

AL/IL LONG TERM TAX EXEMPTION FINANCIAL AGREEMENT

**THIS FINANCIAL AGREEMENT**, (“**Agreement**”) is made this \_\_\_ day of \_\_\_\_\_, 2020, by and between Hurstmont Estate Urban Renewal Entity, LLC (“**Redeveloper**”), an urban renewal entity formed and qualified to do business under the provisions of the Long Term Tax Exemption Law, *N.J.S.A. 40A:20-1 et seq.*, (the “**LTTE**”) having its principal office located at 14 Doty Road, Unit B, Haskel, New Jersey 07420, and the **TOWNSHIP OF HARDING**, a public body corporate and politic of the State of New Jersey, having its principal office located at 21 Blue Mill Road, New Vernon, New Jersey 07976 (the “**Township**”, together with **Redeveloper**, the “**Parties**”).

**RECITALS**

**WHEREAS**, the Township Committee of the Township of Harding has adopted by Ordinance Number 13-2019 enacted June 24, 2019 and Ordinance Number 16-2019 enacted September 30, 2019, a certain Glen Alpin/Hurstmont Redevelopment Plan (the “**Redevelopment Plan**”); and

**WHEREAS**, the Redevelopment Plan was adopted with respect to certain lands designated as Lot 2, Block 27, and Lot 1, Block 34 as shown on the Tax Assessment Map of the Township of Harding (the “**Area in Need of Redevelopment**”); and

**WHEREAS**, this Financial Agreement concerns the northerly portion of Lot 2, Block 27 depicted as Proposed Lot 1 on **Exhibit A** attached hereto and made a part hereof (the “**Property**”); and

**WHEREAS**, on \_\_\_\_\_, 2020, the Township and the Redeveloper entered into a Redevelopment Agreement (the “**Redevelopment Agreement**”) for the redevelopment of the Property; and

**WHEREAS**, the Property is to be redeveloped with approximately 125 Apartment Style Independent Living Units and no more than 85 units designated as “Assisting Living

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Residences” and/or units located within the Dementia Care Home all as defined in the Redevelopment Plan; and

**WHEREAS**, The Project may be developed in two or more phases (each a “**Project Phase**”); and

**WHEREAS**, there will be developed a combination of 40 Affordable Housing Units within the Independent Living Units, Assisted Living Units and Dementia Care Home; and

**WHEREAS**, the Septic Treatment Facility described in Section 4.16 of the Redevelopment Agreement will be designed to and will accommodate the septic demand of the redeveloped historic Glen Alpin property located on Lot 1, Block 34; and

**WHEREAS**, the redevelopment of the Property requires extraordinary costs related to excavation, removal of fill, retaining walls, the Septic Treatment Facility, the set aside at no cost to the Township of approximately 2.5 acres for open space, the construction of a section of the regional Patriot’s Path walking trail, off-site traffic improvements, exterior building façade finishes and restoration of historic ornamental garden features; and

**WHEEAS**, this Agreement will assist Redeveloper in meeting the extraordinary costs associated with the Project as recognized in N.J.S.A. 40A:20-3.h., to facilitate redevelopment of the Property; and

**WHEREAS**, terms not otherwise defined in these recitals shall have the meaning ascribed to them in Section 1.2 of this Agreement; and

**WHEREAS**, Section 5.2 of the Redevelopment Agreement provides that the Township would, subject to certain conditions set forth therein, negotiate and enter into an agreement for a tax exemption and payments in lieu of taxes, pursuant to the LTTE with the Redeveloper; and

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**WHEREAS**, pursuant to Section 8 of the LTTE, on \_\_\_\_\_, 2020, Redeveloper filed an application for tax exemption for the Property (the “**Application**”), a copy of which is attached hereto as **Exhibit B**; and

**WHEREAS**, the Township has determined that the Project will result in significant benefits to the Township, including:

- (i) the provision for affordable housing to be located within the Township;
- (ii) the development of a mix of senior related housing and health care opportunities within the Township;
- (iii) the expansion of the Patriot’s Path walking trail;
- (iv) the provision for additional preservation of open space;
- (v) accommodating the septic demand of the redeveloped historic Glen Alpin property;
- (vi) the creation of jobs during construction; and
- (vii) new business that will contribute to the economic growth of the Township, and the Project can result in significant benefits to the Township which are far greater to the Township than the cost, if any, associated with the grant of a tax exemption for the Property; and

**WHEREAS**, this Agreement will assist Redeveloper to facilitate the marketing of the senior housing with the intention to affect a stabilization of the Project; and

**WHEREAS**, on \_\_\_\_\_, 2020, the Township adopted Ordinance No. \_\_-2020 (the “**Ordinance**”) approving this Financial Agreement, a copy of which is attached hereto as **Exhibit C**.

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

### **ARTICLE I - GENERAL PROVISIONS**

#### **Section 1.1 Governing Law**

This Agreement shall be governed by the provisions of the LTTE and the Local Redevelopment and Housing Law, *N.J.S.A. 40A:12A-1 et seq.* (the “**LRHL**”), and any other applicable state, federal or local laws, rules, regulations, statutes and ordinances applicable to the Project (“**Applicable Law**”). This Agreement shall also be governed by the Ordinance, pursuant to which the Township approved the Annual Service Charge and authorized the execution of this Agreement.

#### **Section 1.2 General Definitions**

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

Affordable Unit – shall mean any residential Unit other than a Unit offered for market rents or charges, including but not limited to a residential Unit that is subject to restrictions on sale price, rental price, or purchaser income.

Allowable Net Profit (or “ANP”) – The Net Profit of Redeveloper that does not exceed the Allowable Profit Rate, pursuant to the provisions of *N.J.S.A. 40A:20-3.c*.

Allowable Profit Rate (or “APR”) – The Allowable Profit Rate for the purpose of this Agreement is the greater of 12% or 1.25% over permanent financing for the Project in accordance with *N.J.S.A. 40A:20-3.b*.

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Annual Service Charge – The annual amount Redeveloper has agreed to pay the Township in lieu of full taxation on the Improvements on the Project pursuant to *N.J.S.A.* 40A:20-12 and as further set forth in Section 4.1.

ASC Start Date – as defined in Section 4.1.

Auditor's Report – A complete financial statement outlining the financial status of the Project (for the relevant period of time), the contents of which have been prepared in a manner consistent with the current standards of the Financial Accounting Standards Board, and which fully details all items as required by all state statutes, which has been certified as to its conformance with such standards by a certified public accountant who is, or whose firm is, licensed to practice that profession in the State of New Jersey.

Certificate of Occupancy – A document issued by the Township authorizing the permanent occupancy of a building, pursuant to *N.J.S.A.* 52:27D-133, and any other Applicable Law.

Certificate of Completion – A determination by the Township made with respect to the entire Project or Project Phase thereof that the construction activities entailed are completed in all material respects and that the entire Project is ready for its intended use. The date for issuance of the Certificate of Completion shall ordinarily mean the date upon which the phase of the Project receives, or is eligible to receive, its last permanent Certificate of Occupancy.

Effective Date – The date upon which the last party executes this Agreement.

Gross Revenue – Any and all revenue derived by Redeveloper in connection with the Project as defined by *N.J.S.A.* 40A:20-3.a., including revenue from wireless antennas.

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Improvements – Any building, structure or fixture permanently affixed to the Land or any structure or fixture affixed to the Property and to be constructed as part of the Project.

In Rem Tax Foreclosure or Tax Foreclosure – A summary proceeding by which the Township may enforce a lien for real estate taxes due and owing by tax sale, under *N.J.S.A. 54:5-1 et seq.* and/or any other Applicable Law.

Land Taxes – The amount of taxes (including municipal, county and school) assessed on the value of land on which the Improvements are located.

Land Tax Payments – Payments made on the quarterly due dates for Land Taxes as determined by the Township Tax Assessor and the Township Tax Collector.

Market Unit – shall mean any Unit for which (i) no restrictions or limitations are imposed on the sales or rental prices, and (ii) no payments of any kind are required in lieu of restrictions or limitations on the sales or rental prices.

Net Profit – The Gross Revenue of Redeveloper, less all operating and non-operating expenses of Redeveloper for the Project, all determined in accordance with generally accepted accounting principles and the provisions of *N.J.S.A. 40A:20-3.c.*

Owner – Each and every owner, whether in fee simple or otherwise, of any portion of the Property or any Improvement related thereto, regardless of whether such owner shall be Redeveloper, a subsequent urban renewal entity, as the same is defined in the LTTE and pursuant to the terms set forth herein, or any other company, entity or person.

Redeveloper – Hurstmont Estate Urban Renewal Entity, LLC, a New Jersey limited liability company established and operated pursuant to the laws of the State of New Jersey, or any successor in interest of the Project in whole or in part, provided such successor(s) in interest is

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formed and is operated under Applicable Law and the form utilized is qualified by the State of New Jersey Department of Community Affairs to be an urban renewal entity and the transfer has been duly approved by the Township pursuant to the Redevelopment Agreement.

Substantial Completion - shall mean as to the entire Project that it has been constructed in accordance with the Redevelopment Agreement and as to each Project Phase that it has received either a Certificate of Occupancy or is eligible to receive a Certificate of Occupancy.

Term – is defined in Section 3.1.

Termination – the expiration of the term of this Agreement in accordance with Section 3.1 or Section 11.1 hereof which by operation of the terms of this Financial Agreement shall cause the relinquishment of the tax exemption applicable to any Improvement, including any Unit.

### **ARTICLE II – APPROVAL**

#### **Section 2.1 Approval of Tax Exemption**

The Township hereby grants its approval for this Financial Agreement and the Long-Term Tax Exemption for the Improvements to be constructed upon the Property and Land Taxes, in accordance with the terms and conditions of this Financial Agreement and the provisions of the LTTE.

#### **Section 2.2 Approval of Redeveloper**

Approval is hereby granted to Redeveloper, a copy of whose Certificate of Formation is attached and annexed hereto as **Exhibit D**. Redeveloper represents that its Certificate of Formation contains all the requisite provisions of Applicable Law, has been reviewed and approved by the Commissioner of the State of New Jersey Department of Community Affairs

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and has been filed with, as appropriate, the State of New Jersey Department of Treasury, all in accordance with *N.J.S.A. 40A:20-5*.

### **Section 2.3 Improvements to be Constructed; Redevelopment Agreement**

Redeveloper represents that it will construct and complete the Project in accordance with the terms and conditions of the Redevelopment Agreement and shall comply with the provisions of all Applicable Law.

### **Section 2.4 Ownership, Management and Control**

Redeveloper represents that it is or prior to the commencement of construction, will become the owner of the Property upon which the Project will be constructed.

### **Section 2.5 Financial Plan.**

The Improvements shall be financed in accordance with the financial plan, as more specifically described in the Application. The plan sets forth the estimated Total Project Cost, the source of funds and the source and amount of paid-in capital.

## **ARTICLE III - DURATION OF AGREEMENT**

### **Section 3.1 Term.**

So long as there is compliance with the LTTE and this Agreement, this Agreement shall remain in effect for thirty (30) years from the date of the Certificate of Completion for each phase of the Property, (but in no event later than 35 years after the date of this Agreement pursuant to *N.J.S.A. 40A:20-13*) subject to the further limitations and agreements contained herein, and shall only be effective and in force during the period while the Improvements are owned by an urban renewal entity formed pursuant to *N.J.S.A. 40A:20-5* and Title 15A of the New Jersey Statutes, or (the “**Term**”). After the expiration of the Term or termination by Redeveloper pursuant to *N.J.S.A. 40A:20-13*: (i) the exemption for the Improvements shall



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expire and the Property and the Improvements shall thereafter be assessed and taxed according to the general law applicable to other non-exempt property in the Township, and (ii) all restrictions and limitations upon Redeveloper shall terminate. In the event of a termination by Redeveloper, such termination shall be subject to Redeveloper rendering, and the Township's acceptance of Redeveloper's final accounting.

**ARTICLE IV - ANNUAL SERVICE CHARGE**

**Section 4.1 Annual Service Charge**

In consideration of the aforesaid exemption from taxation on Improvements, Redeveloper shall make payment to the Township of the Annual Service Charge set forth in this Article IV commencing on the ASC Start Date, which shall be the first day of the month following issuance of a Certificate of Occupancy for a Project Phase. From the time of the execution of this Agreement until the ASC Start Date, the Municipality agrees that no assessment shall be made upon any improvements constructed in connection with the Project, whether by added/omitted assessment, revaluation, interim assessment or any other manner permitted by law.

(a) A separate Annual Service Charge for the Project shall commence on the ASC Start Date and be calculated from the first day of the calendar quarter following the issuance by the Township of a Certificate of Occupancy for each Project Phase.

(b) The Annual Service Charge shall be calculated using an annual formula, which provides that the Annual Service Charge in a given year shall be an amount equal to the percentage of Gross Rents specified in Table 4.1(b) below as "Gross Rent Percentage", but in no event less than an amount equal to the corresponding percentage of ad valorem taxes otherwise due on the Project improvements specified in Table 4.1(b) below as "Tax Percentage."

**Table 4.1(b).**

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Year	Gross Rent Percentage	Tax Percentage
1-5	10%	0%
6-15	12%	80%
16-30	13%	90%

(c) From the Annual Service Charge paid by the Owner, the Township shall annually remit five percent (5%) of the payment received to the County of Morris in accordance with the provisions of *N.J.S.A. 40A:20-12*.

**Section 4.2 Staging Schedule for Annual Service Charge**

The Annual Service Charge shall be scheduled over the term of the Agreement in accordance with *N.J.S.A. 40:20-12(b)* as follows:

Stage One (*Years 1 - 15*): From the ASC Start Date and for each of the 6 years thereafter, the Annual Service Charge shall be the amount determined pursuant to Section 4.1 above.

Stage Two (*Years 16-21*): The Annual Service Charge shall be the amount determined pursuant to Section 4.1 above or 20% of the amount of taxes otherwise due on the value of the Land and Improvements in the absence of this Agreement, whichever is greater.

Stage Three (*Years 22-27*): The Annual Service Charge shall be the amount determined pursuant to Section 4.1 above or 40% of the amount of taxes otherwise due on the value of the Land and Improvements in the absence of this Agreement, whichever is greater.

Stage Four (*Years 28-29*): The Annual Service Charge shall be the amount determined pursuant to Section 4.1 above or 60% of the amount of taxes otherwise due on the value of the Land and Improvements in the absence of this Agreement, whichever is greater.

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Stage Five (*Year 30*): The Annual Service Charge shall be the amount determined pursuant to Section 4.1 above or 80% of the amount of taxes otherwise due on the value of the Land and Improvements in the absence of this Agreement, whichever is greater.

Exhibit F attached hereto depicts the applicable Gross Rent Percentage, Tax Percentage, and percent of taxes otherwise due on the value of Land and Improvements in the absence of this Agreement (“Stage Full Tax Percentage”) for each year of the exemption.

Redeveloper shall have the right to appeal the real property tax assessment in any and every year.

### **Section 4.3 Quarterly Installments**

Redeveloper expressly agrees that the Annual Service Charge shall be paid in quarterly installments on those dates when ad valorem real estate tax payments are due; subject, nevertheless, to an adjustment for over or underpayment within thirty (30) days after the close of each calendar year.

### **Section 4.4 Land Taxes and Land Tax Credit**

Because the land of the Property (the "Land") is not permitted to be exempt from taxes pursuant to N.J.S.A. 40A:20-12, the Redeveloper is required to pay both the Annual Service Charge and the Land Taxes. The Entity and the Township agree that the assessed value of the Land until the next municipal wide re-valuation will never be more or less than the assessed value of the Land for the 2020 tax year (based upon the percentage of the square footage of Block 27, Lot 2 allocable to the Property, which is approximately 40%). Land Taxes shall be separately assessed for the Land, and shall be assessed only on the Land.

The Redeveloper shall be entitled to an annual credit against the Annual Service Charge for the amount, without interest, of the real estate taxes on the Land paid in the last the four (4)

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preceding quarterly installments prior to commencement of the Annual Service Charge, which credit shall be adjusted by acreage in the event of a subdivision. The credit shall be applied on a quarterly basis.

### **Section 4.5 Material Conditions**

It is expressly agreed and understood that the timely payments of the Annual Service Charges, including adjustments thereto, and any interest thereon, and the Tax Exemption granted herein are material conditions ("Material Conditions") of this Agreement.

### **Section 4.6 Other Municipal Services**

Nothing herein shall exempt Redeveloper from the payment for any municipal services ordinarily assessed to tax payers outside of and in addition to ad valorem taxes rendered to the Property. Redeveloper shall timely pay for municipal services rendered to the Property, and the Township shall retain the right to pursue all remedies to collect such payments, including the right to institute collection through a tax lien sale pursuant to *N.J.S.A. 54:5-1 et seq.*

### **Section 4.7 Gross Rent**

For purposes of calculating Gross Revenue, the parties agree that the “**Gross Rent**” for the Project shall be the amounts set forth in **Exhibit E** in a single Project Phase or Project Phases. Gross Rent shall be the rent paid to the Redeveloper by the operators of the Project pursuant to one or more master leases of the Project or Project Phases. The Parties agree that each Project Phase may be subject to its own lease. For the avoidance of doubt, so long as there is a Master Lease, Gross Rent does not include any fees, inclusive or rent or occupancy fees, collected from residents of the Independent Living Units, Assisted Living Residence, and/or Dementia Care Home. In the event there are no master leases for all or a portion of the Project, then Gross Revenue shall be the actual revenue collected for all activities attributable

to the phase of the Project without a master lease, but in no event less than amounts set forth in **Exhibit E.**

**ARTICLE V – CERTIFICATE OF OCCUPANCY**

**Section 5.1 Certificate of Occupancy**

It shall be the obligation of Redeveloper to make application for and make all commercially reasonable efforts to obtain all Certificates of Occupancy in a timely manner. It shall be the primary responsibility of Redeveloper to forthwith file with the Tax Assessor, the Tax Collector and the Township Manager, a copy of any Certificate of Occupancy.

In the event that Redeveloper fails to secure Certificates of Occupancy in a timely manner after Substantial Completion of the Project or a Project Phase, as determined by the Township in its sole discretion and Redeveloper has not obtained the Certificates of Occupancy within sixty (60) days after the Township has provided notice to Redeveloper of the Project Phases Substantial Completion, the Project shall be subject to full taxation (ordinary applicable taxes) for the period between the date of Substantial Completion and the date the Certificate of Occupancy is obtained, unless Redeveloper's application for a Certificate of Occupancy is pending or the delay in issuance of the Certificate of Occupancy is a result of Force Majeure events as set forth in the Redevelopment Agreement.

**ARTICLE VI - ANNUAL REPORTS and AUDITS**

**Section 6.1 Accounting System**

For so long as Redeveloper owns the Improvements, or any portions thereof, constructed on the Property as a part of the Project, Redeveloper agrees to calculate its "net profit" pursuant to *N.J.S.A. 40A:20-3.c.* Redeveloper shall maintain, or cause to be maintained, a system of

accounting and internal controls established and administered in accordance with generally accepted accounting principles.

**Section 6.2 Periodic Reports**

(a) **Auditor's Report** – For so long as Redeveloper owns any of the Units constructed as a part of the Project, within ninety (90) days after the close of each fiscal or calendar year, depending on Redeveloper's accounting basis that this Financial Agreement shall continue in effect, Redeveloper shall submit to the Township Council, the Township Collector and the Township Clerk, who shall advise those municipal officials required to be advised, and the Division of Local Government Services in the State of New Jersey Department of Community Affairs, its Auditor's Report for the preceding fiscal or calendar year. The Auditor's Report shall include, but not be limited to: Gross Rents received by Redeveloper, and the terms and interest rate on any mortgage(s) associated with the purchase or construction of the Project, and such details as may relate to the financial affairs of Redeveloper and to its operation and performance hereunder, pursuant to Applicable Law and this Agreement. The Report shall clearly identify the Gross Rents and calculate the Net Profit for the Project during the previous year. Redeveloper assumes all costs associated with the preparation of these periodic reports.

(b) **Disclosure Statement** – For so long as Redeveloper owns any part of the Project, Redeveloper shall submit to the Township a Disclosure Statement listing the persons having an ownership interest of 10% or more in the Redeveloper and the extent of ownership interest of each, which Disclosure Statement shall be issued immediately upon any change of ownership interest in the Project, unless prior notice to or approval by the Township is otherwise required herein, or upon reasonable request by the Township.

**Section 6.3 Examination of Records**

Until the earlier of such time as Redeveloper no longer holds an interest in any part of the Project or the expiration of the Term of this Agreement, Redeveloper shall permit the inspection of the premises, equipment, buildings and other facilities of the Project, if deemed appropriate or necessary, by representatives duly authorized by the Township and the State of New Jersey Division of Local Government Services in the Department of Community Affairs. It shall also permit, upon request, examination and audit of its books, contracts, records, documents and papers. Such inspection, examination or audit shall be made upon seven (7) days' notice, during the Redeveloper's regular business hours and in the presence of an officer or agent designated by Redeveloper. To the extent reasonably possible, the examination, inspection or audit shall not materially interfere with construction or operation of the Project.

**ARTICLE VII - LIMITATION OF PROFITS AND RESERVES**

**Section 7.1 Limitation of Profits and Reserves**

During the period of tax exemption as provided herein, Redeveloper shall be subject to a limitation of its profits pursuant to the provisions of *N.J.S.A.* 40A:20-15. Pursuant to *N.J.S.A.* 40A:20-3.c., this calculation shall be completed in accordance with GAAP and the definitions of the phrases "Net Profit" and "Gross Revenue" set forth in the Definitions of this Financial Agreement.

Redeveloper shall have the right to establish a reserve against vacancies, unpaid rentals and contingencies in an amount up to ten (10%) percent of the Gross Revenue of the Redeveloper 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.

**Section 7.2 Annual Payment of Excess Profit**

If the Net Profits of Redeveloper, in any fiscal year in which it holds an interest in the Project, shall exceed the Allowable Net Profits for such period, then the Redeveloper, within one hundred twenty (120) 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 Redeveloper may maintain a reserve as determined pursuant to aforementioned Section 7.1, hereof. 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.*, *N.J.S.A. 40A:20-15* and this Financial Agreement.

**Section 7.3 Payment of Reserve upon Termination Expiration or Sale**

Within ninety (90) days after termination of this Agreement, Redeveloper shall pay to the Township the amount of the reserve, if any.

**Section 7.4 Adjustments in Annual Service Charge**

The initial Annual Service Charge shall be billed based upon the minimum Gross Rents set forth on **Exhibit E**. Within one hundred twenty (120) days after the end of each fiscal year, the Tax Assessor shall calculate the amount of Annual Service Charge due based upon the actual Gross Rents for the prior fiscal year, and render a bill to be payable with the next quarterly installment of Annual Service Charge for any deficiency between the amount of Annual Service Charges billed, and the amount of Annual Service Charge due for prior fiscal year. The Tax Assessor may adjust future billings for the Annual Service Charge based upon the actual amounts due.



**ARTICLE VIII - SALE OF PROJECT**

**Section 8.1 Approval**

Redeveloper may sell the Project or any portion thereof and transfer this Financial Agreement, provided that: (a) the transfer complies with the terms of Sections 7.3, 7.4, and 7.5 of the Redevelopment Agreement, (b) the transfer is in compliance with this Agreement and the LTTE, (c) the transferee does not own any other project subject to long term tax exemption at the time of transfer; (d) the transferee is formed and eligible to operate as an urban renewal entity under the LTTE and the Redevelopment Agreement, (e) Redeveloper's obligations under this Financial Agreement are fully assumed by the transferee on a going forward basis and (f) the transferee abides 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. This Section 8.1 shall not apply to the rental of Units in the ordinary course of business, which are hereby expressly authorized.

**ARTICLE IX-COMPLIANCE**

**Section 9.1 Operation**

During the term of this Financial Agreement, the Project shall be maintained and operated in accordance with the provisions of the Applicable Law.

**ARTICLE X - DEFAULT**

**Section 10.1 Cure Upon Default**

If any party to this Financial Agreement breaches the material terms or conditions contained in this Financial Agreement or in the Redevelopment Agreement, then the aggrieved party shall send a written default notice to the other party ("Default Notice"). The Default Notice shall set forth with particularity the basis of the alleged default. In the event of a monetary default by the Redeveloper, the Redeveloper shall have ten (10) days to cure such monetary default. The

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party in breach shall have forty-five (45) days, from receipt of the Default Notice, to cure any non-monetary default. However, if in the reasonable opinion of the non-defaulting party, the default cannot be cured within forty-five (45) days using reasonable due diligence and with continuity of purpose, the non-defaulting party will extend the time to cure. Upon the expiration of the forty-five (45) day cure period set forth above, or upon the expiration of any extension period, the aggrieved party shall have the right to terminate this Financial Agreement in accordance with Article XI hereof.

### **Section 10.2 Remedies for Default in Payment**

The Township shall be entitled to all remedies to collect such payments, including the right to sell a tax sale certificate and proceed against a Unit or the Property (excluding Units previously conveyed) pursuant to In Rem Tax Foreclosure in accordance with applicable law. The failure to make such payments shall not be subject to the dispute resolution procedures as provided in Article 12.1.

## **ARTICLE XI-TERMINATION**

### **Section 11.1 Termination Upon Default**

In the event that the defaulting party fails to cure or remedy a default within the time period provided in Section 10.1, hereof, the aggrieved party may terminate this Financial Agreement as to a defaulting party by written notice of such termination to the party in breach.

### **Section 11.2 Termination and Final Accounting**

Within ninety (90) days after the date of termination, whether by affirmative action of Redeveloper or by virtue of the provisions of the Applicable Law or pursuant to the terms of this Financial Agreement, Redeveloper 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

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Net Profits, if any, payable as of that date and any adjusted Annual Service Charge. For purposes of rendering a final accounting, the termination of the Financial Agreement shall be deemed to be the end of the fiscal year for the Project.

### **Section 11.3 Taxes after Termination Date**

After the termination date, the tax exemption for the Project shall expire and the Improvements shall thereafter be assessed and conventionally taxed according to the Applicable Law regarding other nonexempt taxable property in the Township.

## **ARTICLE XII - DISPUTE RESOLUTION**

### **Section 12.1 Mediation**

In the event of a breach of this Agreement 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 mediation. The parties agree that the mediation will be before a retired judge of the Superior Court of New Jersey agreed upon by the parties within 10 days after request by a party upon occurrence of a dispute, or if the parties fail to so agree, a retired judge of the Superior Court appointed by the Assignment Judge of Morris County upon application of a party. The mediation shall be conducted in accordance with rules as determined by the mediator. The parties agree to engage in good faith in the mediation effort to seek resolution of the disagreement. The good faith obligation shall require, as a condition precedent to commencement of any litigation other than one seeking emergent relief, participation of up to six (6) hours at a mediation session conducted by the mediator at a time and place fixed by the mediator, all to occur within 30 days after appointment of the mediator. The parties further agree that the mediation procedure is voluntary and nonbinding (beyond the good faith obligation described in the previous sentence). Following good faith participation, either party may at any

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time terminate the mediation proceeding with or without cause. The mediator shall also have the right to terminate the mediation if the mediator shall determine that the efforts to reach a settlement are likely to be futile. The parties agree to share the burden of the mediator's compensation equally amongst the parties participating in the mediation and each agrees to pay its share pursuant to the mediator's invoice to be rendered at completion or termination of the mediation process.

### **ARTICLE XIII - WAIVER**

#### **Section 13.1 Waiver**

Nothing contained in this Financial Agreement or otherwise, or any action or non-action shall constitute a waiver or relinquishment by an aggrieved party of any rights and remedies, including, without limitation, the right to terminate the Financial Agreement subject to the qualifications set forth elsewhere in this Financial Agreement for violation of any of the obligations provided herein. Nothing herein or any action or non-action shall be deemed to limit any right of recovery of any amount which the aggrieved party has under any Applicable Law, or in equity, or under any provision of this Financial Agreement.

### **ARTICLE XIV – NOTICE**

#### **Section 14.1 Notices**

Formal notices, demands and/or communications between the Township and the Redeveloper and from the Redeveloper to the Township or from the Township to the Redeveloper (as required herein) shall be deemed sufficiently served if dispatched to the address set forth below by registered or certified mail, postage prepaid, return receipt requested, and shall be deemed delivered upon receipt. Formal notices may also be sent by a commercial overnight delivery service with package tracking capability and proof of delivery is available. In this case

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such notice is deemed to be effective upon delivery. Such written notices demand, and communications may be sent in the same manner to such other addresses as either party may from time to time designate by written notice. Informal communications may be carried out by regular mail.

Copies of all notices, demands and communications shall be sent as follows:

(a) In case of the Township:

Township of Harding  
21 Blue Mill Road, New Vernon  
Morris, New Jersey 07976  
Attn: Robert Falzarano

With a Copy to:

John H. Hague, Esq.  
Greenbaum Rowe Smith Davis, LLP  
Metro Corporate Campus One  
P.O. Box 5600  
Woodbridge, New Jersey 07095

John H. Hague, Esq.  
Greenbaum Rowe Smith Davis, LLP  
99 Wood Avenue South  
Iselin, New Jersey 07095-0988

(b) In the case of the Redeveloper:  
Hurstmont Estate Acquisition LLC  
14 Doty Road, Unit B  
Haskell, NJ 07420  
Attn: Peter H. Monaghan

With a Copy to:

Katharine A. Coffey, Esq.  
Day Pitney  
One Jefferson Road  
Parsippany, NJ 07054

**ARTICLE XV - SEVERABILITY**

**Section 15.1 Severability**

(a) If any term, covenant or condition of this Financial Agreement or the Application shall be judicially declared to be invalid or unenforceable, the remainder of this Financial Agreement or the Application of such term, covenant or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term, covenant or condition of this Financial Agreement shall be valid and be enforced to the fullest extent permitted by the Applicable Law.

(b) If any provision of this Financial Agreement shall be judicially declared to be invalid or unenforceable, and provided that a default has not been declared that has continued uncured after notice and expiration of the grace period provided in this Agreement, the Parties and each of them shall cooperate with each other to take the actions reasonably required to restore the Financial Agreement in a manner contemplated by the Parties. This shall include, but not be limited to the authorization and re-execution of this Financial Agreement in a form reasonably drafted to effectuate the original intent of the Parties.

**ARTICLE XVI - MISCELLANEOUS**

**Section 16.1 Construction**

This Financial Agreement shall be governed, construed and enforced in accordance with the LTTE and other Applicable Laws of the State of New Jersey and without regard to or aid of any presumption or other rule requiring construction against the party drawing or causing this Financial Agreement to be drawn since counsel for both Redeveloper and the Township, respectively have combined in review and approval of same.

**Section 16.2 Conflicts**

The parties agree that in the event of a conflict between the Application and the language contained in this Financial Agreement, this Financial Agreement shall govern and prevail. In the event of conflict between this Financial Agreement and the LTTE, the LTTE shall govern and prevail.

**Section 16.3 Oral Representations**

There have been no oral representations made by either of the parties hereto which are not contained in this Financial Agreement. This Financial Agreement, the Ordinance authorizing the execution of the Financial Agreement, and the Application constitute the full agreement between the parties.

**Section 16.4 Modification**

There shall be no modification of this Financial Agreement except by virtue of a written instrument(s) executed by and between both parties and approved by ordinance.

**Section 16.5 Entire Agreement**

This Financial Agreement, the Ordinance, the Application and all Exhibits attached to each of the foregoing are incorporated into this Financial Agreement and made a part hereof and collectively constitute the entire agreement between the Parties with respect to the tax exemption for the Project.

**[SIGNATURE PAGE FOLLOWS]**

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

Witness: Hurstmont Estate Urban Renewal Entity, LLC

By: \_\_\_\_\_ By: \_\_\_\_\_  
Peter H. Monaghan  
Manager

Witness: TOWNSHIP OF HARDING

By: \_\_\_\_\_ By: \_\_\_\_\_  
Lisa Sharp  
Township Clerk  
Christopher Yates, Mayor



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**EXHIBIT LIST**

- A. Description of the Property**
- B. Application for Tax Exemption**
- C. Ordinance Approving Tax Exemption**
- D. Certificate of Formation**
- E. Minimum Gross Rents**
- F. Applicable Annual Percentage**

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**EXHIBIT A**

Description of the Property

3/6/2020  
6058367.1  
104949911.5  
6144984.2

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**EXHIBIT B**

Application for Tax Exemption  
(See Attached)

3/6/2020  
6058367.1  
104949911.5  
6144984.2

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**EXHIBIT C**

Passed Ordinance # \_\_\_\_\_

3/6/2020  
6058367.1  
104949911.5  
6144984.2

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**EXHIBIT D**

Certificate of Formation



3/6/2020  
6058367.1  
104949911.5  
6144984.2

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**EXHIBIT E**

Annual Gross Rent Percentage, Tax Percentage, and Stage Full Tax Percentage

<b>Year</b>	<b>Gross Rent Percentage</b>	<b>Tax Percentage</b>	<b>Stage Full Tax Percentage</b>
1-5	10%	0%	0%
6-15	12%	80%	0%
16-21	13%	90%	20%
22-27	13%	90%	40%
28-29	13%	90%	60%
30	13%	90%	80%