

ORDINANCE NO. 2018-47

ORDINANCE AUTHORIZING THE EXECUTION OF A FINANCIAL AGREEMENT FOR A TAX EXEMPTION FOR AN URBAN RENEWAL PROJECT WITH RESPECT TO THE PROPERTY COMMONLY KNOWN AS BLOCK 7503, LOTS 33.01 AND 35.01 ON THE TAX MAP OF THE CITY OF VINELAND.

WHEREAS, the Local Redevelopment and Housing Law, *N.J.S.A. 40A:12A-1 et seq.* (the “**Redevelopment Law**”) provides a process for municipalities to participate in the redevelopment and improvement of areas in need of redevelopment; and

WHEREAS, the City of Vineland (the “**City**”) designated certain property within the City, including, without limitation, the property commonly known as Block 7503, Lot 35.01; Block 7503, Lot 33.01, Block 7503, Lot 35.02 and Block 7503, Lot 50 on the tax map of the City of Vineland as an area in need of redevelopment, pursuant to the Redevelopment Law (the “**Redevelopment Area**”); and

WHEREAS, the Redevelopment Area is currently subject to the Redevelopment Plan prepared by Kathleen M. Hicks dated August 2017, as amended and supplemented from time to time (the “**Redevelopment Plan**”) which was duly adopted by the City pursuant to the Redevelopment Law and in accordance with the procedures set forth therein; and

WHEREAS, pursuant to *N.J.S.A. 40A:12-4*, the City has determined to act as the “Redevelopment Entity” (as such term is defined at *N.J.S.A. 40A:12A-3*) for the development of the Project (defined herein) within the Redevelopment Area to exercise the powers contained in the Redevelopment Law; and

WHEREAS, NEP Real Estate of Vineland NJ Urban Renewal, LLC (the “**Entity**”) is the owner or contract purchaser of the Redevelopment Area and is a developer with resources and a team of experts in planning, redevelopment, law, engineering, environmental issues, architecture, design, finance, and real estate development with experience suitable for the proposed redevelopment of the Redevelopment Area; and

WHEREAS, in order to effectuate the public purposes set forth in the Redevelopment Plan and in order to set forth the terms and conditions under which the City and the Entity shall carry out their respective obligations with respect to redevelopment of the Redevelopment Area, on August 16, 2018, the City and the Entity executed a Redevelopment Agreement (the “**Redevelopment Agreement**”); and

WHEREAS, the Redevelopment Agreement provides for the acquisition of the Redevelopment Area by the Entity and designed, development and construction of a multi-phased warehouse and light industrial complex consisting of approximately four buildings, corporate office space, parking and other related amenities as required by the City (collectively, the “**Project**”); and

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

WHEREAS, in order to enhance the economic viability of and opportunity for a successful project, the Entity has submitted an application for the approval of the Project (the “**Exemption Application**”) and a form of financial agreement (the “**Financial Agreement**”) to the City for the approval of an urban renewal project, all in accordance with the Long Term Tax Exemption Law, *N.J.S.A. 40A:20-1 et seq.* (the “**LTTE Law**”), specifically *N.J.S.A. 40A:20-8*; and

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WHEREAS, pursuant to *N.J.S.A. 40A:20-8*, the Mayor has reviewed the Exemption Application and, by a letter dated August 16, 2018 (the “**Mayor’s Recommendation**”), the Mayor has submitted the Exemption Application and Financial Agreement to the City Council with his recommendation for approval, subject to the condition that the Entity pay, in lieu of tax payments on the Project, an annual service charge, such that the combined tax payment on the land and the annual service charge paid by the Entity each year shall be no less than the amount of the total property taxes that the City has received on the Project Site, prior to redevelopment; and

WHEREAS, upon review of the proposed Project, the Exemption Application and the Mayor’s Recommendation, the City has made the following findings with respect to the Project pursuant to *N.J.S.A. 40A:20-11*:

1. The Project Site is not currently developed to its maximum potential. The Project Site is vacant and underutilized and generates minimal taxes for the City. Despite the development potential on the Project Site, the cost of land acquisition and construction make development on the Project Site financial infeasible without financial assistance. Upon expiration of the exemption, the Project shall be fully assessed and conventionally taxed;

2. Given the costs as well as the uncertainty and instability of current economic and market conditions, the investment risk makes the financing of the Project infeasible in the absence of a tax exemption provided by the City;

3. The construction of the Project will result in the creation of approximately 40 construction and approximately 120 permanent jobs;

4. The Project is consistent with the Redevelopment Plan, will further its objectives and will contribute to the economic growth of the City;

5. The Project will result in the productive redevelopment of a vacant parcel that was formerly an industrial site;

6. The Financial Agreement was a material inducement to the Entity to undertake the Project in the City and facilitate the redevelopment of the Project Site; and

WHEREAS, in accordance with the provisions of the LTTE Law, the City desires to approve the Financial Agreement for the Project.

NOW THEREFORE, BE IT ORDAINED BY THE MUNICIPAL COUNCIL OF THE CITY OF VINELAND, NEW JERSEY AS FOLLOWS:

Section 1. The forgoing recitals are incorporated herein as if set forth in full.

Section 2. The form of Financial Agreement submitted by the Entity, attached hereto as **Exhibit A** and made a part hereof, is hereby approved in accordance with Section 8 of the LTTE Law.

Section 3. The Mayor, in consultation with counsel to the City, is hereby authorized to execute the Financial Agreement and prepare, amend or execute any other agreements necessary to effectuate this ordinance, subject to modification or revisions, as deemed necessary and appropriate.

Section 4. The Clerk of the City is hereby authorized and directed, upon execution of the Financial Agreement by the Mayor, to attest to the signature of the Mayor and to affix the corporate seal of the City upon such document.

Section 5. Any exemption from taxation as set forth in the Financial Agreement is hereby granted to the Entity, with respect to the Project for the term set forth in the Financial Agreement; provided that in no event shall the term of the Financial Agreement exceed twenty (20) years from the date of execution of the Financial

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Agreement and only so long as the Entity remains subject to and in compliance with the Financial Agreement and the LTTE Law.

Section 6. The executed copy of the Financial Agreement shall be certified by and filed with the Office of the City Clerk. Further, the Clerk shall file certified copies of this ordinance and the Financial Agreement with the Tax Assessor of the City, the Director of the Division of Local Government Services with the Department of Community Affairs, the chief financial officer of the County of Cumberland and the county counsel in accordance with Section 12 of the LTTE Law.

Section 7. The Project shall conform with all federal, state and City laws, ordinances and regulations relating to its construction and use.

Section 8. The Entity shall, in the operation of the Project, comply with all laws so that no person of race, religious principles, color, national origin or ancestry will be subject to discrimination.

Section 9. This ordinance shall take effect in accordance with all applicable laws.

Passed first reading:

Passed final reading:

President of Council

Approved by the Mayor:

Mayor

ATTEST:

City Clerk

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

Record and Return to:

Jong Sook Nee, Esq.
Nee Plata Law LLC
101 Eisenhower Parkway, Suite 101
Roseland, New Jersey 07068

FINANCIAL AGREEMENT

THIS FINANCIAL AGREEMENT (this “**Agreement**”), made this ___ day of _____ 2018, by and between **NEP REAL ESTATE OF VINELAND NJ URBAN RENEWAL, LLC**, an urban renewal entity qualified to do business under the provisions of the New Jersey Long Term Tax Exemption Law, N.J.S.A. 40A:20-1 et seq., as amended and supplemented (the “**Long Term Tax Exemption Law**”) (the “**Entity**”) and the **CITY OF VINELAND**, a municipal corporation in the County of Cumberland and the State of New Jersey, with offices at City Hall, 640 East Wood Street, Vineland, New Jersey 08360 (together with its permitted successors and assigns, the “**City**”, and together with the Entity, the “**Parties**” or “**Party**”).

WITNESSETH:

WHEREAS, the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq. (the “**Redevelopment Law**”) provides a process for municipalities to participate in the redevelopment and improvement of areas in need of redevelopment; and

WHEREAS, the City designated certain property within the City, including, without limitation, the property commonly known as Block 7503, Lot 35.01; Block 7503, Lot 33.01, Block 7503, Lot 35.02 and Block 7503, Lot 50 on the tax map of the City of Vineland as an area in need of redevelopment, pursuant to the Redevelopment Law (the “**Redevelopment Area**”); and

WHEREAS, the Redevelopment Area is currently subject to the Redevelopment Plan prepared by Kathleen M. Hicks dated August 2017, as amended and supplemented from time to time (the “**Redevelopment Plan**”) which was duly adopted by the City pursuant to the Redevelopment Law and in accordance with the procedures set forth therein; and

WHEREAS, pursuant to N.J.S.A. 40A:12-4, the City has determined to act as the “Redevelopment Entity” (as such term is defined at N.J.S.A. 40A:12A-3) for the development of the Project (defined herein) within the Redevelopment Area to exercise the powers contained in the Redevelopment Law; and

WHEREAS, the Entity is the owner or contract purchaser of the Redevelopment Area and is a developer with resources and a team of experts in planning, redevelopment, law, engineering, environmental issues, architecture, design, finance, and real estate development with experience suitable for the proposed redevelopment of the Redevelopment Area; and

WHEREAS, in order to effectuate the public purposes set forth in the Redevelopment Plan and in order to set forth the terms and conditions under which the City and the Entity shall carry out their respective obligations with respect to redevelopment of the Redevelopment Area, on August 16, 2018, the City and the Entity executed a Redevelopment Agreement (the “**Redevelopment Agreement**”); and

WHEREAS, the Redevelopment Agreement provides for the acquisition of the Redevelopment Area by the Entity and designed, development and construction of a multi-phased warehouse and light industrial complex consisting of multiple buildings, corporate office space, parking and other related amenities as required by the City to be undertaken in phases (collectively, the “**Project**”); and

WHEREAS, pursuant to and in accordance with the provisions of the Long Term Tax Exemption Law and the New Jersey Redevelopment Area Bond Financing Law, N.J.S.A. 40A:12A-64 et seq., as amended and supplemented (the “**Bond Financing Law**”), the City is authorized, in its sole discretion, to provide for and accept, in lieu of real property taxes, an annual service charge paid by the Entity to the City (as defined herein, the “**Annual Service Charge**”); and

WHEREAS, the Entity submitted an application to the City for the approval of the Project as an urban renewal project (the “**Exemption Application**”), in accordance with N.J.S.A. 40A:20-8, a copy of which is attached hereto as *Exhibit B*; and

WHEREAS, on September 12 2018, the City adopted an ordinance, attached here as *Exhibit A*, approving the Exemption Application and authorizing the execution of this Agreement (the “**Ordinance**”); and

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

WHEREAS, pursuant to and in accordance with the provisions of the Bond Financing Law, specifically N.J.S.A. 40A:12A-65 and 67(a), the City may issue nonrecourse redevelopment project bonds (the “**Bonds**”), or an entity acting on behalf of the City, may issue such bonds in order to finance a portion of the costs of the Project or infrastructure serving the Project, which Bonds may be secured by the Annual Service Charge; and

WHEREAS, in furtherance of the Project, the City, or an entity acting on its behalf, shall issue, or reissue, the Bonds in accordance with the terms and provisions of an indenture of trust and/or a general bond resolution (the “**Indenture**”) authorizing the issuance of such Bonds, which shall be used to fund a portion of the Project or infrastructure serving the Project; and

WHEREAS, pursuant to the terms of this Agreement and the Indenture and in accordance with the terms of the Bond Financing Law, specifically N.J.S.A. 40A:12A-67(a), a portion of the Annual Service Charge shall be pledged, on a first lien basis, to the payment of the principal or redemption premium of, and interest on, the Bonds, which Bonds may be recourse to the City, at its election.

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, and intending to be legally bound hereby, it is mutually covenanted and agreed as follows:

ARTICLE I

GENERAL PROVISIONS

SECTION 1.01 Governing Law. This Agreement shall be governed by and construed by the laws of the State (as defined herein), including (a) the Long Term Tax Exemption Law, the Redevelopment Law, the Bond Financing Law and such other State statutes as may be sources of relevant authority, (b) the Ordinance, and (c) all other Applicable Laws, without regard to conflict of law principles.

SECTION 1.02 General Definitions. The following terms shall have the meanings assigned to such term in the preambles hereof:

Agreement
Annual Service Charge
Bond Financing Law
Bonds
City
Exemption Application
Indenture
Entity
Long Term Tax Exemption Law

Ordinance
Party or Parties
Planning Board
Project
Redevelopment Area
Redevelopment Agreement
Redevelopment Law
Redevelopment Plan

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

Acts – The Long Term Tax Exemption Law, Redevelopment Law and the Bond Financing Law.

Administrative Expenses – As defined in the Indenture.

Administrative Fee – As defined in Section _____.

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(c).

Allowable Profit Rate – As defined in N.J.S.A. 40A:20-3(b).

Annual Gross Revenue – The annual gross revenue of the Entity defined as “Gross Revenue” in N.J.S.A. 40A:20-3(a), which shall not include any gain realized by the Entity on the sale of any Unit in fee simple, whether or not taxable under federal or State law.

Annual Service Charge – The Pledged Annual Service Charge plus the Unpledged Annual Service Charge plus the County Annual Service Charge.

Annual Service Charge Start Date – The Effective Date of this Agreement.

Applicable Laws – All federal, State and local laws, ordinances, approvals, rules, regulations, resolutions and requirements applicable hereto including, but not limited to, the Redevelopment Law, the Bond Financing Law, the Long Term Tax Exemption Law, the Tax Sale Law, as applicable, relevant construction codes including construction codes governing access for people with disabilities, and such zoning, sanitary and safety ordinances, laws and such rules and regulations thereunder, including all applicable federal and State labor standards.

Applicable PILOT Rate – The percentage of otherwise applicable taxes (“OAT”) for the Project, or Phase, in the following years:

- Years 1 – 4 0% of OAT
- Years 5-8 20% of OAT
- Years 9-12 40% of OAT
- Years 13-16 60% of OAT
- Years 17-20 80% of OAT

Auditor’s Report – A financial statement outlining the financial status of the Project (for a period of time as indicated by context), which shall include a certification of Annual Gross Revenue. 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.

Bondholder - Any person who is the registered owner of any outstanding Redevelopment Bond, or any credit enhancement entity that is deemed to be the registered owner of any outstanding Redevelopment Bond, all in accordance with the terms of the Indenture.

Bonds – The “Series _____ Redevelopment Area Bonds” to be issued in one or more series under the Indenture for the purposes contemplated hereby, secured by the Pledged Annual Service Charges pursuant to the Bond Financing Law, the Indenture and this Agreement.

Bond Trustee – A bank with corporate trust powers to be selected by the Parties.

Certificate of Occupancy – A temporary (if temporary or conditional for the limited reasons of grading, seeding, landscaping and/or surface pavement course) or permanent Certificate of Occupancy, as such term is defined in the New Jersey Administrative Code issued

by the City authorizing the occupancy of a building, in whole or in part, pursuant to N.J.S.A. 52:27D-133.

County – The County of Cumberland.

County Annual Service Charge – Five percent (5%) of the Pre-Land Tax Credit Annual Service Charge less five percent (5%) of the Land Tax Credit, which shall be payable to the County in accordance with the provisions of N.J.S.A. 40A:20-12.

Debt Service – The scheduled amount of interest and amortization of principal payable on the Bonds during the period of computation, excluding amounts scheduled during such period which relate to principal which has been retired before the beginning of such period.

Debt Service Charge – For any year, the annual Debt Service and all other payments due and payable in any given year in accordance with the terms and provisions of the Indenture including without limitation, the administrative expenses.

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

Default Notice - As defined in Section 14.02.

Disclosure Statement – As defined in Section 7.02(C).

Effective Date – The date on which this Agreement is executed and delivered by the last of the Parties so executing and delivering this Agreement.

Entity – Each of the Entity and any Successor Entity.

Financing Plan – The plan prepared pursuant to N.J.S.A. 40A:20-8(d) and included in the Exemption Application.

Fiscal Plan – The plan prepared pursuant to N.J.S.A. 40A:20-8(e) and included in the Exemption Application.

Improvements – Any building, structure or fixture permanently affixed to the Land and to be constructed and exempted pursuant to this Agreement.

In Rem Tax Foreclosure - A summary proceeding by which the City may enforce the lien for taxes due and owing by a tax sale in accordance with the provisions of the Tax Sale Law.

Indenture – The Indenture as defined in the preambles hereof which may, by its terms, govern the issuance of the Bonds, and which may include any supplemental trust indenture as may be authorized therein for the purpose of issuing Bonds, all such indentures being subject to the approval of the Entity.

Issuing Authority – The City, or such other entity selected by the City to issue the Bonds.

Land – The land, but not the Improvements, identified on the property commonly known as Block 7503, Lots 33.01 and 35.01 on the tax maps of the City.

Land Tax - The amount of taxes assessed on the Land, if any, exclusive of the value of any of the Improvements related thereto, in accordance with Applicable Law.

Land Tax Credit – The amount of Land Tax paid in the immediately prior calendar year for any portion of the Land.

Net Profit – As defined in N.J.S.A. 40A:20-3(c).

Phase – Shall be as defined in the Redevelopment Agreement.

PILOT Administrator – Initially, the Tax Collector and, thereafter, the Trustee, to oversee the collection and administration of the Annual Service Charge.

Pledge Agreement – That certain Pledge and Assignment Agreement, dated as of the issuance of the Bonds, to be entered into by and among, at a minimum, the City, the Issuing Authority and the Trustee, and the Bond Trustee but which form may be amended or supplemented, with the consent of the City, as required by any market participants in the issuance of the Bonds, including the issuer, the Trustee, the Bond Trustee, the underwriter, or any mortgagee, rating agency or credit enhancer for the Bonds.

Pledged Annual Service Charge – A portion of the Annual Service Charge equal to Twenty-Five Thousand Dollars (\$25,000.00) annually required to pay the Debt Service on the Bonds.

Pre-Land Tax Credit Annual Service Charge - The Annual Gross Revenue from the Project multiplied by the Applicable PILOT Rate for a given year.

State – The State of New Jersey.

Substantially Complete or Substantial Completion – Completion of the Project to such a degree that the Project receives a Certificate of Occupancy providing that the Project may be legally occupied.

Successor Entity(ies) – An Urban Renewal Entity created to develop and own the Project, provided any such Successor Entity shall be subject to the requirements of the Redevelopment Agreement, including, but not limited to the transfer provisions set forth therein.

Tax Assessor – The City tax assessor.

Tax Collector – The City 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 - Any action or omission which by operation of the terms of this Agreement or Applicable Law shall cause the Entity to relinquish the tax exemption granted pursuant to this Agreement.

Total Project Cost – As defined in N.J.S.A. 40A:20-3(h).

Trust Estate – As defined in the Indenture.

Trustee – As defined in the Indenture.

Unit – Any individual building or building unit.

Unpledged Annual Service Charge – The Pre-Land Tax Credit Annual Service Charge plus an amount equal to the Land Tax Credit.

Urban Renewal Entity – Shall have the meaning as such term is defined, used and applied in the Long Term Tax Exemption Law.

ARTICLE I

INTERPRETATION AND CONSTRUCTION

SECTION 1.03 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.

(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.

(h) All references to Sections, Articles or Exhibits shall, unless indicated otherwise, refer to the Sections, Articles or Exhibits in this Agreement.

(i) It is expressly understood and agreed that the City expressly has relied upon the facts, data and representations contained in the Exemption Application in granting the tax exemption described in this Agreement.

{End of Article I}

ARTICLE II

APPROVAL

SECTION 2.01 Approval of Tax Exemption

Pursuant to the Ordinance, the Improvements to be constructed, renovated and maintained by the Entity on the Land shall be exempt from taxation as provided for herein and in the Long Term Tax Exemption Law. In accordance with N.J.S.A. 40A:20-12, the tax exemption shall constitute a single continuing exemption from local property taxation for the duration of this Agreement.

SECTION 2.02 Approval of the Entity

The Entity represents that its certificate of formation as attached hereto as *Exhibit D* contains all the requisite provisions of law, has been reviewed and approved by the Commissioner of the New Jersey 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 shall acquire and construct or cause to be constructed the Project in accordance with the Redevelopment Agreement and the Redevelopment Plan, the use of which Project is more specifically described in the Exemption Application.

SECTION 2.04 Construction Schedule

The Entity agrees to diligently undertake the commencement or cause the commencement of the construction and completion of the Project substantially in accordance with the Redevelopment Agreement.

SECTION 2.05 Ownership, Management and Control

The Entity represents that it controls the Land. The Entity covenants that it shall cause the redevelopment of the Land in conformance with the Redevelopment Agreement, the Redevelopment Plan and all Applicable Law.

The Entity covenants, warrants and represents that the Land and the Project shall be used, managed and operated for the purposes set forth in the Exemption Application and the Redevelopment Agreement, and in accordance with the Redevelopment Plan and all Applicable Laws.

SECTION 2.06 Project Financing Plan

The Entity represents that the Project shall be financed substantially in accordance with the Financing Plan.

SECTION 2.07 Findings

The City makes the following findings with respect to the Project:

- A. Relative Benefits of the Project: The Project will accelerate the remediation and development of vacant, underutilized [and contaminated] land and assist in the development of local infrastructure. Further, the Project will renew and revitalize the Redevelopment Area because it allows for the redevelopment of a site currently characterized by vacant land into a productive use that will temporarily and permanently generate jobs and permanently increase tax ratables (initially through the Annual Service Charge) within the Redevelopment Area.
- 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 and sales prices, as applicable 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

{End of Article II}

ARTICLE III

DURATION OF AGREEMENT

SECTION 3.01 Term

This Agreement shall become effective on the Effective Date. The Parties understand and agree that this Agreement, including the obligation to pay the Annual Service Charge required under Article IV and the tax exemption granted and referred to in Section 2.01, shall remain in effect until twenty (20) years from Effective Date. At the expiration of the term hereof or upon Termination, the tax exemption for the Improvements shall expire and the Improvements shall thereafter be assessed and taxed according to the general law applicable to other non-exempt property in the City. After expiration of the term hereof, all restrictions and limitations upon the Entity shall terminate upon the Entity's rendering and the City's acceptance of its final accounting, pursuant to N.J.S.A. 40A:20-12. Upon any Termination of the tax exemption described in Section 2.01, the date of such Termination shall be deemed to be the last day of the fiscal year of the Entity in which the Termination has occurred.

SECTION 3.02 No Voluntary Termination for Phase 1

WITH RESPECT TO THE FIRST PHASE OF THE PROJECT, NEITHER THE ENTITY, NOR THE CITY, MAY AT ANY TIME TERMINATE THIS AGREEMENT WHILE THE BONDS ARE OUTSTANDING, OR AMOUNTS THEREUNDER REMAIN DUE. THE ENTITY FURTHER EXPRESSLY ACKNOWLEDGES, UNDERSTANDS AND AGREES THAT IN ACCORDANCE WITH THE BOND FINANCING LAW, SPECIFICALLY N.J.S.A. 40A:12A-66(a), THE RELINQUISHMENT PROVISIONS SET FORTH IN THE LONG TERM TAX EXEMPTION LAW, SPECIFICALLY N.J.S.A. 40A:20-9(g) AND 13, SHALL NOT BE APPLICABLE IN ACCORDANCE WITH, PURSUANT TO, AND UNDER THIS AGREEMENT WITH RESPECT TO PHASE 1. THE ENTITY FURTHER EXPRESSLY REJECTS, REFUSES, RELINQUISHES, SURRENDERS, AND OTHERWISE WAIVES ANY AND ALL RIGHTS OF RELINQUISHMENT OF ITS STATUS UNDER THE ACTS AND THIS AGREEMENT THAT IT MAY HAVE OTHERWISE BEEN ENTITLED TO RELATING TO PHASE 1 IN ACCORDANCE WITH ANY APPLICABLE LAW, INCLUDING WITHOUT LIMITATION, N.J.S.A. 40A:20-13 DURING ANY PERIOD WHEN BONDS REMAIN "OUTSTANDING" OR AMOUNTS REMAIN DUE TO THE ENTITY WITHIN THE MEANING OF THE INDENTURE.

{End of Article III}

ARTICLE IV

ANNUAL SERVICE CHARGE

SECTION 4.01 Annual Service Charge

The Annual Service Charge shall be paid quarterly to the Trustee at the same times taxes are due. The Trustee shall allocate the Annual Service Charge, *pari passu*, in accordance with Sections 4.02, 4.03 and 4.04.

SECTION 4.02 Pledged Annual Service Charge

(a) The Pledged Annual Service Charge shall be paid, immediately upon receipt of the Annual Service Charge, by the Trustee to the Bond Trustee for deposit in the Revenue Fund (established pursuant to the Indenture) in accordance with Section 5.02 hereof and the Pledge Agreement.

(b) Once received by the Bond Trustee, the Pledged Annual Service Charge shall be disbursed in accordance with the Indenture.

(c) The Parties acknowledge that the Pledged Annual Service Charge shall be irrevocably pledged to pay the Debt Service Charge. To the extent that the amount of Pledged Annual Service Charge exceeds the Debt Service Charge, the balance shall be paid to the Entity as a capital grant to the Entity in accordance with Section 8(f) of the Local Redevelopment and Housing Law, for certain costs of the Project.

(d) The Entity acknowledges that it shall be obligated to pay the Pledged Annual Service Charge in connection with Phase 1 irrespective of a Default that may impact any other Phases of the Project.

SECTION 4.03 City Annual Service Charge

The Unpledged Annual Service Charge shall be paid, immediately upon receipt of the Annual Service Charge, by the Trustee to the City.

SECTION 4.04 County Portion

In accordance with N.J.S.A. 40A:20-12, the County Annual Service Charge shall be paid, immediately upon receipt of the Annual Service Charge, by the Trustee to the County.

SECTION 4.05 Land Taxes, Credits and Waivers; Other Charges

(a) The Entity hereby expressly acknowledges, understands and agrees that the tax exemption provided for herein shall apply to the Improvements and that Land Taxes shall be separately assessed by the City in accordance with Applicable Law.

(b) The Entity is required to pay both the Annual Service Charge and the Land Tax Payments and shall be entitled to the Land Tax Credit. In any year that the Entity fails to make any Land Tax Payments if and when due and owing, such delinquency for the period of delinquency only shall render the Entity ineligible for any Land Tax Credits against the Annual Service Charge for the subsequent year.

(c) The Entity expressly acknowledges, understands and agrees that in accordance with the Redevelopment Bond Law, specifically N.J.S.A. 40A:12A-66(a), the Annual Service Charge shall not be restricted or limited by, or otherwise subject to, the minimum, maximum or staged increased provisions of the Long Term Tax Exemption Law.

(d) The Entity hereby expressly acknowledges, understands, and agrees that, in addition to Land Taxes and Annual Service Charges, it shall be responsible for the payment (without any credit whatsoever hereunder) of all other applicable municipal charges that may, from time to time, be lawfully assessed upon its property, including, without limitation, any and all special benefit assessments, water and sewer charges, and other municipal charges, whether presently existing or hereinafter imposed, and that the City may enforce such assessments and charges in any manner (including, but not limited to, foreclosure or tax sale) permitted by applicable law.

SECTION 4.06 Material Conditions

It is expressly agreed and understood that payment of Land Taxes and Annual Service Charges and any interest payments, penalties or costs of collection due thereon, are material conditions of this Agreement. If any other term, covenant or condition of this Agreement or the Application, as to any person or circumstance shall, to any extent, be determined to be invalid or unenforceable by virtue of a non-appealable order of a court of competent jurisdiction, the remainder of this Agreement or the application of such term, covenant or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each remaining term, covenant or condition of this Agreement shall be valid and enforced to the fullest extent permitted by law.

SECTION 4.07 Payments

The Entity agrees to the payment of the Annual Service Charge, specifically including the Pledged Annual Service Charge, even in the event this Agreement is terminated with respect one or more Phases of the Project, but not in the event the entire Project is terminated. Except as may be provided for and expressly agreed to herein, the Entity and the City may agree to alter the amounts or dates for which the Annual Service Charge, or any installment thereof, shall be due and payable hereunder.

SECTION 4.08 Annual Service Charge as Municipal Lien

(a) The Parties hereby expressly acknowledge, understand and agree that in accordance with the Bond Financing Law, specifically N.J.S.A. 40A:12-68, and such other statutes as may be sources of relevant authority, if any, upon the recordation of the Ordinance and this Agreement, the Annual Service Charge shall be a continuous, municipal lien on the respective Land and that any subsequent Annual Service Charge, including any interest, penalties or costs of collection thereof, that shall thereafter become due or accrue, shall be added and relate back to and be part of the initial municipal lien.

(b) The Entity hereby expressly acknowledges, understands and agrees, and the City acknowledges, without making any representation, warranty or covenant, that (i) the Annual Service Charge shall constitute an automatic, enforceable and perfected statutory municipal lien for all purposes, including specifically and without limitation, the Federal bankruptcy code, regardless of whether the amount of the Annual Service Charge has been determined, and (ii) any applicable process, procedure or action of any court, government body or other relevant authority, including without limitation any confirmation hearing, to determine the amount of the Annual Service Charge due shall not affect the commencement or validity of the municipal lien.

SECTION 4.09 Annual Service Charge as Percentage of Annual Gross Revenue

The Bond Financing Law, specifically N.J.S.A. 40A:12A-66(a), provides that the Long Term Tax Exemption Law's provisions establishing a minimum or maximum annual service charge and requiring staged increases in annual service charges over the term of the exemption period are not applicable to a project, such as this Project, where all or a portion of the costs of the project are financed with the proceeds of redevelopment area bonds.

{End of Article IV}

ARTICLE V

PLEDGE OF PLEDGED ANNUAL SERVICE CHARGE TO THE BONDS

SECTION 5.01 Consent to Annual Service Charge

The Entity hereby acknowledges, consents and agrees (i) to the amount of the Annual Service Charge and to the liens established in this Agreement, (ii) that it shall not contest the validity or amount of any such lien, and (iii) that its remedies shall be limited to those specifically set forth herein and otherwise provided by law. The Entity agrees to the payment of the Annual Service Charge, specifically including the Pledged Annual Service Charge, even in the event this Agreement is terminated with respect one or more Phases of the Project, but not in the event the entire Project is terminated.

SECTION 5.02 Security for the Bonds

(a) Only for so long as the Bonds are outstanding, pursuant to the Bond Financing Law, specifically N.J.S.A. 40A:12A-67(c), and as security for the Bonds, the City and the Entity agree to and do hereby assign (effective only upon the Effective Date) all of its interest in each payment of the Pledged Annual Service Charge, including interest, penalties and costs of collection, to the extent necessary and for the purpose of meeting the Entity's obligations herein, to the Issuing Authority, or alternatively, through the Issuing Authority to the Bond Trustee as part of the pledge of the trust estate under the Indenture. Notwithstanding any law, or any provision contained herein, to the contrary, this pledge shall constitute an absolute and unconditional assignment of all of the City's right, title and interest in and to the Pledged Annual Service Charge, or any installment thereof, along with all of the City's rights and remedies available under this Agreement, including but not limited to, the right of collection of any and all Pledged Annual Service Charge due hereunder; provided, however, that notwithstanding the foregoing, the Pledge Agreement shall require that only the City can undertake the sale of the tax sale certificates, and in the same manner, and at the same time, as generally applicable for unpaid taxes due and owing to the City, subject to all applicable laws (including bankruptcy laws) necessary to realize the collection of Pledged Annual Service Charge remaining unpaid in accordance with this Agreement. The City hereby expressly represents, warrants and covenants that it has not, prior to the date hereof, and shall not, subsequent to the date hereof, pledge the Pledged Annual Service Charge, including any installment or portion, or any right or interest therein, to any person or entity other than the Issuing Authority, or alternatively, the Bond Trustee, it being hereby expressly acknowledged and represented by the City that the Pledge Agreement, is a reaffirmation of the pledge and assignment contained herein and shall not constitute a separate pledge and assignment, nor supersede or in any way alter the pledge and assignment contained herein.

(b) If any installment of the Annual Service Charge is not paid to the Trustee in accordance with this Agreement on the date and in the full amount scheduled to be paid, the

Entity hereby expressly waives any objection or right to challenge the use by the City, the Issuing Authority, the Trustee or the Bond Trustee of the enforcement of remedies to collect such installment of the Annual Service Charge as are afforded the City by law, including the Tax Sale Law, provided however, that in no event shall there be any acceleration of any amounts due and owing to repay the Bonds, and such remedies shall be limited solely to the collection of delinquent and unpaid amounts past due for payment, including interest, penalties and costs of collection provided for by the Tax Sale Law.

(c) Pursuant to the Bond Financing Law, specifically N.J.S.A. 40A:12A-67(c), and other applicable law, the Pledged Annual Service Charge shall not be included within the general funds of the City. The City's pledge and assignment of the Pledged Annual Service Charge to the Issuing Authority, or alternatively, the Bond Trustee, hereunder and under the Pledge Agreement shall be a limited obligation of the City payable to the extent of payments received from the Entity and shall not constitute a general obligation of the City.

(d) If received by the City, the City's Chief Financial Officer shall forward or cause the forwarding of all installments of the Pledged Annual Service Charge to the Bond Trustee in accordance with this Agreement and as further set forth in the Pledge Agreement.

(e) The Unpledged Annual Service Charge shall in no event constitute a portion of the trust estate under the Indenture, or otherwise constitute security for, the Bonds, and the Bond Trustee, upon receipt of any Unpledged Annual Service Charge, shall not set-off any such amount against any unpaid Pledged Annual Service Charge, and accordingly, the Bond Trustee shall transmit such Unpledged Annual Service Charge promptly to the City.

(f) It is hereby expressly understood by the Parties that under no circumstances shall the City be required to (i) purchase, or otherwise fund, any tax lien, tax sale certificate, or other mechanism for the enforcement of the Annual Service Charge, the sole obligation of the City being to undertake the sale of the tax sale certificates in the same manner, and at the same time, as generally applicable for unpaid taxes due and owing to the City, subject to all applicable laws (including bankruptcy laws), or (ii) "guarantee" payment of unpaid Annual Service Charge as if they constituted taxes owing to another taxing district.

{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 take such actions as are necessary under Applicable Laws to obtain all required Certificates of Occupancy in a reasonably timely manner. The City shall, in good faith, reasonably cooperate with the Entity and use its best efforts to support and expedite the review, comment and approval of any application of the Entity seeking a Certificate of Occupancy.

SECTION 6.02 Filing of Certificate of Occupancy

The Entity shall file or cause to be filed with both the Tax Assessor and the Tax Collector a copy of each Certificate of Occupancy promptly upon receipt thereof by the Entity.

Failure of the Entity to file or cause to be filed such issued Certificate of Occupancy as required by the preceding paragraph shall not militate against any action or non-action by the City, 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 Calculation of Net Profit.

For the purposes of this Agreement, the Entity agrees to calculate its “Net Profit” pursuant to N.J.S.A. 40A:20-3(c).

SECTION 7.02 Periodic Reports/Notices

(a) Auditor’s Report: Within ninety (90) days after the close of each fiscal or calendar year that this Agreement shall continue in effect, according to the Entity’s accounting basis, the Entity shall submit to the Mayor, City Council, the Tax Collector and the City Clerk, who shall advise those municipal officials required to be advised, its Auditor’s Report for the preceding fiscal or calendar year. The Auditor’s Report shall clearly identify and calculate the Net Profit for the Entity during the previous year. The Entity assumes all costs associated with preparation of the periodic reports.

(b) Total Project Cost Audit: Within one hundred twenty (120) days after the issuance of the last Certificate of Occupancy for the Project, the Entity shall submit to the Mayor, City Council, the Tax Collector and the City 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 or general contractor.

(c) Disclosure Statement: On each anniversary date of the execution of this Agreement, the Entity shall submit to the Mayor, City Council, the Tax Collector and the City Clerk, 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 City may reasonably request from time to time regarding such ownership interest in the Project (each a “**Disclosure Statement**”).

(d) Each entity and person to whom any such report or information described in Section 7.02(a) through (c) is distributed shall, to the greatest extent possible, and unless prohibited by Applicable Laws, receive, hold and maintain any and all such reports and information STRICTLY CONFIDENTIAL as PROPRIETARY INFORMATION of Entity and not for general publication or distribution; and furthermore shall not so distribute, publish in any form or forum or distribute such reports or information, or any part thereof, except upon order by a court of competent jurisdiction or as required by Applicable Laws.

SECTION 7.03 Inspection

Upon reasonable advance request in writing, during normal business hours, the Entity shall permit (A) the inspection of its property, equipment, buildings and other facilities of the Project, and (B) the examination and audit of its books, contracts, records, documents and papers, in each case by representatives duly authorized by the City and Division of Local Government Services in the New Jersey Department of Community Affairs as provided in the Redevelopment Agreement, provided that such rights of inspection also shall extend to representatives in the Division of Local Government Services in the New Jersey Department of Community Affairs pursuant to N.J.S.A. 40A:20-9(e), duly authorized by the City, as reasonably deemed necessary and appropriate by the City. Such inspections and examinations shall be made as provided in the Redevelopment Agreement. The inspections and examinations shall not in any manner materially interfere with construction or operation of the Project.

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 or dividends pursuant to the provisions of N.J.S.A. 40A:20-15 and N.J.S.A. 40A:20-3(c). Upon expiration or Termination of the tax exemption, the foregoing limitations on the profits or dividends of the Entity shall be of no further force or effect.

The Entity shall have the right in any year to establish and maintain 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 in which the reserve is established or maintained, 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.

There is expressly excluded from calculation of “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, the amount of any sale, including any gain realized thereby, by the Entity on the sale of all or any portion of the Project, including a Unit, whether or not taxable under federal or State law.

SECTION 7.05 Payment of Dividend and Excess Profit Charge

In the event the Net Profits of the Entity (after funding of any reserve described in Section 7.04), in any fiscal year, shall exceed the Allowable Net Profits for such period, then the Entity, within one hundred twenty (120) days after the end of such fiscal year, shall pay such excess Net Profits to the City as an additional Annual Service Charge. 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 shall be treated by the City as additional Annual Service Charge subject to the provisions of this Agreement, including, but not limited to, the pledge set forth in Section 5.02.

{End of Article VII}

ARTICLE VIII

ASSIGNMENT AND/OR ASSUMPTION

SECTION 8.01 Approval

(a) The Entity may not sell, transfer, lease, or otherwise convey all or a portion of the Land, including any Improvements related thereto (for as long as this Agreement is in effect) except with the express written permission of the City, the Issuing Authority, Trustee and Bond Trustee and such sale, transfer, lease, or other conveyance is to an Urban Renewal Entity and is in compliance with the Long Term Tax Exemption Law. A Declaration of Restriction on Transfer to such effect will be recorded against the Land in the office of the Cumberland County Register simultaneously with the recordation of this Agreement on or after the Effective Date. Any purported sale, transfer, conveyance or lease of the Land except as provided above, including any Improvement related thereto, in violation of this Section 8.01(a) shall be void *ab initio*. The Issuing Authority, the Trustee and the Bond Trustee shall each be deemed to be a third-party beneficiary of this Section 9.01(a) for as long as any Bonds remain outstanding.

(b) In accordance with the Long Term Tax Exemption Law, in the event of any sale or other transfer of fee title ownership, in accordance with subsection (a) above, by the Entity (as a limited dividend entity), such Entity shall no longer be subject to, bound by, or otherwise governed by this Agreement, provided however, that within ninety (90) days after the date of the end of the Entity's fiscal year in which such sale or other transfer of fee title occurred, such Entity shall pay to the City any reserves it was authorized to maintain, if any, and any and all Excess Net Profits, if any, all in accordance with N.J.S.A. 40A:20-6, 15.

(c) In accordance with the Long Term Tax Exemption Law, specifically N.J.S.A. 40A:20-6, 16, in the event of any sale or other transfer of fee title ownership, in accordance with subsection (a) above, by the Entity (if it is a nonprofit entity), such Entity shall no longer be subject to, bound by, or otherwise governed by this Agreement, provided however, that within ninety (90) days after the date of the end of the Entity's fiscal year in which such sale or transfer occurred, such Entity shall pay to the City any reserves it was authorized to maintain, if any, and any and all Net Profits, if any, all in accordance with Section 8.05(b) hereof.

(d) THE CITY AND EACH ENTITY HEREBY EXPRESSLY ACKNOWLEDGE, UNDERSTAND AND AGREE THAT UPON THE CONVEYANCE, WHETHER BY SALE, GRANT, AWARD, GIFT, TRANSFER OR OTHERWISE, OF FEE TITLE TO THE LAND, INCLUDING ANY IMPROVEMENTS RELATED THERETO, WHETHER IN ACCORDANCE WITH AND PURSUANT TO THE TERMS HEREOF, THE TAX SALE LAW, OR OTHERWISE, INCLUDING WITHOUT LIMITATION ANY STATE INSOLVENCY LAW, THE CONSTRUCTION LIEN LAW (N.J.S.A. 2A:44A-1 ET SEQ.) OR ANY LAW OF SIMILAR EFFECT, OR THE FEDERAL BANKRUPTCY CODE, THE LAND, INCLUDING ANY IMPROVEMENTS RELATED THERETO, AND THE RELEVANT ENTITY, SHALL CONTINUE TO BE SUBJECT TO, GOVERNED AND BOUND BY THE TERMS OF THIS AGREEMENT. ANY ACCEPTANCE OR CLAIM OF TITLE OR OWNERSHIP OF THE LAND, INCLUDING ANY IMPROVEMENTS RELATED THERETO, SHALL CONSTITUTE AN ACKNOWLEDGEMENT AND ASSUMPTION, FOR

ALL PURPOSES OF LAW, BY SUCH PERSON OR ENTITY ACCEPTING OR CLAIMING TITLE OR OWNERSHIP, THAT IT, INCLUDING ITS SUCCESSORS IN INTEREST IN THE LAND, AND THE LAND, INCLUDING ANY IMPROVEMENTS RELATED THERETO, SHALL BE SUBJECT TO, GOVERNED AND BOUND BY THIS AGREEMENT.

SECTION 8.02 Operation of Project

The Land, including any Improvements related thereto, shall be operated in accordance with all Applicable Laws.

SECTION 8.03 Subordination of Fee Title

It is expressly acknowledged, understood and agreed that the Entity has the right, subordinate to the lien of the Annual Service Charge and to the rights of the City, the Issuing Authority, the Trustee and the Bond Trustee hereunder, to encumber the fee title to the Land, including any Improvements related thereto, and that any such encumbrance shall not be deemed to be a violation of this Agreement. This section shall not prohibit the encumbrance of a mortgage lien(s) on the Land, it being expressly understood that a mortgage lien(s) takes subject to the municipal lien created by the Annual Service Charge under the Acts.

{End of Article VIII}

ARTICLE IX

WAIVER

SECTION 9.01 Waiver

Except as specifically provided in this Agreement including, but not limited to, Sections 3.02 and 4.05, and, 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 contained in this Agreement or otherwise shall constitute a waiver or relinquishment by the City or the Entity of any rights and remedies provided by Applicable Laws. Nothing herein shall be deemed to limit any right of recovery that the City 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 courier or overnight delivery service, as follows:

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

NEP Real Estate of Vineland NJ Urban Renewal, LLC
92 Reese Road
Millville, New Jersey 08332
Attn: John Ruga

with copies to:

Michael P Fralinger, Esq.
100 N Main Road
Vineland, New Jersey 08360

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

City of Vineland
Attn: Sandra Forosisky
640 East Wood Street
Vineland, New Jersey 08360

with copies to

Jong Sook Nee, Esq.
Nee Plata Law LLC
101 Eisenhower Parkway
Suite 101
Roseland, New Jersey 07068

The notice to the City shall identify the subject with the block and lot numbers, and any other qualifying designation as may apply, of the tax parcels comprising the Land.

{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 the tax exemption to remain bound by the provisions of Federal and State law and any lawful ordinances and resolutions of the City, including, but not limited to, the Long Term Tax Exemption Law. The Entity's failure to substantially comply with such statutes or ordinances and the continuation of such noncompliance beyond any applicable notice, grace or cure period provided therein or herein, shall constitute a 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 the laws of the State, and without regard to or aid or any presumption or other rule requiring construction against the party drawing or causing this Agreement to be drawn since counsel for both the Entity and the City 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 City or Issuing Authority shall be named as a party in any action brought by a third-party against the City, Issuing Authority or the Entity by allegation of any breach, Default or violation of any of the provisions of this Agreement and/or the provisions of the Long Term Tax Exemption Law or by allegation and materially arising from or relating to the Project under any other Applicable Laws, the Entity shall indemnify and hold the City and/or the Issuing Authority 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 violation of any of the provisions of this Agreement, the provisions of the Long Term Tax Exemption Law and/or any other Applicable Laws; provided, however, that the Entity shall not be required to indemnify the City or the Issuing Authority for any willful or negligent act, omission or misconduct by the City or the Issuing Authority or any of their officers, officials, employees or agents or a breach of the Agreement by the City. Upon the City or Issuing Authority becoming aware of any claim or loss for which indemnification is sought, the City or the Issuing Authority shall promptly provide the Entity with written notice thereof and demand for indemnification. The Entity shall defend against any such claim or loss at its own expense. The City or the Issuing Authority maintain the right to intervene as a party thereto, to which intervention the Entity hereby consents, the reasonable expense thereof to be borne by the Entity.

{End of Article XIII}

ARTICLE XIV

DEFAULT; REMEDIES; TERMINATION

SECTION 14.01 Default

Default shall be (i) failure of the Entity to make payment of the Annual Service Charge when due hereunder or to otherwise conform to the terms of this Agreement (ii) an event of default under the Redevelopment Agreement and (iii) any failure of the Entity to substantially observe and perform any other obligation imposed upon the Entity by Applicable Laws beyond any applicable notice, cure or grace period.

SECTION 14.02 Cure Upon Default

Should the Entity be in Default of any obligation under this Agreement, the City shall notify the Entity and any mortgagee 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 Entity shall have sixty (60) days to cure any Default (other than a Default in payment of any installment of the Annual Service Charge) from the date of its receipt of the Default Notice; provided, however, that if such Default is not reasonably able to be cured within such sixty (60) day period and the Entity is diligently pursuing a cure, such cure period shall extend as long as the Entity continues diligently to pursue such cure, but in any event, not more than one hundred twenty (120) days from the date of Entity’s receipt of the Default Notice. Any failure to pay the Annual Service Charge within five (5) days of the date due for such payment shall be deemed a Default, without the requirement for the issuance of any notice.

SECTION 14.03 Remedies Upon Default Cumulative; No Waiver

In the event of any uncured Default beyond applicable cure periods, the City shall have the right to proceed against the Project, Phase and/or the Land pursuant to the provisions of Applicable Laws. Upon any Default in payment of any installment of the Annual Service Charge, the City shall have the right to proceed to In Rem Tax Foreclosure consistent with the provisions and procedures of the Tax Sale Law.

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

In the event of 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 the American Arbitration Association in the State to be determined in accordance with its rules and regulations in such a fashion to accomplish the purpose of said laws. Costs for said arbitration, but not counsel fees, shall be paid by each Party equally, to be reimbursed in full by the non-prevailing Party to the prevailing Party.

SECTION 14.04 Remedies

The City's customary tax payment enforcement proceedings shall apply to the collection of any delinquent payment of the Annual Service Charge. 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, and the continuance of such Default after expiration of any notice, grace or cure periods under Applicable Laws, the City in addition to its other remedies, reserves the right to proceed against the Entity's land and premises, in the manner provided by Applicable Laws, including the Tax Sale Law, and any act supplementary or amendatory thereof, provided that it is understood and agreed that the City shall look solely to the estate and property of the Entity in the Project (including the rental income and insurance proceeds therefrom) for the satisfaction of the City's remedies for the collection of a judgment or other judicial process requiring the payment of money by the Entity in the event of any Default or breach by the Entity with respect to any of the terms, covenants and conditions of this Agreement to be observed or performed by the Entity, and any other obligation of the Entity created by, under or as a result of this Agreement, and no other property or assets of the Entity, or of their partners, beneficiaries, shareholders, officers, directors, members, managers, tenants, principals, agents or attorneys (as the case may be) (in any of their capacities) shall be subject to service, levy, execution or other enforcement procedures for the satisfaction of the City's remedies. In no event shall the City name the Entity's partners, members, shareholder's, officers, directors, managers, beneficiaries, tenants, shareholders, principals, agents or attorneys (in any of their capacities) to any suit or other proceeding to which the City and/or Entity are a party arising out of or relating to this Agreement.

The City shall pursue the collection of delinquent payments of Annual Service Charge with the same diligence it employs in the collection of the City's general *ad valorem* real estate taxes, including the commencement of an In Rem Tax Foreclosure. The City agrees that it shall provide notice to the Issuing Authority and the Trustee of any legal proceedings to be instituted for the collection of delinquent payments of the Annual Service Charge. The Parties understand and agree that the City's ordinary discretion in this regard allows it to decide not to expend resources to collect *de minimis* outstanding amounts; provided that the City shall obtain the Trustee's consent with respect to any such amounts in excess of five hundred dollars (\$500) in the event the collection of the Annual Service Charge falls below ninety percent (90%) of the amount assessed and billed in any given quarter.

In the event the City does not pursue the collection of delinquent payment amounts in the manner provided herein, the Issuing Authority may pursue collection of the delinquent Annual Service Charge pursuant to the authority granted in Article V and the Bond Financing Law.

Whenever the word “Taxes” appears, or is applied, directly or implied, to mean taxes or municipal liens on land, such statutory provisions shall be read, as far as it is pertinent to this Agreement, as if the Annual Service Charge were taxes or municipal liens on land. In either case, however, the Entity does not waive any defense it may have to contest the rights of the City to proceed in the above-mentioned manner.

SECTION 14.05 Termination Upon Default of the Entity

Subject to the provisions of Section 3.02, in the event the Entity fails to cure or remedy a Default, within the time period provided in Section 14.02, the City may terminate this Agreement upon thirty (30) days written notice to the Entity, the Issuing Authority and the Trustee. Notwithstanding the foregoing, the City may terminate this Agreement for any Phase other than Phase 1 in the event of an uncured Default of this Agreement. In the event the City terminates this Agreement for any Phase other than Phase 1, the Entity shall remain obligated to pay the Annual Service Charge, including the full amount of the Pledged Annual Service Charge, for any remaining Phases in full compliance with the terms of this Agreement.

SECTION 14.06 Final Accounting

Within ninety (90) days after the date of Termination of tax exemption, the Entity shall provide a final accounting and pay to the City 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 date of termination of this Agreement shall be deemed to be the last day of the fiscal year of the Entity in which the termination occurred.

SECTION 14.07 Conventional Taxes

Upon termination or expiration of this Agreement for the Project or any Phase thereof, the tax exemption for the Improvements shall expire and the Improvements thereon shall thereafter be assessed and conventionally taxed according to the general law applicable to other nonexempt taxable property in the City. The Entity shall cooperate with the City to effectuate the terms of such termination, including the execution of any documents, deeds, subdivisions, or other instruments required by the City.

{End of Article XIV}

ARTICLE XV

MISCELLANEOUS

SECTION 15.01 Conflict

The Parties agree that in the event of a conflict between the Exemption 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 which are not contained in this Agreement.

SECTION 15.03 Entire Document

All conditions in the Ordinance are incorporated in this Agreement and made a part hereof. This Agreement, the Ordinance and the Exemption Application constitute the entire agreement between the Parties as to the subject matter thereof and 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 Recording

Upon the execution and delivery of this Agreement, the entire Agreement, including the Ordinance, shall be filed and recorded with the office of the Cumberland County Register by the Entity, at the Entity's expense, such that this Agreement and the Ordinance shall be reflected upon the land records of the County as a perfected statutory municipal lien upon and a covenant running with each and every parcel of the Land including the Improvements related thereto

SECTION 15.06 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 the Annual Service Charge, as required by law. Nothing herein is intended to release the Entity from its obligation to make such payments.

SECTION 15.07 Financing Matters

The financial information required by the final paragraph of N.J.S.A. 40A:20-9 is set forth in the Exemption Application.

SECTION 15.08 Counterparts; Electronic Signatures

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. Electronic or facsimile signatures shall constitute original signature for all purposes under this Agreement.

SECTION 15.09 Amendments

This Agreement may not be amended, changed, modified, altered or terminated, other than as may be set forth herein, without the written consent of the Parties hereto, provided however, that notwithstanding anything contained herein to the contrary while the Bonds are outstanding, no modification or amendment to this Agreement shall be effective, or otherwise have any force and effect, unless permitted by, or otherwise provided for in, the Indenture or with the express written consent of the Trustee. In the event that the Local Finance Board, in accordance with the Long Term Tax Exemption Law, specifically N.J.S.A. 40A:20-18, shall implement a financial plan that shall require modification of this Agreement, the City hereby expressly covenants, warrants and represents that it shall not approve any modification if such modification would alter, adjust, amend, revise or otherwise change (a) any Annual Service Charge due hereunder, or the calculation thereof, (b) the date on which any Annual Service Charge shall be due hereunder, or (c) the pledge and assignment by the City to the Issuing Authority, or alternatively, the Bond Trustee, as set forth herein and as may be further described in the Pledge Agreement. The Parties hereby expressly acknowledge that the Bond Financing Law, specifically N.J.S.A. 40A:12A-71, provides, among other things, that the State pledges, covenants and agrees with the Bondholders that it will not limit or alter the terms of any agreement, ordinance or resolution, which shall include, but not be limited to, the Ordinance and this Agreement, made in connection with the security for the Bonds, that shall in any way impair the rights or remedies of the Bondholders.

SECTION 15.10 Certification

The City clerk shall certify to the Tax Assessor, pursuant to N.J.S.A. 40A:20-12, that an agreement with an Urban Renewal Entity, i.e., the Entity, for the development of the Land, has been entered into and is in effect as required by the Long Term Tax Exemption Law. Delivery by the City clerk to the Tax Assessor of a certified copy of the Ordinance adopted by the City Council approving the tax exemption described herein and this Agreement 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 City 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 City Clerk that the exemption has been terminated.

Further, upon the execution of this Agreement, a certified copy of the Ordinance and this Agreement shall forthwith be transmitted to the Director of the Division of Local Government Services, New Jersey Department of Community Affairs, by the City Clerk.

SECTION 15.11 Severability

If any terms or provision of this Agreement or the application thereof shall to any extent be held to be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to circumstances other than those to which it is invalid or unenforceable, shall not be affected thereby, and each other term and provision of this Agreement shall be valid and shall be enforced to the extent permitted by Applicable Laws.

SECTION 15.12 Restated Agreement(s)

This Agreement may be separated into separate agreements on a Phase by Phase basis; which separate agreements shall not have cross default provisions between and among such agreements or the Phases. In such instances conformed agreements (with appropriate changes required when utilizing separate agreements) shall be prepared and executed without further approval of the City Council. The applicable City officials are permitted to execute such multiple conformed agreements.

{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.

**NEP REAL ESTATE OF VINELAND NJ URBAN
RENEWAL, LLC,
a New Jersey limited liability company**

By: _____

CITY OF VINELAND

By: _____
Mayor

STATE OF NEW JERSEY :
: ss
COUNTY OF CUMBERLAND :

The foregoing instrument was acknowledged before me this ____ day of _____, 2018, by NEP Real Estate of Vineland NJ Urban Renewal, LLC, a New Jersey limited liability company, by _____, members, on behalf of the company.

Notary Public

Commission Expiration: _____

STATE OF NEW JERSEY :
: ss
COUNTY OF CUMBERLAND :

The foregoing instrument was acknowledged before me this ____ day of _____, 2018, by the CITY OF VINELAND, a municipal corporation of the County of Cumberland and State of New Jersey, by _____, its Mayor, on behalf of the City.

Notary Public

Commission Expiration: _____

Exhibit A

Description of Land

Exhibit B
Exemption Application

Exhibit C
Ordinance

Exhibit D

Certificate of Formation of the Entity