

LONG TERM TAX EXEMPTION  
APPLICATION  
  
OF  
  
LOCUST BERKELEY DEVELOPERS  
URBAN RENEWAL, LLC

In accordance with the requirements of the Long Term Exemption Law, N.J.S.A. 40A:20-1, et seq., (hereinafter referred to as the “Exemption Law”), Locust Berkeley Developers Urban Renewal, LLC (hereinafter referred to as the “Applicant” or the “Entity”) respectfully submits to the Mayor and Governing Body of the Township of Berkeley Heights (hereinafter referred to as the “Township”) this Application for Long Term Tax Exemption along with those documents attached and annexed hereto.

**Applicant’s Name and Address:**

Locust Berkeley Developers Urban Renewal, LLC  
820 Morris Turnpike, Suite 201  
Short Hills, New Jersey 07078

**Project Name:**

100 Locust Avenue Redevelopment

**1. Identification of Project Premises:**

The Project Premises is located within the 100 Locust Avenue Redevelopment Area and consists of a parcel of property containing approximately 10.1 acres of real property, located at 100 Locust Avenue and identified on the Township Tax Map as Tax Block 1901, Lot 35.

**2. General Statement of Nature of Proposed Redevelopment Project:**

The proposed Redevelopment Project consists of the demolition of a functionally obsolete and deteriorating light industrial property and the redevelopment of such blighted property with an age-restricted luxury apartment building. The proposed project will consist of 196 age-restricted luxury rental residential units, including 29 affordable housing units, in at least two buildings, together with related amenities for residents and other infrastructure and ancillary improvements commonly associated with projects of this nature (the “Project”). The Applicant’s undertaking of the Project pursuant to the 100 Locust Avenue Redevelopment Plan and the redevelopment agreement between the Township and the Entity conforms to all applicable municipal ordinances, subject to deviations, variances and waivers granted by the Township Planning Board. The Project accords with the Locust Avenue Redevelopment Plan and the Township Master Plan.

**3. Description of the Project:**

A conceptual plan depicting and describing the Project area and the proposed apartment units in the Project is attached hereto and made a part hereof as Exhibit A.

**4. Estimation of Total Project Cost:**

Pursuant to the Exemption Law, N.J.S.A. 40A:20-3(h), the statement prepared by the Project’s licensed architect setting forth the estimated Total Project Cost for the Project (the Project does not include fee simple units) is attached and annexed hereto as Exhibit B.

**5. Sources, Method and Amount of Financing For Project:**

The cost of the Project is anticipated to be funded through a combination of private investment equity and debt financing that will be secured in whole or in part by a mortgage on the property and the Project. At least five million (\$5,000,000) dollars of the total cost of the Project will be funded with private investment equity, with the balance of the cost of the Project to be funded by debt financing.

**6. Financial/Fiscal Plan:**

A proposed Financial/Fiscal Plan for the Project outlining projected annual gross revenue, the estimated expenditure for operation and maintenance of the Project, payments for interest, amortization of debt and reserves, and payments to the municipality to be made pursuant to the proposed Financial Agreement, is annexed hereto and made a part hereof as **Exhibit C**.

**7. Financial Agreement:**

The proposed Financial Agreement between the Township and the Applicant (therein referred to as the Entity) is attached and annexed hereto as **Exhibit D**.

I hereby certify to the best of my knowledge and belief, that all of the information contained in this application is true and correct.

*[Signature Page Follows]*

**LOCUST BERKELEY DEVELOPERS URBAN  
RENEWAL, LLC**

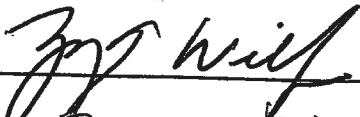
By:   
Name: Evgmunt Wolf  
Title: Managing Member

**Exhibit A**  
(Conceptual Plan)



**CONCEPT SITE PLAN**  
SCALE: 1"=80'



REDEVELOPMENT OF 100 LOCUST AVENUE  
WOODCREST AT BERKELEY HEIGHTS  
BERKELEY HEIGHTS, NEW JERSEY

INFORMATION CONTAINED ON THIS DRAWING IS CONCEPTUAL ONLY  
AND SUBJECT TO FURTHER PROJECT DEVELOPMENT





**Exhibit B**  
(Total Project Cost Estimation)

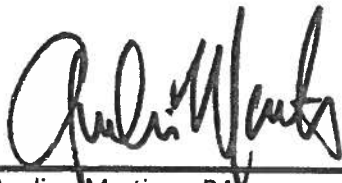
**100 Locust Avenue Berkeley Heights, NJ**

**196 Age Restricted Unit Development**

**TOTAL PROJECT COST**

|                                                              |                        |
|--------------------------------------------------------------|------------------------|
| A. COST OF LAND AND IMPROVEMENTS TO ENTITY                   | \$10,093,800.00        |
| B. ARCHITECT,ENGINEER,ATTORNEY FEEES FOR PROJECT             | \$750,000.00           |
| C. SURVEYING AND TESTING CHARGES FOR PROJECT                 | \$100,000.00           |
| D. ACTUAL CONSTRUCTION COSTS FOR PROJECT                     | \$33,152,625.00        |
| E. INSURANCE, INTEREST AND FINANCE COSTS DURING CONSTRUCTION | \$2,000,000.00         |
| F COSTS OF OBTAINING INITIAL PERMANENT FINANCING             | \$250,000.00           |
| G. COMMISSION AND OTHER EXPENSES FOR INITIAL LEASING         | \$183,625.00           |
| H. REAL EATATE TAXES AND ASSESSMENTS DURING CONSTRUCTION     | \$300,000.00           |
| I. DEVELOPERS OVERHEAD AND PROFIT                            | \$3,919,754.00         |
| <b>TOTAL</b>                                                 | <b>\$50,749,804.00</b> |

**The above is a true estimate of the total project cost for the Project**



August 24, 2017

Avelino Martinez, RA

NJ AI-18292

BlackBird Group Architects, LLC

Further to my review of the total project cost estimate for this project, provided by the developer, the values indicated herein appear to be consistent with those applicable to projects of similar type, scale, and development methodology. In my opinion, this cost estimate represents a reasonable projection of total anticipated development costs.

**Exhibit C**  
**(Fiscal Analysis)**

**Exhibit D**  
(Proposed Financial Agreement)

| <b>Rental Projections</b> | <b>Unit Size</b> | <b># Units</b> | <b>Mo. Rent</b> | <b>Total Rent</b> |
|---------------------------|------------------|----------------|-----------------|-------------------|
| 1 BR Affordables          | 725-sf           | 29             | 780             | 271,440           |
| 1 BR Market Rate          | 900-sf           | 16             | 1,900           | 364,800           |
| 1 BR Den                  | 1,150-sf         | 16             | 2,050           | 393,600           |
| 2 BR                      | 1,350-sf         | 97             | 2,200           | 2,560,800         |
| 2 BR End Unit             | 1,600-sf         | 38             | 2,600           | 1,185,600         |
| <b>Totals</b>             |                  | <b>196</b>     |                 | <b>4,776,240</b>  |

| <b>Projected Pro Forma</b>           | <b>\$/Unit</b> | <b>Total</b>      |
|--------------------------------------|----------------|-------------------|
| Total Projected Rent                 | 24,369         | 4,776,240         |
| Vacancy Rate @ 5.00%                 | 1,218          | 238,812           |
| <b>Effective Gross Income (EGI)</b>  | <b>23,150</b>  | <b>4,537,428</b>  |
| <b>Stabilized Operating Expenses</b> |                |                   |
| General Administration               | 1,000          | 196,000           |
| Common Area Utilities                | 750            | 147,000           |
| Landscaping/Snow Removal             | 750            | 147,000           |
| Insurance                            | 350            | 68,600            |
| Garbage Removal                      | 100            | 19,600            |
| Repairs & Maintenance                | 1,000          | 196,000           |
| Reserve of 2% capital improvement    | 500            | 98,000            |
| Management                           | 500            | 98,000            |
| <b>Total Operating Expenses</b>      | <b>4,950</b>   | <b>970,200</b>    |
| <b>NOI Before Taxes</b>              |                | <b>3,567,228</b>  |
| <b>PILOT @13%</b>                    |                | <b>589,866</b>    |
| <b>Net Operating Income (NOI)</b>    | <b>18,200</b>  | <b>2,977,362</b>  |
| Overall Cap Rate (OAR)               |                | 5.90%             |
| <b>Market Value (NOI/OAR)</b>        |                | <b>50,449,804</b> |

| <b>Construction Cost</b> | <b>Unit</b> | <b>\$/Unit</b> | <b>Total Cost</b> |
|--------------------------|-------------|----------------|-------------------|
|--------------------------|-------------|----------------|-------------------|

|                                |            |          |            |
|--------------------------------|------------|----------|------------|
| Site Preparation               | 10-acres   | \$24/sf  | 5,893,800  |
| Building Hard Cost             | 245,575-sf | \$135/sf | 33,152,625 |
| Soft Cost                      | 245,575-sf | \$15/sf  | 3,683,625  |
| Total Construction Cost        | 245,575-sf | \$174/sf | 42,730,050 |
| Land Acquisition Cost (Actual) | 10-acres   |          | 4,200,000  |
| Total Development Cost         |            |          | 46,930,050 |
| Developer's Profit @ 7.50%     |            |          | 3,519,754  |
| Total Cost Plus Profit         |            |          | 50,449,804 |

#### Gap Calculation

|                             |            |
|-----------------------------|------------|
| Total Cost Plus Profit      | 50,449,804 |
| Capitalized Value (NOI/OAR) | 50,449,804 |
| Gap                         | 0          |

| Unit Size | # Units | Total SF   |       |
|-----------|---------|------------|-------|
| 725-sf    | 29      | 21,025-sf  |       |
| 900-sf    | 16      | 14,400-sf  |       |
| 1,150-sf  | 16      | 18,400-sf  |       |
| 1,350-sf  | 97      | 130,950-sf |       |
| 1,600-sf  | 38      | 60,800-sf  |       |
| Total     | 196     | 245,575-sf | 1,253 |

**Record and return to:**

**Joseph Sordillo, Esq.  
McElroy, Deutsch, Mulvaney & Carpenter LLP  
1300 Mount Kemble Ave., P.O. Box 2075  
Morristown, New Jersey 07962-2075**

**FINANCIAL AGREEMENT  
BY AND BETWEEN  
THE TOWNSHIP OF BERKELEY HEIGHTS  
AND  
BERKELEY DEVELOPERS LOCUST URBAN RENEWAL, L.L.C.**

**DATED AS OF \_\_\_\_\_, 2017**

## FINANCIAL AGREEMENT

**THIS FINANCIAL AGREEMENT** (hereinafter the “**Agreement**”), made this [ ] day of \_\_\_\_\_, 2017, by and between **BERKELEY DEVELOPERS LOCUST URBAN RENEWAL, L.L.C.**, an urban renewal entity qualified to do business under the provisions of the Long Term Tax Exemption Law of 1992, N.J.S.A. 40A:20-1 et seq., as amended and supplemented (the “**Long Term Tax Exemption Law**”), with offices at 820 Morris Turnpike, Short Hills, New Jersey 07078 (the “**Entity**”) and the **TOWNSHIP OF BERKELEY HEIGHTS**, a municipal corporation in the County of Union and the State of New Jersey (the “**Township**”, and together with the Entity, the “**Parties**” or “**Party**”).

### WITNESSETH:

**WHEREAS**, the Entity owns the property identified on the Tax Maps of the Township as Block 1901, Lot 35 (the “**Property**”), commonly known as 100 Locust Avenue and more particularly described by the metes and bounds description attached hereto as ***Exhibit A***; and

**WHEREAS**, on August 23, 2016, the Township adopted Resolution No. 195-2016 designating the Property as a non-condemnation area in need of redevelopment (the “**Redevelopment Area**”) pursuant to the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq., as amended and supplemented (the “**Local Redevelopment and Housing Law**”); and

**WHEREAS**, pursuant to N.J.S.A. 40A:12A-7, on February 7, 2017, the Township Council of the Township (the “**Township Council**”) duly adopted an ordinance approving a Redevelopment Plan (and as same may be further amended from time to time, the “**Redevelopment Plan**”) for the Redevelopment Area; and

**WHEREAS**, on [insert date], the Township Council adopted a resolution designating Berkeley Developers, LLC (the “**Redeveloper**”) as the redeveloper of the Property; and

**WHEREAS**, in accordance with the Long Term Tax Exemption Law, the Redeveloper reconstituted itself as the Entity for the purpose of undertaking the development of the Property pursuant to the Redevelopment Plan; and

**WHEREAS**, on \_\_\_\_\_, 2017, the Township and the Redeveloper entered into a Redevelopment Agreement (the “**Redevelopment Agreement**”) in order to implement the development, design, financing and construction of a project including no more than 196 residential units (as further described in Section 2.01 hereof, the “**Project**”); and

**WHEREAS**, on [\_\_\_\_\_], 2017, the Entity submitted an application to the Township for the approval of an exemption for the Project pursuant to the Long Term Tax Exemption Law (the “**Application**”), which Application is attached hereto as ***Exhibit B***; and

**WHEREAS**, the Mayor has submitted the Application and Agreement to the Township Council with his recommendation of approval (the “**Mayor’s Recommendation**”), a copy of which is on file with the Township Clerk; and

**WHEREAS**, on [insert date] the Township Council finally adopted an ordinance entitled, “Ordinance of the Township of Berkeley Heights, County of Union, New Jersey Approving the Application and Financial Agreement for Tax Exemption of Berkeley Developers Locust Urban Renewal, L.L.C. for the Construction of a Residential Project Located at 100 Locust Avenue,” 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 Township, of the Project and with respect to payment, by the Entity, of the Annual Service Charges (defined herein), in lieu of real property taxes in connection with the Project, the Parties desire to enter into this Agreement; and

**WHEREAS**, the Township made the following findings with respect to the Project:

A. Relative Benefits of the Project: The Project will effectuate the development of deteriorated and unused, abandoned structures formerly utilized for light industrial purposes while providing new residential housing units, including affordable housing units. Further, the Project will renew and revitalize the Redevelopment Area because it allows for the redevelopment of a site currently characterized by a vacant building into a productive use that will temporarily generate jobs and permanently increase tax ratables within the Redevelopment Area. [Add specifics from Application with respect to job generation, current municipal revenues, projected PILOT revenues, and impact on demand for municipal services.]

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 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, age-restricted multi-family rental units in the Township 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 Long Term Tax Exemption Law, the Local Redevelopment and Housing Law, the Ordinance, and all other Applicable Laws. It is expressly understood and agreed that the Township 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:

|                                            |                                |
|--------------------------------------------|--------------------------------|
| <u>Agreement</u>                           | <u>Project</u>                 |
| <u>Application</u>                         | <u>Property</u>                |
| <u>Entity</u>                              | <u>Redeveloper</u>             |
| <u>Local Redevelopment and Housing Law</u> | <u>Redevelopment Agreement</u> |
| <u>Long Term Tax Exemption Law</u>         | <u>Redevelopment Area</u>      |
| <u>Mayor's Recommendation</u>              | <u>Redevelopment Plan</u>      |
| <u>Ordinance</u>                           | <u>Township</u>                |
| <u>Party/Parties</u>                       | <u>Township Council</u>        |

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 Township 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:20-3b.

**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 Township determines to be the prevailing rate of mortgage financing on comparable improvements in the County. The provisions of N.J.S.A. 40A:20-3b are incorporated herein by reference.

Annual Gross Revenue – The annual gross revenue shall be defined as set forth in N.J.S.A. 40A:20-3a.

Annual Service Charge - The amount the Entity has agreed to pay the Township 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 Annual Service Charge Start Date shall be the first day of the month immediately following the month in which Substantial Completion occurs.

Applicable Law – All federal, State and local laws, ordinances, approvals, rules, regulations and requirements applicable thereto including, but not limited to, the Local Redevelopment and Housing Law and the Long Term Tax 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 and clear computation of Net Profit as provided in N.J.S.A. 40A:20-3c. The contents of the Auditor's Report shall have been prepared 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 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 Township authorizing occupancy of a building, in whole or in part, pursuant to N.J.S.A. 52:27D-133.

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 Union.

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, or under Applicable Law, beyond any applicable grace or cure periods after written notice of such failure, or a violation of the declaration of covenants executed by Redeveloper pursuant to the Redevelopment Agreement.

Default Notice – As defined in Section 14.02.

Fiscal Plan – Attached as *Exhibit D*.

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 Township may enforce the lien for taxes due and owing by a tax sale in accordance with the provisions of the Tax Sale Law (defined below).

Land – The real property, but not the Improvements, known as Block 1901, Lot 35 on the tax maps of the Township, 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 Property, in the event it is determined that land is not exempt, exclusive of the value of any Improvements related thereto, 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 Property, 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), 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).

Notice of Termination – As defined in Section 14.04.

State – The State of New Jersey.

Substantial Completion – The determination by the Township construction official that the Project, in whole or in part, is ready for the use intended, which shall mean the date on which the Project receives, or is eligible to receive, any Certificate of Occupancy for any portion of the Project.

Tax Assessor – The Township tax assessor.

Tax Collector – The Township 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:20-3h. 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 Township 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 Long Term Tax Exemption Law on the Property.

The Project will contain not more than 196 residential units and shall otherwise be as set forth in 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 F* 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 Construction Schedule**

The Entity agrees to diligently undertake to commence construction and complete the Project in accordance with the Estimated Construction Schedule as set forth in the Application and 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 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 2.05 Ownership, Management and Control**

The Entity represents that it is the owner of the property identified on the Tax Maps of the Township as Block 1901, Lot 35. 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 in accordance with the representations set forth in the Application, including the Fiscal Plan attached thereto (which is also attached hereto as *Exhibit D*). 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 to be paid on construction financing, the source and amount of paid-in capital, and the terms of any mortgage amortization.

**SECTION 2.07 Township Findings**

The Township made the following findings with respect to the Project:

A. Relative Benefits of the Project: The Project will effectuate the development of deteriorated and unused, abandoned structures formerly utilized for light industrial purposes while providing new residential housing units, including affordable housing units. Further, the Project will renew and revitalize the Redevelopment Area because it allows for the redevelopment of a site currently characterized by a vacant building into a productive use that will temporarily generate jobs and permanently increase tax rates within the Redevelopment Area. [Add specifics from Application with respect to job generation, current municipal revenues, projected PILOT revenues, and impact on demand for municipal services.]

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 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, age-restricted multi-family rental units in the Township 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 the 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 Long Term Tax 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 Long Term Tax 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 Township. Upon Termination all restrictions and limitations upon the Entity shall terminate upon the Entity's rendering and the Township'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 of the Project notify the Township that as of a certain date designated in the notice, it relinquishes its status under the Long Term Tax Exemption Law and that the Entity has obtained 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 and the Township'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. 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 loss of the status of the Entity as an urban renewal entity qualified under and as defined in the Long Term Tax Exemption Law, or any violation by the Township 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 the Annual Service Charge Start Date consistent with Section 4.02B.

B. Payment of the Annual Service Charge shall be made to the Township on a quarterly basis on February 1, May 1, August 1 and November 1 immediately following the Annual Service Charge Start Date and thereafter on February 1, May 1, August 1 and November 1, as applicable, all in accordance with the Township's tax collection schedule, subject, nevertheless, to adjustment for over or underpayment within thirty (30) days after the close of each calendar year. 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 Township against other delinquent taxpayers in the case of unpaid taxes or tax liens on the land until paid.

D. In accordance with the Long Term Tax 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 Township 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 13% of the Annual Gross Revenue generated by the Project. The first year of the Annual Service Charge shall be billed based on the Entity's estimated Gross Revenue, as set forth in the Fiscal Plan attached as *Exhibit C* to the Application, or the Minimum Annual Service Charge, whichever is greater.

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 Property in the last full tax year in which the Property was subject to 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. The parties agree and acknowledge that in accordance with N.J.S.A. 54:3-21(b), no tax appeal is cognizable during the Term of this Agreement.

#### **SECTION 4.04 Reformation of Annual Service Charge Computation**

In the event the exemption of the Land is invalidated by a Court of competent jurisdiction, the Parties agree that this Agreement shall remain valid and in full force and effect, and shall be reformed to cure the invalid provision so that the Annual Service Charge shall be recomputed pursuant to the alternative calculation set forth in the Fiscal Plan attached as *Exhibit D* to the Application. [Need to review upon receipt of draft Application.]

If the exemption of the Land authorized under N.J.S.A. 40A:20-12 is invalidated, the Entity shall be obligated to make payment of Land Taxes according to the general laws applicable to all other tax ratables. Land Taxes shall be separately assessed for the Property, and shall be assessed only on the Land without regard to any improvements or increase in value to the Land because of the Improvements. The payment for Land Taxes shall be applied as a credit against the Annual Service Charge for the subsequent year. In any year that the Entity fails to make any Land Tax Payments when due and owing, such delinquency shall render the Entity ineligible for any land tax credits against the Annual Service Charge. The Entity is required to make payment of both the Annual Service Charge and the Land Tax Payments. The Entity is required to pay the full Land Tax Payments in any given year and no credits will be applied against the Annual Service Charge for partial payment of the Land Taxes. The Entity's failure to make the requisite Annual Service Charge payment and/or the requisite Land Tax Payment in a timely manner shall constitute a violation and breach of this Agreement. The Township shall, among its other remedies, have the right to proceed against the Property pursuant to the Tax Sale Law and/or may declare a Default under this Agreement in accordance with Article XIV hereof.

#### **SECTION 4.05 Schedule of Staged Adjustments**

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

A. Stage One. Commencing on the Annual Service Charge Start Date until the fifteenth anniversary of the Annual Service Charge State Date, the Annual Service Charge shall be the amount established in accordance with Sections 4.03 or 4.04, as applicable.

B. Stage Two. From the first day after the fifteenth anniversary of the Annual Service Charge Start Date until the twenty-first anniversary of the Annual Service Charge Start Date, the Annual Service Charge shall be the amount established in accordance with Sections 4.03 or 4.04, as applicable, 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 the Annual Service Charge Start Date until the twenty-seventh anniversary of the Annual Service Charge Start Date, the Annual Service Charge shall be the amount established in accordance with Sections 4.03 or 4.04, as applicable, 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 the Annual Service Charge Start Date until the twenty-ninth anniversary of the Annual Service Charge Start Date, the Annual Service Charge shall be the amount established in accordance with Sections 4.03 or 4.04, as applicable, 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 Sections 4.03 or 4.04, as applicable, 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 Township 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 Sections 4.03, 4.04 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, Land Taxes, if applicable, and 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 Charge**

Neither the amounts nor dates established for payment of the Annual Service Charge, as provided in Sections 4.02, 4.03, 4.04 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 Long Term Tax Exemption Law, the Annual Service Charge shall be and constitute a continuous municipal lien on the Property 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 Township shall remit five (5%) percent of the Annual Service Charge collected by the Township 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 Township on its own behalf reserves the right to prosecute an In Rem Tax Foreclosure action against the Property, 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**

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 the improvements currently existing thereon, at the times and to the extent due in accordance with Applicable Law.

**{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.

#### **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 Township, 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 Township, 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 in accordance with generally accepted accounting principles and as otherwise prescribed by Applicable Law.

#### **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, Municipal Council, the Tax Collector and the Township 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 Substantial Completion of the Project, the Entity shall submit to the Mayor, Municipal Council, the Tax Collector and the Township 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 form attached as **Exhibit B** to the Application. [Confirm Exhibit reference upon receipt of Application.]

C. Disclosure Statement: On each anniversary date of the execution of this Agreement, the Entity shall submit to the Mayor and Municipal 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 Township 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 Township 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 Township 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) 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 Long Term Tax 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:20-3c, this calculation shall be completed in accordance with generally accepted accounting principles.

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 Township.

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, whether or not taxable under 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 Township 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:20-3c and 40A:20-15.

The Parties agree that any excess Net Profit will be retained by the Township 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 Township, 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 Township under the conditions set forth herein. As permitted by N.J.S.A. 40A:20-10a, it is understood and agreed that the Township, 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 Long Term Tax Exemption Law; (iii) the Entity is not then in Default of the Redevelopment Agreement, this Agreement or the Long Term Tax 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 Township 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 Township may charge an administrative fee of \$3,000.00 for processing any such application for transfer by the Entity.

#### 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 Municipal 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 Township, to effect 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 Long Term Tax 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 Township or the Entity of any rights and remedies provided by the 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 Township 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:

Tony DiGiovanni  
Berkeley Developers Locust Urban Renewal, L.L.C.  
820 Morris Turnpike  
Short Hills, New Jersey 07078

**with a copy to:**

Brett E. Tanzman, Esq.  
Wilf Law Firm, LLP  
820 Morris Turnpike, Suite 201  
Short Hills, New Jersey 07078

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

Township of Berkeley Heights  
Municipal Building  
29 Park Avenue  
Berkeley Heights, NJ 07922

**with a copy to**

Matthew D. Jessup, Esq.  
McManimon, Scotland & Baumann, LLC  
75 Livingston Avenue, 2<sup>nd</sup> Floor  
Roseland, NJ 07068

The notice to the Township shall identify the subject with the tax account numbers of the tax parcels comprising the Property.

**{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 Township 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 Township shall be named as a party defendant in any action brought against the Township 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 Long Term Tax Exemption Law or any other Applicable Law, the Entity shall indemnify and hold the Township 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 Long Term Tax Exemption Law and/or any other Applicable Law except for any willful misconduct by the Township or any of its officers, officials, employees or agents, and the Entity shall defend the suit at its own expense. The Township 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 forty-five (45) 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 ten (10) days from the occurrence thereof). In the event of any uncured Default by the Entity, the Township shall have the right to proceed against the Property pursuant to Applicable Law. Upon any Default in payment of any installment of the Annual Service Charge, the Township 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 Township, 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 Township 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 Township may terminate this Agreement upon thirty (30) days written notice to the Entity (the “**Notice of Termination**”). 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 Township 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. 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 nonexempt taxable property in the Township.

**{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 that 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 Land Taxes (if any) and 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 Township 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 Redevelopment Area, has been entered into and is in effect as required by the Long Term Tax Exemption Law. Delivery by the Township 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 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 Clerk that the exemption has been terminated. Further, within ten (10) days of the execution of this Financial Agreement, the City Clerk shall provide a copy of the Financial Agreement and the Ordinance authorizing the same to the Union County Counsel and the Union 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 Application Fee**

The Township and Entity agree that the Entity has paid to the Township an amount equal to \$3,000.00 as a fee for processing the Application.

#### **SECTION 15.11 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.

**BERKELEY DEVELOPERS LOCUST URBAN  
RENEWAL, L.L.C., a New Jersey limited liability  
company**

**ATTEST:**

By: \_\_\_\_\_



By: \_\_\_\_\_



Title: Member

**ATTEST:**

By: \_\_\_\_\_

Township Clerk

**THE TOWNSHIP OF BERKELEY HEIGHTS**

By: \_\_\_\_\_

Mayor

**ACKNOWLEDGEMENT**

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

On this \_\_\_\_ day of \_\_\_\_\_, 2017 before me, the subscriber, an officer duly authorized pursuant to N.J.S.A. 46:14-6.1 to take acknowledgements for use in the State of New Jersey, personally appeared \_\_\_\_\_, Mayor of the Township of Berkeley Heights, and \_\_\_\_\_, Clerk of the Township of Berkeley Heights, both known to me to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same as the voluntary act of the Township of Berkeley Heights.

\_\_\_\_\_  
 Notary Public

Commission Expiration: \_\_\_\_\_

**ACKNOWLEDGEMENT**

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

On this 30<sup>th</sup> day of August, 2017 before me the subscriber, personally appeared Zygmunt Wilf, who by me duly sworn on his oath, deposed and makes proof to my satisfaction that he is a Member of Berkeley Developers Locust Urban Renewal, L.L.C., and thereupon he acknowledged that he executed, signed, sealed and delivered the foregoing instrument as and for his voluntary act and deed and that of the said limited liability company for the uses and purposes thereof.

  
 \_\_\_\_\_  
 Notary Public

Commission Expiration: 1-5-2020

**AIMEE L. FISCHBECK**  
**NOTARY PUBLIC OF NEW JERSEY**  
**ID # 50007862**  
**My Commission Expires 1/5/2020**

**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. \_\_\_\_\_**
- D. **Fiscal Plan**

**EXHIBIT A**  
**PROPERTY DESCRIPTION**



# Chicago Title Insurance Company

## SCHEDULE A

(Continued)

File No. 1328-108194

### LEGAL DESCRIPTION

All that certain lot, parcel or tract of land, situate and lying in the Township of Berkeley Heights, County of Union, State of New Jersey, and being more particularly described as follows:

Beginning at a point in the northerly sideline of Locust Avenue, where the same is intersected by the westerly boundary line of lands of the Public Service Electric and Gas Company, and running thence:

1. Along the westerly boundary line of the Public Service Electric and Gas Company, North 07 degrees 20 minutes East, a distance of 587.80 feet to a point; thence
2. Still along the westerly boundary line of lands of the Public Service Electric and Gas Company, North 07 degrees 27 minutes, a distance of 431.29 feet to a point in the southerly boundary line of lands of the New Jersey Transit Corp., formerly the Erie Lackawanna Railroad; thence
3. Along the southerly boundary line of said lands, in a general westerly direction, on a curve to the right having a radius of 1994.00 feet, an arc distance of 571.05 feet to a point; thence
4. South 00 degrees 55 minutes East, a distance of 864.32 feet to a point in the northerly sideline of Locust Avenue; thence
5. Along the northerly sideline of Locust Avenue, South 89 degrees 31 minutes East, a distance of 406.06 feet to the point and place of beginning.

FOR INFORMATIONAL PURPOSES ONLY: Also known as Lot 35, in Block 1901, on the Township of Berkeley Heights Tax Map.

**EXHIBIT B**  
**EXEMPTION APPLICATION WITH EXHIBITS**

**EXHIBIT C**  
**ORDINANCE ADOPTED ON XXXX**

**EXHIBIT D  
FISCAL PLAN**



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

**CHRIS CHRISTIE**  
*Governor*

**KIM GUADAGNO**  
*Lt. Governor*

**CHARLES A. RICHMAN**  
*Commissioner*

**TO: State Treasurer**  
**RE: Locust Berkeley Developers Urban Renewal, LLC**  
File #1983  
An Urban Renewal Entity

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

Done this 12th day of April 2017 at Trenton, New Jersey.

DEPARTMENT OF COMMUNITY AFFAIRS

BY

  
\_\_\_\_\_  
Edward M. Smith, Director  
Division of Codes and Standards

