

CITY OF VINELAND

ORDINANCE NO. 2021- 79

ORDINANCE AMENDING ORDINANCE NO. 2018-38, AN  
ORDINANCE APPROVING THE EXECUTION OF A  
FINANCIAL AGREEMENT WITH RESPECT TO THE  
NEWCOMB HOSPITAL REDEVELOPMENT AREA.

WHEREAS, on July 17, 2018, the City Council of the City of Vineland adopted Ordinance 2018-38 approving the execution of a Financial Agreement with Newcomb Medical Alliance Center, LLC, the Redeveloper of the Newcomb Hospital Redevelopment Area (Redeveloper); and

WHEREAS, the Redevelopment Agreement and approval of the City Planning Board for the senior housing project provided for one building with 65 affordable residential units for seniors in Phase I and a second building with 65 affordable residential units for seniors in Phase II ; and

WHEREAS, on August 12, 2018 City Council adopted Resolution 2018-220 approving an assignment of the portion of the Newcomb Medical Alliance Center LLC's interest in and to the senior housing project to Hans Lampart and Eastern Pacific Development, LLC (EPD); and

WHEREAS, on June 12, 2018 the City and EPD executed a Redevelopment Agreement for the redevelopment of the senior affordable units and EPD formed two new entities to own and operate the two phases; Newcomb Senior Apartments Urban Renewal, LLC (Phase 1 Entity) for Phase I and Newcomb Senior Apartments Urban Renewal 2, LLC for Phase 2 (Phase 2 Entity); and

WHEREAS, in order to make the project financially feasible, the City approved, pursuant to the Long Term Tax Exemption Law, an annual service charge in lieu of real property taxes for the projects as whole and executed a Financial Agreement dated July 20, 2018 in accordance with Ordinance No. 2018-38 which specified therein that each phase of the senior housing would have 70 living units; and

WHEREAS, the Parties wish to further amend Ordinance 2018-38 so as to provide a separate Financial Agreement for each entity and for each Phase of the redevelopment; and

WHEREAS, Newcomb Senior Apartments Urban Renewal, LLC, shall be the redevelopment entity for Phase I of the Senior Housing project upon Block 4216 Lot 1.1 on the tax map of the City of Vineland and that the number of units approved by the Financial Agreement needs to be reduced from 70 to 65; and

WHEREAS, the Phase 2 entity, Newcomb Senior Apartments Urban Renewal 2, shall apply for a separate Financial Agreement in the form and substance as previously approved and as amended hereby for Phase 1 for the Phase 2 redevelopment of 65 units on a portion of Block 4216 Lot 1.2; and

WHEREAS, in the Financial Agreement dated July 20, 2018 the entity was erroneously stated as Newcomb Senior Urban Renewal, LLC however the correct name of the entity redeveloping Phase 1 is Newcomb Senior Apartments Urban Renewal, LLC and the parties wish to correct the name of the entity for Phase 1.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Vineland that the Mayor and Clerk are hereby authorized to execute an Amended and Restated Financial Agreement in the form and substance as attached hereto and made a part hereof which

1. corrects the error in the name of the entity execution the first Financial Agreement.
2. separates the financial agreement so that the agreement references Phase 1 only
3. reduces the number of units to be constructed from 70 to 65.

BE IT FURTHER ORDAINED that the balance of Ordinance 2018-38 and the Financial Agreement referenced therein not amended hereby shall remain in full force and effect.

BE IT FURTHER ORDAINED that should any portion of this Ordinance be deemed unenforceable by a court of competent jurisdiction, that portion so determined to be unenforceable, shall be void and the balance hereof shall remain in full force and effect.

CITY OF VINELAND

This Ordinance shall take effect upon adoption and publication according to law.

Passed first reading:

Passed final reading:

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President of Council

ATTEST:

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City Clerk

## AMENDED AND RESTATED FINANCIAL AGREEMENT

**THIS AMENDED AND RESTATED FINANCIAL AGREEMENT** (as the same may be amended, modified or supplemented from time to time, hereinafter this “**Agreement**” or “**Financial Agreement**”), made this \_\_\_ day of \_\_\_\_\_, 2021, by and between **NEWCOMB SENIOR APARTMENTS URBAN RENEWAL, LLC** (together with its permitted successors and assigns, the “**Entity**”), 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**”), with offices at c/o Eastern Pacific Development, LLC, 925 East Landis Avenue, Suite E, Vineland, NJ 08361 and the **CITY OF VINELAND**, a municipal corporation in the County of Cumberland and the State of New Jersey (together with its permitted successors and assigns, the “**City**” and, together with the Entity, the “**Parties**” or “**Party**”).

### WITNESSETH:

**WHEREAS**, by Resolution No. 2012-39 adopted on February 14, 2012, the Vineland City Council (the “**City Council**”) designated that certain area designated Block 4216, Lots 1.01, 1.02, 1.03, 1.04 and 1.05 (formerly Lot 1) on the official tax map of the City (the “**Redevelopment Area**”) as an area in need of redevelopment in accordance with the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq., as amended and supplemented (the “**Local Redevelopment and Housing Law**”); and

**WHEREAS**, pursuant to N.J.S.A. 40A:12A-7, by Ordinance No. 2012-8 adopted on February 28, 2012, the City Council has duly adopted, as amended from time to time, the “Newcomb Hospital Redevelopment Plan” (collectively, and as the same may be further amended, the “**Redevelopment Plan**”), which sets forth the City’s plan for the redevelopment of the Redevelopment Area; and

**WHEREAS**, by Resolution No. 2015-227, the City Council designated Newcomb Medical Alliance Center, LLC as the redeveloper of the Redevelopment Area under the Local Redevelopment and Housing Law; and

**WHEREAS**, on August 3, 2015, the City and Newcomb Medical Alliance Center, LLC entered into a Redevelopment Agreement, as amended (as the same may be further amended, modified or supplemented from time to time, the “**Original Redevelopment Agreement**”), in order to implement the development, design, financing and construction of the Redevelopment Area pursuant to the Redevelopment Plan; and

**WHEREAS**, the Redevelopment Agreement and approval of the City Planning Board for the Senior Housing Project (as defined herein) provided for, among other things, one building with 65 affordable residential apartments for seniors at least 55 years of age and other related improvements (the “**Phase 1 Senior Housing Project**”) on a portion of Redevelopment Area designated as Block 4216, Lot 1.1 on the official tax map of the City of Vineland, County of Cumberland, State of New Jersey as more particularly described in Exhibit E attached hereto (the “**Phase 1 Senior Housing Project Area**”) and a second building with 65 affordable residential apartments for seniors at least 55 years of age and other related improvements (the “**Phase 2 Senior**

**Housing Project”** and together with the Phase 1 Senior Housing Project, the “**Senior Housing Project**”) on a portion of Redevelopment Area designated as Block 4216, Lot 1.2 on the official tax map of the City of Vineland, County of Cumberland, State of New Jersey (the “**Phase 2 Senior Housing Project Area**” and together with the Phase 1 Senior Housing Project Area, the “**Senior Housing Project Area**”); and

**WHEREAS**, each of the Phase 1 Senior Housing Project and the Phase 2 Senior Housing Project will be subject to affordability restrictions pursuant to the Section 42 of the Internal Revenue Code, as amended, in connection with the low income housing tax credits that have been allocated to the respective Senior Housing Projects;

**WHEREAS**, on August 12, 2018, the City Council by Resolution 2018-220 approved the assignment to Hans Lampart and Eastern Pacific Development, LLC (together, “**EPD**”) of the interest of Newcomb Medical Alliance Center, LLC in the Original Redevelopment Agreement for the portion of the Redevelopment Agreement relating to the Senior Housing Project and the Senior Housing Project Area;

**WHEREAS**, on June 12, 2018, the City and EPD executed a Redevelopment Agreement for the redevelopment of the Senior Housing Project Area with the Senior Housing Project (the “**Redevelopment Agreement**”);

**WHEREAS**, EPD formed two New Jersey limited liability companies, the Entity and Newcomb Senior Apartments Urban Renewal 2, LLC (the “**Phase 2 Entity**”), to acquire, redevelop, own and operate the Phase 1 Senior Housing Project and the Phase 2 Senior Housing Project, respectively;

**WHEREAS**, on October 12, 2021, the City Council by Resolution 2021-469 approved the assignment to the Entity of the interest of EPD in the Redevelopment Agreement for the portion of the Senior Housing Project Area relating to the Phase 1 Senior Housing Project and the Phase 1 Senior Housing Project Area;

**WHEREAS**, EPD subsequently assigned to the Entity and the Entity assumed from EPD all of EPD’s rights and obligations under the Redevelopment Agreement with respect to the Phase 1 Senior Housing Project and the Phase 1 Senior Housing Project Area;

**WHEREAS**, the Entity currently owns and intends to undertake the Phase 1 Senior Housing Project for the redevelopment of the Phase 1 Senior Housing Project Area;

**WHEREAS**, on \_\_\_\_\_, 2021, the City Council by Resolution 2021-\_\_\_\_ approved the assignment to the Phase 2 Entity of the interest of EPD in the Redevelopment Agreement for the portion of the Senior Housing Project Area relating to the Phase 2 Senior Housing Project and the Phase 2 Senior Housing Project Area;

**WHEREAS**, the Phase 2 Entity will acquire and intends to undertake the Phase 2 Senior Housing Project for the redevelopment of the Phase 2 Senior Housing Project Area;

**WHEREAS**, pursuant to and in accordance with the provisions of the Long Term Tax Exemption Law, the City is authorized to provide for and accept, in lieu of real property taxes, an annual service charge paid by the Entity to the City in accordance with certain applicable provisions of the Long Term Tax Exemption Law;

**WHEREAS**, the Entity is an urban renewal entity in accordance and compliance with the Long Term Tax Exemption Law for the purpose of undertaking the development of the Redevelopment Area pursuant to the Redevelopment Plan;

**WHEREAS**, in order to improve the feasibility of the Phase 1 Senior Housing Project, Newcomb Medical Alliance Center, LLC, the Entity's predecessor, submitted an application to the City requesting a long term tax exemption and financial agreement with respect to the Senior Housing Project pursuant to the Long Term Tax Exemption Law, which application is on file with the City Clerk (as amended, the "**Application**");

**WHEREAS**, the Entity has represented to the City that the Phase 1 Senior Housing Project would not be feasible in its intended scope but for the provision of financial assistance by the City;

**WHEREAS**, after review of the Application, the Mayor of the City of Vineland ("**Mayor**") recommended that the Application be approved;

**WHEREAS**, the City determined that the assistance provided to the Phase 1 Senior Housing Project pursuant to this Agreement will be a significant inducement for the Entity to proceed with the Phase 1 Senior Housing Project and that based on information set forth in the Application, the Phase 1 Senior Housing Project would not be feasible without such assistance;

**WHEREAS**, the City and the Entity (incorrectly named as Newcomb Senior Apartments Urban Renewal, LLC) entered into a Financial Agreement dated July 20, 2018 with respect to both the Phase 1 Senior Housing Project and the Phase 2 Senior Housing Project (the "**Original Financial Agreement**"); and

**WHEREAS**, the Parties now desire to amend and restate with the City the Original Financial Agreement with respect to the Phase 1 Senior Housing Project only as set forth herein and the Phase 2 Entity and the City will enter into a separate amendment and restatement of the Original Financial Agreement with respect to the Phase 2 Senior Housing Project.

**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**

This Agreement shall be governed by the provisions of the Long Term Tax Exemption Law, as may amended and supplemented, (N.J.S.A. 40A:20-4 et seq.) and all appropriate municipal ordinances or resolutions pertaining to tax exemptions, being referred to herein as the “**Law**”. It being expressly understood and agreed that the City expressly relies upon the facts, data, and presentations contained in the Application attached hereto in granting this tax exemption.

#### **SECTION 1.01      Recitals.**

The Recitals set forth above are hereby incorporated in, and made a part of, this Agreement as if set forth at length.

#### **SECTION 1.02      General Definitions.**

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

Agreement or Financial Agreement – Shall have the meaning given to it in the Preamble,

Allowable Net Profit – The amount arrived at by applying the Allowable Profit Rate to the cost of the Phase 1 Senior Housing Project pursuant to the provisions of N.J.S.A. 40A:20-3(c).

Allowable Profit Rate – The allowable profit rate as defined in N.J.S.A. 40A:20-3(c).

Annual Gross Revenue – Shall have the meaning assigned to “**Gross Revenue**” in N.J.S.A. 40A:20-3.

Annual Service Charge – The amount the Entity has agreed to pay the City pursuant to Article IV hereof for municipal services supplied to the Phase 1 Senior Housing Project, which sum is in lieu of any real estate taxes on the Phase 1 Senior Housing Project all as contemplated pursuant to the Law, which amount, if applicable, shall be pro-rated in the year in which the Annual Service Charge begins and the year in which the Annual Service Charge terminates.

Annual Service Charge Commencement Date – The Annual Service Charge Commencement Date shall be the date of Substantial Completion.

Application – The application filed by the Entity with the City for a tax exemption for the Phase 1 Senior Housing Project, attached hereto as Exhibit A.

Auditor’s Report – A complete financial statement outlining the financial status of the Phase 1 Senior Housing Project (for a period of time as indicated by context), which shall also include a clear computation 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 who is licensed to practice that profession in the State of New Jersey.

Certificate of Occupancy – Shall mean the document, whether temporary or permanent, issued by the City authorizing occupancy of a building, in whole or in part, pursuant to N.J.S.A. 52:27D-133.

City – Shall mean the City of Vineland.

City Council – Shall have the meaning given to it in the recitals.

City Share – Shall mean an amount equal to the Annual Service Charge minus the portion of the Annual Service Charge remitted to the County in accordance with Section 4.04(g).

Commercial Portion – shall mean that portion of the Phase 1 Senior Housing Project producing non-residential income, including but not limited to, commercial leases, laundry units or other services.

County – Shall mean the County of Cumberland, State of New Jersey.

Default – Shall be a breach of or the failure of the Entity to perform any obligation imposed upon the Entity by the terms of this Agreement, or under applicable law.

Default Notice – Shall have the meaning given to it in Section 14.02 of this Agreement.

Entity – The term Entity within this Agreement shall mean Newcomb Senior Apartments Urban Renewal, LLC.

Improvements – Any building, structure or fixture permanently affixed to the Land to be constructed and/or rehabilitated and tax exempted under this Agreement, including without limitation the Phase 1 Senior Housing Project.

In Rem Tax Foreclosure – A summary proceeding by which the City may enforce the lien for taxes due and owing by a tax sale, Said foreclosure is governed by N.J.S.A. 54:5-1 et seq.

Land – The land, but not the Improvements, designated as Block 4216, Lots 1.1 on the official tax map of the City of Vineland, County of Cumberland, and State of New Jersey.

Law – As defined in the first paragraph of this Article I.

Material Conditions – As defined in Section 4.06 hereof.

Minimum Annual Service Charge – The minimum annual service charge shall be the amount of the total taxes levied against all real property within the Phase 1 Senior Housing Project Area in the last full tax year in which the area was subject to taxation, which the parties agree is \$19,677 per tax lot. The Minimum Annual Service Charge shall be paid in each year in which the Annual Service Charge, calculated pursuant to N.J.S.A. 40A:20-

12(b)(2) and the Financial Agreement, would be less than the Minimum Annual Service Charge.

Minimum City Share – Shall mean an amount equal to the Annual Service Charge for the first full year following the Annual Service Charge Commencement Date minus the portion of the Annual Service Charge remitted to the County in accordance with Section 4.04(g).

Ordinance – Ordinance No. 2021-\_\_\_ adopted by the Council of the City on \_\_\_\_\_, 2021, attached hereto as Exhibit B, approving the subject tax exemption and authorizing the execution of this Agreement.

Pronouns – He, she or it shall mean the masculine, feminine or neuter gender, the singular, as well as the plural, as context requires.

Property – The Land and Improvements thereon which are the subject of this Agreement.

Redevelopment Agreement – Shall have the meaning given to it in the recitals.

Redevelopment Plan – Shall have the meaning given to it in the recitals.

Residential Portion – shall mean the portion of the Phase 1 Senior Housing Project consisting of 65 residential rental units of affordable senior housing.

Senior Housing Project – Shall have the meaning given to it in the recitals.

Substantial Completion – Shall mean the date on which the Entity receives its first Certificate of Occupancy for the Phase 1 Senior Housing Project.

Taxes – Shall have the meaning given to it in Section 5.01 of this Agreement.

Tax Sale Law – N.J.S.A. 54:5-1 et seq.

Termination – Any action or omission which by operation of the terms of this Financial Agreement shall cause the Entity to relinquish its tax exemption.

**SECTION 1.03      Exhibits Incorporated.**

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

**SECTION 1.04      Interpretation and Construction.** In this Financial Agreement, unless the context otherwise requires:

A. The terms “hereby”, “hereof”, “hereto”, “herein”, “hereunder” and any similar terms, as used in this Financial Agreement, refer to this Financial Agreement, and the term “hereafter” means after, and the term “heretofore” means before the date of delivery of this Financial Agreement.,

B. Words importing a particular gender mean and include correlative words of every other gender and words importing the singular number mean and include the plural number and vice versa.

C. Words importing persons mean and include firms, associations, partnerships (including limited partnerships), trusts, corporations, limited liability companies and other legal entities, including public or governmental bodies, as well as natural persons.

D. Any headings preceding the texts of the several Articles and Sections of this Financial Agreement, and any table of contents or marginal notes appended to copies hereof, shall be solely for convenience of reference and shall not constitute a part of this Financial Agreement, nor shall they affect its meaning, construction or effect.

E. Unless otherwise indicated, all approvals, consents and acceptances required to be given or made by any person or party hereunder shall not be unreasonably withheld, conditioned, or delayed.

F. All notices to be given hereunder and responses thereto shall be given, unless a certain number of days is specified, within a reasonable time, which shall not be less than ten (10) days nor more than twenty (20) days, unless the context dictates otherwise.

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

**SECTION 1.05**      **Undefined Terms.** Capitalized terms used herein which are not otherwise defined herein shall have the respective meanings ascribed thereto in the Redevelopment Agreement.

**SECTION 1.06**      **Exemption Application.** 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 Financial Agreement.

{End of Article I}

## ARTICLE II

### APPROVAL

#### **SECTION 2.01      Approval of Tax Exemption.**

Pursuant to the Ordinance, the Phase 1 Senior Housing Project to be constructed and/or renovated and maintained by the Entity on the Phase 1 Senior Housing Project Area shall be exempt from taxation (including any Land Taxes) 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 the Term of this Financial Agreement.

#### **SECTION 2.02      Approval of the Entity.**

The Entity represents that its certificate of formation as attached hereto as Exhibit C contains all the requisite provisions of law, has been reviewed and approved by the Commissioner of the Department of Community Affairs, and has been filed with, as appropriate, the Department of the Treasury, all in accordance with N.J.S.A. 40A:20-5.

#### **SECTION 2.03      Improvements to be Constructed.**

The Entity represents that it will construct or cause to be constructed the Phase 1 Senior Housing Project in accordance with the Redevelopment Agreement and the Redevelopment Plan, the use of which Phase 1 Senior Housing Project is more specifically described in the Exemption Application.

#### **SECTION 2.04      Project Schedule.**

The Entity agrees to diligently undertake to commence or cause the commencement of the construction and completion of the Phase 1 Senior Housing Project substantially in compliance with the provisions of the Redevelopment Agreement.

#### **SECTION 2.05      Ownership, Management and Control.**

The Entity represents that it is the owner of the Phase 1 Senior Housing Project Area. The Entity covenants that it shall cause the redevelopment of the Phase 1 Senior Housing Project Area in conformance with the Redevelopment Agreement, the Redevelopment Plan and the Law.

The Entity covenants, warrants and represents that the Phase 1 Senior Housing Project Area and the Phase 1 Senior Housing 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 the Law.

#### **SECTION 2.06      Financial Plan.**

The Entity represents that the Phase 1 Senior Housing Project shall be financed substantially in accordance with the Financial Plan attached hereto as Exhibit D. The Financial Plan sets forth the estimated Total Project Cost, amortization rate on Total Project Cost, the sources

of funds, the interest rates to be paid on construction financing, the source and amount of paid-in capital, the terms of any mortgage amortization, expected rent/service amounts for each Building and the terms of any executed leases.

**SECTION 2.07      Benefits and Importance of Tax Exemption.**

In accordance with the Law, the City hereby finds and determines that this Agreement is to the direct benefit of the health, welfare and financial well-being of the City and its citizens because it allows for the reuse of the Property into a productive, useful and job-creating property, and further:

- a.      The benefits of the Phase 1 Senior Housing Project to the area greatly outweigh cost of tax exemption as the Phase 1 Senior Housing Project results in the provision of critical affordable housing for senior residents in the community, creates development on vacant and blighted land and generally enhances the protection and services to the residents.
- b.      The tax-exempt is a critical component of the obtaining of financing for the Phase 1 Senior Housing Project;
- c.      Without the financing, the land would remain vacant and blighted;
- d.      The tax exemption afforded under the Long term Tax Exemption Law is required to maintain affordable rents and preserve financial feasibility of the Phase 1 Senior Housing Project; and
- e.      The benefits of the tax exemption outweigh any costs

Without the tax exemption granted herein, it is highly unlikely that the Phase 1 Senior Housing Project would otherwise be undertaken.

{End of Article II}

## ARTICLE III

### **DURATION OF AGREEMENT**

#### **SECTION 3.01      Term.**

It is understood and agreed by the parties that this Agreement, including the obligation to pay Annual Service Charges required under Article IV hereof and the tax exemption granted and referred to in Section 2.01 hereof, shall remain in effect for the earlier of (i) a period of fifteen (15) years from the Annual Service Charge Commencement Date or (iii) termination of this Agreement by the Entity in the manner provided by the Law, as required by N.J.S.A. 40A:20-9(g). At the expiration of the term hereof or upon Termination, the tax exemption for the Phase 1 Senior Housing Project shall expire and the Improvements and Land shall thereafter be assessed and taxed according to the general law applicable to real 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. Notwithstanding anything herein to the contrary, the Term shall not exceed the thirty-fifth (35<sup>o</sup>) anniversary of the effective date of this Agreement.

#### **SECTION 3.02      Termination.**

The Entity may terminate this Agreement upon written notice to the City. Upon such a Termination, the Termination date of this Agreement shall be the last day of the calendar year quarter immediately preceding the calendar year quarter in which notice of such a Termination is delivered to the City. Upon the Termination date, the Phase 1 Senior Housing Project shall be assessed and subject to taxation as are other taxable properties in the municipality.

{End of Article III}

## ARTICLE IV

### ANNUAL SERVICE CHARGE

#### **SECTION 4.01      Annual Service Charge Consent.**

The Entity and the City hereby consent and agree to the amount of the Annual Service Charge and the Entity hereby consents and agrees to the liens established in this Financial Agreement, and the Entity shall not contest the validity or amount of any such lien; provided, however, that the foregoing shall not be construed to bar the Entity from raising the defense that (i) the Annual Service Charge then due and owing has been paid in full, (ii) the Annual Service Charge is not yet due and owing, or (iii) the Annual Service Charge is calculated in a manner other than as set forth in this Financial Agreement. Notwithstanding anything herein to the contrary, the Entity's obligation to pay the Annual Service Charge shall be absolute and unconditional and shall not be subject to any defense, set-off, recoupment or counterclaim under any circumstances, including without limitation any loss of status of the Entity as an "urban renewal entity" qualified under and as defined in the Long Term Tax Exemption Law, or any violation by the City of any provisions of this Financial Agreement, termination of the Redevelopment Agreement or failure of the Entity to complete the Phase 1 Senior Housing Project. In consideration of the tax exemption, the Entity shall make payment of the Annual Service Charge commencing from the Annual Service Charge Commencement Date and on each calendar quarter thereafter during the Term as provided in Section 4.05 herein. In the event that the Entity fails to timely pay any installment, the amount past due shall bear the same rate of interest then being assessed by the City against delinquent taxpayers in the case of unpaid real estate taxes or tax liens until paid. Notwithstanding the foregoing, the Entity shall be entitled to any grace periods given to taxpayers within the City for the payment of regular real estate taxes

#### **SECTION 4.02      Payment of Annual Service Charge.**

A. The Annual Service Charge shall be due and payable in quarterly installments as set forth in Section 4.04 below commencing on the first day of the calendar year quarter following the Annual Service Charge Commencement Date, subject, nevertheless, to adjustment as provided herein for over or underpayment within twenty (20) days after the close of each calendar year. The Annual Service Charge, if applicable, will be prorated in the year in which the Annual Service Charge is first payable and in the year in which this Financial Agreement terminates. The Annual Service Charge shall continue at all times while this Agreement remains in effect.

B. Subject to the provisions of Section 4.04, payment of the Annual Service Charge shall be made on a quarterly basis on each February 1, May 1, August 1, and November 1, commencing on the first February 1, May 1, August 1 or November 1 following the Annual Service Charge Commencement Date.

C. In the event that the Entity, fails to timely pay any installment of the Annual Service Charge, the amount past due shall bear the rate of interest then being assessed by the City against other delinquent taxpayers in the case of unpaid property taxes until paid.

D. In accordance with the Long Term Tax Exemption Law, specifically N.J.S.A. 40A:20-12, in the event of any change in the tax-exemption status as provided herein during any

tax year, including but not limited to any Termination of such tax exemption as provided for herein, the procedure for the apportionment of any taxes and/or Annual Service Charge, as the case may be, shall be the same as in the case of other changes in tax exemption status to any other property located within the City during the tax year, in accordance with applicable law.

**SECTION 4.03      Annual Gross Revenue.**

The Annual Gross Revenue shall be calculated as the total of all revenues that would normally be payable to the landlord in the case where the landlord is responsible to pay all costs of operations and maintenance, including the cost of utilities, as well as to pay the full cost of the capital required to construct the Phase 1 Senior Housing Project. To the extent that the actual revenues collected by the Entity are less than such amount, due to any reason, including, without limitation, the payment of expenses by tenants that would normally be paid by the landlord, such as insurance, taxes and/or maintenance, or the existence of an intermediate entity between the Entity and any tenant, but specifically excluding reductions in revenue due to vacancies within the Phase 1 Senior Housing Project, the City may, on notice to the Entity, recalculate the amount that the revenues would have been, without such issues, and utilize the results of its recalculations in all determinations of the Annual Service Charge. In the event of a dispute between the City and the Entity, such dispute shall be subject to the arbitration provisions under Section 14.03 herein, provided the City and the Entity shall each pay one-half (1/2) of the fees (including the arbitrator's fees) in connection with the arbitration of any such dispute, provided each of the City and the Entity shall pay their own legal fees.

**SECTION 4.04      Annual Service Charges.**

The Annual Service Charge throughout the term of this Agreement shall be as follows:

- a. Pursuant to N.J.S.A. 40A:20-12, the parties agree that upon the Annual Service Charge Commencement Date, the Annual Service Charge for the Phase 1 Senior Housing Project shall be an amount equal to 5.00% of Annual Gross Revenue for the Residential Portion and 10% of Annual Gross Revenue for the Commercial Portion, if any.
- b. In no event shall the Annual Service Charge, excluding taxes on the Land, in any year after the Annual Service Charge Commencement Date be less than the Minimum Annual Service Charge.

**SECTION 4.05      Reformation of Annual Service Charge Computation.**

A. In the event the exemption of the Land authorized under N.J.S.A. 40A:20-12 is invalidated by a Court of competent jurisdiction, the Parties agree that this Agreement shall remain valid and in full force and effect and shall be reformed to cure the invalid provision to provide that Land Taxes are assessed on the Land and there shall be no change to the Annual Service Charge, except the Entity shall receive a credit against the Annual Service Charge for the amount, without interest, of the real estate taxes on the Land paid by it in the last four preceding quarterly installments pursuant to N.J.S.A. 40A:20-12.

B. If the exemption of the Land authorized under N.J.S.A. 40A:20-12 is invalidated by a court of competent jurisdiction, the Entity shall be obligated to make payment of Land Taxes according to the general laws applicable to all other tax ratables and as set forth in this Section 4.05(8). Unless otherwise invalidated by a court of competent jurisdiction, the Land shall be exempt from taxation hereunder as a project for the construction of housing by an urban renewal entity. The Entity hereby expressly waives any and all credits against, reductions of the Annual Service Charge that it may otherwise have been entitled to in accordance with N.J.S.A. 40A:20-12 so long as the Land is exempt from taxation hereunder.

**SECTION 4.06      County Portion Paid to the County.**

In accordance with the provisions of N.J.S.A. 40A:20-12, upon the payment of the Annual Service Charge, the City shall remit the County Share to the County.

**SECTION 4.07      Material Conditions,**

It is expressly agreed and understood that all payments of the Annual Service Charge and any interest payments, penalties or costs of collection due thereon, and payments of Land Taxes, if applicable, are material conditions of this Financial Agreement (the “**Material Conditions**”). If any other term, covenant or condition of this Financial Agreement or the Exemption Application, as to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Financial Agreement or the application of such term, covenant or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each remaining term, covenant or condition of this Financial Agreement shall be valid and enforced to the fullest extent permitted by applicable law.

**SECTION 4.08      No Reduction in Payment of the Annual Service Charge.**

Neither the amounts nor dates established for payment of the Annual Service Charge, as provided in Sections 4.02 and 4.04 hereof, shall be reduced, amended or otherwise modified during the term of this Financial Agreement, except as explicitly provided herein.

**SECTION 4.09      Annual Service Charge as Municipal Lien.**

The City and the Entity hereby expressly acknowledge, understand and agree that the Ordinance, this Financial Agreement and any amount due hereunder, including without limitation, the Annual Service Charge, shall be a continuous, perfected municipal lien on the Phase 1 Senior Housing Project Area and the Phase 1 Senior Housing Project, and that any subsequent Annual Service Charge, including any interest, penalties or costs of collection thereof, that shall thereafter become due or accrue, shall be added and relate back to and be part of the initial municipal lien on the relevant portion of the Phase 1 Senior Housing Project Area and the Phase 1 Senior Housing Project,

**SECTION 4.10      Security for Payment of Annual Service Charge.**

In order to secure the full and timely payment of the Annual Service Charge, the City reserves the right to prosecute an In Rem Tax Foreclosure action against the applicable portion of

the Phase 1 Senior Housing Project Area in accordance with applicable law, as more fully set forth in this Financial Agreement.

{End of Article IV}

**ARTICLE V**

**CERTIFICATE OF OCCUPANCY**

**SECTION 5.01      Certificate of Occupancy.**

It is understood and agreed that it shall be the obligation of the Entity to, in good faith, take such actions as are necessary under applicable law 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.

{End of Article V}

## ARTICLE VI

### ANNUAL AUDITS

#### **SECTION 6.01      Calculation of Net Profit.**

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

#### **SECTION 6.02      Periodic Reports/Notices.**

A.     Auditor’s Report: Within ninety (90) days after the close of each fiscal or calendar year that this Financial 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, and the Division of Local Government Services in the Department of Community Affairs, its Auditor’s Report for the preceding fiscal or calendar year. The Auditor’s Report shall clearly identify and calculate the Net Profit for the Entity during the previous year. The Entity assumes all costs associated with preparation of the annual reports.

B.     Total Project Cost Audit: Within ninety (90) days after Substantial Completion of the Phase 1 Senior Housing 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 by a certified public accountant licensed in the State, as to actual construction costs, site remediation and clean-up of Hazardous Substances, as well as any other costs contemplated in this Agreement.

C.     Disclosure Statement: Within ninety (90) days after each anniversary date of the execution of this Financial 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 Phase 1 Senior Housing Project and the extent of the ownership interest of each (each a “**Disclosure Statement**”).

#### **SECTION 6.03      Inspection.**

Upon reasonable request in writing, and with a reasonable amount of advance notice, during normal business hours and in the presence of an officer or agent designated by the Entity if available on the date and time requested, the Entity shall permit (i) the inspection of its property, equipment, buildings and other facilities of the Phase 1 Senior Housing Project, and (ii) 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 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 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 Phase 1 Senior Housing Project.

**SECTION 6.04      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. The calculation of the Entity's excess Net Profit pursuant to the Long Term Tax Exemption Law shall include those project costs directly attributable to site remediation and cleanup expenses and exclude such other amounts as provided in this Financial Agreement and the Long Term Tax Exemption Law. 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 Phase 1 Senior Housing Project, whether or not taxable under federal or State law.

**SECTION 6.05      Payment of Dividend and Excess Profit Charge.**

In the event the Net Profits of the Entity (after funding of any reserve described in Section 8.04), in any fiscal year (taken as one accounting period) after Substantial Completion, 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 set forth in N.J.S.A. 40A:20-3(c) and 40A:20-15, with the Entity having the right to (i) include those Phase 1 Senior Housing Project costs attributable to site remediation and cleanup expenses, and (ii) exclude other costs as provided in this Agreement or N.J.S.A. 40A:20-3.

{End of Article VI}

## ARTICLE VII

### ASSIGNMENT AND/OR ASSUMPTION

#### **SECTION 7.01      Transfers Generally.**

Except for Permitted Transfers set forth in Section 7.02 below, the Entity shall not, without the prior written consent of the City (which may be granted or withheld in the City's sole discretion): (A) effect or permit any change, directly or indirectly, in the majority ownership or control of the Entity, (B) assign or attempt to assign this Agreement, or (C) make any total sale, lease, transfer or conveyance of the whole of its interest in the Phase 1 Senior Housing Project Area or the Phase 1 Senior Housing Project (collectively, a "**Transfer**").

#### **SECTION 7.02      Permitted Transfers.**

Notwithstanding the foregoing Section 9.01, the Entity, without violating the provisions of Section 9.01, may effectuate the following Transfers, sales or assignments, to which the City hereby consents, without the necessity of further action by the City (the "**Permitted Transfers**"):

A.      The City hereby expressly permits and consents to the transfer of: (1) 99.99% of the ownership interest in the Entity to a tax credit investor chosen by the Entity, at its sole discretion, in furtherance of the Phase 1 Senior Housing Project's anticipated low income housing tax credit financing; (2) the tax credit investor's interest in the Entity pursuant to Section 10.01 of the First Amended and Restated Operating Agreement of the Entity (the "**Operating Agreement**"); and (3) the interest of the managing member in the Entity if the tax credit investor removes the managing member due to a default of the managing member under the Operating Agreement pursuant to Section 9.02 of the Operating Agreement, provided the tax credit investor gives to the City prior written notice of the removal and the new managing member.

B.      Transfers to any Holder as security for the purpose of obtaining the financing necessary to enable the Entity to perform its obligations under the Redevelopment Agreement with respect to completing the Phase 1 Senior Housing Project and any other purpose authorized by the Redevelopment Agreement, including deeds to Holders in lieu of foreclosure or transfers at foreclosures;

C.      Any mortgage or mortgages and other liens and encumbrances for the purposes of financing costs associated with the acquisition, development, construction and marketing of the Phase 1 Senior Housing Project;

D.      Utility and other development easements;

E.      Environmental covenants and restrictions imposed by a regulatory agency as a condition of any Governmental Approval (as such term is defined in the Redevelopment Agreement);

F.      Transfers to affiliates of the Entity; provided such entity is an urban renewal entity formed pursuant to the Long Term Tax Exemption Law, Hans Lampart maintains control of such entity (which control may be indirect) and the transferee expressly assumes the obligations under

the Redevelopment Agreement and this Agreement; it being the mutual intent of the Parties that under all circumstances this Agreement shall remain in full force and effect, applicable to the entire Phase 1 Senior Housing Project Area, in the event of any Transfer.

G.

The Entity shall provide thirty (30) day prior notice to the City of any Permitted Transfer to be consummated pursuant to this Section 7.02.

**SECTION 7.03      Transfer to an Unaffiliated Urban Renewal Entity.**

As permitted by N.J.S.A. 40A:20-10(a), notwithstanding the foregoing Section 9.01, upon written application by the Entity, the City will consent to a sale to another urban renewal entity purchasing all or a portion of the Phase 1 Senior Housing Project in fee simple and the transfer of the tax exemption in this Financial Agreement for the Phase 1 Senior Housing Project, or portion thereof (reflected in a new financial agreement incorporating all the terms of this Financial Agreement for the period remaining on the tax exemption for the Phase 1 Senior Housing Project or portion thereof (the “**Transferee Agreement**”)), provided: (A) the transferee entity is formed and eligible to operate under the Long Term Tax Exemption Law; (B) the Entity is not then in Default of this Financial Agreement or the Long Term Tax Exemption Law; (C) the Entity’s obligations under this Financial Agreement as to the Phase 1 Senior Housing Project or portion thereof being transferred are fully assumed by the transferee entity in the Transferee Agreement; (D) the transferee entity agrees to all terms and conditions of this Financial Agreement in the Transferee Agreement; (E) if applicable, the Entity or the transferee entity, upon proper application to and approval by the City, subdivides the Phase 1 Senior Housing Project Area underlying that portion of the Phase 1 Senior Housing Project being transferred, which application for subdivision shall not be unreasonably withheld, conditioned or delayed; and (F) the City consents in writing to such transfer pursuant to the terms of the Redevelopment Agreement. The City shall, in good faith, in a prompt and timely manner reasonably cooperate with the Entity and the transferee entity and use its best efforts to review the written application of the Entity, review and approve the application for approval of the transferee entity pursuant to N.J.S.A. 40A:20-8, and negotiate and approve the Transferee Agreement. The then applicable Annual Service Charge for the Phase 1 Senior Housing Project or portion thereof will be paid by the transferee entity pursuant to the Transferee Agreement. In the event that any transfer contemplated in this Section 9.03 is for less than the whole of the Phase 1 Senior Housing Project, the Annual Service Charge to be paid by the Entity and the transferee entity after the transfer shall be pro-rated based on the relative assessed value of the portion of the Phase 1 Senior Housing Project being transferred compared to the portion of the Phase 1 Senior Housing Project remaining with the Entity.

**SECTION 7.04      Subordination of Fee Title.**

It is expressly 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 hereunder, to encumber and/or lease and/or assign the fee title to the Phase 1 Senior Housing Project Area and/or Senior Housing Phase 1 Senior Housing Project, and that any such encumbrance, lease or assignment shall not be deemed to be a violation of this Financial Agreement.

**SECTION 7.05      Restriction on Transfer.**

So long as this Financial Agreement remains in effect, any transfer of the Phase 1 Senior Housing Project Area (except for any Permitted Transfer or any Transfer to which the City consents under this Article VII) shall be void ab initio.

{End of Article VII}

## ARTICLE VIII

### CITY DETERMINATIONS AND OBLIGATIONS

#### **SECTION 8.01      Relative Benefits.**

In accordance with the Long Term Tax Exemption Law, specifically N.J.S.A. 40A:20-11(a), the City hereby finds and determines that this Financial Agreement is to the direct benefit of the health, safety, welfare and financial well-being of the City and its citizens despite the tax exemption granted hereunder.

#### **SECTION 8.02      Importance of Tax Exemption.**

In accordance with the Long Term Tax Exemption Law, specifically N.J.S.A. 40A:20-11(b), the City hereby finds and determines that this Financial Agreement is a critical incentive for the Entity to undertake the Phase 1 Senior Housing Project in the City due to the extraordinary costs associated with the development of the Redevelopment Area and the related infrastructure costs of the Phase 1 Senior Housing Project. The exemption contemplated hereunder provide the benefits to the City, among others, of the completion of (i) the Phase 1 Senior Housing Project providing much needed age and health restricted housing, (ii) needed infrastructure Improvements, (iii) certain other local and regional infrastructure improvements that otherwise would not exist, and (iv) certain aesthetic, drainage, roadway and pedestrian improvements in the City.

{End of Article VIII}

## **ARTICLE IX**

### **WAIVER**

#### **SECTION 9.01     Waiver.**

Except as specifically provided in this Financial 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 Financial Agreement or otherwise shall constitute a waiver or relinquishment by the City or the Entity of any rights and remedies provided by applicable law. 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 Financial Agreement.

{End of Article XI}

**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, as follows:

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

Newcomb Senior Apartments Urban Renewal, LLC  
c/o Hans Lampart  
925 East Landis  
Suite E  
Vineland, NJ 08360  
Fax: (856) 696-1200  
Phone: (856) 696-0200  
E-mail: hl@epacdevco.com

**with a copy to:**

Jeffrey S. Beenstock  
Ballard Spahr LLP  
700 East Gate Drive, Suite 330  
Mount Laurel, New Jersey 08054  
Fax: (856) 761-1020  
Phone: (856) 761-3417  
E-mail: beenstock@ballardspahr.com

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

Sandy Forosisky, Director of Economic Development  
City of Vineland  
640 E. Wood Street  
P.O. Box 1508  
Vineland, New Jersey 08632.1508  
Fax: (856)405-4607  
Phone: (856) 794-4000 ext. 4623  
E-mail: sforosisky@virtelandcity.org

**with copies to:**

Richard Tonetta, Esq., Department of Law  
City of Vineland  
640 E. Wood Street  
P.O. Box 1508

Vineland, New Jersey 08632-1508  
Fax: (856) 405-4607  
Phone: (856) 794-4000 ext. 4600  
E-mail: rtonetta@vinelandcity.org

Leah Sandbank, Esq.  
McManimon, Scotland & Baumann, LLC  
75 Livingston Road, 2<sup>nd</sup> Floor  
Roseland, New Jersey 07068  
Fax: (973) 712-1431  
Phone: (973) 622-1800  
E-mail: lsandbank@msbnj.com

The notice to the City shall identify the subject with the block and lot numbers on the tax map of the City of the parcels comprising the Phase 1 Senior Housing Project Area.

{End of Article X}

**ARTICLE XI**

**COMPLIANCE**

**SECTION 11.01 Compliance.**

The Entity hereby agrees at all times prior to the expiration or Termination of the tax exemption to remain bound by the provisions of this Agreement and the Law.

{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 Financial 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.

A. It is hereby understood and agreed that in the event the City shall be named as a party in any action brought against the Entity (other than an action brought by the City itself) by allegation of any breach, Default or violation of any of the provisions of this Financial Agreement and/or the provisions of the Long Term Tax Exemption Law arising out of or resulting from the action or inaction of the Entity, the Entity shall indemnify and hold the City 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 such breach, Default or violation of any of the provisions of this Financial Agreement and/or the provisions of the Long Term Tax Exemption Law; provided, however that the Entity shall not be required to indemnify the City for any willful or negligent act, omission or misconduct by the City or any of its officers, officials, employees or agents. Upon the City becoming aware of any claim or loss for which indemnification is sought, the City 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 using counsel of its choosing. The City maintains the right to intervene as a party thereto, to which intervention the Entity hereby consents, the expense thereof to be borne by the City.

B. The Entity shall indemnify and defend the City and its directors, officers, shareholders, employees, successors and assigns, (collectively, the "**Indemnified Parties**"), against, and hold the Indemnified Parties harmless from, and reimburse the Indemnified Parties for, any and all claims, demands, judgments, penalties, liabilities, costs, damages, expenses, incurred by any of the Indemnified Parties, including court costs and reasonable attorney's fees (prior to trial, at trial and on appeal), caused by, resulting from or arising out of any of the following acts or omissions committed, permitted or omitted by the Entity:

- (1) fraud or intentional or material representation by the Entity;
- (2) misappropriation of rents or security deposits received by the Entity;
- (3) intentional material physical waste of any portion of its Parcels; or
- (4) failure by the Entity to pay any valid taxes, assessments, mechanic's liens, materialmen's liens or other liens which could create liens on any portion of its Land or Phase 1 Senior Housing Project which would, or could, be superior or equal in priority to the lien or security title of this Financial Agreement.

{End of Article XIII}

## ARTICLE XIV

### **DEFAULT; REMEDIES; TERMINATION**

#### **SECTION 14.01     Default.**

“**Default**” shall mean the failure of the Entity or the City to comply with the terms of this Financial Agreement observe and perform any other obligation imposed upon the Entity or the City, as applicable, beyond any applicable notice, cure or grace period. As set forth in Section 1.01, in the event of any breach or Default of this Financial Agreement by an Owner, such breach or Default shall not constitute a breach or default by any other Owner(s) and such other Owner(s), and its respective parcel or portion of Land, and any improvements related thereto, shall continue to be subject to, governed by and bound by this Financial Agreement.

#### **SECTION 14.02     Cure Upon Default.**

Should either Party be in Default of any obligation under this Financial Agreement, the non-defaulting Party shall notify the defaulting Party 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 defaulting Party shall have (i) sixty (60) days to cure any non-payment Default from the date of its receipt of the Default Notice and (ii) ten (10) business days to cure any payment Default from the date of such Default; provided, however, that if such non-payment Default is not reasonably able to be cured within such sixty (60) day period and the defaulting Party is diligently pursuing a cure, such cure period shall extend as long as the defaulting Party continues diligently to pursue such cure. No Default hereunder by the Entity shall terminate the tax exemption described herein and its obligation to make Annual Service Charge payments, which shall continue in effect for the respective durations set forth in Section 3.01 hereof, subject to Section 3.02 hereof.

#### **SECTION 14.03     Remedies Upon Default Cumulative; No Waiver.**

In the event of any uncured Default by the Entity, the City shall have the right to proceed against any portion of the Phase 1 Senior Housing Project Area and the Phase 1 Senior Housing Project owned by the Entity pursuant to the provisions of applicable law. Upon any Default in payment of any installment of the Annual Service Charge by the Entity, 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 Financial Agreement including Section 14.04, all of the remedies provided in this Financial 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 Financial Agreement shall deprive the City of any of its remedies or actions against the Entity because of Entity’s failure to pay Land Taxes (if applicable), 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 Land Taxes (if applicable), Annual. Service Charge or other charges, or for breach of covenant or the resort of any other remedy herein provided for the recovery of Land Taxes (if applicable), 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 Financial Agreement.

In the event of a Default under of this Financial Agreement by either Party or 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 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 will 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 law, 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 law, 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 Phase 1 Senior Housing 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 Financial 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 Financial Agreement, and no other property or assets of the Entity's 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 any of 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 Financial 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 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.

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 Financial 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      Final Accounting.**

Within ninety (90) days after the date of Termination of tax exemption, the Entity shall provide a final accounting pursuant to N.J.S.A. 40A:20-12. After Termination or expiration, restrictions and limits on the Entity shall terminate upon the Entity's rendering a final accounting.

**SECTION 14.06      Conventional Taxes.**

Upon Termination or expiration of this Financial Agreement, the tax exemption for the Phase 1 Senior Housing Project shall expire and the Phase 1 Senior Housing Project Area and the Phase 1 Senior Housing Project thereon shall thereafter be assessed and conventionally taxed according to the general law applicable to other nonexempt taxable property in 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 Financial Agreement, the language in this Financial 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 Financial Agreement.

#### **SECTION 15.03     Entire Document.**

All conditions in the Ordinance are incorporated in this Financial 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 and expressly replaces and supersedes all prior agreements, including without limitation the Original Financial Agreement with respect to the Phase 1 Senior Housing Project.

#### **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 Financial Agreement, the entire Financial 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 Financial 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 Phase 1 Senior Housing Project Area including the Phase 1 Senior Housing Project 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 Land Taxes (but only if the Phase 1 Senior Housing Project Area is determined not to be exempt pursuant to the Long Term Tax Exemption Law) and 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 are set forth in the Exemption Application, which financial information is incorporated by reference as if set forth in full herein.

**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 Financial Agreement.

**SECTION 15.09     Amendments.**

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

**SECTION 15.10     Certification.**

The City Clerk shall certify to the Tax Assessor, pursuant to N.J.S.A. 40A:20-12, that a financial agreement with an urban renewal entity, i.e., the Entity, for the development of the Redevelopment Area, has been entered into and is in effect as required by N.J.S.A. 40A:20-1, *et seq.* 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 Financial 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 Financial Agreement or until the Tax Assessor has been duly notified by the City Clerk that the exemption has been terminated.

Upon the adoption of this Financial Agreement, a certified copy of the Ordinance and this Financial Agreement shall forthwith be transmitted to the Director of the Division of Local Government Services by the City Clerk. Within ten (10) days of the execution of this Financial Agreement, the City Clerk shall provide a copy of the Financial Agreement and the Ordinance authorizing the same to the Cumberland County Counsel and the Cumberland County Chief Financial Officer for informational purposes in accordance with P.L. 2015, c. 247, Section 1, as codified in N.J.S.A. 40A:20-12.

**SECTION 15.11     Administrative Fees.**

No annual administrative fee shall be assessed or payable in connection with this Agreement.

**SECTION 15.12     Severability.**

If any terms or provision of this Financial Agreement or the application thereof shall to any extent be held to be invalid or unenforceable, the remainder of this Financial 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 Financial Agreement shall be valid and shall be enforced to the extent permitted by applicable law.

**SECTION 15.13      Force Majeure.**

Neither Party shall be liable to the other for failure to perform its obligations under this Agreement due to causes that are beyond the reasonable control and not substantially due to the fault or negligence of the party seeking to excuse delay or failure of performance of an obligation hereunder by reason thereof, including, but not limited to, declarations of public emergency; acts of nature (as to weather-related events, limited to severe and unusual events or natural occurrences such as hurricanes, tornadoes, earthquakes, and floods); acts of the public enemy; acts of terrorism; acts of war; fire; epidemics; quarantine restrictions; blackouts, power failures, or energy shortages; governmental embargoes; strikes or similar labor action by equipment or material suppliers or transporters, or unavailability of necessary building materials. Notwithstanding the foregoing, the payment of Land Taxes (during any period in which Land Taxes are not exempt hereunder) and Annual Service Charge are Material Conditions of this Agreement which shall not be excused by the occurrence of a force majeure event.

{End of Article XV}

**IN WITNESS WHEREOF**, the parties have caused this Financial Agreement to be executed as of the day and year first above written.

**NEWCOMB SENIOR APARTMENTS URBAN RENEWAL, LLC**, a New Jersey limited liability company

By: Newcomb Senior Apartments Managing Member, LLC, its managing member

By: \_\_\_\_\_  
Hans Lampart, President

STATE OF NEW JERSEY :  
: ss  
COUNTY OF :

On this, the \_\_\_\_\_ day of November, 2021, before me, the subscriber, personally appeared Hans Lampart, who I am satisfied is the person who executed the foregoing instrument as the President of Newcomb Senior Apartments Urban Renewal, LLC, a New Jersey limited liability company and the managing member of Newcomb Senior Apartments Managing Member, LLC, the New Jersey limited liability company named in the foregoing instrument, and he acknowledged that he, in such capacity, being authorized to do so, executed the foregoing instrument as such entity's voluntary act and deed for the purposes therein contained by signing on behalf of said entity.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

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

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

**[CONTINUED ON NEXT PAGE]**

**CITY OF VINELAND**

By: \_\_\_\_\_  
Anthony Fanucci, Mayor

STATE OF NEW JERSEY :  
: ss  
COUNTY OF CUMBERLAND :

On this, the \_\_\_\_\_ day of November, 2021, before me, the subscriber, personally appeared Anthony Fanucci, who I am satisfied is the person who executed the foregoing instrument as the Mayor of the City of Vineland, and he acknowledged that he, in such capacity, being authorized to do so, executed the foregoing instrument as such municipal corporation's voluntary act and deed for the purposes therein contained by signing on behalf of said municipal corporation.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

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

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

