

FINANCIAL AGREEMENT

THIS FINANCIAL AGREEMENT (hereinafter “**Agreement**” or “**Financial Agreement**”), made this ____ day of _____, 2021, by and between **LINQUE - H.C. PARTNERS 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, with offices at One Meadowlands Plaza, Suite 803, East Rutherford, New Jersey 07073 (the “**Entity**”) and the **BOROUGH OF RUTHERFORD**, a municipal corporation of the State of New Jersey in the County of Bergen with offices located at 176 Park Avenue, Rutherford, New Jersey 07070 (the “**Borough**”, and together with the Entity, the “**Parties**”).

W I T N E S S E T H:

WHEREAS, the governing body of the Borough of Rutherford (the “**Borough**”) is authorized to determine whether certain property located within the Borough is in need of rehabilitation or redevelopment under the New Jersey Local Redevelopment and Housing Law, *N.J.S.A. 40A:12A-1 et seq.* (the “**Redevelopment Law**”); and

WHEREAS, by resolutions adopted on August 4, 1998, the Borough designated the properties consisting of an approximately 30-acre area, primarily located within the Hackensack Meadowlands District including: Block 219.02, Lots 60.01, 61, 62, 63, 65.01, 65.07, 66.05, and 67.04; Block 223, Lot 8.02; Block 224, Lots 3.02, 3.04, 3.05 and part of 3.01 on the Borough’s official tax map and commonly known as the “Highland Cross Redevelopment Area” (hereinafter, the “**Original Redevelopment Area**”) as an area in need of redevelopment under the Redevelopment Law; and

WHEREAS, the Hackensack Meadowlands Development Commission (the “**HMDC**”) determined on August 4, 1998 that the Original Redevelopment Area was an area in need of redevelopment in accordance with the Hackensack Reclamation and Development Act *N.J.S.A. 13:17-1 et seq.*; and

WHEREAS, by ordinance on December 1, 1998, the Borough adopted that certain redevelopment plan for the Original Redevelopment Area dated October 5, 1998, revised October 26, 1998 (the “**Original Redevelopment Plan**”); and

WHEREAS, by resolutions dated November 25, 1998, the HMDC approved the Original Redevelopment Plan and authorized its Executive Director to enter into a contract with the Borough to implement the Original Redevelopment Plan; and

WHEREAS, the Entity made application to the Borough to be designated as the redeveloper, as that term is defined in the Redevelopment Law, for the Original Redevelopment Area in accordance with the relevant provisions of the Original Redevelopment Plan; and

WHEREAS, the Borough and Linque – H.C. Partners, LLC (“Linque”), an affiliate of the Entity, entered into a Redevelopment Agreement on May 13, 1999 (the “**Original Redevelopment Agreement**”), which set forth those parties’ respective rights and obligations in connection with the development of that portion of the Original Redevelopment Area consisting of Block 219.02, Lots 60.01, 61, 62, 63, 65.01, 65.07, 66.05, and 67.04, Block 223, Lots 8.02, Block 224, Lots 3.02, 3.04, 3.05 and part of 3.01 (the “**Original Project Site**”); and

WHEREAS, pursuant to the terms of the Original Redevelopment Agreement, Linque agreed to redevelop the Original Project Site by constructing thereon a mixed-use project consisting of commercial and light industrial uses and conveying a portion of the Original Project Site to the Borough for the Borough to construct a Department of Public Works (“**DPW**”) garage and a municipal recycling facility (collectively, the “**Original Project**”); and

WHEREAS, the Borough and Linque entered into a series of side letter agreements dated May 13, 1999 and November 24, 1999, which modified the Original Redevelopment Agreement (collectively, the “**Side Letter Agreements**”); and

WHEREAS, the Borough and Linque entered into an amended and restated redevelopment agreement, dated May 9, 2001 (the “**First Amended and Restated Redevelopment Agreement**”), to amend, modify and supplement certain articles of the Original Redevelopment Agreement and to rescind the terms and conditions of the Side Letter Agreements; and

WHEREAS, in 2001, a major subdivision was undertaken within a portion of the Original Redevelopment Area that divided it into several large development parcels, including Block 219.04, Lots 1, 2.01, 2.02, 3 and 61; and Block 219.02, Lots 65.05, 65.06, and 65.07 on the Borough’s official tax map (together with the ‘Original Redevelopment Area,’ the “**Redevelopment Area**”); and

WHEREAS, pursuant to the terms of the First Amended and Restated Redevelopment Agreement, the Borough and Linque agreed, among other things, to modify and amend the Original Redevelopment Agreement as follows: (1) to rescind the Side Letter Agreements; (2) the Borough agreed to relinquish any right it had to operate a recycling facility on the Original Project Site, cease all recycling activities on any portion of the Original Project Site, vacate a portion of the Original Project Site, and convey a portion of the Original Project Site to Linque for the sum of \$250,000 and other consideration enumerated in the First Amended and Restated Agreement; (4) the Entity agreed to: (a) convey a portion of the Redevelopment Area consisting of Block 219.04 Lot 2.01 (which constitutes a portion of former Block 219.04, Lot 2HM) on the Borough’s official tax map to the Borough (the “**Borough Property**”), (b) develop the Borough Property by constructing thereon a DPW garage, fuel depot, and salt storage barn (collectively, the “**DPW Facility**”), and (c) work with the Borough to obtain an easement from the Bergen County Utility Authority (“**BCUA**”); (5) eliminate any reference to “municipal recycling facility” from the Original Redevelopment Agreement; (6) provide that Linque had no further obligation to cooperate with the Borough in seeking a mutually acceptable offsite location for a municipal recycling facility and the parties agreed that no recycling facility, nor any recycling activities will ever be conducted on the Original Project Site, including the Borough Property,

and that this restriction shall be restated in in any deed tendered by Linque to the Borough for the Borough Property; (7) the Borough agreed to accept and utilize the Borough Property as a DPW Facility consistent with the site plan, and the provisions of a Declaration of Zoning Lot Record, and to accept title to the Borough Property subject to a deed restriction prohibiting recycling use on the Borough Property; (8) the Borough agreed to accept the Borough Property subject to: (i) a landscaping easement allowing Linque to landscape the DPW Facility at the Borough's cost and expense, and (ii) an easement allowing Linque to continuously locate, erect, maintain and replace a monument sign; (9) Linque agreed to complete the extension of Veterans Boulevard northward to Highland Cross, and dedicate the newly constructed portion of Veterans Boulevard to the Borough as a public road and right-of-way; (10) the Borough agreed to vacate that portion of Veterans Boulevard existing as of the date of the First Amended and Restated Redevelopment Agreement between Borough Street and Highland Cross, and also to vacate that portion of Borough Street lying west of Veterans Boulevard, and deliver, by quitclaim deed, title to the areas so vacated to Linque (collectively, the "**Amended Project**"); and

WHEREAS, effective February 5, 2015, the New Jersey Meadowlands Commission ("**NJMC**"), formerly the HDMC, is now part of the New Jersey Sports and Exposition Authority ("**NJSEA**"); and

WHEREAS, by NJMC Resolution No. 14-38, dated September 24, 2014, and by NJSEA Resolution No. 2019-31, dated October 17, 2019, the NJMC and NJSEA adopted resolutions approving amendments to the Original Redevelopment Plan including expanding the Redevelopment Plan to include the Redevelopment Area consisting of Block 219.04, Lots 1, 2.01, 2.02, 3 and 61; and Block 219.02, Lots 65.05, 65.06, and 65.07 (the "**Redevelopment Plan**"); and

WHEREAS, Linque has completed construction of the DPW Facility and conveyed the Borough Property to the Borough; and

WHEREAS, the vision for the redevelopment of the balance of the Redevelopment Area has since changed and Linque now agrees to redevelop the portion of the Redevelopment Area consisting of Block 219.04, Lot 1 (the "**Project Site**"), which has led the Parties to agree to amend the First Amended and Restated Redevelopment Agreement; and

WHEREAS, on August 25, 2020, the Borough and the Entity entered into that certain second amended and restated redevelopment agreement (the "**Second Amended and Restated Redevelopment Agreement**"), pursuant to which the Entity agreed to: (1) subdivide the Project Site (the "**Subdivision**") consistent with the "Minor Subdivision Plan for 235 Veterans Boulevard, Lots 1, 2.01 & 3 in Block 219.04", prepared by Control Point Associates, Inc. and dated March 22, 2018, a copy of which is attached to the Second Amended and Restated Redevelopment Agreement (the "**Subdivision Plan**") in order to subdivide approximately 12,178 square feet from the Project Site (the "**Additional Borough Property**" and, together with the Borough Property, the "**Expanded Borough Property**"), which it will convey to the Borough to be merged into the Borough Property; and (2) redevelop the Project Site by: (A) constructing an approximately 357,521 square foot warehouse and distribution facility including 8 loading docks, 206 exterior van parking spaces, 175 interior van parking spaces, 183 employee

car parking spaces, appropriate on-site and off-site infrastructure and landscaping; (the “**Project**”); (B) re-striping the parking area on the Expanded Borough Property to create 12 net additional parking spaces and provide space on the Additional Borough Property for 9 large bus parking spaces (8’X36’) and 8 small bus parking spaces (8’X24’) (the “**DPW Portion**”); and (C) constructing related improvements including modifying the existing median on Veterans Boulevard to accommodate the new entrances to the Expanded Borough Property and the Project Site (the “**DPW Improvements**”, and together with the Project and the DPW Portion, the “**Redevelopment Project**”); and

WHEREAS, pursuant to and in accordance with the provisions of the Redevelopment Law 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

WHEREAS, in accordance with the Long Term Tax Exemption Law, the Entity filed an application, which is incorporated herein by reference (the “**Application**”), attached hereto as **Exhibit A**, 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 Site, which is currently underutilized, with a state-of-the-art industrial distribution warehouse, which will generate revenues and create jobs. Additionally, the undertaking of the Redevelopment Project, of which the Project is a part, will provide roadway and associated public infrastructure improvements in the Borough, including expanding and improving the Borough’s Department of Public Works Parking Lot. The undertaking of the Project will also help the Borough satisfy its constitutional obligation because the Entity will make a payment to the Borough, described in more detail in the Second Amended and Restated Redevelopment Agreement, which the Borough will use to provide housing opportunities for households of low and/or moderate income. The Project is expected to produce approximately 150 temporary construction jobs and approximately 211 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.

WHEREAS, the Borough Council on [INSERT], 2021 adopted an ordinance (the “**Ordinance**”, a copy of which is attached hereto as **Exhibit B**), approving the Application and authorizing the execution of this Agreement; and

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

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

ARTICLE I
GENERAL PROVISIONS

Section 1.01 Governing Law. This Financial Agreement shall be governed by the provisions of (a) the Long Term Tax Exemption Law, the Redevelopment Law 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>Additional Borough Property</u>	<u>NJMC</u>
<u>Agreement/Financial Agreement</u>	<u>NJSEA</u>
<u>Amended Project</u>	<u>Ordinance</u>
<u>BCUA</u>	<u>Original Project</u>
<u>Borough</u>	<u>Original Project Site</u>
<u>Borough Property</u>	<u>Original Redevelopment Agreement</u>
<u>DPW</u>	<u>Original Redevelopment Area</u>
<u>DPW Facility</u>	<u>Original Redevelopment Plan</u>
<u>DPW Improvements</u>	<u>Parties</u>
<u>DPW Portion</u>	<u>Project</u>
<u>Entity</u>	<u>Project Site</u>
<u>Expanded Borough Property</u>	<u>Redevelopment Agreement</u>
<u>First Amended and Restated Redevelopment Agreement</u>	<u>Redevelopment Law</u>
<u>HDMC</u>	<u>Redevelopment Plan</u>
<u>Long Term Tax Exemption Law</u>	<u>Redevelopment Project</u>

Second Amended and Restated
Redevelopment Agreement

Side Letter Agreements

Subdivision

Subdivision Plan

Warehouse Portion

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 annual percentage rate as set forth in *N.J.S.A.* 40A:20-3(b). Pursuant to *N.J.S.A.* 40A:20-3(b), the Allowable Profit Rate means 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 – the annual gross revenue of the Entity for space used by the Entity or leased by the Entity to either to a sublessee or end user, as defined in in *N.J.S.A.* 40A:20-3, as well as any other revenue received by the Entity. In the event the sublessee or end user is an entity related to the Entity, the lease rate shall be either a market rate or, if not actually a market rate, for purposes of calculating the Entity's Annual Gross Revenue, shall be imputed to be a market rate. Any operating expenses paid by the tenant that are ordinarily paid by the landlord shall be treated as revenue to the Entity. Annual Gross Revenue shall not include tenant reimbursements to the landlord of actual operating expenses under a triple net lease such as Annual Service Charges and land taxes, utilities, sewer and water charges and CAM charges, since all such tenant reimbursements are operating expenses ordinarily paid by a tenant under a triple net lease.

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 as defined herein, 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: With respect to the Project as a whole, 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, as defined herein.

Annual Service Charge Start Date: The first Annual Service Charge Payment Date occurring after the Borough issues a Certificate of Occupancy for the Project, or portion thereof, as applicable.

Applicable Law: All federal, State and local laws, ordinances, approvals, rules, regulations and requirements applicable to the Project including, but not limited to, the Redevelopment Law, the Long Term Tax Exemption Law, the Redevelopment 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.

Application – The application filed by the Entity pursuant to *N.J.S.A.* 40A:20-8 with the Mayor of the Borough for a long-term tax exemption for the Project, attached hereto as **Exhibit C**.

Auditor's Report: A complete financial statement outlining the financial status of the Project (for a period of time as indicated by context), which shall also include a certification of Total Project Cost and clear computation of Net Profit as provided in *N.J.S.A.* 40A:20-3(c)(2). The Net Profit calculation shall be included in a separate, supplemental reporting section of the Auditor's Report. The Auditor's opinion on the financial statements shall include, at a minimum, a "relation to the financial statements as a whole" opinion with respect to the separate, supplemental section. The separate, supplemental section regarding excess Net Profit shall also include an excess Net Profit calculation schedule that sets forth the Entity's activity with respect to excess Net Profit. 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. The Auditor's Report shall be certified as to its conformance with such principles by a certified public accountant licensed to practice that profession in the State.

Certificate of Completion – A certificate or certificates, issued by the Borough authorizing occupancy of a building, in whole or in part, and certifying that the Entity has performed its duties and obligations under the Second Amended and Restated Redevelopment Agreement and the Redevelopment Plan with respect to the Project.

Certificate of Occupancy: A Certificate of Occupancy (temporary or permanent), as such term is defined in the New Jersey Administrative Code, is issued by the Borough authorizing occupancy of a building, in whole or in part upon Completion (hereinafter defined), of the Project, pursuant to *N.J.S.A.* 52:27D-133.

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

Change in Law – The enactment, promulgation, modification or repeal of or with respect to Applicable Law, including without limitation, the Long Term Tax Exemption Law, the Act or other similar statute with respect to the matters addressed by the terms of this Financial Agreement and/or the transactions contemplated hereby.

Completion, Complete or Completed – With respect to the Project, (a) all work related to the Project in its entirety or any other work or actions to which such term is applied has been completed, acquired and/or installed in accordance with the Second Amended and Restated Redevelopment Agreement and in compliance with Applicable Laws so that (i) the Project may be used and operated under the applicable provisions of the Second Amended and Restated 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 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 Entity with respect to the Project, which determination is reasonably acceptable to the Borough.

Default: A breach or the failure of either Party to perform any obligation imposed upon such Party by the terms of this Agreement, or under Applicable Law, beyond any applicable grace period or cure periods.

Excess Profit Accounting Period: Any period, but not less than one fiscal year of the Entity, in which the aggregate Net Profit of the Entity exceeds aggregate Allowable Net Profit on a cumulative basis. The first Excess Profit Accounting Period shall commence upon the issuance of a Certificate of Occupancy for the Project and terminate at the end of the fiscal year in which such aggregate Net Profit of the Entity exceeds the aggregate Allowable Net Profit for the entire period, taken as one accounting period. Each subsequent Excess Profit Accounting Period shall commence on the first day of the next fiscal year of the Entity after the end of the last Excess Profit Accounting Period and shall terminate at the end of the fiscal year in which such aggregate Net Profit of the Entity exceed the aggregate Allowable Net Profit for the entire period, taken as one accounting period.

Exhibit(s) – Any exhibit attached hereto which shall be deemed to be a part of this Financial Agreement, as if set forth in full in the text hereof

Effective Date: The date of this Agreement.

Financial Plan – The financial plan for the development of the Project, as attached to the Application as *Exhibit 14*.

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 of the Borough in accordance with Applicable Law.

Net Profit: The Annual Gross Revenue of the Entity of the Entity pertaining to the Project 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)*. As provided in *N.J.S.A. 40A:20-3(a)*, any gain realized by the Entity on the sale of any unit in fee simple, whether or not taxable under federal or state law, shall not be included in computing Annual Gross Revenue.

Notice: As defined in Section 15.01.

Property: The Land and the Improvements.

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

Substantial Completion – The date the work related to the Project is sufficiently complete in accordance with the Redevelopment Plan and the Second Amended and Restated Redevelopment Agreement so that the Entity can occupy or utilize the Project for the use for which it is intended. This date shall be confirmed by a certificate of Substantial Completion signed by the Entity.

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 thirtieth (30th) anniversary date of the applicable Annual Service Charge Start Date; or (ii) 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 and constructing 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. There shall be included in Total Project Cost the actual costs incurred to construct and/or rehabilitate the Improvements which are specifically described and estimated in *Exhibit 11* to the Application. The architect certification required under *N.J.S.A. 40A:20-3(h)(4)* shall be submitted with the initial Auditor's Report.

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 of a tax exemption for the Improvements, 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 Second Amended and Restated Redevelopment Agreement, the Redevelopment Plan and Applicable Law, the use of which is more specifically described in the Application.

Section 2.04 Ownership, Management and Control. The Entity represents that it is the owner of the Land, on which the Project will be constructed.

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 Second Amended and Restated 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 Project 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 and, to the extent applicable, the Land, 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.

(a) In accordance with the Long Term Tax Exemption Law, including without limitation *N.J.S.A. 40A:20-9(g)* and 13, at any time after one (1) year from the Completion Date, the Entity may voluntarily terminate this Financial Agreement and relinquish its status under the Long Term Tax Exemption Law.

(b) Notwithstanding anything contained in this Financial Agreement to the contrary, in the event that the Entity shall voluntarily terminate this Financial Agreement, all in accordance with Section 3.03(a) hereof, the tax exemption provided for in this Financial Agreement shall no longer be applicable to the Entity or the Improvements, shall thereafter be assessed and taxed according to the general law applicable to all other non-exempt property located within the Borough.

(c) Notwithstanding anything contained in this Financial Agreement to the contrary, in the event that the Entity shall voluntarily terminate this Financial Agreement, all in accordance with Section 3.03(a) hereof, the date of such termination shall be deemed the close of the fiscal year of the Entity, all in accordance with the Long Term Tax Exemption Law, including without limitation *N.J.S.A. 40A:20-13*.

ARTICLE IV
ANNUAL SERVICE CHARGE

Section 4.01 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. Notwithstanding anything herein to the contrary, the Term of this Financial Agreement or the duration of the tax exemption provided for in Section 3.01 hereof, 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 4.02 Annual Service Charge Amount. In consideration for the tax exemption provided for herein, the Entity shall make payment to the Borough, in lieu of real property taxes on the improvements within the Project Area, of an Annual Service Charge in an amount equal to the greater of (a) eleven and 31/100 percent (11.31%) of the Annual Gross Revenue or (b) \$2.00 per square foot of the Project (\$715,042).

Section 4.03 Quarterly Installments. The Entity agrees that payment of the Annual Service Charge shall be paid to the Borough on a quarterly basis on February 1, May 1, August 1, and November 1 of each year commencing on the Annual Service Charge Start Date. In the event that the Entity fails to timely pay any installment, the entire amount past due on the Land shall bear until paid the highest rate of interest permitted to be assessed under applicable State law against delinquent taxpayers in the case of unpaid taxes or tax liens, which interest rate is currently eighteen percent (18%).

Section 4.04 Payment of Annual Service Charge. In consideration of the exemption from taxation for the Improvements, the Entity or any successor, as applicable, shall pay the Annual Service Charge, to the Borough on the Annual Service Charge Payment Dates as set forth below:

(a) Upon the issuance of a Certificate of Occupancy for the Improvements, or any portion thereof, the Entity shall be responsible for the payment of the Annual Service Charge applicable to such Improvements, on the respective Annual Service Charge Payment Dates. In the event that the Entity fails to timely pay any installment, the amount past due shall bear until paid the highest rate of interest permitted to be assessed under applicable State law against delinquent taxpayers in the case of unpaid taxes or tax liens.

(b) Upon a permitted transfer of title to the Improvements, or any portion thereof for which a Certificate of Occupancy has been issued, the respective Transferee will be responsible for the payment of the Annual Service Charge applicable to such Improvements, as provided for in Section 4.04(a). In the event that a Transferee fails to timely pay any installment, the amount past due shall bear until paid the highest rate of interest permitted to be assessed under applicable State law against delinquent taxpayers in the case of unpaid taxes or tax liens.

(c) In no event shall the Annual Service Charge be less than the amount of the total taxes levied against the Project Site in the last full year in which the Property was subject to conventional taxation (the "**Minimum Annual Service Charge**"). Notwithstanding the provisions of the Long Term Tax Exemption Law or any provision of this Agreement to the contrary, the Annual Service Charge shall never be reduced below the Minimum Annual Service Charge through any tax appeal on the Land and/or Improvements or any other legal proceeding

regarding the Project during the period that this Agreement is in force and effect. Further, any and all tax appeals currently pending on the Land or existing improvements have been withdrawn

Section 4.05 Schedule of Staged Adjustments. The Annual Service Charge shall be reviewed and shall be adjusted in stages over the term of this Agreement in accordance with *N.J.S.A.* 40A:20-12(b) as follows:

(a) Stage One (Years 1-15): For each of the years one (1) through fifteen from the Annual Service Charge Start Date, the Annual Service Charge shall be the amount due pursuant to Section 4.02;

(b) Stage Two (Years 16-21): For each of the years sixteen (16) through twenty-one (21) from the Annual Service Charge Start Date, the Annual Service Charge shall be the greater of (1) the amount due pursuant to Section 4.02; or (2) twenty percent (20%) of the amount of the taxes otherwise due on the value of the Land and Improvements;

(c) Stage Three (Years 22-27): For each of the years twenty-two (22) through twenty-seven (27) from the Annual Service Charge Start Date, the Annual Service Charge shall be the greater of (a) the amount due pursuant to Section 4.02 or (b) forty percent (40%) of the amount of the taxes otherwise due on the value of the Land and Improvements;

(d) Stage Four (Years 28-29): For each of the years twenty-eight (28) through twenty-nine (29) from the Annual Service Charge Start Date, the Annual Service Charge shall be the greater of (a) the amount due pursuant to Section 4.02 or (b) sixty percent (60%) of the amount of the taxes otherwise due on the value of the Land and Improvements; and

(e) Stage Five (Year 30): For year thirty (30) from the Annual Service Charge Start Date, the Annual Service Charge shall be the greater of (a) the amount due pursuant to Section 4.02 or (b) eighty percent (80%) of the amount of the taxes otherwise due on the value of the Land and Improvements.

Section 4.06 Material Conditions. It is expressly agreed and understood that all payments of the Land Taxes, Annual Service Charge, the Administrative Fee, 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 4.07 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 4.02 and 4.04 hereof shall be reduced, amended, or otherwise modified during the Term of this Agreement, through: (1) any tax appeal on the Improvements or

otherwise unless a tax appeal is required to correct the future land assessment due to errors in the assessment or due to changed circumstances or market conditions, or (2) any other legal proceeding regarding the Project during the term of this Agreement.

Section 4.08 Annual Service Charge as Municipal Lien. - The Borough and the Entity hereby expressly acknowledge, understand and agree that in accordance with Applicable Law, upon the recordation of the Ordinance and this Financial Agreement (a) the Ordinance, this Financial Agreement and any amount due hereunder, including without limitation, the Annual Service Charge and the Administrative Fee shall be a continuous, municipal lien on the Project Site and the Project, and that any subsequent Annual Service Charge, including any interest, penalties or costs of collection thereof, that shall thereafter become due or accrue, shall be added and relate back to and be part of the initial municipal lien on the Project Site and the Project, (b) the Ordinance, this Financial Agreement and any amounts due hereunder, including without limitation, the Annual Service Charge, shall constitute an automatic, enforceable and perfected statutory municipal lien for all purposes on the Project Site and the Project, including specifically and without limitation, the federal bankruptcy code, regardless of whether the amount of the Annual Service Charge has been determined, and (c) any applicable process, procedure or action of any court, government body or other relevant authority, including without limitation any confirmation hearing, to determine the amount of the Annual Service Charge due shall not affect the commencement or validity of the municipal lien.

Section 4.09 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 4.10 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 Annual Service Charge upon the Annual Service Charge Start Date and each anniversary thereafter prior to the Termination Date (the “**Administrative Fee**”). The Administrative Fee may be enforced in the same manner as the Annual Service Charge. In the event the Entity fails to pay the Administrative Fee when due and owing, the amount unpaid shall bear the highest rate of interest permitted under applicable State law in the case of unpaid taxes or tax liens until paid.

Section 4.11. Assessment of Land Taxes - Land Taxes shall be separately assessed for the Land and paid, and shall be assessed only on the Land, without regard to any Improvements or increase in fair market value to the Land because of the Improvements or because of any governmental approvals (including land use approvals) relating to the Improvements.

Section 4.12 Land Tax Credit - Pursuant to *N.J.S.A. 40A:20-12b(2)(e)*, the Entity shall, in each year after the Annual Service Charge Start Date, be entitled to a credit against the Annual Service Charge for the amount, without interest, of the Land Tax Payments paid by the Entity (or Transferee, as applicable) in the last four preceding quarterly installments. In no event shall the Annual Service

Charge, even after application of the Land Tax Credit provided for herein, be less than the Minimum Annual Service Charge.

ARTICLE V
CERTIFICATE OF OCCUPANCY

Section 5.01 Certificate of Occupancy - It is understood and agreed that it shall be the obligation of the Entity to obtain a Certificate of Occupancy in a reasonably timely manner after the Entity has satisfied all requirements to secure such Certificate of Occupancy.

Section 5.02 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 any Certificate of Occupancy.

Notwithstanding the foregoing, the filing of any Certificate of Occupancy shall not be a prerequisite for any action taken by the Borough, including, if appropriate, retroactive billing with interest to collect any charges due hereunder.

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, the Tax Collector and the Township Clerk, who shall advise those municipal officials required to be advised, a disclosure statement listing all 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 Land, equipment, fixtures, 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)* and (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. 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 Project 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.

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
RESERVATION OF RIGHTS AND REMEDIES

Section 9.01. Reservation of Rights and Remedies. 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 BY ENTITY WITH LAW

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. To the fullest extent permitted by 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 exercise and/or performance by the Borough of any of its powers and/or obligations under this Agreement and/or the provisions of Applicable Law, except to the extent any liability is caused by misconduct of the Borough, its officials, employees or agents, or by the Borough's breach or Default. The Entity shall defend the suit at its own expense. Notwithstanding the foregoing, the Borough maintains the right to intervene as a party thereto, to which intervention the Entity hereby consents, the expense thereof to be borne by the Entity. Unless otherwise required by the Borough, 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. The Entity's indemnity, hold harmless, and defense obligations shall survive termination of 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, including initiating and pursuing an action under the Tax Sale Law.

(c) No Default hereunder by the Entity shall automatically 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 pay the Annual Service Charge and Administrative Fee, 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, Administrative Fee, 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, Administrative Fee, 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, Administrative Fee, 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, to the extent applicable, 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 or Administrative Fee 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 Property, 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 Rutherford
Municipal Building
176 Park Avenue
Rutherford, New Jersey 07070

Attn: Borough Clerk

with copies to:

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

If to Entity:

Linqe - H.C. Partners Urban Renewal, LLC
c/o Lincoln Equities Group, LLC
One Meadowland Plaza
Suite 803
East Rutherford, New Jersey 07073

With a copy to:

Richard S. Goldman, Esq.
Faegre Drinker Biddle & Reath, LLP
105 College Road East
PO Box 627
Princeton, New Jersey 08542

ARTICLE XVI

MISCELLANEOUS

Section 16.01 Financial Agreement Controlling. The Parties agree that in the event of a conflict between (1) the Application and this Financial Agreement or (2) the Second Amended and Restated Redevelopment Agreement and this Financial Agreement, the language in this Financial Agreement shall govern and be controlling.

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 by this Financial Agreement.

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 Bergen 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 Annual Service Charge Paid to County - Pursuant to *N.J.S.A. 40A:20-12*, the Township shall remit upon receipt five percent (5%)

of the Annual Service Charge to Bergen County (the “County Share”).

Section 16.08 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 16.09 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 16.10 Amendments. This Agreement may not be amended, changed, modified, altered or terminated without the written consent of the Parties hereto.

Section 16.11 Certification. The Borough Clerk shall certify to the Tax Assessor, pursuant to *N.J.S.A.* 40A:20-12, that a Financial Agreement with an urban renewal entity, i.e., the Entity, for the development of the Project, has been entered into and is in effect as required by the Long Term Tax Exemption Law. Delivery by the Borough Clerk to the Tax Assessor of a certified copy of the Ordinance and this Financial Agreement shall constitute the required certification. Upon certification as required hereunder and upon the Annual Service Charge Start Date, the Tax Assessor shall implement the exemption and continue to enforce that exemption without further certification by the clerk until the expiration of the entitlement to exemption by the terms of this Financial Agreement or until the Tax Assessor has been duly notified by the Borough Clerk that the exemption has been terminated.

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

Section 16.12 Construction. This Agreement shall be construed and enforced in accordance with the laws of the State, and without regard to or aid of any presumption or other rule requiring construction against the Party drawing or causing this Agreement to be drawn

since counsel for both the Entity and the Borough have combined in their review and approval of same.

Section 16.13 Severability of Invalid Provisions. If any one or more of the covenants, agreements or provisions herein contained shall be held to be illegal or invalid in a final proceeding, then any such covenants, agreements or provisions shall be null and void and shall be deemed separable from the remaining covenants, agreements or provisions and shall in no way affect the validity of any of the other provisions hereof.

Section 16.14 Choice of Laws. - This Agreement shall be governed by the laws of the State of New Jersey without regard for the conflicts of law or choice of law provisions thereof, with jurisdiction and venue in Bergen County, New Jersey. Neither Party will raise any objection to jurisdiction and/or move based on forum non conveniens.

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
- C. Application

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 RUTHERFORD

Margaret Scanlon
Borough Clerk

By: _____
Name: Frank Nunziato
Title: Mayor

ATTEST:

**LINQUE – H.C. PARTNERS URBAN RENEWAL,
LLC**

By: _____

By: _____
Name:
Title: Managing Member

STATE OF NEW JERSEY

COUNTY OF BERGEN

The foregoing instrument was acknowledged before me this ____ day of _____, 2021, by the Borough of Rutherford in the County of Bergen, State of New Jersey, by Mayor Frank Nunziato, on behalf of the Borough.

Notary Public

Commission Expiration: _____

STATE OF NEW JERSEY

COUNTY OF BERGEN

The foregoing instrument was acknowledged before me this _____ day of _____, 2021, by _____, Managing Member of Linque – H.C. Partners Urban Renewal, LLC, a New Jersey limited liability company.

Notary Public

Commission Expiration: _____

EXHIBIT A

METES AND BOUNDS DESCRIPTION OF THE LAND

EXHIBIT B
ORDINANCE

EXHIBIT C
APPLICATION