

**APPLICATION FOR
LONG TERM TAX EXEMPTION**

ROOSEVELT AVE URBAN RENEWAL COMPANY LLC

Redevelopment Project: 180-182 Roosevelt Avenue, Carteret, New Jersey

II. Developer Identification:

A. Name of Applicant: ROOSEVELT AVE URBAN RENEWAL COMPANY LLC

B. Principal Address: c/o Richard LaBarbiera
242 Oradell Ave., 2nd Floor, Paramus, NJ 07652

C. Type of Entity (check one)

 Corporation XX LLC LLP Partnership Other (please specify)

D. Contact Information

1.) Name of Primary Contact: PAUL KAUFMAN, ESQ.

2.) Contact Numbers:

a. Phone: 201-947-88855

b. Fax: 201-947-2402

c. Email: pkaufman@northjerseyattorneys.com

E. Name and Address of Statutory Agent:

Please list the name and address of the entity upon whom a legal process can be served:

Paul Kaufman, Esq

Two Executive Drive, Suite 530

Fort Lee, NJ 07024

F. Federal Tax Identification Number:

47-2697414

III. Project Description:

A. Applicant's Ownership Interest in the Project: Applicant is the contract purchaser of the property pursuant to a Redevelopment Agreement with the Borough of Carteret.

___ Conventional (Fee Simple) ___ Condominium

B. Project Type (Please check all that apply):

XXX Residential; ___ Retail; ___ Office; ___ Manufacturing; ___ Distribution Facility; ___ Hotel;

Other (Specify): _____

If the project involves more than one type of usage, indicate the percentage that each usage bears to the overall project measured using square feet of gross area:

___ % Residential; ___ % Retail; ___ % Office; ___ % Manufacturing; ___ % Distribution Facility;

___ % Hotel; ___ % Other (specify here _____)

C. Marketing Expectation:

XXX For Sale ___ For Lease ___ Both

D. Project Location:

1. Provide all street addresses by which the project site is currently known:

Address #1: 180 Roosevelt Avenue

Address #2: 182 Roosevelt Avenue

Address #3: _____

Address #4: _____

Use additional sheets if necessary

2. Provide all tax lots that comprise the project site. Designate lots as they appear on the official maps of the Tax Assessor as of the date of this application (i.e. prior to any subdivision associated with the project):

Block 302 Lots: 6

Block 302 Lots: 7

Block Lots:

Block _____ Lots: _____

Use additional sheets if necessary

3. Metes and Bounds Description:

Please attach the metes and bounds description of the project site as Exhibit 5 of this application.

4. Survey:

Please attach survey of the project site as Exhibit 6 of this application. If a survey has not yet been completed, a plotting on the official tax map may be provided at this time. A certified survey will be required prior to execution of any financial agreement.

E. Deed or Lease Agreement:

Please attach a copy of the deed or lease agreement for the property as Exhibit 7 confirming that the project is under the control of the applicant.

F. Purpose of Project:

Please check all that apply:

1. This project is located within an officially designated "area in need of redevelopment."
XXX Yes ___ No
2. This project is located within an Urban Enterprise Zone.
___ Yes XXX No
3. This Project is intended to provide housing to low and/or moderate income households:
___ Yes XXX No

Please indicate the number of units of each type listed below, as appropriate.

Number of units for low income households _____
Number of units for moderate income households _____
Number of market rate units _____
Total number of residential units _____

4. This Project is intended to provide housing to households relocated as a result of a redevelopment project: ___ Yes XXX No
5. This Project is intended as a means to implement the objectives set forth in an adopted Redevelopment Plan: XXX Yes ___ No

6. If the answer to questions 3 through 5 of this section was "No", please indicate the purpose of the Project:

H. Narrative Description of Project:

Provide a brief narrative description of the project, including the height and bulk of proposed improvements, type of construction materials to be used and expected square foot area of each proposed use. Indicate the number and type of each unit to be constructed as part of the project and whether the project will be restricted to any group or groups on the basis of age or income. Include maps, renderings, floor plans and other graphic materials if available. Attach this description as Exhibit 8 of this application.

I. Current Conditions:

1. Provide a brief description of any improvements that are in place currently on the project site and indicate which if any are expected to be reused as part of the project. Attach extra pages as needed.

PROPERTY IS PRESENTLY VACANT

2. Provide a list with the current tax assessment and the current real property tax levy for each lot included within the project site. Attach extra pages as needed.

Block	Lot	Current Tax Assessment	Current Real Property Tax Levy
302	6	383,400	\$11,300 (approx.)
302	7	290,000	9,360 (approx.)

3. Provide a list showing the current status of all municipal fees and charges which are currently levied against each lot located within the project site, including, without limitation water charges, sewer charges, permit or license fees, fines and/or penalties. Attach extra pages as needed.

There are no municipal fees or charges due to Applicant's knowledge.

Block	Lot	Current Status of Municipal Fees and Charges (specify type)

J. Site Plan Approval:

Provide a copy of the site plan approved by the Planning Board for the Project. Also provide a copy of the resolution of the Planning Board providing final site plan approval for the project. Attach the site plan as Exhibit 9 of this application and the resolution as Exhibit 10 of this application.

K. Project Cost Estimates

1. Provide a detailed cost breakdown for the project, including both hard and soft costs. The estimate should be certified by a licensed architect or engineer. Attach the completed estimate for the entire Project as Exhibit 11 of this application.

2. For each type of unit to be included within the Project, provide an estimate of the total unit cost for that unit. This may be provided at a summary level, not at the level set forth for the estimate required by section K.1 above. The estimate should also be certified by a licensed architect or engineer. Attach the completed unit estimates as Exhibit 12 of this application.

L. Project Pro-Forma:

Provide a detailed projection of the estimated revenues and expenses for the project. The projections for all rental projects and for the rental component of mixed-use projects should cover the full exemption

period. Projections involving the sale of units should be for the period expected to be needed to complete all sales activity. Attach the projection as Exhibit 13 of this application.

M. Project Financing Plan:

1. Provide a detailed explanation of the expected method by which the project will be financed, indicating the amount of equity to be contributed and its source, all public loans and/or grants that are to be used and all private sources of capital. Attach this explanation as Exhibit 14 of this application.

2. Private Financing Commitments: Provide certified copies of any and all letters from public or private sources of capital indicating a commitment to make funds available for the project. Attach these letters as Exhibit 15 of this application.

N. Explanation of the Need for Tax Exemption:

Provide an explanation of why the applicant believes that a long term tax exemption is necessary to make this project economically feasible. Attach the explanation as Exhibit 16 of this application.

O. Project Schedule:

Attach a detailed schedule of the key milestone dates in the approval, construction and leasing or sale of the project as Exhibit 17 of the application.

P. Statement of Project Benefits:

Provide a detailed description of the public benefits that would result from the project. At a minimum, include a projection of the number and type of construction jobs to be created, the number and type of permanent jobs to be created and the amount of municipal revenue to be generated by the project through the payment of taxes, payments in lieu of taxes, water and sewer fees and any other municipal payments. Attach the description as Exhibit 18 of the application.

IV. Exemption Information:

A. Annual Service Charge to be based on: (check one)

___ Annual Gross Revenue (Non-condominium) ___ Project Cost

___ Imputed debt service (Condominium)

SEE THE PROPOSED FINANCIAL AGREEMENT ANNEXED AS EXHIBIT 19

B. Term Requested:

_____ Years

C. Proposed Rates and Phases:

[illegible]

Representations and Certifications:

In submitting the application, the Developer certifies that all of the information is true and accurate to the best of his or her knowledge and further certifies to the following:

A. The project conforms to the Redevelopment Plan that is in effect for the area that includes the project site and with any Redevelopment Agreement as may be in place between the Municipality and the Developer.

B. The Project either 1) conforms to the Master Plan of the Municipality; or 2) to the extent that the Redevelopment Plan is inconsistent with the Master Plan, the Project conforms to the Redevelopment Plan and the Municipal Council, in adopting the Redevelopment Plan, set forth its reasons for adopting a Redevelopment Plan with such inconsistencies.

C. The project will conform to and the applicant(s) agrees to comply with all Federal and State laws and to all applicable municipal ordinances.

D. Construction of the project has not commenced as of the time of the submission of this application. The applicant understands that the Municipal Council is under no obligation to approve this tax exemption application. Any work done on the assumption of receipt of a tax exemption following the submission of the application and before final approval is undertaken at the risk of the developer. **Note that under no circumstances will an exemption be granted for a project that has already reached substantial completion.**

F. No officer or employee of the Municipality has any interest, directly or indirectly, in the project that is the subject of this application.

Signatures

By my signature below, I hereby submit this application on behalf of the Developer. I certify that all of the information is true and accurate to the best of my knowledge and belief. I am aware that if any of the information provided is willfully false, that I am, subject to prosecution.

For the Developer:



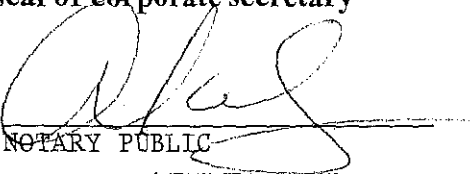
Name: RICHARD LABARBIERA

Title: MANAGER

10-21-15

Date

Please notarize here or
provide attestation and
seal of corporate secretary



NOTARY PUBLIC

ANTOINETTE KENNEDY

A Notary Public of New Jersey

My Commission Expires September 23, 2018

EXHIBITS

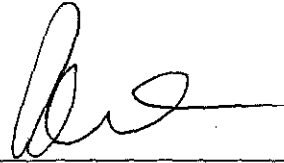
The following is a check-list of required exhibits that must be attached to the application:

<u>Exhibit #</u>	<u>Description</u>	<u>Included?</u>
1	Disclosure of Ownership	___
2	Certificate of Incorporation	___
3	Certificate of DCA Approval of Urban Renewal Entity	___
4	Resolution Authorizing Submission of Application	___
5	Metes and Bounds Description	___
6	Survey	___
7	Copy of Deed or Lease Agreement	___
8	Narrative Description of Project	___
9	Site Plan as Approved by Planning Board	___
10	Site Plan Approval Resolution	___
11	Total Project Cost Estimate	___
12	Cost Estimates for Each Unit Type	___
13	Project Pro-Forma	___
14	Project Financing Plan	___
15	Private Financing Commitments	___
16	Explanation of the Need for Tax Exemption	___
17	Project Schedule	___
18	Summary of Project Benefits	___
19	Form of Financial Agreement	___

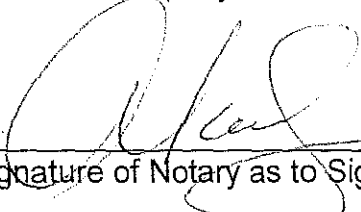
EXHIBIT 1-B

DISCLOSURE OF OWNERSHIP
ROOSEVELT AVE URBAN RENEWAL COMPANY LLC

1. Members

<u>Name</u>	<u>Address</u>	<u>Signature</u>	<u>%</u>
RVN Development LLC	242 Oradell Avenue 2 nd Floor Paramus, NJ 07652 (Richard LaBarbiera 100%)		50%
Lexington Edgewater LLC	Two Executive Drive Suite 530 Fort Lee, NJ 07024 (Paul Kaufman 100%)		50%

ROOSEVELT AVE URBAN RENEWAL COMPANY LLC
Name of Company


Signature of Notary as to Signatures

10-21-15
Date

ANTOINETTE KENNEDY
A Notary Public of New Jersey
My Commission Expires September 23, 2018

Exhibit 2

CERTIFICATE OF FORMATION

Please attach a copy of the approved certificate of formation of the entity applying for the exemption to this sheet.

CERTIFICATE OF FORMATION

OF

ROOSEVELT AVE. URBAN RENEWAL COMPANY LLC

Pursuant to N.J.S.A. 42:2C-1 et seq. and N.J.S.A. 40A:20-1 et seq.

The undersigned, being authorized to execute and file this Certificate of Formation, for the purpose of forming a limited liability company pursuant to the provisions of Title 42:2C, the New Jersey Limited Liability Company Act, and N.J.S.A. 40A:20-1 et seq., the New Jersey Long Term Tax Exemption Law, as amended, hereby certifies that:

FIRST: The name of the limited liability company is: Roosevelt Ave. Urban Renewal Company, LLC (hereinafter the "Company").

SECOND: The name and address of the registered agent and registered office of the Company in this State is Antoinette Kennedy, Two Executive Drive, Suite 530, Fort Lee, New Jersey 07024.

THIRD: (a) The purposes for which the Company is formed shall be to operate under P.L. 1991, c.431 (C.40A:20-1 et seq.), and to initiate and conduct projects for the redevelopment of a redevelopment area pursuant to a redevelopment plan, or projects necessary, useful or convenient for the relocation of residents displaced or to be displaced by the redevelopment of all or any part of one or more redevelopment area, or low and moderate income housing projects and, when authorized by financial agreement with the Township of North Bergen (the "Municipality"), to acquire, plan, develop, construct, alter, maintain or operate housing, senior citizen housing, business, industrial, commercial, administrative, community, health, recreational, educational or welfare projects, or any combination of two or more of these types of improvements in a single project, under such conditions as to use, ownership, management and control as regulated pursuant to P.L. 1991, c.431 (C.40A:20-1 et seq.).

(b) So long as the Company is obligated under a financial agreement with the Municipality made pursuant to P.L. 1991, c.431 (C.40A:20-1 et seq.), it shall engage in no business other than the ownership, operation and management of the project.

(c) The Company has been organized and formed to serve a public purpose. The Company's operations shall be directed toward; (1) the redevelopment of redevelopment areas, the facilitation of the relocation of residents displaced, or to be displaced by redevelopment, or the conduct of low and moderate income housing projects; and (2) the acquisition, management and operation of a project, redevelopment relocation housing project or low and moderate income

housing project under P.L. 1991, c.431 (C.40A:20-1 et seq.). The Company shall be subject to regulation by the Municipality, and to a limitation or prohibition, as appropriate, on profits or dividends for so long as the Company remains the owner of a project subject to P.L. 1991, c.431 (C.40A:20-1 et seq.).

(d) The Company shall not voluntarily transfer more than ten percent (10%) of the ownership of the project or any portion thereof undertaken by it under P.L. 1991, c.431 (C.40A:20-1 et seq.) until it has first removed both itself and the project from all restrictions of P.L. 1991, c.431 (C.40A:20-1 et seq.) in the manner required by P.L. 1991, c.431 (C.40A:20-1 et seq.) and, if the project includes housing units, has obtained the consent of the Commissioner of the New Jersey Department of Community Affairs to such transfer, with the exception of transfer to another urban renewal entity as approved by the Municipality, which other urban renewal entity shall assume all contractual obligations of the Company under the financial agreement with the Municipality. The Company shall file annually with the governing body of the Municipality a disclosure of the persons having an ownership in the project, and the extent of the ownership interest held by each. Nothing herein shall prohibit any transfer of the ownership interest in the Company itself, provided that the transfer, if greater than ten percent (10%), is disclosed to the governing body of the Municipality in the annual disclosure statement or in correspondence sent to the Municipality in advance of the annual disclosure statement referred to above.

(e) The Company shall be subject to the provisions of §18 of P.L. 1991, c.431 (C.40A:20-18) respecting the powers of the Municipality to alleviate financial difficulties of the Company or to perform actions on behalf of the Company upon a determination of financial emergency.

(f) Any housing units constructed or acquired by the Company shall be managed subject to the supervision of, and in accordance with rules adopted by, the Commissioner of the New Jersey Department of Community Affairs.

FOURTH: The term of the Company shall be perpetual unless otherwise terminated in accordance with the provisions of the Company's Operating Agreement.

IN WITNESS WHEREOF, I have signed this Certificate of Formation this 8th day of December, 2014.



PAUL KAUFMAN
Authorized Person

Certificate of Approval of Urban Renewal Entity from the New Jersey Department of
Community Affairs (DCA)

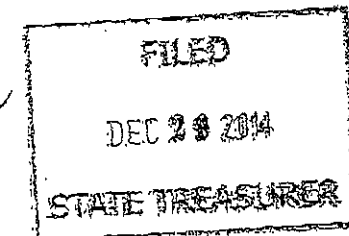
Please attach a copy of DCA's certificate of approval of the applicant as an Urban Renewal entity to this sheet. (Low and moderate income housing projects to be constructed outside an approved redevelopment area are exempt from this requirement.)



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
101 SOUTH BROAD STREET
PO Box 805
TRENTON, NJ 08625-0805

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor



RICHARD E. CONSTABLE, III
Commissioner

0600416947

DEPARTMENT OF COMMUNITY AFFAIRS

TO: State Treasurer
RE: ROOSEVELT AVE. URBAN RENEWAL COMPANY LLC
File # 1514
An Urban Renewal Entity

This is to certify that the attached CERTIFICATE OF FORMATION OF AN URBAN RENEWAL ENTITY has been examined and approved by the Department of Community Affairs, pursuant to the power vested in it under the "Long Term Tax Exemption Law," P.L. 1991, c.431.

Done this 23rd day of December 2014 at Trenton, New Jersey.

DEPARTMENT OF COMMUNITY AFFAIRS

BY

Edward M. Smith, Director
Division of Codes and Standards



2716134-

4834640

RESOLUTION AUTHORIZING SUBMISSION OF APPLICATION

PLEASE TAKE NOTICE that a meeting of the Members of Roosevelt Ave Urban Renewal Company LLC was held at Noon P.M. on October 21, 2015 at 332 Bergen Boulevard, Fairview, New Jersey at which time the following Resolution was unanimously adopted:

RESOLVED that the Company is authorized to submit an application to the Borough of Carteret for the provision of a long term tax exemption.

BE IT FURTHER RESOLVED that if the Company's application is accepted by the Borough of Carteret, the Manager of the Company is authorized to execute and deliver on its behalf, a contract with the Borough, substantially in the form attached to the application, with such changes thereto as may be negotiated by the parties.

The Manager of the Company hereby certifies that the foregoing Resolution was lawfully adopted by the Members on the date set forth above, that the foregoing Resolution is a true, accurate and complete copy of the Resolution so adopted and placed in the Company records, and that they are in full force and effect as of the date hereof.



RICHARD LaBARBIERA, Manager

October 21, 2015
Date

METES AND BOUNDS DESCRIPTION

THE LAND REFERRED TO IN THIS COMMITMENT IS DESCRIBED AND FOLLOWS:

BEGINNING AT A POINT IN THE EASTERLY LINE OF ROOSEVELT AVENUE--
(FORMERLY KNOWN AS WOODBRIDGE AVENUE) DISTANT 156.35 FEET
NORTHERLY FROM THIS INTERSECTION WITH THE EASTERLY LINE OF
ROOSEVELT AVENUE WITH THE NORTHERLY LINE OF LANDS NOW OR
FORMERLY OF GEORGE D. EMERY AND COMPANY (I.T. WILLIAMS AND SONS),
AND RUNNING THENCE:

- (1) NORTH 39 DEGREES 48 MINUTES 30 SECONDS WEST 200.25 FEET TO A POINT;
THENCE
- (2) SOUTH 47 DEGREES 19 MINUTES 30 SECONDS WEST 100.76 FEET TO A POINT;
THENCE
- (3) SOUTH 42 DEGREES 40 MINUTES 30 SECONDS EAST 200. FEET TO A POINT;
THENCE
- (4) NORTH 47 DEGREES 19 MINUTES 30 SECONDS EAST 91.75 FEET TO THE POINT
AND PLACE OF BEGINNING.

FOR INFORMATION PURPOSES ONLY
THE PROPERTY IS COMMONLY KNOWN AS:
180 ROOSEVELT AVE, CARTERET, NJ 07008

First American Title Insurance Company

SCHEDULE "C"

File No. TGT13-8120

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

BEGINNING at a point on the southeasterly line of Roosevelt Avenue, said point being 30.00 feet southwesterly from lands now or formerly of American Agricultural Chemical Company and running; thence

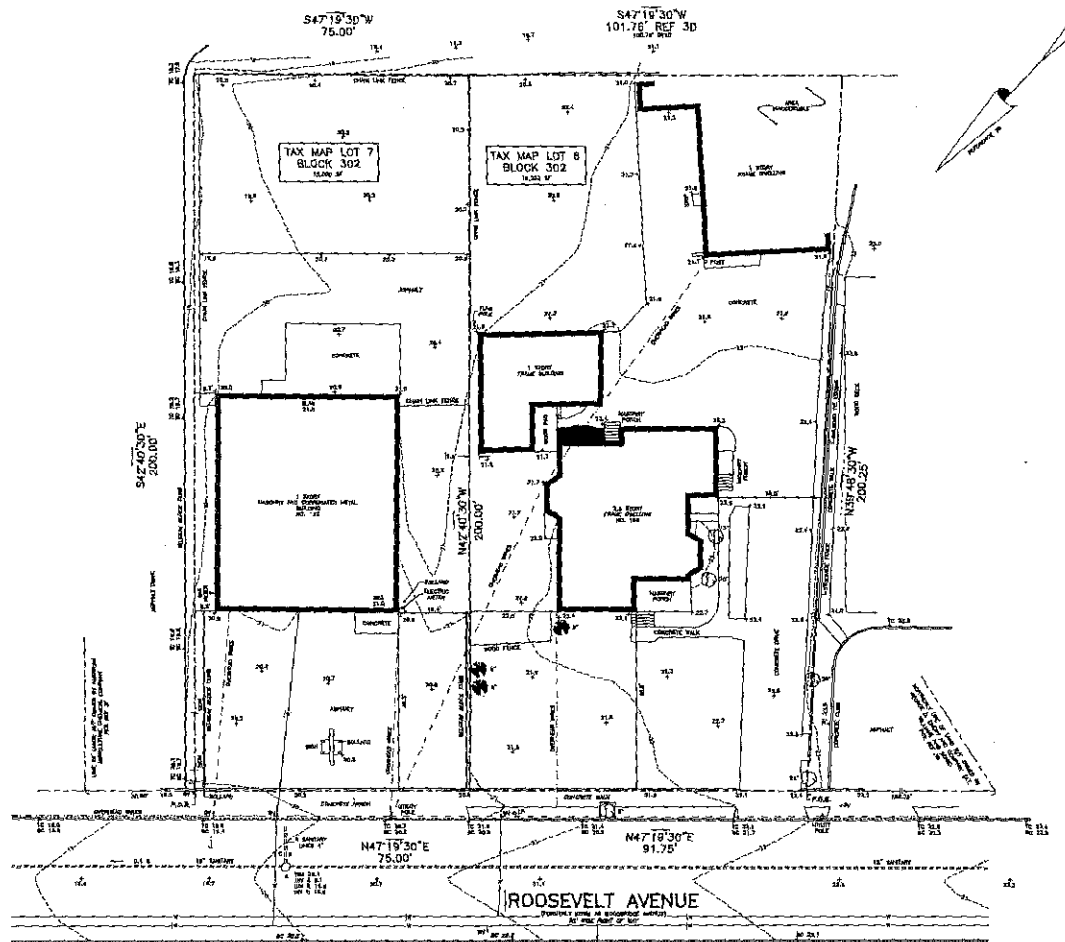
1. South 42 degrees 40 minutes 30 seconds East, along lands now or formerly of the Borough of Carteret, 200.00 feet to a point; thence
2. South 47 degrees 19 minutes 30 seconds West, still along lands of the Borough of Carteret, 75.00 feet to a point; thence
3. North 42 degrees 40 minutes 30 seconds West, 200.00 feet to the southeasterly line of Roosevelt Avenue; thence
4. North 47 degrees 19 minutes 30 seconds East along the southeasterly line of Roosevelt Avenue, 75.00 feet to a point or place of the BEGINNING.

For Informational Purposes only:

ALSO known as Lot 7 in Block 302, formerly known as Lot 6 in Block 5.1, in the Borough of Carteret Tax Map.

SURVEY

Attach survey of the project. If a survey has not yet been completed, a plotting on the official tax map may be provided at this time. A certified survey will be required prior to execution of any financial agreement.



NOTES:

1. SIGNATURE AND EMBOSSED SEAL SIGNIFY THAT THIS SURVEY WAS PREPARED IN ACCORDANCE WITH THE EXISTING CODES OF PRACTICE ADOPTED BY THE NEW JERSEY STATE BOARD OF PROFESSIONAL ENGINEERS AND LAND SURVEYORS.
2. A WRITTEN WAIVER AND DIRECTION NOT TO SET CORNER MARKERS HAS BEEN OBTAINED FROM THE ULTIMATE USER PURSUANT TO P.L.2003, C.14 (D450-36.3) AND N.J.A.C. 13:40-5.1(D).
3. ONLY COPIES MARKED WITH THE SURVEYORS EMBOSSED SEAL SHALL BE CONSIDERED VALID AND TRUE COPIES.
4. UNDERGROUND UTILITIES SHOWN HEREON FOR GRAPHICAL PURPOSES ONLY AND ARE SUBJECT TO VERIFICATION BY THE RESPECTIVE AUTHORITY.
5. VERTICAL DATUM: NGVD 1929 ESTABLISHED BY GPS.

REFERENCES:

1. TAX MAP FOR THE BOROUGH OF CARTERET, MIDDLESEX COUNTY, NEW JERSEY.
3. THE FOLLOWING DEEDS:
 A) BLOCK 302 LOT 5 DEED BOOK 3788 PAGE 004
 B) BLOCK 302 LOT 5 DEED BOOK 6610 PAGE 022
 C) BLOCK 302 LOT 6 DEED BOOK 5263 PAGE 373
 D) BLOCK 302 LOT 8 DEED BOOK 3948 PAGE 004
 E) BLOCK 302 LOT 6 & 7 DEED BOOK 2192 PAGE 004
 F) BLOCK 302 LOT 7 DEED BOOK 5536 PAGE 419
4. FIELD WORK PERFORMED ON 12-26-14.
5. FINAL CONSTRUCTION SURVEY FOR VILLA ESTATES, SITUATED IN BOROUGH OF CARTERET, MIDDLESEX COUNTY, NEW JERSEY PERFORMED BY ABBINGTON - NEY ASSOCIATES DATED 01-11-06 RECORDED IN DEED BOOK 3788 PAGE 598.

DIAZ LAND SURVEYING, LLC

PROFESSIONAL LAND SURVEYORS

237 Madison Avenue, Wyckoff, New Jersey 07481
 ph 201 560-1253 - fx 201 560-1254 - email jdiaz@diazlandsurveying.com
 Certificate of Authorization No. 240A28097800

John G. Diaz
 New Jersey Professional Land Surveyor License Number 41638

EXISTING CONDITIONS MAP
 180 & 182 ROOSEVELT AVENUE
 BOROUGH OF CARTERET
 MIDDLESEX COUNTY, NEW JERSEY
 TAX MAP LOTS 6 AND 7 BLOCK 302

Drawn By: CHH	Scale: 1" = 20'	Project No: 14218
Field Surveyed By: AZ	Date: 12-26-14	

Exhibit 7

COPY OF DEED, PURCHASE AND SALE AGREEMENT OR LEASE AGREEMENT

Please attach evidence that applicant has legal control over site(s) included in the proposed project.

The applicant has entered into a Redevelopment Agreement with the Borough dated July 17, 2015, a copy of is annexed hereto.

Exhibit 7

COPY OF DEED, PURCHASE AND SALE AGREEMENT OR LEASE AGREEMENT

Please attach evidence that applicant has legal control over site(s) included in the proposed project.

REDEVELOPMENT AGREEMENT

BY AND BETWEEN

**BOROUGH OF CARTERET,
as Redevelopment Entity,**

and

**ROOSEVELT AVE. URBAN RENEWAL COMPANY, LLC,
as Redeveloper.**

Dated as of July 17, 2015

REDEVELOPMENT AGREEMENT (the "**Redevelopment Agreement**"), dated as of July 17, 2015, by and between:

BOROUGH OF CARTERET, a public body corporate and politic of the State of New Jersey, with offices at Memorial Municipal Building, 61 Cooke Avenue, Carteret, New Jersey 07008, and its successors and assigns (the "**Borough**")

and

ROOSEVELT AVE. URBAN RENEWAL COMPANY , LLC, a limited liability company formed under the laws of the State of New Jersey, with offices at c/o Richard LaBarbiera, 242 Oradell Ave., Second Floor, Paramus, NJ 07652, and its successors and assigns ("**Redeveloper**" and, together with the Borough, the "**Parties**").

W-I-T-N-E-S-S-E-T-H:

WHEREAS, on October 2, 2014, the Municipal Council of the Borough ("Municipal Council") adopted a resolution designating the properties identified as Block 302, Lots 6 and 7 on the tax map of the Borough (the "**Redevelopment Area**") as an "area in need of redevelopment" under the Local Redevelopment and Housing Law, *N.J.S.A. 40A:12A-1 et seq.*, as amended and supplemented (the "**Redevelopment Law**"); and

WHEREAS, on December 18, 2014, the Municipal Council adopted an ordinance approving and adopting a redevelopment plan known as the 180-182 Roosevelt Avenue Redevelopment Plan for the Redevelopment Area, prepared by Beacon Planning and Consulting Services, LLC and dated October 2014 (the "**Redevelopment Plan**"); and

WHEREAS, the Borough and its affiliate the Carteret Redevelopment Agency (the "**Agency**") collectively control the Redevelopment Area, as to which the Borough has issued a formal "Request for Proposal" to solicit redevelopers to purchase and redevelop the site; and

WHEREAS, Redeveloper has expressed a desire to redevelop the Redevelopment Area and has submitted a proposal for redevelopment to the Borough in response to the request for same; and

WHEREAS, Redeveloper proposes to purchase and redevelop the Redevelopment Area by constructing thereon a project consisting of sixty (60) market-rate residential units (the "**Residential Component**" or the "**Project**"); and

WHEREAS, the Borough has determined that Redeveloper is capable of undertaking the redevelopment of the Redevelopment Area; and

WHEREAS, on November 13, 2014, the Municipal Council adopted a resolution conditionally designating Redeveloper as redeveloper of the Redevelopment Area, subject to the successful negotiation of a redevelopment agreement; and

WHEREAS, the Parties have determined to execute this Redevelopment Agreement in order to set forth the terms and conditions under which the Parties shall carry out their respective obligations with respect to the redevelopment of the Redevelopment Area, all in accordance with the Redevelopment Plan,

NOW, THEREFORE, for and in consideration of the mutual promises, representations, covenants and agreements contained herein and the undertakings of each Party to the other and such other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound hereby and to bind its successors and assigns, do mutually promise, covenant and agree as follows:

ARTICLE I

DEFINITIONS AND INTERPRETATIONS

SECTION 1.01. Definitions. In this Redevelopment Agreement, words that are capitalized, and which are not the first word of a sentence, are defined terms. The terms defined in the preambles hereto shall have the meanings assigned to such terms. Unless specifically provided otherwise or the context otherwise requires, the following terms when used in this Redevelopment Agreement shall mean:

"Affiliate" means with respect to the Redeveloper, any other Person directly or indirectly controlling or controlled by, or under direct or indirect common control with the Redeveloper. For purposes of this definition, the term "control" (including the correlative meanings of the terms "controlled by" and "under common control with") shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management policies of the Redeveloper, whether through the ownership of voting securities or by contract or otherwise.

"Agency" is defined in the recitals.

"Agency Parcel" is defined in Section 3.09(b).

"Appeal Period" shall mean the period of time specified by statute or court rule within which an appeal may be taken by any party from the grant of any Governmental Approval, and includes the period for filing an appeal to an appellate court after entry of a judgment or decision by a lower court or administrative agency.

"Applicable Law" means any statute, law, constitution, charter, ordinance, resolution, judgment, order, decree, rule, regulation, directive, interpretation, standard or similarly binding authority which, in any case, shall be enacted, adopted, promulgated, issued or enforced by any Governmental Authority, and/or court of competent jurisdiction that relates to or affects the Parties or either of them, the Redevelopment Area, the Project, or any portion thereof, the performance by the Parties of their respective obligations or the exercise by the Parties of their respective rights under this Redevelopment Agreement, including without limitation, the Municipal Land Use Law, the Redevelopment Law, the Long Term Tax Exemption Law and all Environmental Laws.

"ASTs" is defined in Section 4.01(a)

"Borough" is defined in the recitals.

"Borough Costs" is defined in Section 3.03.

"Borough Event of Default" means, with respect to the Borough, an Event of Default, as such term is defined in Section 14.01 hereof.

"Borough Indemnified Parties" means the Borough, the Agency and their respective officers, elected and/or appointed officials, agents, employees, representatives, contractors and consultants.

"Borough Parcel" means the portion of the Redevelopment Area commonly known as Block 302, Lot 6 on the tax map of the Borough.

"Borough Purchase and Sale Agreement" is defined in Section 3.09(a).

"Certificate of Completion" means a certificate issued by the Borough upon Completion of the Project pursuant to Section 10.02 hereof, in the form attached hereto as **Exhibit 3**.

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

"Commence[ment of] Construction" means the undertaking by Redeveloper of any actual physical construction of any portion of the Project, including site preparation, environmental remediation, construction of new structures or construction or upgrading of infrastructure.

"Comple[t]e, [ed] or [ion]" means with respect to the Project, or any portion thereof, that (a) all work related to the Project, or a portion thereof, or any other work or actions to which such term is applied has been completed, acquired and/or installed in accordance with this Redevelopment Agreement and in compliance with Applicable Laws so that (i) the Project, or any portion thereof that has been completed, as the case may be, may, in all respects, be used and operated under the applicable provisions of this Redevelopment Agreement, or (ii) with respect to any other work or action to which such term is applied, that the intended purpose of such work or action has been completed, (b) all permits, licenses and approvals that are required in order that a Certificate of Completion can be issued for the Project, or any portion thereof that have been completed, or such other work or action to which such term is applied are in full force and effect, and (c) such "Completion" has been evidenced by a written notice provided by the Redeveloper (with respect to the Project, or any portion thereof) in the form of Schedule 1 to the form of Certificate of Completion attached hereto as **Exhibit 3**.

"Completion Date" means the date that the Project is Completed.

"Control" (including the correlative meanings of the terms "controlled by" and "under common control with"), as used with respect to the Redeveloper, the power, directly or indirectly, to direct or cause the direction of the management policies of the Redeveloper, whether through the ownership of an interest in the Redeveloper, or by contract or otherwise.

"Declaration" is defined in Section 9.05 hereof, the form of which is attached hereto as **Exhibit 2**.

"Effective Date" means the date on which this Redevelopment Agreement is executed by the last of the Parties to so execute same, or such other date as may be agreed to by the Parties.

"Engineering Controls" means any mechanism to contain or stabilize contamination or to ensure the effectiveness of a Remediation. Engineering Controls may include, without limitation, caps, covers, dikes, trenches, leachate control systems, signs, fences and physical access barriers.

"Environmental Credit" is defined in Section 4.01(a) hereof.

"Environmental Laws" means all federal, state, regional, and local laws, statutes, ordinances, regulations, rules, codes and administrative orders or decrees, directives or judgments relating to environmental contamination or damage to or protection of the environment, including, but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA") (42 U.S.C. §§ 9601-9675); the Resource Conservation and Recovery Act of 1976 ("RCRA") (42 U.S.C. §§ 6901 *et seq.*); the Clean Water Act (33 U.S.C. §§ 1251 *et seq.*); the New Jersey Spill Compensation and Control Act (the "Spill Act") (N.J.S.A. 58:10-23.11 *et seq.*); ISRA; the New Jersey Underground Storage of Hazardous Substances Act (N.J.S.A. 58:10A-21 *et seq.*); the New Jersey Water Pollution Control Act (N.J.S.A. 58:10A-1 *et seq.*); the New Jersey Environmental Rights Act (N.J.S.A. 2A:35A-1 *et seq.*); and the rules and regulations promulgated thereunder.

"Escrow Account" is defined in Section 3.04.

"Estoppel Certificate" is defined in Section 5.04.

"Event of Default" is defined in Section 14.01.

"Exhibit(s)" means any exhibit attached hereto which shall be deemed to be a part of this Redevelopment Agreement as if set forth in full in the text hereof.

"Ferry Terminal" is defined in Section 3.07(a)

"Financial Agreement" means an agreement, substantially in the form attached hereto as Exhibit 4, that may be executed by the Borough and Redeveloper (or its affiliated Urban Renewal Entity) pursuant to the Long Term Tax Exemption Law, subject to formal approval by the Municipal Council.

"Force Majeure" is defined in Section 14.02.

"Foreclosure" is defined in Section 13.03(b).

"Governmental Approvals" means all necessary reviews, consents, permits or other approvals of any kind legally required by any local, county, state or federal governmental or quasi-governmental entity to be obtained in order to construct the Project, including but not

limited to Carteret Planning Board, Middlesex County Planning Board, Soil Conservation District approval, TWA sewer construction permit, water allocation permit, NJDEP (if applicable) and NJDOT (if applicable)..

"Governmental Authority" means the federal government, the State, any state or other political subdivision thereof, and any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government and any other governmental entity with authority or jurisdiction over any part of the permitting, Remediation, construction or operation of the Project or the Redevelopment Area, or pursuant to Environmental Laws including without limitation, the Planning Board and the NJDEP.

"Hazardous Substance" means any element, compound, material, mixture, substance, chemical or waste that is listed as hazardous or toxic, or a pollutant or contaminant, in any Environmental Law.

"Holder(s)" is defined in Section 13.01(a).

"Institutional Controls" means a mechanism used to limit human activities at or near a contaminated site, or to ensure the effectiveness of a Remediation over time, when contaminants remain at the contaminated site in levels or concentrations above the applicable remediation standard that would allow unrestricted use of the site. Institutional Controls may include, without limitation, structure, land and natural resource use restrictions, classification exception areas, well restrictions areas and deed notices.

"ISRA" means the Industrial Site Recovery Act, as amended, *N.J.S.A. 13:1K-6 et seq.*

"Jitney Service" is defined in Section 3.07(a).

"Jitney Service Fee" is defined in Section 3.07(c).

"Long Term Tax Exemption Law" means *N.J.S.A. 40A:20-1 et seq.*, as amended and supplemented.

"LSRP" is defined in Section 4.01(a) hereof.

"Municipal Council" is defined in the recitals.

"Municipal Land Use Law" means *N.J.S.A. 40:55D-1 et seq.*, as amended and supplemented.

"Natural Resource Damages" means the loss, liability or damages owed to any natural resource trustee, including, without limitation, a state, the federal government or Indian tribe, to compensate for the loss or injury to natural resources.

"NJDEP" means the New Jersey Department of Environmental Protection.

"Parties" is defined in the Recitals.

"Permitted Transfers" is defined in Section 11.03.

"Person" means any individual, sole proprietorship, corporation, partnership, joint venture, limited liability company, trust, unincorporated association, Urban Renewal Entity, institution, or any other entity.

"Planning Board" means the Planning Board of the Borough of Carteret.

"Progress Meetings" is defined in Section 6.01.

"Progress Report" is defined in Section 6.02.

"Project" is defined in the Recitals.

"Project Costs" means the costs of acquiring the Redevelopment Area, and designing, permitting and constructing the Project, including soft and hard costs.

"Project Schedule" means the schedule for the design, permitting, financing, construction and completion of the Project by the Redeveloper, as set forth in **Exhibit 1** hereto.

"Project Team" is defined in Section 9.03(b).

"Purchase Price" is defined in Section 4.0 of the Borough Purchase and Sale Agreement.

"Rahway" is defined in Section 3.07(a).

"Redeveloper" is defined in the Recitals.

"Redeveloper Event of Default" means, with respect to the Redeveloper, an Event of Default as defined in Section 14.01.

"Redevelopment Agreement" or "Agreement" means this agreement.

"Redevelopment Law" is defined in the Recitals.

"Redevelopment Plan" is defined in the Recitals.

"Redevelopment Area" is defined in the Recitals.

"Remediat[e], [ed], [ing] or [ion]" means the investigation, study, planning, design, clean-up, removal, containment, disposal, dispersal, treatment (including, but not limited to, in-situ and ex-situ treatment), management, remediation (including, but not limited to, the use of Engineering Controls and Institutional Controls, stabilization, neutralization of Hazardous

Substances required by Governmental Authority and/or pursuant to Environmental Laws which allows for the Project, including, but not limited to any operations, maintenance, and monitoring activities that may be required after completion of the foregoing.

"Residential Component" is defined in the Recitals.

"Retail Component" is defined in the Recitals.

"Scheduled Completion Date" means the anticipated Completion Date as set forth in the Project Schedule attached hereto as **Exhibit 1**, subject to any extensions granted in accordance with this Redevelopment Agreement.

"Section" means a section or subsection of this Redevelopment Agreement.

"Site Plan" means the Preliminary Site Plan or Final Site Plan, as applicable, depicting those aspects of the Project Improvements required pursuant to the Borough's site plan ordinance and pursuant to N.J.S.A. 40:55D-7.

"State" means the State of New Jersey.

"Substantial Completion" or **"Substantially Completed"** means that the requirements set forth in clauses (a) through (c), inclusive, of the definition of "Completion" have been satisfied, with the exception of certain immaterial portions of the work relating to the Project, or portion thereof, if applicable, that have been Completed, or such other work remains to be Completed as long as (a) the Redeveloper, with respect to the Project, has prepared and delivered to the Borough a "punch list" of items requiring completion or correction in order for the Redeveloper to fully comply with the terms of this Redevelopment Agreement, (b) "punch list" items have been reasonably agreed to by the Borough, and (c) such "punch list" items are capable of being Completed within ninety (90) days of the date that Completion is certified, as set forth in the written notice provided under (c) of the definition of Completion, or such later date as is mutually acceptable to the Parties, as long as the public health, welfare or safety is not impaired by such additional time for Completion; and provided further however, that all such "punch list" items shall be Completed under all circumstances within (i) one hundred eighty (180) days following the date that Completion is certified, as provided above, with respect to the exterior of any buildings and (ii) three hundred sixty-five (365) days following the date that Completion is certified, as provided above, with respect to the interiors of any buildings. "Substantial Completion" shall be evidenced by issuance of a temporary Certificate of Occupancy for the Project, or any portion or phase thereof that has been Substantially Completed.

"Term" means that period of time from the Effective Date of this Redevelopment Agreement until the Borough issues the Certificate of Completion for the Project, or applicable portion thereof, or this Agreement is terminated, whichever is sooner.

"Transfer" is defined in Section 11.02.

"Urban Renewal Entity" means an urban renewal entity formed by the Redeveloper (including the Redeveloper itself if the Redeveloper converts to an urban renewal entity) in accordance with the Long Term Tax Exemption Law and this Redevelopment Agreement to construct the Project.

"USTs" is defined in Section 4.01(a)

"Utilities" means water, sanitary sewer and storm water facilities and natural gas, electricity, and voice and data transmission facilities.

"Woodbridge" is defined in Section 3.07(a)

SECTION 1.02. Interpretation and Construction. In this Redevelopment Agreement, unless the context otherwise requires:

(a) The terms "hereby", "hereof", "hereto", "herein", "hereunder" and any similar terms, as used in this Redevelopment Agreement, refer to this Redevelopment Agreement, and the term "hereafter" means after, and the term "heretofore" means before the date of delivery of this Redevelopment 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 Redevelopment 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 Redevelopment 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) Each right of the Borough to review or approve any actions, plans, specifications, or other obligations of the Redeveloper hereunder shall be made by the Borough official(s) with legal authority to conduct such review or grant such approvals. Any review contemplated by this Redevelopment Agreement shall be made in a timely manner. Upon request of the Redeveloper, the Borough shall inform the Redeveloper of all officials with the required authority.

(g) 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.

(h) Unless otherwise indicated, any "fees and expenses" shall be required to be actual, out of pocket, customary and reasonable.

[END OF ARTICLE I]

ARTICLE II

PROJECT; GREEN TECHNOLOGY

SECTION 2.01. Project. The overall development of the Redevelopment Area will include the Project to be constructed by the Redeveloper. The Project shall be constructed consistent with the Redevelopment Plan, as it may be amended from time to time, this Agreement, the Site Plan and all Applicable Laws. The Redeveloper initially plans to offer the units of the Project for rent; provided, however, that the Redeveloper will offer the units for sale as condominiums if Redeveloper determines, in its reasonable business judgment, that the appropriate market exists for such sale.

SECTION 2.02. Infrastructure Improvements. Except as otherwise set forth herein, Redeveloper shall provide for the timely implementation of infrastructure improvements necessary to complete the Project. Redeveloper shall cooperate with the Borough in all respects to insure that the implementation of such infrastructure improvements does not unreasonably interfere with the operation of the existing utilities. Redeveloper agrees to provide all performance and maintenance bonds as required by the Governmental Approvals.

SECTION 2.03. Project Schedule. If Redeveloper fails to meet the Completion Date set forth in the Project Schedule or determines that it will fail to meet the Completion Date, Redeveloper, within a reasonable time, shall provide notice to the Borough stating: (a) the reason for the failure to complete the applicable task; (b) Redeveloper's schedule for completing such task; and (c) the method or methods by which Redeveloper proposes to achieve subsequent tasks by the Completion Date. This Section shall in no way limit the right of the Borough under Article XIV or other applicable provisions of this Agreement.

[END OF ARTICLE II]

ARTICLE III

FINANCIAL OBLIGATIONS

SECTION 3.01. The Redeveloper's Financial Commitment. The Redeveloper represents and warrants that to the best of Redeveloper's knowledge and belief and subject to the terms of Section 13.01(d), it has obtained or can obtain and intends to commit the requisite equity and debt financing in an amount necessary to implement and complete the Project.

SECTION 3.02. Project Costs. All costs of implementing this Redevelopment Agreement and completing the Project incurred by the Redeveloper (including costs relating to demolition) will be borne by the Redeveloper, including Borough Costs as specified in Section 3.03 hereof (for which Redeveloper shall reimburse the Borough and/or Agency).

SECTION 3.03. Borough Costs. In addition to the Redeveloper's costs for the Project, the Redeveloper agrees to provide funding to the Borough or the Agency for all reasonable out-of-pocket costs incurred thereby in connection with the redevelopment of the Redevelopment Area ("**Borough Costs**"). Borough Costs shall include, but not be limited to, any fees and costs of any professional consultant retained by the Borough or the Agency in connection with the Project, including attorneys, technical consultants, planners, financial consultants and appraisers, among others, and all out-of-pocket costs and expenses of the Borough or the Agency.

SECTION 3.04. Payment of Borough Costs. The Redeveloper agrees that it will reimburse the Borough and the Agency, as applicable, for all Borough Costs in accordance with the terms hereof. The Redeveloper agrees that it will establish an escrow account (the "**Escrow Account**"), having an initial balance of Twenty-Five Thousand Dollars (\$25,000). The Redeveloper agrees that it will replenish the Escrow Account in the event that the balance drops below Seven Thousand Five Hundred Dollars (\$7,500). Funds in the Escrow Account will be applied to the payment or reimbursement of the Borough Costs as provided in this Redevelopment Agreement, including costs that were incurred prior to the date hereof in accordance with the terms of this Section 3.04. At least ten (10) days prior to making any disbursement from the Escrow Account, written notice of the proposed disbursement shall be mailed to the Redeveloper, setting forth: (a) the amount of the disbursement; (b) the name of the person, company or entity designated to receive payment; and (c) a description, in reasonable detail, of the particular cost to be paid or reimbursed in accordance with this Redevelopment Agreement (including hours worked and billing rates). If the Redeveloper does not object to such disbursement within ten (10) days of receipt of such notice, the Redeveloper will be deemed to have acquiesced to the same. The Parties make reference to the Interim Costs Agreement between the Borough and the Redeveloper dated January 9, 2015, which established an escrow account to pay certain costs prior to the date of this Agreement. To the extent there is any balance in that escrow account as of the date hereof, such balance shall be transferred to the Escrow Account and shall be credited against the initial required balance set forth above. To the extent there is a deficiency in that escrow account to pay for such costs incurred prior to the date of this Redevelopment Agreement that are required to be paid in accordance with the terms of the Interim Cost Agreement, then such costs shall be paid from the funds in the Escrow Account in accordance with the terms hereof. The Interim Costs Agreement is hereby terminated.

SECTION 3.05. Governmental Approval Fees. The Redeveloper will pay all fees for permits required by any Governmental Authority for the construction and development of the Project, including any permit fees payable to all required Governmental Authorities for any Governmental Approvals.

SECTION 3.06. Application for Tax Exemption; Urban Renewal Entity. Following the Effective Date, the Redeveloper may submit to the Borough an application for tax exemption in accordance with the Long Term Tax Exemption Law and the terms of the Financial Agreement (in the form attached hereto as **Exhibit 4**), which shall provide, *inter alia*, that the Redeveloper shall construct the Project and shall make annual payments to the Borough in lieu of taxes as follows: (a) in the event the Redeveloper offers the units of the Project for rent, said payments shall be in an amount equal to fifteen percent (15%) of the Redeveloper's Annual Gross Revenue (as defined in the Financial Agreement); or (b) in the event the Redeveloper conveys fee simple title to the units of the Project, said payments shall be in an amount equal to two percent (2%) of the "total project cost" as that term is defined and used in the Long Term Tax Exemption Law. The entering of the Financial Agreement between the Parties shall be subject to formal approval by the Municipal Council and Redeveloper meeting all of the requirements of the Long Term Tax Exemption Law.

SECTION 3.07. Jitney Service/Ferry Terminal Fee.

(a) The Parties recognize in addition to other improvements in and around the Borough, the Borough is in the process of constructing a ferry terminal on the Arthur Kill (the "**Ferry Terminal**"), from which a ferry will transport persons to ferry terminals located in New York, New York and other parts of the State. New Jersey Transit's rail system includes station stops in Rahway City, a municipal corporation of the State located in Union County ("**Rahway**") and Woodbridge Township, a municipal corporation of the State located in Middlesex County ("**Woodbridge**"), both of which are located near the Borough. The Borough intends to provide a jitney service that will transport passengers between and among the Ferry Terminal, the Rahway and Woodbridge station stops, the Redevelopment Area, other residential developments located throughout the Borough and various other locations throughout the Borough (collectively, the "**Jitney Service**").

(b) Residents of all residential units currently in development and construction stages, including the Project, and all residential units to be developed and constructed in the Borough, will make payments to the Borough, on a monthly basis, to help finance the costs of operating the Jitney Service and the Ferry Terminal. All other users of the Jitney Service will make payments to help finance the costs of operating the Jitney Service and the Ferry Terminal on a monthly basis or, in the alternative, on a per-trip or other incremental basis.

(c) In connection with the Residential Component, the Redeveloper, in addition to fully complying with all conditions constituting part of the resolutions memorializing approval by the Planning Board of the Project, shall pay, directly to the Borough, the sum of Twenty Dollars (\$20.00) per month for each residential unit constructed (the "**Jitney Service Fee**").

(d) The initial Jitney Service Fee payment for each unit shall immediately become due and payable upon: (1) the issuance of a Certificate of Occupancy for such unit; and (2) the commencement of the Jitney Service to the Ferry Terminal or to the Rahway and Woodbridge station stops, whichever is earlier. The Jitney Service Fee shall thereafter be due and payable no later than the tenth (10th) day of each month.

(e) In exchange for payment of the Jitney Service Fee, each resident and/or tenant of units in the Residential Component will be entitled to utilize the Jitney Service on an unlimited basis during the month corresponding to such payment(s). The Borough will provide such residents and/or tenants with identifying permits, passes or other documentation evidencing such entitlement, which documentation must be presented to the operator of the Jitney Service prior to use thereof.

(f) In connection with the Residential Component, as of the fifth anniversary of the execution of this Redevelopment Agreement, and on each successive fifth anniversary thereof, the Borough may reevaluate the costs necessary to operate the Jitney Service and the Ferry Terminal. Except as otherwise set forth herein, in connection with such periodic review, the Borough hereby specifically reserves the right to terminate this Section 3.07 of the Redevelopment Agreement or, in the alternative, to increase the Jitney Service Fee. The Borough agrees that, if it determines to increase the Jitney Service Fee after any such five (5) year review period, such fee will not be increased more than twenty-five percent (25%) above the then current fee. The Borough agrees that in the event of any such increase, the Jitney Service Fee shall not exceed the monthly fee paid by non-residents of the Project for monthly passes for the Jitney Service. The Redeveloper shall have the right to terminate this Section 3.07 no earlier than twenty (20) years from the Effective Date; this obligation shall survive the end of the Term of this Agreement (i.e. the upon issuance of any Certificate of Completion) until the date specified herein. The Redeveloper shall notify the Borough not less than one hundred eighty (180) days prior to such date of its election to so terminate this Section 3.07. In the event that the Redeveloper fails to notify the Borough of its election to terminate this Section 3.07, this Section 3.07 shall be deemed extended for an additional five (5) year term consistent with the review periods described herein. The Redeveloper shall have the right to terminate this Section 3.08 upon the conclusion of any such additional five (5) year term, subject to the requirement that it provide notice of such termination not less than one hundred eighty (180) days prior to the conclusion of any such additional five (5) year term. In the event the Borough or the Redeveloper terminate(s) this Section 3.07 pursuant to this subsection 3.07(f), residents of the Residential Component will thereafter make payments for use of the Jitney Service according to the same terms as non-residents of the Residential Component.

SECTION 3.08. Carteret Health and Wellness Center.

(a) The Redeveloper agrees to enter into an agreement with the operator of the Carteret Health and Wellness Center, located at 60 Cooke Avenue in the Borough, for pre-paid memberships thereto at a rate of Forty-Five Dollars (\$45.00) per unit per month, initially payable upon the issuance of a Certificate of Occupancy for such unit, and payable thereafter on or by the fifteenth (15th) day of each month. The execution of such agreement by the Redeveloper with

such operator shall be a condition precedent to the Borough's issuance of a Certificate of Occupancy for any unit within the Residential Component.

(b) In exchange for the aforementioned payment, each resident and/or tenant of units in the Residential Component for whom the monthly payment has been made will be entitled to utilize the Carteret Health and Wellness Center on an unlimited basis during the month corresponding to such payment.

SECTION 3.09. Conveyance of Redevelopment Area to Redeveloper.

(a) The Borough shall convey fee simple title to the Redevelopment Area to the Redeveloper in accordance with the terms of the Purchase and Sale Agreement in substantially the same form as attached hereto as **Exhibit 5** (the "**Borough Purchase and Sale Agreement**"). Except as otherwise set forth herein or in the Borough Purchase and Sale Agreement, the Redeveloper shall acquire the Redevelopment Area in an "as is" condition.

(b) The Parties understand that, as of the date hereof, the Agency owns a portion of the Redevelopment Area, namely the parcel commonly known as Block 302, Lot 7 on the tax map of the Borough (the "**Agency Parcel**"). The Redeveloper's obligations hereunder and under the Borough Purchase and Sale Agreement are contingent upon the Agency's conveyance of the Agency Parcel to the Borough, which will thereupon convey the entire Redevelopment Area, including the parcel referred to herein as the Borough Parcel, to the Redeveloper pursuant to the Borough Purchase and Sale Agreement. The Agency agrees to convey the Agency Parcel when and in the manner required to enable the Borough to timely perform its obligations under this Agreement and the Borough Purchase and Sale Agreement.

[END OF ARTICLE III]

ARTICLE IV

ENVIRONMENTAL MATTERS

SECTION 4.01. Environmental Compliance in General. The Parties acknowledge that there may be present Hazardous Substances on, under or migrating to or from the Redevelopment Area that may require Remediation. The Redeveloper agrees and specifically assumes any and all responsibility, liability and costs for any such Remediation of the Redevelopment Area or anything affected off-site, as required by applicable Environmental Laws and Governmental Authorities, except to the extent that the prior owner(s) of the Redevelopment Area retain such responsibility or liability. The Redeveloper, as owner of record and principal responsible party for the Redevelopment Area, will prepare and submit all applications and documentation necessary to comply with the requirements of all Environmental Laws. The Redeveloper also agrees that it shall obtain all requisite approvals from the appropriate Governmental Authority (or Licensed Site Remediation Professional) for the Remediation of the Redevelopment Area. Upon the execution and delivery of this Agreement, the Borough and the Agency shall deliver to Redeveloper all reports, studies and investigations in respect of the environmental condition of the Redevelopment Area. Redeveloper shall have sixty (60) days from the execution and delivery of this Agreement to investigate the environmental condition of the Redevelopment Area. If Redeveloper is dissatisfied with the environmental condition of the Redevelopment Area, Redeveloper shall, prior to the expiration of the sixty (60) day period, have the right to terminate this Agreement, which shall be exercised by the delivery of a notice to terminate. Upon receipt of such a notice to terminate, the Borough shall remit to Redeveloper all remaining funds in the Escrow Account.

SECTION 4.02. Redeveloper Indemnification of Borough. In conjunction with the Indemnification provisions of Article XII hereof, the Redeveloper covenants and agrees, at its expense, to pay and to indemnify, protect, defend and hold the Borough Indemnified Parties harmless from and against all liability, losses, damages (including, without limitation, Natural Resource Damages), demands, costs, claims, lawsuits, administrative proceedings, fines, penalties and expenses (including attorneys' fees and court costs) of every kind, character and nature arising from or associated with (i) the performance or any failure or delay of performance by the Redeveloper of its responsibilities and obligations to Remediate the Redevelopment Area or anything affected off-site, as required by applicable Environmental Laws and Governmental Authorities; and (ii) the presence of Hazardous Substances, whether known or unknown, on, under or migrating from the Redevelopment Area, but excluding damage, liability, costs and expenses to the extent that same result from the negligence or willful misconduct of the Borough or Borough Indemnified Parties.

SECTION 4.03. Borough Cooperation and Environmental Reports. If off-site disposal of either Hazardous Substances or non-Hazardous Substances is required as part of the Remediation of the Redevelopment Area or the construction of the Project, the Borough will not be required to sign any manifests relating to such disposal. Upon the execution and delivery of this Redevelopment Agreement, the Borough will provide to the Redeveloper and its engineering consultants any and all copies of environmental reports that the Borough obtains or has possession of in connection with the Redevelopment Area. The Redeveloper will provide to the

Borough and its engineering consultants copies of any and all environmental reports that Redeveloper submits to NJDEP.

SECTION 4.04. Termination of Agreement. Notwithstanding anything herein to the contrary, this Redevelopment Agreement shall automatically terminate if the Redeveloper, as the "Buyer" named in the Borough Purchase and Sale Agreement, terminates the Borough Purchase and Sale Agreement under Section 9.5 thereof. In that event, the Redeveloper's designation as the redeveloper of the Redevelopment Area shall automatically terminate and neither Party shall have any further rights or obligations under this Redevelopment Agreement, except as may otherwise be set forth herein. Upon such termination, the Borough shall remit to Redeveloper all remaining funds in the Escrow Account, except to the extent such funds are necessary to pay Borough Costs incurred through such date. .

[END OF ARTICLE IV]

ARTICLE V

CONSTRUCTION OF PROJECT

SECTION 5.01. Construction of Project. (a) Project. Subject to the terms of this Redevelopment Agreement, (i) the Project shall be implemented in accordance with the Redevelopment Plan, the Site Plan and the Project Schedule, including obtaining all Governmental Approvals, and (ii) Redeveloper shall commence physical work on the Project in accordance with the Project Schedule, and Complete the Project on or prior to the Scheduled Completion Date, as set forth on **Exhibit 1** hereto. Except as otherwise provided in this Agreement, the Redeveloper will construct, or cause to be constructed, the Project at its sole cost and expense.

(b) **Modification of Project Schedule.** In the event that the Redeveloper is unable, for reasonable cause, to comply with any time frame set forth on the Project Schedule, the Redeveloper shall provide written notice to the Borough at least thirty (30) days prior to such Date (or such lesser period of time as the circumstances may require), setting forth in reasonable detail (i) the reason for the failure to satisfy the required tasks necessary to comply with the Project Schedule, (ii) the Redeveloper's proposed actions to remedy any delay, and (c) the Redeveloper's proposal for revising the Project Schedule. In such event the Project Schedule shall be modified accordingly, subject to the Borough's consent, which shall not be unreasonably withheld, conditioned or delayed. The Borough's approval of any such extension shall not limit in any manner the rights of the Borough or diminish the obligations of the Redeveloper with respect to the Project under this Redevelopment Agreement.

SECTION 5.02. Relocation of Utilities. The Redeveloper acknowledges that providers of Utilities may have certain rights with respect to the Redevelopment Area and may own certain facilities located therein. The Redeveloper agrees that, except as otherwise set forth herein, it is its sole responsibility to undertake the appropriate measures to negotiate with, acquire, remove, relocate or otherwise address the existence of these Utilities and improvements and easements therefor, in order to complete construction of the Project, as provided by this Redevelopment Agreement. Notwithstanding the foregoing, to the extent reasonably requested by the Redeveloper, the Borough shall cooperate in facilitating the installation and/or relocation of any such affected Utilities.

SECTION 5.03. Maintenance of Redevelopment Area. Following commencement of physical construction of the Project, the Redeveloper will maintain, in accordance with Applicable Law, all areas of the Redevelopment Area including the buildings, parking areas, landscaping, streetscaping, sidewalks including curbing and traffic calming devices (but not the paved roadway, unless disturbed by the Redeveloper), trash collection and receptacles, and all such issues identified in Chapters 198 (Property Maintenance Code) and 222 (Streets and Sidewalks) of the Borough Code.

SECTION 5.04. Estoppel Certificates. Within thirty (30) days following written request therefore by a Party hereto, or of any Holder, purchaser, tenant or other party having an interest in the Redevelopment Area, the other party shall issue a signed certificate ("Estoppel

Certificate) stating that (i) this Redevelopment Agreement is in full force and effect, (ii) there is no default or breach under this Redevelopment Agreement (nor any event which, with the passage of time and the giving of notice would result in a default or breach under this Redevelopment Agreement), or stating the nature of the default or breach or event, if any, and (iii) any other matter reasonably requested. No more than a reasonable number of Estoppel Certificates may be requested per year.

SECTION 5.05. Cooperation. The Parties shall fully cooperate with each other as necessary to effectuate the Project, including entering into additional agreements that may be required; provided however, that such actions and/or agreements shall not result in a material increase or decrease in any Party's respective rights, obligations and liabilities hereunder.

[END OF ARTICLE V]

ARTICLE VI

PROJECT OVERSIGHT

SECTION 6.01. Progress Meetings. The Parties agree to attend and participate in monthly progress meetings ("**Progress Meetings**") to report on the status of the Project and to review the progress under the Project Schedule. Progress Meetings may be held more frequently at the reasonable request of the Borough. The Borough shall give the Redeveloper seven (7) days advance written notice of any additional meetings. The Progress Meetings shall be held at Borough Hall. Prior to the meeting, representatives of the Borough may visit the Redevelopment Area to inspect the progress of the work on the Project, in accordance with Section 6.03.

The agenda for the Progress Meetings shall include, but not be limited to, (a) a status report with regard to Governmental Approval submissions and approvals, (b) financial commitments, (c) construction of the Project, and (d) compliance with the Redevelopment Plan. At the Progress Meetings, this information will be evaluated by the Borough to determine compliance with the terms and conditions of this Redevelopment Agreement and the Project Schedule. The Borough shall have the right at all reasonable times to inspect the construction contracts, financing commitments and agreements, books and records pertinent to the construction contracts, insurance policies, and such other agreements of the Redeveloper which are pertinent to the purposes of this Redevelopment Agreement and to the Progress Meetings in order to insure completion of the Project in accordance with the Project Schedule, provided, however, Redeveloper shall have the right to withhold from the Borough's review, any materials that Redeveloper deems to be confidential and/or proprietary in nature.

SECTION 6.02. Progress Reports. The Redeveloper shall submit to the Borough a detailed quarterly written progress report ("**Progress Report**") (or more frequent Progress Reports, if reasonably requested by the Borough) which shall include a description of activities completed, the activities to be undertaken prior to the next quarterly Progress Report, the status of all Governmental Approvals, an explanation of each activity, if any, which is causing delay, a description of problem areas, current and anticipated delaying factors and their estimated impact on performance of other activities and completion dates in the Project Schedule and an explanation of corrective action taken or proposed. The written progress report shall also contain the most current Estoppel Certificate, if any.

SECTION 6.03. Access to Property. The Borough and its authorized representatives shall have the right to enter the Redevelopment Area in accordance with Applicable Law to inspect the Project and any and all work in progress for the purpose of furthering its interest in this Redevelopment Agreement provided that such inspections shall not interfere with work in progress. In no event shall the Borough's inspection of the Project (or any construction activities related thereto) be deemed acceptance of the work or be deemed to waive any right the Borough has under this Redevelopment Agreement. The Borough acknowledges hereby that the Redevelopment Area will be an active construction site and that the Redeveloper shall not be liable or responsible to the Borough, its employees or agents for injury to person or property sustained in connection with any such inspection, except to the extent that the Redeveloper willfully or negligently violates its standard of due care owed to invitees.

SECTION 6.04. Submissions. The Redeveloper shall be required to provide the Borough with a copy of each and every application for Governmental Approvals submitted to Governmental Authorities at the same time the Redeveloper submits those applications to such Governmental Authorities.

[END OF ARTICLE VI]

ARTICLE VII

GENERAL DEVELOPMENT REQUIREMENTS

SECTION 7.01. Scope of Undertaking. Except as expressly provided, herein, the services and responsibilities undertaken by the Redeveloper hereunder include all aspects of the design, development, and construction of the Project, including without limitation, all design, engineering, permitting and administrative aspects, the performance of or contracting for and administration and supervision of all physical work required in connection with the Project, arrangement for interim and final inspections and any other actions required to satisfy the requirements of any applicable Governmental Approvals, the administration, operation and management, or contracting for the administration, operation and management of the Project and all aspects of the funding of the Project, including equity funding and construction, interim and permanent financing, all at the sole cost and liability of the Redeveloper.

SECTION 7.02. Standards of Construction. Without limitation, all work on the Project shall be performed in a good and workmanlike manner, with the materials called for under the Governmental Approvals being of such quality as is required by such approvals.

SECTION 7.03. Compliance With Applicable Law. The Project and all materials, fixtures and equipment used or installed in connection therewith shall be in full compliance with all Applicable Laws, subject to any waivers, variances, deviations, exceptions or similar approval granted in accordance with Applicable Law.

SECTION 7.04. Payment of Project Costs. The Redeveloper shall pay (or cause to be paid) when in a timely manner, all costs and expenses incurred by Redeveloper, including, without limitation, all contractors' requisitions and the cost of materials and equipment incurred in connection with work on the Project and all fees and expenses of any consultants and professionals and like providers acting for (or on behalf of) the Redeveloper, provided, however, nothing herein shall be construed to prohibit Redeveloper from withholding any payments if, for any reason, in Redeveloper's reasonable business judgment, Redeveloper disputes the amount alleged to be owed.

[END OF ARTICLE VII]

ARTICLE VIII

APPROVAL OF APPLICATIONS FOR GOVERNMENTAL APPROVALS

SECTION 8.01. Applications for Governmental Approvals. (a) The Redeveloper (at its sole cost and expense) shall apply for and obtain all Governmental Approvals necessary to construct and use the Project. The Redeveloper shall provide the Borough with a copy of each application for Governmental Approvals at such time as such applications are submitted.

The Redeveloper shall provide the Borough with a copy of each Governmental Approval received by the Redeveloper with respect to the Project.

(b) To the extent reasonably requested by the Redeveloper, and to the extent applicable, the Borough shall provide assistance and support to the Redeveloper in connection with any applications for any Governmental Approvals required to be obtained for or with respect to the Project.

(c) In the event that all necessary Governmental Approvals for the Project are not obtained from the required Governmental Authorities prior to the 180th day after the date of this Redevelopment Agreement, on terms and conditions acceptable to Redeveloper in its sole discretion, or if Redeveloper determines that the Governmental Approvals for the Project cannot be obtained on terms and conditions reasonably acceptable to Redeveloper, then Redeveloper shall have the right to terminate this Redevelopment Agreement upon written notice to the Borough. No Governmental Approval shall be deemed to have been obtained (i) until the Appeal Period relating thereto has expired and no appeal has been taken, or (ii) if an appeal is filed within the applicable Appeal Period, until such appeal shall have been finally resolved in a manner sustaining the challenged Governmental Approval. If this Redevelopment Agreement is terminated pursuant to the terms of this Section 8.01(c), then, except as expressly set forth herein to the contrary, this Redevelopment Agreement (including, without limitation, all the covenants contained herein) shall be of no further force and effect and the Parties hereto shall have no further rights, liabilities and/or obligations hereunder, except that the Redeveloper shall be responsible for the payment of all Borough Costs incurred prior thereto.

[END OF ARTICLE VIII]

ARTICLE IX

REPRESENTATIONS AND WARRANTIES; REDEVELOPER COVENANTS

SECTION 9.01. Representations and Warranties by the Redeveloper. The Redeveloper hereby represents and warrants the following to the Borough for the purpose of inducing the Borough to enter into this Redevelopment Agreement and to consummate the transactions contemplated hereby, all of which shall be true as of the date hereof:

(a) The Redeveloper is a limited liability company organized under the laws of the State, is in good standing under the laws of the State, and has all requisite power and authority to carry on its business as now and whenever conducted, and to enter into and perform its obligations under this Redevelopment Agreement.

(b) The Redeveloper has the legal power, right and authority to enter into this Redevelopment Agreement and the instruments and documents referenced herein to which the Redeveloper is a party, to consummate the transactions contemplated hereby, to take any steps or actions contemplated hereby, and to perform its obligations hereunder.

(c) This Redevelopment Agreement has been duly authorized, executed and delivered by the Redeveloper; and is valid and legally binding upon the Redeveloper and enforceable in accordance with its terms. The execution and delivery thereof shall not constitute a default under or violate the terms of any indenture, agreement or other instrument to which the Redeveloper is a party.

(d) No receiver, liquidator, custodian or trustee of the Redeveloper has been appointed as of the Effective Date, and no petition to reorganize the Redeveloper pursuant to the United States Bankruptcy Code or any similar statute that is applicable to the Redeveloper has been filed as of the Effective Date.

(e) No adjudication of bankruptcy of the Redeveloper or a filing for voluntary bankruptcy by the Redeveloper under the provisions of the United States Bankruptcy Code or any other similar statute that is applicable to the Redeveloper has been filed as of the Effective Date.

(f) No indictment has been returned against any partner of the Redeveloper with respect to any transaction related to the transactions contemplated by the terms of this Redevelopment Agreement or otherwise.

(g) There are no suits, other proceedings or investigations pending or, to the best of the Redeveloper's knowledge, threatened against the Redeveloper that would have a material adverse effect on the financial condition of the Redeveloper.

(h) All materials and documentation submitted by the Redeveloper and its agents to the Borough and their agents were, to the best of Redeveloper's knowledge, at the time of such submission, and as of the Effective Date, materially accurate, and the Redeveloper shall continue

to inform the Borough of any material and adverse changes in the documentation submitted. The Redeveloper acknowledges that the facts and representations contained in the information submitted by the Redeveloper are a material factor in the decision of the Borough to enter into this Redevelopment Agreement.

(i) Subject to obtaining construction financing, the Redeveloper is financially and technically capable of developing, designing, financing and constructing the Project.

(j) Except as otherwise provided in this Agreement, the cost and financing of the Project is the responsibility of the Redeveloper.

(k) The ownership structure of the Redeveloper is set forth in Exhibit 6. The Redeveloper shall, at such times as the Borough may reasonably request, furnish the Borough with a complete statement subscribed and sworn to by the managing member of the Redeveloper, setting forth all of the ownership interests in the Redeveloper greater than ten percent (10%), or other owners of equity interests of the Redeveloper greater than ten percent (10%) and the extent of their respective holdings, and in the event any other parties have a beneficial interest in the Redeveloper greater than ten percent (10%), their names and the extent of such interest.

If reasonably requested by the Borough, the Redeveloper shall, from time to time, update and reaffirm the representations and warranties set forth in this Section 9.01.

SECTION 9.02. Representations and Warranties by the Borough. The Borough hereby represents and warrants the following to the Redeveloper for the purpose of inducing the Redeveloper to enter into this Redevelopment Agreement and to consummate the transactions contemplated hereby, all of which shall be true as of the date hereof:

(a) The Borough has the legal power, right and authority to enter into this Redevelopment Agreement and the instruments and documents referenced herein to which the Borough is a party, to consummate the transactions contemplated hereby, and to perform its obligations hereunder.

(b) This Redevelopment Agreement has been duly authorized, executed and delivered by the Borough and is valid and legally binding upon the Borough and enforceable in accordance with its terms on the basis of laws presently in effect and the execution and delivery thereof shall not, with due notice or the passage of time, constitute a default under or violate the terms of any indenture, agreement or other instrument to which the Borough is a party.

(c) There is no pending or, to the best of the Borough's knowledge, threatened litigation that would in any way (i) contest or seek to invalidate the Redeveloper's ability to commence performance of its obligations under the Redevelopment Agreement, or (ii) prevent the Borough from performing its duties and obligations hereunder.

(d) There are no suits, other proceedings or investigations pending or, to the best of the Borough's knowledge, threatened against the Borough that would have a material adverse effect on the Borough's financial condition.

SECTION 9.03. Delivery of Documents by the Redeveloper. The Redeveloper agrees to deliver the following fully executed collateral documents simultaneously with the execution of this Redevelopment Agreement and the Borough hereby acknowledges the receipt of such documents:

(a) Certified copies of the certificate of formation and certificate of good standing of the Redeveloper.

(b) A comprehensive list of the names, addresses, email addresses and telephone numbers of all individuals who will comprise the Redeveloper's "Project Team" including, but not limited to, those individuals who will be directly responsible for managing the Project's design, approvals and construction. The Redeveloper shall provide notice to the Borough of any changes in the representatives on the Project Team.

SECTION 9.04. Redeveloper Covenants. Redeveloper covenants and agrees that, subject to the terms hereof, and except as explicitly provided herein, including Section 9.07 below (collectively, "**Redeveloper Covenants**");

(a) The Redeveloper shall use diligent efforts to obtain all Government Approvals necessary for the construction and development of the Project. The Redeveloper shall construct, improve, operate and maintain the Project in compliance with all Governmental Approvals, and other laws, ordinances, approvals, rules, regulations and requirements applicable thereto including, but not limited to, such zoning, sanitary, pollution and other environmental safety ordinances, laws and such rules and regulations thereunder as shall be binding upon the Redeveloper under applicable laws.

(b) The Redeveloper shall use commercially reasonable efforts to (i) obtain financing for the Project, (ii) construct and develop the Project with due diligence and (iii) commence and Complete each item in the Project Schedule on or prior to the applicable date set forth in the Project Schedule and, for those items for which commencement dates only are given, such items shall be completed in a commercially reasonable period. All activities performed under this Redevelopment Agreement shall be performed in accordance with the level of skill and care ordinarily exercised by reputable developers of similar developments of the character, scope and composition of the Project.

(c) The Redeveloper shall construct the Project in accordance with this Redevelopment Agreement, the Redevelopment Law, the Redevelopment Plan, and all other Applicable Law and, in the event that the Redeveloper wishes to materially change or modify the Project, notwithstanding the fact that such material change or modification is authorized by the Redevelopment Plan, the Borough's written approval (which shall not be unreasonably withheld, conditioned or delayed) must be secured prior to proceeding with any activities relating to such proposed material modifications. The Redeveloper acknowledges that the Borough has relied on the Project Schedule in entering into its obligations under this Redevelopment Agreement.

(d) The Redeveloper shall fulfill its material obligations under any and all agreements it enters into with third parties with respect to the acquisition, construction, leasing, financing and other matters relating to the Project; provided, however, that this covenant is not intended to prevent the Redeveloper from contesting the scope or nature of such obligations as and to the extent provided in such agreements.

(e) The Redeveloper shall use commercially reasonable efforts to complete the Project or cause same to be completed, on or prior to the date set forth in the Project Schedule at its sole cost and expense; provided, however, that the Parties acknowledge that moneys may be made available towards the completion of same from other outside sources. In the event that moneys made available pursuant to any outside source are not sufficient to pay the costs necessary to complete the Project, the Redeveloper shall not be entitled to any funds from the Borough.

(f) Upon completion of the development and construction of the Project, the Redeveloper shall use diligent efforts to obtain all Governmental Approvals authorizing the occupancy and uses of the Project for the purposes contemplated hereby.

(g) The Redeveloper shall not discriminate against or segregate any person, or group of persons, on account of race, color, religion, creed, national origin, ancestry, physical handicap, age, marital status, affectional preference or gender in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Project, nor shall the Redeveloper itself, or any Person claiming under or through the Redeveloper, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees of the Project.

(h) The Redeveloper shall not restrict the sale, lease, sublease, rental, transfer, use, occupancy, tenure, or enjoyment of the Project on the basis of race, color, religion, creed, national origin, ancestry, physical handicap, age, marital status, affectional preference or gender of any person.

(i) The Redeveloper shall immediately notify the Borough of any material change in its financial condition from the information provided to the Borough by the Redeveloper indicating the Redeveloper's financial capability to develop, finance and construct the Project in furtherance of the Borough's consideration in designating the Redeveloper as the redeveloper of the Redevelopment Area.

(j) The Redeveloper shall not use the Redevelopment Area, Project or any part thereof, for which a Certificate of Completion has not been issued, in a manner that is inconsistent with the Redevelopment Plan and this Redevelopment Agreement.

(k) The Redeveloper shall not use the Redevelopment Area, Project or any part thereof for which a Certificate of Completion has not been issued, as collateral for an unrelated transaction.

SECTION 9.05. Declaration of Covenants and Restrictions. The Redeveloper shall execute and record one or more declaration(s) of project covenant(s) in form of Exhibit 2 attached hereto (the "Declaration") imposing on the Project and the Redevelopment Area, the Redeveloper Covenants set forth in Section 9.04 (as may be limited by the terms of this Redevelopment Agreement, including Section 9.06 hereof), and those other matters indicated in this Redevelopment Agreement to be included in the Declaration.

SECTION 9.06. Effect and Duration of the Covenants. It is intended and agreed, and the Declaration shall so expressly provide, that the agreements and covenants set forth in Section 9.04 hereof and those elsewhere in this Redevelopment Agreement designated for inclusion in the Declaration shall be covenants running with the land until the Project is Completed, and such covenants shall, in any event, and without regard to technical classification or designation, legal or otherwise, and except only as otherwise specifically provided in this Redevelopment Agreement, be binding, to the fullest extent permitted by Applicable Law and equity, for the benefit and in favor of, and enforceable by, the Borough, its successors and assigns, and any successor in interest to the Project, or any part thereof, the Redeveloper, its successors and assigns and every successor in interest therein, and any Party in possession or occupancy of the Project, or any part thereof provided, however, that such covenants shall not be binding on any Holder except in accordance with the terms of Article 13 hereof. Such agreements and covenants, however, shall be binding on the Redeveloper itself, each successor in interest to the Redeveloper and each party in possession or occupancy, respectively, only for such period as the Redeveloper or such successor or party shall be in possession or occupancy of the Redevelopment Area, the buildings and structures thereon, or any part thereof.

SECTION 9.07. Enforcement of Covenants by the Borough. In amplification, and not in restriction of the provisions of this Article IX, it is intended and agreed that the Borough and its successors and assigns shall be deemed beneficiaries of the agreements and covenants set forth in this Redevelopment Agreement, both for and in their own right but also for the purposes of protecting the interests of the community and other parties, public or private, in whose favor or for whose benefit such agreements and covenants have been provided. Such agreements and covenants shall run in favor of the Borough for the entire period during which such agreements and covenants shall be in force and effect, without regard to whether the Borough has at any time been, remains, or is an owner of any land or interest therein, or in favor of which such agreements and covenants relate. The Borough shall have the right, in the event of any breach of any such agreement or covenant, to terminate this Redevelopment Agreement in accordance with the terms of Section 14.03 hereof. Upon redevelopment of the Redevelopment Area and completion of the Project (as evidenced by the Borough's issuance of a Certificate of Completion), the conditions that were found and determined to exist at the time the Redevelopment Area was determined to be in need of redevelopment shall be deemed to no longer exist, the land and improvements thereon shall no longer be subject to eminent domain as a result and the conditions and requirements of N.J.S.A. 40A:12A-9 shall be deemed to have been satisfied with respect to the Project.

SECTION 9.08 Borough Covenants. The Borough hereby covenants and agrees that:

(a) The Borough agrees to support any applications for Governmental Approvals that are consistent with the terms of the Redevelopment Plan and this Redevelopment Agreement, and to otherwise cooperate with the Redeveloper with respect to the Governmental Approvals; provided that nothing contained in this Section 9.08(a) shall be deemed: (i) to constitute an approval of all or any portion of the Project for which applications have been submitted or are required or (ii) a waiver of the ability of any Governmental Authority, to exercise its statutorily authorized responsibilities with respect to such applications or Governmental Approvals. Without limiting the generality of the foregoing, the Borough shall (A) schedule, convene and conclude all required public hearings in an expeditious manner consistent with Applicable Laws, and (B) cause all of the planners, engineers and other consultants engaged by the Borough to review and comment on all submittals by Redeveloper in an expeditious manner.

(b) The Borough shall undertake and complete, with due diligence, all of its obligations under this Agreement.

(a) The Redeveloper has been designated as the exclusive redeveloper of the Redevelopment Area and shall have the exclusive right and obligation to redevelop the Redevelopment Area and implement the Project in accordance with the terms and conditions of this Redevelopment Agreement.

(b) The Borough shall not exercise its power of eminent domain to condemn the Property during the Term.

[END OF ARTICLE IX]

ARTICLE X

CERTIFICATES OF OCCUPANCY AND COMPLETION

SECTION 10.01. Certificate of Occupancy. The Redeveloper shall apply to the appropriate governmental officer or body for a Certificate of Occupancy for any building constructed as part of the Project. The Redeveloper shall take all actions required for issuance of a Certificate of Occupancy.

SECTION 10.02. Certificate of Completion. The Borough shall, within thirty (30) days after Completion or Substantial Completion of the Project, and receipt of a written request from the Redeveloper, issue a Certificate of Completion, provided there is not then an existing Redeveloper Event of Default. The Certificate of Completion shall constitute a recordable, conclusive determination of the satisfaction (in accordance with the terms of this Redevelopment Agreement, the Redevelopment Plan and Applicable Law) and termination of this Redevelopment Agreement, and of all of Redeveloper's agreements and covenants in this Redevelopment Agreement and shall discharge and release the lien of this Redevelopment Agreement and the Declaration from the Redevelopment Area or portion thereof, as the case may be. If the Borough determines that the Redeveloper is not entitled to a Certificate of Completion, the Borough shall, at the written request of the Redeveloper, within thirty (30) days of receipt of the written request, provide the Redeveloper with a written statement of the reasons the Borough refused or failed to furnish a Certificate of Completion. Notwithstanding the foregoing, if the Project is Substantially Complete, the Borough will issue its Certificate of Completion upon the posting of a bond (or other reasonably satisfactory security) by the Redeveloper with the Borough in an amount representing 125% of the value of the work not yet completed less the amount of any completion guaranty posted for such work in accordance with the Municipal Land Use Law.

[END OF ARTICLE X]

ARTICLE XI

TRANSFERS

SECTION 11.01. Prohibition Against Speculative Development. The Redeveloper covenants that its undertakings pursuant to this Redevelopment Agreement shall be for the purpose of redevelopment of the Redevelopment Area and not for speculation in land holding.

SECTION 11.02. Prohibition Against Transfers. The Redeveloper recognizes the importance of the redevelopment to the general welfare of the community and the public assistance to be made available by law and by the Borough on the conditions stated herein for the purpose of making such redevelopment possible. The Parties acknowledge and agree that a change in control of the Redeveloper is for practical purposes a transfer or disposition of the property interest then owned by the Redeveloper, and that, therefore, the qualifications and identity of the Redeveloper and its principals are of particular concern to the Borough.

In light of the foregoing, except for Permitted Transfers, during the Term of this Redevelopment Agreement, the Redeveloper shall not, without the prior written consent of the Borough, which shall not be unreasonably withheld, conditioned or delayed: (a) effect or permit any change, directly or indirectly, in the control of the Redeveloper prior to the issuance of the final Certificate of Completion for the Project or any portion thereof, (b) assign or attempt to assign this Redevelopment Agreement or any rights herein, or (c) make any total or partial sale, transfer, or conveyance of the whole or any part of the Redevelopment Area or Project (individually and collectively, a "Transfer").

SECTION 11.03. Permitted Transfers. (a) The Redeveloper, without violating the provisions of Section 11.01 or Section 11.02 hereof, may effect the following Transfers, to which the Borough hereby consents upon receipt of notice thereof, without the necessity of further action by the Borough ("**Permitted Transfers**"):

(i) security for, and only for, the purpose of obtaining the financing necessary to enable the Redeveloper to perform its obligations under this Redevelopment Agreement with respect to completing the Project and any other purpose authorized by this Redevelopment Agreement;

(ii) the Declaration;

(iii) a mortgage or mortgages and other liens and encumbrances (but not including mechanic's liens) for the purposes of financing costs associated with the acquisition, development, construction and marketing of the Project;

(iv) utility and other development easements;

(v) environmental covenants and restrictions imposed by a regulatory Governmental Authority as a condition of any permit or approval;

(vi) a lease, option agreement or contract of sale to a residential tenant or a tenant or end user of the Project for the purpose of operating a permitted business as a part of the Project under the Redevelopment Plan;

(vii) a transfer to an Affiliate of the Redeveloper, including without limitation a qualified Urban Renewal Entity, or a transfer among members of the Redeveloper and their family members and/or trustees for their benefit;

(viii) a Transfer pursuant to a foreclosure or deed in lieu of foreclosure, and any Transfer by any Holder or any Holder's successor and/or assigns after foreclosure.

(ix) any contract or agreement with respect to any of the foregoing exceptions.

SECTION 11.04. Notice of Permitted Transfers. With respect to any Permitted Transfers, the Redeveloper shall provide to the Borough written notice at least thirty (30) days prior to such Transfer, including a description of the nature of such Permitted Transfer, and the name(s) and address(es) of the transferee and any parties, individuals and/or entities comprising such transferee. The Redeveloper shall cause the transferee to execute such documentation as is reasonably requested by the Borough in order to assure that the transferee has assumed all of the Redeveloper's obligations under this Redevelopment Agreement and the Declaration as to the Project (if the Redeveloper's right, title and interest in the Project is being transferred) or any portion thereof (if the Redeveloper's right, title and interest in a portion of the Project is being transferred).

SECTION 11.05. Transfers Void. Any transfer of the Redeveloper's interest in violation of this Redevelopment Agreement shall be a Redeveloper Event of Default and shall be null and void *ab initio*. Such default shall entitle the Borough to seek all remedies available under the terms hereof, and those available pursuant to law or equity, including termination of this Redevelopment Agreement. In the absence of specific written consent by the Borough, or a deemed approval in accordance with the terms hereof, no such sale, transfer, conveyance or assignment or approval thereof by the Borough, shall be deemed to relieve the Redeveloper from any obligations under this Redevelopment Agreement. The Declaration shall contain a restriction against transfers as set forth in this Article and, in addition, shall provide that in the event of any attempted transfer in violation of the restrictions in this Article, the Borough shall be entitled to the *ex parte* issuance of an injunction restraining such transfer, and the award of legal fees and related expenses of the Borough in connection with any such legal action. Upon recording of the final Certificate of Completion, the provisions of the Declaration set forth in this Article as to the Project shall be deemed terminated, and the Declaration shall so state.

SECTION 11.06. Transfer Fee. Notwithstanding anything to the contrary contained herein, prior to any Transfer not specifically permitted but to which the Borough consents, the Redeveloper will pay or cause to be paid to the Borough the sum of One Hundred Fifty Thousand Dollars (\$150,000.00) in consideration for such right to transfer and in order to defray costs associated with such Transfer and the ongoing oversight thereof. This section shall not be applicable to the transfer of a portion of the membership interest in Redeveloper (provided that the same shall not exceed 1/3rd of the interests) to an equity participant.

[END OF ARTICLE XI]

ARTICLE XII

INDEMNIFICATION; INSURANCE

SECTION 12.01. Redeveloper Indemnification. (a) The Redeveloper covenants and agrees, at its expense, to pay and to indemnify, protect, defend and hold the Borough Indemnified Parties harmless from and against all liability, losses, damages, demands, costs, claims, lawsuits, administrative proceedings, fines, penalties, and expenses (including attorneys' fees and court costs) of every kind, character and nature resulting, wholly or partially, from the condition, use, possession, conduct, management, planning, design, acquisition, construction, installation, financing, leasing or sale of the Project, including but not limited to any lawsuit or proceeding relating to the death of any person or any accident, injury, loss, and damage whatsoever to any person or to the property of any person which shall occur on or adjacent to the Redevelopment Area and results from any negligence or willful misconduct of Redeveloper, its agents, servants, employees, or contractors, but excluding damage, liability, costs and expenses to the extent that same may result from the negligence or willful misconduct of the Borough, its employees, representatives or agents.

(b) The Redeveloper shall defend, indemnify and hold harmless the Borough Indemnified Parties and their officers, agents, employees, contractors, and consultants from any claims, investigations, liability, loss, injury, damage, remediation costs, lawsuits, civil proceedings, fines, penalties, and expenses including reasonable attorneys' fees and disbursements which result, wholly or partially, from (i) the performance or any failure or delay of performance by the Redeveloper of its obligations under the Redevelopment Agreement; or (ii) any bodily injury or property damage that may occur in the Redevelopment Area during the term of the Redevelopment Agreement; provided, however, that such indemnity shall not include the actions or inactions of third-parties over whom the Redeveloper does not exercise control, as long as the Redeveloper maintains and enforces commercially reasonable security measures and commercial liability insurance to protect against such actions or inactions.

(c) In any situation in which a Borough Indemnified Party is entitled to receive and desires indemnification by the Redeveloper, the Borough Indemnified Party shall give prompt notice of such situation to the Redeveloper. Failure to give prompt notice to the Redeveloper shall not relieve the Redeveloper of any liability to indemnify the Borough Indemnified Party, unless such failure to give prompt notice materially impairs the Redeveloper's ability to defend such party. Upon receipt of such notice, the Redeveloper shall resist and defend any action or proceeding on behalf of the Borough Indemnified Party, including the employment of counsel reasonably acceptable to the Borough Indemnified Party, the payment of all expenses and the right to negotiate and consent to settlement. All of the Borough Indemnified Parties shall have the right to employ separate counsel in any such action and to participate in the defense thereof, but the fees and expenses of such separate counsel shall be at the expense of such Borough Indemnified Party. The Redeveloper shall not be liable for any settlement of any such action effected without its consent, but if settled with the consent of the Redeveloper or if there is a final judgment against the Borough Indemnified Party in any such action, the Redeveloper agrees to indemnify and hold harmless the Borough Indemnified Party from and against any loss or liability by reason of such settlement or judgment for which the Borough Indemnified Party is

entitled to indemnification hereunder. The Redeveloper shall have the right to settle any such action on terms it deems appropriate provided that a full release of the Borough Indemnified Party is obtained and no admission of liability by the Borough Indemnified Party is required. In the event the Borough refuses to provide a release of such action, and a final judgment is rendered against the Redeveloper, the Borough shall be responsible for the Redeveloper's counsel fees and costs incurred subsequent to the refusal by the Borough to release the action and for that amount of the judgment which is in excess of the sum for which the Redeveloper would have otherwise settled the action.

(d) The Redeveloper's indemnity provided under this Section 12.01 shall survive the termination of this Redevelopment Agreement with respect to occurrences prior to the date of termination and shall run with the land and be referenced in the Declaration.

SECTION 12.02. Insurance Required. (a) Prior to the commencement of construction of the Project, the Redeveloper shall furnish or shall cause to be furnished, to the Borough, a certificate of insurance evidencing a policy of commercial general liability insurance, insuring the Borough against losses, costs, liabilities, claims, causes of action and damages for bodily injury and property damage on all property in the Redevelopment Area or related to the construction thereon, in the amount of at least Five Million Dollars (\$5,000,000.00) combined single limit coverage. Such insurance shall include blanket contractual liability coverage. All such policies shall be endorsed to add the Borough as an additional insured, and to provide that such coverage shall be primary and that any insurance maintained by the Borough shall be excess insurance only. Such coverage shall be endorsed to waive the insurer's rights of subrogation against the Borough if such a waiver is available.

(b) Redeveloper shall also provide a certificate of insurance evidencing a policy of Builder's Risk Insurance for the benefit of the Redeveloper (subject to the interests of any Holder), during the term of construction, sufficient to protect against loss or damage resulting from fire and lightning, the standard extended coverage perils, vandalism, and malicious mischief. The limits of liability will be equal to one hundred percent (100%) of the replacement cost (to current building code) of the Project, including items of labor and materials connected therewith, whether in or adjacent to the structure(s) insured, and materials in place or to be used as part of the permanent construction.

(c) The Redeveloper shall also furnish or cause to be furnished to the Borough evidence satisfactory to the Borough that any contractor with whom it has contracted for the construction of the Project carries (i) workers' compensation insurance as required by law, (ii) employer's liability insurance in the amount of \$500,000.00 bodily injury each accident, \$500,000.00 bodily injury each employee and \$500,000.00 bodily injury policy limit, and (iii) commercial general liability insurance in the amount of \$1,000,000.000 each occurrence, \$2,000,000 general aggregate.

(e) All insurance policies required by this section shall be obtained from insurance companies licensed in the State and rated at least A VII in Best's Insurance Guide or such lesser rated provider that is proposed by the Redeveloper and is reasonably acceptable to the Borough.

All insurance policies required hereunder shall be kept in force until a Certificate of Completion is issued.

(f) All insurance policies required by this Section shall be non-assessable and shall contain language to the effect that (a) the policies are primary and noncontributing with any insurance that may be carried by the Borough, (b) the policies cannot be canceled or materially changed except after thirty (30) days written notice by the insurer to the Borough, and (c) the Borough shall not be liable for any premiums or assessments. All such insurance shall have deductibility limits reasonably satisfactory to the Borough and shall contain cross liability endorsements.

(g) The Redeveloper's obligation to maintain insurance in this Section 12.02 shall terminate upon issuance of a Certificate of Completion with respect to the Project.

[END OF ARTICLE XII]

ARTICLE XIII

MORTGAGE FINANCING; NOTICE OF DEFAULT TO MORTGAGEE; RIGHT TO CURE

SECTION 13.01. Mortgage Financing. (a) Neither the Redeveloper nor any successor in interest to the Project, or any part thereof, shall engage in any financing or any other transaction creating any mortgage or other encumbrance or lien upon the Project, whether by express agreement or operation of law, or suffer any encumbrance or lien (other than liens for governmental impositions) to be made or attach to the Project, in excess of ninety percent (90%) of Project Costs, except as may be approved by the Borough (which approval shall not be unreasonably withheld, delayed or conditioned) for the purpose of obtaining funds in connection with the payment of such Project Costs; provided, however, that upon the issuance of a Certificate of Completion for the Project, or any portion thereof, such prohibition shall no longer apply with respect to the corresponding parcel of land and improvements. The Redeveloper, or its successor in interest, shall notify the Borough in advance of any such financing secured by a mortgage or other lien instrument which it proposes to enter into with respect to the Project, or any part thereof (the mortgagee thereunder, a "Holder") and, in any event, the Redeveloper shall promptly notify the Borough of any encumbrance or lien (other than liens for governmental impositions) that has been created on or attached to any portion of the Project, whether by voluntary act of the Redeveloper or otherwise, upon obtaining knowledge or notice of same.

(b) If the Holder reasonably requires any change(s) or modification(s) to the terms of this Redevelopment Agreement, the Borough shall reasonably cooperate with the Holder and the Redeveloper in reviewing and approving such proposed change(s) or modification(s); provided, however, that any such proposed change or modification shall not materially and adversely alter or modify the rights and obligations of the Redeveloper or the Borough, as provided in this Redevelopment Agreement.

(c) To the extent reasonably requested by the Redeveloper, the Borough shall execute such other agreements and/or documents, to the extent same are in form and content reasonably acceptable to the Borough, as may be requested or required by any Holder (or any equity participant of the Redeveloper); provided, however, that any such agreement or document shall not materially or adversely alter any of the rights, liabilities or obligations of the Redeveloper or the Borough under this Redevelopment Agreement.

(d) In the event that the Redeveloper is unable to obtain financing for the Project on terms and conditions acceptable to Redeveloper in its sole discretion, or if Redeveloper determines that financing for the Project cannot be obtained on terms and conditions acceptable to Redeveloper in its sole discretion, then Redeveloper shall have the right to terminate this Redevelopment Agreement upon written notice to the Borough.

(e) If this Redevelopment Agreement is terminated pursuant to the terms of this Section 13.01 then, except as expressly set forth herein to the contrary and upon full payment of all Borough Costs accruing until the date of such termination, this Redevelopment Agreement

(including, without limitation, all the covenants contained herein) shall be of no further force and effect and the Parties hereto shall have no further rights, liabilities and/or obligations hereunder.

SECTION 13.02. Notice of Default to the Redeveloper and Right to Cure.

Whenever the Borough shall deliver any notice or demand to the Redeveloper with respect to any breach or default by the Redeveloper under this Redevelopment Agreement, the Borough shall at the same time deliver to each Holder a copy of such notice or demand; provided that the Redeveloper has delivered to the Borough a written notice of the name and address of such Holder. Each such Holder shall (insofar as the rights of the Borough are concerned) have the right at its option within ninety (90) days after the receipt of such notice (and the expiration of all applicable cure periods), to cure or remedy, or to commence to cure or remedy, any such default which is subject to being cured and to add the cost thereof to the debt and the lien which it holds. The Borough shall not seek to enforce any of its remedies under this Redevelopment Agreement during the period in which any such Holder or Redeveloper is proceeding diligently and in good faith to cure a Redeveloper Event of Default. If possession of the Redevelopment Area is necessary to cure any default or breach, any Holder will be allowed to complete any proceedings required to obtain possession of the Redevelopment Area.

SECTION 13.03. No Guarantee of Construction or Completion by Holder.

(a) A Holder shall in no manner be obligated by the provisions of this Redevelopment Agreement to construct or complete the Project, or to guarantee such construction or completion; nor shall any covenant or any other provisions be construed so to obligate a Holder. Nothing contained in this Redevelopment Agreement shall be deemed to permit or authorize such Holder to undertake or continue the construction or completion of the Project (beyond the extent necessary to conserve or protect the Holder's security, including the improvements or construction already made) without the Holder or Affiliate of Holder first having expressly assumed the Redeveloper's obligations to the Borough with respect to the Project by written agreement reasonably satisfactory to the Borough.

(b) If a Holder forecloses its mortgage secured by the Redevelopment Area, or takes title (in its name or the name of an Affiliate) to the Redevelopment Area by deed-in-lieu of foreclosure or similar transaction (collectively a "**Foreclosure**"), the Holder or its Affiliate shall have the option to either (i) sell the Redevelopment Area, as applicable, to a responsible Person reasonably acceptable to the Borough, which Person shall assume the obligations of the Redeveloper under this Redevelopment Agreement in accordance with Applicable Law, and/or (ii) itself, or its affiliate, assume the obligations of the Redeveloper under this Redevelopment Agreement in accordance with Applicable Law. In the event of a Foreclosure and provided the Holder or the purchaser is in compliance with this Redevelopment Agreement, the Borough shall not seek to enforce against the Holder or purchaser of such parcel any of the remedies available to the Borough pursuant to the terms of this Redevelopment Agreement available in connection with the events preceding the Foreclosure. The Holder, or the entity assuming the obligations of the Redeveloper as to the parcel affected by such Foreclosure or sale, in that event must agree to complete the Project in accordance with the terms of this Redevelopment Agreement, but subject to reasonable extensions of the Project Schedule, and shall submit evidence reasonably satisfactory to the Borough that it has the qualifications and financial responsibility necessary to perform such obligations. Any such Holder, or other entity assuming such obligations of the

Redeveloper, properly completing the Project shall be entitled, upon written request made to the Borough, to Certificates of Completion. Nothing in this Redevelopment Agreement shall be construed or deemed to permit or to authorize any Holder, or such other entity assuming such obligations of the Redeveloper, to devote the Redevelopment Area, or any part thereof, to any uses, or to construct any improvements thereon, other than those uses or improvements provided for or authorized by this Redevelopment Agreement and the Redevelopment Plan. The Holder or such other entity that assumes the obligations of the Redeveloper shall be entitled to develop the Redevelopment Area and Project in accordance herewith.

[END OF ARTICLE XIII]

ARTICLE XIV

EVENTS OF DEFAULT AND REMEDIES

SECTION 14.01. Events of Default. Any one or more of the following shall, beyond the expiration of the applicable cure period, constitute an event of default hereunder ("Event of Default"), subject to the occurrence of an event of Force Majeure (with none of the following to be construed as a limitation on any other):

(a) Failure of the Redeveloper or the Borough to observe and perform any covenant, condition or agreement under this Redevelopment Agreement, and continuance of such failure for a period of thirty (30) days, after receipt by the defaulting party of written notice from the non-defaulting party specifying the nature of such failure and requesting that such failure be remedied; provided, however, if the failure is one which cannot be remedied within the thirty (30) days after such written notice has been given, it shall not be an Event of Default as long as the defaulting party is proceeding with due diligence to remedy the same as soon as practicable but in no event later than one hundred twenty (120) days after such written notice.

(b) (i) The Redeveloper shall have applied for or consented to the appointment of a custodian, receiver, trustee or liquidator of all or a substantial part of its assets; (ii) a custodian shall have been legally appointed with or without consent of the Redeveloper; (iii) the Redeveloper (A) has made a general assignment for the benefit of creditors, or (B) has filed a voluntary petition in bankruptcy or a petition or an answer seeking an arrangement with creditors or has taken advantage of any insolvency law; (iv) the Redeveloper has filed an answer admitting the material allegations of a petition in any bankruptcy or insolvency proceeding; (v) the Redeveloper shall take any action for the purpose of effecting any of the foregoing; (vi) a petition in bankruptcy shall have been filed against the Redeveloper and shall not have been dismissed for a period of ninety (90) consecutive days; (vii) an order for relief shall have been entered with respect to or for the benefit of the Redeveloper under the Bankruptcy Code; (viii) an order, judgment or decree shall have been entered, without the application, approval or consent of the Redeveloper by any court of competent jurisdiction appointing a receiver, trustee, custodian or liquidator of the Redeveloper or a substantial part of its assets and such order, judgment or decree shall have continued unstated and in effect for any period of ninety (90) consecutive days; or (ix) the Redeveloper shall have suspended the transaction of its usual business.

(c) The Redeveloper shall materially default in or violate its obligations with respect to the design, development and/or construction of the Project in accordance with this Redevelopment Agreement (including, but not limited to, the Project Schedule) and the Site Plan, or shall abandon or substantially suspend construction work (unless such suspension arises out of an event of Force Majeure), and any such default, violation, abandonment or suspension shall not be cured, ended, or remedied within ninety (90) days after written demand by the Borough to do so; provided however, that if the default or violation is one which cannot be completely remedied within the ninety (90) days after such written notice has been given, it shall not be an Event of Default as long as the Redeveloper is proceeding with due diligence to

remedy the same as soon as practicable, but in no event later than one hundred eighty (180) days after such written notice.

(d) The Redeveloper or its successor in interest (except for third parties to which a portion of the Project has been conveyed in the ordinary course of business) shall fail to pay any real estate taxes or assessments on any real property or any part thereof owned by it in the Borough when due, or shall place thereon any encumbrance or lien unauthorized by this Redevelopment Agreement, or shall suffer any levy or attachment to be made, or any materialman's, mechanics' or construction lien, or any other unauthorized encumbrance or lien to attach and such real estate taxes or assessments shall not have been paid, or the encumbrance or lien removed or discharged or provision satisfactory to the Borough made for such payment, removal, or discharge, within sixty (60) days after written demand by the Borough to do so.

(e) There is, in violation of this Redevelopment Agreement, any Transfer.

SECTION 14.02. Force Majeure. Performance by either Party hereunder shall not be deemed to be in default where delays or failure to perform are the result of events or conditions beyond the reasonable control of the Party relying thereon as justification for not performing an obligation or complying with any condition required of such party under the terms of this Redevelopment Agreement, including, without limitation, the following (a "Force Majeure"):

(a) An act of God, lightning, blizzards, hurricane, tornado, earthquake, acts of public enemy, war (whether or not declared), terrorism, blockade, insurrection, riot or civil disturbance, sabotage or similar occurrence, economic disruptions including the scarcity of materiel necessary for the construction of the Project, but not including reasonably anticipated weather conditions for the geographic area of the Redevelopment Area, other than those set forth above (such events being required to physically affect a Party's ability to fulfill its obligations hereunder; and the consequential effect of such events (e.g., impact on market conditions) shall not be considered a Force Majeure event);

(b) A landslide, fire, explosion, flood, release of nuclear radiation, damage to or theft of any part of the Project, or any casualty not created by the willful misconduct or grossly negligent act or omission of the party claiming Force Majeure;

(c) The order, judgment, action or inaction and/or determination of any Governmental Authority (other than the Borough when acting in conformance with this Redevelopment Agreement) excepting decisions interpreting federal, State and local tax laws generally applicable to all business taxpayers; provided, however, that such order, judgment, action or inaction and/or determination shall not be the result of the willful misconduct or grossly negligent action or inaction of the Party relying thereon. Neither the contesting of any such order, judgments, action or inaction and/or determination, in good faith, nor the reasonable failure to so contest, shall constitute or be construed as willful misconduct or grossly negligent action or inaction by such Party;

(d) The suspension, termination, interruption, denial, or failure of or delay in renewal or issuance of any Governmental Approval (including due to any appeal), provided,

however, that such suspension, termination, interruption, denial, or failure of or delay in renewal or issuance shall not be the result of the willful misconduct or grossly negligent action or inaction of the Party relying thereon. Neither the contesting of any such suspension, termination, interruption, denial or failure of renewal or issuance, in good faith, nor the reasonable failure to so contest, shall constitute or be construed as willful misconduct or grossly negligent action or inaction by such Party. Delay in issuance of a Governmental Approval resulting from the Redeveloper's failure to make an administratively complete submission for a Governmental Approval in accordance with Applicable Law shall not be an event of Force Majeure; or

(e) An inability to procure goods or services for any reason not caused by the willful misconduct or grossly negligent act or omission of the party claiming Force Majeure, including, without limitation, the limited manufacturing capacity of any suppliers; a general shortage of labor, equipment, facilities, energy, materials or supplies in the open market; failure of transportation, strikes, lockouts, slowdowns or similar labor action by trade unions or any of their members, equipment manufacturers, suppliers of material and/or transporters of same; or any other economic condition that may adversely affect the Project, the Redevelopment Area or the real estate markets; or

(f) Acts or omissions of the other Party (except in conformance with this Redevelopment agreement or Applicable Law) e.g. as to the Redeveloper, acts or omissions of the Borough.

Any event of Force Majeure affecting any counterparty to an agreement with any or all of the Parties hereto shall be considered an event of Force Majeure hereunder. Notice by the Party claiming such extension shall be sent to the other Party within thirty (30) calendar days of the commencement of the cause. During any Force Majeure event that affects part of the Project, to the extent reasonably practicable, the Redeveloper shall continue to perform its obligations for the rest of the Project. The existence of an event of Force Majeure shall not prevent a Party from declaring the occurrence of an Event of Default by the Party relying on such Force Majeure event; provided that the event that is the basis of the Event of Default is not a result of the Force Majeure event. Except for an event or events of Force Majeure resulting from acts or omissions of the Borough, any event or events of Force Majeure will be deemed to have ceased to exist as of a date twenty four (24) months from its initial occurrence.

SECTION 14.03. Remedies Upon Events of Default by the Redeveloper. If an Event of Default by the Redeveloper occurs, and during its continuance, the Borough may take whatever action at law or in equity as may appear necessary or desirable to enforce the performance or observance of any rights, remedies, obligations, agreements, or covenants of the Redeveloper, as applicable, under this Redevelopment Agreement, including enforcement of the terms stated in Sections 3.03 and 3.04 above, and the seeking of damages. Further, but subject to any cure provisions afforded the Redeveloper hereunder, the Borough shall have the right, in its sole and absolute discretion, upon sixty (60) days' notice to the Redeveloper and any Holder, to terminate this Redevelopment Agreement and the Redeveloper's designation as the redeveloper of the Redevelopment Area.

In the event that the Borough terminates the Redeveloper's designation as the redeveloper of the Redevelopment Area, the Borough shall, pursuant to its responsibilities under State law,

use reasonable efforts to designate a replacement redeveloper for the Redevelopment Area (subject to the obligations of the Borough pursuant to Article XIII, such permitted mortgage liens as may exist against the Project and the rights of a Holder as set forth in Article XIII hereof). Such replacement Redeveloper shall be designated as soon and in such manner as the Borough shall find feasible and consistent with the objectives of State law and of the Redevelopment Plan, to a qualified and responsible party or parties as determined by the Borough, who will assume the obligation of completing the Project or such other improvements in its stead as shall be satisfactory to the Borough and in accordance with the uses specified in this Redevelopment Agreement and the Redevelopment Plan. This provision shall be entered in the Declaration. The Redeveloper shall deliver to such replacement Redeveloper assignments of all other rights and agreements pertaining to the Project. Any proceeds resulting from the designation of the replacement Redeveloper under this Section shall be applied:

(a) First, to all reasonable costs and expenses incurred by the Borough, as defined in and not reimbursed pursuant to §§3.03 or 3.04 above, in connection with the Project; all taxes, payments in lieu of taxes, assessments, and water and sewer charges owed by the Redeveloper as of such date, if any, with respect to the Project or any part thereof; any payments made or necessary to be made to discharge any encumbrances or liens existing on the Project at the time of the Borough's designation of the replacement redeveloper, or to discharge or prevent from attaching, or being made, any subsequent encumbrances or liens due to obligations, defaults, or acts of the Redeveloper, its successors or transferees; any expenditures made or obligations incurred with respect to the completion of the Project, or any part thereof, on the uncompleted portion or any part thereof; and any amounts otherwise owed to the Borough by the Redeveloper and its successors or transferees in accordance with the terms of this Redevelopment Agreement; and

(b) Second, to reimburse the Redeveloper, its successor or transferee, up to the amount equal to the Redeveloper's actual costs associated with the Project, including engineering, planning, site improvement, marketing and other development costs paid for by the Redeveloper. Any balance remaining after such reimbursements shall (subject to the obligations of the Borough pursuant to Article XIII, such permitted mortgage liens as may exist against the Project and the rights of a Holder as set forth in Article XIII hereof) be retained by the Borough as its property.

SECTION 14.03. Remedies Upon Events of Default by the Redeveloper. If an Event of Default by the Redeveloper occurs, the Borough shall have as its sole and exclusive remedy under this Redevelopment Agreement, the right, in its sole and absolute discretion, upon sixty (60) days' notice to the Redeveloper and any Holder, to terminate this Redevelopment Agreement and the Redeveloper's designation as the 'redeveloper' (as defined in the Redevelopment Law) of the Project and the Redevelopment Area.

SECTION 14.04. Remedies Upon Events of Default by the Borough. In the event that an Event of Default by the Borough occurs, then the Redeveloper may take whatever action at law or in equity as may appear necessary or desirable to enforce the performance or observance of any rights, remedies, obligations, agreements, or covenants of the Borough under this Redevelopment Agreement, including an action for specific performance and/or damages. Further, but subject to any cure provisions afforded the Borough hereunder, the Redeveloper shall have the right, in its sole and absolute discretion, upon sixty (60) days' notice to the

Borough to terminate this Redevelopment Agreement. Notwithstanding the foregoing, neither the Borough nor any of its respective Affiliates, directors, officers, managers, agents, employees, or representatives shall be liable in any action, at law or in equity, in contract, tort, strict liability or otherwise, to Redeveloper or to any other person, including Redeveloper's Affiliates, partners, shareholders, members, directors, officers, managers, agents, employees, or representatives for loss of profits, revenues or expectancies, loss of use or loss of business opportunities or for any special, consequential, indirect or incidental damages, or punitive, exemplary or multiplier damages with respect to the redevelopment of the Redevelopment Area and/or construction of the Project.

SECTION 14.05. Failure or Delay. Except as otherwise expressly provided in this Redevelopment Agreement, any failure or delay by either party in asserting any of its rights or remedies as to any default, shall not operate as a waiver of any default, or of any such rights or remedies, or deprive either such party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

SECTION 14.06. Remedies Cumulative. No remedy in favor of either Party conferred by any of the provisions of this Redevelopment Agreement is intended to be exclusive of any other remedy and each and every remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. The election of any one or more remedies by a Party shall not constitute a waiver of the right to pursue other available remedies.

SECTION 14.07. Continuance of Obligations. The occurrence of an Event of Default shall not relieve the defaulting party of its obligations under this Redevelopment Agreement unless this Redevelopment Agreement is terminated as a result of such Event of Default, as and to the extent permitted hereunder.

SECTION 14.08. Mitigation. The Parties shall act reasonably to mitigate any damages that may be incurred as a result of an Event of Default hereunder; provided, however, that the costs of any mitigation efforts shall be at the sole cost of the defaulting Party.

SECTION 14.09. Documents to be Delivered Upon Termination. In the event this Redevelopment Agreement is terminated for any reason, except as a result of the default of the Borough, the Redeveloper shall deliver to the Borough, within ten (10) days after such termination, copies of all reports, studies, data, plans, surveys, title reports, subdivision maps and specifications prepared by the Redeveloper and third parties with respect to the Redevelopment Area and all documents, reports, permits and approvals obtained by the Redeveloper relating to the Project provided, however, Redeveloper shall not be obligated to deliver any materials to the Borough that Redeveloper deems to be confidential and proprietary in nature.

SECTION 14.10. Agreement Not to Develop Upon Termination. Subject to the rights of any Holders, in the event this Redevelopment Agreement is terminated as a result of a Redeveloper Event of Default, then the Redeveloper agrees that, for a period of six (6) months following such termination, in the event that the Redeveloper still owns or controls the

Redevelopment Area (or any part thereof), it shall take no further steps to construct the Project or to develop the Redevelopment Area, except as may be agreed to by the Borough in its sole discretion, notwithstanding the fact that the Redeveloper may be in possession of Governmental Approvals required for such development.

[END OF ARTICLE XIV]

ARTICLE XV

MISCELLANEOUS

SECTION 15.01. Notices. Formal notices, demands and communications between the Borough and the Redeveloper shall be deemed given if dispatched to the address set forth below by a commercial overnight delivery service with package tracking capability and for which proof of delivery is available or by facsimile or electronically followed by overnight courier. In this case such notice is deemed effective upon delivery. Such written notices, demands and communications may be sent in the same manner to such other addresses as either party may from time to time designate by written notice.

Copies of all notices, demands and communications shall be sent as follows:

If to the Borough:

Carteret Redevelopment Borough
Municipal Building
61 Cooke Avenue
Carteret, New Jersey 07008
Attn: Executive Director
Tel. No. 732-541-3800
Fax No. 732-541-8925

with a copy to:

Kevin P. McManimon, Esq.
McManimon, Scotland & Baumann, LLC
75 Livingston Avenue, 2nd Floor
Roseland, New Jersey 07068
Tel. No. 973-622-4869
Fax No. 973-712-1440
E-mail: kmcmanimon@msbnj.com

If to the Redeveloper:

Roosevelt Ave. Urban Renewal Company, LLC
c/o Richard LaBarbiera
242 Oradell Ave., Second Floor
Paramus, New Jersey 07652
E-mail: rvm3@verizon.net

with a copy to:

Paul C. Kaufman, Esq.
Kaufman, Semeraro & Leibman, LLP.
Two Executive Drive, Suite 530
Fort Lee, New Jersey 07024
Tel. No. 201-947-8855
Fax No. 201-947-2402

E-mail: pkauftan@northjerseyattorneys.com

SECTION 15.02. Conflict of Interest. No member, official or employee of the Borough shall have any direct or indirect interest in this Redevelopment Agreement, nor participate in any decision relating to this Redevelopment Agreement which is prohibited by law.

SECTION 15.03. No Consideration For Redevelopment Agreement. The Redeveloper warrants it has not paid or given, and will not pay or give, any third person any money or other consideration in connection with obtaining this Redevelopment Agreement, other than normal costs of conducting business and costs of professional services such as architects, engineers, financial consultants and attorneys. The Redeveloper further warrants it has not paid or incurred any obligation to pay any officer or official of the Borough, any money or other consideration for or in connection with this Redevelopment Agreement.

SECTION 15.04. Lender Changes. If the Redeveloper's lender requires a change in the terms of this Redevelopment Agreement, the Borough shall reasonably cooperate with the Redeveloper in approving such change, so long as such change, if any, does not modify or change the substantial rights or obligations of the Parties as set forth in this Redevelopment Agreement. In addition, the Borough agrees to enter into such agreements as the Redeveloper's lender (or its equity participants) may reasonably require provided that such agreement shall not be inconsistent with the terms of this Redevelopment Agreement (*i.e.* shall not increase the responsibilities of the Borough, or decrease its benefits hereunder).

SECTION 15.05. Non-Liability of Officials and Employees of the Borough. No member, official or employee of the Borough shall be personally liable to the Redeveloper, or any successor in interest, in the event of any default or breach by the Borough, or for any amount which may become due to the Redeveloper or its successor, or on any obligation under the terms of this Redevelopment Agreement.

SECTION 15.06. Non-Liability of Officials and Employee of Redeveloper. No member, officer, shareholder, director, partner or employee of the Redeveloper shall be personally liable to the Borough, or any successor in interest, in the event of any default or breach by the Redeveloper or for any amount which may become due to the Borough, or its successors, on any obligation under the terms of this Redevelopment Agreement.

SECTION 15.07. No Brokerage Commissions. The Borough and the Redeveloper each represent one to the other that no real estate broker initiated, assisted, negotiated or consummated this Redevelopment Agreement as broker, agent, or otherwise acted on behalf of the Borough or the Redeveloper, and the Borough and the Redeveloper shall indemnify each other with respect to any claims made by any person, firm or organization claiming to have been so employed by the indemnifying party.

SECTION 15.08. Provisions Not Merged With Deeds. To the extent that the provisions of this Redevelopment Agreement are intended to bind the Redeveloper's assigns and successors, its provisions shall not be merged by reason of any deeds transferring title to any portion of the Redevelopment Area from the Redeveloper or any successor in interest, and any

such deeds shall not be deemed to affect or impair the provisions and covenants of this Redevelopment Agreement.

SECTION 15.09. Successors and Assigns. This Redevelopment Agreement shall be binding upon and inure to the benefit of the permitted successors and assigns of the parties hereto, and their heirs, executors, and administrators.

SECTION 15.10. Titles of Articles and Sections. The titles of the several Articles and Sections of this Redevelopment Agreement are inserted for the convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

SECTION 15.11. Severability. If any term or provision of this Redevelopment Agreement or the application thereof shall to any extent be held to be invalid or unenforceable, the remainder of this Redevelopment Agreement, or the application of such term or provision to circumstances other than those to which it is invalid or unenforceable, shall not be affected thereby, and each other term and provision of this Redevelopment Agreement shall be valid and shall be enforced to the extent permitted by law.

SECTION 15.12. Modification of Redevelopment Agreement. No modification, waiver, amendment, discharge, or change of this Redevelopment Agreement shall be valid unless the same is in writing, duly authorized, and signed by the party against which the enforcement of such modification, waiver, amendment, discharge, or change is or may be sought.

SECTION 15.13. Execution of Counterparts. This Redevelopment Agreement may be executed in one or more counterparts (which may be copies delivered electronically or by facsimile) and when each party has executed and delivered at least one counterpart, this Redevelopment Agreement shall become binding on the parties and such counterparts shall constitute one and the same instrument.

SECTION 15.14. Prior Agreements Superseded. This Redevelopment Agreement integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes any prior agreement and all negotiations or previous agreements between the parties with respect to all or any part of the subject matter hereof.

SECTION 15.15. Waivers and Amendments in Writing. All waivers of the provisions of this Redevelopment Agreement must be in writing and signed by the appropriate authorities of the Borough and the Redeveloper and all amendments hereto must be in writing and signed by the appropriate authorities of the Borough and the Redeveloper.

SECTION 15.16. Drafting Ambiguities; Interpretation. In interpreting any provision of this Redevelopment Agreement, no weight shall be given to, nor shall any construction or interpretation be influenced by, the fact that counsel for one of the parties drafted this Redevelopment Agreement, each party acknowledging that it and its counsel have had an opportunity to review this Redevelopment Agreement and have contributed to the final form of same.

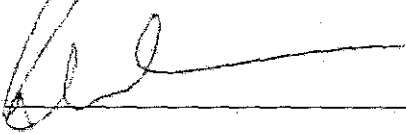
SECTION 15.17. Governing Law. This Redevelopment Agreement shall be governed by and construed in accordance with the Applicable Laws of the State, and any disputes arising hereunder shall be resolved in the Superior Court, State of New Jersey, Middlesex County Vicinage.

[END OF ARTICLE XV]

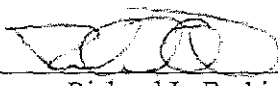
**[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.
SIGNATURES APPEAR ON THE FOLLOWING PAGE].**

IN WITNESS WHEREOF, the parties hereto have caused this Redevelopment Agreement to be executed, all as of the date first above written.

ATTEST:



ROOSEVELT AVE. URBAN RENEWAL
COMPANY, LLC

By: 

Name: Richard LaBarbiera

Title: Manager

ATTEST:

BOROUGH OF CARTERET

By: _____

Daniel J. Reiman, Mayor

The undersigned joins in this Agreement for the purpose of agreeing to perform its obligations under Section 3.09(b) of this Agreement.

ATTEST:

CARTERET REDEVELOPMENT AGENCY

By: _____

Eric F. M. Chubenko, Executive Director

IN WITNESS WHEREOF, the parties hereto have caused this Redevelopment Agreement to be executed, all as of the date first above written.

ATTEST:

ROOSEVELT AVE. URBAN RENEWAL
COMPANY, LLC

By: _____
Name: Richard LaBarbiera
Title: Manager

ATTEST:

BOROUGH OF CARTERET

Kathleen M. Barry

By: Daniel J. Reiman
Daniel J. Reiman, Mayor

The undersigned joins in this Agreement for the purpose of agreeing to perform its obligations under Section 3.09(b) of this Agreement.

ATTEST:

CARTERET REDEVELOPMENT AGENCY

Kathleen M. Barry

By: Eric F. M. Chubenko
Eric F. M. Chubenko, Executive Director

Tab #1

EXHIBIT 1

PROJECT SCHEDULE

1	The Borough and the Redeveloper execute the Redevelopment Agreement	Effective Date
2	The Borough and the Urban Renewal Entity Execute and Deliver the Financial Agreement (if applicable)	Within 90 days after the Effective Date
3	Redeveloper obtains all Governmental Approvals required for Commencement of Construction	Within 180 days after the Effective Date
4	Redeveloper closes on financing	Within 180 days after the Effective Date
5	Commencement of Construction	Within 360 days after the Effective Date
6	Completion of Construction	Within 24 months after Commencement of Construction

Tab #2

EXHIBIT 2

FORM OF DECLARATION OF PROJECT COVENANTS

Record and Return to:
Kevin P. McManimon, Esq.
McManimon, Scotland & Baumann, LLC
75 Livingston Avenue, 2nd Floor
Roseland, New Jersey 07068

THIS REDEVELOPMENT PROJECT COVENANT (the "Project Covenant") is made this ____ day of _____, 2015, by ROOSEVELT AVE. URBAN RENEWAL COMPANY, LLC, a limited liability company formed under the laws of the State of New Jersey with offices at c/o Richard LaBarbiera, 242 Oradell Ave., Second Floor, Paramus, NJ 07652 and its successors and assigns (the "Redeveloper").

W-I-T-N-E-S-S-E-T-H:

WHEREAS, on October 2, 2014, the Municipal Council of the Borough ("Municipal Council") adopted a resolution designating the properties identified as Block 302, Lots 6 and 7 on the tax map of the Borough (the "Project Area") as an "area in need of redevelopment" under the Local Redevelopment and Housing Law, *N.J.S.A. 40A:12A-1 et seq.* as amended and supplemented (the "Redevelopment Law"); and

WHEREAS, on December 18, 2014, the Municipal Council adopted an ordinance approving and adopting a redevelopment plan known as the 180-182 Roosevelt Avenue Redevelopment Plan for the Project Area, prepared by Beacon Planning and Consulting Services, LLC and dated October 2014 (the "Redevelopment Plan"); and

WHEREAS, the Redeveloper has expressed a desire to redevelop the Project Area; and

WHEREAS, the Borough has determined that the Redeveloper is capable of undertaking the redevelopment of the Project Area; and

WHEREAS, the Redeveloper proposes to redevelop the Project Area by constructing thereon a project consisting of sixty (60) market-rate residential units (the "Project Improvements"); and

WHEREAS, on July [], 2015, the Borough and the Redeveloper executed a Redevelopment Agreement (the "Redevelopment Agreement") setting forth the terms and conditions under which the Redeveloper will construct the Project Improvements on the Project Area; and

WHEREAS, at such time as the Project Improvements are completed in accordance with the terms of the Redevelopment Plan and the Redevelopment Agreement, this Project Covenant and the existing conditions which rendered the Project Area an area in need of redevelopment, will no longer exist; and

NOW, THEREFORE, the Redeveloper, intending to be legally bound hereby and to bind its successors and assigns, does promise, covenant and declare as follows:

The Redeveloper hereby declares and covenants that the Project Area shall be used only for the uses allowed under the Redevelopment Plan, and subject to and in accordance with the covenants and restrictions herein, which covenants and restrictions shall, subject to the terms hereof, run with the land and shall be binding upon the Redeveloper, and its successors and assigns and, to the extent applicable, to all future lessees and occupants of all or any portion of the Project Area including, without limitation, the rights or easements appurtenant thereto.

1. **Terms and Definitions.** Capitalized terms used but not defined herein shall be afforded the meanings provided in the Redevelopment Agreement.

2. **Applicable Laws.** The Redeveloper's development, construction, use, operation and maintenance of the Project Area and all improvements thereon and thereto, as provided in the Redevelopment Plan and the Redevelopment Agreement shall be undertaken and carried out in accordance with all Applicable Laws, including without limitation, the Redevelopment Plan, as it may be amended from time to time by the agreement of the Redeveloper and the Borough.

3. **Redeveloper Covenants.**

3.1. The Redeveloper covenants and agrees as follows, provided, however that all such covenants and agreements shall be subject to the terms of the Redevelopment Agreement and that in case of a conflict between the Redevelopment Agreement and this Project Covenant, the terms of the Redevelopment Agreement shall control:

(a) The Redeveloper shall use diligent efforts to obtain all Government Approvals necessary for the construction and development of the Project Improvements. The Redeveloper shall construct, improve, operate and maintain the Project Improvements in compliance with all Governmental Approvals, and other laws, ordinances, approvals, rules, regulations and requirements applicable thereto including, but not limited to, such zoning, sanitary, pollution and other environmental safety ordinances, laws and such rules and regulations thereunder as shall be binding upon the Redeveloper under applicable laws.

(b) The Redeveloper shall use commercially reasonable efforts to (i) obtain financing for the Project Improvements, (ii) construct and develop the Project Improvements with due diligence and (iii) commence and complete each item in the Project Schedule on or prior to the applicable date set forth in the Project Schedule and, for those items for which commencement dates only are given, such items shall be completed in a commercially reasonable period. All activities performed under the Redevelopment Agreement shall be performed in accordance with the level of skill and care ordinarily exercised by reputable developers of similar developments of the character, scope and composition of the Project Improvements.

(c) The Redeveloper shall construct the Project Improvements in accordance with the Redevelopment Agreement, the Redevelopment Law, the Redevelopment Plan, and all other Applicable Law and, in the event that the Redeveloper wishes to materially change or modify the Project Improvements, notwithstanding the fact that such material change or modification is authorized by the Redevelopment Plan, the Borough's written approval (which shall not be unreasonably withheld, conditioned or delayed) must be secured prior to proceeding with any activities relating to such proposed material modifications. The Redeveloper acknowledges that the

Borough has relied on the Project Schedule in entering into its obligations under the Redevelopment Agreement.

(d) The Redeveloper shall fulfill its material obligations under any and all agreements it enters into with third parties with respect to the acquisition, construction, leasing, financing and other matters relating to the Project Improvements; provided, however, that this covenant is not intended to prevent the Redeveloper from contesting the scope or nature of such obligations as and to the extent provided in such agreements.

(e) The Redeveloper shall use commercially reasonable efforts to complete the Project Improvements or cause same to be completed, on or prior to the date set forth in the Project Schedule at its sole cost and expense; provided, however, that the Parties acknowledge that moneys may be made available towards the completion of same from other outside sources. In the event that moneys made available pursuant to any outside source are not sufficient to pay the costs necessary to complete the Project Improvements, the Redeveloper shall not be entitled to any funds from the Borough.

(f) Upon completion of the development and construction of the Project Improvements, the Redeveloper shall use diligent efforts to obtain all Governmental Approvals authorizing the occupancy and uses of the Project Improvements for the purposes contemplated hereby.

(g) The Redeveloper shall not discriminate against or segregate any person, or group of persons, on account of race, color, religion, creed, national origin, ancestry, physical handicap, age, marital status, affectional preference or gender in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Project Improvements, nor shall the Redeveloper itself, or any Person claiming under or through the Redeveloper, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees of the Project Improvements.

(h) The Redeveloper shall not restrict the sale, lease, sublease, rental, transfer, use, occupancy, tenure, or enjoyment of the Project Improvements on the basis of race, color, religion, creed, national origin, ancestry, physical handicap, age, marital status, affectional preference or gender of any person.

(i) The Redeveloper shall immediately notify the Borough of any material change in its financial condition from the information provided to the Borough by the Redeveloper indicating the Redeveloper's financial capability to develop, finance and construct the Project Improvements in furtherance of the Borough's consideration in designating the Redeveloper as the redeveloper of the Project Area.

(j) The Redeveloper shall not use the Project Area, Project Improvements or any part thereof, for which a Certificate of Completion has not been issued, in a manner that is inconsistent with the Redevelopment Plan and the Redevelopment Agreement.

(k) The Redeveloper shall not use the Project Area, Project Improvements or any part thereof for which a Certificate of Completion has not been issued, as collateral for an unrelated transaction.

3.2. Effect and Duration of the Redeveloper Covenants. The covenants set forth in Section 3.1 hereof shall be covenants running with the land until the Project Improvements are Completed, all in accordance with the Redevelopment Agreement, and they shall, and except only as otherwise specifically provided in the Redevelopment Agreement, be binding to the fullest extent permitted by Applicable Law and equity, for the benefit and in favor of, and enforceable by, the Borough, its successors and assigns, and any successor in interest to the Project Improvements, or any part thereof, against the Redeveloper, its successors and assigns and every successor in interest therein and any party in possession or occupancy of the Project Improvements; provided, however, that such covenants shall not be binding on any Mortgagee except in accordance with the terms of Article 13 of the Redevelopment Agreement. Such agreements and covenants, however, shall be binding on the Redeveloper itself, each successor in interest to the Redeveloper and each party in possession or occupancy, respectively, only for such period as the Redeveloper or such successor or party shall be in possession or occupancy of the Project Area, the buildings and structures thereon, or any part thereof.

3.3. Enforcement of the Covenants. The Borough and its successors and assigns shall be deemed beneficiaries of the agreements and covenants contained in this Project Covenant, both for and in their own right, and also for the purposes of protecting the interests of the community and other parties, public or private, in whose favor or for whose benefit such agreements and covenants have been provided. Such agreements and covenants shall run in favor of the Borough for the entire period during which such agreements and covenants shall be in force and effect, without regard to whether the Borough has at any time been, remains, or is an owner of any land or interest therein, or in favor of which such agreements and covenants relate. The Borough shall have the right, in the event of any breach of any such agreement or covenant, to terminate the Redevelopment Agreement in accordance with Section 14.03 thereof.

3.4. Completion of Project Improvements. Upon redevelopment of the Project Area and completion of the Project Improvements, the conditions that were found and determined to exist at the time the Project Area was determined to be in need of redevelopment shall be deemed to no longer exist, the land and improvements thereon shall no longer be subject to eminent domain as a result and the conditions and requirements of N.J.S.A. 40A:12A-9 shall be deemed to have been satisfied with respect to the Project Improvements or any applicable portion thereof. The covenants contained herein shall terminate and this Project Covenant will be discharged of record upon Redeveloper's receipt of a Certificate of Completion and termination of the Redevelopment Agreement pursuant to Section 10.02 thereof for the Project Improvements.

IN WITNESS WHEREOF, the Redeveloper has caused this Project Covenant to be executed on the date first above written.

ATTEST:

ROOSEVELT AVE. URBAN RENEWAL,
COMPANY, LLC, as Redeveloper

By: _____
Richard LaBarbiera, Manager

ACKNOWLEDGMENT

STATE OF NEW JERSEY :
: SS
COUNTY OF _____ :

BE IT REMEMBERED, that on this _____ day of _____, 2015 before me, the subscriber, a Notary Public of the State of New Jersey, personally appeared _____ who, being by me duly sworn on his/her oath, deposes and makes proof to my satisfaction that he is the _____ of **ROOSEVELT AVE. URBAN RENEWAL COMPANY, LLC**, the Redeveloper named in the within Instrument; that the execution, as well as the making of this Instrument, having been duly authorized by the Redeveloper, and said Instrument was signed and delivered by said _____ as and for the voluntary act and deed of said Redeveloper.

Notary Public of New Jersey

Tab #3

EXHIBIT 3

FORM OF CERTIFICATE OF COMPLETION

Record and Return to:

CERTIFICATE OF COMPLETION

(respecting Block 302, Lots 6 & 7 on the tax
maps of the Borough of Carteret)

Pursuant to Section 10.02 of the Redevelopment Agreement by and between the Borough of Carteret (the "Borough") and Roosevelt Ave. Urban Renewal Company, LLC (the "Redeveloper"), dated as of ____, 2015, (the "Redevelopment Agreement"), the undersigned, as of the date hereof, certifies that (all undefined terms used herein shall have the same meaning ascribed to them in the Redevelopment Agreement):

(i) the Project in its entirety has been completed as of [____], in accordance with the Redevelopment Agreement and in compliance with Applicable Laws so that the Project in its entirety may, in all material respects, be used and operated under the applicable provisions of the Redevelopment Agreement;

(ii) all permits, licenses and approvals that are required in order for the Redeveloper to Complete the Project or such other work or action to which such term is applied are, to the extent so required, in full force and effect;

(iii) such Completion has been further evidenced by a written certificate of the Redeveloper and a certificate of the Redeveloper's engineer evidencing Completion of the Project, which certificates are attached hereto as **Schedule 1**:

(iv) the Project is being operated in accordance with the terms and provisions of the Redevelopment Agreement, the Redevelopment Plan and Applicable Law; and

(v) a copy of any Certificate of Occupancy issued with respect to any portion or portions of the Project for which a Certificate of Occupancy is required is attached hereto as **Schedule 2**.

The conditions determined to exist at the time the Redevelopment Area was determined to be an 'area in need of redevelopment' under the Redevelopment Law no longer exist with respect to the Redevelopment Area. The Redevelopment Area shall no longer be subject to (i)

any covenant running with the land covered by this Certificate of Completion for the benefit of the Borough, and (ii) eminent domain for purposes of redevelopment as a result of those determinations.

The Declaration recorded in the office of the Middlesex County clerk on [] in Deed Book [], at Page [] is hereby discharged of record and is void and of no further force and effect.

This certificate is given without prejudice to any rights against third parties which exist on the date hereof or which may subsequently come into being.

IN WITNESS WHEREOF, the undersigned has caused this Certificate of Completion as to the Project to be executed as of the [] day of [].

WITNESS:

BOROUGH OF CARTERET

By: _____

By: _____

Acknowledgment

STATE OF NEW JERSEY :

:SS

COUNTY OF MIDDLESEX :

On this [] day of [] before me, personally appeared _____, the _____ of the Borough of Carteret, a public body corporate and politic organized and existing under and by virtue of the laws of the State of New Jersey, who I am satisfied is the person who executed the foregoing instrument; and s/he acknowledged that s/he executed the foregoing instrument as the act of the entity and that s/he was authorized to execute the foregoing instrument on behalf of the entity.

Notary Public of the State of New Jersey

Schedule 1

REDEVELOPER'S CERTIFICATE

Pursuant to the Redevelopment Agreement by and between the Borough of Carteret (the "Borough") and Roosevelt Ave. Urban Renewal Company, LLC (the "Redeveloper"), dated as of _____, 2015, (the "Redevelopment Agreement"), the Redeveloper certifies as follows to the best of its knowledge information and belief (capitalized terms used herein and not otherwise defined shall have the same meanings ascribed to them in the Redevelopment Agreement):

(i) the Project in its entirety has been completed as of [_____], in accordance with the Borough building and construction code, the Redevelopment Agreement, the Redevelopment Plan and in compliance with Applicable Laws so that the Project in its entirety may, in all material respects, be used and operated under the applicable provisions of the Redevelopment Agreement;

(ii) all permits, licenses and approvals that are required in order for Redeveloper to Complete the Project or such other work or action to which such term is applied are, to the extent so required, in full force and effect;

(iii) Redeveloper has performed or has caused to be performed all of its duties and obligations under the Redevelopment Agreement with respect to the Project;

(iv) attached hereto is a certificate of [_____], Redeveloper's engineer, evidencing completion and certification of the Project; and

(v) the Project is being operated in accordance with the terms and provisions of the Redevelopment Agreement, the Redevelopment Plan and Applicable Law.

_____, LLC

By: _____
Name:
Title:

Schedule 2

CERTIFICATE OF OCCUPANCY

Tab #4

EXHIBIT 4
FORM OF FINANCIAL AGREEMENT

FINANCIAL AGREEMENT

THIS FINANCIAL AGREEMENT (hereinafter "Agreement" or "Financial Agreement"), made this ____ day of _____, 2015, by and between **ROOSEVELT AVE. URBAN RENEWAL COMPANY, 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"), along with its successors and/or assigns (including Unit Purchasers (as defined herein)), with offices at c/o Richard LaBarbiera, 242 Oradell Ave., 2nd Floor, Paramus, New Jersey 07652 (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, on October 2, 2014, the Borough adopted a resolution designating the properties identified as Block 302, Lots 6 and 7 on the tax map of the Borough (the "Project Area") as an "area in need of redevelopment" under the New Jersey Local Redevelopment and Housing Law, *N.J.S.A. 40A:12A-1 et seq.* (the "Act"); and

WHEREAS, on December 18, 2014, the Borough adopted an ordinance approving and adopting a redevelopment plan for the Project Area, prepared by Beacon Planning and Consulting Services, LLC and dated October 2014 (the "Redevelopment Plan"); and

WHEREAS, on _____, 2015, the Borough and the Entity entered into that certain redevelopment agreement (the "Redevelopment Agreement"), pursuant to which the Entity agreed to redevelop the Project Area; and

WHEREAS, the Entity is the owner of the Project Area, as more particularly described in Exhibit A annexed hereto; and

WHEREAS, the Entity proposes to redevelop the Project Area by constructing thereon a project consisting of sixty (60) market-rate residential units (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 and the Project, the Borough has made the following findings:

A. Relative Benefits of the Project:

The Project will provide the Project Area, which is located in the heart of the Borough and is currently underutilized, with new housing opportunities. These opportunities will generate revenues and creates jobs. The Project is expected to produce approximately [] construction jobs and approximately [] 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 _____, 201__ 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 an 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>Ordinance</u>
<u>Agreement/Financial Agreement</u>	<u>Parties</u>
<u>Application</u>	<u>Project</u>
<u>Borough</u>	<u>Project Area</u>
<u>Entity</u>	<u>Redevelopment Agreement</u>
<u>Long Term Tax Exemption Law</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 – Pursuant to N.J.S.A. 40A:20-3(a), to the extent Units are offered for rent, the annual gross revenue shall include all rental charges generated from tenants in the Project, and all application fees, pet fees, parking fees, floor or view premiums, health club fees and any other fees or charges charged to tenants or prospective tenants in the Project. To the extent the Project, or any part thereof is subject to condominium ownership pursuant to N.J.S.A. 46:8B-1 *et seq.*, "Annual Gross Revenue" shall be determined in accordance with N.J.S.A. 40A:20-14a.

Annual Service Charge: The amount the Entity has agreed to pay the Borough pursuant to Article IV herein with respect to the Improvements, 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, (c) shall be paid on the Annual Service Charge Payment Dates, and (d) shall be pro-rated in the year in which this Agreement begins and the year in which this Agreement terminates.

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.

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, subject to the relevant provisions of Long Term Tax Exemption Law and this Agreement, 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.

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 – the land on which the Project will be constructed.

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, including any applicable grace periods, for Land Taxes, if any, 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.

Rental Period – the period of time during which the Units are offered for rent. It shall also include the period of time during which the Units are offered for sale prior to closing; provided, however, that the "Annual Gross Revenue" during such time shall be determined in accordance with N.J.S.A. 40A:20-14a.

Security Arrangements: 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 total 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) and this Agreement. To the extent the Units are offered for

sale to Unit Purchasers, the Total Project Cost for a Unit shall be the most recent sales price of such Unit, which shall be the true consideration paid for a deed to the Unit in fee simple in a bona fide arm's length transaction between the Entity and such Unit Purchaser, but not less than the assessed valuation of the Unit in fee simple assessed at 100 percent of true value at the time of such sale.

Unit – Any of the units of the Project.

Unit Purchaser – Any third-party purchaser of any Unit, including such purchaser's successors and assigns, to whom the tax exemption for that Unit will be transferred and who will be responsible pursuant to this Agreement to pay the applicable portion of the Annual Service Charge.

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 and the Land in accordance with the terms and conditions of this Agreement and the provisions of Applicable Law.

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 contract purchaser/developer of the Land upon which the Improvements are to be constructed and which is the subject of this Agreement, and that prior to the commencement of construction of the Project, it will be the owner of the Land.

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.

Section 3.03 Voluntary Termination by Entity. The Entity may at any time after the expiration of one year from the completion of the Project notify the Municipality that as of a certain date designated in the notice, it relinquishes its status under the Long Term Tax Exemption Law and the Entity has obtained the consent of the Commissioner of the Department of Community Affairs, and this Agreement shall terminate as of the date set forth in the Notice.

ARTICLE IV ANNUAL SERVICE CHARGE

Section 4.01 Annual Service Charge. In consideration for the tax exemption, the Entity shall make payment to the Borough of an Annual Service Charge as follows:

- (a) During the Rental Period, an amount equal to 15% of the Annual Gross Revenue.
- (b) Upon the sale of any Unit, the Annual Service Charge for such Unit shall be an amount equal to two percent (2%) of the Total Project Cost.

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 the Annual Service Charge 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 Charge. In order to secure the full and timely payment of the Annual Service Charge, 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 and Credits.

(a) In the event the exemption of the Land required under N.J.S.A. 40A:20-12 is invalidated by a court of competent jurisdiction, the Parties agree that this Agreement shall remain valid and in full force and effect, and shall be reformed to provide that Land Taxes are assessed on the Land. In such case, the payment for Land Taxes shall be applied as a credit against the Annual Service Charge for the subsequent year. In any year that the Entity fails to make any Land Tax Payments when due and owing, such delinquency shall render the Entity ineligible for any land tax credits against the Annual Service Charge.

(b) In the event the exemption of the Land authorized under N.J.S.A. 40A:20-12 is invalidated as described in Section 4.08(a), all Land Taxes, shall be separately assessed for the Land, and shall be assessed only on the Land without regard to any improvements or increase in value to the Land because of the improvements. In such event, the Entity will be required to make payment of both the Annual Service Charge and the Land Tax Payments. The Entity will be required to pay the full Land Tax Payments in any given year, and no credits will be applied against the Annual Service Charge for partial payment of the Land Taxes. The Entity's failure to make the requisite Annual Service Charge payment and/or the requisite Land Tax Payment, if any and as applicable, in a timely manner shall constitute a violation and breach of this Agreement. The Borough shall, among its other remedies, have the right to proceed against the Land pursuant to the Tax Sale Law and/or may declare a Default under this Agreement upon sixty (60) days written notice to the Entity.

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:

A. Stage One. Commencing on the Annual Service Charge Start Date through the sixth year of the Agreement, the Annual Service Charge shall be the amount established in accordance with Section 4.01 of this Agreement.

B. Stage Two. For the seventh year of this Agreement, 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.

C. Stage Three. For the eighth of this Agreement, 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.

D. Stage Four. For the ninth year of this Agreement, 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.

E. Stage Five. From the tenth year through the final year of this Agreement, 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

CERTIFICATE OF OCCUPANCY

Section 5.01 Filing of Certificate of Occupancy. It shall be the primary responsibility of the Entity to forthwith file with both the Tax Assessor and the Tax Collector a copy of the Certificate of Occupancy.

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)*, which calculation shall be in accordance with generally accepted accounting principles, the provisions of this Agreement and the Long Term Tax Exemption Law.

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 ninety (90) 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 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(b)(c)*, this calculation is completed in accordance with generally accepted accounting principles, the provisions of this Agreement and Applicable Law.

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 Revenue of the Entity for the last full fiscal year and may retain such part of the excess Net Profit 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 Profit 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 Revenue. The reserve is to be noncumulative.

There is expressly excluded from calculation of Annual Gross Revenue and from Net Profit as set forth in *N.J.S.A. 40A:20-3* for the purpose of determining compliance with *N.J.S.A. 40A:20-15* or *N.J.S.A. 20-16*, any revenue realized by the Entity on the sale of all or a portion of the project, whether or not taxable under Applicable Law.

Section 7.02 Payment of Dividend and Excess Profit Charge. In the event the Net Profits of the Entity shall exceed the Allowable Net Profit for the period, taken as one accounting period, commencing on the Annual Service Charge Start Date and terminating at the end of the last full fiscal year, then the Entity, within one hundred (120) days after the end of that fiscal year, shall pay such excess Net Profit to the Borough as an additional service charge; provided, however, that the Entity may maintain a reserve as determined pursuant to aforementioned Section 7.01. The calculation of Net Profit and Allowable Net Profit shall be made in the manner required pursuant to *N.J.S.A. 40A:20-3(b)* and (c) and *40A:20-15* and this Agreement.

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 Profit, 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 Property 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 Borough 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) The Borough hereby acknowledges that the Entity may impose a condominium form of ownership on the Project (pursuant to *N.J.S.A. 46:8B-1 et seq.*) and may ultimately sell the individual Units to Unit Purchasers for residential occupancy. The Borough hereby consents to the imposition of such condominium form of ownership and to the sale of any individual Unit to a Unit Purchaser. The Borough further consents to and requires that upon assumption by any Unit Purchaser of the Entity's obligations under this Agreement (which assumption shall be deemed to have occurred upon sale of such Unit), the tax exemption provided hereunder shall continue and inure to such Unit Purchaser and such Unit Purchaser's successors and assigns.

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 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. The Entity hereby agrees at all times prior to the Termination Date to comply with the provisions of the Application and Applicable Law, including, but not limited to, the Long Term Tax Exemption Law. The Entity's failure to comply with such statutes or ordinances shall constitute a Default under this Agreement and the Borough shall, among its other remedies, have the right to terminate this Agreement, subject to the Default procedure provisions of Article XIII herein.

ARTICLE XI **CONSTRUCTION**

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 by the Entity 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. In no event shall the Entity be required to indemnify the Municipality for any liability, losses, damages, demands, costs, claims, actions or expenses (including reasonable attorneys' fees and expenses) resulting from any misconduct by the Municipality or any of its officers, officials, employees or agents, or resulting from the illegality or unenforceability of this Agreement or any of the terms of this Agreement. 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 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 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, unless the Borough terminates this Agreement as provided in Section 13.02, its obligation to make Annual Service Charge, 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 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 the Annual Service Charge or other charges, or for breach of covenant or the resort to any other remedy herein provided for the recovery of the Annual Service Charge or other charges shall not be construed as a waiver of the right to proceed with an In Rem Tax Foreclosure action consistent with the terms and provisions of this Agreement.

Section 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 Profit. 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 Land and the Improvements shall expire and same 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, and produce a reasoned decision, 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:

Roosevelt Ave. Urban Renewal Company, LLC
c/o Richard LaBarbiera
242 Oradell Avenue, 2nd Floor
Paramus, New Jersey 07652

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 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, upon the adoption of this Financial Agreement, a certified copy of the Ordinance and this Financial Agreement shall forthwith be transmitted to the Director of the Division of Local Government Services by the Borough Clerk.

Section 16.11 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:

- 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

ROOSEVELT AVE. URBAN RENEWAL COMPANY,
LLC

By: _____
[Name], [Title]

STATE OF NEW JERSEY

COUNTY OF MIDDLESEX

The foregoing instrument was acknowledged before me this ____ day of _____, 201__,
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

STATE OF NEW JERSEY

COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____, 201__, by [Name], [Title] of Roosevelt Ave Urban Renewal Company, LLC, a New Jersey limited liability company.

Notary Public

Commission Expiration: _____

EXHIBIT A

METES AND BOUNDS DESCRIPTION OF THE LAND

EXHIBIT B
ORDINANCE

Tab #5

EXHIBT 5

BOROUGH PURCHASE AND SALE AGREEMENT

AGREEMENT FOR PURCHASE OF REAL PROPERTY

AGREEMENT FOR PURCHASE OF REAL PROPERTY (the "Agreement") made this ____ day of _____, 2015, (the "Effective Date") by and between THE BOROUGH OF CARTERET, a municipal corporation having an address of 61 Cooke Avenue, Carteret, New Jersey 07008 (the "Seller"), and ROOSEVELT AVE. URBAN RENEWAL COMPANY, LLC, a New Jersey limited liability company, having an address of c/o Richard LaBarbiera, 242 Oradell Ave., Second Floor, Paramus, New Jersey 07652 (the "Buyer" and, together with the Seller, the "Parties").

1.0 Background.

1.1 The Seller is the owner of certain property located in the Borough of Carteret, County of Middlesex, State of New Jersey, designated as Block 302, Lots 6 & 7 on the tax map of the Borough of Carteret (the "Property"). The Seller has entered into a redevelopment agreement with the Buyer relating to the Property of even date herewith (the "Redevelopment Agreement") and which, *inter alia*, provides for sale of the Property to the Buyer. This Agreement is being entered into by the Parties in order to memorialize the terms and conditions of such sale. Any defined terms used in this Agreement shall have the same meaning as when used in the Redevelopment Agreement, unless a different meaning is ascribed to such term herein. In the event of a conflict between this Agreement and the Redevelopment Agreement, the terms of the Redevelopment Agreement shall control.

2.0 Agreement to Sell.

2.1 The Seller agrees to sell the Property to the Buyer and the Buyer agrees to buy the Property from the Seller upon the terms and conditions set forth below.

2.2 The Property shall be sold, and Buyer shall accept possession of the Property as of the Closing (as hereinafter defined), "AS IS, WHERE IS, WITH ALL FAULTS", with no right of setoff or reduction in the Purchase Price, except as expressly set forth to the contrary in this Agreement.

3.0 **Property to be Conveyed.** The Property consists of all those certain lots, tracts or parcels of land together with any improvements thereon contained and the privileges contained and appurtenances thereto appertaining, including but not limited to all rights, title and interest of the Seller in and to any adjoining strips and gores, and easements and rights-of-way incidental thereto.

4.0 **Purchase Price.** The purchase price is Two Million and 00/100 DOLLARS (\$2,000,000.00) (the "Purchase Price").

5.0 **Payment of Purchase Price.** The Purchase Price shall be paid on the Closing Date (as hereinafter defined), subject to any adjustments set forth in this Agreement, by wire transfer to an account designated by Seller. There shall be no good faith deposit.

6.0 Title.

6.1 The Seller shall deliver good title to the Buyer at Closing, as such may be insured by a title company authorized to do business in New Jersey with only such exceptions that would not materially interfere with the construction of the Project as contemplated by the Redevelopment Agreement.

6.2 The Buyer may, in its discretion and at its cost and expense, obtain a title report (the "Title Report") of the Property from a title company authorized to do business in the State of New Jersey (the "Title Company"), and, if desired by the Buyer, a survey (the "Survey") of the Property by a licensed New Jersey surveyor. Buyer shall furnish a copy of the Title Report and Survey to the Seller promptly after the Buyer receives same. If anything in the Title Report or Survey constitutes a title defect which renders title to the Property to be less than the quality of title set forth in Section 6.1, above, then the Buyer shall give notice thereof to the Seller, specifying in detail such title defect(s). The Seller shall cure, satisfy and/or discharge such title defect(s) by the Closing Date. If by the Closing Date the Seller fails to cure, satisfy or discharge title defects which render title to the Property to be less than as prescribed hereunder, the Buyer shall have the right to terminate this Agreement on written notice to the Seller; provided, however, that if the Seller has made a good faith effort to cure, satisfy and/or discharge any title defect(s) prior to the Closing Date, the Buyer shall grant Seller a reasonable adjournment of the Closing Date to do so prior to terminating the Agreement, which adjournment shall not exceed thirty (30) days, unless the Buyer agrees to such longer period. If title is not as set forth in Section 6.1, above, and the Seller is unable or unwilling to cure, Buyer's sole remedy shall be to either close without an adjustment to the Purchase Price or terminate this Agreement, whereby the Parties shall be released of any further obligation to each other, other than as set forth in the Redevelopment Agreement.

7.0 Closing of Title.

7.1 The Parties agree that the closing of title (the "Closing") shall take place on or before sixty (60) days from the Effective Date (the "Closing Date"), and may, in Buyer's discretion, be by mail or, in person and, if in person, shall take place at the offices of McManimon, Scotland & Baumann, LLC, 75 Livingston Avenue, 2nd Floor, Roseland, New Jersey 07068.

7.2 On the Closing Date, the Seller shall deliver to the Buyer the following:

- a) A bargain and sale deed with covenants against grantor's acts (the "Deed") to convey title to the Property;
- b) An Affidavit of Title in form reasonably acceptable to the Buyer and its Title Company;
- c) An Affidavit of Consideration;
- d) An Internal Revenue Code Section 1445 Affidavit (FIRPTA Affidavit);
- e) Closing Statement;
- f) Such documents that are reasonably satisfactory to the Buyer's Title Company evidencing approval of this transaction and authorizing Seller to take such acts

and to execute and deliver such documents as are needed to effectuate same, if applicable. A municipal resolution adopted by the Seller authorizing the execution of the Redevelopment Agreement, which contemplates the sale of the Property and the entering of this Agreement, shall be sufficient to satisfy the Seller's obligation set forth in this Section 7.2(f); and

- g) Any other necessary and customary documents reasonably required by the Buyer's Title Company in order to transfer title to the Property as contemplated hereunder.

7.3 The Buyer will pay for all recording fees incidental to conveying title to the Property to the Buyer. Seller shall pay any realty transfer fees, if applicable. In the event the "mansion tax" is due, the payment of such tax shall be the Buyer's obligation. It is expressly understood and agreed, however, that each party shall be solely responsible for its own attorney fees, except as otherwise provided in the Redevelopment Agreement.

8.0 Adjustments at Closing. The following adjustments are to be made at the Closing as of the end of the Closing Date: (i) real estate taxes on the basis of the fiscal year for which assessed, if any; (ii) water charges (if applicable); (iii) sewer rents (if applicable); and (iv) any other items which shall be appropriate for adjustment. If the Closing Date shall occur before a tax rate is fixed, the apportionment of real estate taxes shall be made upon the basis of the tax rate for the immediately preceding year applied to the latest assessed valuation of the Property.

9.0 Right of Entry.

9.1 Buyer and/or Buyer's principal is a sophisticated owner/investor of real estate, has knowledge of the Property, and has determined that the physical condition of the Property is satisfactory to it. Notwithstanding the preceding, Buyer shall have the right to conduct a due diligence investigation of the Property limited to environmental matters and pre-closing inspection, only. Such investigations shall be conducted on weekdays during normal business hours upon the provision of two (2) days advance notice to Seller.

9.2 During the time of performance of due diligence activity on or at the Property, Buyer shall maintain, and cause its retained professionals, agents, contractors and/or consultants to maintain, as applicable, a comprehensive general liability insurance policy for not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate, as well as professional liability insurance, where applicable, in amounts commercially acceptable. Said insurance policies shall name Seller as an additional insured and be submitted to Seller prior to entry onto the Property.

9.3 Buyer shall remain obligated hereunder to promptly repair any damage caused by Buyer (or by its retained professionals, agents, contractors and/or consultants) during its due diligence investigation and to restore the Property to the condition as it existed prior to any and all such inspections, with said repairs to be completed in full compliance with all laws, ordinances, rules and regulations. Buyer shall, upon request of Seller, provide copies of inspection reports and studies prepared by third parties in connection with Buyer's inspection and due diligence. The obligations and liabilities of Buyer under this Section 9.3 shall survive the Closing or sooner termination of this Agreement.

9.4 Buyer shall indemnify and hold harmless Seller, its employees, agents, successors and assigns, from and against any all damages, claims, actions, penalties or liabilities arising out of or in any way connected with negligent acts or omissions or willful misconduct of the Buyer (or its retained professionals, agents, contractors and/or consultants) regarding the access and inspection of the Property. The Borough makes no representation or warranty as to the physical condition of the Property.

9.5 In the event the condition of the Property is not satisfactory to Buyer upon the conclusion of its due diligence investigation, then Buyer may, by not later than sixty (60) days following the Effective Date, provide Seller with a notice terminating this Agreement, whereby the Parties shall be released of any further obligation to each other, other than as set forth in the Redevelopment Agreement.

10.0 Representations and Warranties of the Seller.

10.1 For the purpose of inducing the Buyer to enter into this Agreement, and to consummate the transactions contemplated hereby pursuant to the terms and conditions hereof, the Seller represents and warrants to the Buyer, to the best of its knowledge, as follows:

- a) Each party executing and delivering this Agreement and all documents to be executed and delivered in regard to the consummation of the transaction contemplated hereby on behalf of the Seller has due and proper authority to execute and deliver same.
- b) The Property is now and has been held in peaceable and undisturbed possession by the Seller since said Property was acquired and the title has never been disputed, questioned or rejected to the Seller's knowledge or belief, nor does the Seller know any facts by reason of which said possession or title may be disputed or questioned, or by reason of which any claim to any part of the Property or any interest therein adverse to that of the Seller might be set up or made.
- c) No contract for the sale of the Property has been made and no option to purchase the same has been given to anyone other than the Buyer. The Seller will not sell, mortgage, encumber or otherwise dispose of the Property or any part thereof prior to the Closing Date, except to the Buyer.
- d) The execution, delivery and performance of this Agreement will not conflict with or result in a breach of any material terms and conditions of, or constitute a default or require consent under the terms of any material agreement to which Seller is a party or by which Seller may be bound, or to which the Property is subject, and no consent, approval or authorization of any third party is now required for the execution, delivery and performance of this Agreement, except those that have been obtained or made, and are in full force and effect.

10.2 The representations and warranties set forth in this Agreement are made to the best of

Seller's knowledge and shall not survive the Closing.

11.0 Bulk Sales Law. Buyer shall have the right to comply with N.J.S.A. 54:32B-22(c) and N.J.S.A. 54:50-38 and Seller shall cooperate in connection with such compliance. In furtherance thereof: (i) Seller shall prepare and deliver to the New Jersey Division of Taxation the Asset Transfer Tax Declaration (the "TTD") in the form prescribed by the Director of the New Jersey Division of Taxation (the "Director"), so that such form is received by Buyer not less than thirty (30) days prior to the Closing Date; and (ii) Buyer may deliver a Notification of Sale, Transfer, or Assignment in Bulk (Form C-9600), together with the completed TTD and a fully executed copy of this Agreement (the "Tax Notification") to the Director by registered or certified mail or overnight delivery so that such Tax Notification is received by the Director not less than fifteen (15) days prior to Closing. Seller shall provide all information requested by Buyer to enable Buyer to complete the Tax Notification, as soon as practicable. If, at any time prior to Closing, the Director informs Buyer that a possible claim (the "Claim") for taxes imposed or to be imposed on Seller, including any interest or penalties thereon, any cost or fees imposed by the Director related thereto and any tax on the gain from the sale of the Property (collectively, "Taxes"), exists and the amount thereof (the "Deficiency"), then Buyer and Seller shall close as scheduled and without delay, and Buyer shall withhold the portion of the Purchase Price equal to the amount of the Deficiency, which amount so withheld shall be placed in an escrow account (the "Tax Escrow"), which Tax Escrow shall be held pursuant to an escrow agreement (the "Bulk Sales Escrow Agreement"), if applicable. The escrow agent shall be a title company, attorney or bank authorized to transact business in New Jersey selected by Buyer and reasonably acceptable to Seller ("Tax Escrow Agent"). If, after Closing, the Director or Seller requests that the Buyer pay all or any portion of the Deficiency on behalf of Seller, then Buyer shall direct Tax Escrow Agent to, and Tax Escrow Agent shall, promptly release to the Division such amount from the Tax Escrow. If the Director informs Buyer that the Deficiency has been fully paid or that the Buyer has no further liability for the Deficiency, then Buyer shall direct the Tax Escrow Agent to, and Tax Escrow Agent shall, promptly release such difference to Seller. Notwithstanding anything to the contrary contained herein, Seller shall have the right to negotiate with the Director regarding the Claim and the Deficiency; provided, however, that: (i) Buyer shall be entitled to comply with all instructions of the Director; (ii) the Closing shall not be delayed as a result thereof; and (iii) Buyer shall not be liable for any amount in excess of the Tax Escrow. In no event shall the Tax Escrow Agent fail to make any distribution provided for hereunder, including, without limitation, on the grounds that Seller contests any finding of the Director. Notwithstanding anything to the contrary contained herein, Buyer shall not be liable for any Taxes (including but not limited to, Taxes owed in connection with the use and operation of the Property prior to Closing, or any Taxes on any gain realized upon the sale, transfer or assignment of the Property) and Seller shall indemnify and hold Buyer harmless from any liability or cost incurred in connection with any claim for any such Taxes, including any interest and penalties thereon and cost and fees imposed by the Director relating thereto. The indemnification provision contained in this Section 11.0 shall survive the termination of this Agreement and/or the Closing under this Agreement.

12.0 Remedies for Buyer's Default. In the event the Buyer defaults hereunder, the Seller shall have all remedies set forth in the Redevelopment Agreement.

13.0 Discharge of Liens. On or before the Closing Date, the Seller shall cause to be properly

released, satisfied and discharged all mortgages, judgments, mechanic's and materialman's liens and other encumbrances and shall furnish proper evidence of having done so.

14.0 Assignment. The Buyer may only assign this Agreement in accordance with the transfer provisions set forth in the Redevelopment Agreement.

15.0 Binding Agreement. This Agreement shall bind not only the Seller and the Buyer but also their heirs, executors, administrators, successors and assigns, as applicable.

16.0 Entire Agreement. It is understood and agreed that all understandings and agreements between the Parties are merged in this Agreement, which along with the Redevelopment Agreement and other documents executed in connection therewith, fully and completely expresses their agreement. This Agreement may not be changed, altered or canceled orally; all changes to the Agreement must be in writing and signed by the Parties.

17.0 Brokerage Commissions. Each Party hereto represents to the other that no finders or brokers have been involved with the introduction of the Buyer and the Seller and/or the purchase and sale of the Property. Each Party agrees to indemnify the other against any claim of a brokerage commission alleged by a broker claiming to have represented the indemnifying Party. This provision shall survive Closing.

18.0 Notices.

18.1 All notices, requests, consents, approvals or other communications under this Agreement shall be in writing and mailed by certified mail, return receipt requested, postage prepaid, or delivered by a nationally recognized overnight courier service which obtains delivery receipts (e.g., Federal Express) addressed as follows:

If to the Seller, at:	Borough of Carteret 61 Cooke Avenue Carteret, New Jersey 07008 Attn: Law Director
with a copy to:	McManimon, Scotland & Baumann, LLC 75 Livingston Avenue, 2 nd Floor Roseland, NJ 07068 Attn: Kevin P. McManimon, Esq.
If to the Buyer at:	Roosevelt Ave. Urban Renewal Company, LLC c/o Richard LaBarbiera 242 Oradell Avenue, Second Fl. Paramus, New Jersey 07652
with a copy to:	Kaufman, Semeraro & Leibman, LLP Two Executive Drive, Suite 530 Fort Lee, New Jersey 07024

Attn: Paul C. Kaufman, Esq.

18.2 Either Party may, by notice given as aforesaid, change its address for all subsequent notices. A Party's attorney may deliver any notice on behalf of that Party.

18.3 All notices hereunder shall be effective upon the earlier of either three (3) days after mailing (if mailed) or one (1) business day after delivery to a nationally recognized independent overnight courier.

19.0 Miscellaneous

19.1 This Agreement shall be governed by and construed in accordance with the laws of the State of New Jersey.

19.2 The Seller and the Buyer waive any statutory or common law presumption which would serve to have this document construed in favor and/or against either Party as the drafter.

19.3 Each of the Parties hereby agrees to execute, acknowledge, and deliver such other documents or instruments as the other may reasonably require from time to time to carry out the purposes of this Agreement.

19.4 The Effective Date of this Agreement shall be the date on which it is signed by all Parties, or, if not signed simultaneously, the date on which it is signed by the last of the Parties, which date shall be inserted at the top of the first page hereof.

20.0 Counterparts. This Agreement may be simultaneously executed in several 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 this Agreement for Purchase of Real Property to be executed as of the date set forth on the first page hereof.

WITNESS/ATTEST:

Name:
Title:

SELLER:
BOROUGH OF CARTERET

By: _____
Daniel J. Reiman
Mayor

WITNESS/ATTEST:

Name:
Title:

BUYER:
ROOSEVELT AVE. URBAN RENEWAL
COMPANY, LLC

By: _____
Name:
Title:

Tab #6

EXHIBIT 6

REDEVELOPER OWNERSHIP STRUCTURE

ROOSEVELT AVE. URBAN RENEWAL COMPANY, LLC, a New Jersey limited liability company, is owned by:

RVN Development LLC	50 %
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Lexington Edgewater LLC	50%
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NARRATIVE DESCRIPTION OF PROJECT

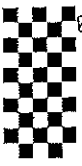
The Project is comprised of sixty (60) units in a four (4) story building above ground level surface parking. The units are comprised of forty-seven (47) 2 bedroom/2bath units that range from 1150 to 1295 square feet per unit and thirteen (13) 1 bedroom/1 bath units that average 900 square feet per unit. The Project includes 96 parking spaces which is 1.60 per unit and which is in excess of the number of spaces required under the Redevelopment Plan.

Condominium style finishes equipped with a security access system and elevator access to each floor are planned. All apartments feature:

- Fully equipped kitchen with dining area
- Through the wall heating and cooling (PTAC)
- Stacked washer/dryer
- Separate metering of utilities
- Pre-wired Internet, cable and security

The proposed Project will have no restrictions as to income or age.

SITE PLAN APPROVAL BY PLANNING BOARD



RESOLUTION OF FINDINGS AND CONCLUSIONS

Application No. PB-15-002

WHEREAS, by Application No. PB-15-002, Roosevelt Avenue Urban Renewal Company, LLC, purchaser under contract of the property from the Borough of Carteret, of the property commonly known as 180-182 Roosevelt Avenue, and designated as Lots 6 and 7 in Block 302, requests preliminary and final site plan approval, together with a deviation from the residential site improvement standards for the number of parking spaces in order to construct a five story residential structure, including a parking level creating sixty (60) residential units;

WHEREAS, a meeting was conducted on March 25, 2015; and

WHEREAS, the following members of the Borough of Carteret Planning Board heard the testimony and read the documents submitted:

Chairman Joseph Agliata
Councilman Jorge Diaz
Mr. Robert Brown
Mr. Ajit Chima
Mr. Ajmar Johal
Mr. Anthony Nelbert
Ms. Rhoda Weissman
Mr. Mohammad Janjua (Second Alternate)

WHEREAS, at said meeting all those who desired to be heard were heard, and the testimony was recorded by the Planning Board of the Borough of Carteret; and

WHEREAS, the testimony was carefully considered and the following findings of fact were made:

FINDINGS OF FACT

1. The applicant is the contract purchaser from the Borough of Carteret of the property commonly known as 180-182 Roosevelt Avenue, and designated as Lots 6 and 7 in Block

302 on th Borough of Carteret Tax Map

2. The property maintains 167 feet of frontage along Roosevelt Avenue and a uniform lot depth of 200 feet. Lot 6 is presently improved with a two and a half story frame dwelling, a second one story frame dwelling and a one story frame building. Lot 7 is improved with a one story masonry and corrugated metal building that was previously utilized as an auto repair shop. The property is located in the 180-182 Roosevelt Avenue Redevelopment zone.

3. Mr. Mark Clark, the applicant's engineer and Mr. Jose Carballo, applicant's architect testified and described the proposal in detail. The building will have five (5) stories with a parking level at grade and four (4) residential floors above. The lower parking level will be improved with ninety-six (96) parking spaces, including sixteen (16) tandem (double stacked) spaces and four (4) handicap accessible spaces. The parking level will also include a lobby, a mail room, a management office, trash room, two utility rooms, a transformer room, a bicycle storage room and a management office.

4. The second floor will contain fourteen (14) units, consisting of three (3) one bedroom units and eleven (11) two bedroom units. The second floor will also include an elevator lobby, a storage closet, an undefined space adjacent to the storage closet, a gym and a limited outdoor activity area.

5. The third and fourth floors will each contain four (4) one bedroom units and twelve (12) two bedroom units, while the fifth floor will be improved with two (2) one bedroom units and twelve (12) two bedroom units.

6. The front elevation expresses architectural interest in that it provides a mix of textures and materials as well as movement in order to prevent a monotonous appearance.

7. The property is designated as the 180-182 Roosevelt Avenue Redevelopment Area. All of the standards of the 180-182 Redevelopment Plan are complied with by the Applicant's proposal. However, the residential site improvement standard for parking is not met. RSIS requires 117 spaces, whereas 96 spaces are required. However the 96 spaces does satisfy the parking requirement under the Redevelopment Plan.

8. Testimony was elicited that there are several factors which would result in an adjustment to the required number of spaces under the RSIS including but not limited to the availability of public transportation. It is also anticipated that not every resident of this residential complex will own two or even one automobile.

9. The sixteen (16) tandem parking spaces (32 total stalls) will be made available to the tenants of the two bedroom apartments.

10. The Applicant's professionals reviewed the CME Associates Memorandum dated March 24, 2015. On behalf of the Applicant, its professionals agreed that the applicant would comply with all the comments in that Memorandum. More particularly, it was agreed that there would be compliance with item 3(d) as indicated, or in some other manner compliant with the Americans With Disabilities Act; the installation of wheel stops; furnishing four inch of dense graded aggregate for the onsite concrete sidewalks as requested; submittal of "Streetscape" details; furnish a detail of the top/bottom of curb; eliminate the conflict between the sidewalk and an existing stockade fence at the northeasterly side of the site; locate a trash area on the architectural plans, satisfy the Board staff with regard to the means for collection of refuse and recyclables, and demonstrating the ability of an SU-30 vehicle to enter the understory parking garage; furnish storm pipe calculations and the location of the tie in; identify the location of roof

leaders, clean cuts and how runoff will exist the site; provide adequate space in the utility room for all proposed meters and provide proposed water and sanitary sewer laterals sizes, clean outs, curb stops and valves at all lateral locations; indicate the proposed connection to the exiting sanitary sewer main on Roosevelt Avenue; calculate and add to the plans the size and slope of the sanitary pipe; submit the Borough's application for sanitary sewer connection approval as well as the NJDEP TWA forms; meet with the Borough Fire Chief, the Middlesex Water Company, Elizabethtown Gas Company and PSE&G to review proposed utility services and requirements.

11. Applicant advised that its signage package had not yet been developed and same must be submitted to, reviewed and approved by the Board staff and without any deviations from the 180-182 Roosevelt Avenue Redevelopment Plan.

Based upon the above findings of fact, the Board concludes as follows:

1. Provided all of the conditions in this Resolution are met and there is complete compliance with the CME Associates Engineering review memorandum dated March 24, 2015, the Board concludes that the proposed site plan will not only benefit the subject property, but also surrounding properties.
2. There is adequate evidentiary support for granting the deviation from the residential site improvement parking standard. In approving this deviation, the Board notes from its knowledge of local conditions and experience with other similar residential projects, that not every resident will own two motor vehicles. In some instances a resident may not own any motor vehicle. The Board also is aware of the availability of public transportation which is a factor RSIS uses to justify the providing of fewer than the customarily required parking spaces. The Board also notes that there is a long range plan to provide ferry service from

Carteret to New York City and land transportation from various sites within the Borough to the ferry slip on the Arthur Kill.

3. The application can be granted without any impairment, much less substantial impairment, to the goals and objectives of the 180-182 Redevelopment Plan, the Borough's Master Plan or the Zoning Ordinance. In fact, the parking deviation is only at variance with the RSIS standards and is conforming to the Redevelopment Plan standard for parking.

4. The parking deviation can also be granted without substantial detriment to the public good. In developing the parking standard the author of the 180-182 Roosevelt Avenue Redevelopment Plan contemplated the declining use of automobiles by groups such as young professionals and empty nesters as well as the current availability of public transportation and the future ferry service.

NOW, THEREFORE, BE IT RESOLVED that the application of Roosevelt Avenue Urban Renewal Company, LLC for preliminary and final site plan approval and a deviation from the RSIS parking standard, based upon engineering plans prepared by MCB Engineering Associates, LLC dated March 5, 2015 and architectural elevations and floor plans prepared by JCA Architectural Group, PC dated January 27, 2015, be and the same is hereby granted, subject to the voluntary conditions in paragraph 10 and the following additional conditions:

1. The Consolidation Deed must be reviewed and approved by the Board attorney.
2. The applicant's signage package must be reviewed and approved by the Board's professionals.

3. The amenity area and deck must be redesigned to the satisfaction of the Board staff.
4. Compliance with the Redevelopment Plan exterior design standards must be confirmed by the Board staff prior to the issuance of a Certificate of Occupancy.
5. Applicant is designated as the Redeveloper of the property and executes a Redevelopment Agreement satisfactory to the Borough of Carteret.
6. Applicant shall obtain all of the necessary government approvals.
7. Applicant shall post all bonds and pay inspection fees.
8. Applicant shall pay the fees of the Board's professionals including for the review of the Consolidation Deed.
9. Applicant shall comply with the Council on Affordable Housing requirements if applicable.

The above is memorialization of a motion duly made and seconded on March 25, 2015 on the following vote:

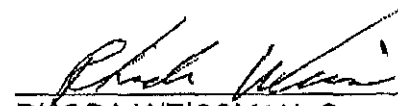
ROLL CALL VOTE

Those in Favor: Agliata, Diaz, Brown, Chima, Johal, Nelbert, Weissman, Janjua (Second Alternate)

Opposed: None

Abstained: None


JOSEPH AGLIATA, Chairman


RHODA WEISSMAN, Secretary

Dated: April 29, 2015

S:\Dorothy Filadelfo\PLANNING\RESOLUTIONS\Resolution of Findings and Conclusions - PE 16 002.vpd

Exhibit 10

SITE PLAN APPROVAL RESOLUTION

See attachment to Exhibit 9

EXHIBIT II

TOTAL PROJECT COST ESTIMATE

180-182 Roosevelt Ave., Carteret
 Building/Site Costs
 Apartment Building- 60 Units, 4 stories over 1 parking

Construction Budget
 3/18/2015
 82,903 sf/building

DESCRIPTION	BUDGET VALUE	COST/SF
HARD COSTS		
Sitework		
Grading	\$50,000.00	
Water	\$10,000.00	
Storm Drainage	\$50,000.00	
Sanitary	\$20,000.00	
Perimeter Wall	\$90,000.00	
Tel/CATV/Elect	\$10,000.00	
Curbing/Concrete/Paving	\$200,000.00	
Striping/Signage	\$10,000.00	
Site Lighting	\$20,000.00	
Landscaping	\$20,000.00	
Sub-total sitework	\$480,000.00	
Structure - 23,000 sf Podium		
Excavation Footings and Found	\$253,000.00	\$11.00
Concrete Podium/slab/rail	\$1,035,000.00	\$45.00
Misc lighting/finish/insulation	\$115,000.00	\$5.00
Sub-total podium	\$1,403,000.00	\$61.00
Building - 82,903 sf, 60 Units		
Carpentry	\$911,933.00	\$11.00
Elevator \$125,000/cab	\$250,000.00	\$3.02
Masonry	\$165,806.00	\$2.00
Doors and Trim	\$414,515.00	\$5.00
Drywall	\$331,612.00	\$4.00
Electric/Communication \$16,000/unit	\$960,000.00	\$11.58
Fireproofing/Sprinklers	\$302,595.95	\$3.65
HVAC \$6,500/unit	\$390,000.00	\$4.70
Ceramic Tile	\$190,676.90	\$2.30
Painting	\$248,709.00	\$3.00
Insulation	\$165,806.00	\$2.00
Plumbing \$8,000/unit	\$480,000.00	\$5.79
Roofing/Siding	\$829,030.00	\$10.00
Windows/entry door	\$207,257.50	\$2.50
Cabinets/Vanities \$6,000/unit	\$360,000.00	\$4.34
Stairs/rails	\$248,709.00	\$3.00
Appliances \$3,700/unit	\$222,000.00	\$2.68
Flooring	\$331,612.00	\$4.00
Accessorie/blinds/Rooftop	\$414,515.00	\$5.00
General Conditions	\$331,612.00	\$4.00
Sub-total building	\$7,756,389.35	\$93.56
Sub-total sitework, podium and building	\$9,639,389.35	
Contingency	\$125,000.00	
TOTAL HARD COSTS	\$9,764,389.35	

Building - 68,995 sf, 60 Units Cont'd		
Fireproofing/Sprinklers	\$251,831.75	\$3.65
HVAC \$6,500/unit	\$390,000.00	\$5.65
Ceramic Tile	\$158,688.50	\$2.30
Painting	\$206,985.00	\$3.00
Insulation	\$137,990.00	\$2.00
Plumbing \$8,000/unit	\$480,000.00	\$6.96
Windows/entry door	\$172,487.50	\$2.50
Cabinets/Vanities \$6,000/unit	\$360,000.00	\$5.22
Appliances \$3,700/unit	\$222,000.00	\$3.22
Flooring	\$275,980.00	\$4.00
Accessorie/blinds	\$344,975.00	\$5.00
General Conditions	\$275,980.00	\$4.00
Sub-total units	\$5,556,817.75	\$80.54
Sub-total sitework	\$480,000.00	
Sub-total podium	\$1,403,000.00	
Sub-total common areas/amenities	\$1,965,704.60	
Contingency	\$250,000.00	
TOTAL HARD COSTS	\$9,655,522.35	
BUILDING COST PER UNIT	\$92,613.63	

I certify that this Engineers's Estimate is prepared to best of my ability and based on:

- 1) Preliminary and Final Site Plan prepared by MCB Engineering Associates, LLC dated March 5, 2015 and consisting of five (5) sheets
- 2) Architectural Plan prepared by Jose Carballo Architectural Group, P.C. dated January 27, 2015, last revised March 25, 2015, and consisting of four (4) sheets; and
- 3) Survey prepared by Diaz Land Surveying, LLC dated December 26, 2014.



Richard A. LaBarbiera, PE
NJ License #39271

COST ESTIMATE FOR EACH UNIT TYPE

Attach a summary of the estimated total costs for each unit, broken down by type of unit. This information can be presented in summary form, not at the level of detail required in Exhibit 11. However, this estimate must also be certified by a licensed architect or engineer.

\$92,613.63 per unit as set forth on Exhibit 11

PROJECT PRO FORMA

180-182 Roosevelt Ave., Carteret- Budget

2-Aug-15

60 Rental Units

Development Cost	
DESCRIPTION	AMOUNT
LAND	\$1,500,000.00
HARD COSTS	
Sitework/Grade Parking	\$680,000.00
Elevated parking/structure	\$1,903,000.00
Building	\$7,956,389.35
Sub-total	\$10,539,389.35
Contingency	\$125,000.00
TOTAL HARD COSTS	\$10,664,389.35
SOFT COSTS	
Cost \$ (5% on 50% \$10m cost for 1 yr)	\$250,000.00
A&E	\$275,000.00
Legal	\$150,000.00
Permits	\$120,000.00
Insurance	\$60,000.00
Tax	\$40,000.00
Lease up Cost	\$50,000.00
TOTAL SOFT COSTS	\$945,000.00
TOTAL DEVELOPMENT COSTS	\$13,109,389.35

180-182 ROOSEVELT AVENUE					
CARTERET					
SALES APPROACH					
Sales Price	47	2 BR	@	\$ 325,000	\$ 15,275,000
	13	1 BR	@	\$ 250,000	\$ 3,250,000
					\$ 18,525,000
	Less commissions and marketing (5% of gross sales)				\$ 926,250
	Misc. closing expenses (Realty Transfer Fees, closing costs, HOW premiums)				\$ 350,000
					\$ 1,276,250
Net Sales					\$ 17,248,750
Total Project Costs					\$ 13,109,389
Equity Required					\$ 3,100,000
Net Potential Profit					\$ 4,139,361

PROJECT FINANCING PLAN

Attach a detailed explanation of the expected method by which the project will be financed, indicating the amount of equity to be contributed and its source, all public loans and/or grants that are to be used and all private sources of capital.

PROJECT FINANCING PLAN

Attach a detailed explanation of the expected method by which the project will be financed, indicating the amount of equity to be contributed and its source, all public loans and/or grants that are to be used and all private sources of capital.

The Applicant intends to finance the project utilizing a combination of institutional construction financing and equity and the Applicant has an application pending before Amboy Bank for a construction loan in the amount of \$10,000,000. The Applicant will fund the equity portion (approximately \$3,100,000) from its members and may offer up to 33-1/3 % of the membership interest to an investor.

PRIVATE FINANCING COMMITMENTS

Attach certified copies of any and all letters from public or private sources of capital indicating a commitment to make funds available for the project.

NOT APPLICABLE

EXPLANATION OF NEED FOR TAX EXEMPTION

Long Term Tax exemption is required to help create a for-sale market for the proposed condominium units by providing fixed long term (10 year), affordable payments in lieu of taxes to attract potential purchasers by reflecting the benefits of ownership rather than rented.

The annual service charge is required to provide stabilizing tax structures to (i) attract institutional construction financing by demonstrating as alternative to the for-sale market as a safe harbor to such lenders; and (ii) to provide a reasonable return on unsold units as the for-sale market is created.

Exhibit 17

PROJECT SCHEDULE

1.	Applicant obtains all governmental approvals required for commencement of construction	December 15, 2015
2.	Applicant closes on financing and property	December 29, 2015
3.	Commencement of Construction	January 2016
4.	Commence marketing	September 2017
5.	Completion of Construction	December 2017

SUMMARY OF PROJECT BENEFITS

Attach a summary of all the public benefits associated with this project, including, at a minimum, the number and type of construction jobs anticipated, the number and type of permanent jobs to be created and the amount of municipal revenue to be generated by the project through the payment of taxes, payments in lieu of taxes, water and sewer fees and any other municipal payments.

Applicant anticipates that the number of construction jobs throughout the project will be approximately 200. These jobs will be in all phases of construction from site work through trim.

Applicant anticipates that 3 permanent jobs will be created.

Applicant anticipates that the payment in lieu of taxes will be approximately \$260,000.00.

FORM OF FINANCIAL AGREEMENT

The appropriate form of Financial Agreement should be attached to this application.

FINANCIAL AGREEMENT

THIS FINANCIAL AGREEMENT (hereinafter "Agreement" or "Financial Agreement"), made this ____ day of _____, 2015, by and between **ROOSEVELT AVE. URBAN RENEWAL COMPANY, 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"), along with its successors and/or assigns (including Unit Purchasers (as defined herein)), with offices at c/o Richard LaBarbiera, 242 Oradell Ave., 2nd Floor, Paramus, New Jersey 07652 (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, on October 2, 2014, the Borough adopted a resolution designating the properties identified as Block 302, Lots 6 and 7 on the tax map of the Borough (the "Project Area") as an "area in need of redevelopment" under the New Jersey Local Redevelopment and Housing Law, *N.J.S.A. 40A:12A-1 et seq.* (the "Act"); and

WHEREAS, on December 18, 2014, the Borough adopted an ordinance approving and adopting a redevelopment plan for the Project Area, prepared by Beacon Planning and Consulting Services, LLC and dated October 2014 (the "Redevelopment Plan"); and

WHEREAS, on July 17, 2015, the Borough and the Entity entered into that certain redevelopment agreement (the "Redevelopment Agreement"), pursuant to which the Entity agreed to redevelop the Project Area; and

WHEREAS, the Entity is the owner of the Project Area, as more particularly described in Exhibit A annexed hereto; and

WHEREAS, the Entity proposes to redevelop the Project Area by constructing thereon a project consisting of sixty (60) market-rate residential units (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 and the Project, the Borough has made the following findings:

A. Relative Benefits of the Project:

The Project will provide the Project Area, which is located in the heart of the Borough and is currently underutilized, with new housing opportunities. These opportunities will generate revenues and creates jobs. The Project is expected to produce approximately [] construction jobs and approximately [] 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 _____, 201__ 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 an 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>Ordinance</u>
<u>Agreement/Financial Agreement</u>	<u>Parties</u>
<u>Application</u>	<u>Project</u>
<u>Borough</u>	<u>Project Area</u>
<u>Entity</u>	<u>Redevelopment Agreement</u>
<u>Long Term Tax Exemption Law</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 – Pursuant to N.J.S.A. 40A:20-3(a), to the extent Units are offered for rent, the annual gross revenue shall include all rental charges generated from tenants in the Project, and all application fees, pet fees, parking fees, floor or view premiums, health club fees and any other fees or charges charged to tenants or prospective tenants in the Project. To the extent the Project, or any part thereof is subject to condominium ownership pursuant to N.J.S.A. 46:8B-1 *et seq.*, “Annual Gross Revenue” shall be determined in accordance with N.J.S.A. 40A:20-14a.

Annual Service Charge: The amount the Entity has agreed to pay the Borough pursuant to Article IV herein with respect to the Improvements, 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, (c) shall be paid on the Annual Service Charge Payment Dates, and (d) shall be pro-rated in the year in which this Agreement begins and the year in which this Agreement terminates.

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.

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, subject to the relevant provisions of Long Term Tax Exemption Law and this Agreement, 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.

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 – the land on which the Project will be constructed.

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, including any applicable grace periods, for Land Taxes, if any, 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.

Rental Period – the period of time during which the Units are offered for rent. It shall also include the period of time during which the Units are offered for sale prior to closing; provided, however, that the “Annual Gross Revenue” during such time shall be determined in accordance with *N.J.S.A. 40A:20-14a*.

Security Arrangements: 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 total 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)* and this Agreement. To the extent the Units are offered for

sale to Unit Purchasers, the Total Project Cost for a Unit shall be the most recent sales price of such Unit, which shall be the true consideration paid for a deed to the Unit in fee simple in a bona fide arm's length transaction between the Entity and such Unit Purchaser, but not less than the assessed valuation of the Unit in fee simple assessed at 100 percent of true value at the time of such sale.

Unit – Any of the units of the Project.

Unit Purchaser – Any third-party purchaser of any Unit, including such purchaser's successors and assigns, to whom the tax exemption for that Unit will be transferred and who will be responsible pursuant to this Agreement to pay the applicable portion of the Annual Service Charge.

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 and the Land in accordance with the terms and conditions of this Agreement and the provisions of Applicable Law.

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 contract purchaser/developer of the Land upon which the Improvements are to be constructed and which is the subject of this Agreement, and that prior to the commencement of construction of the Project, it will be the owner of the Land.

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.

Section 3.03 Voluntary Termination by Entity. The Entity may at any time after the expiration of one year from the completion of the Project notify the Municipality that as of a certain date designated in the notice, it relinquishes its status under the Long Term Tax Exemption Law and the Entity has obtained the consent of the Commissioner of the Department of Community Affairs, and this Agreement shall terminate as of the date set forth in the Notice.

ARTICLE IV **ANNUAL SERVICE CHARGE**

Section 4.01 Annual Service Charge. In consideration for the tax exemption, the Entity shall make payment to the Borough of an Annual Service Charge as follows:

- (a) During the Rental Period, an amount equal to 15% of the Annual Gross Revenue.
- (b) Upon the sale of any Unit, the Annual Service Charge for such Unit shall be an amount equal to two percent (2%) of the Total Project Cost.

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 the Annual Service Charge 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 Charge. In order to secure the full and timely payment of the Annual Service Charge, 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 and Credits.

(a) In the event the exemption of the Land required under N.J.S.A. 40A:20-12 is invalidated by a court of competent jurisdiction, the Parties agree that this Agreement shall remain valid and in full force and effect, and shall be reformed to provide that Land Taxes are assessed on the Land. In such case, the payment for Land Taxes shall be applied as a credit against the Annual Service Charge for the subsequent year. In any year that the Entity fails to make any Land Tax Payments when due and owing, such delinquency shall render the Entity ineligible for any land tax credits against the Annual Service Charge.

(b) In the event the exemption of the Land authorized under N.J.S.A. 40A:20-12 is invalidated as described in Section 4.08(a), all Land Taxes, shall be separately assessed for the Land, and shall be assessed only on the Land without regard to any improvements or increase in value to the Land because of the improvements. In such event, the Entity will be required to make payment of both the Annual Service Charge and the Land Tax Payments. The Entity will be required to pay the full Land Tax Payments in any given year, and no credits will be applied against the Annual Service Charge for partial payment of the Land Taxes. The Entity's failure to make the requisite Annual Service Charge payment and/or the requisite Land Tax Payment, if any and as applicable, in a timely manner shall constitute a violation and breach of this Agreement. The Borough shall, among its other remedies, have the right to proceed against the Land pursuant to the Tax Sale Law and/or may declare a Default under this Agreement upon sixty (60) days written notice to the Entity.

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:

A. Stage One (Years 1 – 7). From the Annual Service Charge Start Date through the seventh year of the Agreement, the Annual Service Charge shall be an amount equal to 15% of the Annual Gross Revenue or an amount equal to two percent (2%) of the Total Project Cost, as applicable under Section 4.01 hereof.

B. Stage Two (Years 8 – 120). From the eighth (8th) anniversary of the Annual Service Charge Start Date through the tenth (10th) year of this Agreement, the Annual Service Charge shall be an amount equal to 15% of the Annual Gross Revenue or an amount equal to two percent (2%) of the Total Project Cost, as applicable under Section 4.01 hereof, or 20% of the amount of the taxes otherwise due on the Land and Improvements, whichever is greater.

C. Stage Three (Years 121 – 153). From the eleventh (11th) anniversary of the Annual Service Charge Start Date through the thirteenth (13th) year of this Agreement, the Annual Service Charge shall be an amount equal to 15% of the Annual Gross Revenue or an amount equal to two percent (2%) of the Total Project Cost, as applicable under Section 4.01 hereof, or 40% of the amount of the taxes otherwise due on the Land and Improvements, whichever is greater.

D. Stage Four (Years 164 -2015). From the fourteenth (14th) anniversary of the Annual Service Charge Start Date through the fifteenth (15th) year of this Agreement, the Annual Service Charge shall be an amount equal to 15% of the Annual Gross Revenue or an amount equal to two percent (2%) of the Total Project Cost, as applicable under Section 4.01 hereof, or 60% of the amount of the taxes otherwise due on the Land and Improvements, whichever is greater.

E. Stage Five (Years 2116 – 30). From the sixteenth (16th) anniversary of the Annual Service Charge Start Date through the final year of this Agreement, the Annual Service Charge shall be an amount equal to 15% of the Annual Gross Revenue or an amount equal to two percent (2%) of the Total Project Cost, as applicable under Section 4.01 hereof, 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

CERTIFICATE OF OCCUPANCY

Section 5.01 Filing of Certificate of Occupancy. It shall be the primary responsibility of the Entity to forthwith file with both the Tax Assessor and the Tax Collector a copy of the Certificate of Occupancy.

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)*, which calculation shall be in accordance with generally accepted accounting principles, the provisions of this Agreement and the Long Term Tax Exemption Law.

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 ninety (90) 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 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(b)(c), this calculation is completed in accordance with generally accepted accounting principles, the provisions of this Agreement and Applicable Law.

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 Revenue of the Entity for the last full fiscal year and may retain such part of the excess Net Profit 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 Profit 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 Revenue. The reserve is to be noncumulative.

There is expressly excluded from calculation of Annual Gross Revenue and from Net Profit as set forth in *N.J.S.A.* 40A:20-3 for the purpose of determining compliance with *N.J.S.A.* 40A:20-15 or *N.J.S.A.* 40A:20-16, any revenue realized by the Entity on the sale of all or a portion of the project, whether or not taxable under Applicable Law.

Section 7.02 Payment of Dividend and Excess Profit Charge. In the event the Net Profits of the Entity shall exceed the Allowable Net Profit for the period, taken as one accounting period, commencing on the Annual Service Charge Start Date and terminating at the end of the last full fiscal year, then the Entity, within one hundred (120) days after the end of that fiscal year, shall pay such excess Net Profit to the Borough as an additional service charge; provided, however, that the Entity may maintain a reserve as determined pursuant to aforementioned Section 7.01. The calculation of Net Profit and Allowable Net Profit shall be made in the manner required pursuant to *N.J.S.A.* 40A:20-3(b) and (c) and 40A:20-15 and this Agreement.

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 Profit, 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 Property 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 Borough 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) The Borough hereby acknowledges that the Entity may impose a condominium form of ownership on the Project (pursuant to N.J.S.A. 46:8B-1 *et seq.*) and may ultimately sell the individual Units to Unit Purchasers for residential occupancy. The Borough hereby consents to the imposition of such condominium form of ownership and to the sale of any individual Unit to a Unit Purchaser. The Borough further consents to and requires that upon assumption by any Unit Purchaser of the Entity's obligations under this Agreement (which assumption shall be deemed to have occurred upon sale of such Unit), the tax exemption provided hereunder shall continue and inure to such Unit Purchaser and such Unit Purchaser's successors and assigns.

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 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. The Entity hereby agrees at all times prior to the Termination Date to comply with the provisions of the Application and Applicable Law, including, but not limited to, the Long Term Tax Exemption Law. The Entity's failure to comply with such statutes or ordinances shall constitute a Default under this Agreement and the Borough shall, among its other remedies, have the right to terminate this Agreement, subject to the Default procedure provisions of Article XIII herein.

ARTICLE XI

CONSTRUCTION

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 by the Entity 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. In no event shall the Entity be required to indemnify the Municipality for any liability, losses, damages, demands, costs, claims, actions or expenses (including reasonable attorneys' fees and expenses) resulting from any misconduct by the Municipality or any of its officers, officials, employees or agents, or resulting from the illegality or unenforceability of this Agreement or any of the terms of this Agreement. 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 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 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, unless the Borough terminates this Agreement as provided in Section 13.02, its obligation to make Annual Service

Charge, 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 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 the Annual Service Charge or other charges, or for breach of covenant or the resort to any other remedy herein provided for the recovery of the Annual Service Charge or other charges shall not be construed as a waiver of the right to proceed with an In Rem Tax Foreclosure action consistent with the terms and provisions of this Agreement.

Section 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 Profit. 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 Land and the Improvements shall expire and same 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, and produce a reasoned decision, 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:

Roosevelt Ave. Urban Renewal Company, LLC
c/o Richard LaBarbiera
242 Oradell Avenue, 2nd Floor
Paramus, New Jersey 07652

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 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, upon the adoption of this Financial Agreement, a certified copy of the Ordinance and this Financial Agreement shall forthwith be transmitted to the Director of the Division of Local Government Services by the Borough Clerk.

Section 16.11 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:

- 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

ROOSEVELT AVE. URBAN RENEWAL COMPANY,
LLC

By: _____
[Name], [Title]

STATE OF NEW JERSEY

COUNTY OF MIDDLESEX

The foregoing instrument was acknowledged before me this ____ day of _____, 201__,
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

STATE OF NEW JERSEY

COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____, 201__, by [Name], [Title] of Roosevelt Ave Urban Renewal Company, LLC, a New Jersey limited liability company.

Notary Public

Commission Expiration: _____

EXHIBIT A

METES AND BOUNDS DESCRIPTION OF THE LAND

EXHIBIT B
ORDINANCE