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Passaic County Document Summary Sheet

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NJ PRESERVATION ACCOUNT	$5.00
RECORDING FEES - RECORDER OF DEEDS	$3.00
HOMELESSNESS TRUST FUND	$5.00
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	Name(s) *(Last Name First Name Middle Initial Suffix) (or Company Name as written)*	Address *(Optional)*
First Party *(Grantor or Mortgagor or Assignor) (Enter up to five names)*	Borough of Totowa	
Second Party *(Grantee or Mortgagee or Assignee) (Enter up to five names)*	Totowa Med Urban Renewal, LLC	

	Municipality	Block	Lot	Qualifier	Property Address
Parcel Information *(Enter up to three entries)*	Borough of Totowa	154	19.03		

	Book Type	Book	Beginning Page	Instrument No.	Recorded/File Date
Reference Information *(Enter up to three entries)*					

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DOCUMENT SUMMARY SHEET (COVER SHEET) IS PART OF PASSAIC COUNTY FILING RECORD. RETAIN THIS PAGE FOR FUTURE REFERENCE.

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

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

FINANCIAL AGREEMENT
(MEDICAL OFFICE BUILDING PROJECT)

THIS FINANCIAL AGREEMENT is made this 20th day of August, 2019 (the "Agreement") between **TOTOWA MED URBAN RENEWAL, LLC** (the "Entity") a New Jersey limited liability company having its principal office at 2 Broad Street, Suite 400, Bloomfield, New Jersey 07003 and the **BOROUGH OF TOTOWA**, a municipal corporation of the State of New Jersey with an address at 537 Totowa Road, Totowa, New Jersey (the "Borough" and together with the Entity, the "Parties" or a "Party").

WITNESSETH:

WHEREAS, on October 13, 2015, pursuant to Resolution 126-2015, the Borough Council (the "Governing Body") designated that certain property then identified as Block 154, Lot 19 and 154.01, Lot 1 on the official tax map of the Borough as an area in need of redevelopment (the "Redevelopment Area") in accordance with 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 February 23, 2016, pursuant to Ordinance 03-2016, the Governing Body adopted the North Jersey Development Center Redevelopment Plan for the Redevelopment Area, as amended on April 25, 2017, pursuant to Ordinance 04-2017 (as amended, the "Redevelopment Plan"); and

WHEREAS, in order to implement the Redevelopment Plan, on June 15, 2017, the Borough and NJDC Urban Renewal, LLC ("NJDC"), an affiliate of the Entity, entered into that certain redevelopment agreement, which was approved by the Governing Body on June 13, 2017, pursuant to Resolution 82-2017 (as amended by (i) that certain First Amendment to Redevelopment Agreement, dated January 24, 2018, (ii) that certain Second Amendment to Redevelopment Agreement, dated February 26, 2019, and (iii) that certain "Assignment and

Assumption Agreement (Medical Office Building Component)," dated February 26, 2019, by and among NJDC, the Entity, and the Borough, and as may be further amended from time to time, collectively, the "Redevelopment Agreement"); and

WHEREAS, the Redevelopment Agreement sets forth the terms and conditions by which the Entity will undertake to redevelop a portion of the Redevelopment Area by remediating and constructing thereon a medical office building of approximately 125,000 square feet (the "Medical Office Building Project"), such portion of the Redevelopment Area designated as Block 154, Lot 19.03 in the Borough's tax records, which is intended to be renamed as Block 154, Lot 19.07, as more particularly described on **Exhibit A** hereto (the "Land"); and

WHEREAS, in order to improve the feasibility of the Medical Office Building Project, the Entity applied to the Governing Body for a long term tax exemption pursuant to the Long Term Tax Exemption Law, N.J.S.A. 40A:20-1 et seq. (the "Exemption Law") pursuant to the application annexed hereto as **Exhibit B** (the "Application"); and

WHEREAS, pursuant to and in accordance with the provisions of the Exemption Law and the New Jersey Redevelopment Area Bond Financing Law, constituting Chapter 310 of the Pamphlet Laws of 2001 of the State, and the acts amendatory thereof and supplemental thereto (the "RAB Law", as codified in N.J.S.A. 40A:12A-64 et seq., and together with the Redevelopment Law and the Exemption Law, the "Acts"), the Borough is authorized to provide for and accept, in lieu of real property taxes, an annual service charge paid by the Entity to the Borough; and

WHEREAS, the Mayor transmitted the Application to the Governing Body together with his recommendations dated May 10, 2019; and

WHEREAS, by Ordinance 06-2019 adopted by the Governing Body on June 11, 2019, a copy of which is annexed hereto as **Exhibit C**, (the "Ordinance") the Governing Body approved the long term tax exemption and execution of this Agreement; and

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

WHEREAS, pursuant to and in accordance with the provisions of the RAB Law, specifically N.J.S.A. 40A:12A-65 and 67(a), the Borough may issue Bonds (as defined herein) in order to finance certain costs in the Redevelopment Area in accordance with the terms and provisions of a resolution authorizing the issuance of the Bonds (the "Bond Resolution"), to be adopted by the Governing Body; and

WHEREAS, pursuant to the terms of this Agreement, the Annual Service Charge (as defined herein), as such term is defined herein, shall be pledged to the payment of the principal of and redemption premium, if any, on the Bonds; and

WHEREAS, prior to, and as conditions precedent to, the issuance of any and all of the Bonds and in accordance with all applicable law, including without limitation, N.J.S.A. 40A:12A-29(a)(3) and N.J.S.A. 40A:12A-67(g), (i) the Local Finance Board in the Division of Local Government Services in the Department of Community Affairs (the "Local Finance Board") will have issued all necessary statutory findings and approvals, pursuant to a resolution duly adopted at a meeting of the Local Finance Board, and (ii) the Governing Body will have adopted the Bond Resolution; and

WHEREAS, the Borough and the Entity have reached agreement with respect to, among other things, the terms and conditions relating to the Annual Service Charge and desire to execute this Agreement; and

WHEREAS, the Entity has represented, and the Borough has determined, that the assistance provided to the Medical Office Building Project pursuant to this Agreement will be a significant inducement for the Entity to proceed with the Medical Office Building Project and that based on information set forth in the Application, the Project would not be feasible without such assistance; and

WHEREAS, pursuant to this Agreement, the Borough and the Entity desire to set forth in detail their mutual rights and obligations with respect to the Long Term Tax Exemption, payment of the Annual Service Charge by the Entity, and the issuance of the Bonds and provision for repayment thereof through the Annual Service Charge; and

WHEREAS, the Governing Body has reviewed the Application and has made the following findings:

A. **Benefits of Medical Office Building Project v. Costs.**

i. The development and construction of the Medical Office Building Project as set forth in the Redevelopment Agreement and Redevelopment Plan will be beneficial to the overall community; will achieve certain of the goals and objectives of the Redevelopment Plan; will help revitalize the long vacant Redevelopment Area; will improve the quality of life for the community; and will enhance the economic development of the Borough.

ii. It is anticipated that the development of the Medical Office Building Project will create approximately 200 construction jobs over the duration of the construction of the Medical Office Building Project, as well as approximately 400 full-time permanent jobs in connection with the operation of the Medical Office Building Project.

iii. The Medical Office Building Project includes the environmental remediation of the Land.

iv. Block 154, Lot 19.03 currently generates under one hundred thousand dollars ($100,000.00) in real estate taxes to applicable government units. The Medical Office Building Project will require nominal municipal services and have no impact on the school system. Pursuant to this Agreement, the Medical Office Building Project is projected to generate revenue for the Borough in the aggregate amount of approximately thirteen million three hundred thousand dollars ($13,300,000.00) million for the term of this Agreement. The Borough's authorized officers and employees have determined that the benefits to the Borough accruing as a result of the Medical Office Building Project, including the environmental remediation of the Land, the revitalization of the Redevelopment Area, and the generation of jobs as described above, will substantially outweigh the nominal costs to the Borough resulting from the long term tax exemption granted herein.

B. **Importance of Long Term Tax Exemption.**

The Governing Body's approval of the Long Term Tax Exemption set forth herein is essential to the success of this Medical Office Building Project because:

i. The Medical Office Building Project involves the remediation of the Land, demolition of existing unused buildings, and construction of a new state of the art medical office building. In addition, due to the nature of financing and implementing the medical improvements, which are desirable for the health, safety and welfare of the community, and the requirement for specialized tenant improvements specifications, the period of lease-out and unknown costs of the tenant build-out materially increase the risk and appurtenant costs of the Medical Office Building Project. As a result, in the current real estate marketplace, the rents likely to be achieved by this Medical Office Building Project are not sufficient to pay for the costs of the construction and the payment of full taxes.

ii. The relative stability and predictability of the Annual Service Charge associated with the Medical Office Building Project will make it more attractive to financial institutions whose participation is necessary in order to finance the Project.

iii. The relative stability and predictability of the Annual Service Charge will allow the Entity to provide a high level of maintenance for the Land and will have a positive impact on the surrounding area and community.

iv. The financial benefit conferred by the Long Term Tax Exemption assists in the undertaking of environmental remediation as a part of the Project.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein, and for other good and valuable consideration, the Parties to this Agreement mutually covenant and agree as follows:

ARTICLE I – GENERAL PROVISIONS

Section 1.1 Governing Law

This Agreement shall be governed by the provisions of the Exemption Law, the Redevelopment Law, the Ordinance, the RAB Law, and all other Applicable Laws, as defined below. It is expressly understood and agreed that the Borough relied upon the facts, data, and representations contained in the Application in its granting of the Long Term Tax Exemption and the Application is hereby incorporated into this Agreement by reference.

Section 1.2 General Definitions and Construction

The recitals and Exhibits to this Agreement are hereby incorporated by reference herein as if set forth at length. Unless specifically provided otherwise or the context otherwise requires, when used in this Agreement, the following terms and phrases shall have the following respective meanings:

(i) **Acts** – Shall have the meaning specified in the recitals.

(ii) **Administrative Fee** – Shall have the meaning specified in Section 4.8 hereof.

(iii) **Agreement** – Shall have the meaning specified in the preamble.

(iv) **Allowable Net Profit (also referred to as "ANP")** – The amount arrived at by applying the Allowable Profit Rate pursuant to the Exemption Law.

(v) **Allowable Profit Rate (also referred to as "APR")** - The allowable profit rate as defined in N.J.S.A. 40A:20-3(b).

(vi) **Annual Audited Statement** - A complete financial statement outlining the financial status of the Medical Office Building Project, which shall also include a computation of Net Profit, Allowable Net Profit, and Annual Gross Revenue, prepared annually by the Entity's certified public accountant. The contents of each Annual Audited Statement shall be prepared in conformity with Generally Accepted Accounting Principles, the Exemption Law, and this Agreement.

(vii) **Annual Gross Revenue** – Annual gross revenue of the Entity as defined as Gross Revenue in N.J.S.A. 40A:20-3(a).

(viii) **Annual Service Charge** – The total annual amount that the Entity has agreed to pay for services supplied to the Medical Office Building Project, which sum is in lieu of any taxes on the Improvements pursuant to the Exemption Law.

(ix) **Applicable Law** – Any and all federal, state and local laws, rules, regulations, rulings, court orders, statutes and ordinances applicable to the Medical Office Building Project, the Redevelopment Area, the Long Term Tax Exemption, the Annual Service Charge, or the Bonds.

(x) **Application** – Shall have the meaning specified in the recitals.

(xi) **ASC Commencement Date** – The date that any discrete phase of the Medical Office Building Project is eligible for a Certificate of Occupancy, on which date the Entity shall commence payment of the Annual Service Charge, as more fully set forth herein.

(xii) **Bond Resolution** - Shall have the meaning specified in the recitals.

(xiii) **Bonds** – Shall mean a $300,000.00 principal amount of thirty (30) year, non-recourse redevelopment area bonds bearing interest at zero percent (0%) per annum issued by the Borough pursuant to the RAB Law and Bond Resolution, of which at least $150,000 shall be used to demolish the structure located within the Redevelopment Area commonly known as "Buttermore House" and/or to construct within the Redevelopment Area a replacement structure to be used for public purposes.

(xiv) **Borough** – Shall have the meaning specified in the preamble.

(xv) **Certificate of Occupancy** – A temporary or permanent certificate of occupancy issued by the appropriate Borough official, pursuant to N.J.S.A. 52:27D-133, authorizing the occupancy of a building or any portion thereof.

(xvi) **County Share** – Five percent (5%) of the Annual Service Charge (excluding the Debt Service Charges) collected by the Borough, which the Borough shall remit to the County of Passaic in accordance with N.J.S.A. 40A:20-12(b)(2)(e).

(xvii) **Days** – Whenever the word "Days" is used to denote time, it shall mean calendar days.

(xviii) **Debt Service Charges** – $10,000.00, plus any fees due under the Bond Resolution, per year payable semiannually as set forth in the Bond Resolution.

(xix) **Default** – A breach or failure of the Borough or the Entity to perform any obligation imposed by the terms hereof, or under the Exemption Law, beyond any applicable grace or cure periods set forth in this Agreement.

(xx) **Effective Date** – The date that this Agreement has been executed and delivered by both Parties and the Land has been acquired by the Entity.

(xxi) **Entity** – The entity specified in the preamble, which shall be qualified as an urban renewal entity under the Exemption Law. Unless the context provides otherwise, it shall also include any permitted Transferee, which shall also be qualified as an urban renewal entity under the Exemption Law, as set forth in Section 9.1 hereof.

(xxii) **Excess Net Profits** – The amount of Net Profits that exceeds the Allowable Net Profits for the applicable accounting period as determined in accordance with the Exemption Law.

(xxiii) **Exemption Law** – Shall have the meaning specified in the recitals.

(xxiv) **Exemption Term** – The period beginning on the ASC Commencement Date and ending on the Termination Date.

(xxv) **Governing Body** – Shall have the meaning specified in the recitals.

(xxvi) **Improvements** – Any building, structure, improvement, addition, or fixture permanently affixed to the Land existing or to be constructed and exempt under this Agreement. The Improvements shall consist of the Medical Office Building Project.

(xxvii) **Initial Adjustment Date** – Shall have the meaning specified in Section 4.2 hereof.

(xxviii) **Land** – Shall have the meaning specified in the recitals.

(xxix) **Land Tax Credit** – Shall have the meaning specified in Section 4.4 hereof.

(xxx) **Land Taxes** – The amount of real estate taxes levied on the Land, exclusive of any Improvements related thereto.

(xxxi) **Local Finance Board** – Shall have the meaning specified in the recitals.

(xxxii) **Long Term Tax Exemption** – The long term tax exemption granted in accordance with the Exemption Law and the RAB Law pursuant to the Ordinance and this Agreement.

(xxxiii) **Medical Office Building Project** – Shall have the meaning specified in the recitals.

(xxxiv) **Minimum Annual Service Charge** – The Land Tax Credit plus $10,600.00.

(xxxv) **Net Profit** – Annual Gross Revenue less all operating and non-operating expenses and costs of the Entity, all determined in accordance with Generally Accepted Accounting Principles and the provisions of the Exemption Law.

(xxxvi) **Ordinance** – Shall have the meaning specified in the recitals.

(xxxvii) **Party or Parties** – Shall have the meaning specified in the preamble.

(xxxviii) **Payment Default** – Shall have the meaning specified in the Section 6.3 hereof.

(xxxix) **RAB Law** – Shall have the meaning specified in the recitals.

(xl) **Redevelopment Agreement** – Shall have the meaning specified in the recitals.

(xli) **Redevelopment Area** – Shall have the meaning specified in the recitals.

(xlii) **Redevelopment Law** – Shall have the meaning defined in the recitals.

(xliii) **Redevelopment Plan** – Shall have the meaning defined in the recitals.

(xliv) **Secured Party or Secured Parties** – Shall have the meaning defined in Section 9.3(a) hereof.

(xlv) **Security Arrangements** – Shall have the meaning defined in Section 9.3(a) hereof.

(xlvi) **Termination Date** – The earlier to occur of: (i) 35th anniversary of the execution hereof by both Parties; (ii) the 30th anniversary date of the ASC Commencement Date; or (iii) such other date as this Agreement may terminate pursuant to the terms of this Agreement or pursuant to Applicable Law.

(xlvii) **Total Medical Office Building Project Cost** – The total cost of developing the Medical Office Building Project, as calculated in accordance with N.J.S.A. 40A:20-3(h).

(xlviii) **Transfer** – Shall have the meaning specified in Article IX hereof.

(xlix) **Transferee** – Shall have the meaning specified in Article IX hereof.

ARTICLE II – MEDICAL OFFICE BUILDING PROJECT AND LAND

Section 2.1 Borough's Findings

Pursuant to the Exemption Law, the Borough finds that, in addition to the findings and determinations set forth in the recitals to this Agreement and incorporated by reference herein, the Long Term Tax Exemption granted pursuant to the Ordinance and this Agreement will benefit the Borough and the community by assuring the success of the redevelopment of the Land, which exhibits the statutorily recognized redevelopment criteria. The benefits of granting the Long Term Tax Exemption will substantially outweigh the costs, if any, associated with the Long Term Tax Exemption. The Long Term Tax Exemption is important to the Borough and the Entity because without the incentive of the Long Term Tax Exemption, it is unlikely that the Medical Office Building Project would be undertaken. The Long Term Tax Exemption is expected to attract future occupants to the Medical Office Building Project and it will help to offset the costs of developing and constructing the Medical Office Building Project. The high costs associated with the development and construction of the Project and the real estate taxes that would otherwise be levied upon the Medical Office Building Project would operate as a disincentive to the redevelopment of the Land, and would therefore frustrate the objectives and goals of the Redevelopment Plan and would make the Project materially less competitive in the marketplace.

Section 2.2 Approval of Agreement

The Borough hereby approves a Long Term Tax Exemption for Improvements which are to be constructed and maintained on the Land in accordance with the terms and conditions set forth herein, the provisions of the Exemption Law, the Redevelopment Agreement, the Redevelopment Law, and other Applicable Law. The Land shall not be exempt.

Section 2.3 Approval of the Entity

The Borough hereby approves of the Entity in reliance upon the Entity's representation that its Certificate of Formation attached to the Application contains all the requisite provisions of law, has been reviewed and approved by the Commissioner of the Department of Community Affairs, and has been filed with, as appropriate, the Department of Treasury, all in accordance with N.J.S.A. 40A:20-5.

Section 2.4 Redevelopment of the Land

The Entity represents and covenants that it will develop and construct the Medical Office Building Project in accordance with the terms of the Redevelopment Agreement and the Redevelopment Plan.

Section 2.5 Entity's Relationship to Land

The Entity represents that it is the contract purchaser of the Land and that, upon satisfaction of the conditions set forth in such purchase and sale agreement, the Entity will acquire title to the Land.

ARTICLE III – OWNERSHIP, MANAGEMENT AND CONTROL

Section 3.1 Entity's Representations, Warranties and Covenants

(i) The Entity represents that, upon acquisition of the Land, it shall remain the fee title owner of the Land throughout the development and construction of the Medical Office Building Project, subject to its rights of Transfer and other provisions set forth in Article IX hereof and the terms of the Redevelopment Agreement.

(ii) To the extent not otherwise set forth herein, those items required by N.J.S.A. 40A:20-9 to be included in this Agreement are set forth in the Application attached hereto as **Exhibit B**, which is incorporated herein as if set forth at length, and the Entity represents and warrants as to the accuracy of the contents thereof; however, to the extent that a conflict between the Application and this Agreement exists, the language in this Agreement shall govern and prevail.

(iii) After the Termination Date, all restrictions and limitations set forth in this Agreement imposed upon the Entity, the Land, and the Medical Office Building Project, excluding (i) the requirement to make payment of any Annual Service Charge then due and owing hereunder, (ii) the requirement to make payment to the Borough of any then due and owing reserves or Excess Net Profit, if applicable, in accordance with Section 7.1 hereof, and (iii) any and all related and available remedies of the Borough, shall terminate upon the end of the fiscal year of the Entity in which the expiration of the Long Term Tax Exemption provided for herein occurs, in accordance with N.J.S.A. 40A:20-13, provided however, that the Entity has rendered the Entity's final accounting in accordance with N.J.S.A. 40A:20A-12.

(iv) Notwithstanding the provision of Section 8.1 hereof, in accordance with the RAB Law, specifically N.J.S.A. 40A:12A-66(a), prior to the final maturity of the Bonds as set forth in the Award Certificate as defined in the Bond Resolution (the "Maturity Date"), the provisions of the Exemption Law permitting the Entity to relinquish its status as an Urban Renewal Entity, specifically N.J.S.A. 40A:20-9(g) and N.J.S.A. 40A:20-13, shall be inapplicable, and the Entity shall not relinquish its status as an Urban Renewal Entity during such time period. In addition, the Entity shall have no right to terminate, and shall not terminate, this Agreement prior to the Maturity Date of the Bonds.

ARTICLE IV – TAX EXEMPTION

Section 4.1 Duration of Tax Exemption

The Medical Office Building Project (excluding the Land) shall be exempt from taxation during the Exemption Term.

Section 4.2 Annual Service Charge

In consideration of the Borough granting the Entity the exemption set forth in Section 4.1 hereof, during the Exemption Term, the Entity shall pay an Annual Service Charge equal to the sum of (a) Ten Thousand Six Hundred Dollars ($10,600), plus (b) the following:

(i) From the ASC Commencement Date until the next succeeding January 1st (the "Initial Adjustment Date"), an amount equal to the pro rata share of one hundred and thirty-five thousand dollars ($135,000.00) based upon actual number of days within such time period divided by three hundred and sixty-five (365);

(ii) From the Initial Adjustment Date until the first anniversary of the Initial Adjustment Date, an amount equal to the greater of (a) one hundred and thirty-seven thousand seven hundred dollars ($137,700.00) or (b) two dollars and thirty cents ($2.30) per gross square foot of rented space in Medical Office Building Project;

(iii) From the first anniversary of the Initial Adjustment Date until the second anniversary of the Initial Adjustment Date, an amount equal to the greater of (a) two hundred ten thousand six hundred and eighty dollars ($210,680.00) or (b) two dollars and thirty-four ($2.34) per gross square foot of rented space in Medical Office Building Project;

(iv) From the second anniversary of the Initial Adjustment Date until the third anniversary of the Initial Adjustment Date, an amount equal to the greater of (a) two hundred fourteen thousand eight hundred and ninety-five dollars ($214,895.00) or (b) two dollars and thirty-nine ($2.39) per gross square foot of rented space in Medical Office Building Project;

(v) From the third anniversary of the Initial Adjustment Date until the fourth anniversary of the Initial Adjustment Date, an amount equal to three hundred seventy-five thousand dollars ($375,000.00), escalating at two percent (2%) per annum beginning on the fourth anniversary of the Initial Adjustment Date and on each January 1st thereafter.

Notwithstanding the foregoing or anything to the contrary in this Agreement, in the event the Annual Service Charge is less than the Minimum Annual Service Charge in any given year, the Entity shall pay the Minimum Annual Service Charge to the Borough.

Section 4.3 Payment of the Annual Service Charge

The Entity hereby agrees to pay to the Borough, as described at Section 4.10 hereof, the Annual Service Charge.

Section 4.4 Land Taxes

From and after the Entity's acquisition of the Land, the Entity (and any Transferee, as applicable) shall be obligated to make timely payments of the Land Taxes at all times during the Term of this Agreement. From and after the ASC Commencement Date, the Entity shall be entitled to a credit for the amount, without interest, of the Land Tax payments made in the last four preceding quarterly installments (the "Land Tax Credit") against the next due Annual Service Charge, provided such Land Tax Credit shall not exceed the amount of the applicable Annual Service Charge less the Debt Service Charge. In any year that the Entity fails to make any Land Tax payments, if and when due and owing, such delinquency shall render the Entity ineligible for any Land Tax Credits against the Annual Service Charge for that year. In addition, the Borough shall have, among this remedy and other remedies, the right to proceed against the Land pursuant to the Tax Sale Law and/or to declare a Default.

Section 4.5 Quarterly Installments

The Annual Service Charge shall be paid in quarterly installments on those dates when ad valorem real estate tax payments on other properties within the Borough are due, subject to adjustment for over payment or underpayment within thirty (30) Days after the close of each calendar year.

Section 4.6 Rights and Obligations Related to Long Term Tax Exemption

(i) All Annual Service Charge payments, as the case may be, made pursuant to this Agreement shall be in lieu of taxes and the Borough shall have the rights and remedies of tax enforcement granted to a municipality by Applicable Law, including those of in rem tax foreclosure pursuant to N.J.S.A. 54:5-1, just as if said payments constituted regular real estate tax obligations on other real properties within the Borough.

(ii) If the ASC Commencement Date occurs on a date other than the first day of a quarter, the amount of the Annual Service Charge for such period shall be based on the per diem assessment for such quarter.

Section 4.7 Remittance to County

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

Section 4.8 Administrative Fee

The Entity (and/or any Transferee or unit owner, as may be applicable from time to time) shall pay to the Borough no later than December 31 of each year an administrative fee in an amount equal to two percent (2%) of the Annual Service Charge due for that year (the "Administrative Fee"), which is permitted by N.J.S.A. 40A:20-9.

Section 4.9 Payments During Construction

The Parties agree that conventional property taxes are due from time to time in accordance with Applicable Law prior to the ASC Commencement Date.

Section 4.10 Payments to Borough

At all times during the Term hereof, the Entity (and/or any Transferee or unit owner, as may be applicable from time to time) shall pay (i) the Administrative Fee to the Borough and (ii) all Land Taxes and Annual Service Charges due to the Borough for application in accordance with this Agreement and the Bond Resolution.

ARTICLE V – PLEDGE OF ANNUAL SERVICE CHARGE TO BONDS

Section 5.1 Entity's Consent

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

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

Section 5.2 Security for the Bonds

(i) Pursuant to the RAB Law, specifically N.J.S.A. 40A:12A-67(c), and as security for the Bonds, the Annual Service Charge shall be pledged to the repayment of the Bonds, in accordance with and as further set forth in the Bond Resolution.

(ii) Pursuant to the RAB Law, specifically N.J.S.A. 40A:12A-67(c), and other applicable law, the Annual Service Charge shall not be included within the general funds of the Borough. The Borough's pledge of the Annual Service Charge shall be a limited obligation of the Borough payable to the extent of payments received from the Entity and shall not constitute a general obligation of the Borough. The Borough has no obligation whatsoever to make any payments of the Annual Service Charge to the extent that the Annual Service Charge or any portion thereof is not paid by the Entity.

(iii) It is hereby expressly understood by the Parties that under no circumstances shall the Borough be required to (a) purchase, or otherwise fund, any tax lien, tax sale certificate, or other mechanism for the enforcement of the Annual Service Charge, the sole obligation of the Borough being to undertake the sale of the tax liens in the same manner, and at the same time, as generally applicable for unpaid taxes due and owing to the Borough, subject to all applicable laws (including bankruptcy laws) or (b) make payment of any unpaid Annual Service Charge.

ARTICLE VI – DISPUTE RESOLUTION

Section 6.1 Agreement to Arbitrate

If the Borough or the Entity breaches this Agreement, or a dispute arises between the Parties regarding the terms and provisions set forth herein, then the Parties shall submit the dispute to the American Arbitration Association in the State of New Jersey, to be resolved in accordance with its rules and regulations in such fashion as to accomplish the purposes of the Exemption Law and this Agreement. The costs of arbitration shall be borne equally by the Parties involved in the arbitration. The award rendered by the arbitrator(s) shall be final, and judgment may be entered upon it in accordance with Applicable Law in any court having jurisdiction. Notwithstanding anything to the contrary set forth in this Agreement, and in accordance with Section 4.6(i), above, the Borough shall be entitled to collect any overdue payments of Annual Service Charge in the same manner as it collects overdue payments of generally applicable real estate taxes, and shall not be required to submit such matters to arbitration.

Section 6.2 Covenant to Make Payments

The Entity agrees that the timely payment of the Land Taxes, the Administrative Fee, and the Annual Service Charge to the Borough, all as described herein, as well as continued compliance with the Applicable Laws, are material conditions of this Agreement. The failure to make any of the aforesaid payments in timely fashion shall constitute both a breach of this Agreement and a tax payment delinquency under Applicable Law.

Section 6.3 Notification of Breach Required

Other than with respect to the nonpayment or late payment of all or a portion of the Land Taxes, the Administrative Fee or Annual Service Charge (any of the foregoing, a "Payment

Default"), the Borough shall notify the Entity in writing of any breach relating to the terms of this Agreement. If the Entity fails to cure a Payment Default within ten (10) Days of its occurrence, or any other breach identified within thirty (30) Days after the actual delivery of such notice by the Borough, or within any additional periods to which the Parties may agree to, in writing, the Borough may move to invalidate the Long Term Tax Exemption upon thirty (30) Days' final written notice to the Entity, which shall inform the Entity that the Long Term Tax Exemption shall terminate due to the breach of the terms of this Agreement. With respect to defaults other than Payment Default(s), the Borough shall not unreasonably refuse to grant a reasonable extension of the cure period, not to exceed ninety (90) days after the Notice unless the Borough in its sole discretion shall agree to a longer cure period.

Section 6.4 Borough's Remedies Upon Default

The Borough's remedies upon its declaration of default shall be cumulative and concurrent. No determination under this Agreement shall deprive the Borough of its right to proceed against the Entity for the nonpayment of all or a portion of the Land Taxes, Administrative Fee or Annual Service Charge, as the case may be, including any arrearage that would accrue in the absence of such determination.

Section 6.5 Force Majeure

Neither Party shall be liable to the other for failure to perform its obligations under this Agreement due to causes that are beyond the reasonable control and not substantially due to the fault or negligence of the Party seeking to excuse delay or failure of performance of an obligation hereunder by reason thereof, including, but not limited to, declarations of public emergency; acts of nature (as to weather-related events, limited to severe and unusual events or natural occurrences such as hurricanes, tornadoes, earthquakes, and floods); acts of the public enemy; acts of terrorism; acts of war; fire; epidemics; quarantine restrictions; blackouts, power failures, or energy shortages; governmental embargoes; strikes or similar labor action by equipment or material suppliers or transporters, or unavailability of necessary building materials. Notwithstanding the foregoing, the payment of the Land Taxes, Administrative Fee or Annual Service Charge, as the case may be, are material conditions of this Agreement which shall not be excused by the occurrence of a Force Majeure event.

ARTICLE VII – LIMITATION ON PROFITS

Section 7.1 Entity's Covenant of Limitation on Profits

During the Exemption Term, the Entity's profits shall be limited, according to the provisions of the Exemption Law and the definitions set forth therein. In accordance with N.J.S.A. 40A:20-15, for any period, taken as one accounting period, commencing on the ASC Commencement Date, and terminating at the end of the last full fiscal year of the Exemption Term, in which the Entity's Net Profits exceed the Allowable Net Profit, the Excess Net Profits shall be paid to the Borough as an additional Annual Service Charge within one hundred twenty (120) Days of the close of the Entity's fiscal year.

ARTICLE VIII – TERMINATION OF AGREEMENT AND INSPECTIONS

Section 8.1 Voluntary Termination of the Agreement by Entity

NEITHER THE ENTITY NOR ANY OTHER TRANSFEREE OR PURCHASER MAY TERMINATE THIS AGREEMENT WITHOUT THE BOROUGH'S APPROVAL OR UNDER ANY CIRCUMSTANCES AT ANY TIME PRIOR TO THE MATURITY DATE OF THE BONDS. Following the Maturity Date of the Bonds, the Entity or any Transferee may at any time after the expiration of one (1) year from the ASC Commencement Date, notify the Borough that, as of a certain date designated in the notice, it relinquishes its status as an urban renewal entity under the Exemption Law and that the Entity, or Transferee, has obtained the consent of the Commissioner of the Department of Community Affairs, if required by Applicable Law. As of that date, all of the obligations and requirements contained in this Agreement shall terminate with respect to the Entity or Transferee. Notwithstanding the foregoing, such relinquishment shall not impact the obligation of the Entity or the Transferee, as applicable, to make payment Land Taxes, Administrative Fee or Annual Service Charge, as the case may be, that has accrued up to and including the date of Termination, or the obligation of the Entity or the Transferee, as applicable, to perform the final accounting required by the Exemption Law and Section 8.2 hereof.

Section 8.2 Termination and Final Accounting

Within ninety (90) Days after the Termination Date, whether by affirmative action of the Entity or by virtue of the provisions of the Applicable Law or pursuant to the terms of this Agreement, the Entity shall provide a final accounting and pay to the Borough the reserve, if any, pursuant to N.J.S.A. 40A:20-15, as well as any Excess Net Profits, if any payable as of that date. For purposes of rendering a final accounting, the termination of the Agreement shall be deemed to be the end of the fiscal year for the Entity.

Section 8.3 Taxes After Termination Date

After the Termination Date, the Long Term Tax Exemption shall expire, and the Land and the Improvements constructed thereupon shall thereafter be assessed and conventionally taxed according to Applicable Law as other real property in the Borough.

Section 8.4 Rights of Inspection

Pursuant to a written request, the Entity shall authorize the Borough or its representatives to examine the Entity's contracts, records and documents, related to the Medical Office Building Project. Such examination shall be made during reasonable business hours, in the presence of a member or agent of the Entity. The Parties agree that ten (10) Days' written notice shall constitute a reasonable request for inspection. Notwithstanding the foregoing, the Entity may request an extension of time for such examination, up to ten (10) Days. Except to the extent required by Applicable Law, all information and documentation provided hereunder shall remain confidential and not subject to public disclosure.

ARTICLE IX – TRANSFERS

Section 9.1 Conveyance of Medical Office Building Project

(i) As permitted in N.J.S.A. 40A:20-10(a), it is understood and agreed that the Entity may, upon written notice to the Borough, sell the Land or Medical Office Building Project (a "Transfer") in its entirety to another urban renewal entity, qualified and organized under the Exemption Law (hereinafter referred to as a "Transferee"), provided that: (i) in the event that the Medical Office Building Project shall not have been completed, the Transferee shall have demonstrated to the reasonable satisfaction of the Borough that such Transferee possesses the experience and capitalization to complete the Project; (ii) such Transferee owns no other project subject to the Exemption Law at the time of the Transfer; (iii) the Entity is not then in Default of this Agreement or Applicable Law; and (iv) the Transferee assumes the Entity's obligations under this Agreement. Upon a Transferee's assumption of the Entity's obligations under this Agreement, the Long Term Tax Exemption shall continue to the benefit of the Transferee and any of its Transferees. Neither the leasing of any units to any third-party, nor the sale of units in the Medical Office Building Project to any third-party in the event that a condominium regime shall be established within the Medical Office Building Project, shall be deemed a Transfer under this Section 9.1(a).

(ii) Each condominium sub-unit Transferred within the Medical Office Building Project shall be assigned its proportionate interest in (i) the amount of Land Taxes due, (ii) the associated credit for Land Taxes, in accordance with Section 4.4 hereof, and (iii) the Long Term Tax Exemption granted to the Medical Office Building Project as a whole on a per square foot basis, such that the sum of the Annual Service Charge allocable to each sub-unit shall equal the Annual Service Charge that would otherwise be due and owing in connection with the Medical Office Building Project as a whole.

Section 9.2 Obligations of Entity and Transferee After Conveyance

If the Entity Transfers the Medical Office Building Project in its entirety to a Transferee pursuant to and in accordance with Section 9.1 hereof, then the Entity shall be absolutely discharged from any further obligations regarding the Medical Office Building Project and shall be qualified to undertake another project pursuant to the Exemption Law. Within ninety (90) Days after the date of a Transfer of the Medical Office Building Project in its entirety, the Entity shall pay to the Borough any Excess Net Profits payable to the Borough pursuant to this Agreement and the Exemption Law.

Section 9.3 Collateral Assignment

It is expressly understood and agreed that the Entity has the right, to the extent permitted by the Exemption Law and the Redevelopment Agreement, 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 Medical Office Building Project and (ii) permanent mortgage financing relating to the Medical Office Building Project.

(i) 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 Medical Office Building Project. The Borough agrees that the Entity and or its affiliates may, subject to compliance with the Redevelopment Agreement (if in effect) and the Exemption Law, assign, pledge, hypothecate or otherwise transfer its rights under this Agreement and/or its interest in the Medical Office Building Project to one or more secured parties or any agents therefor (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.

(ii) If the Entity shall Default in any of its obligations hereunder, the Borough shall give written 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 not less than fifteen (15) Days from the date of such written notice to the Secured Parties with regard to a Payment Default by the Entity, and ninety (90) Days from the date the Entity was required to cure any other Default.

(iii) To the extent permitted by the Exemption Law, 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.

ARTICLE X – ENTITY'S COVENANTS AND REPRESENTATIONS

Section 10.1 Management and Operation

Subject to its rights to Transfer pursuant to Section 9.1 hereof, the Entity represents and covenants that it will own the Medical Office Building Project.

Section 10.2 Computation of Gross Revenue

The Entity shall calculate the Annual Gross Revenue in accordance with the Exemption Law and this Agreement and the computation of Annual Gross Revenue shall be shown on the Entity's Annual Audit Statement.

Section 10.3 Annual Audit Report

For so long as the Entity owns the Medical Office Building Project and within ninety (90) Days after the close of each fiscal or calendar year (depending on the Entity's accounting basis) that this Agreement shall continue in effect, the Entity shall submit to the Mayor of the Borough, the Governing Body and the Borough Clerk, its Annual Audited Statement for the preceding fiscal or calendar year in accordance with the Exemption Law. The report shall clearly identify and calculate the Net Profit for the Entity during the previous fiscal year. The Entity assumes all costs associated with preparation of the Annual Audited Statements.

Section 10.4 Total Medical Office Building Project Cost Audit

Within ninety (90) Days after a final Certificate of Occupancy is issued for the Medical Office Building Project, the Entity shall submit to the Mayor and Governing Body, an audit of Total Medical Office Building Project Cost, certified as to actual construction costs by the Entity's architect.

ARTICLE XI – MISCELLANEOUS PROVISIONS

Section 11.1 Governing Law

This Agreement shall be governed by the provisions of Applicable Law including but not limited to the Exemption Law.

Section 11.2 Oral Representation

Neither Party hereto has made any oral representation that is not contained in this Agreement. This Agreement and the Application, including all of the Exhibits attached and annexed thereto, constitute the entire Agreement by and between the Parties.

Section 11.3 Modification

This Agreement shall not be amended, changed, modified, altered or terminated, other than as may be set forth herein, without the written consent of both of the Parties hereto.

Section 11.4 Notices

All notices required hereunder shall be sent by certified mail, return receipt requested, or by recognized overnight courier, with proof of delivery, addressed as follows:

(i) When sent by the Borough to the Entity:

Totowa Med Urban Renewal, LLC
2 Broad Street, Suite 400
Bloomfield, New Jersey 07003
Attention: Steven M. Rosefsky

With a copy to:

Patricia J. Ryou, Esq.
Pearlman & Miranda, LLC
2 Broad Street, Suite 510
Bloomfield, New Jersey 07003

(ii) When sent by the Entity to the Borough:

Borough of Totowa
537 Totowa Road
Totowa, New Jersey 07512
Attention: Mayor John Coiro

With a copy to:

Robert Corrado, Esq.
Borough Attorney
Corrado & Corrado
142 Totowa Road, Suite 2
Totowa, NJ 07512

And to:

Joseph Wassel
Borough Clerk
Borough of Totowa
537 Totowa Road
Totowa, New Jersey 07512

And to:

Joseph P. Baumann, Jr., Esq.
McManimon, Scotland & Baumann, LLC
75 Livingston Avenue, 2nd Floor
Roseland, New Jersey 07068

In addition, if the Entity delivers formal written notice to the Borough in accordance with this Agreement, of the name and address of Entity's mortgagee, then the Borough shall provide such mortgagee with a copy of any notice required to be sent to the Entity. Any notice given by an attorney for a party shall be effective for all purposes.

Section 11.5 Severability

If any term, covenant or condition of this Agreement shall be judicially declared to be invalid or unenforceable, the remainder of this Agreement or the application of such term, covenant or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term, covenant or condition of this Agreement shall be valid and be enforced to the fullest extent permitted by Applicable Law.

If any portion of this Agreement shall be judicially declared to be invalid and unenforceable and provided that a default has not been declared pursuant to this Agreement, the Parties shall cooperate with each other to take the actions reasonably required to restore the Agreement in a manner contemplated by the Parties, including, but not limited to the authorization and amendment of this Agreement in a form reasonably drafted to effectuate the original intent of the Parties.

Section 11.6 Good Faith

The Entity and the Borough agree to act in good faith in all of their dealings with each other.

Section 11.7 Certification

The Borough Clerk shall certify to the Borough Tax Assessor, pursuant to the Exemption Law, that this Agreement by and between the Borough and the Entity has been entered into and is in effect pursuant to the Exemption Law. The delivery by the Borough Clerk to the Borough Tax Assessor of a certified copy of the Ordinance shall constitute the required certification. Upon the delivery of the certification as required hereunder, the Borough Tax Assessor shall implement the Long Term Tax Exemption and continue to enforce the Long Term Tax Exemption without further certification by the Borough Clerk until the Termination Date. Further, within ten (10) Days of the execution of this Agreement, the Borough Clerk shall provide a copy of the Agreement and the Ordinance authorizing the same to the Passaic County Counsel and the Passaic County Director of Finance for informational purposes in accordance with N.J.S.A. 40A:20-12.

Section 11.8 Exhibits

This Agreement in its proposed form appears as an attachment to the Application. This Agreement along with each Exhibit attached and annexed hereto is incorporated into the Application.

Section 11.9 Recording

Upon the Effective Date, this entire Agreement and the Ordinance shall be filed and recorded with the Passaic County Clerk by the Borough, at the Entity's expense, such that this Agreement and the Ordinances shall be reflected upon the land records of the County of Passaic as a municipal lien upon and a covenant running with the Land, including any Improvements related thereto, and same may be discharged by the Entity or the Borough upon the Termination Date.

Section 11.10 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 11.11 Estoppel Certificate

Within thirty (30) Days following written request therefor by the Entity, or any mortgagee or other party having an interest in the Medical Office Building Project, the Borough shall issue a signed estoppel certificate in reasonable form stating that (i) this Agreement is in full force and effect, (ii) to the best of the Borough's knowledge, no default has occurred under this Agreement (nor any event which, with the passage of time and/or the giving of notice would result in the occurrence of a default) or stating the nature of any default and (iii) stating any such other reasonable information as may be requested.

[Signature Page Follows]

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

TOTOWA MED URBAN RENEWAL, LLC

By: [signature]
Name: Steven M. Rosefsky
Title: Authorized Signatory

ACKNOWLEDGMENT

STATE OF NEW JERSEY :
: **ss:**
COUNTY OF Essex **:**

BE IT REMEMBERED, that on this 20th day of August, 2019, before me, the subscriber, a Notary Public or Attorney at Law of New Jersey, personally appeared Steven M. Rosefsky, who being by me duly sworn on his/her oath, deposes and makes proof to my satisfaction that s/he is the designated authorized signatory of Totowa Med Urban Renewal, LLC the entity named in the within Instrument; that the execution, as well as the making of this Instrument, have been duly authorized by the entity and said Instrument was signed and delivered by said designated authorized signatory as and for the voluntary act and deed of said entity.

Kathleen Correll
Notary or Attorney at Law
The State of New Jersey

KATHLEEN J. CORRELL
NOTARY PUBLIC OF NEW JERSEY
I.D. # 2454193
My Commission Expires 1/5/2021

ATTEST:

JOSEPH WASSEL, RMC
MUNICIPAL CLERK

BOROUGH OF TOTOWA

By: John Coiro
JOHN COIRO
MAYOR

ACKNOWLEDGMENT

STATE OF NEW JERSEY :
: **ss:**
COUNTY OF PASSAIC :

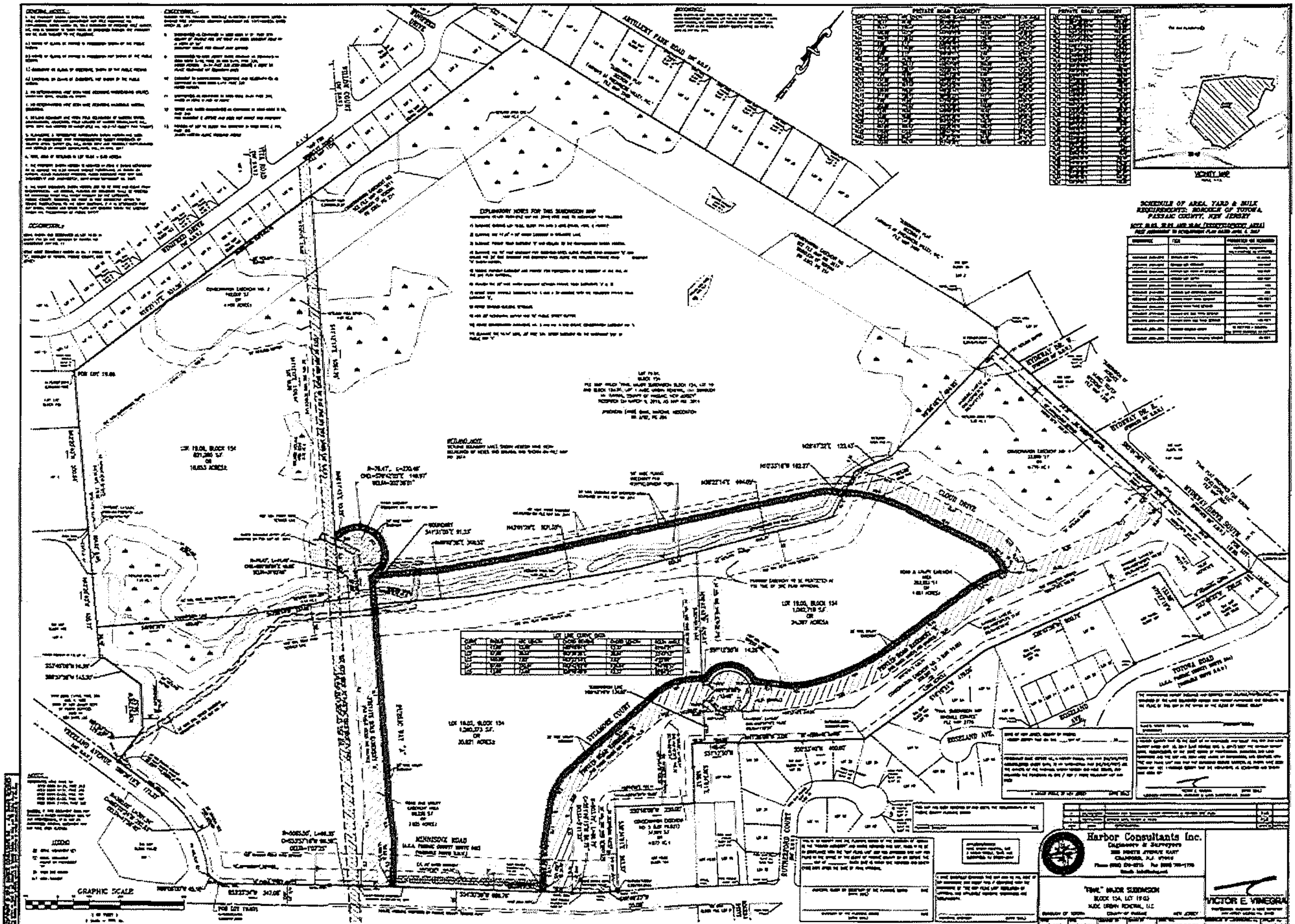
BE IT REMEMBERED, that on this 29th day of August, 2019, before me, the subscriber, a Notary Public or Attorney at Law of New Jersey, personally appeared **JOHN COIRO,** who being by me duly sworn on his oath, deposes and makes proof to my satisfaction that he is the Mayor of the **BOROUGH OF TOTOWA,** the municipal corporation named in the within Instrument; that the execution, as well as the making of this Instrument, have been duly authorized by the Borough of Totowa and said Instrument was signed and delivered by said designated authorized signatory as and for the voluntary act and deed of the Borough of Totowa.

Dina M. Statuto
Notary or Attorney at Law
The State of New Jersey

DINA M. STATUTO
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires 8/2/2021

4812-1289-9982, v. 4

<u>EXHIBIT A – TO AGREEMENT</u>
LAND DESCRIPTION



Harbor Consultants Inc.
Engineers & Surveyors
"FINAL" MAJOR SUBDIVISION
VICTOR E. VINEGRA
ARTILLERY PARK ROAD
TOTOWA ROAD
ROSELAND AVE.
CLOUD DRIVE
SYCAMORE COURT
RUTHERFORD COURT
MINNISINK ROAD
VREELAND AVENUE
WILLOW COURT
VITA ROAD
WINIFRED DRIVE
GRAPHIC SCALE
VICINITY MAP
EXPLANATORY NOTES FOR THIS SUBDIVISION MAP
SCHEDULE OF AREA, YARD & BULK REQUIREMENTS: BOROUGH OF TOTOWA, PASSAIC COUNTY, NEW JERSEY
PRIVATE ROAD EASEMENT

<u>EXHIBIT B – TO AGREEMENT</u>
APPLICATION

<u>Not Recorded</u>

Copy on File with the Borough Clerk of the Borough of Totowa

EXHIBIT C – TO AGREEMENT
ORDINANCE

BOROUGH OF TOTOWA
PASSAIC COUNTY, NEW JERSEY

ORDINANCE NO. 06-2019

ORDINANCE OF THE BOROUGH OF TOTOWA AUTHORIZING THE EXECUTION OF A FINANCIAL AGREEMENT WITH RESPECT TO A PORTION OF CERTAIN PROPERTY IDENTIFIED ON THE BOROUGH'S TAX MAPS AS BLOCK 154, LOT 19.03 LOCATED WITHIN THE NORTH JERSEY DEVELOPMENTAL CENTER REDEVELOPMENT AREA

WHEREAS, the Local Redevelopment and Housing Law, *N.J.S.A.* 40A:12A-1 *et seq.*, as amended from time to time (the "Redevelopment Law"), authorizes municipalities to determine whether certain parcels of land in a municipality constitute areas in need of redevelopment or rehabilitation, and to adopt a redevelopment plan for such areas, pursuant to which redevelopment projects are to be undertaken; and

WHEREAS, the Redevelopment Law confers certain contract, planning and financial powers upon a redevelopment entity, as defined in *N.J.S.A.* 40A:12A-3, in order to implement redevelopment plans adopted pursuant thereto; and

WHEREAS, the Borough of Totowa (the "Borough"), in the County of Passaic, State of New Jersey, has elected to exercise these redevelopment entity powers directly, as permitted under *N.J.S.A.* 40A:12A-4; and

WHEREAS, in accordance with the Redevelopment Law, by Resolution 126-2015, duly adopted on October 13, 2015, the Borough Council designated certain properties then identified as Block 154, Lot 19 and Block 154.01, Lot 1 on the official tax maps of the Borough as an "area in need of redevelopment" (the "Redevelopment Area"); and

WHEREAS, pursuant to *N.J.S.A.* 40A:12A-7, by Ordinance 03-2016 duly adopted on February 23, 2016, the Borough Council adopted a redevelopment plan entitled "North Jersey Developmental Center Redevelopment Plan," as amended on April 25, 2017 pursuant to Ordinance 04-2017 (as amended and as may be further amended and supplemented from time to time, the "Redevelopment Plan"), in order to effectuate the redevelopment of the Redevelopment Area; and

WHEREAS, on June 13, 2017, by Resolution 82-2017, the Borough authorized execution of a Redevelopment Agreement with NJDC Urban Renewal, LLC ("NJDC"), dated June 15, 2017, as amended by that certain First Amendment to Redevelopment Agreement, dated January 24, 2018, as further amended by that certain Second Amendment to Redevelopment Agreement, dated February 26, 2019 (collectively, the "Redevelopment Agreement") in order to implement the redevelopment of a portion of the Redevelopment Area identified as Block 154, Lot 19.03 with a medical office building of approximately 125,000 square feet (the "Project"); and

WHEREAS, on February 26, 2019, NJDC, the Borough and Totowa Med Urban Renewal, LLC (the "Entity"), an urban renewal entity qualified to do business under the provisions of the Long Term Tax Exemption Law, *N.J.S.A.* 40A:20-1 *et seq.* (the "Exemption Law"), entered into that certain Assignment and Assumption Agreement (Medical Office Building Component) to transfer redevelopment rights and obligations with respect to the medical office building component of the Project to the Entity; and

WHEREAS, despite the Entity's current and future substantial investment of equity and traditional borrowed funds for acquisition, development and construction of the Project, such amounts of equity and traditional borrowed funds are insufficient to pay for all of the costs associated with the acquisition, development and construction of the Project; and

WHEREAS, the Entity has submitted an application to the Borough for the approval of a long term tax exemption for the Project (the "Application") pursuant to the Exemption Law and the Redevelopment Area Bond Financing Law, *N.J.S.A.* 40A:12A-64 *et seq.* (the "Bond Financing Law"), which Application is on file with the Borough; and

WHEREAS, after review of the Application, the Mayor recommended that the Application be approved on such terms as set forth in a proposed form of financial agreement (the "Financial Agreement"), a copy of which is on file with the Borough Clerk, as may be modified in consultation with counsel as set forth herein; and

WHEREAS, the Borough is agreeable to granting the long term tax exemption to the Entity for the Project and, in connection therewith, the Borough and the Entity will utilize the Bond Financing Law, the Exemption Law, and such other statutes as may be sources of relevant authority, if any, to facilitate financing of the Project; and

WHEREAS, the provisions of the Exemption Law, the Bond Financing Law, and such other statutes as may be sources of relevant authority, if any, authorize the Borough to accept, in lieu of real property taxes, an annual service charge paid by the Entity to Borough as set forth in such laws; and

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

WHEREAS, pursuant to and in accordance with the provisions of the Bond Financing Law, specifically *N.J.S.A.* 40A:12A-65 and 67(a), the Borough may issue bonds, may apply to an authority (as such term is defined in the Bond Financing Law) to issue bonds, or may cause the issuance of such bonds to finance redevelopment projects or any other cost or expense of the Borough; and

WHEREAS, to defray certain eligible costs of the Project, the Borough intends to issue its notes and/or bonds in a principal amount not to exceed Three Hundred Thousand Dollars ($300,000.00) in accordance with the terms of the Financial Agreement, a bond ordinance and the Bond Financing Law; and

WHEREAS, the Borough hereby finds that the relevant benefits of the Project to the redevelopment of the Redevelopment Area outweigh the costs, if any, associated with the tax exemption, and in fact increase Borough revenues over current levels by granting the long term tax exemption for the Project, which relevant benefits are further described in the Application and the Financial Agreement; and

WHEREAS, the Borough hereby determines that the assistance provided to the Project pursuant to the Financial Agreement will be a significant inducement for the Entity to proceed with the Project and that based on information set forth in the Application, the Project would not be feasible without such assistance,

NOW, THEREFORE, BE IT ORDAINED AND ENACTED by the Borough Council of the Borough of Totowa, in the County of Passaic, State of New Jersey as follows:

I. GENERAL

The aforementioned recitals are incorporated herein as though fully set forth at length.

II. APPROVAL OF APPLICATION

The Application submitted by the Entity is hereby approved.

III. EXECUTION OF FINANCIAL AGREEMENT AUTHORIZED

(a) The Mayor is hereby authorized and directed to execute the Financial Agreement, subject to additions, deletions, modifications, or revisions deemed necessary and appropriate in consultation with counsel.

(b) The Clerk of the Borough is hereby authorized and directed, upon the execution of the Financial Agreement in accordance with the terms of Section III(a) hereof, to attest to the signature of the Mayor upon such document and is hereby further authorized and directed to affix the corporate seal of the Borough upon such document.

(c) The Borough Clerk shall file certified copies of this Ordinance and the Financial Agreement with the Tax Assessor of the Borough. In accordance with P.L. 2015, c. 247, within ten (10) calendar days following the later of the effective date of this Ordinance or the execution of the Financial Agreement by the Entity, the Borough Clerk also shall transmit a certified copy of this Ordinance and the Financial Agreement to the chief financial officer of Passaic County and to the Passaic County Counsel for informational purposes.

IV. SEVERABILITY

If any part of this Ordinance shall be deemed invalid, such parts shall be severed and the invalidity thereby shall not affect the remaining parts of this Ordinance.

V. ACTION REGARDING FINANCIAL AGREEMENT

The Mayor is hereby authorized and directed to determine all matters and terms in connection with the Financial Agreement, all in consultation with the redevelopment counsel to the Borough, and the manual or facsimile signature of the Mayor upon any documents shall be conclusive as to all such determinations. The Mayor, the Business Administrator, the Chief Financial Officer, the Borough Clerk and any other Borough official, officer or professional, including but not limited to redevelopment counsel, bond counsel, the financial advisor and the auditor to the Borough, are each hereby authorized and directed to execute and deliver such documents as are necessary to facilitate the transactions contemplated hereby, and to take such actions or refrain from such actions as are necessary to facilitate the transactions contemplated hereby, in consultation with, as applicable, redevelopment counsel, bond counsel, the financial advisor and the auditor to the Borough, and any and all actions taken heretofore with respect to the transactions contemplated hereby are hereby ratified and confirmed.

VI. AVAILABILITY OF THE ORDINANCE

A copy of this Ordinance shall be available for public inspection at the offices of the Borough.

VII. EFFECTIVE DATE

This Ordinance shall take effect according to law.

ATTEST:

JOSEPH WASSEL, RMC
BOROUGH CLERK

JOHN COIRO
MAYOR

INTRODUCED: MAY 14, 2019

ADOPTED: JUNE 11, 2019