

Via Federal Express

Charles Heck
Tax Assessor, CTA
Borough of Carteret
Finance Department
100 Cooke Avenue
Carteret, New Jersey 07008

August 29, 2016

**Re: Borough of Carteret (the "Borough")
48 Leffert Street Urban Renewal, LLC (the "Entity")**

Dear Mr. Heck:

Enclosed, please find a fully-executed Financial Agreement by and between the Borough and the Entity.

If you have any questions, please feel free to contact me directly at 973-622-4851 or by email at kpesserillo@msbnj.com.

Sincerely,



Kayla Pesserillo, Esq.

Enclosure

FINANCIAL AGREEMENT

THIS FINANCIAL AGREEMENT (hereinafter "Agreement" or "Financial Agreement"), made this 23rd day of August, 2016, by and between **48 Leffert Street Urban Renewal, LLC**, a New Jersey limited liability company and an urban renewal entity qualified to do business under the provisions of the Long Term Tax Exemption Law of 1992, as amended and supplemented, *N.J.S.A. 40A:20-1, et seq.* (the "Long Term Tax Exemption Law"), with offices c/o the Hampshire Companies, 22 Maple Avenue, Morristown, New Jersey 07960 (the "Entity") and the **BOROUGH OF CARTERET**, a municipal corporation of the State of New Jersey in the County of Middlesex with offices located at 61 Cooke Avenue, Memorial Municipal Building, Carteret, New Jersey 07008 (the "Borough", and together with the Entity, the "Parties").

WITNESSETH:

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

WHEREAS, by resolution No. 14-258 duly adopted on December 18, 2014, the Borough Council (the "Borough Council") of the Borough designated the properties known as Block 500, Lot 3; Block 600, Lot 1; Block 601, Lot 3; Block 625, Lot 1; Block 650, Lots 1 and 2; Block 675, Lot 1; Block 750, Lots 1 and 2; Block 5601, Lots 10-13; and Block 5602, Lots 12-14 on the Borough's tax map (collectively, the "Redevelopment Area") as an area in need of redevelopment under the Act; and

WHEREAS, by Ordinance No. 15-12, finally adopted on June 4, 2015, the Borough Council adopted a redevelopment plan for the Redevelopment Area (the "Redevelopment Plan"); and

WHEREAS, the Entity is the owner of a portion of the Redevelopment Area consisting of Block 5601, Lots 10-13, as more particularly described in **Exhibit A** annexed hereto (the "Land"); and

WHEREAS, the Entity was formerly known as 48 Leffert Street, LLC prior to changing its name and converting to an Urban Renewal Entity pursuant to the Long Term tax Exemption Law; and

WHEREAS, the Borough and the Entity entered into that certain Redevelopment Agreement, dated August 17, 2016 (the "Redevelopment Agreement"), pursuant to which, among other things, the Entity agreed to undertake the construction, on the Land, of a project consisting of an approximately 96,000 square foot self-storage facility and related improvements (the "Project"); and

WHEREAS, pursuant to and in accordance with the provisions of the Act and the Long Term Tax Exemption Law, the Borough is authorized to provide for a tax exemption within a redevelopment area and for payments in lieu of taxes; and

WHEREAS, in order to enhance the economic viability of and opportunity for a successful project, the Borough will enter into this Agreement with the Entity governing the payments made to the Borough in lieu of taxes on the Project pursuant to the Long Term Tax Exemption Law and the Act; and

WHEREAS, in accordance with the Long Term Tax Exemption Law, the Entity filed an application, which is incorporated herein by reference (the "Application"), with the Borough for approval of a long term tax exemption for the Improvements (as defined herein); and

WHEREAS, upon review of the Application, the Borough has made the following findings:

- A. Relative Benefits of the Project:
The Project will provide the region with a new state-of-the-art self-storage facility. The Redevelopment Area is currently underutilized and could benefit from a facility upgrade that generates revenues and creates jobs. The Project is expected to produce approximately 250 construction jobs and approximately 2 permanent jobs.
- B. Assessment of the importance of the tax exemption in obtaining development of the Project and influencing the locational decisions of probable occupants:
The Entity is making a significant equity contribution toward the cost of the Project. In order to improve the economic viability of the development of the Project, the Borough has agreed to provide the tax exemption for the Project pursuant to this Agreement. The stability and predictability of the Annual Service Charge (as defined herein) will make the Project more competitive and assist the Entity to undertake the Project in the Borough.

WHEREAS, the Borough Council on August 18, 2016 adopted an ordinance approving the Application and authorizing the execution of this Agreement (the "Ordinance"), a copy of which is attached hereto as **Exhibit B**; and

WHEREAS, in order to set forth the terms and conditions under which the Entity and the Borough shall carry out their respective obligations with respect to the payment of the Annual Service Charge by the Entity, in lieu of real property taxes, the Parties have determined to execute this Financial Agreement.

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

ARTICLE I
GENERAL PROVISIONS

Section 1.01 Governing Law. This Financial Agreement shall be governed by the provisions of (a) the Long Term Tax Exemption Law, the Act and such other statutes as may be the sources of relevant authority, and (b) the Ordinance. It is expressly understood and agreed that the Borough relies upon the facts, data, and representations contained in the Application in granting this tax exemption.

Section 1.02 General Definitions. The following terms shall have the meaning assigned to such term in the preambles hereof:

<u>Act</u>	<u>Long Term Tax Exemption Law</u>
<u>Agreement/Financial Agreement</u>	<u>Ordinance</u>
<u>Application</u>	<u>Parties</u>
<u>Borough</u>	<u>Project</u>
<u>Borough Council</u>	<u>Redevelopment Agreement</u>
<u>Entity</u>	<u>Redevelopment Area</u>
<u>Land</u>	<u>Redevelopment Plan</u>

Unless specifically provided otherwise or the context otherwise requires, the following terms when used in this Agreement shall mean:

Administrative Fee: As defined in Section 4.10.

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

Allowable Profit Rate: The greater of twelve percent (12%) or the percentage per annum arrived at by adding one and one quarter percent (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 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 (1.25%) 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 Gross Revenue: Annual gross rents and other income received by the Entity and derived from or generated by the leasing of the Land and any revenue or other amounts received by the Entity and derived from or generated by the Project, specifically excluding condemnation awards, insurance proceeds, gains from sales, transfers, or assumption of the Project or any part thereof, proceeds of any financing or refinancing, or proceeds from any disposition of a partner or a partner's interest in the Entity or any successor entity.

Annual Service Charge: The amount the Entity has agreed to pay the Borough pursuant to Article IV herein with respect to the Improvements (but not the Land), which: (a) Entity has agreed to pay in part for municipal services supplied to the Project, (b) is in lieu of any taxes on the Improvements pursuant to *N.J.S.A. 40A:20-12*, and (c) shall be paid on the Annual Service Charge Payment Dates.

Annual Service Charge Payment Dates: February 1, May 1, August 1 and November 1 of each year commencing on the first such date after the date that a Certificate of Occupancy is issued for the Project and ending on the Termination Date.

Annual Service Charge Start Date: The first Annual Service Charge Payment Date.

Applicable Law: All federal, State and local laws, ordinances, approvals, rules, regulations and requirements applicable to the Project including, but not limited to, the Act, the Long Term Tax Exemption Law, relevant construction codes including construction codes governing access for people with disabilities, and such zoning, sanitary, pollution and other environmental safety ordinances, laws and such rules and regulations thereunder, including all applicable environmental laws, applicable federal and State labor standards and all applicable laws or regulations with respect to the payment of prevailing wages

Auditor's Report: An annual audited statement which clearly identifies the calculation of Net Profit as provided in *N.J.S.A. 40A:20-3(c)(2)*. The contents of the Auditor's Report shall be prepared by a certified public accountant licensed to practice in the State in conformity with generally accepted accounting principles.

Certificate of Occupancy: A Certificate of Occupancy (temporary or permanent), as such term is defined in the New Jersey Administrative Code, issued with respect to the Project.

Chief Financial Officer: The Borough's chief financial officer.

Default: A breach or the failure to perform any obligation imposed by the terms of this Agreement, or under Applicable Law.

Effective Date: The date of this Agreement.

Excess Profits Accounting Period. Any period, but not less than one fiscal year of the Entity, in which the aggregate Net Profits of the Entity exceed aggregate Allowable Net Profits on a cumulative basis. The first Excess Profits Accounting Period shall commence upon the issuance of a Certificate of Occupancy for the Project and terminate at the end of the fiscal year in which such aggregate Net Profits of the Entity exceed the aggregate Allowable Net Profits for

the entire period, taken as one accounting period. Each subsequent Excess Profits Accounting Period shall commence on the first day of the next fiscal year of the Entity after the end of the last Excess Profits Accounting Period and shall terminate at the end of the fiscal year in which such aggregate Net Profits of the Entity exceed the aggregate Allowable Net Profits for the entire period, taken as one accounting period.

Improvements: All improvements on the Land comprising the Project.

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

Land Taxes: The amount of taxes assessed on the value of Land, on which the Project is located.

Land Tax Payments: Payments made on the quarterly due dates for Land Taxes as determined by the Tax Assessor and the Tax Collector in accordance with Applicable Law.

Net Profit: The Annual 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)*. Without limiting the foregoing, included in expenses shall be an amount sufficient to amortize the Total Project Cost in accordance with generally accepted accounting principles as well as all other expenses permitted under the provisions of *N.J.S.A. 40A:20-3(c)*.

Notice: As defined in Section 15.01.

Property: The Land and the Improvements.

Security Arrangements: As defined in Section 8.02(a).

Secured Parties: As defined in Section 8.02(a).

Secured Party: As defined in Section 8.02(a).

State: The State of New Jersey.

Tax Assessor: The Borough tax assessor.

Tax Collector: The Borough tax collector.

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

Termination Date: The earlier to occur of (i) the thirty-fifth (35th) anniversary of the Effective Date; (ii) the thirtieth (30th) anniversary date of the Annual Service Charge Start Date; or (iii) such other date as this Financial Agreement may terminate pursuant to the terms hereof or pursuant to Applicable Law.

Total Project Cost: The cost of developing the Project as determined in accordance with N.J.S.A. 40A:20-3(h), as certified by a qualified architect or engineer and as permitted pursuant to N.J.S.A. 40A:20-3(h).

Section 1.02 Interpretation and Construction. In this Financial Agreement, unless the context otherwise requires:

(a) The terms "hereby", "hereof", "hereto", "herein", "hereunder" and any similar terms, as used in this Financial Agreement, refer to this Financial Agreement, and the term "hereafter" means after, and the term "heretofore" means before the date of delivery of this Financial Agreement.

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

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

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

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

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

(g) This Financial Agreement shall become effective upon its execution and delivery by the Parties.

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

ARTICLE II **APPROVAL**

Section 2.01 Approval of Tax Exemption. The Borough hereby grants its approval for a tax exemption for the Improvements to be constructed and maintained in accordance with the terms and conditions of this Agreement and the provisions of Applicable Law, which Improvements shall be constructed and/or renovated on the Land.

Section 2.02 Approval of Entity. The Entity represents that its Certificate of Formation and Certificate of Authority as attached as *Exhibit 2* to the Application contain all the requisite provisions of law, have been reviewed and approved by the Commissioner of the Department of Community Affairs, and have been filed with, as appropriate, the Secretary of Treasury, all in accordance with *N.J.S.A. 40A:20-5*.

Section 2.03 Improvements to be Constructed. The Entity represents that it will construct the Project in accordance with the Redevelopment Agreement, the Redevelopment Plan and Applicable Law, the use of which is more specifically described in the Application.

Section 2.04 Ownership, Management and Control. The Entity represents that it is the owner of the Land upon which the Improvements are to be constructed and which is the subject of this Agreement.

Section 2.05 Financial Plan. The Entity represents that the Improvements shall be financed in accordance with the financial plan attached as *Exhibit 14* to the Application.

Section 2.06 Statement of Projected Revenues. The Entity represents that projected Annual Gross Revenue is set forth in *Exhibit 13* attached to the Application.

Section 2.07 Representations and Covenants Regarding Use, Management and Operations of the Project by the Entity. The Entity expressly covenants, warrants and represents that upon completion, the Project, including all Land and Improvements, shall be used, managed and operated for the purposes set forth in the Application, in accordance with the Redevelopment Agreement, Redevelopment Plan and all Applicable Laws. The Entity represents that the representations and covenants required under *N.J.S.A. 40A:20-9* are set forth in the Application.

ARTICLE III
DURATION OF AGREEMENT

Section 3.01 Term. It is understood and agreed by the Parties that this Agreement, including the obligation to pay the Annual Service Charge required under Article IV hereof and the tax exemption granted and referred to in Section 2.01 hereof, shall remain in effect until the Termination Date. The tax exemption shall only be effective during the period of usefulness of the Project and shall continue in force only while the Land is owned by a corporation, association or other entity formed and operating under the Long Term Tax Exemption Law, except for permitted conveyances as stated in Sections 8.01 and 8.02 of this Financial Agreement. Upon the Termination Date, the tax exemption for the Improvements shall expire and same shall thereafter be assessed and taxed according to the general law applicable to other non-exempt property in the Borough. Upon the Termination Date, all restrictions and limitations upon the Entity shall terminate upon the Entity's rendering and the Borough's acceptance of its final accounting, pursuant to *N.J.S.A. 40A:20-13*.

Section 3.02 Date of Termination. The Termination Date shall be deemed to be the fiscal year end of the Entity.

ARTICLE IV

ANNUAL SERVICE CHARGE

Section 4.01 Annual Service Charge. In consideration for the tax exemption provided for herein, the Entity shall make payment to the Borough of an Annual Service Charge in an amount equal to: (a) for years one (1) through five (5) of the exemption period, twelve percent (12%) of the Annual Gross Revenue; (b) for years six (6) through ten (10) of the exemption period, thirteen percent (13%) of the Annual Gross Revenue; for years eleven (11) through twenty (20) of the exemption period, thirteen and one-half percent (13.5%) of the Annual Gross Revenue; for years twenty-one (21) through twenty-five (25) of the exemption period, fourteen and one-half percent (14.5%) of the Annual Gross Revenue; and for years twenty-six (26) through thirty (30) of the exemption period, fifteen percent (15%) of the Annual Gross Revenue.

Section 4.02 Consent of Entity to Annual Service Charge. The Entity hereby consents and agrees to the amount of Annual Service Charge and to the liens established in this Financial Agreement, and the Entity shall not contest the validity or amount of any such lien. Subject to the terms of this Agreement, the Entity's obligation to pay the Annual Service Charge shall be absolute and unconditional and shall not be subject to any defense, set-off, recoupment or counterclaim under any circumstances, including without limitation any loss of status of Entity as an "urban renewal entity" qualified under and as defined in the Long Term Tax Exemption Law. The Entity's remedies shall be limited to those specifically set forth herein and otherwise provided by law.

Section 4.03 Quarterly Installments. After the Annual Service Charge Start Date, the Entity agrees that payment of the Annual Service Charge shall be paid to the Borough on a quarterly basis on each Annual Service Charge Payment Date. In the event that Entity fails to timely pay any installment, the amount past due shall bear the highest rate of interest permitted under applicable State law and then being assessed by the Borough against other delinquent taxpayers in the case of unpaid taxes or tax liens until paid.

Section 4.04 Material Conditions. It is expressly agreed and understood that all payments of Land Taxes, Annual Service Charges and any interest payments, penalties or costs of collection due thereon, are material conditions of this Financial Agreement. If any other term, covenant or condition of this Financial Agreement or the Application, as to any person or circumstance shall, to any extent, be determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Financial 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 Financial Agreement shall be valid and enforced to the fullest extent permitted by Applicable Law.

Section 4.05 No Reduction in Payment of the Annual Service Charge. The Parties agree that neither the amounts nor dates established for payment of the Annual Service Charge, as provided in Section 4.01 hereof shall be reduced or amended or otherwise modified through any tax appeal on the Improvements or any other legal proceeding regarding the Project during the term of this Agreement.

Section 4.06 Service Charges as Municipal Lien. In accordance with the provisions of the Long Term Tax Exemption Law, upon recordation of this Financial Agreement and the Ordinance, any amount due and owing hereunder, including the Annual Service Charge shall be and constitute a continuous municipal lien on the Project.

Section 4.07 Security for Payment of Annual Service Charges. In order to secure the full and timely payment of the Annual Service Charges, the Borough reserves the right to prosecute an In Rem Tax Foreclosure action against the Property, as more fully set forth in this Agreement.

Section 4.08 Land Taxes. Land Taxes shall be assessed only on the Land portion of the Property without regard to any Improvements or increase in value to the Land because of the Improvements.

The Entity is required to pay both the Annual Service Charge and the Land Tax Payments. The Entity shall be entitled to a credit for the amount, without interest, of the Land Taxes paid on the Property in the last four preceding quarterly installments against the Annual Service Charge.

The Entity is obligated to make timely Land Tax Payments in order to be entitled to a Land Tax credit against the Annual Service Charge for the subsequent year. No credit will be applied against the Annual Service Charge for partial payments of Land Taxes. In any year that the Entity fails to make any Land Tax Payments, beyond any notice and cure period, such delinquency shall render the Entity ineligible for any Land Tax credits against the Annual Service Charge for that year and such failure shall constitute a Default under this Agreement. In addition, the Borough shall have, among this remedy and other remedies, the right to proceed against the Property pursuant to the Tax Sale Law and/or may terminate this Agreement in a manner consistent with the Default provisions set for in Article XIII hereof.

Section 4.09 Schedule of Stage Adjustments to Annual Service Charge. Pursuant to N.J.S.A. 40A:20-12(b), the Annual Service Charge shall be adjusted as follows:

Stage One. Commencing on the Annual Service Charge Start Date through the sixth (6th) year of this Agreement (ie, the year beginning on the fifth (5th) anniversary of the Annual Service Charge Start Date), the Annual Service Charge shall be the amount established in accordance with Section 4.01 of this Agreement.

Stage Two. During the seventh year of the Term of this Agreement (ie, the year beginning on the sixth (6th) anniversary of the Annual Service Charge Start Date), the Annual Service Charge shall be the amount established in accordance with Section 4.01 of this Agreement or 20% of the amount of the taxes otherwise due on the Land and Improvements, whichever is greater.

Stage Three. During the eighth year of the Term of this Agreement (ie, the year beginning on the seventh (7th) anniversary of the Annual Service Charge Start Date), the Annual Service Charge shall be the amount established in accordance with Section 4.01 of this

Agreement or 40% of the amount of the taxes otherwise due on the Land and Improvements, whichever is greater.

Stage Four. During the ninth year of the Term of this Agreement (ie, the year beginning on the eighth (8th) anniversary of the Annual Service Charge Start Date), the Annual Service Charge shall be the amount established in accordance with Section 4.01 of this Agreement or 60% of the amount of the taxes otherwise due on the Land and Improvements, whichever is greater.

Fifth Stage. During the tenth (10th) through thirtieth (30th) years of the Term of this Agreement (ie, the year beginning on the ninth (9th) anniversary of the Annual Service Charge Start Date through the year beginning on the twenty-ninth (29th) anniversary of the Annual Service Charge Start Date), the Annual Service Charge shall be the amount established in accordance with Section 4.01 of this Agreement or 80% of the amount of the taxes otherwise due on the Land and Improvements, whichever is greater.

Section 4.10 Administrative Fee. In addition to the Annual Service Charge, the Entity shall pay to the Borough an annual fee of two percent (2%) of the projected Annual Service Charge upon the Annual Service Charge Start Date and each anniversary thereafter prior to the Termination Date (the "Administrative Fee").

In the event the Entity fails to pay the Administrative Fee when due and owing, the amount paid shall bear the highest rate of interest permitted in the case of unpaid taxes or tax liens in the Borough until paid.

Section 4.11 Remittance to County. The Borough shall remit to the County of Middlesex five percent (5%) of the Annual Service Charge received each year from the Entity, pursuant to *N.J.S.A. 40A:20-12(b)(2)(e)*.

ARTICLE V

Section 5.01

Filing of Certificate of Occupancy. It shall be

Failure of the Entity to file such issued Certificate of Occupancy as required by the preceding paragraph, 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.

ARTICLE VI

ANNUAL AUDITS

Section 6.01 Accounting System. The Entity agrees to calculate its Net Profit pursuant to *N.J.S.A. 40A:20-3(c)*. As stated in *N.J.S.A. 40A:20-3(c)*, this calculation shall be made in accordance with generally accepted accounting principles.

Section 6.02

Periodic Reports.

(a) Auditor's Report: Within ninety (90) days after the close of each fiscal year during the term of the exemption pursuant to this Agreement, the Entity shall submit to the Mayor, Borough Council, the Tax Collector and the Borough Clerk, who shall advise those municipal officials required to be advised, and the State Division of Local Government Services in the Department of Community Affairs, its Auditor's Report for the preceding fiscal or calendar year. The Auditor's Report shall clearly identify and calculate the Net Profit for the Entity during the previous year and shall include, but not be limited to, itemizations of operating and non-operating expenses, mortgage interest and terms, amortization of Improvements and such other computations of income, expense and other details as may relate to the financial status of the Entity. The Entity assumes all costs associated with preparation of the periodic reports. All such periodic reports shall remain confidential except as otherwise required by law.

(b) Disclosure Statement: Within thirty (30) days after each anniversary date of the execution of this Agreement, the Entity shall submit to the Borough Council, a disclosure statement listing the persons having an ownership interest in the Project, and the extent of the ownership interest of each.

Section 6.03 Inspection. The Entity shall, upon request, permit the inspection of its property, equipment, buildings and other facilities of the Project and also permit, upon request, examination and audit of its books, contracts, records, documents and papers by representatives duly authorized by the Borough, and State Division of Local Government Services in the Department of Community Affairs pursuant to *N.J.S.A. 40A:20-9(e)*. Such inspection shall be made upon seven (7) business days' written notice during the Entity's regular business hours, in the presence of an officer or agent designated by the Entity. To the extent reasonably possible, the inspection will not materially interfere with construction or operation of the Project.

ARTICLE VII

LIMITATION ON PROFITS AND RESERVES

Section 7.01

Section 7.01 Limitation on Profits and Reserves. During the period of tax exemption as provided herein, the Entity shall be subject to a limitation of its profits pursuant to the provisions of *N.J.S.A. 40A:20-15*. Pursuant to *N.J.S.A. 40A:20-3(c)*, this calculation is completed in accordance with generally accepted accounting principles.

The Entity shall have the right to establish a reserve against vacancies, unpaid rentals, and reasonable contingencies in an amount up to ten percent (10%) of the Annual Gross Revenues of the Entity for the last full fiscal year and may retain such part of the excess Net Profits as is necessary to eliminate a deficiency in that reserve, as provided in *N.J.S.A. 40A:20-15*. In no event shall any portion of the excess Net Profits be retained or contributed to such reserve if the amount of the reserve as of the end of such fiscal year equals or exceeds ten percent (10%) of the preceding year's Annual Gross Revenues. The reserve is to be noncumulative.

Section 7.02

Section 7.02 Payment of Dividend and Excess Profit Charge.
In accordance with N.J.S.A. 40A:20-15, if the Net Profits of the Entity shall exceed the Allowable Net Profits in any Excess Profits Accounting Period, then the Entity, within one hundred and twenty (120) days after the end of the Excess Profits Accounting Period, shall pay such excess Net Profits to the Township as an additional Annual Service Charge; provided, however, that the Entity may maintain a reserve as determined pursuant to Section 7.1.

Section 7.03 Payment of Reserve/Excess Net Profit Upon Termination, Expiration or

Sale. The Termination Date of this Agreement, or the date of sale or transfer of the Improvements 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 amount of the reserve, if any, maintained by it pursuant to Section 7.01 and the excess Net Profits, if any.

ARTICLE VIII
ASSIGNMENT AND/OR ASSUMPTION

Section 8.01 Restrictions on Transfer.

(a) Except as set forth in the following subsections, the Entity may not voluntarily transfer more than ten percent (10%) of the ownership of the Land or any portion thereof until it has first removed both itself and the Land from all restrictions imposed by the Long Term Tax Exemption Law, in the manner provided by the Long Term Tax Exemption Law. Nothing herein shall prohibit any transfer of the ownership interest in the Entity itself provided that the transfer, if greater than 10 percent (10%), is disclosed to the Council in the annual disclosure statement required pursuant to Section 6.02(b) of this Agreement or in correspondence sent to the Borough in advance of the annual disclosure.

(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, will consent to a sale of the Land and the transfer of this Agreement provided that: (1) the transferee entity is formed and eligible to operate under the Long Term Tax Exemption Law; (2) the transferee entity does not own any other project subject to long term tax exemption at the time of transfer; (3) the Entity is not then in Default of this Agreement or Applicable Law; and (4) the Entity's obligations under this Agreement are fully assumed by the transferee entity.

Section 8.02 Collateral Assignment. Notwithstanding the foregoing, it is expressly understood and agreed that the Entity has the right to encumber and/or assign the fee title to the Land and/or Improvements for purposes of (i) financing the design, development and construction of the Project and (ii) permanent mortgage financing.

(a) The Borough acknowledges that the Entity and/or its affiliates intend to obtain secured financing in connection with the acquisition, development and construction of the Project. The Borough agrees that the Entity and or its affiliates may assign, pledge, hypothecate or otherwise transfer its rights under this Agreement and/or its interest in the Project to one or more secured parties or any agents therefore (each, a "**Secured Party**" and collectively, the "**Secured Parties**") as security for obligations of the Entity, and/or its affiliates, incurred in connection with such secured financing (collectively, the "**Security Arrangements**"). The Entity shall give the Borough written Notice of any such Security Arrangements, together with the name and address of the Secured Party or Secured Parties. Failure to provide such Notice waives any requirement of the Borough hereunder to provide any Notice of Default or Notice of intent to enforce its remedies under this Agreement.

(b) Without limiting the generality of Article XIII hereof, if the Entity shall Default in any of its obligations hereunder, the Borough shall give Notice of such Default to the Secured Parties and the Borough agrees that, in the event such Default is not waived by the Borough or cured by the Entity, its assignee, designee or successor, within the period provided for herein, before exercising any remedy against the Entity hereunder, the Borough will provide the Secured Parties a reasonable period of time to cure such Default, but in any event not less than fifteen (15) days from the date of such notice to the Secured Parties with regard to a failure of the Entity to pay the Annual Service Charge or Land Taxes and ninety (90) days from the date the Entity was required to cure any other Default.

(c) In the absence of a Default by the Entity, the Borough agrees to consent to any collateral assignment by the Entity to any Secured Party or Secured Parties of its interests in this Agreement and to permit each Secured Party to enforce its rights hereunder and under the applicable Security Arrangement and shall, upon request of the Secured Party, execute such documents as are typically requested by secured parties to acknowledge such consent. This provision shall not be construed to limit the Borough's right to payment from the Entity, nor shall the priority of such payments be affected by the Secured Party exercising its rights under any applicable Security Arrangement.

(d) Notwithstanding anything to the contrary contained herein, and in addition to all other rights and remedies of Secured Parties set forth in this Agreement, the provisions of N.J.S.A. 55:17-1 – N.J.S.A. 55:17-11 shall apply to this Agreement to protect the interests of any Secured Party.

ARTICLE IX
WAIVER

Section 9.01.

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

ARTICLE X COMPLIANCE

Section 10.01

Statutes and Ordinances.

Section 11.01 Construction. This Financial 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 XII

INDEMNIFICATION

Section 12.01

Indemnification. It is understood and agreed that in the event the Borough shall be named as party defendant in any action brought against the Borough or Entity by allegation of any breach, Default or a violation by the Entity of any of the provisions of this Agreement and/or the provisions of Applicable Law, the Entity shall indemnify and hold the Borough harmless from and against all liability, losses, damages, demands, costs, claims, actions or expenses (including reasonable attorneys' fees and expenses) of every kind, character and nature arising out of or resulting from the action or inaction of Entity and/or by reason of any breach, Default or a violation of any of the provisions of this Agreement and/or the provisions of Applicable Law, including without limitation, the Long Term Tax Exemption Law, except for any misconduct by the Borough or any of its officers, officials, employees or agents, and Entity shall defend the suit at its own expense. Notwithstanding the foregoing, the Borough maintains the right to intervene as a party thereto, to which intervention Entity hereby consents, the expense thereof to be borne by Entity. To the extent practical and ethically permissible, the Entity's attorneys shall jointly defend and represent the interest of the Borough and the Entity as to all claims indemnified in connection with this Agreement.

ARTICLE XIII
DEFAULT AND REMEDIES

Section 13.01

Section 13.01 Cure Upon Default. Should the Entity be in Default, the Borough shall notify the Entity and any Secured Party in writing of said Default. Said notice shall set forth with particularity the basis of said Default. Except as provided in Section 8.02(b) hereof or otherwise limited by law, the Entity shall have sixty (60) days after it receives Notice to cure any Default (other than a Default in payment of any installment of the Annual Service Charge, which Default must be cured within fifteen (15) days after the Entity receives Notice). Curing the Default shall be the sole and exclusive remedy available to the Entity or the Secured Party, as applicable; provided, however, that if, in the reasonable opinion of the Borough, the Default cannot be cured within the applicable cure period using reasonable diligence, the time to cure may be extended upon written Notice for an additional ninety (90) day period of time.

Upon the expiration of the cure period, or any approved extension thereof, and providing that the Default is not cured, the Borough shall have the right to terminate this Agreement in accordance with Section 13.02 of this Agreement.

Section 13.02

Remedies Upon Default.

(a) In the event the Entity or a Secured Party fails to cure or remedy the Default within the time period provided in Sections 13.01 or 8.02(b), respectively, the Borough may terminate this Agreement upon written Notice to the Entity and the Secured Party.

(b) Upon any Default in payment of any installment of the Annual Service Charge not cured within fifteen (15) days, the Borough in its sole discretion shall have the right to immediately exercise the following remedies: (1) terminate this Agreement, at which time: the Improvements on the Land shall be subject to conventional taxation; or (2) exercise any other remedy available to the Borough in law or equity. The Borough as a courtesy will give Entity and any Secured Party Notice of the intention to exercise its remedies.

(c) No Default hereunder by the Entity shall terminate the tax exemption (except as described herein and after Notice and cure as provided for herein) and its obligation to make Annual Service Charges, which shall continue in effect for the duration of the term hereof and subject to Section 13.03 hereinafter.

(d) All of the remedies provided in this Agreement to the Borough, and all rights and remedies granted 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 of any of its remedies or actions against the Entity 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 Charges or other charges, or for breach of covenant or the resort to 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 Tax Foreclosure action consistent with the terms and provisions of this Agreement.

Section 13.03 Final Accounting. Within ninety (90) days after the Termination Date, 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 Date of the Agreement shall be deemed to be the end of the fiscal year for the Entity.

Section 13.04 Conventional Taxes. Upon the Termination Date, 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 XIV

DISPUTE RESOLUTION

Section 14.01 Arbitration. In the event of a dispute arising between the Parties in reference to the terms and provisions as set forth herein, the Parties shall submit the dispute to the American Arbitration Association in the State to be determined in accordance with its rules and regulations in such a fashion to accomplish the purpose of the Long Term Tax Exemption Law. Each Party to this Agreement shall designate an arbitrator, and the two (2) arbitrators shall choose a third arbitrator. The arbitrators designated and acting under this Agreement shall make a determination regarding the issue(s) in controversy in strict conformity with the terms of this Agreement and Applicable Law. Costs for said arbitration shall be borne equally by both Parties. In the event of a Default on the part of the Entity to pay any installment of the Annual Service Charge required by Article IV above, the Borough, in addition to their other remedies, and subject to Article 13 of this Agreement, reserves the right to proceed against the Land, in the manner provided by law, including the Tax Sale Law, and any act supplementary thereto 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 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 to proceed in the above-mentioned manner.

Notwithstanding anything herein to the contrary, no arbitrator shall have any power or authority to amend, alter, or modify any part of this Agreement, in any way.

ARTICLE XV
NOTICE

Section 15.01 Notice. Formal notices, demands and communications between the Borough and Entity shall be deemed given if dispatched to the address set forth below by registered or certified mail, postage prepaid, return receipt requested, or by a commercial overnight delivery service with packaging tracking capability and for which proof of delivery is available ("Notice"). In that case such Notice is deemed effective upon delivery. Such written Notices may be sent in the same manner to such other addresses as either party may from time to time designate by written notice. Notice given by counsel to a party in accordance with this Section 15.01 shall be effective for all purposes hereunder. Copies of all notices, demands and communications shall be sent as follows:

If to the Borough:

Borough of Carteret
Memorial Municipal Building
61 Cooke Avenue
Carteret, New Jersey 07008
Attn: Borough Clerk

with copies to:

Borough of Carteret
Memorial Municipal Building
61 Cooke Avenue
Carteret, New Jersey 07008
Attn: Director of Law

Kevin P. McManimon, Esq.
McManimon, Scotland & Baumann, LLC
75 Livingston Avenue, 2nd Floor
Roseland, NJ 07068

If to Entity:

48 Leffert Street Urban Renewal, LLC
c/o The Hampshire Companies
22 Maple Avenue
Morristown, New Jersey 07960
Attention: Donald J. Engels

With copies to:

Drinker Biddle & Reath LLP
600 Campus Drive
Florham Park, New Jersey 07932
Attention: Andy S. Norin, Esq.

ARTICLE XVI

MISCELLANEOUS

Section 16.01 Conflict. The Parties agree that in the event of a conflict between the Application and this Financial Agreement, the language in this Financial Agreement shall govern and prevail.

Section 16.02 Oral Representations. There have been no oral representations made by either of the Parties which are not contained in this Financial Agreement. This Financial Agreement, the Ordinance and the Application constitute the entire agreement between the Parties and there shall be no modifications thereto other than by a written instrument executed by the Parties and delivered to each of them.

Section 16.03 Entire Document. All conditions in the Ordinance are incorporated in this Agreement and made a part hereof. This Agreement, with all attachments and exhibits, the Ordinance and the Application shall constitute the entire agreement between the Parties, shall be incorporated herein by reference thereto and there shall be no modifications thereto other than by a written instrument approved and executed by and delivered to each Party. All prior agreements and understandings, if any, are superseded.

Section 16.04 Good Faith. In their dealings with each other, the Parties agree that they shall act in good faith.

Section 16.05 Recording. This entire Agreement will be filed and recorded with the Middlesex County Clerk by the Entity at the Entity's expense. Upon Termination of this Agreement, the parties shall execute and record an instrument discharging this Agreement of record in form reasonably satisfactory to the parties.

Section 16.06 Municipal Services. The Entity and/or its successors (including without limitation any owner's or similar association) will be responsible to provide and/or pay for the following services:

(a) **Water & Sewer** – The Entity shall make payments for water and sewer charges and any other services that create a lien on the Property superior to the lien for the Land Taxes and Annual Service Charge, as required by law.

(b) **Waste and Refuse Disposal** – Collection and disposition of all solid waste, refuse and recyclables emanating from the Project, shall be the responsibility of the Entity to have picked up and disposed of by a licensed collector, hauler or scavenger, at the Entity's cost and expense. The Borough may establish regulations for the collection and for the storage and recycling of solid waste, discarded or old newspaper and/or other recyclables; compliance therewith shall be by and at the sole expense of the Entity.

Section 16.07 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.

Section 16.08 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 16.09 Amendments. This Agreement may not be amended, changed, modified, altered or terminated without the written consent of the Parties hereto.

Section 16.10 Certification. The Borough Clerk shall certify to the Tax Assessor, pursuant to *N.J.S.A.* 40A:20-12, that a Financial Agreement with an urban renewal entity, i.e., the Entity, for the development of the Project, has been entered into and is in effect as required by the Long Term Tax Exemption Law. Delivery by the Borough Clerk to the Tax Assessor of a certified copy of the Ordinance and this Financial Agreement shall constitute the required certification. Upon certification as required hereunder and upon the Annual Service Charge Start Date, the Tax Assessor shall implement the exemption and continue to enforce that exemption without further certification by the clerk until the expiration of the entitlement to exemption by the terms of this Financial Agreement or until the Tax Assessor has been duly notified by the Borough Clerk that the exemption has been terminated.

Further, within 10 calendar days following the later of the effective date of the Ordinance or the execution of the financial agreement by the Entity, the Borough Clerk shall transmit a certified copy of the Ordinance and the Financial Agreement to the chief financial officer of Middlesex County and to the Middlesex County counsel for informational purposes..

Section 16.11 Conditions Precedent.

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

(a) Receipt by the Entity of all federal, State, county and municipal approvals required for the construction of the Project.

(b) Enactment by the Borough of all ordinances and other official action necessary under the Long Term Tax Exemption Law to enter into and effectuate the terms of this Agreement.

Section 16.12 Construction. This Agreement shall be construed and enforced in accordance with the laws of the State, 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.

EXHIBITS

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

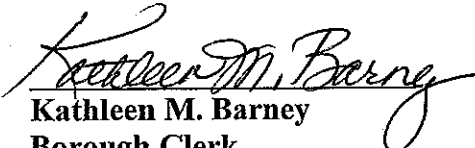
Exhibits

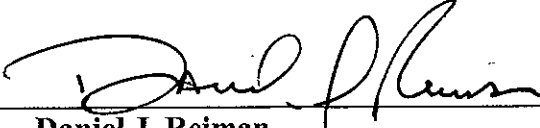
- A. Metes and Bounds description of the Land
- B. Ordinance

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

ATTEST:

BOROUGH OF CARTERET


Kathleen M. Barney
Borough Clerk

By: 
Daniel J. Reiman
Mayor

48 LEFFERT STREET URBAN RENEWAL, LLC

By: Hampshire Partners Fund VIII, L.P.,
its Sole Member

By: Hampshire Partners VIII, LLC,
its General Partner

By: _____
Name:
Title:

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

ATTEST:

BOROUGH OF CARTERET

Kathleen M. Barney
Borough Clerk

By: _____
Daniel J. Reiman
Mayor

48 LEFFERT STREET URBAN RENEWAL, LLC

By: **Hampshire Partners Fund VIII, L.P.,**
its Sole Member

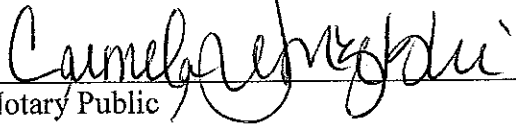
By: **Hampshire Partners VIII, LLC,**
its General Partner

By: _____
Name: *Donald J. Ervett*
Title: *Vice President*

STATE OF NEW JERSEY

COUNTY OF MIDDLESEX

The foregoing instrument was acknowledged before me this 23rd day of August, 2016, by the Borough of Carteret in the County of Middlesex, State of New Jersey, by Mayor Daniel J. Reiman, on behalf of the Borough.


Notary Public

CARMELA POGORZELSKI
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires 9/27/2017

EXHIBIT A

METES AND BOUNDS DESCRIPTION OF THE LAND

METES AND BOUNDS DESCRIPTION

ALL that certain lot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the Borough of Carteret, in the County of Middlesex, State of New Jersey:

BEGINNING at an iron pipe found on the southeasterly right of way line of Lefferts Street (A.K.A. Lefferts Avenue, 30.00 foot wide R.O.W.) at the dividing line between Lot 10 Block 5601, lands now or formerly Maggyco Incorporated and Lot 9 Block 5601, lands now or formerly Lefferts Street, LLC and running thence;

- (1) along southeasterly right of way line of Lefferts Street (A.K.A. Lefferts Avenue, 30.00 foot wide R.O.W.), North 26 degrees 54 minutes 00 seconds East, a distance of 856.10 feet to a point of curvature on the northwesterly right of way line of the Carteret Industrial Road (A.K.A. Peter J. Sica Industrial Highway, 70.00 foot wide R.O.W.); thence

The following (5) five courses and distance along northwesterly right of way line of the Carteret Industrial Road:

- (2) along the arc of a circle curving to the right, having a radius of 865.00 feet, an arc length of 329.00 feet, a central angle of 21 degrees 47 minutes 32 seconds, a chord bearing South 00 degrees 35 minutes 50 seconds East, and a chord distance of 327.02 feet to a point; thence
- (3) South 26 degrees 14 minutes 00 seconds East, a distance of 10.00 feet to a point; thence
- (4) South 33 degrees 18 minutes 00 seconds West, a distance of 16.00 feet to a point; thence
- (5) along the arc of circle curving to the right, having a radius of 865.00 feet, an arc length of 194.00 feet, a central angle of 12 degrees 51 minutes 00 seconds, a chord bearing South 18 degrees 13 minutes 54 seconds West, and a chord distance of 193.59 feet to a point of non-tangency; thence
- (6) South 29 degrees 59 minutes 00 seconds West, a distance of 353.25 feet to a point; thence
- (7) along dividing line of Lot 10 Block 5601 and Lot 9, Block 5601, North 63 degrees 06 minutes 00 seconds West, a distance of 167.38 feet to the point and place of BEGINNING.

Containing 124,721 square feet or 2.863 acres.

The above description being drawn in accordance with a survey prepared by Blue Marsh Associates, Inc., dated May 15, 2015.

EXHIBIT B
ORDINANCE

No. 16-19

Ordinance
of the
Borough of Carteret, N. J.

ORDINANCE OF THE BOROUGH OF CARTERET, COUNTY OF MIDDLESEX, NEW JERSEY APPROVING APPLICATION FOR FINANCIAL AGREEMENT

WHEREAS, 48 Leffert Street Urban Renewal, LLC (the "Redeveloper") is the owner of property known as Block 5601, Lots 10, 11, 12, and 13 (collectively, the "Project Area"), which is located in an area designated as an area in need of redevelopment; and

WHEREAS, the Borough and the Redeveloper entered into that certain Redevelopment Agreement, pursuant to which the Redeveloper agreed to redevelop the Project Area by constructing thereon an approximately 96,000 square foot, multi-building, self-storage facility (the "Project"); and

WHEREAS, the Redeveloper submitted to the Mayor (the "Mayor") an application (the "Application"), which is on file with the Borough Clerk, to make payments to the Borough in lieu of taxes in connection with the Project; and

WHEREAS, the Redeveloper also submitted to the Mayor a form of financial agreement (the "Financial Agreement"), a copy of which is attached as Exhibit 19 to the Application; and

WHEREAS, the Mayor submitted the Application and Financial Agreement to the Borough Council with his recommendation for approval, a copy of which recommendation is on file with the Borough Clerk.

NOW, THEREFORE, BE IT ORDAINED BY THE BOROUGH COUNCIL OF THE BOROUGH OF CARTERET, NEW JERSEY AS FOLLOWS:

Section 1. The Application and Financial Agreement are hereby approved.

Section 2. The Mayor is hereby authorized to execute the Financial Agreement substantially in the form attached as Exhibit 19 to the Application, subject to minor modification or revision, as deemed necessary and appropriate after consultation with counsel.

Section 3. The Borough Clerk is hereby authorized and directed, upon execution of the Financial Agreement by the Mayor, to attest to the signature of the Mayor.

Section 4. This ordinance shall take effect in accordance with applicable law.

DO NOT USE SPACE BELOW THIS LINE

RECORD OF COUNCIL VOTE

COUNCILMAN	YES	NO	NV	A.B.	COUNCILMAN	YES	NO	NV	A.B.
PELLINO	X				THAY	X			
DIAZ	X				KEIM				X
DIMASCO	X				NAPLES	X			

X - Indicate Vote AB - Absent NV - Not Voting XOR - Indicates Vote to Overrule Veto

Adopted on first reading of the Council of the Borough of Carteret, N.J., on August 4, 2016

Adopted on second reading after hearing on August 18, 2016

APPROVED BY

MAYOR

ON 8-19-16

BOROUGH CLERK