

THIS AGREEMENT AND THE ORDINANCE ATTACHED HERETO AS EXHIBIT B SECURES BONDS OR OTHER OBLIGATIONS ISSUED IN ACCORDANCE WITH THE PROVISIONS OF THE “REDEVELOPMENT AREA BOND FINANCING LAW” AND THE LIEN HEREOF IN FAVOR OF THE OWNERS OF SUCH BONDS OR OTHER OBLIGATIONS IS A MUNICIPAL LIEN SUPERIOR TO ALL OTHER NON-MUNICIPAL LIENS HEREAFTER RECORDED

FINANCIAL AGREEMENT

(N.J.S.A. 40A:20-1 et seq. and N.J.S.A. 40A:12A-64 et seq.)

This **FINANCIAL AGREEMENT** (the “Agreement”) is made as of this ___ day of _____, 2024, by and between **HBC LIBERTY TOWNHOMES URBAN RENEWAL LLC**, an urban renewal entity formed and qualified to do business under the provisions of the Long Term Tax Exemption Law of 1992, as amended and supplemented to date, N.J.S.A. 40A:20-1 et seq. (the “**Exemption Law**”), having its principal offices at 68 Deer Haven Road, Bedminster, New Jersey 07921 (the “**Entity**” or “**Redeveloper**”), and the **BOROUGH OF FLEMINGTON**, a municipal corporation of the State of New Jersey, having its principal office, 38 Park Avenue, Flemington, NJ 08822 (the “**Borough**”).

RECITALS

WHEREAS, the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq, as amended and supplemented (the “**Redevelopment Law**”), provides a process for municipalities to participate in the redevelopment and improvement of areas in need of redevelopment; and

WHEREAS, pursuant to Resolution No. 2021-15 adopted on October 12, 2021, the Borough Council designated the Liberty Village Redevelopment Area, identified as Block 35, Lots 22, 23, 24, 25, 31, 53, 54, 69, 70 and 71 in the Borough of Flemington Tax Map (the “**Redevelopment Area**”), as a non-condemnation area in need of redevelopment pursuant to the Redevelopment Law; and

WHEREAS, pursuant to Ordinance No. 2021-28 finally adopted on December 13, 2021, the Borough Council adopted the “Liberty Village Redevelopment Plan, Flemington Borough” dated November 18, 2021, with non-substantive revisions reflected in an updated plan dated December 5, 2021 (the “**2021 Liberty Village Redevelopment Plan**”), to govern the redevelopment of the Redevelopment Area; and

WHEREAS, by Resolution No. 2022-48 adopted on January 24, 2022, the Borough Council authorized the execution and delivery of a Conditional Redeveloper Designation and Interim Cost Agreement with HBC Liberty Village, LLC (the “**Redeveloper**”), conditionally designating the Redeveloper as the redeveloper of the Redevelopment Area, on the condition that a redevelopment agreement be negotiated and executed within one hundred eighty (180) days, as the same may be extended by the Borough in its sole discretion; and

WHEREAS, by Resolution No. 2022-148 adopted on June 13, 2022, the Borough Council authorized the execution and delivery of a Redevelopment Agreement with the Redeveloper (the “**Original Redevelopment Agreement**”), which Original Redevelopment Agreement was subsequently executed and delivered by the Borough and the Redeveloper; and

WHEREAS, the Original Redevelopment Agreement contemplated a two-phase redevelopment of the Redevelopment Area, with an initial “Phase I” to consist generally of the construction of approximately one hundred sixty (160) for-sale stacked townhomes and related improvements on a portion of the Redevelopment Area consisting generally of Block 35, Lots 31, 53, 54, 69, 70 and 71 (collectively, the “**Former Phase I Site**”), and a subsequent “Phase II” to consist generally of the construction of approximately two hundred twenty-five (225) residential rental apartment units and related improvements on a portion of the Redevelopment Area consisting generally of Block 35, Lots 22, 23, 24 and 25 (collectively, the “**Former Phase II Site**”); and

WHEREAS, during the course of designing the Phase I project, the need arose to make certain changes to the Original Redevelopment Agreement, including substantial modifications to the proposed redevelopment of the Former Phase I Site and the removal of all provisions of the Original Redevelopment Agreement pertaining to the Former Phase II Site except for the construction of a detention basin on a portion of Block 35, Lot 22; and

WHEREAS, pursuant to a resolution adopted by the Borough Council of the Borough on _____, 2024, the Borough and the Redeveloper have entered into an Amended and Restated Redevelopment Agreement dated _____, 2024 (the “**Redevelopment Agreement**”), amending and restating the Original Redevelopment Agreement, such that (i) any and all prior agreements between the Borough and the Redeveloper contained in the Original Redevelopment Agreement in respect of the Former Phase I Site shall be superseded in their entirety by the provisions of the proposed amended and restated Redevelopment Agreement (as hereinafter defined) and (ii) any and all prior agreements between the Borough and the Redeveloper contained in the Original Redevelopment Agreement in respect of the Former Phase II Site and the redevelopment thereof shall be null and void; and

WHEREAS, the Redevelopment Agreement contemplates the redevelopment of the Former Phase I Site and a portion of Block 35, Lot 22 (collectively, the “**Project Site**”), by the Redeveloper and its Production Partners (as defined therein), through implementation of a new redevelopment project (the “**Redevelopment Project**”) consisting generally of (i) the construction of one hundred eleven (111) for-sale townhomes to be located in twenty-one three-story structures, of which seven (7) townhomes shall meet the affordability requirements contained in the Redevelopment Agreement, together with related improvements (collectively, the “**Townhomes Component**”), (ii) the construction of twelve (12) rental housing units to be located in two three-story buildings each containing not less than six (6) two-bedroom apartments, all of which shall meet the affordability requirements contained in the Redevelopment Agreement and will be owned by or leased to a veterans’ housing provider, together with related improvements (collectively, the “**Veterans’ Component**”), and (iii) the substantial renovation of the existing building located at One Church Street, together with related improvements (collectively, the “**Commercial Component**”), all as more fully described in the proposed Redevelopment Agreement; and

WHEREAS, the Redevelopment Project also includes the construction (where appropriate) and/or donation to the Borough of the Well Access Easement, the Well Expansion Land, the Brown Street Park, the Brown Street Detention Basin and the Allies Building (as each such term is defined in the Redevelopment Agreement) (collectively, the “**Borough Component**”), as well as certain cash donations to the Borough; and

WHEREAS, a draft “Liberty Village Phase 1 Redevelopment Plan”, dated January 23, 2024 (the “**Redevelopment Plan**”), was prepared by the Borough’s Planning Consultant, Kyle + McManus Associates, in consultation with the Mayor and Borough Council and the Borough’s staff and consultants; and

WHEREAS, the Redevelopment Plan governs a portion of the Redevelopment Area consisting of Block 35, Lots 31, 53, 54, 69, 70 and 71 and a portion of Lot 22, as described therein; and

WHEREAS, pursuant to Ordinance No. ____ finally adopted on _____, 2024, the Borough Council has approved the Redevelopment Plan, whereupon the Redevelopment Plan superseded and replaced, in its entirety, the 2021 Liberty Village Redevelopment Plan, which 2021 Liberty Village Redevelopment Plan was thereby rescinded; and

WHEREAS, the Redevelopment Project is consistent with, and will be implemented in furtherance of, the Redevelopment Plan; and

WHEREAS, the Entity is an affiliate of the Redeveloper, and will, in conjunction with a Production Partner (as such term is defined in the Redevelopment Agreement), undertake the construction of the Townhomes Component of the Redevelopment Project (the “**Project**”) upon a portion of the Project Site consisting of _____ [TO DESCRIBE THE PORTIONS OF BLOCK 35, LOTS 22, 31 AND 71 UPON WHICH THE TOWNHOMES COMPONENT WILL BE CONSTRUCTED, EXCLUDING THEREFROM THE FOOTPRINTS OF THE VETERANS’ COMPONENT, THE COMMERCIAL COMPONENT AND THE BOROUGH COMPONENT], all as [outlined] [more fully described] in **Exhibit A** hereto, as the same may be adjusted to reflect the final subdivision of the Project Site (the “**Property**”); and

WHEREAS, following completion of construction, each of the one hundred eleven (111) individual condominium or fee simple residential housing units comprising the Project (each, a “**Housing Unit**”) will be sold to a purchaser either as part of a condominium structure or in fee simple (each such purchaser, a “**Unit Owner**”), and the remaining common elements (the “**Common Elements**”) will be transferred either as part of a condominium structure or in fee simple to, and will thereafter owned and maintained by, a condominium association, homeowners association or similar entity (the “**Homeowners Association**”); and

WHEREAS, for real estate assessment and tax purposes (including for purposes of the Annual Service Charge), notwithstanding that the Homeowners Association will have title ownership of the Common Elements, the Borough and the Entity each agree that 100% of the value of the Common Elements will be assessed and taxed against the Housing Units, in such proportion as shall be set forth in the master deed or similar instrument establishing the property regime applicable to the Project (the “**Master Deed**”); and

WHEREAS, in the event it is determined that the assessment and taxation of the Common Elements against each of the Housing Units is not legally permissible, then the value of the Common Elements will be assessed and taxed against the Homeowners Association, in which event the Entity has represented that such assessments and taxes will be allocated by the Homeowners Association to each of the Housing Units as a community charge pursuant to the Master Deed; and

WHEREAS, pursuant to the Exemption Law, the Borough is authorized to provide for tax exemptions within a redevelopment area and for payments in lieu of taxes in accordance with the applicable provisions thereof; and

WHEREAS, the Borough has received an Application for Long Term Tax Exemption (the “**Exemption Application**”) from (i) the Entity, (ii) HBC Liberty Veterans Urban Renewal LLC and (iii) HBC Liberty Commercial Urban Renewal LLC, requesting long term tax exemptions under the provisions of the Exemption Law (and other applicable law) in connection with their respective portions of the Redevelopment Project (including the Project); and

WHEREAS, the Exemption Application contains documentation evidencing financial responsibility and capability with respect to the proposed development; estimated total development costs; estimated time schedule for start and completion of the proposed development; and conceptual plans; and

WHEREAS, the Borough evaluated the Exemption Application according to criteria which included financial capabilities, experience, expertise, and project concept descriptions, and pursuant to Ordinance No. ____ finally adopted on _____, 2024, a copy of which is attached hereto as **Exhibit B** (the “**Ordinance**”), authorized the execution and delivery of three separate financial agreements, including this Agreement, in order to enhance the economic viability of the Redevelopment Project (including the Project); and

WHEREAS, since the Project involves the construction of housing by the Entity, the Land upon which the Project is situated shall be exempt from taxation to the same extent as the improvements being constructed thereon, in accordance with N.J.S.A. 40A:20-12; and

WHEREAS, pursuant to and in accordance with the provisions of the Redevelopment Area Bond Financing Law, N.J.S.A. 40A:12A-64 et seq. (the “**Bond Financing Law**”), specifically N.J.S.A. 40A:12A-66(a), the Borough is authorized to provide for such tax exemptions and payments in lieu of taxes in a manner that deviates from the structure otherwise established under the Tax Exemption Law, if the redevelopment project is to be financed with bonds issued in accordance with the Bond Financing Law; and

WHEREAS, pursuant to the Bond Financing Law, specifically N.J.S.A. 40A:12A-68, the Annual Service Charge (as such term is defined herein) shall, upon the recordation of this Agreement and the Ordinance, constitute a municipal lien on the Land, as defined herein, and the Project within the meaning of the law; and

WHEREAS, pursuant to and in accordance with the provisions of the Bond Financing Law, specifically N.J.S.A. 40A:12A-67(a), the Borough may issue bonds, may apply to an authority (as such term is defined in the Bond Financing Law) to issue bonds, or may cause the issuance of such bonds, which bonds may be secured by the Annual Service Charge (as defined herein) (the “**Bonds**”); and

WHEREAS, in order to assist in financing a portion of the costs of the Project, the Borough has agreed that it shall issue the Bonds in accordance with the terms and provisions of a bond resolution (the “**Bond Resolution**”) to be adopted by the Borough, authorizing the issuance of such Bonds; and

WHEREAS, pursuant to the terms of this Agreement and the Bond Resolution and in accordance with the terms of the Bond Financing Law, specifically N.J.S.A. 40A:12A-67(a), the Pledged Annual Service Charge shall be pledged to the payment of the Debt Service and the Administrative Expenses (both as defined below); and

WHEREAS, the Entity and the Borough have agreed that the Unpledged Annual Service Charge shall be paid to the Borough for any lawful use and purpose in the exercise of the Borough's sole discretion; and

WHEREAS, the Borough has, in this Agreement, provided its consent pursuant to N.J.S.A. 40A:20-10(c) to the sale or transfer of the Common Elements to the Homeowners Association, and to the sale and transfer, from time to time, of each of the Housing Units to a Qualified Unit Owner (as hereinafter defined), in each case as part of a condominium structure or in fee simple, subject to the conditions for such transfer or sale as set forth herein; and

WHEREAS, pursuant to N.J.S.A. 40A:20-10(c), upon assumption by each such Qualified Unit Owner of the transferor's obligations under this Agreement, the tax exemption of the Housing Unit shall continue and inure to such Qualified Unit Owner; and

WHEREAS, the Borough made the following findings:

In accordance with the Exemption Law, specifically N.J.S.A. 40A:20-11, the Borough hereby finds and determines that the financial agreements, including this Agreement, are to the direct benefit of the health, welfare and financial well-being of the Borough and its citizens because it allows for the development of a property that has fallen into disrepair into a productive, useful and job-creating property, and further:

(a) The Redevelopment Project (of which the Project is a part) will help revitalize and/or repurpose underutilized land, will invigorate the Project Site and surrounding community, will create approximately two hundred sixty (260) construction jobs and four (4) new permanent jobs in connection with the operation of the Redevelopment Project, will improve the quality of life in the community, and will enhance the economic development of the Borough. In addition, seven (7) of the for-sale townhomes and all twelve (12) of the veterans' rental housing units will be deed restricted for a combination of very low-, low- and moderate-income households, as provided in the Redevelopment Agreement; and

(b) Without the tax exemption granted herein it is highly unlikely that the Redevelopment Project would otherwise be undertaken, as a source of funding all or a portion of the costs thereof would not otherwise be available;

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 1 **GENERAL PROVISIONS**

Section 1.1 Governing Law. This Agreement shall be governed by the provisions of the Exemption Law and the Ordinance, which authorized the execution of this Agreement. The Borough

has relied upon the facts, data, and representations contained in the Exemption Application in granting this tax exemption.

Section 1.2 General Definitions. Unless specifically provided otherwise or the context otherwise requires, when used in this Agreement, the following terms shall have the following meanings:

- i. Administrative Expenses – The expenses and fees of the Trustee.
- ii. Affordable Housing Units – Any of the seven (7) Housing Units that are subject to the affordability controls and deed restriction described in the Redevelopment Agreement and Section 2.3 of this Agreement.
- iii. Allowable Net Profit – The amount determined by applying the Allowable Profit Rate to Total Project Cost pursuant to N.J.S.A. 40A:20-3(c).
- iv. Allowable Profit Rate – The greater of 12% or the percentage per annum arrived at by adding 1.25% 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 12% or the percentage per annum arrived at by adding 1.25% per annum to the interest rate per annum that the Borough determines to be the prevailing rate on mortgage financing on comparable improvements in Bergen County. The provisions of N.J.S.A. 40A:20-3(b) are incorporated herein by reference.
- v. Annual Gross Revenue – The amount equal to annual gross rents and other income derived by the Entity in connection with the Project, together with any insurance, operating and maintenance expenses paid by a tenant that are ordinarily paid by a landlord. Annual Gross Revenue shall include fees or income paid or received for parking, laundry room, vending machines, and the like, or as user fees for other services. No deductions will be allowed for operating or maintenance costs, including, but not limited to, gas, electric, water and sewer, other utilities, garbage removal and insurance charges, whether paid for by the Entity, tenant or third party.
- vi. Annual Service Charge – The amount the Entity has agreed to pay the Borough for Borough services supplied to the Project, which sum is (a) in lieu of any taxes on the Land or Improvements, and (b) partially remitted to Hunterdon County, pursuant to N.J.S.A. 40A:20-12. The Annual Service Charge consists of the Pledged Annual Service Charge and the Unpledged Annual Service Charge.
- vii. Applicable Law – Any and all federal, state and local laws, rules, regulations, rulings, court orders, statutes and ordinances applicable to the Project, the Property, the long term tax exemption provided herein, or the Annual Service Charge.
- viii. 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 include a certification of Total Project Cost (in the first Auditor's Report following Substantial Completion of the entire Project only, with any changes to be contained in a subsequent Auditor's Report) and proper and accurate

computations of Annual Gross Revenue and Net Profit. The contents of the Auditor's Report shall be prepared in conformity with generally accepted accounting principles and shall contain such information as necessary to compute the foregoing items, and any other items required by the Law or by Borough ordinance. The Auditor's Report shall be certified as to its conformance with such principles by a certified public accountant that is licensed to practice in the State of New Jersey.

ix. Certificate of Occupancy — A document, whether temporary or permanent, issued by the Borough authorizing occupancy of a building, in whole or in part, pursuant to N.J.S.A. 52:27D-133. It is anticipated that Certificates of Occupancy will be issued separately, at different times, for each of the one hundred eleven (111) Housing Units.

x. County Share — An amount equal to five percent (5%) of the Unpledged Annual Service Charge collected by the Borough, which the Borough shall remit to the County of Hunterdon in accordance with N.J.S.A. 40A:20-12(b)(2)(e).

xi. Debt Service — An amount equal to the principal of and interest on the Bonds.

xii. Default — A breach of or the failure of the Entity or any Unit Owner to perform any obligation imposed upon the Entity or such Unit Owner by the terms of this Agreement, or under the Law, beyond any applicable grace or cure periods.

xiii. Entity — The term "Entity" within this Agreement shall be as defined in the Recitals as the Entity and includes any subsequent purchasers or successors in interest of the Project (or the Common Elements), provided they are formed and operate as an urban renewal entity under the Law and the transfer has been duly approved by the Borough in accordance with Article VIII below. The term "Entity" shall not include any Qualified Unit Owner. The term "Entity" shall not include the Homeowners Association, unless it is determined that the assessment and taxation of the Common Elements against each of the Housing Units is not legally permissible, in which event the Homeowners Association may be organized as an urban renewal entity in order to qualify for the continuation of the tax exemption provided hereunder in respect of the Common Elements.

xiv. Improvements or Project — Any building, structure or fixture permanently affixed to the Land and to be constructed and tax exempted under this Agreement.

xv. In Rem Tax Foreclosure or Tax Foreclosure — A summary proceeding by which the Borough may enforce a lien for taxes due and owing by tax sale, under N.J.S.A. 54:5-1 to 54:5-129 et seq.

xvi. Land — The land, but not the Improvements, on the Property.

xvii. Land Taxes — The amount of taxes assessed on the value of the Land on which the Project is located and, if applicable, taxes on any pre-existing improvements. Since the Project involves the construction of housing by the Entity, the Land upon which the Project is situated shall be exempt from taxation to the same extent as the improvements being constructed thereon, in accordance with N.J.S.A. 40A:20-12. Accordingly, there shall be no credit against the Annual Service Charge for Land Tax Payments.

xviii. Land Tax Payments — Payments made on the quarterly due dates, including approved grace periods, if any, for Land Taxes as determined by the Tax Assessor and the Tax Collector. Since the Project involves the construction of housing by the Entity, the Land upon which the Project is situated shall be exempt from taxation to the same extent as the improvements being constructed thereon, in accordance with N.J.S.A. 40A:20-12. Accordingly, there shall be no credit against the Annual Service Charge for Land Tax Payments.

xix. Law — The Long-Term Tax Exemption Law, as amended and supplemented, N.J.S.A. 40A:20-1 et seq. and the Ordinance that authorized the execution of this Agreement, and all other relevant Federal, State or Borough statutes, ordinances, resolutions, rules and regulations.

xx. Market Rate Housing Units – Any of the one hundred four (104) Housing Units not comprising the Affordable Housing Units.

xxi. Minimum Annual Service Charge — By agreement of the parties and in satisfaction of the Law, the Minimum Annual Service Charge shall be 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 not be reduced through any tax appeal during the period this Agreement is in force and effect. The Minimum Annual Service Charge shall be determined on the basis of the entire Project and then allocated equally among each of the one hundred eleven (111) Housing Units.

xxii. Net Profit — The gross revenue of the Entity, less all operating and non-operating expenses of the Entity, all determined in accordance with generally accepted accounting principles and the provisions of N.J.S.A. 40A:20-3(c).

xxiii. Ordinary Taxes – The combined taxes on the Land and Improvements that would ordinarily be due and payable on any of the Housing Units comprising the Project in the absence of a tax exemption.

xxiv. PASC Commencement Date – The earlier to occur of (i) the date on which the Bonds, or any portion thereof, are first issued or (ii) the first date of Substantial Completion of any of the one hundred four (104) Market Rate Housing Units. The PASC Commencement Date shall be uniform for all Market Rate Units and accordingly may begin prior to the issuance of a Certificate of Occupancy for any such Market Rate Housing Unit.

xxv. Pledged Annual Service Charge – For each quarterly payment date from and after the PASC Commencement Date, an amount equal to the sum of the Debt Service and the Administrative Expenses payable under the Bond Resolution on such quarterly payment date. As provided in Section 4.2 hereof, the Pledged Annual Service Charge shall be allocated equally among, and charged to, each of the one hundred four (104) Market Rate Housing Units, whether or not any such Market Rate Housing Unit has received a Certificate of Occupancy.

xxvi. Pronouns — He or it shall mean the masculine, feminine or neuter gender, the singular, as well as the plural, as context requires.

xxvii. Qualified Unit Owner – The buyer of a Housing Unit to whom the tax exemption for that Housing Unit will be transferred and who will be responsible pursuant to this Agreement to pay the portion of the Annual Service Charge allocable to such Housing Unit. The buyer must be an

individual or a non-commercial legal entity which, at the time of acquisition of such Housing Unit, owns no other Housing Unit. In addition, prior to such acquisition such buyer must execute, in accordance with Section 5.1 hereof, an instrument expressly assuming the obligation to pay the portion of the Annual Service Charge allocable to such Housing Unit.

xxviii. Substantial Completion — The determination by the Borough that the Project, in whole or in part, is ready for the use intended, which ordinarily shall mean the date on which the Project, or any part thereof, receives, or is eligible to receive, a Certificate of Occupancy for any portion of the Project. Substantial Completion shall be determined separately for each of the one hundred eleven (111) Housing Units.

xxix. Termination — Any act or omission which by operation of the terms of this Financial Agreement shall cause the Entity to relinquish its tax exemption.

xxx. Total Project Cost — The total cost of constructing the Project through the date a final Certificate(s) of Occupancy is issued for the Project, which categories of cost are set forth in N.J.S.A. 40A:20-3(h).

xxxi. Trustee – A bank with corporate trust powers selected by the Entity, with the consent of the Borough, to serve as trustee for the Bonds pursuant to the Bond Resolution.

xxxii. Unpledged Annual Service Charge – As provided in Section 4.3 hereof.

ARTICLE II **APPROVAL**

Section 2.1 Approval of Tax Exemption. The Borough approves a tax exemption for the Land and all the Improvements to be constructed and maintained in accordance with the terms and conditions of this Agreement and the Redevelopment Agreement and the provisions of the Law and all Applicable Law, which Improvements shall be constructed on the Property. The tax exemption provided in this Financial Agreement shall be separately granted, administered and enforced for each of the one hundred eleven (111) Housing Units, including the Common Elements. The Entity represents and covenants that, effective as of the completion of the Project, it shall use the Project for the purposes set forth in the Exemption Application and the land use applications filed with, and as approved by, the Borough in connection with the Project.

Section 2.2 Approval of Entity. Approval is granted to the Entity. Entity represents that its Certificate of Formation contains all the requisite provisions of the Law; has been reviewed and approved by the Commissioner of the New Jersey Department of Community Affairs ("**DCA**"); and has been filed with, as appropriate, the Office of the State Treasurer, all in accordance with N.J.S.A. 40A:20-5.

Section 2.3 Improvements to be Constructed. The Entity represents, covenants and warrants that it will construct, operate and maintain the Project, or cause the Project to be constructed, operated and maintained, in accordance with the Redevelopment Agreement, the Redevelopment Plan and Applicable Law, the proposed use of which is more specifically described in the Exemption Application. The Project shall consist of the construction of one hundred eleven (111) for-sale Townhomes to be located in twenty-one three-story structures, of which seven (7) Townhomes shall

meet the affordability requirements contained herein, together with related improvements (including the Common Elements), all as more fully described in the Redevelopment Agreement. The seven (7) affordable Townhomes shall be subject to affordability controls of not less than thirty (30) years. The affordable element to the Redevelopment Project (of which the Project is a part) shall be implemented by phasing consistent with N.J.A.C. 5:93-5.6(d) which will include a minimum of a pro-rata share of affordable units constructed as the market for sale residential units are built. All of the apartments shall be consistent with the applicable standards of the Uniform Housing Affordability Control Rules, N.J.A.C. 5:80-26.1 et seq.

Section 2.4 Construction Schedule. Subject to the receipt of acceptable financing, the Entity shall diligently undertake to commence construction or cause to construct and complete the Project in accordance with the estimated construction schedule, as more specifically described in the Exemption Application and the Redevelopment Agreement.

Section 2.5 Ownership, Management and Control. The Entity is the contract purchaser of the Property and shall own the Property prior to commencement of construction of the Project, and except as permitted in Article VI and Section 9.1(a) hereof, the Entity shall retain ownership of the Project at all times prior to Substantial Completion thereof.

Section 2.6. Financial Plan. The Improvements shall be financed in accordance with the financial plan, as more specifically described in the Exemption Application and the Redevelopment Agreement. The plan sets forth the estimated Total Project Cost, the source of funds and the amount of paid-in capital, or equity.

Section 2.7 Compliance with the Law. The Entity shall, at all times prior to the expiration or termination of this Agreement, remain bound by the provisions of the Law.

ARTICLE III **DURATION OF AGREEMENT**

Section 3.1 Term. So long as there is compliance with the Law and this Agreement, this Agreement shall remain in effect as to each Housing Unit for a term of thirty (30) years from the date of Substantial Completion of such Housing Unit and shall continue in force only while said Housing Unit is owned by either the Entity (prior to the initial sale of such Housing Unit) or a Qualified Unit Owner; provided, however, that in no case shall this Agreement (or any portion hereof) remain in effect as to the Project or any Housing Unit or therein longer than thirty-five (35) years from the date of execution of this Agreement. Upon expiration of the term of this tax exemption in respect of any Housing Unit, (i) the tax exemption for such Housing Unit shall no longer be in effect and the Land and the Improvements comprising such Housing Unit shall thereafter be assessed and taxed according to general law applicable to other non-exempt property in the Borough and (ii) all restrictions and limitations upon the Qualified Unit Owner shall terminate.

As provided in Section 4.4 hereof, in the event it is determined that the assessment and taxation of the Common Elements against each of the Housing Units is not legally permissible, whereupon the value of the Common Elements will be assessed and taxed against the Homeowners Association, then the tax exemption allocable to the Common Elements shall terminate and the Common Elements shall be subject to full taxation, unless the Homeowners Association is organized as an urban renewal entity that qualifies for the continuation (as an assignee of the Entity) of the tax

exemption provided hereunder in respect of the Common Elements. Any such tax exemption for the Common Elements shall, so long as there is compliance with the Law and this Agreement, remain in effect for a term of thirty (30) years from the date of Substantial Completion of the Common Elements and shall continue in force only while the Common Elements are owned by the Homeowners Association (as an assignee of the Entity); provided, however, that in to case shall such tax exemption remain in effect longer than thirty-five (35) years from the date of execution of this Agreement.

This Financial Agreement shall be binding upon the Entity until the later to occur of (i) the initial sale of the last of the one hundred eleven (111) Housing Units and (ii) the Entity's rendering and the Borough's acceptance of the Entity's final accounting; provided, that the indemnification provisions applicable to the Entity set forth in Section 15.1 hereof shall survive termination of the Entity's obligations hereunder.

Section 3.2 No Voluntary Termination. NEITHER THE BOROUGH, THE ENTITY NOR ANY QUALIFIED UNIT OWNER MAY AT ANY TIME TERMINATE THIS AGREEMENT. THE ENTITY AND EACH QUALIFIED UNIT OWNER FURTHER EXPRESSLY ACKNOWLEDGE, UNDERSTAND AND AGREE THAT IN ACCORDANCE WITH THE BOND FINANCING LAW, SPECIFICALLY N.J.S.A. 40A:12A-66(a), THE RELINQUISHMENT PROVISIONS SET FORTH IN THE EXEMPTION LAW, SPECIFICALLY N.J.S.A. 40A:20-9(g) AND 13, SHALL NOT BE APPLICABLE IN ACCORDANCE WITH, PURSUANT TO, AND UNDER THIS FINANCIAL AGREEMENT. THE ENTITY AND EACH QUALIFIED UNIT OWNER FURTHER EXPRESSLY REJECT, REFUSE, RELINQUISH, AND OTHERWISE WAIVE ANY AND ALL RIGHTS OF RELINQUISHMENT OF ITS STATUS UNDER THE EXEMPTION LAW AND THIS AGREEMENT THAT IT MAY HAVE OTHERWISE BEEN ENTITLED TO IN ACCORDANCE WITH ANY APPLICABLE LAW, INCLUDING WITHOUT LIMITATION N.J.S.A. 40A:20-13.

ARTICLE IV

ANNUAL SERVICE CHARGE & ANNUAL ADMINISTRATIVE FEE

Section 4.1 Annual Service Charge. In consideration of the tax exemption granted under this Agreement, the Entity and each Qualified Unit Owner shall pay to the Borough the sum of the Pledged Annual Service Charge and the Unpledged Annual Service Charge. The Entity and each Qualified Unit Owner hereby consent and agree to the amount of Annual Service Charge and to the liens established by this Agreement and neither the Entity nor any Qualified Unit Owner shall contest the validity of the amount of any such lien. Notwithstanding anything herein to the contrary, the obligation of the Entity and each Qualified Unit Owner to pay the Annual Service Charge shall be absolute and unconditional and shall not be subject to any defense, set-off, recoupment or counterclaim. The remedies of the Entity and each Qualified Unit Owner shall be limited to those specifically set forth or limited herein and otherwise provided by law.

Section 4.2 Pledged Annual Service Charge. From and after the PASC Commencement Date, and continuing thereafter on each until no Bonds remain outstanding under the Indenture and the Trustee has certified to the Borough that all Debt Service and Administrative Expenses in respect of the Bonds have been paid, there shall be payable on each Quarterly Payment Date (as defined in Section 4.7 hereof) in respect of each Market Rate Housing Unit (regardless of whether a Certificate of Occupancy has or has not yet been issued for such unit) a Pledged Annual Service Charge in an amount equal to the sum of all Debt Service and Administrative Expenses payable pursuant to the

Indenture on such Quarterly Payment Date, (ii) divided by one hundred four (104). By way of illustration only, if as to a particular Quarterly Payment Date the Debt Service and Administrative Expenses under the Indenture are \$36,000 and \$1,000, respectively, then the total Pledged Annual Service Charge for such Quarterly Payment Date shall be \$37,000, and the portion payable in respect of each Market Rate Housing Unit (regardless of whether a Certificate of Occupancy has or has not yet been issued for such unit) shall be such amount divided by 104, or \$355.77.

The Entity expressly acknowledges that it shall be responsible for payment of any and all Pledged Annual Service Charges in respect of the Market Rate Housing Units until such time, if any, as the obligations of this Financial Agreement in respect of any particular Market Rate Housing Unit has been assumed by a Qualified Unit Owner pursuant to Section 5.1 hereof.

The Pledged Annual Service Charge shall be payable either to the Borough or to the Trustee, as the Borough may direct.

The Pledged Annual Service Charge in respect of any Market Rate Housing Unit shall remain payable by the owner of each Market Rate Housing Unit notwithstanding any termination or ineffectiveness, either in whole or in part, of the tax exemption granted by this Financial Agreement.

Section 4.3 Unpledged Annual Service Charge. From and after the first day of the month following the month in which Substantial Completion of any particular Housing Unit occurs (the “Unpledged ASC Start Date”), and continuing thereafter for the Term described in Section 3.1 hereof, there shall be payable on each Quarterly Payment Date in respect of each such Housing Unit an Unpledged Annual Service Charge equal to the following amounts:

(a) For each of the one hundred four (104) Market Rate Housing Units:

(i) Stage One (1 year): From Unpledged ASC Start Date through and including the day immediately preceding the first anniversary of the Unpledged ASC Start Date, an amount equal to the greater of (x) fifty percent (50%) of Ordinary Taxes in respect of said Housing Unit (including therein such portion of the value of the Common Elements allocated to such Housing Unit pursuant to the Master Deed) and (y) the Minimum Annual Service Charge.

(ii) Stage Two (4 years): From the first day of the second (2nd) year following the Unpledged ASC Start Date through and including the last day of the fifth (5th) year following the Unpledged ASC Start Date, an amount equal to the greater of (x) fifty-five percent (55%) of Ordinary Taxes in respect of said Housing Unit (including therein such portion of the value of the Common Elements allocated to such Housing Unit pursuant to the Master Deed) and (y) the Minimum Annual Service Charge.

(iii) Stage Three (5 years): From the first day of the sixth (6th) year following the Unpledged ASC Start Date through and including the last day of the tenth (10th) year following the Unpledged ASC Start Date, an amount equal to the greater of (x) sixty-five percent (65%) of Ordinary Taxes in respect of said Housing Unit (including therein such portion of the value of the Common Elements allocated to such Housing Unit pursuant to the Master Deed) and (y) the Minimum Annual Service Charge.

(iv) Stage Four (6 years): From the first day of the eleventh (11th) year following the Unpledged ASC Start Date through and including the last day of the sixteenth (16th) year following the Unpledged ASC Start Date, an amount equal to the greater of (x) seventy percent (70%) of Ordinary Taxes in respect of said Housing Unit (including therein such portion of the value of the Common Elements allocated to such Housing Unit pursuant to the Master Deed) and (y) the Minimum Annual Service Charge.

(v) Stage Five (6 years): From the first day of the seventeenth (17th) year following the Unpledged ASC Start Date through and including the last day of the twenty-second (22nd) year following the Unpledged ASC Start Date, an amount equal to the greater of (x) eighty-five percent (85%) of Ordinary Taxes in respect of said Housing Unit (including therein such portion of the value of the Common Elements allocated to such Housing Unit pursuant to the Master Deed) and (y) the Minimum Annual Service Charge.

(b) For each of the seven (7) Affordable Housing Units:

From the Unpledged ASC Start Date through and including the last day of the twenty-second (22nd) year following the Unpledged ASC Start Date, an amount equal to the greater of (x) thirty percent (30%) of Ordinary Taxes in respect of said Housing Unit (including therein such portion of the value of the Common Elements allocated to such Housing Unit pursuant to the Master Deed) and (y) the Minimum Annual Service Charge.

The Entity expressly acknowledges that it shall be responsible for payment of any and all Unpledged Annual Service Charges in respect of the Housing Units until such time, if any, as the obligations of this Financial Agreement in respect of any particular Housing Unit has been assumed by a Qualified Unit Owner pursuant to Section 5.1 hereof.

The Borough shall deposit all Unpledged Annual Service Charges paid by the Entity under this Agreement into the general fund owned or controlled by the Borough.

Section 4.4 Treatment of Common Elements. The Borough and the Entity each agree that for real estate assessment and tax purposes (including for purposes of the Annual Service Charge), notwithstanding that the Homeowners Association will have title ownership of the Common Elements, 100% of the value of the Common Elements will be assessed and taxed against the Housing Units, in such proportion as shall be set forth in the Master Deed. Accordingly, such allocated value of the Common Elements will be included in the calculations of Ordinary Taxes and the Unpledged Annual Service Charge described in Section 4.3 hereof. However, in the event it is determined that the assessment and taxation of the Common Elements against each of the Housing Units is not legally permissible, then the value of the Common Elements will be assessed and taxed against the Homeowners Association, in which event the Entity has represented that such assessments and taxes will be allocated by the Homeowners Association to each of the Housing Units as a community charge pursuant to the Master Deed. In such event, the tax exemption allocable to the Common Elements shall terminate and the Common Elements shall be subject to full taxation, unless the Homeowners Association is organized as an urban renewal entity that qualifies for the continuation (as an assignee of the Entity) of the tax exemption provided hereunder in respect of the Common Elements.

In the event the Homeowners Association is organized as an urban renewal entity that qualifies for the continuation (as an assignee of the Entity) of the tax exemption provided hereunder

in respect of the Common Elements, then the Annual Service Charge applicable to the Common Elements shall consist solely of an Unpledged Annual Service Charge computed in the same manner as set forth in Section 4.3(a) hereof in the case of the one hundred four (104) Market Rate Housing Units, provided that the computation of Ordinary Taxes shall be based only on the value of the Common Elements.

Section 4.5 No Land Tax Credits. Since the Project involves the construction of housing by the Entity, the Land upon which the Project is situated shall be exempt from taxation to the same extent as the improvements being constructed thereon, in accordance with N.J.S.A. 40A:20-12. Accordingly, there shall be no credit against the Annual Service Charge for Land Tax Payments.

Section 4.6 Annual Administrative Fee. In addition to the Annual Service Charge, the Entity and each Qualified Unit Owner shall pay to the Borough an annual administrative fee (the “**Annual Administrative Fee**”) in an amount equal to two percent (2%) of the Annual Service Charge due in any year, to cover the Borough’s administrative costs. The Annual Administrative Fee shall be payable to the Borough in installments on the same dates as each quarterly installment of the Annual Service Charge is due and payable.

Section 4.7 Quarterly Installments. The Entity shall pay the Annual Service Charge in quarterly installments on those dates when real estate tax payments are due (each, a “**Quarterly Payment Date**”); subject, nevertheless, to adjustment for over or underpayment within thirty (30) days after the close of each calendar year as provided in Section 4.1 hereof. In the event that the Entity or unit owner fails to pay the Annual Service Charge or the Annual Administrative. Fee in full, the unpaid amount shall bear the highest rate of interest permitted in the case of unpaid taxes or tax liens on the land until paid.

Section 4.5 Material Conditions. It is expressly agreed and understood that all Land Tax Payments (if any), Annual Service Charges (including the methodology of computation thereof), Annual Administrative Fees, and any water, sewer, special assessment or other municipal charges upon the Property, and any interest thereon, are material conditions (“**Material Conditions**”) of this Agreement. If any other term, covenant or condition of this Agreement, as to any person or circumstance, shall to any extent be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and each such remaining term, covenant or condition of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

Section 4.6 Other Municipal Services and Impositions. Nothing herein shall exempt the Entity from the payment of any municipal services, including sewer and water charges, rendered to the Property, and any special assessments or other municipal charges that may be imposed upon the Property. The Entity shall timely pay for municipal services rendered to the Property.

Section 4.7 Remittance to County. The Borough shall remit the County Share to the County of Hunterdon in accordance with N.J.S.A. 40A:20-12(b)(2)(e).

Section 4.8 Issuance of the Bonds. As contemplated by the Redevelopment Agreement, the Borough agrees to take all necessary actions to cause the issuance of the Bonds, in a total principal amount not to exceed Five Hundred Thousand Dollars (\$500,000), in order to finance a portion of the cost of constructing the Townhomes Component and/or the Borough Component, along with costs of issuance and capitalized interest on the Bonds (if any). The Bonds will be secured solely by the

Pledged Annual Service Charge, and the interest on the Bonds will be included in gross income for federal income tax purposes (i.e., the Bonds will be “taxable” obligations). The Bonds will not be secured, in whole or in part, by the full faith and credit obligations of the Borough, and will not be payable, in whole or in part, from the levy of *ad valorem* taxes upon taxable property within the Borough. The Borough will not participate in the preparation of any offering materials relating to the sale of the Bonds. The Entity shall be solely responsible for identifying a purchaser of the Bonds, which shall be sold by means of a private placement without the provision of offering documents. The purchaser so identified by the Entity shall, as a condition to purchasing the Bonds, be required to execute and deliver to the Borough a “sophisticated investor” letter acknowledging, *inter alia*, the limited source of security for payment of the Bonds, the absence of any offering materials and that it has made a full investigation of the Bonds and the security therefor, and expressly waiving, *inter alia*, any claims it may have against the Borough in connection with the authorization, execution and delivery of this Agreement and the authorization, execution, marketing and sale of the Bonds.

ARTICLE V

ASSIGNMENT TO QUALIFIED UNIT OWNERS

Section 5.1 Approval of Sale to Qualified Unit Owners. As permitted by N.J.S.A. 40A:20-10(b), it is understood and agreed that the Borough hereby consents to the sale of Housing Units to Qualified Unit Owners and their successors and/or assigns, each owning no other Housing Unit at the time of transfer, and upon execution of a written instrument by the Qualified Unit Owner assuming all of the obligations with respect to such Housing Unit under this Agreement, the tax exemption shall continue and inure to the Housing Unit owned by such Qualified Unit Owner and his/her successors and/or assigns. The Borough further hereby consents to entry by the aforesaid Qualified Unit Owners into customary financing arrangements for the financing of the acquisition and/or maintenance of the Housing Unit (e.g., mortgage financing, home equity financing).

The Entity covenants that it shall file the Master Deed as to all Housing Unit comprising the Townhomes Component which has been approved for tax exemption under this Agreement. If such filing has been made as aforesaid, then each Housing Unit shall continue to be subject to the provisions of this Agreement, and the tax exemption previously approved under this Agreement with respect to all Housing Units comprising the Townhomes Component shall be unaffected by the filing of the Master Deed or any subsequent deed conveying the Housing Unit and its appurtenant interest in the Common Elements. The tax exemption herein shall continue as to the Housing Unit and its appurtenant undivided interest in the Common Elements, subject to this Agreement.

Section 5.2 Conveyance of Housing Unit. The conveyance of a Housing Unit which is authorized under this Agreement to a Qualified Unit Owner shall not require consent or approval by the Borough. However, such Qualified Unit Owner shall acquire title to such Housing Unit subject to the requirement for payment of the Annual Service Charge and other provisions of this Agreement expressly applicable to Qualified Unit Owners, and the exemption from taxation as to such Housing Unit shall continue unaffected by the transfer. The requirement in Section 5.1 to assume the obligations of this Agreement by a written instrument executed by the Qualified Unit Owner shall be an express condition in any deed transferring a Housing Unit to a Qualified Unit Owner.

THE ENTITY COVENANTS THAT IT WILL INCLUDE IN THE MASTER DEED A NOTIFICATION TO THE UNIT PURCHASER THAT UPON PURCHASE OF A HOUSING

UNIT EACH UNIT PURCHASER SHALL HAVE CONSENTED TO THE OBLIGATIONS UNDER THIS AGREEMENT, AND SHALL OBTAIN A WRITING TO THIS AFFECT FROM THE UNIT PURCHASER AT CLOSING. THE ENTITY FURTHER COVENANTS THAT THIS AGREEMENT, AND THE OBLIGATIONS AND RISKS RELATED THERETO, SHALL BE FULLY DISCLOSED TO ALL POTENTIAL PURCHASERS OF THE HOUSING UNITS PRIOR TO EXECUTING A SALE OF SUCH HOUSING UNIT, AND THAT A COPY OF THIS AGREEMENT WILL BE MADE AVAILABLE TO EACH SUCH POTENTIAL PURCHASER UPON REQUEST.

ARTICLE VI **CERTIFICATE OF OCCUPANCY**

Section 6.1 Certificate of Occupancy. The Entity shall obtain all Certificates of Occupancy in a timely manner so as to complete construction in accordance with the proposed construction schedule in the Exemption Application and the Redevelopment Agreement. The failure to secure the Certificates of Occupancy shall subject the Property to full taxation (ordinary applicable taxes) for the period between the date of Substantial Completion and the date the Certificate of Occupancy is obtained.

Section 6.2 Filing of Certificate of Occupancy. It shall be the primary responsibility of the Entity to forthwith file with the Tax Assessor a copy of each Certificate of Occupancy. Failure of the Entity to file such issued Certificates of Occupancy, as required by the preceding sentence, shall not militate against any action or non-action, taken by the Borough, including, if appropriate, retroactive billing with interest for any charges determined to be due, in the absence of such filing by the Entity. The estimated cost basis for the Project or any portion thereof disclosed by the Entity in the Exemption Application, the Redevelopment Agreement and/or this Agreement may, at the option of the Borough's construction official, be used as the basis for the construction cost in the issuance of the building permits.

ARTICLE VII **ANNUAL REPORTS**

Section 7.1 Accounting System. The Entity shall maintain, or cause to be maintained, a system of accounting and internal controls established and administered in accordance with generally accepted accounting principles and as otherwise prescribed in the Law.

Section 7.2 Periodic Reports.

A. Auditor's Report: Within ninety (90) days after the close of each fiscal or calendar year, depending on the Entity's accounting basis, that this Agreement shall continue in effect, the Entity shall submit its Auditor's Report for the preceding fiscal or calendar year to the Tax Collector and Borough Clerk, who shall forward copies of same to the Mayor and governing body of the Borough as required by N.J.S.A. 40A:20-9(d).

The Auditor's Report shall include, but not be limited to: rents received by the Entity and the rent schedule for the Project, the terms and interest rate on any mortgage(s) associated with the Project, and such details as may relate to the financial affairs of the Entity and to its operation and performance hereunder, pursuant to the Law and this Agreement. The Report shall clearly identify

and calculate the Net Profit for the Entity during the previous year. After completion of the Project, the Entity agrees to submit a Total Project Cost audit certified by a certified public accountant within ninety (90) days after completion of the Project.

If any Auditor's Report is not provided to the Borough by the time specified herein, the Entity shall be responsible for reimbursement to the Borough for any expenses incurred in connection with the enforcement of such requirement, including reasonable legal fees.

B. Disclosure Statement: Upon written request of the Borough, the Entity shall submit a Disclosure Statement to the Borough Clerk, listing the persons having an ownership interest in the Project, and the extent of the ownership interest of each.

C. Borough Certification: Upon written request of the Entity, the Borough shall certify that this Agreement has been entered into and is in effect.

Section 7.3 Inspection. Upon request, the Entity shall permit the inspection of its property, equipment, buildings and other facilities of the Project by representatives duly authorized by the Borough and the Division of Local Government Services of DCA by representatives authorized by the Borough. The Entity shall permit, upon request, an examination and audit of its books, contracts, records, documents and papers. Such examination or audit shall be made during the reasonable hours of the business day, in the presence of an officer or agent designated by the Entity.

ARTICLE VIII

LIMITATION OF PROFITS AND RESERVES

Section 8.1 Limitation of Profits and Reserves. During the period of tax exemption as provided herein, the Entity shall be subject to a limitation of its profits pursuant to the provisions of N.J.S.A. 40A:20-15.

The Entity shall have the right to establish a reserve against unpaid rentals, reasonable contingencies and/or vacancies in an amount not exceeding ten percent (10%) of the gross revenues of the Entity for the fiscal year preceding the year in which a determination is being made with respect to permitted Net Profits as provided in N.J.S.A. 40A:20-15, said reserve to be noncumulative, it being intended that no further credits thereto shall be permitted after the reserve shall have attained the allowable level of ten percent (10%) of the preceding year's gross revenues as aforesaid.

Section 8.2 Annual Payment of Excess Net Profit. If Net Profits in any fiscal year exceed the Allowable Net Profits for such period, the Entity, within ninety (90) days after the end of such fiscal year, shall pay such excess Net Profits to the Borough as an additional service charge; provided, however, that the Entity may maintain a reserve as determined pursuant to Section 7.1 above.

Section 8.3 Payment of Excess Net Profit upon Termination, Expiration or Sale. The date of termination, expiration or sale shall be considered to be the close of the fiscal year of the Entity. Within ninety (90) days after such date, the Entity shall pay to the Borough the excess Net Profit, if any, maintained by it pursuant to this section.

ARTICLE IX
SALE, ASSIGNMENT AND/OR ASSUMPTION

Section 9.1 Approval of Sale of Project by Urban Renewal Entity Formed and Eligible to Operate Under Law.

(a) Prior to Substantial Completion of the Project, the Entity shall only be permitted to transfer the Project, its ownership interest in the Property, or any ownership interest in the Entity, in accordance with the terms set forth in the Redevelopment Agreement.

(b) As permitted by N.J.S.A. 40A:20-10, it is understood and agreed that the Borough, on written application by the Entity, may consent, which consent shall not be unreasonably withheld, delayed or conditioned, to a sale of the Project and the transfer of this Agreement provided (a) the transferee (the “**Transferee**”) is an urban renewal entity formed and eligible to operate under the Exemption Law; (b) the Transferee does not own any other project subject to long term tax exemption at the time of transfer; (c) the Entity is not then in Default of this Agreement or in violation of Applicable Law; (d) the Entity’s obligations under this Agreement are fully assumed by the Transferee in a duly executed written instrument or document satisfactory to Borough, including but not limited to a new financial agreement incorporating all the terms of this Agreement for the period remaining on the tax exemption applicable to the Project (the “**Transferee Agreement**”); (e) the Transferee agrees to abide by all terms and conditions of this Agreement. Upon such a transfer and the execution of a Transferee Agreement, the tax exemption provided for herein shall continue and inure to the Transferee and his/her successors and/or assigns. A transfer of greater than 10 percent of the ownership interest in the Entity may be transferred in accordance with N.J.S.A. 40A:20-5e.

(c) As permitted by N.J.S.A. 40A:20-10(d), the Entity shall pay to the Borough an administrative fee equal to two percent (2%) of the Annual Service Charge for the processing of each request for assignment of this Agreement pursuant to paragraphs (a) or (b) of this Section 8.1.

Section 9.2 Mortgages. Notwithstanding anything herein to the contrary, the Entity may enter into mortgages with banks or other lenders, without the consent of the Borough.

Section 9.3 Severability. It is an express condition of the granting of this tax exemption that during its duration, the Entity shall not, except in accordance with a final subdivision plan approved by the Borough Planning Board, without the prior consent of the Borough Council of the Borough by ordinance, convey, mortgage or transfer, all or part of the Project so as to sever, disconnect, or divide the Improvements from the Land which is basic to, embraced in, or underlying the exempted Improvements.

Section 9.4 Subordination of Fee Title. It is expressly understood and agreed that the Entity has the right, subordinate to the lien of the Annual Service Charge and to the rights of the Borough hereunder, to encumber and/or lease and/or assign the fee title to the Project Area and/or Project, and that any such encumbrance, lease or assignment shall not be deemed to be a violation of this Agreement.

ARTICLE X **COMPLIANCE**

Section 10.1 Operation. During the term of this Agreement, the Project shall be maintained and operated in accordance with the provisions of the Law and all Applicable Law. The Entity's failure to comply with the Law and all Applicable Law shall constitute a Default under this Agreement.

ARTICLE XI **DEFAULT**

Section 11.1 Default. Default is hereby defined as (i) the failure of the Entity or any Qualified Unit Owner to pay the Land Taxes (if any), the Annual Service Charge or the Annual Administrative Fee, or any part thereof, beyond any applicable notice, cure or grace period or (ii) the failure of the Entity or any Qualified Unit Owner to perform any obligations imposed by the Agreement and the Law and that the Entity or such Qualified Unit Owner fails to cure within sixty (60) days after written notice thereof. If, in the reasonable opinion of the Borough, the Default cannot be cured within sixty (60) days using reasonable diligence, the Borough will extend the time to cure. A Default under this Agreement by the Entity or any Qualified Unit Owner shall only be considered a Default against that specific party, without any implication of a Default against any other party.

Section 11.2 Remedies upon Default.

(a) If a Default by the Borough should occur, the Entity or any Qualified Unit Owner may take whatever action at law or in equity as may be necessary or desirable to enforce the performance or observance of any rights under this Agreement, including an action for specific performance or damages.

(b) If a Default by the Entity or any Qualified Unit Owner should occur, the Borough may take whatever action at law or in equity as may be necessary or desirable to enforce the performance or observance of any rights under this Agreement, including an action for specific performance or damages. Among its other remedies provided hereunder, the Borough, either directly or in collaboration with the Trustee, shall have the right to proceed against the Property pursuant to the In-Rem Tax Foreclosure Act, N.J.S.A. 54:5-1 et seq. No Default by the Entity or any Qualified Unit Owner shall terminate the long term tax exemption and its obligation to make Annual Service Charge Payments, which shall continue in effect for the duration set forth in Section 3.1 hereof.

All of the remedies provided in this Agreement to the Borough, and all rights and remedies granted to it by law and equity, shall be cumulative and concurrent. No provision of this Agreement shall deprive the Borough of any of its remedies or actions against the Entity because of its failure to pay Land Taxes (if any), the Annual Service Charge the Annual Administrative Fee. This right shall apply to arrearages that are due and owing at the time of termination. Further, the bringing of any action for Land Taxes (if any), the Annual Service Charge or the Annual Administrative Fee, or for breach of covenant, or the resort to any other remedy herein provided for the recovery of Land Taxes, shall not be construed as a waiver of the rights to terminate the tax exemption or proceed with a tax sale or Tax Foreclosure action or any other specified remedy.

ARTICLE XII
TERMINATION

Section 12.1 Termination. As provided in Section 3.1 hereof, the Term of this Agreement shall be computed separately for each Housing Unit based on the date of Substantial Completion thereof. As provided in Section 3.2 hereof, neither the Borough, the Entity nor any Qualified Unit Owner shall have the right to voluntarily terminate this Agreement.

Section 12.2 Final Accounting. Within ninety (90) days after the initial sale of the last of the one hundred eleven (111) Housing Units, the Entity shall provide a final accounting and pay to the Borough 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. For purposes of rendering a final accounting, the termination of the Agreement shall be deemed to be the end of the fiscal year for the Entity.

Section 12.3 Conventional Taxes. Upon expiration of this Agreement in respect of any Housing Unit (or, if separately assessed, the Common Elements), the tax exemption for such Housing Unit (or, if separately assessed, the Common Elements) shall expire and the land and the Improvements thereon comprising such Housing Unit (or, if separately assessed, the Common Elements) shall thereafter be assessed and conventionally taxed according to the general law applicable to other nonexempt taxable property in the Borough.

ARTICLE XIII
DISPUTE RESOLUTION

Section 13.1 Arbitration. Upon a Default of this Agreement by either of the parties hereto, or a dispute arising between the parties in reference to the terms and provisions as set forth herein, either party may apply to the Superior Court of New Jersey, by an appropriate proceeding, to settle and resolve the dispute in such fashion as will tend to accomplish the purposes of the Law. If the Superior Court does not entertain jurisdiction, the parties shall submit the dispute to the American Arbitration Association in New Jersey to be determined in accordance with its rules and regulations in such a fashion to accomplish the purpose of the Long-Term Tax Exemption Law. The cost for the arbitration shall be borne equally by the parties. The parties agree that the Entity may not file an action in Superior Court or with the Arbitration Association unless the Entity has first paid in full all Annual Service Charges.

In the event of a Default on the part of the Entity or any Qualified Unit Owner to pay the Land Taxes (if any), the Annual Service Charge or the Annual Administrative Fee in respect of any Housing Unit and/or the Common Elements, the Borough, among its other remedies, reserves the right to proceed against the Property comprising such Housing Unit and/or Common Elements in the manner provided by N.J.S.A. 54:5-1 to 54:4-129, and any act supplementary or amendatory thereof. 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 is pertinent to this Agreement, as if the Annual Service Charge and Annual Administrative Fee were taxes or municipal liens on land.

ARTICLE XIV
WAIVER

Section 14.1 Waiver. Nothing contained in this Agreement shall constitute a waiver or relinquishment by the Borough of any rights and remedies, including, without limitation, the right to terminate the Agreement and tax exemption for violation of any of the conditions provided herein. Nothing herein shall be deemed to limit any right of recovery of any amount that the Borough has under law, in equity, or under any provision of this Agreement.

ARTICLE XV
INDEMNIFICATION

Section 15.1 Indemnification. If the Borough is named as party defendant in any action as a result of the Entity's alleged breach, default or a violation of any of the provisions of this Agreement and/or the provisions of N.J.S.A. 40A:20-1 et seq., including specifically the validity and enforceability of the provisions of Article V hereof (which have been incorporated at the request of the Entity), the Entity shall defend, indemnify and hold the Borough harmless against any and all liability, loss, cost, or expense (including reasonable attorney's fees and costs, through trial and all stages of any appeal, including the cost of enforcing this indemnity) arising out of this Agreement. However, the Borough maintains the right to intervene as a party thereto, to which intervention the Entity consents; the expense thereof to be borne by the Borough. The Entity shall not be obligated to indemnify the Borough for any suit or claim arising from the gross negligence, willful or intentional misconduct or actions of the Borough.

The provisions of this Article XV shall survive the termination, in whole or in part, of this Agreement.

ARTICLE XVI
NOTICE

Section 16.1 Certified Mail. Any notice required hereunder shall be sent by certified or registered mail, return receipt requested.

Section 16.2 Sent by Borough. When sent by the Borough to the Entity, the notice shall be addressed to:

HBC Liberty Townhomes Urban Renewal LLC
c/o Donald Pepe, Esq.
331 Newman Springs Road
Building 3, Suite 310
Red Bank, New Jersey 07701

With a copy to: HBC Liberty Townhomes Urban Renewal LLC
c/o George T. Vallone
68 Deer Haven Road
Bedminster, New Jersey 07921

or at such other address to which the Entity has notified the Borough in writing.

Provided that the Borough is sent written notice, in accordance with this Agreement, of the name and address of Entity's Mortgagee, the Borough shall provide such Mortgagee with a copy of any notice sent to the Entity.

Section 16.3 Sent by Entity. When sent by the Entity to the Borough, it shall be addressed to:

Carla Conner, Borough Clerk
Borough of Flemington
38 Park Avenue
Flemington, New Jersey 08822
Fax: (908) 782-0142

With a copy to: James G Fearon, Esq.
Dilworth Paxson LLP
4 Paragon Way, Suite 400
Freehold, New Jersey 07728
Fax: (732) 530-6770

or at such other address to which the Borough has notified the Entity in writing, with a copy to the Borough Attorney.

ARTICLE XVII **SEVERABILITY**

Section 17.1 Severability. Subject to Section 4.5 hereof, if any term, covenant or condition of this Agreement is judicially declared to be invalid or unenforceable, 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 term, covenant or condition of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

ARTICLE XVII **MISCELLANEOUS**

Section 18.1 Interpretation. This Agreement shall be construed and enforced in accordance with the laws of the State of New Jersey, and without regard to or aid of 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 Borough have combined in their review and approval of same.

Section 18.2 Conflicts. In the event of a conflict between the Exemption Application and the language contained in the Agreement, the Agreement shall govern and prevail. In the event of conflict between the Agreement and the Law, the Law shall govern and prevail.

Section 18.3 Oral Representations. There have been no oral representations made by either party hereto that is not contained in this Agreement. This Agreement, the Ordinance authorizing the Agreement and the Exemption Application constitute the entire agreement between the parties, and there shall be no modifications thereto other than by a written instrument approved and executed by both parties.

Section 18.4 Entire Document. This Agreement and all conditions in the Ordinance of the Borough Council approving this Agreement are incorporated in this Agreement and made a part hereof.

Section 18.5 Good Faith. The Entity and the Borough shall exercise good faith in dealing with each other.

Section 18.6 Amendment. This Financial Agreement may only be amended in writing signed by the parties, and, prior to taking effect, such amendment must be approved by ordinance duly adopted by the Borough upon the recommendation of the Mayor or other chief executive officer.

ARTICLE XIX
EXHIBITS

The following Exhibits are attached hereto and incorporated as if set forth herein:

- A. Description of the Property.
- B. Ordinance of the Borough authorizing the execution of this Agreement.

Exhibit A

Description of the Property

DRAFT

Exhibit B

Ordinance of the Borough Authorizing the Execution of this Agreement

DRAFT