TAX ABATEMENT

FINANCIAL AGREEMENT PURSUANT TO THE LONG TERM TAX EXEMPTION LAW,
<u>N.J.S.A.</u> 40A:20-1, <u>et</u> <u>seq.</u>,
BETWEEN THE BOROUGH OF RED BANK AND
RIVER STREET URBAN RENEWAL ASSOCIATES, L.P.

THIS **FINANCIAL AGREEMENT** (hereinafter, the "Agreement"), made this ___ day of ____________, 1995, between River Street Urban Renewal Associates, L.P., an urban renewal limited partnership of the State of New Jersey having its principal office at c/o Pennrose Properties, Inc., One Liberty Place, Suite 3810, Philadelphia, PA 19103-7332, herein designated as the "Entity", and the Borough of Red Bank, a municipal corporation in the County of Monmouth and the State of New Jersey, hereinafter designated as the "Borough".

<u>WITNESSETH</u>:

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

1. This Agreement shall be governed by the provisions of the Long Term Tax Exemption Law as amended and supplemented, <u>N.J.S.A.</u> 40A:20-1,<u>et</u> <u>seq.</u>, (the "Law"). It being expressly understood and agreed that the Borough relies upon the facts, data, and representations contained in the Application for Approval of the River Street Commons Project and Tax Abatement pursuant to the Long Term Tax Exemption Law, 40A:20-1, <u>et</u> <u>seq.</u>, (formerly referred to as a "Fox Lance Application") (hereinafter, the "Application") attached hereto. The Entity shall at all times prior to the expiration or other termination of this Agreement

remain bound by the provisions of the Law. Operation under this Agreement shall be terminable by the Entity in the manner provided by the Law.

2. The Borough has granted and does hereby grant its approval for an urban renewal project, the nature, magnitude and description of which is disclosed in the accompanying Application to be built under the provisions of the Law on the land described in said Application, commonly known on the Official Tax Map of the Borough of Red Bank as Block 74, Lots 5A, 6 and 7 located at 60 River Street, 209 Shrewsbury Street and 213-15 Shrewsbury Street (hereinafter, the "Property") (the urban renewal project to be undertaken on the Property hereinafter referred to as the "Project"). The Borough finds that the redevelopment of the Property creates a substantial benefit to the Borough when compared to costs, if any, associated with the tax exemption granted herein and, further, finds that such tax exemption is of significant importance in obtaining the development of the Project and in influencing the locational decisions of probable occupants of the Project.

3. Approval hereunder is granted to the Entity for the undertaking of the Project on the lands referred to above, which shall in all respects comply and conform to all applicable statutes and municipal ordinances, and the lawful regulations made pursuant thereto, governing land, building(s) and the use thereof, and which Project is more particularly described in the accompanying Application.

4. The Project to be constructed by the Entity shall be exempt from taxation on improvements in accordance with the provisions of the Law and in the manner provided by this Agreement for a term of thirty (30) years from the completion of the entire Project but not more than thirty-five (35) years from the execution of this Agreement, and only so long as the Entity and its Project remain subject to the provisions of the Law and complies with this Agreement.

5. In consideration of the aforesaid exemption from taxation on improvement(s), the Entity, its successors and assigns shall make payment to the Borough of an annual service charge for municipal services supplied to the Project (hereinafter, the "Annual Service Charge") of a sum equal to 6.28% of the annual gross revenue determined pursuant to N.J.S.A. 40A:20-1, et seq., calculated from the first day of the month following the substantial completion of the Project. There is hereby established a schedule of annual service charges to be paid over the term of the thirty (30) year exemption period which shall be in stages as follows:

(a) For the first stage of the exemption period, fifteen (15) years, commencing from the date of substantial completion of the Project, the Entity shall pay the Borough an Annual Service Charge equal to 6.28% of the annual gross revenue. For the remainder of the period of the exemption the Annual Service Charge shall be determined as follows:

(b) For the second stage of the exemption period which shall be for years sixteen (16) through twenty (20) of the exemption period, the Entity shall pay the Borough an amount equal to either the amount determined pursuant to Paragraph 6(a) of this Agreement or twenty percent (20%) of the amount of taxes otherwise due on the value of the land and improvements whichever shall be greater;

(c) For the third stage of the exemption period, which shall be for years twenty-one (21) through twenty-five (25) of the exemption period, the Entity shall pay the Borough an amount equal to either the amount determined pursuant to Paragraph 6(a) of this Agreement or forty percent (40%) of the amount of taxes otherwise due on the value of the land and improvements, whichever shall be greater;

(d) For the fourth stage of the exemption period which shall be for years twenty-six (26) through twenty-eight (28) of the exemption period, the Entity shall pay the Borough an amount equal to either the amount determined pursuant to Paragraph 6(a) of this Agreement or sixty percent (60%) of the amount of taxes otherwise due on the value of the land and improvements whichever shall be greater;

(e) For the final stage of the exemption period which shall be for years twenty-nine (29) through thirty (30) of the exemption period, the Entity shall pay the Borough an amount equal to either the amount determined pursuant to Paragraph 6(a) of this Agreement or eighty percent (80%) of the amount of taxes otherwise due on the value of the land and improvements, whichever shall be greater.

The Annual Service Charge shall be paid to the Borough on a quarterly basis in a manner consistent with the Borough's tax collection schedule.

Against the Annual Service Charge the Entity shall be entitled to credit for the amount, without interest, of the real estate taxes on land paid by it or by the owner of the land in the last four (4) preceding quarterly installments. Notwithstanding the provisions of this section of the Agreement, the minimum Annual Service Charge shall be the amount of the total taxes levied against all real property in the area covered by the Project in the last full tax year in which the area was subject to taxation, and the minimum Annual Service Charge shall be paid in each year in which the Annual Service Charge calculated pursuant to this section of the Agreement would be less than the minimum Annual Service Charge.

6. The Annual Service Charge for the first year of tax exemption shall be on a pro rata basis, from the date of commencement of the exemption to the close of the calendar year, and, for the last calendar year of the tax exemption, from the first day of the calendar year to the date of termination of the exemption. Upon the termination of the exemption granted pursuant to the provisions of the Law, the Project, all affected parcels, and all improvements made thereto shall be assessed and subject to taxation as are other taxable properties in the municipality.

After the date of termination, all restrictions and limitations upon the Entity shall terminate and be at an end upon the Entity's rendering its final accounting to and with the municipality.

7. In the event of a dispute arising between the parties in reference to the terms and provisions of this Agreement the matters in controversy shall be resolved by arbitration by submission thereof to the American Arbitration Association for resolution.

In the event of a default on the part of the Entity pursuant to its obligation to pay the Annual Service Charge as defined in Paragraph 6 above, the Borough may terminate the tax abatement if the default is not remedied within ninety (90) days of the due date of the Annual Service Charge or in the alternative it reserves the right to proceed against the Entity's land premises, the subject of this Agreement, in the manner provided by N.J.S.A. 54:5-1 to 54:5-129 and any act supplementary or amendatory thereof, it being understood and agreed by the parties hereto that throughout N.J.S.A. 54:5-1 to 54:5-129 and any act supplementary or amendatory thereof, whenever the word "taxes" appears, or is applied, directly or impliedly to mean taxes or municipal liens on land, such statutory provisions shall be read, as far as is pertinent to this Agreement, as if the Annual Service Charge were taxes or municipal liens on land. In any event, however, the Entity does not waive any defense it may have to contest the right of the Borough to proceed in the above mentioned manner by conventional or in rem tax foreclosure.

8. It is agreed between the parties that the Entity, at any time after the expiration of one (1) year from the completion of the Project, may notify the Municipal Council of the Borough that, as of a certain date designated in the notice, it relinquishes its status under the Law, and that the Entity has obtained the consent of the Commissioner of Community Affairs to such a relinquishment. As of that date, the tax exemption, the service charges, and the profit and dividend restrictions shall terminate. The date of termination of tax exemption, whether by relinquishment by the Entity or by terms of this Agreement, shall be deemed the close of the fiscal year of the Entity. Within ninety (90) days of that date, the Entity shall pay to the Borough the amount of reserve, if any maintained, pursuant to section 15 or 16 of the Law, as well as the excess net profits, if any, payable as of that date.

9. The Entity shall be subject, during the period of this Agreement and tax exemption under the Law, to a limitation of its profits and in addition, in the case of a corporation, of the dividends payable by it. Whenever the net profits of the entity for the period, taken as one accounting period, commencing on the date on which the construction of the Project is completed and terminating at the end of the last full fiscal year, shall exceed the allowable net profits for the period, the Entity shall, within ninety (90) days of the close of the fiscal year, pay the excess net profits to the Borough as an additional service charge. The Entity may maintain during the term of this Agreement a reserve against vacancies against unpaid rentals, reasonable contingencies

and/or vacancies in an amount not exceeding ten percent (10%) of the gross annual revenues of the Entity for the fiscal year preceding the year in which a determination is being made with respect to permitted net profits as provided in N.J.S.A. 40A:20-15.

10. Within ninety (90) days after the date of such termination, the Entity shall pay the Borough a sum equal to the amount of the reserve, if any, maintained pursuant to N.J.S.A. 40A:20-15 and 40A:20-16, as well as the excess net profits, if any, payable as of that date. This provision shall not apply, however, to reserves required to be established pursuant to the Disposition Agreement.

11. The Entity shall submit annually, within ninety (90) days after the close of each of its fiscal years, its auditor's reports of income and expenses related to the Project to the Mayor and Municipal Council of the Borough and to the Director of Local Government Services in the Department of Community Affairs having a mailing address of CN-805, Trenton NJ 08625-0805.

12. The Entity shall, upon request, permit inspection of the property, equipment, buildings, and other facilities of the Entity by authorized representatives of the Borough or the State. The Entity shall also permit examination and audit of its books, contracts, records, documents and papers by authorized representatives of the Borough or the State at the Entity's expense. Such inspection or examination shall be made during the

reasonable hours of the business day, in the presence of an officer or agent of the Entity.

13. After examination of the books, contracts, etc. as set forth Paragraph 13, the Borough, in its reasonable discretion, may, within ninety (90) days after the close of any fiscal or calendar year (depending on the Entity's accounting basis) in which this Agreement remains in effect, require the Entity to submit an auditor's report for the preceding fiscal or calendar year, certified by a certified public accountant, to the Mayor, the Borough Council, the Finance Director and the Clerk of the Borough. Said auditor's report shall include, but not be limited to, such details as may relate to the Project's cost and to the financial affairs of the Entity and to its operation and performance hereunder, pursuant to the Law, as amended and supplemented, and this Agreement, and shall be prepared in a manner consistent with the current standards of the Financial Accounting Standards Board. Said auditor's report shall be submitted to the representatives of the Borough mentioned above within 90 days of receipt by the Entity of the Borough's request for said auditor's report.

14. The failure on the part of the Entity to make timely payment of all municipal obligations, taxes, fees and charges arising out of this Agreement or in any way arising out of the affected Project, its land and/or improvements, or failure on the part of the Entity to comply with the requirements of the aforementioned audit, or with any other substantive condition of

this Agreement shall permit the Borough to exercise such remedies as may be provided by the Law or this agreement provided that this Entity shall have received from the Borough a Notice of Default and Intent to Terminate in which case the Entity shall have ninety (90) days in which to cure any default and avoid such termination. In the event of any dispute between the parties matters in controversy shall be resolved by arbitration as provided in this Agreement.

15. Any notice required hereunder to be sent by either party to the other, shall be sent by certified mail, return receipt requested, or by a nationally recognized overnight delivery service, addressed as follows:

(a) When sent by the Borough to the Entity it shall be addressed to: River Street Urban Renewal Associates, L.P., c/o Pennrose Properties, Inc., One Liberty Place, Suite 3810, Philadelphia, PA 19103-7332, unless prior to giving such notice the Entity shall have notified the Borough otherwise in writing.

(b) When sent by the Entity to the Borough, it shall be addressed to the Clerk, Red Bank Borough, 32 Monmouth Street, Red Bank, NJ 07701, unless prior to giving such notice the Borough shall have notified the Entity otherwise in writing.

16. It is understood and agreed that in the event the Borough shall be named as a party defendant in any action brought against the Entity by reason of any breach, default, or a violation of any of the provisions of the within Agreement and/or the provisions of <u>N.J.S.A.</u> 40A:20-1, <u>et seq.</u>, the Entity shall

indemnify and hold the Borough harmless and shall, further, defend any such action at its own expense. Notwithstanding anything in the Agreement to the contrary, the Entity's liability under this Agreement shall be limited to its interest in the Property. However, the Borough maintains the right to intervene as a party thereto, to which intervention the Entity consents; the expense thereof to be borne by the Borough.

17. The Entity shall have and may exercise such of the powers conferred by law on limited partnerships as shall be necessary for the operation of the business of the Entity and as shall be consistent with the provisions of the Law, and, in addition, shall have and may exercise the powers set forth in the Law, but only so long as this Agreement, together with any amendments thereto, is in effect with the Borough pursuant to the Law.

18. The Borough consents to a sale of the Project by the Entity to another urban renewal entity organized pursuant to the Law, their successors, assigns, all owning no other Project at the time of the transfer and that, upon assumption by the transferee urban renewal entity of the transferor's then remaining obligations under this Agreement, the tax exemption of the improvements shall continue and inure to the transferee urban renewal entity, its respective successors or assigns.

However, any change made in the ownership of the Project which, as determined by the Borough in its reasonable discretion, would materially affect the terms of this Agreement shall render this Agreement voidable unless approved by the Municipal Council by resolution. It is understood and agreed that the Borough may,on written application by the Entity, consent to a sale of the Project and the transfer of the Agreement to an urban renewal corporation or association eligible to function under the Law provided the Entity is not in default as respects any performance required of it hereunder and full compliance with the terms and conditions of N.J.S.-A. 40A:20-1 et seq. has occurred and the Entity's obligation under this Agreement with the Borough is assumed by the transferee.

If the Entity has, with the consent of the municipality in which the Project is located, transferred its Project to another urban renewal entity which has assumed the then remaining contractual obligations of the transferor entity with the municipality, the transferor entity shall be discharged from any further obligation under this Agreement, and shall be qualified to undertake another Project with the same or a different municipality.

The Borough recognizes and acknowledges that the Entity is a New Jersey limited partnership and as such intends to sell limited partnership interests in the Entity through syndication. The Borough specifically recognizes and consents to such syndication and sale or resale of limited partnership interests in the Entity.

19. Where approval or consent of the Borough is sought for an assignment of the Agreement, either the Entity or its assignee shall be required to pay to the Borough a reasonable fee for the

legal services of the Borough's Law Department or outside counsel, as determined by the Borough, related to the review, preparation, and/or submission of papers to the Municipal Council for its appropriate action on the requested assignment.

20. Reference to the Long Term Tax Exemption Law shall mean N.J.S.A. 40A:20-1, et seq., as amended and supplemented.

21. The Entity shall, from the time the Annual Service Charge becomes effective, and on the same due dates as scheduled for the payment of land taxes, pay the Borough the estimated 1/4 of the Annual Service Charge on improvements until the correct amount due from the Entity as the Annual Service Charge on improvements is determined after any review and examination by the Borough of the Entity's books and records and for submission to the Borough of any auditor's reports pursuant to Paragraphs 12 and 13, above.

Within 90 days after the correct amount due and from the Entity as the Annual Service Charge on Improvements has been determined by the Borough's Finance Director and notice of same given to the Entity, the Borough and the Entity will adjust and pay any over or under payment so made, or needed to be made.

22. All conditions in the Ordinance of the Municipal Council approving this Agreement are hereby incorporated in this Agreement and made a part hereof.

IN WITNESS WHEREOF, the parties have caused these presents to be executed the date and year first above written.

RIVER STREET URBAN RENEWAL ASSOCIATES, L.P.
By:
PENNROSE PROPERTIES, INC.

ATTEST:

BY: ______________________
RICHARD K. BARNHART, PRESIDENT

BOROUGH OF RED BANK

ATTEST:

BY: ______________________
EDWARD MCKENNA, MAYOR