reasonably able to be cured within such sixty (60) day period and the Entity is diligently pursuing a cure, such cure period shall extend as long as the Entity continues diligently to pursue such cure, but in any event, not more than one hundred twenty (120) days from the date of Entity’s receipt of the Default Notice.

SECTION 14.03 Remedies Upon Default Cumulative; No Waiver

In the event of any uncured Default, the Township shall have the right to proceed against the Project, and/or the Property pursuant to the provisions of Applicable Laws. Upon any Default in payment of any installment of the Annual Service Charge or other municipal charge, the Township shall have the right to proceed to In Rem Tax Foreclosure consistent with the provisions and procedures of the Tax Sale Law.

Subject to the other terms and conditions of this Agreement including Section 14.04, all of the remedies provided in this Agreement to the Township, and all rights and remedies granted to

the Township by law and equity, shall be cumulative and concurrent and no determination of the invalidity of any provision of this Agreement shall deprive the Township of any of its remedies or actions against the Entity for Entity's failure to pay Land Taxes, the Annual Service Charge and/or any other applicable municipal charges, including water and sewer charges and interest payments. This right shall only apply to arrearages that are due and owing at the time, and the bringing of any action for Land Taxes, the Annual Service Charge or any other applicable municipal charges, or for breach of covenant or the resort of any other remedy herein provided for the recovery of Land Taxes, Annual Service Charge or other charges shall not be construed as a waiver of the right to proceed with an In Rem Tax Foreclosure action consistent with the terms and provisions of this Agreement.

SECTION 14.04 Remedies

The Township's customary tax payment enforcement proceedings shall apply to the collection of any delinquent payment of the Annual Service Charge or any other municipal charge. In the event of a Default on the part of the Entity to pay any installment of the Annual Service Charge or any other municipal charge required by Article IV above, and the continuance of such Default after expiration of any notice, grace or cure periods under Applicable Laws, the Township, in addition to its other remedies, reserves the right to proceed against the Entity's Land and Improvements, in the manner provided by Applicable Laws, including the Tax Sale Law, and any act supplementary or amendatory thereof.

The Township shall pursue the collection of delinquent payments of the Annual Service Charge with the same diligence it employs in the collection of the Township's general *ad valorem* real estate taxes, including the commencement of an In Rem Tax Foreclosure. Whenever the word "**Taxes**" appears, or is applied, directly or implied, to mean taxes or municipal liens on land, such statutory provisions shall be read, as far as it is pertinent to this Agreement, as if the Annual Service Charge were taxes or municipal liens on land. In either case, however, the Entity does not waive any defense it may have to contest the rights of the Township to proceed in the above-mentioned manner.

SECTION 14.05 Termination upon Default of the Entity

In the event the Entity fails to cure or remedy the Default, including without limitation a Default as described in Section 14.01, within the time period provided in Section 14.02, the Township may terminate this Agreement upon thirty (30) days' written notice to the Entity ("**Notice of Termination**").

SECTION 14.06 Final Accounting

For purposes of rendering a final accounting, the date of Termination, the date of expiration of this Agreement, or the sale of the Project, shall be deemed to be the last day of the fiscal year of the Entity. Within ninety (90) days after such date, the Entity shall provide a final accounting and pay to the Township the reserve, if any, pursuant to the provisions of *N.J.S.A. 40A:20-13* and 15 as well as any Excess Net Profits.

SECTION 14.07 Conventional Taxes

Upon Termination or expiration of this Agreement, the tax exemption for the Project shall expire and the Land and the Improvements thereon shall thereafter be assessed and conventionally taxed according to the general law applicable to other nonexempt taxable property in the Township.

ARTICLE XV
MISCELLANEOUS

SECTION 15.01 Conditions Precedent

This Agreement is expressly subject to the satisfaction by the Entity or the Township of the following conditions precedent:

- a. Receipt by the Entity of all Federal, State, county and municipal approvals required for the construction of the Project; and
- b. Enactment by the Township of all ordinances and other official action necessary under *N.J.S.A. 40A:20-1 et seq.* to enter into and effectuate the terms of this Agreement.

SECTION 15.02 Conflict

The Parties agree that in the event of a conflict between the Application and this Financial Agreement, the language in this Agreement shall govern and prevail.

SECTION 15.03 Oral Representations

There have been no oral representations made by either of the Parties which are not contained in this Agreement.

SECTION 15.04 Entire Document

All conditions in the Ordinance are incorporated in this Agreement and made a part hereof. This Agreement, with all attachments and exhibits, the Ordinance and the Application constitute the entire agreement between the Parties as to the subject matter thereof and hereof.

SECTION 15.05 Good Faith

In their dealings with each other, the Parties agree that they shall act in good faith.

SECTION 15.06 Recording

Upon the acquisition of the Property by the Entity, the entire Agreement shall be filed

and recorded with the office of the Essex County Register by the Township, at the Entity's expense, such that this Agreement shall be reflected upon the land records of the County as a perfected statutory municipal lien upon and a covenant running with the Property.

SECTION 15.07 Municipal Services

The Entity shall make payments for municipal services, including, without limitation, water and sewer charges and any services that create a lien on a parity with or superior to the lien for the Land Taxes, if applicable, and the Annual Service Charge, as required by law. These charges are not included in the Annual Service Charge and shall be billed separately. Nothing herein is intended to release the Entity from its obligation to make such payments.

SECTION 15.08 Waste and Refuse Disposal

The Entity shall comply with the Township Mandatory Recycling Ordinance to ensure that used corrugated cardboard, glass bottles and jars, food and beverage cans, newspapers and magazines and other recyclables deemed mandatory by the Township are separated from waste and refuse emanating from the Project for the purpose of recycling.

SECTION 15.09 Force Majeure

Neither Party shall be liable to the other for failure to perform its obligations under this Agreement due to fire, flood, strikes, or other industrial disturbances, accidents, war, riot, insurrection, or other similar causes beyond the reasonable control of the Parties that have a material impact upon such Party's ability to perform its obligations hereunder.

SECTION 15.10 Arbitration

In the event of a dispute arising between the Parties in reference to the terms and provisions as set forth herein, then the Parties shall submit the dispute to the American Arbitration Association in the State, to be determined in accordance with its rules and regulations in such a fashion to accomplish the purposes of the Exemption Law and this Financial Agreement. The award rendered by the arbitrator(s) shall be final, and judgment may be entered upon it in accordance with Applicable Law in any court having jurisdiction. The costs of arbitration shall be borne by the respective Parties. Notwithstanding anything herein to the contrary, no arbitrator shall have any power or authority to amend, alter, or modify any part of this Agreement, in any way.

SECTION 15.11 Amendments

This Agreement may not be amended, changed, modified, altered or terminated, other than as may be set forth herein, without the written consent of the Parties hereto and as provided by Applicable Law.

SECTION 15.12 Certification

The Township Clerk shall certify to the Tax Assessor that a Financial Agreement for the development of the Property has been entered into and is in effect as required by *N.J.S.A. 40A:20-1 et seq.* Delivery by the Township Clerk to the Tax Assessor of a certified copy of the Ordinance adopted by the Township Council approving the tax exemption described herein and an executed copy of this Agreement shall constitute the required certification. Upon certification as required hereunder, the Tax Assessor shall implement the exemption and continue to enforce that exemption without further certification by the Township Clerk until the expiration of the entitlement to exemption by the terms of this Agreement or until the Tax Assessor has been duly notified by the Township Clerk that the exemption has been terminated.

Further, upon the execution of this Agreement, a certified copy of the Ordinance and this Agreement shall forthwith be transmitted by the Township to the County Counsel and the Chief Financial Officer of the County within 10 calendar days of the execution of the Agreement.

SECTION 15.13 Severability

If any terms or provision of this Agreement shall to any extent be held to be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to circumstances other than those to which it is invalid or unenforceable, shall not be affected thereby, and each other term and provision of this Agreement shall be valid and shall be enforced to the extent permitted by Applicable Laws. Further, provided that a Default has not been declared under this Agreement, the Parties shall cooperate to take the actions reasonably required to restore the Agreement in a manner contemplated by the Parties, including, but not limited to, the authorization and amendment of this Agreement in a form reasonably drafted to effectuate the original intent of the Parties. Notwithstanding the foregoing, if the long term tax exemption is declared invalid or unenforceable or if the benefit thereof is materially and adversely affected by judicial action, this Agreement shall be deemed null and void.

SECTION 15.14 Estoppel Certificate

Within thirty (30) days following written request therefor by the Entity, or any mortgagee, purchaser, tenant or other party having an interest in the Project, the Township shall issue a signed estoppel certificate in reasonable form stating: (i) that this Financial Agreement is in full force and effect; (ii) that to the best of the Township's actual knowledge, no Default has occurred under this Financial Agreement (nor any event which, with the passage of time and the giving of notice would result in the occurrence of a Default), or stating the nature of any Default; and (iii) any such other reasonable information as may be requested.

SECTION 15.15 Counterparts; Electronic Signatures

This Agreement may be executed in counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

EXHIBITS AND SCHEDULES

The following Exhibits are attached hereto and incorporated herein:

- A. APPLICATION WITH EXHIBITS
- B. SITE PLAN
- C. CERTIFICATE OF FORMATION
- D. FORM OF FIRST SOURCE AGREEMENT

[SIGNATURE PAGE FOLLOWS]

