


THIS AGREEMENT AND THE ORDINANCE ATTACHED HERETO AS EXHIBIT C 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

Record and Return to:


Joseph P. Baumann, Jr., Esq.
McManimon, Scotland & Baumann, LLC
75 Livingston Avenue
Roseland, New Jersey 07068

FINANCIAL AGREEMENT

THIS FINANCIAL AGREEMENT (as the same may be amended, modified or supplemented from time to time, hereinafter this "**Agreement**"), made this 8th day of November, 2018, by and between **FLEMINGTON CENTER URBAN RENEWAL, LLC**, an urban renewal entity qualified to do business under the provisions of the New Jersey Long Term Tax Exemption Law, N.J.S.A. 40A:20-1 et seq., as amended and supplemented (the "**Exemption Law**"), with offices at 5 Bartles Corner Road, Flemington, New Jersey 08822 (together with its permitted successors and assigns, the "**Entity**"), and the **BOROUGH OF FLEMINGTON**, a municipal corporation in the County of Hunterdon and the State of New Jersey, with offices at 38 Park Avenue, Flemington, New Jersey 08822 (together with its permitted successors and assigns, the "**Borough**", and together with the Entity, the "**Parties**" or "**Party**"),

WITNESSETH:

WHEREAS, by Resolution 2010-94, adopted on June 14, 2010, the Borough designated the Union Hotel property, located at 70-76 Main Street, Flemington, and identified on the Borough tax map as Block 22, Lot 4 (the "**Initial Redevelopment Area**") as an area in need of redevelopment in accordance with the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq. (the "**Redevelopment Law**"); and

WHEREAS, by Ordinance 2010-14, adopted on October 25, 2010, the Borough adopted the Union Hotel Redevelopment Plan for the Initial Redevelopment Area; and

WHEREAS, by Resolution 2014-44, adopted February 10, 2014, the Borough designated the area south of the Union Hotel property, inclusive of properties located at 78 Main Street, 80 Main Street, 82 Main Street, 90-100 Main Street, 104 Main Street, 110 Main Street, 7 Spring Street, 19 Spring Street, 3 Chorister Place and 6 Chorister Place, identified on the Borough Tax Map as Block 22 Lots 5, 6, 7, 8, 9, 10 and 12 and Block 23, Lots 1 and 7 as an area in need of redevelopment pursuant to the Redevelopment Law (such properties, together with the

Initial Redevelopment Area, is the “**2014 Redevelopment Area**”) and, subsequently, on March 7, 2014, the Borough enacted an ordinance adopting a redevelopment plan for the 2014 Redevelopment Area (the “**2014 Redevelopment Plan**”); and

WHEREAS, the Redevelopment Law authorizes the Borough to arrange or contract with a redeveloper for the planning, construction or undertaking of any project or redevelopment work in an area designated as an area in need of redevelopment; and

WHEREAS, by Resolution 2017-65, adopted on March 13, 2017, the Borough designated the Entity as redeveloper of the 2014 Redevelopment Area and the anticipated 2017 Redevelopment Area (as defined herein) in accordance with the Redevelopment Law, and authorized the execution of a redevelopment agreement (the “**Initial Redevelopment Agreement**”) with the Entity; and

WHEREAS, by Resolution 2017-130, adopted on July 10, 2017, the Borough expanded the 2014 Redevelopment Area to include Block 22, Lots 13 and 14 (23 Bloomfield Avenue and 21 Bloomfield Avenue) and Block 24, Lots 1, 2, 3 and 5 (2 Spring Street, 8 Spring Street and 12 Spring Street) (collectively the “**2017 Redevelopment Area**” and together with the 2014 Redevelopment Area is the “**Redevelopment Area**”); and

WHEREAS, by Ordinance 2017-17, adopted on December 11, 2017, the Borough adopted a redevelopment plan for the entire Redevelopment Area (the “**Redevelopment Plan**”); and

WHEREAS, the Redevelopment Plan envisions the redevelopment of the Redevelopment Area to provide for a mixed-use, multi-phase project comprised of hotel, residential, retail, restaurant, commercial, medical office and educational uses, structured parking, and any improvements ancillary or necessary thereto (collectively, the “**Project**”) upon Block 22, Lots 4, 5, 6, 7, 12, 13 and 14 and Block 24, Lots 1, 2, 3 and 5 (the “**Project Area**” as further depicted on *Exhibit A* hereto); and

WHEREAS, as authorized by Resolution 2017-206, adopted on December 11, 2017, the Borough and the Entity entered into an Amended and Restated Redevelopment Agreement dated December 12, 2017 (the “**Redevelopment Agreement**”), for the purpose of setting forth their respective undertakings, rights and obligations in connection with the construction of the Project which shall be undertaken by the Entity; and

WHEREAS, pursuant to and in accordance with the provisions of the Exemption Law and the Redevelopment Area Bond Financing Law, *N.J.S.A.* 40A:12A-64 *et seq.*, as amended and supplemented (the “**Bond Financing Law**”), the Borough is authorized to provide for and accept, in lieu of real property taxes, an annual service charge paid by the Entity to the Borough; and

WHEREAS, the Entity submitted an application with the Mayor of the Borough (the “**Application**”, attached hereto as *Exhibit B*), and in accordance with the Exemption Law the Mayor has recommended to the Borough that the Application be approved; and

WHEREAS, upon consideration of the Application and the Mayor's recommendations with respect thereto pursuant to N.J.S.A. 40A:20-8, the Borough Council (i) on October 9, 2018 adopted Resolution No. 2018-138 approving the Application, and (ii) on October 9, 2018 adopted Ordinance No. 2018-18 authorizing the execution of this Agreement (the "**Ordinance**"); 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 relating to public infrastructure improvements and certain other costs, the Borough has agreed that it shall issue, or reissue, the Bonds in accordance with the terms and provisions of a bond resolution (the "**Bond Resolution**") 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 made the following findings with respect to the Project:

A. Relative Benefits of the Project:

The Project will accelerate the development of longstanding, vacant and currently unusable land; save the facades of historic buildings, provide restaurant(s) and retail establishments, provide a downtown venue for the use of a liquor license, establish the first higher educational facility in the county, develop a medical offices building in the town, develop a hotel and with all such improvements develop jobs, ratables and a new vibrancy for the town center. New residents will occupy the residential component of the Project while substantial infrastructure improvements shall be made to the water system.

- B. Assessment of the importance of the tax exemption in obtaining development of the Project and influencing the locational decisions of probable occupants:

Tax exemption is required to allow the Project to move forward, and influence the residents, retailers, restaurateurs, hotelier, centers for higher learning and medical tenants to locate in the Borough while allowing the Entity to pay for the extraordinary costs associated with the saving of certain components of the historic buildings in the Borough and the expenses associated with the significant infrastructure improvements.

WHEREAS, in order to set forth the terms and conditions under which the Parties shall carry out their respective obligations with respect to (a) the payment of the Annual Service Charge by the Entity and (b) the issuance of the Bonds, the Parties have determined to execute this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants herein contained and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, it is mutually covenanted and agreed as follows:

ARTICLE I
GENERAL PROVISIONS

SECTION 1.01 Governing Law.

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

SECTION 1.02 General Definitions.

Defined terms shall have the meaning assigned to such terms in the preambles hereto and as follows:

Acts – Tax Exemption Law, Redevelopment Law and the Bond Financing Law.

Administrative Expenses – Expenses and fees of the Trustee. A total of Seventy Percent (70%) of the Administrative Expenses is allocated to the Residential Component. Ten Percent (10%) of the Administrative Expenses is allocated to each of the Retail Component, the Hotel Component and the Educational/Medical Component. Notwithstanding such allocation, until such time as all of the Components are complete and paying the Annual Service Charge, the Administrative Expenses shall be allocated to the first Component required to pay the Annual Service Charge.

Administrative Fee – As defined in Section 4.05(d) hereof.

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

Allowable Profit Rate – The greater of twelve percent (12%) or the percentage per annum arrived at by adding one and one-quarter percent (1¼ %) 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 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 twelve percent (12%) or the percentage per annum arrived at by adding one and one-quarter percent (1¼%) per annum to the interest rate per annum that the Borough determines to be the prevailing rate of mortgage financing on comparable improvements in the county. The provisions of N.J.S.A. 40A:20-3(b) are incorporated herein by reference.

Annual Service Charge – The Pledged Annual Service Charge plus the Unpledged Annual Service Charge.

Annual Service Charge Start Date – For each Component, the first day of the month immediately following the month in which the Certificate of Occupancy for such Component is issued.

Auditor's Report – A complete financial statement prepared by a certified public accountant who is, or whose firm is, licensed to practice that profession in the State and not a principal of the Entity, that fully details all items as required by the Exemption Law, including without limitation, (a) the terms and interest rate on any mortgage(s) associated with the Land or any Improvements related thereto, (b) the Net Profit for the period shown, including the calculation thereof, showing, inter alia, the percentage of excess profits utilized to maintain reserves pursuant to the Exemption Law, (c) the Total Project Cost, and (d) such details as may relate to the financial affairs of the Entity and to its operation and performance hereunder.

Bondholder - Any person who is the registered owner of any outstanding Bond, or any credit enhancement entity that is deemed to be the registered owner of any outstanding Bond, all in accordance with the terms of the Bond Resolution.

Bonds – Three Hundred Thousand Dollars (\$300,000.00) principal amount of non-recourse redevelopment area bonds secured by the Pledged Annual Service Charge, bearing interest at zero percent (0%) per annum, payable over a period of thirty (30) years and issued pursuant to the Bond Resolution for the purpose of funding a portion of the Project Public Improvements.

Certificate of Occupancy – 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.

Component(s) – Individually or collectively, the Hotel Component, the Residential Component, the Retail Component, and the Educational/Medical Component (and any phase thereof).

Condominium Association – Either (a) a New Jersey nonprofit corporation formed in accordance with the New Jersey Nonprofit Corporation Act, N.J.S.A. 15A:1-1 *et seq.* or (b) an Entity organized as a condominium association in accordance with N.J.S.A. 46:8B-12.

County – The County of Hunterdon, New Jersey.

County Amount – Five percent (5%) of the Annual Service Charge.

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

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

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

Debt Service – Ten Thousand Dollars (\$10,000.00) per year. A total of Seventy Percent (70%) of the Debt Service is allocated to the Residential Component. Ten Percent (10%) of the Debt Service is allocated to each of the Retail Component, the Hotel Component and the Educational/Medical Component. Notwithstanding such allocation, until such time as all of the Components are complete and paying the Annual Service Charge, the Debt Service shall be allocated to the first Component required to pay the Annual Service Charge.

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.

Educational – Any permanent building or portion thereof designed or used as an institution of higher learning or offices, support services and amenities for the institution of higher learning.

Educational/Medical Component – Any Educational or Medical portion of the Project for which a Certificate of Occupancy has been issued.

Effective Date – The earlier of (a) the Annual Service Charge Start Date for each Component (or phase thereof) or (b) the date of the issuance of the initial series of Bonds.

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

Gross Revenue – The meaning applied to such term in, and calculated in accordance with, the Exemption Law, specifically N.J.S.A. 40A:20-3(a).

Hotel – Any permanent building or portion thereof designed or used for the business of renting, leasing, maintaining, keeping, operating, conducting or providing of overnight or temporary sleeping or housing accommodations, for a consideration, to tourists, transients or travelers or any building or structure or group of buildings or structures devoted exclusively or primarily to said business, commonly known as "tourist lodges," "motels," "motor lodges," "motor courts" or "hotels," whether meals are served therein or not.

Hotel Component – Any Hotel portion of the Project for which a Certificate of Occupancy has been issued.

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

Improvement Parcel(s) – Any subdivided portion of the Land owned by the Entity on which a Component is, or shall be, located.

Indemnified Parties – As defined in Section 14.01(d) hereof.

In Rem Foreclosure – A summary proceeding by which the Borough may enforce the lien for taxes or Annual Service Charge due and owing by a tax sale in accordance with the Tax Sale Law.

Land – The land, but not the Improvements, identified on the official tax map of the Borough as Block 22, Lots 4, 5, 6, 7, 12, 13 and 14, and Block 24, Lots 1, 2, 3 and 5, and more particularly described by the metes and bounds description set forth within *Exhibit A* of this Agreement. The Land may be subdivided in furtherance of the Project.

Land Tax Credit – The amount, without interest, of Land Tax Payments made in the last four preceding quarters for any Improvement Parcel or portion thereof.

Land Taxes – The amount of taxes assessed on the value of Land on which any Component is located, which Land Taxes shall be determined following a determination of the assessment of the Land by the Tax Assessor for the Borough, at such time and to the extent required by law for all other properties generally in the Borough.

Land Tax Payments – Payments made on the quarterly due dates for Land Taxes on the Land, as determined by the Tax Assessor and the Tax Collector.

Material Conditions – As defined in Section 4.04 hereof.

Medical – Any permanent building or portion thereof designed or used as a medical office.

Net Profit – The Gross Revenue of the Entity, minus 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).

Pledged Annual Service Charge – The Debt Service plus the Administrative Expenses.

Project Public Improvements – Improvements on the Project Area accessible to the public including but not limited to, sidewalks, curbs, paved parking areas, landscaping, and courtyards.

Residential – Any permanent building or portion thereof designed or used as the residence or sleeping place of one or more persons, excluding the Hotel Component.

Residential Component – Any Residential portion of the Project for which a Certificate of Occupancy has been issued regardless of whether the individual units are for-sale or for-rent.

Retail – Any permanent building or portion thereof designed or used for the sale of goods or services to the public for use or consumption.

Retail Component – Any Retail portion of the Project for which a Certificate of Occupancy has been issued.

State – State of New Jersey.

Successor Entity(ies) – Urban renewal entity created to develop a Component (or phase thereof), provided any such Successor Entity shall be subject to the requirements of the Redevelopment Agreement, including, but not limited to, the transfer provisions set forth in Article 5 thereof.

Tax Assessor – The Borough tax assessor.

Tax Collector – The Borough tax collector.

Tax Sale Law – *N.J.S.A. 54:5-1 et seq.*

Term – As defined in Section 3.01 hereof.

Termination – Any action or omission which by operation of the terms of this Agreement shall cause the Entity to relinquish its tax exemption subject to the provisions set forth in Section 3.02 hereof.

Total Project Cost – The total cost of construction and/or rehabilitation of the Project through the date a Certificate(s) of Occupancy is issued for the entire Project, which categories of cost are as defined in *N.J.S.A. 40A:20-3(h)*. There shall be included in Total Project Cost the actual costs incurred to construct the Improvements which are specifically described in the Application.

Trustee – A bank with corporate trust powers selected by the Entity to serve as trustee pursuant to a Bond Resolution.

Unpledged Annual Service Charge – For the Hotel Component, One Thousand Two Hundred Dollars (\$1,200.00) per room. For the Residential Component, One Thousand Six Hundred Dollars (\$1,600.00) per apartment. For the Retail Component, One Dollar Fifty Cents (\$1.50) per rentable square foot. For the Educational/Medical Component, One Dollar Fifty Cents (\$1.50) per rentable square foot. The Annual Service Charge for each Component shall increase by Five Percent (5%) on the fifth (5th) anniversary of the Annual Service Charge Start Date for each applicable Component, and increase by an additional Five Percent (5%) every fifth (5th) anniversary thereafter.

Urban Renewal Entity – An entity as defined, used and applied in the Exemption Law.

SECTION 1.03 Exhibits Incorporated

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

SECTION 1.04 Designation as Redeveloper

The Entity is designated to act as redeveloper for the Project, in accordance with the Redevelopment Agreement, the Redevelopment Plan and all site plan applications, as the same may from time to time be amended or supplemented by the Entity in accordance with applicable law.

ARTICLE II
APPROVAL

SECTION 2.01 Borough Approval of Tax Exemption

Pursuant to the Ordinance, any and all Improvements shall be exempt from taxation as provided for herein and in the Exemption Law. In accordance with the Exemption Law, specifically N.J.S.A. 40A:20-12, such tax exemption shall constitute a single continuing exemption from local property taxation for the duration of this Agreement, commencing on the Annual Service Charge Start Date. Upon acquisition of the Project Area by the Entity and prior to the Annual Service Charge Start Date, the Entity shall be responsible for the payment of *ad valorem* taxes. The Project shall be as described in the Application and the Entity hereby expressly covenants, warrants and represents that the Land and Improvements thereto shall be used, managed and operated for the purposes set forth in the Application and in accordance with the Acts.

SECTION 2.02 Borough Approval of Project, Related Assignment and Proposed Conveyances to Successor Entities

(a) Approval is hereby granted by the Borough to the Entity for the development, financing, acquisition, construction, management and operation of the Project, which is hereby acknowledged to be a redevelopment project under and consistent with the Redevelopment Plan, and which shall in all respects materially comply and conform to the Redevelopment Plan and all applicable statutes of the State, and the lawful regulations made pursuant thereto, governing land, building(s) and the use thereof.

(b) In order to facilitate the implementation and financing of the Project, the Borough hereby acknowledges and consents to one or more partial assignments of this Agreement by the Entity to Successor Entities, following their qualification as Urban Renewal Entities and in accordance with the provisions of the Exemption Law, N.J.S.A. 40A:20-5(e). The Borough shall

execute any documents required to approve and acknowledge each such assignment subject to the Entity providing satisfactory documentation that each Successor Entity meets the qualifications of a Qualified Entity under the Redevelopment Agreement and such assignment meets the requirements for a Permitted Transfer under the Redevelopment Agreement. After such assignment, this Agreement shall remain in full force and effect with respect to each Successor Entity solely with respect to the specific Component of the Project to which such assignment applies.

(c) Subject to subsection (b) above, the Borough hereby acknowledges and consents to the several subsequent conveyances of the Land, or any portion thereof to, by and among the Entity and a Successor Entity(s) to ensure that each of the Successor Entities owns fee title or its equivalent if a Condominium Association to the Land required for implementation of its Component (or phase thereof) of the Project.

(d) For all purposes of this Agreement, upon the partial assignment of a portion of this Agreement pursuant to subsection (b) above, the applicable Successor Entity shall be deemed the sole Urban Renewal Entity and shall fully assume and be solely responsible for the performance of the obligations of an Urban Renewal Entity under the Exemption Law and this Agreement (such that the provisions of this Agreement shall be separately applicable to such Component (or phase thereof) and the applicable Successor Entity independently of each other Component (or phase thereof) and each other Entity; provided, however, that nothing shall be construed as obligating the Entity to utilize the proposed Project structure or to assign this Agreement in whole or in part to any Successor Entity, if the Entity in the exercise of its business judgment determines that doing so is not necessary or desirable for the implementation of the Project.

(e) The Borough hereby acknowledges and consents to the use of a Condominium Association (if determined appropriate by the Entity) with respect to the properties comprising the Land, as may be required for implementation of the Project. The provisions of this Agreement shall continue to apply to such properties following the filing of a master deed establishing the Condominium Association, notwithstanding any resulting change to (i) the tax map designation (i.e., block and lot number) thereof or (ii) ownership of a portion of the Land remaining with an Entity.

(f) Any transfer in the ownership of the Entity or any Successor Entities shall be governed by and conducted in accordance with the provisions of the Redevelopment Agreement.

(g) The Entity represents that it will construct the Project in accordance with the Redevelopment Agreement, the Redevelopment Plan and governing law, the use of which is more specifically described in the Application.

(h) The Entity represents that it will acquire the Project Area upon which the Improvements are to be constructed and which is the subject of this Agreement and acknowledges that this Agreement is contingent upon the Entity securing ownership of the Project Area.

(i) The Entity anticipates that the Improvements shall be financed in accordance with the financial plans provided in the Application. The financial plans set forth estimated Total Project Cost, amortization rate on Total Project Cost, the source of funds, the interest rates to be paid on construction financing, the source and amount of paid-in capital, and the terms of any mortgage amortization for the Project.

ARTICLE III **DURATION OF AGREEMENT**

SECTION 3.01 Term

(a) It is hereby expressly understood and agreed by the Parties that this Agreement, or any portion of this Agreement that has been partially assigned to a Successor Entity pursuant to Section 2.02(b) hereof, including the obligation to pay the Annual Service Charges required under Article IV hereof and the tax exemption granted and referred to in Section 2.01 hereof, shall commence on the Effective Date and shall remain in effect for each amended and restated financial agreement as permitted hereunder, until the earlier of (i) thirty-five (35) years from the date of execution of this Agreement, or (ii) thirty (30) years from the issuance of the Certificate of Occupancy for the related Component (or phase thereof) (the "**Term**"). Upon the expiration of the tax exemption granted and provided for herein, the Improvements shall thereafter be assessed and taxed according to the general law applicable to all other non-exempt property located within the Borough.

(b) Upon the expiration of the tax exemption provided for herein, all restrictions and limitations of this Agreement imposed upon the relevant Entity and the respective Land, and Improvements thereto, excluding (i) the requirement to make payment of any Annual Service Charge due and owing hereunder, (ii) the requirement to make payment to the Borough of any reserves, Net Profit, or Excess Net Profit, if applicable, in accordance with Article VIII hereof, and (iii) any and all related and available remedies of the Borough or the Trustee, shall terminate upon the end of the fiscal year of the relevant Entity, in accordance with N.J.S.A. 40A:20-13, provided, however, that the Entity has rendered, and the Borough has accepted, the Entity's final accounting in accordance with N.J.S.A. 40A:20-12.

SECTION 3.02 Voluntary Termination Not Permitted

NEITHER THE ENTITY NOR THE BOROUGH MAY AT ANY TIME TERMINATE THIS AGREEMENT DURING ANY PERIOD WHEN BONDS REMAIN "OUTSTANDING" OR AMOUNTS REMAIN DUE TO THE ENTITY WITHIN THE MEANING OF THE BOND RESOLUTION AND/OR TRUST INDENTURE. THE ENTITY FURTHER EXPRESSLY ACKNOWLEDGES, UNDERSTANDS AND AGREES 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 AGREEMENT. THE ENTITY

FURTHER EXPRESSLY REJECTS, REFUSES, RELINQUISHES, SURRENDERS, AND OTHERWISE WAIVES ANY AND ALL RIGHTS OF RELINQUISHMENT OF ITS STATUS UNDER THE ACTS 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 DURING ANY PERIOD WHEN BONDS REMAIN "OUTSTANDING" OR AMOUNTS REMAIN DUE TO THE ENTITY WITHIN THE MEANING OF THE BOND RESOLUTION.

ARTICLE IV **ANNUAL SERVICE CHARGE**

SECTION 4.01 Annual Service Charge

The Pledged Annual Service Charge shall be paid quarterly to the Trustee at the same times taxes are due. Once received by the Trustee, the Pledged Annual Service Charge shall be disbursed in accordance with the Bond Resolution. The Unpledged Annual Service Charge shall be paid quarterly to the Borough at the same times taxes are due.

SECTION 4.02 County Annual Service Charge

In accordance with N.J.S.A. 40A:20-12, the County Amount shall be paid, immediately upon receipt of the Annual Service Charge, by the Borough to the County.

SECTION 4.03 Land Taxes, Credits and Waivers; Other Charges

(a) The Entity hereby expressly acknowledges, understands and agrees that the tax exemption provided for herein shall apply to the Improvements.

(b) The Entity is required to pay both the Annual Service Charge and the Land Tax Payments and shall be entitled to the Land Tax Credit. In any year that the Entity fails to make any Land Tax Payments if and when due and owing, such delinquency for the period of delinquency only shall render the Entity ineligible for any Land Tax Credits against the Annual Service Charge for the subsequent year.

(c) The Entity expressly acknowledges, understands and agrees that in accordance with the Bond Financing Law, specifically N.J.S.A. 40A:12A-66(a), the Annual Service Charge shall not be restricted or limited by, or otherwise subject to, the minimum, maximum or staged increase provisions of the Exemption Law.

(d) The Entity hereby expressly acknowledges, understands, and agrees that, in addition to Land Taxes and Annual Service Charges, it shall be responsible for the payment (without any credit whatsoever hereunder) of all other applicable municipal charges that may, from time to time, be lawfully assessed upon its property, including, without limitation, any and all special benefit assessments, water and sewer charges, hotel tax and other municipal charges, whether presently existing or hereinafter imposed, and that the Borough may enforce such assessments and charges in any manner (including, but not limited to, foreclosure or tax sale) permitted by applicable law.

SECTION 4.04 Material Conditions

It is expressly agreed and understood that payment of Land Taxes and Annual Service Charges and any interest payments, penalties or costs of collection due thereon, are material conditions of this Agreement ("**Material Conditions**"). If any other term, covenant or condition of this Agreement or the Application, as to any person or circumstance shall, to any extent, be determined to be invalid or unenforceable by virtue of a non-appealable order of a court of competent jurisdiction, the remainder of this Agreement or the application of such term, covenant or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each remaining term, covenant or condition of this Agreement shall be valid and enforced to the fullest extent permitted by law.

SECTION 4.05 Payments of Annual Service Charges

(a) The Entity shall be responsible for payment of the Annual Service Charge commencing on the Effective Date for each Component. The Entity is required to pay the Pledged Annual Service Charge if Debt Service and Administrative Expenses are due prior to completion of the Project.

(b) The Annual Service Charge shall be due and payable in equal quarterly installments on each November 1, February 1, May 1 and August 1 after the Effective Date for each Component. The Unpledged Annual Service Charge shall be prorated in the year in which the Effective Date begins and the year in which this Financial Agreement terminates, such that the Entity shall pay the amount of the prorated Unpledged Annual Service Charge on the quarterly payment date immediately following the Effective Date of the Annual Service Charge. In the event that the Entity fails to timely pay any installment, the amount past due shall bear the highest rate of interest permitted under applicable State law in the case of unpaid taxes or tax liens on land until paid.

(c) The Entity waives the right to file a tax appeal during the term of this Agreement, unless the Borough consents and agrees that a tax appeal is necessary to correct the future Land assessment due to errors in the assessments. The Parties agree, however, that neither the amounts nor dates established for payment of the Unpledged Annual Service Charge, as provided herein, shall be reduced through any tax appeal or any other legal proceeding regarding the Project during the term of this Agreement.

(e) In addition to the Annual Service Charge, the Entity shall pay to the Borough an annual fee of two percent (2%) of the projected Unpledged Annual Service Charge upon the Annual Service Charge Start Date and each anniversary thereafter prior to the end of the Term of this Agreement (the "**Administrative Fee**"). In the event the Entity fails to pay the Administrative Fee when due and owing, the amount unpaid shall bear the highest rate of interest permitted in the case of unpaid taxes or tax liens in the Borough until paid.

SECTION 4.06 Annual Service Charge as Municipal Lien

(a) The Parties hereby expressly acknowledge, understand and agree that in accordance with the Bond Financing Law, specifically N.J.S.A. 40A:12A-68, and such other statutes as may be sources of relevant authority, if any, upon the recordation of the Ordinance and this Agreement, the Annual Service Charge shall be a continuous municipal lien on the Land and that any subsequent Annual Service Charge, including any interest, penalties or costs of collection thereof, that shall thereafter become due or accrue, shall be added and relate back to and be part of the initial municipal lien. In order to secure the full and timely payment of the Annual Service Charges, the Borough reserves the right to prosecute an In Rem Foreclosure action against the Property, as more fully set forth in this Agreement.

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

SECTION 4.07 Annual Service Charge as Percentage of Gross Revenue

In accordance with the Bond Financing Law, specifically N.J.S.A. 40A:12A-66(a), the calculation of the Annual Service Charge under the Exemption Law, at N.J.S.A. 40A:12A-12(b)(1), as a percentage of annual Gross Revenue or Total Project Cost is not applicable. Accordingly, should any Residential Component be implemented as a Condominium regime, N.J.S.A. 40A:20-14 shall not apply.

ARTICLE V

PLEDGE OF ANNUAL SERVICE CHARGE TO BONDS

SECTION 5.01 Consent to Annual Service Charge

The Entity hereby acknowledges, consents and agrees (a) to the amount of the Annual Service Charge and to the liens established in this Agreement, (b) that it shall not contest the validity or amount of any such lien, and (c) that its remedies shall be limited to those specifically set forth herein and otherwise provided by law.

SECTION 5.02 Security for the Bonds

(a) Pursuant to the Bond Financing Law, specifically N.J.S.A. 40A:12A-67(c), and as security for the Bonds, the Borough and the Entity agree to and do hereby assign (effective only upon the Effective Date and satisfaction of the conditions set forth in Section 2.02 hereof) all of its interest in each payment of the Pledged Annual Service Charge, including interest, penalties and costs of collection, to the extent necessary and for the purpose of meeting the Entity's

obligations herein, to the Trustee as part of the pledge of the trust estate under the Bond Resolution. Notwithstanding any law, or any provision contained herein, to the contrary, this pledge shall constitute an absolute and unconditional assignment of all of the Borough's right, title and interest in and to the Pledged Annual Service Charge, or any installment thereof, along with all of the Borough's rights and remedies available under this Agreement, including but not limited to, the right of collection of any and all Pledged Annual Service Charge due hereunder; provided, however, that notwithstanding the foregoing, the Bond Resolution shall require that only the Borough can undertake the sale of the tax sale certificates, and in the same manner, and at the same time, as generally applicable for unpaid taxes due and owing to the Borough, subject to all applicable laws (including bankruptcy laws) necessary to realize the collection of the Pledged Annual Service Charge remaining unpaid in accordance with this Agreement. The Borough hereby expressly represents, warrants and covenants that it has not, prior to the date hereof, and shall not, subsequent to the date hereof, pledge the Pledged Annual Service Charge, including any installment or portion, or any right or interest therein, to any person or entity other than the Trustee, it being hereby expressly acknowledged and represented by the Borough that the Bond Resolution is a reaffirmation of the pledge and assignment contained herein and shall not constitute a separate pledge and assignment, nor supersede or in any way alter the pledge and assignment contained herein.

(b) If any installment of the Pledged Annual Service Charge is not paid to the Trustee in accordance with this Agreement on the date and in the full amount scheduled to be paid, the Entity hereby expressly waives any objection or right to challenge the use by the Borough or the Trustee of the enforcement of remedies to collect such installment of the Pledged Annual Service Charge as are afforded the Borough by law, including the Tax Sale Law, provided, however, that in no event shall there be any acceleration of any amounts due and owing to repay the Bonds, and such remedies shall be limited solely to the collection of delinquent and unpaid amounts past due for payment, including interest, penalties and costs of collection provided for by the Tax Sale Law.

(c) Pursuant to the Bond Financing Law, specifically N.J.S.A. 40A:12A-67(c), and other applicable law, the Pledged Annual Service Charge shall not be included within the general funds of the Borough. The Borough's pledge and assignment of the Pledged Annual Service Charge to the Trustee hereunder shall be a limited obligation of the Borough payable to the extent of payments received from the Entity and shall not constitute a general obligation of the Borough.

(d) If received by the Borough, the Borough's Chief Financial Officer shall forward or cause the forwarding of all installments of the Pledged Annual Service Charge to the Trustee in accordance with this Agreement and as further set forth in the Bond Resolution.

(e) It is hereby expressly understood by the Parties that under no circumstances shall the Borough be required to (i) purchase, or otherwise fund, any tax lien, tax sale certificate, or other mechanism for the enforcement of the Pledged Annual Service Charge, the sole obligation of the Borough being to undertake the sale of the tax sale certificates in the same manner, and at the same time, as generally applicable for unpaid taxes due and owing to the Borough, subject to

all applicable laws (including bankruptcy laws), or (ii) "guarantee" payment of unpaid Pledged Annual Service Charge as if they constituted taxes owing to another taxing district.

ARTICLE VI

CERTIFICATE OF OCCUPANCY AND NO FURTHER ACTION LETTER

SECTION 6.01 Certificate of Occupancy

It is understood and agreed that the Entity shall make application for and make all good faith efforts which are reasonable to obtain a Certificate(s) of Occupancy in a timely manner for the Land and the Improvements related thereto.

SECTION 6.02 Filing of Certificate of Occupancy

It shall be the primary responsibility of the Entity to forthwith file with the Tax Assessor, Tax Collector, and Chief Financial Officer of the Borough a copy of any such Certificate of Occupancy.

ARTICLE VII

BOROUGH DETERMINATIONS

SECTION 7.01 Tax Exemption and Annual Service Charge

(a) The Borough hereby expressly covenants, warrants, represents and otherwise agrees that the tax exemption granted and provided herein shall continue in accordance with the terms hereof, notwithstanding any permissive provision of the Exemption Law.

(b) The Borough hereby expressly covenants, warrants, represents and otherwise agrees that the Annual Service Charge shall be calculated in accordance with the terms hereof, and shall not otherwise be increased regardless of any permissive provision of the Exemption Law.

ARTICLE VIII

ANNUAL AUDITS

SECTION 8.01 Accounting System

The Entity hereby expressly covenants and agrees to maintain a system of accounting as prescribed in the Exemption Law during the term of this Agreement.

SECTION 8.02 Periodic Reports

(a) In accordance with the Exemption Law, specifically N.J.S.A. 40A:20-9(d), the Entity shall submit, on an annual basis and within ninety (90) days after the close of the Entity's fiscal year, its Auditor's Report prepared by an independent certified public accountant for the preceding fiscal year to the Trustee, Mayor, the Board of Commissioners and the Borough Clerk, who shall advise those municipal officials required to be advised, and to the Director of the Division of Local Government Services in the New Jersey Department of Community Affairs.

(b) Prior to December 1st of each year, the Entity shall certify (a) the total square feet of the Retail Component and (b) the total square feet of the Educational/Medical Component.

SECTION 8.03 Inspection

In accordance with the Exemption Law, specifically N.J.S.A. 40A:20-9(e), upon the request of the Borough, the Trustee, or the State, the Entity shall permit the inspection of the Land and Improvements thereto, by the requesting party or its agents. It also shall permit, upon request of the Borough, the Trustee, or the State, reasonable examination and audit of its books, contracts, records, documents and papers by representatives duly authorized by the Borough, the Trustee, or the State. Such inspection, examination or audit shall be made during the hours of the business day, in the presence of any officer or agent of the Entity. To the extent reasonably possible, the inspection will not materially interfere with the construction or operation of the Project.

SECTION 8.04 Payment of Dividends and Profits

In accordance with the Exemption Law, specifically N.J.S.A. 40A:20-9(a) and -15, during the period of tax exemption as provided herein, the Entity (as a limited dividend entity) shall not make any distribution of profits, or pay or declare any dividend or other distribution on any shares of any class of its stock, unless, after giving effect thereto, the Cumulative Allowable Net Profit preceding the date of the proposed dividend or distribution would otherwise equal or exceed the amount of all dividends and other distributions paid or declared on any shares of its stock since its incorporation or establishment.

SECTION 8.05 Limitation on Profits and Reserves

(a) In accordance with the Exemption Law, specifically N.J.S.A. 40A:20-9(a) and -15, the Entity (as a limited dividend entity), shall, within one hundred and twenty (120) days of the close of its fiscal year, or in accordance with N.J.S.A. 40A:20-13 upon termination of this Agreement, within ninety (90) days of the close of its fiscal year, pay any Excess Net Profit to the Borough, provided, however, that the Entity may maintain a reserve against vacancies, unpaid rentals and contingencies in an amount not to exceed ten percent (10%) of its Gross Revenue and may retain such part of the Excess Net Profits as is necessary to eliminate a deficiency in such reserve, provided, however, that upon the termination of this Agreement, the amount of such reserve, if any, shall be paid to the Borough within ninety (90) days of the close of the Entity's fiscal year.

(b) In accordance with the Exemption Law, specifically N.J.S.A. 40A:20- 9(a) and - 16, the Entity (if it is a nonprofit entity) shall, within ninety (90) days of the close of its fiscal year, pay over its Net Profit, if any, to the Borough, provided, however, that the Entity may maintain a reserve against vacancies, unpaid rentals and contingencies in an amount not to exceed ten percent (10%) of its Gross Revenue and may retain such part of the Net Profits as is necessary to eliminate a deficiency in such reserve, provided, however, that upon the termination of this Agreement, the amount of such reserve, if any, shall be paid to the Borough within ninety (90) days of the close of its fiscal year.

SECTION 8.06 Gross Revenue

The Borough hereby expressly acknowledges and agrees that in accordance with the Exemption Law, specifically N.J.S.A. 40A:20-3(a), any gain realized by the Entity on the sale of any Component or any unit within a Component in fee simple, shall not constitute Gross Revenue, regardless whether any such gain shall be taxable under Federal or State law.

ARTICLE IX
SALE AND/OR TRANSFER OF PROPERTY

SECTION 9.01 Approval

(a) The Entity may sell, transfer, lease, or otherwise convey all or a portion of the Land and Improvements thereto, provided that (for as long as this Agreement is in effect) such sale, transfer, lease, or other conveyance is to an Urban Renewal Entity and is in compliance with the Exemption Law and the Redevelopment Agreement. A Declaration of Restriction on Transfer to such effect will be recorded against the Land and Improvements in the office of the Hunterdon County Clerk simultaneously with the recordation of this Agreement on or after the Effective Date. Any purported sale, transfer, conveyance or lease of the Land, including any Improvement related thereto, in violation of this Section 9.01(a) shall be void *ab initio*. The Trustee shall each be deemed to be a third-party beneficiary of this Section 9.01(a) for as long as any Bonds remain outstanding. Subject to the satisfaction of the conditions set forth above, the Borough hereby expressly consents to (i) any sale, transfer, conveyance or lease of the Land and Improvements thereto, and (ii) the continuation of the tax exemption of the Improvements as provided for herein.

(b) In accordance with the Exemption Law, specifically N.J.S.A. 40A:20-6 and -15, in the event of any sale or other transfer of fee title ownership, in accordance with subsection (a) above, by the Entity (as a limited dividend entity), such Entity shall no longer be subject to, bound by, or otherwise governed by this Agreement, provided, however, that within ninety (90) days after the date of the end of the Entity's fiscal year in which such sale or other transfer of fee title occurred, such Entity shall pay to the Borough reserves it was authorized to maintain, if any, and all Excess Net Profits, if any, all in accordance with Section 8.05(a) hereof.

(c) In accordance with the Exemption Law, specifically N.J.S.A. 40A:20-6 and -16, in the event of any sale or other transfer of fee title ownership, in accordance with subsection (a) above, by the Entity (if it is a nonprofit entity), such Entity shall no longer be subject to, bound by, or otherwise governed by this Agreement, provided, however, that within ninety (90) days after the date of the end of the Entity's fiscal year in which such sale or transfer occurred, such Entity shall pay to the Borough reserves it was authorized to maintain, if any, and all Net Profits, if any, all in accordance with Section 8.05(b) hereof.

(d) THE BOROUGH AND THE ENTITY HEREBY EXPRESSLY ACKNOWLEDGE, UNDERSTAND AND AGREE THAT UPON THE CONVEYANCE, WHETHER BY SALE, GRANT, AWARD, GIFT, TRANSFER OR OTHERWISE, OF FEE TITLE TO THE PROPERTY AND ANY IMPROVEMENTS THERETO, WHETHER IN ACCORDANCE WITH AND PURSUANT TO THE TERMS HEREOF, THE TAX SALE LAW, OR OTHERWISE, INCLUDING WITHOUT LIMITATION ANY STATE INSOLVENCY LAW, THE CONSTRUCTION LIEN LAW (N.J.S.A. 2A:44A-1 *ET SEQ.*) OR ANY LAW OF SIMILAR EFFECT, OR THE FEDERAL BANKRUPTCY CODE, THE PROPERTY AND IMPROVEMENTS THERETO, AND THE RELEVANT ENTITY, SHALL CONTINUE TO BE SUBJECT TO, GOVERNED AND BOUND BY THE TERMS OF THIS AGREEMENT. ANY ACCEPTANCE OR CLAIM OF TITLE OR OWNERSHIP OF THE

PROPERTY AND ANY IMPROVEMENTS THERETO, SHALL CONSTITUTE AN ACKNOWLEDGEMENT AND ASSUMPTION, FOR ALL PURPOSES OF LAW, BY SUCH PERSON OR ENTITY ACCEPTING OR CLAIMING TITLE OR OWNERSHIP, THAT IT, INCLUDING ITS SUCCESSORS IN INTEREST IN THE PROPERTY, AND THE PROPERTY AND ANY IMPROVEMENTS THERETO, SHALL BE SUBJECT TO, GOVERNED AND BOUND BY THIS AGREEMENT.

A Declaration of Restriction on Transfer to such effect will be recorded against the Land and Improvements thereto in the office of the Hunterdon County Clerk simultaneously with the recordation of this Agreement on or after the Effective Date.

SECTION 9.02 Operation of Project

The Land and Improvements thereto shall be operated in accordance with all applicable laws.

SECTION 9.03 Subordination of Fee Title

It is expressly acknowledged, 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 and Trustee hereunder, to encumber the fee title to the Land and Improvements thereto, and that any such encumbrance shall not be deemed to be a violation of this Agreement. This section shall not prohibit the encumbrance of a mortgage lien on the Land and Improvements thereto, it being expressly understood that a mortgage lien takes subject to the municipal lien created by the Annual Service Charge under the Acts.

ARTICLE X

WAIVER

SECTION 10.01 Waiver

Nothing contained in this Agreement or otherwise shall constitute a waiver or relinquishment by the Borough, the Trustee or the Entity, as applicable, of any rights and remedies provided by law, except, as applicable, for the express waiver herein of certain rights of acceleration and certain rights to terminate this Agreement and the tax exemption provided for herein, for violation of any of the conditions provided herein. Nothing herein shall be deemed to limit any right of recovery that the Borough, the Trustee or the Entity, as applicable, has under law, in equity, or under any provision of this Agreement.

ARTICLE XI

NOTICE

SECTION 11.01 Notice

A notice required hereunder by any Party to another Party, or to all other Parties, shall be sufficiently given or delivered if dispatched by United States certified or registered mail, postage prepaid and return receipt requested, or hand delivered (and receipt acknowledged), or delivered by a reputable overnight delivery service for next business day delivery, to another Party, or all other Parties simultaneously, at their respective addresses, as follows, or at such other address or addresses with respect to the Parties or their counsel as any Party may, from time to time, designate in writing and forward to the other(s) as provided by this Article XI:

- (a) When sent to the Entity, it shall be addressed as follows:

Attn: John J. Cust Jr., CPA
5 Bartles Corner Road
Flemington, New Jersey 08822

With copies to:

Attn: Joseph P. Baumann, Jr., Esq.
McManimon, Scotland & Baumann, LLC
75 Livingston Avenue, Second Floor
Roseland, New Jersey 07068

- (b) When sent to the Borough, it shall be addressed as follows:

Attn: Borough Clerk
Borough of Flemington
Municipal Building
38 Park Avenue
Flemington, New Jersey 08822

With copies to:

Attn: Robert Beckelman, Esq.
Greenbaum Rowe Smith & Davis LLP
99 Wood Avenue South
Iselin, New Jersey 08830-2712

The Trustee shall receive copies of all notices given hereunder, which shall be addressed as directed by the Entity by written notice to the Borough.

SECTION 11.02 Rejection or refusal to accept or the inability to deliver because of changed address of which no notice was given shall be deemed to be receipt of the notice. Any Party shall have the right from time to time and any time upon at least ten (10) days' written notice thereof, to change its respective address, and each shall have the right to specify as its address any other addresses within the United States of America.

ARTICLE XII **COMPLIANCE**

SECTION 12.01 **Statutes and Ordinances**

The Entity hereby expressly agrees at all times prior to the expiration or other termination of this Agreement to remain bound by applicable provisions of Federal and State law, including the Acts and any applicable lawful ordinances and resolutions of the Borough. The Entity's failure to comply with any such statutes, ordinances or resolutions shall constitute a violation and breach of this Agreement.

ARTICLE XIII **CONSTRUCTION**

SECTION 13.01 **Construction**

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

ARTICLE XIV **INDEMNIFICATION**

SECTION 14.01 **Indemnification**

(a) It is hereby expressly acknowledged, understood and agreed that in the event the Borough or the Trustee and their respective directors, officers, shareholders, employees, successors and assigns shall be named as defendant in any action by reason of any breach, default or a violation of any of the provisions of this Agreement and/or the provisions of the Acts by the Entity, or any challenge to the validity of this Agreement, it being hereby expressly acknowledged that as of the date hereof, the Entity shall indemnify and hold the Borough and the Trustee and their respective directors, officers, shareholders, employees, successors and assigns harmless from and against all liability, losses, damages, demands, costs, claims, actions or expenses (including attorneys' fees and expenses) of every kind, character and nature arising out of or resulting from the action or inaction of the Entity and/or by reason of any breach, default or a violation of any of the provisions of this Agreement, the provisions of the Acts, and/or any Federal or State securities law and/or any challenge to the validity of this Agreement; provided, however, that to the extent that the Entity shall also be named in any such action, so long as the Entity shall actually be paying the costs of any such defense and to the extent the interests of the Entity and any of the Borough and the Trustee and their respective directors, officers, shareholders, employees, successors and assigns, as applicable, shall align on any particular issue

of any such defense, the Entity (and its counsel and other professionals) shall direct any such defense.

(b) In the event the Entity alone is named a defendant to any action of the type set forth in subsection (a) above, the Borough and the Trustee and their respective directors, officers, shareholders, employees, successors and assigns each maintain the right to intervene as a party thereto, to which intervention the Entity hereby expressly consents, and to carry out their own defense, the reasonable cost of which shall be borne by the Entity, provided that so long as any such Entity shall actually be paying the costs of any such defense, the Entity (and its counsel and other professionals) shall direct any such defense.

(c) Notwithstanding the foregoing subsections (a) and (b), the Entity shall not be so obligated to provide any such indemnity to the extent that such action is brought as a result of the gross negligence or willful misconduct of the Borough or the Trustee or any of their respective officers, elected officials, employees or agents, although in either such case, should the Entity be a named party to any such action, the Entity shall defend itself in such suit at its sole cost and expense.

(d) The Entity, shall indemnify and defend the Borough, the Trustee and their respective directors, officers, shareholders, employees, successors and assigns, and the holders from time to time of the Bonds (collectively, the "**Indemnified Parties**"), against, and hold the Indemnified Parties harmless from, and reimburse the Indemnified Parties for, any and all claims, demands, judgments, penalties, liabilities, costs, damages, expenses, diminution of value of the Bonds, incurred by any of the Indemnified Parties, including court costs and reasonable attorneys' fees (prior to trial, at trial and on appeal), caused by, resulting from or arising out of any of the following acts or omissions committed, permitted or omitted by the Entity:

- (i) fraud or intentional or material representation;
- (ii) misappropriation of rents or security deposits;
- (iii) intentional material physical waste of any portion of the Land; or
- (iv) failure by the Entity to pay any valid taxes, assessments, mechanic's liens, materialmen's liens or other liens which could create liens on any portion of its Land or Improvements which would, or could, be superior or equal in priority to the lien or security title of this Agreement.

ARTICLE XV

DEFAULT

SECTION 15.01 Default

A default hereunder shall be deemed to have occurred if the Entity fails to conform to the terms of this Agreement or fails to perform any obligation imposed upon the Entity by applicable statute, ordinance or lawful regulation.

SECTION 15.02 Cure Upon Default

Should the Entity be in default of any obligation under this Agreement, the Borough, or the Trustee shall notify the Entity in writing of said default. Said notice shall set forth with particularity the basis of said default. Except as otherwise limited by law, the Entity shall have ninety (90) days to cure any default (other than a default in payment of any installment of the Annual Service Charge in which case the Entity shall have twenty (20) days to cure such payment default). In the case of a default which cannot with diligence be remedied or cured, or the remedy or cure of which cannot be commenced, within the time periods set forth herein, the Entity shall have such additional time as reasonably necessary to remedy or cure such default provided that the Entity shall at all times be acting with diligence, and in good faith, to remedy or cure such default as soon as practicable. Upon the expiration of such default and cure period, the Borough, or the Trustee shall have the right to proceed against the Land and Improvements thereto, pursuant to any and all applicable provisions of law, but subject to the limitations on acceleration as set forth in Sections 5.02 and 15.03 hereof. So long as any bonds remain outstanding, no default hereunder by the Entity shall terminate the tax exemption described herein and the Entity's obligation to make payment of the Annual Service Charge shall continue in effect for the duration set forth in this Agreement.

SECTION 15.03 Remedies

In the event of a default of this Agreement by any of the Parties hereto or a dispute arising between the Parties in reference to the terms and provisions as set forth herein, other than those items specifically included as Material Conditions herein, any Party may apply to the Superior Court of New Jersey by an appropriate proceeding, to settle and resolve said dispute in such fashion as will tend to accomplish the purposes of the Acts. In the event the Superior Court shall not entertain jurisdiction or, in the event of a breach of a Material Condition, then 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 said laws. Costs for said arbitration shall be paid by the non-prevailing Party. In the event of a default on the part of the Entity to pay any installment of the Land Taxes or the Annual Service Charge required by Article IV hereof, the Borough or the Trustee, in addition to their other remedies, specifically and without limitation, reserve the right to proceed against the Land through an In Rem Foreclosure, in the manner provided by law, including the Tax Sale Law, and any act supplementary or amendatory thereof; provided, however, that in no event shall there be any acceleration of any future Annual Service Charge. Whenever the word "Taxes" appears, or is applied, directly or implied, to mean taxes or municipal liens on land, such statutory provisions shall be read, as far as it is pertinent to this Agreement, as if the Annual Service Charge were taxes or municipal liens on land. In either case, however, the Entity does not waive any defense it may have to contest the rights of the Borough or the Trustee to proceed in the above-mentioned manner.

SECTION 15.04 Remedies Upon Default Cumulative; No Waiver

Subject to the provisions of Section 15.03 hereof and the other terms and conditions of this Agreement, all of the remedies provided in this Agreement to the Borough and the Trustee,

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

ARTICLE XVI **MISCELLANEOUS**

SECTION 16.01 Conflict

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

SECTION 16.02 Oral Representations

There have been no oral representations made by any of the Parties hereto which are not contained in this Agreement. This Agreement, the Ordinance, and the Application by and between the Parties, to be executed contemporaneously with this Agreement, constitute the entire agreement between the Parties and there shall be no modifications thereto other than by a written instrument executed by the Parties hereto and delivered to each of them. Notwithstanding anything contained herein to the contrary, no waiver of any rights granted hereunder and no modification or amendment to this Agreement shall be effective, or otherwise have any force and effect, unless permitted by, or otherwise provided for in, the Bond Resolution or with the express written consent of the Trustee.

SECTION 16.03 Municipal Services

Subject to the provisions of Section 12.02 hereof, the Entity shall make payments for certain municipal utility services, including water and sewer charges, to the extent that such utility services, such as water and sewer charges, are not otherwise included in the real property taxes generally assessed upon property within the Borough, and any other services that create a lien on a parity with or superior to the lien for the Land Taxes and Annual Service Charge, as required by law. Nothing herein is intended to release the Entity from its obligation to make such payments. The obligation to make payment of the Annual Service Charge herein shall entitle the Entity, the Land, and any Improvements related thereto, to the benefit of all of the municipal services that any other property within the Borough that is subject to generally applicable real property taxes generally enjoys.

SECTION 16.04 Financing Matters

The financial information required by the final paragraph of N.J.S.A. 40A:20-9 is set forth in the Application.

SECTION 16.05 Filing with Local Government Services

In accordance with N.J.S.A. 40A:20-12, upon execution of this Agreement, the Borough shall cause this Agreement and the Ordinance to be filed with the Director of the Division of Local Government Services in the Department of Community Affairs of the State.

SECTION 16.06 Recording

Upon the Effective Date, this entire Agreement and the Ordinance, together with the declaration(s) of restriction on transfer referenced in Sections 9.01(a) and 9.01(d) hereof, shall be filed and recorded with the Hunterdon County Clerk by the Borough, at the Entity's expense, such that this Agreement and the Ordinance shall be reflected upon the land records of the County of Hunterdon as a municipal lien upon, and a covenant running with, the Land and Improvements thereto.

SECTION 16.07 Delivery to Tax Assessor

Upon the Effective Date, the Clerk of the Borough shall deliver to the Tax Assessor a certified copy of the Ordinance along with an executed copy of this Agreement. Such delivery by the Borough Clerk to the Tax Assessor shall constitute the certification as required in accordance with the Exemption Law, specifically N.J.S.A. 40A:20-12. Upon such delivery, the Tax Assessor shall implement the tax exemption granted and provided herein and shall continue to enforce the tax exemption, without further certification by the Borough Clerk, until the expiration of the tax exemption in accordance with the terms hereof. Upon any partial assignment of this Agreement pursuant to Section 2.02(b) hereof, the Entity shall cause an executed copy of the assignment and assumption agreement to be filed with the Borough Clerk and the Tax Assessor.

SECTION 16.08 Amendments

This Agreement may not be amended, changed, modified, altered or terminated, other than as may be set forth herein, without the written consent of the Parties hereto, provided, however, that notwithstanding anything contained herein to the contrary, no modification or amendment to this Agreement shall be effective, or otherwise have any force and effect, unless permitted by, or otherwise provided for in, the Bond Resolution or with the express written consent of the Trustee. In the event that the Local Finance Board, in accordance with the Exemption Law, specifically N.J.S.A. 40A:20-18, shall implement a financial plan that shall require modification of this Agreement, the Borough hereby expressly covenants, warrants and represents that it shall not approve any modification if such modification would alter, adjust, amend, revise or otherwise change (a) any Annual Service Charge due hereunder, or the calculation thereof, (b) the date on which any Annual Service Charge shall be due hereunder, or (c) the pledge and assignment by the Borough to the Trustee, as set forth herein and as may be further described in the Bond Resolution. The Parties hereby expressly acknowledge that the

Bond Financing Law, specifically N.J.S.A. 40A:12A-71, provides, among other things, that the State pledges, covenants and agrees with the Bondholders that it will not limit or alter the terms of any agreement, ordinance or resolution, which shall include, but not be limited to, the Ordinance and this Agreement, made in connection with the security for the Bonds, that shall in any way impair the rights or remedies of the Bondholders.

SECTION 16.09 Good Faith

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

SECTION 16.10 Entire Document

All conditions in the Ordinance and the Application are incorporated in this Agreement and made a part hereof.

SECTION 16.11 Effective Date

Notwithstanding the date of execution of this Agreement by the Parties hereto, this Agreement shall be effective as of, and shall automatically be of full force and effect on, the Effective Date, it being hereby expressly acknowledged, understood and agreed by each of the Borough and Entity, respectively, that this Agreement shall not be amended, modified or terminated prior to the Effective Date without the express written consent of each of the Borough and the Entity, respectively.

SECTION 16.12 Counterparts

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

IN WITNESS WHEREOF, the Parties have caused these presents to be executed as of the day and year first above written.

ATTEST:

**FLEMINGTON CENTER URBAN RENEWAL,
LLC**

Diana M. Skatuto

By:

John J. Cust, Jr.
John J. Cust, Jr., Managing Member

ATTEST:

THE BOROUGH OF FLEMINGTON

Amber Purcell

By:

Phil Greiner
Phil Greiner, Mayor

STATE OF NEW JERSEY)

) SS:

COUNTY OF HUNTERDON)

The foregoing instrument was acknowledged before me this 5th day of November, 2018 by John J. Cust, Jr. on behalf of Flemington Center Urban Renewal, LLC.

Suzanne Mangin #2450244
Notary Public

SUZANNE MANGIN

Commission Expiration: NOTARY PUBLIC OF NEW JERSEY
My Commission Expires 10/3/2019

STATE OF NEW JERSEY)

) SS:

COUNTY OF HUNTERDON)

The foregoing instrument was acknowledged before me this 21st day of NOV., 2018, by the Borough of Flemington, a municipal corporation in the County of Hunterdon and the State of New Jersey, by Phil Greiner, its Mayor on behalf of the Borough.

[Signature]
Notary Public

Commission Expiration: _____

