

FINANCIAL AGREEMENT
(N.J.S.A. 40A:20-1 et seq.)

This **FINANCIAL AGREEMENT** (the "Agreement") is made as of this ___ day of _____, 2024, by and between **HBC LIBERTY VETERANS 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 Veterans' 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 VETERANS' COMPONENT WILL BE CONSTRUCTED, EXCLUDING THEREFROM THE FOOTPRINTS OF THE TOWNHOMES 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, 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) HBC Liberty Townhomes Urban Renewal LLC, (ii) the Entity 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, 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. 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).

ii. 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.

iii. 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.

iv. 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.

v. 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.

vi. 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 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.

vii. 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.

viii. County Share – An amount equal to five percent (5%) of the 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).

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

x. 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, provided they are formed and operate under the Law and the transfer has been duly approved by the Borough in accordance with Article VIII below.

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

xii. 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.

xiii. Land – The land, but not the Improvements, on the Property.

xiv. 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.

xv. 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.

xvi. 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.

xvii. 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.

xviii. 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).

xix. Ordinary Taxes – the combined taxes on the Land and Improvements that would ordinarily be due and payable on the Project in the absence of a tax exemption.

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

xxi. 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.

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

xxiii. 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.

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 Entity represents and covenants that, effective as of the completion of the Project, is 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 twelve (12) rental housing units for disabled veterans 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, all as more fully described in the Redevelopment Agreement. Subject to the foregoing requirements, the Project shall be a separate, stand-alone, non-inclusionary development. Four (4) of the apartments (i.e., the ground floor units) shall be ADA-compliant and the remaining eight (8) apartments (i.e., the second and third-floor units) shall be ADA-adaptable. All apartments shall be subject to affordability controls of not less than thirty (30) years and any lease and/or sale of any apartments to any Veteran's Housing Provider (as defined in the Redevelopment Agreement) shall be subject to the prior review and approved in writing by the Borough, which approval shall not be unreasonably withheld. 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 Section 8.1(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 for a term of thirty (30) years from the date of Substantial Completion of the Project and shall continue in force only while said Project is owned by an urban renewal entity formed pursuant to the Law; provided, however, that in no case shall this Agreement remain in effect longer than thirty-five (35) years from the date of execution of this Agreement. Upon expiration of the term of this tax exemption, (i) the tax exemption for the Project shall no longer be in effect and the Land and the Improvements on the Property 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 Entity shall terminate upon the Entity's rendering and the Borough's acceptance of the Entity's final accounting.

ARTICLE IV ANNUAL SERVICE CHARGE & ANNUAL ADMINISTRATIVE FEE

Section 4.1 Annual Service Charge. The Annual Gross Revenue shall be calculated as set forth within N.J.S.A. 40A:20-3(a) and shall include the total of all revenues 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 construct the Project. 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 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 Borough 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.

In consideration of the tax exemption granted under this Agreement, the Entity shall pay to the Borough of the following Annual Service Charges, which have been determined in accordance with the staging requirements set forth in N.J.S.A. 40A:20-12(b):

- (a) Stage One (15 years): From the first day of the month following the month in which Substantial Completion occurs (the "**Annual Service Charge Start Date**") through and including the last day of the fifteenth (15th) year following the Annual Service Charge Start Date, an amount equal to the greater of (i) ten percent (10%) of Annual Gross Revenue and (ii) the Minimum Annual Service Charge.

(b) Stage Two (3 years): From the first day of the sixteenth (16th) year following the Annual Service Charge Start Date through and including the last day of the eighteenth (18th) year following the Annual Service Charge Start Date, an amount equal to the greater of (i) ten percent (10%) of Annual Gross Revenue, (ii) twenty percent (20%) of Ordinary Taxes and (iii) the Minimum Annual Service Charge.

(c) Stage Three (6 years): From the first day of the nineteenth (19th) year following the Annual Service Charge Start Date through and including the last day of the twenty-fourth (24th) year following the Annual Service Charge Start Date, an amount equal to the greater of (i) ten percent (10%) of Annual Gross Revenue, (ii) forty percent (40%) of Ordinary Taxes and (iii) the Minimum Annual Service Charge.

(d) Stage Four (4 years): From the first day of the twenty-fifth (25th) year following the Annual Service Charge Start Date through and including the last day of the twenty-eighth (28th) year following the Annual Service Charge Start Date, an amount equal to the greater of (i) ten percent (10%) of Annual Gross Revenue, (ii) sixty percent (60%) of Ordinary Taxes and (iii) the Minimum Annual Service Charge.

(e) Stage Five (2 years): From the first day of the twenty-ninth (29th) year following the Annual Service Charge Start Date through and including the last day of the thirtieth (30th) year following the Annual Service Charge Start Date, an amount equal to the greater of (i) ten percent (10%) of Annual Gross Revenue, (ii) eighty percent (80%) of Ordinary Taxes and (iii) the Minimum Annual Service Charge.

Whenever the amount of the Annual Service Charge payable in respect of any quarterly installment is based on the amount of Annual Gross Revenue, the Entity shall calculate such amount based on the higher of (x) the amount of Annual Gross Revenue reasonably anticipated to be received during the year applicable to such quarterly installment and (y) the amount of Annual Gross Revenue actually realized during the most recently completed year. Such payments shall be subject to adjustment and reconciliation for over- or under-payment within thirty (30) days after the close of each annual period covered by an Auditor's Report, with (i) any over-payment to be credited against the next quarterly installment and (ii) any under-payment to be paid upon delivery of said Auditor's Report.

Commencing with "Stage Two" (as identified above), the Borough will provide quarterly advice statements advising the Entity of the amount of Ordinary Taxes on the Project applicable to such quarter.

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

Section 4.2 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 4.3 Annual Administrative Fee. In addition to the Annual Service Charge, the Entity 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 4.4 Quarterly Installments. The Entity shall pay the Annual Service Charge in quarterly installments on those dates when real estate tax payments are due; 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).

ARTICLE V

CERTIFICATE OF OCCUPANCY

Section 5.1 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 5.2 Filing of Certificate of Occupancy. It shall be the primary responsibility of the Entity to forthwith file with the Tax Assessor a copy of the Certificate of Occupancy. Failure of the Entity to file such issued Certificate 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 VI **ANNUAL REPORTS**

Section 6.1 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 6.2 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 6.3 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 VII
LIMITATION OF PROFITS AND RESERVES

Section 7.1 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 7.2 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 7.3 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 VIII
SALE, ASSIGNMENT AND/OR ASSUMPTION

Section 8.1 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 8.2 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 8.3 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 8.4 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 IX **COMPLIANCE**

Section 9.1 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 may terminate this Agreement as provided by N.J.S.A. 40A:20-1 et seq., as currently amended and supplemented. The Borough may also terminate this Agreement in the event of a Default under this Agreement. The Entity's failure to comply with the Law and all Applicable Law shall constitute a Default under this Agreement and the Borough shall, among its other remedies, have the right to terminate the tax exemption and/or this Agreement.

ARTICLE X **DEFAULT**

Section 10.1 Default. Default is hereby defined as (i) the failure of the Entity 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 to perform any obligations imposed by the Agreement and the Law and that the Entity 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. Should the Entity fail to pay any charges defined as Material Conditions in Section 4.6 above, such failure shall not be subject to the default remedies provided in Section 10.2 below but shall allow the Borough to proceed immediately to terminate the Agreement as provided in Article XI below.

Section 10.2 Remedies upon Default. The Borough shall, among its other remedies provided hereunder, 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. and/or may declare a Default and terminate this Agreement. Any default arising out of the Entity's failure to pay Land Taxes (if any), the Annual Service Charge or the Annual Administrative Fee shall not be subject to the default procedural remedies as provided in this Article X but shall allow the Borough to proceed immediately to terminate the Agreement as provided in Article XI below. 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 termination of any 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 or 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 XI **TERMINATION**

Section 11.1 Termination upon Default of the Entity. If the Entity fails to cure or remedy the Default within the time period provided in Section 10.1, the Borough may terminate this Agreement upon thirty (30) days written notice to the Entity (the “**Notice of Termination**”).

Section 11.2 Voluntary Termination by the Entity. The Entity may, one year after the Substantial Completion of the Project, notify the Borough that, as of a certain date designated in the notice; it relinquishes its status as a tax-exempt project. As of the date so set, the tax exemption, the Annual Service Charges and the profit and dividend restrictions shall terminate.

Section 11.3 Final Accounting. Within ninety (90) days after the date of termination, whether by affirmative action of the Entity, by virtue of the provisions of the Law or pursuant to the terms of this Agreement, 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 11.4 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 Borough.

ARTICLE XII **DISPUTE RESOLUTION**

Section 12.1 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 to pay the Land Taxes (if any), the Annual Service Charge or the Annual Administrative Fee, the Borough, among its other remedies, reserves the right to proceed against the Property 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 XIII **WAIVER**

Section 13.1 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 XIV **INDEMNIFICATION**

Section 14.1 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., 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.

In the event the Borough shall be named as party defendant in any action alleging any 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., the Entity reserves the right, in their sole and absolute discretion, to 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. If the Entity does not exercise such right to indemnify in accordance herewith, the Borough may terminate this Agreement.

ARTICLE XV **NOTICE**

Section 15.1 Certified Mail. Any notice required hereunder shall be sent by certified or registered mail, return receipt requested.

Section 15.2 Sent by Borough. When sent by the Borough to the Entity, the notice shall be addressed to:

HBC Liberty Veterans 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 Veterans 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 15.3 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 XVI **SEVERABILITY**

Section 16.1 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 17.1 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 17.2 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 17.3 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 17.4 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 17.5 Good Faith. The Entity and the Borough shall exercise good faith in dealing with each other.

Section 17.6 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 XVIII
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

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