

Record and return to:

Matthew D. Jessup, Esq.
McManimon, Scotland & Baumann, LLC
75 Livingston Avenue
Roseland, New Jersey 07068

FINANCIAL AGREEMENT

BY AND BETWEEN

THE BOROUGH OF DUNELLEN

AND

120-126 NORTH AVENUE URBAN RENEWAL, LLC

DATED AS OF [•], 2022

FINANCIAL AGREEMENT

THIS FINANCIAL AGREEMENT (hereinafter the “**Agreement**”), made this [•] day of [•], 2022, by and between **120-126 NORTH AVENUE URBAN RENEWAL, LLC**, 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., as amended and supplemented (the “**Exemption Law**”), with offices at 5 Corporate Drive, Suite 100, Central Valley, New York 10917 (the “**Entity**”) and the Borough of Dunellen, a municipal corporation in the County of Middlesex and the State of New Jersey (the “**Borough**”, and together with the Entity, the “**Parties**” or “**Party**”).

WITNESSETH:

WHEREAS, the Entity is a formed as a limited liability company and as an urban renewal company under the laws of the State of New Jersey (the “**State**”) and an affiliated entity is the owner of certain properties identified as Block 1, Lots 19, 20, and 21, on the official Tax Maps of the Borough (the “**Project Area**”) and depicted in a certain survey and described in the property descriptions attached hereto as **Exhibit A** and hereby made a part hereof; and

WHEREAS, on October 15, 2001, the Borough Council of the Borough of Dunellen, in the County of Middlesex, New Jersey (the “**Borough Council**”), authorized the Dunellen Planning Board (the “**Planning Board**”) to conduct a preliminary investigation as to whether the Project Area qualifies as an area in need of redevelopment; and

WHEREAS, the Planning Board Chairman created a sub-committee of the Planning Board members to conduct a study and survey the area and prepare a report on the findings of the survey, entitled, “Report on a Study to Determine the Qualification of the Dunellen Downtown Redevelopment Study Area as a Redevelopment Area”, undated; and

WHEREAS, the Planning Board, at a duly noticed public hearing on February 24, 2003, reviewed information and objections to the area designation and, after due consideration of applicable documentation and objections, recommended to the Borough Council, by resolution granted April 28, 2003 and memorialized May 12, 2003, that the study area be designated as an area in need of redevelopment; and

WHEREAS, on May 5, 2003, the Borough Council in accordance with provisions of the Redevelopment Law and based upon the report and recommendation of the Planning Board, designated, among others, certain property identified on the official Tax Maps of the Borough as Block 1, Lots 19, 20, and 21 as a non-condemnation “area in need of redevelopment” under the Redevelopment Law, N.J.S.A. 40A:12A-1 et seq., as amended and supplemented (the “**Redevelopment Law**”); and

WHEREAS, on August 9, 2004, the Borough Council adopted an ordinance adopting a Redevelopment Plan, prepared by CME Associates (Michael J. McClelland, P.E., P.P., C.M.E., and Bruce J. Rydel, P.P., AICP) entitled “Dunellen Downtown Redevelopment Plan” and dated July 12, 2004 (“**Initial Redevelopment Plan**”); and

WHEREAS, the Initial Redevelopment Plan was subsequently amended by ordinance on June 6, 2011, August 5, 2013, and November 3, 2014; and

WHEREAS, the Borough Council duly adopted an ordinance adopting an amended redevelopment plan, for the Project Area, along with other properties, entitled “Dunellen Downtown Redevelopment Plan Phase 1”, dated May 16, 2016, and most recently amended June 7, 2021 pursuant to Borough Ordinance 2021-10, and entitled “Amended and Restated Dunellen Downtown Redevelopment Plan Phase 1” (as the same may be amended and supplemented from time to time, the “**Redevelopment Plan**”); and

WHEREAS, on March 1, 2021, the Borough Council adopted Resolution #5-b, naming the Redeveloper as redeveloper of the Project Area and authorizing the execution of a conditional redeveloper’s agreement with respect thereto (the “**Conditional Redeveloper’s Agreement**”); and

WHEREAS, simultaneously herewith, the Borough and the Entity are entering into a redevelopment agreement (the “**Redevelopment Agreement**”) in order to implement the development, design, financing, and construction of a mixed-use development including one, three-story building containing a total of thirty-three (33) residential, rental units, including twenty-eight market-rate units and five (5) units affordable to very low-, low- and moderate-income households, along with 2,192 square feet of ground floor commercial space, together with thirty-five (35) on-site parking spaces, all in accordance with the provisions of the Redevelopment Plan (as further described in Section 2.01 hereof, the “**Project**”); and

WHEREAS, the Entity submitted an application to the Borough for the approval of an exemption for the Project pursuant to the Exemption Law (the “**Application**”), which Application is attached hereto as **Exhibit B**; and

WHEREAS, the Mayor submitted the Application and a form of financial agreement to the Borough Council with his recommendation of approval, a copy of which is on file with the Borough Clerk; and

WHEREAS, on [•], the Borough Council finally adopted an ordinance entitled, “Ordinance of The Borough of Dunellen, in the County of Middlesex, New Jersey Approving Application for a Long Term Tax Exemption and Authorizing the Execution of a Financial Agreement with 120-126 North Avenue Urban Renewal, LLC,” a copy of which is attached hereto as **Exhibit C** (the “**Ordinance**”); and

WHEREAS, in order to set forth the terms and conditions under which the Parties shall carry out their respective obligations with respect to the exemption from taxation, by the Borough, of the Project and with respect to payment, by the Entity, of the Annual Service Charges (as defined herein), in lieu of real property taxes in connection with the Project, the Parties desire to enter into this Agreement; and

WHEREAS, the Borough made the following findings with respect to the Project:

A. Relative Benefits of the Project:

(i) The Project will effectuate the development of underutilized property in the Borough and new residential housing units, including affordable housing units, as well as provide commercial space. Further, the Project will renew and revitalize the Project Area because it allows for the redevelopment of a site currently vacant and underutilized into a productive use that will generate temporary construction and permanent jobs and permanently increase tax ratables within the Project Area.

(ii) It is anticipated that the development of the Project will create approximately 45 full-time equivalent construction jobs over the duration of the construction of the Project, as well as approximately 3 permanent jobs in connection with the operation of the Project.

(iii) In 2021, the Project Area, including the improvements thereon, generated approximately \$42,859 in total real estate taxes to all government units, including \$11,363 to the Borough. Pursuant to this Agreement, in addition to the provision of affordable rental housing within the Borough, the Project is projected to generate revenue of approximately \$75,000 to all government units, including approximately \$73,000 (including a 2% administrative fee) to the Borough, well in excess of the municipal revenue generated by *ad valorem* taxes in 2021. The benefits to the Borough accruing as a result of the Project, including the provision of affordable housing, the generation of jobs, the revitalization of the Project Area, and the generation of municipal revenues, will substantially outweigh any incremental costs to the Borough resulting from the long term tax exemption granted herein.

B. Assessment of the Importance of the Tax Exemption in obtaining development of the Project and influencing the locational decisions of probable occupants: Without the exemption, the Entity would not be able to finance and construct the Project in a manner that will allow it to establish retail and residential rents that are consistent with the current market. As a result, without the tax exemption probable occupants of the Project would not choose to reside or rent commercial space in the Project. The exemption permits the Entity to charge rents that are consistent with the market for new, multi-family rental units and modern commercial space in the Borough and thus influence the locational decisions of the probable occupants of the Project.

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

ARTICLE I

GENERAL PROVISIONS

SECTION 1.01 Governing Law. This Agreement shall be governed by the provisions of the Exemption Law, the Redevelopment Law, the Ordinance, and all other Applicable Laws. It is expressly understood and agreed that the Borough expressly 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 meanings assigned to such term in the preambles hereof:

Agreement

Application

Borough

Borough Council

Conditional Redeveloper's Agreement

Entity

Exemption Law

Initial Redevelopment Plan

Ordinance

Party/Parties

Planning Board

Project

Project Area

Redevelopment Agreement

Redevelopment Law

Redevelopment Plan

State

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

Administrative Fee – The annual fee paid to the Borough by the Entity, as set forth in Section 4.06.

Affiliate – With respect to any person or entity, any other person or entity directly or indirectly Controlling or Controlled by, or under direct common Control with, such person or entity.

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

Allowable Profit Rate - The greater of (A) twelve percent (12%) or (B) the percentage per annum arrived at by adding one and one quarter percent (1¼%) 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 (X) twelve percent (12%) or (Y) the percentage per annum arrived at by adding one and one-quarter percent (1¼%) 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 shall be defined as set forth in N.J.S.A. 40A:20-3(a). Annual Gross Revenue means the annual gross revenue received by the Entity from the Project as defined within N.J.S.A. 40A:20-3(a). Annual gross revenue shall not include (i) commercial tenant reimbursements to the landlord of actual operating expenses under a triple net lease such as Annual Service Charges, utilities, sewer and water charges and common area maintenance charges, and (ii) condemnation awards, insurance proceeds, gains from sales, transfer or any part thereof, proceeds from any financing or refinancing, proceeds from any disposition of any interest in the Entity or any successor entity.

Annual Service Charge - The amount the Entity has agreed to pay the Borough pursuant to Article IV for municipal services supplied to the Project, which sum is in lieu of any taxes on the Land and Improvements, which amount shall be pro-rated in the year in which the Annual Service Charge begins and the year in which the Annual Service Charge terminates.

Annual Service Charge Start Date – The date of issuance of the first Certificate of Occupancy for the Project authorizing the occupancy of one or more residential or commercial units within the Project.

Applicable Law – All federal, State and local laws, ordinances, approvals, rules, regulations and requirements applicable thereto including, but not limited to, the Redevelopment Law and the Exemption Law.

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, certified as to actual construction costs by the Entity’s architect, and clear computation of Net Profit as provided in N.J.S.A. 40A:20-3(c). The contents of the Auditor’s Report shall have been prepared utilizing generally acceptable accounting principles or as otherwise required by the Exemption Law, including N.J.S.A. 40A:20-3. Other than the actual construction costs which shall be certified by the architect, the Auditor’s Report shall be certified as to its conformance with such principles by a certified public accountant who is licensed to practice that profession in the State.

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

Completion Date – The date in which the last Certificate of Occupancy is issued for the Project authorizing the occupancy of one or more residential or commercial units within the Project.

Control – As used with respect to any person or entity, shall mean possession, directly or indirectly, of the power to direct or cause the direction of the management and operation of such person or entity, whether through the ownership of voting securities or by contract or other written agreement.

County – The County of Middlesex.

Debt Service - The amount required to make annual payments of principal and interest or the equivalent thereof on any construction mortgage, permanent mortgage or other financing including returns on institutional equity financing and market rate related party debt for a project for a period equal to the term of the tax exemption granted by this Agreement.

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

Default Notice – As defined in Section 14.02.

Fiscal Plan – The financial analysis attached to the Application as Exhibit J.

Improvements - Any building, structure or fixture permanently affixed to the Land and to be constructed and exempt under this Agreement.

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 provisions of the Tax Sale Law.

Land – The real property, but not the Improvements, known as Block 1, Lots 19, 20, and 21 on the Tax Maps of the Borough, and more particularly described by the metes and bounds description set forth in Exhibit A of this Agreement.

Land Taxes - The amount of taxes assessed on the value of the land portion of the Project Area, in accordance with Applicable Laws.

Land Tax Payments - Payments made on the quarterly due dates, including approved grace periods, if any, for Land Taxes as determined by the Tax Assessor and the Tax Collector.

Material Conditions – As defined in Section 4.07.

Minimum Annual Service Charge – As defined in Section 4.03.

Net Profit – The Annual Gross Revenue of the Entity pertaining to the Project Area, less all operating and non-operating expenses of the Entity, all determined in accordance with generally accepted accounting principles or as otherwise required by the provisions of N.J.S.A. 40A:20-3(c), which includes, but is not limited to, the Debt Service and an annual amount sufficient to amortize (utilizing the straight line method-equal annual amounts) the Total Project Cost over the term of the exemption granted pursuant to this Agreement as well as all other expenses permitted under the provisions of N.J.S.A. 40A:20-3(c). There is expressly excluded from calculation of Annual Gross Revenue and from Net Profit as set forth in N.J.S.A. 40A:20-3 for the purpose of determining compliance with N.J.S.A. 40A:20-15 or N.J.S.A. 40A:20-16, any gain realized by the Entity on the sale of any unit in the Project, whether or not taxable under Applicable Law.

State – The State of New Jersey.

Tax Assessor – The Borough tax assessor.

Tax Collector – The Borough tax collector.

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 – Expiration of the term of this Agreement in accordance with Section 3.01 or any action or omission which by operation of the terms of this Agreement shall cause the Entity to relinquish the tax exemption granted pursuant to this Agreement.

Total Project Cost – The total cost of construction and/or rehabilitation of the Project through the date a Certificate(s) of Occupancy is issued for the entire Project, which categories of cost are as defined in N.J.S.A. 40A:20-3(h). There shall be included in Total Project Cost the actual costs incurred to construct the Improvements which are specifically described in the Application.

SECTION 1.03 Interpretation and Construction In this Agreement, unless the context otherwise requires:

A. The terms “hereby”, “hereof”, “hereto”, “herein”, “hereunder” and any similar terms, as used in this Agreement, refer to this Agreement, and the term “hereafter” means after, and the term “heretofore” means before the date of delivery of this 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 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 Agreement, nor shall they affect its meaning, construction or effect. All references to Articles, Sections or Exhibits in this Agreement shall, unless indicated otherwise, refer to the Articles Sections or Exhibits in this Agreement.

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

[End of Article I]

ARTICLE II

APPROVAL

SECTION 2.01 Approval of Tax Exemption

The Borough has granted and does hereby grant its approval for a tax exemption for the Project, including the Land, to be developed and maintained in accordance with the provisions of the Exemption Law on the Project Area.

The Entity will undertake the following actions, consistent with the Redevelopment Agreement: (i) acquire the Project Area; (ii) demolish all existing structures on the Project Area; (iii) design, develop, finance, construct, operate, and maintain on the Project Area a mixed-use development including one, three-story building containing a total of thirty-three (33) residential, rental units, including twenty-eight (28) market-rate units and five (5) affordable units, along with associated amenities and site improvements, a ground floor commercial space of 2,192 square feet, thirty-five (35) surface parking spaces for use by the residents and visitors to the commercial space and including one (1) electric vehicle charging station; and (iv) construct all necessary on- and off-site infrastructure improvements, including streetscape improvements (collectively, and as more fully described in the Redevelopment Agreement, the “**Project**”), all in accordance with the provisions of the Redevelopment Plan and the Redevelopment Agreement.

SECTION 2.02 Approval of the Entity

Approval is granted to the Entity based on its representation that its Certificate of Formation attached to the Application as Exhibit A 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 2.03 Improvements to be Constructed

The Entity represents that it will construct or cause the Project to be constructed in accordance with the Redevelopment Agreement and the Redevelopment Plan.

SECTION 2.04 Project Schedule

The Entity agrees to diligently undertake to commence construction and complete the Project in accordance with the Project Schedule as set forth in the Redevelopment Agreement, as same may be modified in accordance with the terms of the Redevelopment Agreement. Notwithstanding the above or anything set forth in the Redevelopment Agreement to the contrary, the Entity shall commence construction in accordance with the terms of the Redevelopment Agreement and diligently prosecute such construction to completion as set forth in the Redevelopment Agreement. The occurrence of an Event of Default as defined in the Redevelopment Agreement for failure to commence or complete the Project in accordance with

the Redevelopment Agreement shall constitute an Event of Default under this Agreement, and this Agreement shall be terminated.

SECTION 2.05 Ownership, Management and Control

The Entity represents that an affiliated entity is the owner of the property identified on the Tax Maps of the Borough as Block 1, Lots 19, 20, and 21, which will be conveyed to 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 and the Redevelopment Agreement, in accordance with the Redevelopment Plan and all Applicable Laws.

SECTION 2.06 Fiscal Plan

The Entity represents that the Improvements shall be financed substantially in accordance with the representations set forth in the Application, including the Fiscal Plan attached thereto as Exhibit J outlining a schedule of annual gross revenue, the estimated expenditures for operation and maintenance, payments for interest, amortization of debt and reserves, and payments to the municipality to be made pursuant to this Agreement. The Application and Fiscal Plan set forth the estimated Total Project Cost, amortization rate on the Total Project Cost, the source of funds, the interest rates anticipated to be paid on construction financing, the source and amount of the investment of private paid-in capital, and the terms of any mortgage amortization.

SECTION 2.07 Borough Findings

A. The Borough made the following findings with respect to the Project:

(i) The Project will effectuate the development of underutilized property in the center of the Borough's downtown area that will increase commerce within the Borough and provide new residential housing units, including affordable housing units. Further, the Project will renew and revitalize the Project Area because it allows for the redevelopment of a site currently characterized by underutilized and dilapidated lots into a productive use that will generate temporary construction and permanent jobs and permanently increase tax ratables within the Project Area.

(ii) It is anticipated that the development of the Project will create approximately 45 full-time equivalent construction jobs over the duration of the construction of the Project, as well as approximately 3 permanent jobs in connection with the operation of the Project.

(iv) In 2021, the Project Area, including the improvements thereon, generated approximately \$42,859 in total real estate taxes to all government units, including \$11,363 to the Borough. Pursuant to this Agreement, in addition to the provision of affordable rental housing within the Borough, the Project is projected to generate revenue \$75,000 to all government units, including approximately \$73,000 (including a 2% administrative fee) to the Borough, well in excess of the municipal revenue generated by *ad valorem* taxes in 2021. The benefits to the Borough accruing as a result of the Project, including the provision of affordable housing, the generation of jobs, the revitalization of the Project Area, and the generation of municipal revenues,

will substantially outweigh any incremental costs to the Borough resulting from the long term tax exemption granted herein.

B. Assessment of the Importance of the Tax Exemption in obtaining development of the Project and influencing the locational decisions of probable occupants: Without the exemption, the Entity would not be able to finance and construct the Project in a manner that will allow it to establish residential rents that are consistent with the current market. As a result, without the tax exemption probable occupants of the Project would not choose to reside in the Project. The exemption permits the Entity to charge rents that are consistent with the market for new residential rentals in the Borough and thus influence the locational decisions of the probable occupants of the Project.

[End of Article II]

ARTICLE III

DURATION OF AGREEMENT

SECTION 3.01 Term

This Agreement shall become effective upon its execution and delivery by the Parties. So long as there is compliance with the Applicable Law and this Agreement, it is understood and agreed by the Parties that this Agreement, including the obligation to pay Annual Service Charges under Article IV and the tax exemption granted and referred to in Section 2.01, shall remain in effect until the earlier of (A) thirty-five (35) years from the date of execution of this Agreement or (B) thirty (30) years from each Annual Service Charge Start Date for the Project. The tax exemption shall apply only so long as the Entity and the Project remain subject to the provisions of the Exemption Law and shall continue in force only while the Project is owned or leased and operated and managed by a corporation, association or other entity formed and operating under the Exemption Law. Upon Termination, the tax exemption for the Project shall expire and the Land and Improvements shall thereafter be assessed and taxed according to the general laws applicable to other non-exempt property in the Borough. Upon Termination, 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. Notwithstanding the above, the occurrence of an event of default under the Redevelopment Agreement, which has not been cured in accordance with the terms of the Redevelopment Agreement, for failure to commence or complete the Project in accordance with the Redevelopment Agreement, shall constitute an Event of Default under this Agreement, and this Agreement shall be terminated.

SECTION 3.02 Date of Termination

Upon any Termination of the tax exemption, as described in Section 3.01, the date of such Termination shall be deemed to be the last day of the fiscal year of the Entity.

SECTION 3.03 Voluntary Termination by Entity

The Entity may at any time after the expiration of one year from the Completion Date notify the Borough that as of a certain date designated in the notice, it relinquishes its status under the Exemption Law and that the Entity has obtained, to the extent required under Applicable Law, the consent of the Commissioner of the Department of Community Affairs. Upon Termination of the Agreement, all restrictions and limitations upon the Entity shall terminate upon the Entity's rendering subject to the Borough's acceptance of its final accounting, pursuant to N.J.S.A. 40A:20-13.

[End of Article III]

ARTICLE IV

ANNUAL SERVICE CHARGE

SECTION 4.01 Annual Service Charge Consent

The Entity hereby consents and agrees to the amount of Annual Service Charge and to the liens established in this Agreement, and the Entity shall not contest the validity or amount of any such lien; provided, however, that the foregoing shall not be construed to bar the Entity from raising the defense that (i) the Annual Service Charge then due and owing has been paid in full, (ii) that the Annual Service Charge is not yet due and owing, or (iii) the Annual Service Charge is calculated in a manner other than as set forth in this Financial Agreement. Notwithstanding anything herein to the contrary, 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 violation by the Borough of any provisions of this Agreement. The Entity's remedies shall be limited to those specifically set forth herein and otherwise provided by Applicable Law.

SECTION 4.02 Payment of Annual Service Charge

A. In consideration of the tax exemption, the Entity shall make payment of the Annual Service Charge to be calculated from each Annual Service Charge Start Date consistent with Section 4.02B.

B. Payment of the Annual Service Charge shall be made to the Borough on a quarterly basis on February 1, May 1, August 1, and November 1 immediately following each Annual Service Charge Start Date and thereafter on February 1, May 1, August 1, and November 1, as applicable, all in accordance with the Borough's tax collection schedule, subject, nevertheless, to pro rata adjustment on May 1, August 1, and November 1 in the following calendar year for over or underpayment as calculated by the Entity and agreed to by the Borough within thirty (30) days after the receipt by the Borough of the annual certified audit to be provided to the Borough. The Annual Service Charge will be prorated in the year in which the Annual Service Charge Start Date commences and the date the exemption terminates. The obligation to pay the Annual Service Charge shall continue until the expiration of the term hereof or Termination of the Agreement.

C. In the event that the Entity fails to timely pay the Annual Service Charge or any installment thereof, the amount past due shall bear the highest rate of interest permitted under applicable New Jersey law and then being assessed by the Borough against other delinquent taxpayers in the case of unpaid taxes or tax liens on the land until paid.

D. In accordance with the Exemption Law, specifically N.J.S.A. 40A:20-12, in the event of any change in the tax-exemption status as provided herein during any tax year, including but not limited to any termination of such tax exemption as provided for herein, the procedure for the apportionment of any taxes and/or Annual Service Charge, as the case may be, shall be the same as in the case of other changes in tax exemption status to any other property located within the Borough during the tax year, in accordance with Applicable Law.

SECTION 4.03 Annual Service Charge Amount

Pursuant to N.J.S.A. 40A:20-12, the Annual Service Charge shall be an amount equal to: (i) 10% of the Annual Gross Revenue generated by the Project in years 1 through 15, inclusive, and (ii) 12% of the Annual Gross Revenue generated by the Project in years 16 through 30, inclusive. The first year of the Annual Service Charge shall be billed based on the Entity's estimated Gross Revenue to be provided to the Borough not later than December 31 of the calendar year of the Project's Completion Date, as calculated in the same format as set forth in the Fiscal Plan attached as Exhibit J to the Application, or the Minimum Annual Service Charge, whichever is greater. If the first year of the Annual Service Charge is billed based on the Entity's estimate of Gross Revenue, an amended Annual Service Charge billing shall be sent within thirty (30) days after the Annual Gross Revenues are certified and the Annual Service Charge shall be based on that billing unless it is less than the Minimum Annual Service Charge.

Pursuant to N.J.S.A. 40A:20-12b(2)(e), notwithstanding any provisions of this Agreement to the contrary, the Annual Service Charge shall never be less than the amount of the total taxes levied against the Project Area in the last full tax year in which the Project Area was subject to taxation (the "**Minimum Annual Service Charge**").

Notwithstanding the provisions of the 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 or Improvements or any other legal proceeding regarding the Project during the period that this Agreement is in force and effect. During construction when buildings within the Project are partially completed, but not yet issued temporary certificates of occupancy, it is not the Parties' intent to have added assessments on said partially completed buildings.

SECTION 4.04 Land Tax Payments

The Project Area shall be exempt from Land Taxes from the ASC Commencement Date through the Termination Date in accordance with N.J.S.A. 40A:20-12; provided however, that if such exemption of Land Taxes is invalidated by a court of competent jurisdiction, then this Agreement shall remain in full force and effect and shall be reformed to provide that (a) Land Taxes are assessed on the Project Area, and (b) the Entity, or its Transferee, shall be entitled to a credit against the Annual Service Charge for the amount, without interest, of the pro rata portion of the Land Tax payments made in the last four (4) preceding quarterly installments, so that there is no financial impact to the Entity from such invalidation.

SECTION 4.05 Schedule of Staged Adjustments

Pursuant to N.J.S.A. 40A:20-12(b) (2), the Annual Service Charge shall be adjusted as follows:

A. Stage One. Commencing on an Annual Service Charge Start Date until the fifteenth anniversary of such Annual Service Charge State Date, the Annual Service Charge shall be the amount established in accordance with Section 4.03.

B. Stage Two. From the first day after the fifteenth anniversary of such Annual Service Charge Start Date until the twenty-first anniversary of such Annual Service Charge Start Date, the Annual Service Charge shall be the amount established in accordance with Section 4.03, or 20% of the amount of the taxes otherwise due on the Land and Improvements, whichever is greater.

C. Stage Three. From the first day after the twenty-first anniversary of such Annual Service Charge Start Date until the twenty-seventh anniversary of such Annual Service Charge Start Date, the Annual Service Charge shall be the amount established in accordance with Section 4.03, or 40% of the amount of the taxes otherwise due on the Land and Improvements, whichever is greater.

D. Stage Four. From the first day after the twenty-seventh anniversary of such Annual Service Charge Start Date until the twenty-ninth anniversary of such Annual Service Charge Start Date, the Annual Service Charge shall be the amount established in accordance with Section 4.03, or 60% of the amount of the taxes otherwise due on the Land and Improvements, whichever is greater.

E. Stage Five. In the thirtieth year of the Agreement, the Annual Service Charge shall be the amount established in accordance with Section 4.03, or 80% of the amount of the taxes otherwise due on the Land and Improvements, whichever is greater.

SECTION 4.06 Administrative Fee

The Entity shall pay annually an administrative fee to the Borough in addition to the Annual Service Charge. The Administrative Fee shall be computed as two percent (2%) of the Annual Service Charge required pursuant to Section 4.03 or 4.05, as applicable. This fee shall be payable and due on each November 1 on or after the Annual Service Charge Start Date. In the event the Entity fails to pay the Administrative Fee when due and owing, the amount unpaid shall bear interest at the prime rate compounded annually.

SECTION 4.07 Material Conditions

It is expressly agreed and understood that all payments of Annual Service Charges and any interest payments, penalties or costs of collection due thereon and the Administrative Fee are material conditions of this Agreement (the “**Material Conditions**”). If any other term, covenant or condition of this Agreement, as to any person or circumstance shall, to any extent, 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 held invalid or unenforceable, shall not be affected thereby, and each remaining term, covenant or condition of this Agreement shall be valid and enforced to the fullest extent permitted by Applicable Law.

SECTION 4.08 No Reduction in Payment of the Annual Service Charges

Except as expressly provided herein, neither the amounts nor dates established for payment of the Annual Service Charge, as provided in Sections 4.02, 4.03, or 4.05 shall be reduced, amended or otherwise modified during the Term of this Agreement.

SECTION 4.09 Annual Service Charges as Municipal Lien

In accordance with the provisions of the Exemption Law, the Annual Service Charge shall be and constitute a continuous municipal lien on the Project Area and the Improvements.

SECTION 4.10 Remittance of County Portion

Pursuant to N.J.S.A. 40A:20-12, upon receipt of the Annual Service Charge, the Borough shall remit five percent (5%) of the Annual Service Charge collected by the Borough to the County in accordance with N.J.S.A. 54:4-74.

SECTION 4.11 Security for Payment of Annual Service Charges

In order to secure the full and timely payment of the Annual Service Charges, the Borough on its own behalf reserves the right to prosecute an In Rem Tax Foreclosure action against the Project Area, as more fully set forth in this Agreement and Applicable Law.

SECTION 4.12 Payment of Conventional Taxes on Land and Prior Improvements During Construction, and Prior to Payment of Annual Service Charges

During the period between execution of this Agreement and the Annual Service Charge Start Date, the Entity shall make payment of conventional real estate taxes with respect to the Land and any improvements thereon, as applicable, at the times and to the extent due in accordance with applicable law.

SECTION 4.13 Rent Control

The Parties agree that the Redevelopment Project shall not be subject to rent control or any similar price control by a Governmental Agency. Under no circumstances, however, shall this provision be construed to amend or alter the affordable housing provisions of this Agreement.

[End of Article IV]

ARTICLE V

REMEDIES

SECTION 5.01 Dispute Resolution

In the event of a breach of this Agreement (other than a payment default) by any of the Parties or a dispute arising between the Parties in reference to the terms and provisions as set forth herein, then the Parties shall submit the dispute to arbitration, which shall utilize State law and the arbitration rules of the American Arbitration Association in the State to be determined in accordance with such law, rules and regulations in such a fashion to accomplish the purpose of Applicable Law and this Agreement. Costs for said arbitration shall be borne equally by the Parties. The demand for arbitration shall be filed in writing and shall be made within a reasonable time after a dispute or breach occurs. The arbitrator(s) shall make written findings of fact and conclusions of law. Any arbitration award may be appealed by either party to the New Jersey Superior Court, Law Division, with respect to asserted errors of fact or law, and the outcome of such appeal may be further appealed in the State courts, and shall not be limited in any way due to the origin of the action in arbitration pursuant to the rules and regulations of the American Arbitration Association.

SECTION 5.02 Remedies

In the event of a Default on the part of the Entity to pay any installment of the Annual Service Charge required by Article IV above, the Borough, in addition to its other remedies (including but not limited to those set forth at Article XIV hereof), reserves the right to proceed against the Project, in the manner provided by Applicable Law, including the Tax Sale Law, and any act supplementary 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 Charges were taxes or municipal liens on land.

[End of Article V]

ARTICLE VI

CERTIFICATE OF OCCUPANCY

SECTION 6.01 Certificate of Occupancy

It is understood and agreed that it shall be the obligation of the Entity to obtain all Certificates of Occupancy in a reasonably timely manner.

SECTION 6.02 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 issued for the Project.

Failure of the Entity to file such issued Certificate of Occupancy as required by the preceding paragraph shall not militate against any action or non-action, taken by the Borough, including, if appropriate retroactive billing with interest for any charges determined to be due, in the absence of such filing by the Entity.

[End of Article VI]

ARTICLE VII

ANNUAL AUDITS

SECTION 7.01 Accounting System

The Entity agrees to maintain a system of accounting and internal controls established and administered as otherwise prescribed by this Agreement and Applicable Law including the principles and the requirements of the Exemption Law, including N.J.S.A. 40A:20-3.

SECTION 7.02 Periodic Reports

A. **Auditor's Report**: Within ninety (90) days after the close of each fiscal or calendar year, depending on the Entity's accounting basis, for the duration of 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 Division of Local Government Services in the Department of Community Affairs, its Auditor's Report for the preceding fiscal or calendar year pursuant to N.J.S.A. 40A:20-3(c). The Report shall clearly identify and calculate the Net Profit for the Entity during the previous year. The Entity assumes all costs associated with preparation of the periodic reports.

B. **Total Project Cost Audit**: Within ninety (90) days after the Completion Date, 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, an audit of Total Project Cost, certified as to actual construction costs by the Entity's architect utilizing the categories of cost and form attached to the Application which is attached hereto as **Exhibit B**.

C. **Disclosure Statement**: On each anniversary date of the execution of this Agreement, the Entity shall submit to the Mayor and Borough Council, who shall advise those municipal officials required to be advised, a disclosure statement listing the persons having an ownership interest in the Project, and the extent of the ownership interest of each and such additional information as the Borough may request from time to time.

SECTION 7.03 Inspection

The Entity shall permit the inspection of its property, equipment, buildings and other facilities of the Project by representatives duly authorized by the Borough and Division of Local Government Services in the Department of Community Affairs pursuant to N.J.S.A. 40A:20-9(e). The Entity shall also permit, upon written request, examination and audit of its books, contracts, records, documents and papers relating to the Project by representatives duly authorized by the Borough and 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 five (5) business days' prior written notice, 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. Nothing in this section shall be construed to affect, limit or restrict the powers of municipal, county, State or other officials from carrying out those inspections that are generally

applicable outside of the Exemption Law context, including, but not limited to, inspections by fire officials, construction code officials, etc.

SECTION 7.04 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 and dividends pursuant to the provisions of N.J.S.A. 40A:20-15. Pursuant to N.J.S.A. 40A:20-3(c), this calculation shall be completed in accordance with generally accepted accounting principles or as otherwise required by the Exemption Law, including N.J.S.A. 40A:20-3.

Pursuant thereto, the calculation of Net Profit shall be cumulative for the period commencing on the date on which the construction of the unit or project is completed, and terminating at the close of the fiscal year of the entity preceding the date on which the computation is made, with any negative amounts of profit from prior years being carried forward and included in the accumulated excess profit calculation. The Entity shall have the right to establish a reserve against vacancies, unpaid rentals, and reasonable contingencies in an amount up to ten percent (10%) of the Annual Gross Revenues of the Entity for the last full fiscal year preceding the year and may retain such part of the excess Net Profits as is necessary to eliminate a deficiency in that reserve, as provided in N.J.S.A. 40A:20-15. The reserve shall be noncumulative. Upon expiration or Termination of this Agreement, the amount of the reserve shall be paid over to the Borough in accordance with applicable law.

SECTION 7.05 Payment of Dividend and Excess Profit Charge

In the event the Net Profits of the Entity in any fiscal year shall exceed the Allowable Net Profits for such period, then the Entity, within ninety (90) days after the end of such fiscal year shall pay such excess Net Profits to the Borough as an additional service charge; provided, however, that the Entity may maintain a reserve as determined pursuant to aforementioned Section 7.04. 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(c) and 40A:20-15.

The Parties agree that any excess Net Profit will be retained by the Borough as additional Annual Service Charge.

[End of Article VII]

ARTICLE VIII

ASSIGNMENT AND/OR ASSUMPTION

SECTION 8.01 Approval of Sale of Project to Entity Formed and Eligible to Operate Under Applicable Law

The Entity shall not transfer all or any portion of the Project without the prior written approval of the Borough, except that after completion of the Project, the Entity shall be permitted to transfer all or any portion of the Project to another urban renewal entity approved by the Borough under the conditions set forth herein. As permitted by N.J.S.A. 40A:20-10(a), it is understood and agreed that the Borough, on written application by the Entity after completion of the Project, shall consent to a sale of the Project and the transfer of this Agreement provided: (i) the transferee entity does not own or lease any other Project subject to long term tax exemption at the time of transfer; (ii) the transferee entity is formed and eligible to operate under the Exemption Law; (iii) the Entity is not then in Default of the Redevelopment Agreement, this Agreement or the Exemption Law; (iv) the Entity's obligations under this Agreement are fully assumed by the transferee entity; (v) the transferee entity agrees to abide by all terms and conditions of this Agreement including, without limitation, the filing of an application pursuant to N.J.S.A. 40A:20-8, and any other terms and conditions of the Borough in regard to the Project; (vi) the transferee entity possesses the requisite experience, qualifications, and financial capacity to operate and manage the Project; and (vii) the principal owners of the transferee entity possess the same business reputation, financial qualifications and credit worthiness as the Entity and are otherwise reputable. The Borough may charge an administrative fee in an amount equal to two percent (2%) of the then current year Annual Service Charge for processing any such application for transfer by the Entity.

If the Entity transfers the Project Improvements to another urban renewal entity in accordance with the Exemption Law and this Agreement, and the transferee entity has assumed all of the Entity's contractual obligations under this Agreement, then, pursuant to N.J.S.A. 40A:20-6, the Entity shall be discharged from any further obligation under this Agreement and shall be qualified to undertake another project pursuant to the Exemption Law.

SECTION 8.02 Severability

It is an express condition of the granting of this tax exemption that during its duration, the Entity shall not, without the prior consent of the Borough Council by ordinance, convey, mortgage or transfer, all or part of the Project so as to sever, disconnect, or divide the Improvements from the Lands which are basic to, embraced in, or underlying the exempt Improvements.

SECTION 8.03 Permitted Transfers

Notwithstanding the provisions set forth in Section 8.01 and Section 8.02 above, it is expressly understood and agreed that the Entity is permitted, without the prior approval of the Borough, to affect the following transfers with respect to the Project:

A. Encumber the Project, e.g., mortgage financing, development easements, etc., provided that any such encumbrance is subordinate to the lien of the Annual Service Charges.

B. Transfer the ownership interest in the Entity to a related entity or Affiliate.

C. Transfer the ownership in the Entity by means of inheritance, devise, or bequest or by operation of law upon an immediate family member of Interest Holders, or a trust established for the benefit of such immediate family member. For purposes of the foregoing sentence, an “immediate family member” shall mean a spouse, child, or grandchild of any Interest Holder, and “Interest Holders” shall mean holders of interests in the Entity (or holders of interests in any entity directly or indirectly holding an interest in the Entity) as of the date of this Agreement.

D. Lease any portion of the Project to an end user, with such tenant not being required to be an entity eligible to operate under the Exemption Law.

Notwithstanding anything to the contrary contained in A. through D., above, or elsewhere in this Agreement, the Parties expressly agree and acknowledge that:

(i) the Entity shall not enter into any lease, whether or not with an affiliate or related entity, that shall operate to minimize or remove revenues properly includable in the calculation of Annual Gross Revenue; and

(ii) notwithstanding anything to the contrary contained in this Agreement, the Parties agree and acknowledge that prior to completion of the Project, all restrictions on transfer that are set forth in the Redevelopment Agreement shall apply in accordance with the terms thereof.

[End of Article VIII]

ARTICLE IX

WAIVER

SECTION 9.01 Waiver

Nothing contained in this Agreement or otherwise shall constitute a waiver or relinquishment by the Borough or the Entity of any rights and remedies provided by Applicable Law except for the express waiver herein of certain rights of acceleration and certain rights to terminate the Agreement and tax exemption for violation of any of the conditions provided herein. Nothing herein shall be deemed to limit any right of recovery that the Borough or the Entity has under law, in equity, or under any provision of this Agreement.

[End of Article IX]

ARTICLE X

NOTICE

SECTION 10.01 Notice

Any notice required hereunder to be sent by any Party to another Party shall be sent to all other Parties hereto simultaneously by certified or registered mail, return receipt requested or by commercial overnight delivery service with package tracking capabilities and for which proof of delivery is available, as follows:

A. When sent to the Entity it shall be addressed as follows:

120-126 North Avenue Urban Renewal, LLC
5 Corporate Drive, Suite 100
Central Valley, New York 10917
Attention: Mayer Gross

with a copy to:

DiFrancesco, Bateman, Kunzman, Davis, Lehrer & Flaum, P.C.
15 Mountain Boulevard
Warren, New Jersey 07059
Attn: Susan Bateman

B. When sent to the Borough, it shall be addressed as follows:

Borough of Dunellen
Municipal Building
355 North Avenue
Dunellen, NJ 08812
Attn: Mayor and Business Administrator

with a copy to

McManimon, Scotland & Baumann, LLC
75 Livingston Avenue, 2nd Floor
Roseland, NJ 07068
Attn: Matthew D. Jessup, Esq.

The notice to the Borough shall identify the subject with the tax account numbers of the tax parcels comprising the Project Area.

[End of Article X]

ARTICLE XI

COMPLIANCE

SECTION 11.01 Statutes and Ordinances

The Entity hereby agrees at all times prior to the expiration or Termination of this Agreement to remain bound by the provisions of Applicable Law. The Entity's failure to comply with such Applicable Law shall constitute a violation and breach of this Agreement.

[End of Article XI]

ARTICLE XII

CONSTRUCTION

SECTION 12.01 Construction

This Agreement shall be construed and enforced in accordance with Applicable Law, 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.

[End of Article XII]

ARTICLE XIII

INDEMNIFICATION

SECTION 13.01 Indemnification

It is understood and agreed that in the event the Borough shall be named as a party defendant in any action brought against the Borough or the Entity by allegation of any breach, Default or a violation of any of the provisions of this Agreement and/or the provisions of the Exemption Law or any other Applicable Law, the Entity shall indemnify and hold the Borough harmless from and against all liability, losses, damages, demands, costs, claims, actions or expenses (including reasonable attorneys' fees and expenses) of every kind, character and nature arising out of or resulting from the action or inaction of the Entity and/or by reason of any breach, Default or a violation of any of the provisions of this Agreement, the provisions of the Exemption Law and/or any other Applicable Law except for any willful misconduct by the Borough or any of its officers, officials, employees or agents, and the Entity shall defend the suit at its own expense. The Borough shall be entitled to intervene in any such suit, and retain attorneys of its choosing, whether as party defendant or intervenor, the cost of such attorneys to be borne by the Entity in accordance with this Section.

[End of Article XIII]

ARTICLE XIV

DEFAULT

SECTION 14.01 Default

Default shall be failure of the Entity to conform to the terms of this Agreement and failure of the Entity to perform any obligation imposed upon the Entity by statute, ordinance, or lawful regulation beyond any applicable notice, cure or grace period. In addition, a Default under the Redevelopment Agreement, which has not been cured in accordance with the terms of the Redevelopment Agreement, for failure to commence or complete the Project in accordance with the Redevelopment Agreement, shall constitute a Default under this Agreement.

SECTION 14.02 Cure Upon Default

Should a Party be in Default of any obligation under this Agreement (except for payment Defaults, which shall not require notice), the non-defaulting Party shall notify the defaulting Party and any mortgagee, if applicable, of the Entity in writing of said Default (the “**Default Notice**”). Said Default Notice shall set forth with particularity the basis of said Default. Except as otherwise limited by law, the defaulting Party shall have thirty (30) days from the issuance of such Default Notice to cure any Default (other than any payment Default, for which a Default Notice is not required and which must be cured within five (5) days from the occurrence thereof). In the event of any uncured Default by the Entity, the Borough shall have the right to proceed against the Project Area pursuant to Applicable Law. Upon any Default in payment of any installment of the Annual Service Charge, the Borough shall have the right to proceed to In-Rem Tax Foreclosure consistent with the provisions and procedures of the Tax Sale Law. Notwithstanding anything herein to the contrary, except in connection with the Entity’s obligation to make payments hereunder for which no extension shall be permitted, the Entity shall be entitled to a reasonable extension period in order to comply with any obligations hereunder, provided that they have commenced to cure the Default within the cure period.

SECTION 14.03 Remedies Upon Default Cumulative; No Waiver

Subject to the other terms and conditions of this Agreement, all of the remedies provided in this Agreement to the Borough, and all rights and remedies granted to it by law and equity shall be cumulative and concurrent and no determination of the invalidity of any provision of this Agreement shall deprive the Borough of any of its remedies or actions against the Entity because of the Entity’s failure to pay Land Taxes, the Annual Service Charge, and/or the Administrative Fee and interest payments. This right shall only apply to arrearages that are due and owing at the time, and the bringing of any action for Land Taxes, Annual Service Charges, Administrative Fee or other charges, or for breach of covenant or the resort to any other remedy herein provided for the recovery of Land Taxes, Annual Service Charges, 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 14.04 Termination Upon Default of the Entity

In the event the Entity fails to cure or remedy the Default within the time period provided in Section 14.02, the Borough may terminate this Agreement upon thirty (30) days written notice to the Entity. In addition, if the Redevelopment Agreement has been terminated, this Financial Agreement shall also automatically terminate.

SECTION 14.05 Final Accounting

Within ninety (90) days after the date of Termination, the Entity shall provide a final accounting and pay to the Borough the reserve, if any, pursuant to the provisions of N.J.S.A. 40A:20-13 and 15 as well as any excess Net Profits, if any, which may be payable. 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 14.06 Conventional Taxes

Upon Termination or expiration of this Agreement, the tax exemption for the Project shall expire and the Land and the Improvements thereon shall thereafter be assessed and conventionally taxed according to the general law applicable to other non-exempt taxable property in the Borough.

[End of Article XIV]

ARTICLE XV

MISCELLANEOUS

SECTION 15.01 Conflict

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

SECTION 15.02 Oral Representations

There have been no oral representations made by either of the Parties hereto which are not contained in this Agreement. This 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 hereto and delivered to each of them.

SECTION 15.03 Entire Document

All conditions in the Ordinance and Application are incorporated in this Agreement and made a part hereof.

SECTION 15.04 Good Faith

In their dealings with each other, the Parties agree they shall act in good faith.

SECTION 15.05 Municipal Services

The Entity shall make payments for municipal services, including water and sewer charges and any services that create a lien on a parity with or superior to the lien for Annual Service Charges, as required by law. Nothing herein is intended to release Entity from its obligation to make such payments.

SECTION 15.06 Financing Matters

The financial information required by the final paragraph of N.J.S.A. 40A:20-9 is set forth in the Application, and is incorporated herein by this reference thereto.

SECTION 15.07 Counterparts

This Agreement may be simultaneously executed in counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

SECTION 15.08 Amendments

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

SECTION 15.09 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 Area, has been entered into and is in effect as required by the Exemption Law. Delivery by the Borough Clerk to the Tax Assessor of a certified copy of the Ordinance shall constitute the required certification. Upon certification as required hereunder, the Tax Assessor shall implement the exemption and continue to enforce that exemption without further certification by the Borough Clerk until the expiration of the entitlement to exemption by the terms of this Agreement or until the Tax Assessor has been duly notified by the Borough Clerk that the exemption has been terminated. Further, within ten (10) days of the execution of this Financial Agreement, the Borough Clerk shall provide a copy of the Financial Agreement and the Ordinance authorizing the same to the Middlesex County Counsel and the Middlesex County Chief Financial Officer for informational purposes in accordance with P.L. 2015, c. 247, Section 1, as codified in N.J.S.A. 40A:20-12.

SECTION 15.10 Severability

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.

[End of Article XV]

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

**120-126 NORTH AVENUE URBAN RENEWAL,
LLC, a New Jersey limited liability company**

ATTEST:

By: _____

By: _____

Name:

Title:

ATTEST:

**THE BOROUGH OF DUNELLEN, IN THE
COUNTY OF MIDDLESEX, NEW JERSEY**

By: _____
Name: William M. Robins, RMC
Title: Borough Clerk

By: _____
Name: Jason F. Cilento
Title: Mayor

ACKNOWLEDGEMENT

STATE OF NEW JERSEY)
) ss.
COUNTY OF MIDDLESEX)

On this ____ day of _____, 2022 before me, the subscriber, a Notary Public of New Jersey, personally appeared _____, who, being by me duly sworn on his oath, deposes, and makes proof to my satisfaction that he is a Member of 120-126 North Avenue 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 Member as and for the voluntary act and deed of said entity.

Notary Public

Commission Expiration: _____

LIST OF EXHIBITS

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

- A. **Property Description**
- B. **Application with Exhibits**
- C. **Ordinance No. [*]**

EXHIBIT A
PROPERTY DESCRIPTION

EXHIBIT B
APPLICATION WITH EXHIBITS

EXHIBIT C

ORDINANCE NO. [*]

