

ORDINANCE OF THE CITY OF EAST ORANGE, NEW JERSEY

1st Reading: 3, 23, 2020

Referred to Planning Board: / /

Public Hearing: 4 11 2020

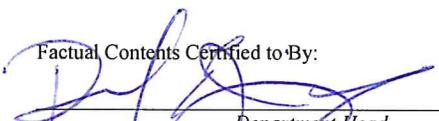
Received from Planning Board: / /

Final Reading: 4 11 2020

Approved as to Form and Legality
On Basis of Facts Set Forth.

Factual Contents Certified to By:

 3/11/20
Corporation Counsel


Department Head

Appropriations:

Tabled: / /

Comptroller

Removed From Table: / /

Councilman/Councilwoman Pullins

Presents the following Ordinance:

ORDINANCE NO. 13 OF 2020

AN ORDINANCE TO APPROVE THE TAX EXEMPTION AND TO AUTHORIZE THE EXECUTION OF A FINANCIAL AGREEMENT BETWEEN THE CITY OF EAST ORANGE AND NORMAN TOWERS URBAN RENEWAL, LLC

WHEREAS, the Entity has applied for a long term tax exemption pursuant to the New Jersey Housing and Mortgage Finance Agency Law of 1983, as amended and supplemented, *N.J.S.A.* 55:14K-1 *et seq.* (the “HMFA Law”) for a project to preserve and significantly rehabilitate a four hundred six (406) unit HUD Section 8 age-restricted housing complex located at 500 North Walnut Street and identified on the City’s tax maps as Block 320, Lot 11 (the “Property”) in order to construct certain substantial renovations as described more fully within the Application, as such term is defined herein (collectively, the “Project”);

WHEREAS, the Entity is the owner of certain property designated as Tax Block 320, Lot 11, more commonly known by the street address of 500 North Walnut Street, East Orange, and more particularly described by the metes and bounds descriptions set forth in Exhibit 1 to this Agreement (the “Property” or the “Project Site”); and

WHEREAS, the City desires to adopt an ordinance approving a long term tax exemption for the Project as authorized by *N.J.S.A.* 55:14K-37 and wishes to enter into this Financial Agreement in order to memorialize the terms and conditions applicable to this long term tax exemption; and

WHEREAS, the Developer has provided an in-depth proposal and application to the City of East Orange (hereinafter referred to as the “Municipal Governing Body”) seeking a long-term tax exemption; and

WHEREAS, the Local Redevelopment and Housing Law, *N.J.S.A.* 40A:12A-1, *et seq.*, as amended and supplemented (the “Act”), authorizes municipalities to participate in the redevelopment and improvement of areas in need of redevelopment; and

WHEREAS, the Developer has presented to the Mayor’s Tax Exemption Review Committee a revenue projection for the Project, that sets forth the total gross revenue to be received and costs to be expended by the Developer from the operation of the Project as estimated by the Developer; and

WHEREAS, The Mayor of the City of East Orange in accordance with the *N.J.S.A.* 55:14K-1 *et seq.* (the “HMFA Law”) and Article II of Chapter 247 of the municipal code entitled Long-Term Tax Exemptions and Payments in Lieu of Taxes has recommended to the Municipal Governing Body the acceptance of this application; and

WHEREAS, the Municipal Governing Body has determined that the financial feasibility and viability of the project is dependent upon financial assistance in the form of the payment to the City of an annual service charge in lieu of taxes in accordance with applicable law; and

WHEREAS, the Municipal Governing Body has also determined that said documents support the benefit to the resident of the City of East Orange of granting a long-term tax exemption; and

WHEREAS, the Developer has demonstrated to the satisfaction of Municipal Governing Body that the granting of a long-term tax exemption will improve the quality of life for the occupants of the project and the quality of life for the City of East Orange; and

WHEREAS, the Municipal Governing Body has thoroughly reviewed the Developer's submissions and supporting documents and determined that it is in the best interest of the City to grant a tax abatement to the Developer in the amount set forth in the financial agreement subject to the adoption of this ordinance for a twenty five (25) year term during which the annual service charge shall be increased in accordance with the Financial Agreement; and

WHEREAS, the Developer has agreed that the Office of the Tax Assessor shall conduct a mandatory review during the exemption period of the Financial Agreement and other financial documents every five years; and

WHEREAS, the Developer has agreed that the project is financially feasible and as such, the annual service charge shall be increased in accordance with the Financial Agreement; and

WHEREAS, the Developer has agreed to grounds for termination of the tax abatement consistent with the Financial Agreement and Article II Chapter 247 of the municipal code entitled long term tax exemptions and pilots; and

WHEREAS, the City of East Orange is entering into the Financial Agreement in reliance upon planned rehab construction including site work to the Project being commenced and completed in accordance with the construction schedule; and

WHEREAS, the financial agreement represents an arm's length transaction between the parties and all promises and agreements, express or implied, payment of fees or other benefits, terms or conditions related thereto are incorporated therein as it concerns the project and the parties hereto as well as their agents and servants; and

WHEREAS, the Entity hereby certifies its compliance with the applicable municipal ordinances including but not limited to Ordinance No. 4 of 2010 and any amendments thereto as the Long-Term Tax Exemption Law and specifically N.J.S.A. 40A:20-8.

NOW, THEREFORE, BE IT ORDAINED by the Municipal Governing Body of the City of East Orange that:

SECTION 1: PROVISIONS

- (1) The Municipal Governing Body hereby finds and determines that the proposed Project will meet or meets an existing housing need and that the exemption is in the City's best interest; and
- (2) The Municipal Governing Body does hereby make the determination and findings herein contained pursuant to, and in conformity with the provisions of Article II Chapter 247 of the municipal code entitled Long-Term Tax Exemptions and Pilots and the *N.J.S.A. 55:14K-1 et seq.* (the "HMFA Law"). and in accordance with the recommendations of the Mayor's tax exemption review committee; and
- (3) The Municipal Governing Body does hereby adopt this Ordinance with the further intent and purpose that from the date of Substantial Completion, the proposed Project, specifically the improvements thereon, will be exempt from real property taxation for a term not to exceed twenty five (25) years in accordance with *N.J.S.A. 40:20-12*, provided that payment of the land taxes and annual service charges for municipal services supplied to the Project are made to the City for the time in such amounts and

in the manner set forth in Financial Agreement, and there is no material breach of all other terms in the Financial Agreement; and

- (4) The Municipal Governing Body hereby authorizes and directs the Mayor and the City Clerk to execute the Financial Agreement referenced herein as *Exhibit A*; and
- (5) The Municipal Governing Body hereby directs the City Clerk to transmit a certified copy of this Ordinance and the Financial Agreement to the Director of the Division of Local Government Services.
- (6) Upon Adoption of this Ordinance and execution of the Financial Agreement, a copy shall be transmitted to the Department of Community Affairs, Director of the Division of Local Government Services pursuant to N.J.S.A. 40A:20-12

SECTION 2: INCONSISTENCIES

All other ordinances and parts of ordinances in conflict or inconsistent with this Ordinance are hereby repealed but only to the extent of such conflict or inconsistency.

SECTION 3: HEADINGS

All headings within this ordinance are for convenience only and are not deemed to be part of this ordinance.

SECTION 4: EFFECTIVE DATE

This ordinance shall take effect after final passage and upon expiration of twenty (20) days following publication unless otherwise provided by resolution of this City Council.

FIRST READING

Council Member	AYE	NAY	N.V.	A.B	VETO
GOMEZ	✓				
BRENT	✓				
PULLINS JR	✓				
GARRETT-WARD	✓				
LENEUS	✓				

Council Member	AYE	NAY	N.V.	A.B	VETO
HOLMAN				✓	
AWE	✓				
LEWIS	✓				
CLAYBROOKS	✓				
JAMES	✓				

RECORD OF COUNCIL VOTE ON SECOND READING & FINAL PASSAGE

Council Member	AYE	NAY	N.V.	A.B	VETO
GOMEZ					
BRENT					
PULLINS JR					
GARRETT-WARD					
LENEUS					

Council Member	AYE	NAY	N.V.	A.B	VETO
HOLMAN					
AWE					
LEWIS					
CLAYBROOKS					
JAMES					

X - Indicates Vote AB - Absent NV - Not Voting (Abstain/Excused)

ACTION ON VETO: ✓ to Sustain ✓✓ to Override

Passed on First Reading: 3, 23, 2020
 Adopted on Final Reading: / /
 Presented to Mayor: / /
 Approved: / / Vetoed: / /

Reconsidered by Council: / /


 Council Chairman/Chairwoman

 Mayor

 City Clerk

FINANCIAL AGREEMENT

THIS FINANCIAL AGREEMENT (hereinafter the “**Agreement**” or the “**Financial Agreement**”), made this 16th day of MARCH, 2020, by and between **NORMAN TOWERS COMMUNITY PARTNERS, LP** having its principal office at 17782 Sky Park Circle, Irvine, CA (the “**Entity**”) and the **CITY OF EAST ORANGE**, a municipal corporation in the County of Essex and the State of New Jersey (the “**City**”) (collectively, the “**Parties**”) having offices at 44 City Hall Plaza, East Orange, New Jersey 07018.

WITNESSETH:

WHEREAS, the Entity has applied for a long term tax exemption pursuant to the New Jersey Housing and Mortgage Finance Agency Law of 1983, as amended and supplemented, *N.J.S.A. 55:14K-1 et seq.* (the “**HMFA Law**”) for a project to preserve and significantly rehabilitate a four hundred six (406) unit HUD Section 8 age-restricted housing complex located at 500 North Walnut Street and identified on the City’s tax maps as Block 320, Lot 11 (the “**Property**”) in order to construct certain substantial renovations as described more fully within the Application, as such term is defined herein (collectively, the “**Project**”);

WHEREAS, the City has adopted an ordinance approving a long term tax exemption for the Project as authorized by *N.J.S.A. 55:14K-37* and wishes to enter into this Financial Agreement in order to memorialize the terms and conditions applicable to this long term tax exemption, a copy of which Ordinance is attached hereto as **EXHIBIT A**.

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

ARTICLE I GENERAL PROVISIONS

1.01 Governing Law. This Financial Agreement shall be governed by the provisions of (a) the HMFA Law, (b) the Ordinance pursuant to which the Municipal Council approved the Application, and (c) all other relevant Federal, State or City statutes, ordinances, resolutions, rules and/or regulations.. It is expressly understood and agreed that the City expressly relies upon the facts, data, and representations contained within the Entity’s tax exemption Application attached hereto in granting this tax exemption.

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

Agency Mortgage – The mortgage on the Property in favor of the HMFA pursuant to the HMFA Law.

Annual Gross Revenue – The total annual gross rents and other income of the Entity from the Project including but not limited to laundry vending machines, tv services etc. For the avoidance of doubt, the entire gross rents received by the Entity including the tenant share and HUD share of such rents shall be treated as Annual Gross Revenue under this Agreement.

Annual Service Charge – The total annual amount the Entity has agreed to pay the City pursuant to Article IV hereof for municipal services supplied to the Project, which amount is in lieu of any real estate taxes on the Property, which amount shall be pro-rated in the year in which the Annual Service Charge begins and the year in which the Annual Service Charge terminates.

Annual Service Charge Start Date – The Annual Service Charge Start Date shall be the date on which the Project achieves Substantial Completion .

Application - The application filed by the Entity for a tax exemption for the Project which is attached hereto as **EXHIBIT B**.

Auditor's Report – A complete financial statement outlining the financial status of the Project (for a period of time as indicated by context), which shall also include, among other things, a certification of Annual Gross Revenue for the Project and the Annual Service Charge due to the City for each year that this Agreement is in effect. The contents of the Auditor's Report shall be prepared in conformity with generally accepted accounting principles and 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. Such audit shall be bound with numbered pages, a table of contents and shall be submitted in accordance with this agreement.

Certificate of Completion – AIA G704 Form as submitted by the Architect with respect to the Project shall be submitted in addition to a request to the Tax Assessor's office for an inspection to be completed.

City – Shall be as defined in the preamble.

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 the Law, beyond any applicable grace or cure periods.

Default Notice – Shall be as defined in Section 11.02.

Director – The Director of the City's Department of Policy, Planning and Development.

Effective Date – The date of the full execution of this Agreement.

Entity - The term Entity within this Agreement shall mean Norman Towers Community Partners, LP.

HMFA – The New Jersey Housing and Mortgage Finance Agency.

HMFA Law – The New Jersey Housing and Mortgage Finance Agency Law of 1983, as amended and supplemented, N.J.S.A. 55:14K-1 et seq.

Improvements - Shall mean the existing building on the Land and any and all other improvements to be constructed on, in or under the Land in accordance with the terms hereof, including the interior rehabilitation and renovation of tenant rental units and common area and tenant amenity space.

In Rem Tax Foreclosure - A summary proceeding by which the City may enforce the lien for taxes due and owing by a tax sale, which shall be governed by the Tax Sale Law.

Land – The land, but not the Improvements, comprising the real property commonly known as 500 North Walnut Street and identified on the City’s tax maps as Block 320, Lot 11, and more particularly described by the metes and bounds description set forth within Exhibit A of this Agreement.

Law – The term shall refer to the HMFA Law, the Ordinance pursuant to which the Municipal Council approved the Application, and all other relevant Federal, State or City statutes, ordinances, resolutions, rules and/or regulations applicable to this Agreement.

Material Conditions – Shall be as defined in Section 4.06.

Minimum Annual Service Charge - The minimum annual service charge shall be \$1,005,526.50. The Minimum Annual Service Charge shall be paid in each year in which the Annual Service Charge would be less than the Minimum Annual Service Charge.

Notice of Termination – Shall be as defined in Section 11.05.

Ordinance – The ordinance adopted by the Municipal Council approving the tax exemption for the Property.

Parties – Shall be as defined in the preamble.

Project – The project to preserve and significantly rehabilitate a four hundred six (406) unit HUD Section 8 age-restricted housing complex as described more fully within the Application.

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

Property – Has the meaning as set forth in the Recitals hereof.

State – The State of New Jersey.

Substantial Completion – The determination by the City that the Project has been substantially completed, which shall mean the date on which a Certificate of Completion is received by the Entity and delivered to the Director or should have been received by the Entity and delivered to the Director.

Tax Sale Law - Shall mean N.J.S.A. 54:5-1 et seq., as amended or supplemented from time to time.

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

1.03 Exhibits and Recitals Incorporated. The Application (including all exhibits to the Application), attached to this Financial Agreement as Exhibit B are incorporated herein and made part hereof.

ARTICLE II **APPROVALS**

2.01 City Approval of Tax Exemption. Pursuant to the Ordinance and in accordance with N.J.S.A. 55:14K-37, the Project Land and Improvements shall be exempt from taxation as provided for herein and under the HMFA Law. Such tax exemption shall constitute a single continuing exemption from local property taxation commencing on the Annual Service Charge Start Date and continuing for the term of the Agency Mortgage. Prior to commencement of the Annual Service Charge on the Annual Service Charge Start Date, the Entity shall continue to pay real estate taxes on the Land and Improvements, however, in accordance with N.J.S.A. 55:14K-37 during the period of construction of the Project, the Project's real estate taxes shall remain at their current level and there shall not be any increase reflecting partial incremental increase in the value of the Property by way of any partial assessments, added assessments or omitted assessments. The Project shall be as described in the Application and the Entity hereby expressly covenants, warrants and represents that the Property, including any Improvements related thereto, shall be used, managed and operated for the purposes set forth in the Application and in accordance with the Law. In the event that the Project, or any portion thereof, shall be utilized for any other purpose other than as set forth in the Application, the Agreement shall terminate and the Improvements and the Land shall thereafter be assessed and taxed according to the general law applicable to other non-exempt property in the City.

ARTICLE III **Long Term Exemption**

3.01 Scope. During the Exemption Term, the Improvements, and the Land, shall be exempt from Ad Valorem Taxes and, therefore, between the Exemption Start Date and the Termination Date, the Entity shall pay both the total PILOT billed and the Land Taxes. The Long Term Exemption shall have no effect on water and/or sewer charges, or the Entity's obligation to pay all such charges billed to the Property on a timely basis.

3.02 Certificate of Occupancy.

The Exemption Start Date shall not be set until the Entity submits a Certificate of Occupancy for the Property to the ASTU, Tax Assessor and Tax Collector, if a Certificate of Occupancy is applicable and obtainable otherwise the Certificate of Completion shall serve as a substitute document. The Entity shall make all good faith efforts to obtain a Certificate of Occupancy (or Certificate of Completion if applicable) for the Property in a timely manner, and shall be solely responsible for submitting copies of same to the ASTU, Tax Assessor and Tax Collector. Failure to submit the Certificate of Occupancy or Certificate of Completion as required herein shall not militate against any action or non-action taken by the City, including, if appropriate, retroactive billing with penalties and interest for any charges determined to be due.

3.03 PILOT Billing; Quarterly Installments; Interest. During the Exemption Term, the City shall issue billing statements for the PILOT to the Entity (or its designee) at least annually. Statements shall itemize all PILOT-related charges, credits and other adjustments for the applicable billing period and shall be paid in quarterly installments as set forth therein.

Any portion of a quarterly installment remaining past due 20 days after it becomes due shall bear penalties and interest as a tax delinquency from the original due date until paid at the maximum amount/rate allowable at law. Estimated PILOT charges shall not be binding on the City, and the City may accept PILOT payments without prejudice to its right to challenge the amount due.

3.04 Land Taxes; Land Tax Credit. If for any reason the Land is determined not to be exempt from taxation in accordance with § 3.1 above, and if the Entity is required to pay both the PILOT and the Land Taxes during each year of the Exemption Term; then in such instances the Entity shall be eligible for a credit against the PILOT equal to the Entity's Land Tax payments for the immediately preceding year ("Land Tax Credit"); however, the Entity shall be ineligible to receive a Land Tax Credit for any year in which: a Land Tax installment (or portion thereof) was paid late; the Annual Audit Report was not submitted in a timely manner; or, the Minimum Annual Service Charge applies. The Land Tax Credit shall operate as a partial payment toward the Entity's PILOT obligation.

3.05 Continuous Lien; Tax Sales; In Rem Tax Foreclosure.

- (a) The Entity acknowledges that its total PILOT obligation is in lieu of Ad Valorem Taxes on the Improvements, and that timely payment of all PILOT and Land Tax installments are material conditions of this Agreement. Failure to make such payments in timely manner shall constitute a tax delinquency under Applicable Law and a material Default of this Agreement.
- (b) The Entity further acknowledges, understands and agrees that its PILOT obligation shall constitute an automatic, continuous, enforceable and perfected statutory municipal lien for all purposes, including specifically and without limitation, the federal Bankruptcy Code, 11 U.S.C. §§ 101 *et seq.*, regardless of whether the total PILOT has been computed. The Entity expressly consents to the lien created under the terms of this Agreement as well as the addition of any subsequent unpaid PILOT balances, which shall relate back to and become part of the initial municipal lien.
- (c) Notwithstanding anything to the contrary in this Agreement, the City expressly reserves all rights, authorities and remedies of tax enforcement granted to a municipality under Applicable

Law, including without limitation the authority under the Tax Sale Law, *N.J.S.A. 54:5-1 et seq.*, for any unpaid portion of the PILOT, as well as the authority to foreclose on the Property pursuant to *N.J.S.A. 54:5-77, N.J.S.A. 54:5-85 et seq.*, and the In Rem Tax Foreclosure Act (1948), *N.J.S.A. 54:5-104.29 et seq.*

3.06 Prohibition of Master Leases or Related Techniques.

- (a) This Agreement is intended to account for all revenue arising from the Property as if said revenue accrues to the benefit of the Entity. The Entity is, therefore, prohibited from entering into any lease, contract or other agreement, the direct or indirect effect of which is to interpose a third party between the Entity and the end users of the Property for the purpose of reducing the amount of revenue appearing to benefit the Entity.
- (b) To the extent the City, in its sole discretion, determines that such an arrangement is being utilized, the City shall be entitled to recast the Entity's finances to account for the Annual Gross Revenue and Net Profit that would have accrued to the Entity had the arrangement not been in existence and, based on those finances, recast the PILOT and any amounts the City determines were due for prior years within the Exemption Term.
- (c) Notwithstanding the foregoing, the Entity shall be permitted to enter into a lease for the operation and maintenance of the Property, provided however, that any such lease shall include provisions that require the same amount to be payable to the City each year as would be required under the terms of this Agreement and as if no lease existed. Failure to include these provisions within any such lease shall be a material Default and grounds for termination of this Agreement.

3.07 Term. It is expressly understood and agreed by the Parties that this Financial Agreement shall become effective on the Effective Date and shall remain in effect until the earlier of: (i) twenty-five (25) years from the Annual Service Charge Start Date, (ii) the Entity's voluntary termination of this Agreement, or (iii) the continuance of a Default as set forth within Article XII of this Agreement beyond the applicable notice and cure periods set forth therein; provided, however, that the exemption from taxation and the Entity's obligation to make payments in lieu of taxes shall not extend beyond the date on which the Agency Mortgage is paid in full. Upon the expiration of the tax exemption provided for herein, all restrictions and limitations of this Financial Agreement imposed upon the Entity and the Property shall terminate upon the end of the fiscal year of the Entity and the Property shall thereafter be assessed and taxed according to the general law applicable to other non-exempt property in the City; provided, however, that any and all related remedies available to the City shall survive the termination of this Agreement.

ARTICLE IV
ANNUAL SERVICE CHARGE

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

4.02 Commencement of Annual Service Charge. The Annual Service Charge shall commence on the first day of the month following the Annual Service Charge Start Date. The Annual Service Charge will be prorated in the year in which the Annual Service Charge Start Date begins and terminates. The Annual Service Charge shall continue for the full term of this Agreement in accordance with the terms contained herein.

4.03 Annual Gross Revenue. (a) Annual Gross Revenue shall be calculated as the total annual gross rents and other income of the Entity from the Project.

(b) All other revenue generated by the Project, including without limitation, revenue from vending and laundry machines, shall be included as Annual Gross Revenue for annual service charge purposes.

(c) For the avoidance of doubt, gains realized on any Transfer shall be excluded from Annual Gross Revenue as such revenue is not within the definition of “annual gross revenue” provided at N.J.S.A. 55:14k-37.

4.04 Calculation of Annual Service Charges. The Annual Service Charge during the term shall be the greater of (i) 11.02% of Annual Gross Revenue or (ii) the Minimum Annual Service Charge.

In no event shall the Annual Service Charge in any year after the Annual Service Charge Start Date be less than the Minimum Annual Service Charge. The Minimum Annual Service Charge shall not be reduced through any tax appeal on Land and/or Improvement during the period the Agreement is in force and effect.

4.05 Annual Service Charge Installments. Payment of the Annual Service Charge shall be paid to the City on a quarterly basis on February 1, May 1, August 1, and November 1 after the Annual Service Charge Start Date, subject, nevertheless, to adjustment for over or underpayment within thirty (30) days after completion of and submission to the City of the Annual Audit. In the event that the Entity fails to timely pay any installment, the amount past due shall bear the rate of interest permitted under applicable New Jersey law and then being assessed by the City against other delinquent taxpayers in the case of unpaid taxes or tax liens on the land until paid.

4.06 Material Conditions and Severability. It is expressly agreed and understood that all payments of Annual Service Charges and any interest payments, penalties or costs of collection due thereon and payment of water and sewer charges, are material conditions of this Agreement (“Material Conditions”). If any other term, covenant or condition of this Financial Agreement or the Application, as to any person or circumstance shall, to any extent, be determined to be invalid or unenforceable, the remainder of this Agreement or the application of such term, covenant or condition to persons or circumstances other than those 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 law.

4.07 Payments. Neither the Entity nor the City may alter the amounts or dates as established in this Article IV, other than as set forth herein.

4.08 Annual Service Charge as Municipal Lien. The Annual Service Charge and other related municipal charges shall be a continuous, municipal lien on the Land and Improvements

and any subsequent Annual Service Charge, including any interest, penalties or costs of collection thereof, shall be added and shall relate back to and part of the initial municipal lien. The Entity hereby acknowledges, understands and agrees that the Annual Service Charge shall constitute an automatic, enforceable and perfected statutory municipal lien for all purposes, including specifically and without limitation, the Federal bankruptcy code, regardless of whether the amount of the Annual Service Charge has been determined.

4.09 Annual Service Charge Payment Report. Included with each quarterly payment of the Annual Service Charge, the Entity shall submit a report to the City setting forth the calculation of the total quarterly payment amount.

ARTICLE V **ADDITIONAL PROJECT COVENANTS**

5.01 Improvements to be Constructed. The Entity represents that it will significantly rehabilitate the four hundred six (406) unit housing complex, including without limitation, those improvements as set forth in the Application attached hereto as Exhibit B. The Entity shall commence the Project in accordance with the schedule set forth within the Application and shall complete the Project within thirty-six (36) months of the adoption of the ordinance approving this Financial Agreement. The Entity may apply to the Director for extensions to these deadlines so long as it files such extension request in writing and shows good cause for the extension. The Director shall have sole reasonable discretion as to whether to grant or deny any extension request sought hereunder.

5.02 Construction Schedule. The Entity agrees to diligently undertake to commence construction of the Project in accordance with Section 5.01 of this Financial Agreement. Failure to commence or complete construction in accordance with that schedule shall be an event of Default governed by Article XIII of this Agreement.

5.03 Ownership, Management and Control. The Entity represents that it is the contract purchaser of the Property upon which the Project is to be constructed, and that it shall be the owner of the Property upon which the Project is to be constructed prior to the commencement of construction pursuant to Section 5.01 of this Financial Agreement.

ARTICLE VI **CERTIFICATE OF OCCUPANCY/CERTIFICATE OF COMPLETION**

6.01 Certificate of Occupancy; Certificate of Completion. It is understood and agreed by the Parties that to the extent that a Certificate of Occupancy is required to be issued upon Substantial Completion of the Project, it shall be the obligation of the Entity to make all good faith efforts to obtain the Certificates of Occupancy for the Property and the Improvements related thereto in a timely manner. In the event that a Certificate of Occupancy is not required to be issued

for the Project, then upon Substantial Completion of the Project it shall be the obligation of the Entity to deliver a Certificate of Completion to the Director.

6.02 Filing of Certificate of Occupancy or Certificate of Completion. It shall be the primary responsibility of the Entity to forthwith file with both the Tax Assessor and the Tax Collector a copy of the Certificate of Occupancy or Certificate of Completion issued for the Project. Failure of the Entity to file such issued Certificate of Occupancy or Certificate of Completion as required by the preceding paragraph shall not militate against any action or non-action, taken by the City, including, if appropriate, retroactive billing with interest for any charges determined to be due, in the absence of such filing by the Entity.

ARTICLE VII CITY DETERMINATIONS

7.01 Benefits and Importance of Tax Exemption. The City 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 preservation and substantial renovation of four hundred six (406) HUD Section 8 age restricted affordable housing units. Additionally, the City has determined that:

(a) the benefits of the Project, including (i) the construction of the Improvements, (ii) the creation of between 50 and 70 construction jobs, and (iii) the preservation of the 24 full- and part-time permanent jobs at the Project, outweigh any costs associated with the tax exemption; and

(b) without the tax exemption granted herein, the Project would not otherwise be undertaken and the Property likely would revert to market-rate housing upon expiration of the existing HAP contract thereby displacing the current residents.

ARTICLE VIII

REPORTS AND AUDITS

8.01 Accounting Standards; Reporting Periods. The Entity agrees – if permitted by the HMFA financing and HUD Regulations - to utilize calendar-year accounting and reporting periods and maintain a system of accounting and internal controls established and administered in accordance with GAAP and the HMFA Exemption Statute.

8.02 Annual Audit.

(a) Not later than 120 days after the close of each year during the Exemption Term, the Entity shall submit to the ASTU the City's Chief Financial Officer ("CFO"), an Annual Audit Report for the preceding year.

(b) Each Annual Audit Report shall be bound, page-numbered. An electronic copy of each Annual Audit Report shall also be submitted to the ASTU.

- (c) The contents of each Annual Audit Report shall be prepared by a certified public accountant licensed to practice in the State of New Jersey, in conformity with GAAP, HMFA Law and this Agreement. Each Annual Audit Report shall be certified by the preparing accountant as to its compliance with these requirements. The Entity assumes all costs associated with preparation of all Annual Audit Reports.
- (d) Except to the extent required by the Applicable Law, all financial information provided hereunder shall remain confidential and not subject to public disclosure.

8.03 Required Disclosures. With each Annual Audit Report, the Entity shall submit an Annual Disclosure Statement in the form appended hereto as *Schedule D*, listing all parties with any ownership interest in the Property, and the extent of their respective interests. The Annual Disclosure Statement shall also set forth the Entity's mailing and billing contact information.

In the event any information contained on the Disclosure Statement changes between reporting periods, the Entity shall notify the ASTU in writing not later than 10 days after the change.

8.04 Review of Audit Report. Upon receipt of the Total Project Cost Audit Report and each Annual Audit Report, it shall each be reviewed by the ASTU. If the audit is deemed unacceptable, at the City's option, it may be recast by an independent auditor with all fees and costs therefore being billed to the Entity.

8.05 Inspections; Quinquennial Review.

- (a) The Entity shall permit the City's representatives to inspect the Property at any time during the Exemption Term; and, at the City's request, the Entity shall provide certified true copies of all leases and/or subleases for the Property.
- (b) Not later than 30 days after the start of each year, the Entity shall arrange an annual inspection with the City's Department of Policy, Planning and Development to conduct interviews regarding maintenance of the Property.
- (c) Every 5 years during the term of this Agreement, City representatives shall conduct a review of the Entity's books, contracts, records, documents and papers ("Quinquennial Review"), which shall be on 30 days' written notice to the Entity and conducted during regular business hours with the Entity's representative present and, to the extent reasonably possible, without materially interfering with the construction or operation of the Improvements. Should a Quinquennial Review reveal any discrepancies that resulted in overpayment or underpayment of the PILOT or other charges during the immediately preceding 5-year period or earlier, the Entity shall be billed or credited accordingly.

ARTICLE IX
SALE AND/OR ASSIGNMENT PROVISIONS

9.01 Approval. (a) It is understood and agreed that the City, on written application by the Entity after completion of the Project, may consent to a sale of the entire Project and the transfer of this Agreement provided: 1) the transferee entity qualifies under the HMFA Law and assumes the Agency Mortgage; 2) the Entity is not then in Default of this Agreement or the Law; 3) the Entity's obligations under this Agreement are fully assumed by the transferee entity; 4) the transferee entity agrees to abide by all terms and conditions of this Agreement; and 5) the principal

owners of the transferee entity possess comparable business reputation, financial qualifications and credit worthiness as the Entity and are otherwise reputable. The City may levy an administrative fee of two percent (2%) of the then applicable Annual Service Charge for the Project being transferred for processing any such application by the Entity.

(b) The Parties hereto acknowledge that the Entity shall transfer a portion of its partnership interest to one or more tax credit investors in connection with the financing of the Project. The City agrees that its consent is not required for this transfer.

(c) The City hereby further consents to any of the following future transfers:

- (i) transfers of partnership interests in the Entity between or among existing partners in the Entity or those entities as set forth in the Application;
- (ii) transfers of partnership interests in the Entity of less than ten percent (10%); and
- (iii) transfers of partnership interests in the Entity to an affiliate of the Entity or an affiliate of one of the partners in the Entity.
- (iv) transfers of the Project to an entity controlled by the principals of the Entity; and
- (v) The Agency Mortgage and any collateral assignments of interests in the Entity in connection therewith.

(d) Any other transfer in connection with the Entity or the Project, including without limitation, any transfer of a portion of the Project shall be deemed a Default hereunder.

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

9.03 Subordination of Fee Title. It is expressly understood and agreed that the Entity has the right, subordinate to the lien of the Annual Service Charges and to the rights of the City hereunder, to encumber and/or assign the fee title to the Land and/or Improvements for the sole purpose of obtaining financing for use in the Project, and that any such encumbrance or assignment shall not be deemed to be a violation of this Agreement.

ARTICLE X
WAIVER

10.01 No Waiver. 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 Law except for the express waiver herein of certain rights of acceleration and certain rights to terminate this Financial Agreement and tax exemption for violation of any of the conditions provided herein. Nothing herein shall be deemed to limit any right of recovery that the City or the Entity has under law, in equity, or under any provision of this Financial Agreement.

ARTICLE XI
NOTICE

11.01 Notice. Any notice required hereunder to be sent by any party to another party shall be sent to all other parties hereto simultaneously by certified or registered mail, return receipt requested, or by commercial overnight courier, as follows:

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

CPP East, LLC
11951 Freedom Drive, Suite 1204
Reston, Virginia 20190
Attention: Seth Gellis
Phone: (703) 936-2182
Email: sgellis@cpp-housing.com

With a copies to:

Community Preservation Partners, LLC
17782 Sky Park Circle
Irvine, California 93614
Attention: Anand Kannan
Phone: (949) 236-8278
Email: akannan@wnc.com

Jeffrey Moelis
L+M Development Partners
2 Park Avenue, 23rd Floor
New York, NY 10016

Cannon Heyman & Weiss, LLP
54 State Street, 5th Floor
Albany, New York 12207
Attn: David Kuracina, Esq.

Phone: (518) 465-1500
Email: dkuracina@chwattys.com

Michael J. Caccavelli, Esq.
Pearlman & Miranda, LLC
110 Edison Place, Suite 301
Newark, New Jersey 07102

The Entity has an affirmative duty to provide the City with the new information in the event that the address for the Entity changes. The Entity must provide the City with the name and address of the registered agent or party authorized to accept service of process on their behalf.

When sent to the City, it shall be addressed to the City Administrator, 44 City Hall Plaza, East Orange, New Jersey 07019 with copies sent to Corporation Counsel, and the Director of Policy, Planning & Development at the same address, unless prior to the giving of notice the City shall have notified the Entity otherwise.

ARTICLE XII

DEFENSE/INDEMNIFICATION

12.01 Defense/Indemnification. It is understood and agreed that in the event the City shall be named as party in any action brought against the City or Entity by allegation of any breach, Default or a violation of any of the provisions of this Agreement, the provisions of the HMFA Law or any other applicable law, and/or in any way related to the Project, the Entity shall, at its sole cost and expense, defend, 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 the action or inaction of the Entity and/or by reason of any breach, Default or a violation of any of the provisions of this Agreement, the provisions of the HMFA Law or any other applicable law, and/or in any way related to the Project, except for any misconduct by the City or any of its officers, officials, employees or agents. However, 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 Entity.

ARTICLE XIII

Default; Termination

13.01 Defaults; Material Defaults.

- (a) A Default shall be defined as a Party's failure to conform to the terms of this Agreement and/or failure to perform an obligation imposed on it by this Agreement or Applicable Law beyond any notice, cure or grace period set forth herein.
- (b) It is expressly agreed that any of the following occurrences shall be a Material Default by the Entity under this Agreement:

- (1) a failure to commence or complete construction in accordance with the schedule included in the Redevelopment Agreement;
- (2) a failure to pay any municipal charges due, including without limitation any portion of the PILOT (which shall also be considered a tax delinquency under the Tax Sale Law);
- (3) a failure to comply with the reporting and inspection requirements set forth in Article 4 above;
- (4) a failure to disclose a change in use of the Property during the Exemption Term;
- (5) a failure to disclose any receipts that should have been included in Annual Gross Revenue;
- (6) a failure to maintain the habitability of the Property in accordance with the Applicable Laws, including without limitation any applicable construction codes;
- (7) a failure to maintain safe and secured housing in accordance with the City's regulations regarding same;
- (8) a failure to arrange an annual inspection with the City's Department of Policy, Planning and Development in accordance with § 4.6(b) above;
- (9) a failure to permit inspections of the Property by the City's Department of Property Maintenance or any other governing agency.

13.02 Notice of Default; Opportunity to Cure.

- (a) In the event of a Default by the Entity, the City shall provide written notice of the Default to the Entity in accordance with § 8.1 below, which shall also notify the Entity of the potential actions the City may take as a result of the Default. Except as otherwise limited by law, the Entity shall have 30 days from the date the notice is received to fully cure the Default. The City may, upon reasonable request and in its sole discretion, extend the 30-day cure period for any Default other than a Default of the Entity's financial obligations hereunder.
- (b) In the event of a Default by the City, the Entity shall provide written notice of the Default to the City in accordance with § 8.2 below. Except as otherwise limited by law, the City shall have 30 days from the date the notice of Default is received to fully cure the Default.

13.03 Remedies Upon Default.

- (a) In the event of any uncured Default by the Entity, the City shall have the right to proceed against the Property pursuant to Applicable Law, including without limitation the right to terminate this Agreement and cancel the Long Term Exemption. Nothing herein shall be deemed to limit any right of recovery that the City has under law, equity or any provision of this Agreement.
- (b) With respect to any Default of the Entity's financial obligations under this Agreement, the City shall also have the right to enforce such obligations as a tax delinquency under the Tax Sale Law, *N.J.S.A. 54:5-1 et seq.*, *N.J.S.A. 54:5-77*, *N.J.S.A. 54:5-85 et seq.*, and/or the In Rem Tax Foreclosure Act (1948), *N.J.S.A. 54:5-104.29 et seq.*
- (c) The City's remedies upon declaring a Default shall be cumulative and concurrent, and bringing any action against the Entity for any Default under this Agreement, shall not be construed as a waiver of any right of recovery the City has under law, equity or any other provision of this

Agreement, including right to proceed with a separate action against the Property for enforcement of a Default of the Entity's financial obligations under this Agreement.

13.04 Force Majeure.

- (a) Neither Party shall be liable to the other for a 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 without limitation:
- (1) declarations of public emergencies;
 - (2) weather-related events limited to severe and uncommon natural occurrences, such as earthquakes, hurricanes or tornadoes;
 - (3) acts of terrorism/war;
 - (4) blackouts, power failures, or energy shortages;
 - (5) governmental embargoes; or,
 - (6) strikes by equipment or material suppliers or transporters resulting in the unavailability of necessary building materials.
- (b) Notwithstanding the foregoing, the Entity's financial obligations under this Agreement, including without limitation the obligation to pay the PILOT, Land Taxes and all water/sewer charges in full and on a timely basis, are material conditions not excusable by the occurrence of a force majeure event.

13.06 Final Accounting. Not later than 90 days after the Termination Date, the Entity shall submit a final accounting to the ASTU. For purposes of rendering a final accounting, the Termination Date shall serve as the end of the Entity's fiscal year.

13.07 Estoppel Certificate. Not later than 30 days after the City receives a written request therefor, the City shall issue a signed estoppel certificate in reasonable form confirming that this Agreement is in full force and effect, and stating either that the Entity is not in Default of this Agreement or the nature of any existing or anticipated Default.

13.08 Indemnification. In the event the City is named as a party in any action brought by a third-party, alleging any breach, Default or violation of any provision of this Agreement and/or Applicable Law, the Entity shall indemnify and hold the City harmless from and against all liability, losses, damages, demands, costs, claims, actions or expenses (including reasonable attorney's fees and expenses) of every kind, character and nature arising out of or resulting from the action or inaction of the Entity and/or by reason of the Entity's breach, Default or violation of any of the provisions of this Agreement and/or the provisions of the Law. However, the City maintains the right to intervene as a party therein, for which intervention the Entity hereby consents to bear the expense thereof.

**ARTICLE XIV
RESERVED**

ARTICLE XV
MISCELLANEOUS

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

15.02 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 of the City authorizing this Agreement, and the Application constitute the entire agreement between the Parties regarding the long term tax exemption for the Property and there shall be no modifications thereto other than by a written instrument executed by the Parties hereto and delivered to each of them.

15.03 Entire Document. All conditions in the Ordinance of the City Council approving this Agreement are incorporated in this Agreement and made a part hereof.

15.04 Construction. This Financial Agreement shall be construed and enforced in accordance with the laws of the State of New Jersey, and without regard to or aid or any presumption or other rule requiring construction against the party drawing or causing this Agreement to be drawn since counsel for both the Entity and the City have had the opportunity to review and approve the Financial Agreement.

15.05 RESERVED.

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 parity with or superior to the lien for the Annual Service Charges, as required by law. Nothing herein is intended to release Entity from its obligation to make such payments.

15.07 Delivery to Tax Assessor. Upon the full execution of this Financial Agreement, the Clerk of the City shall deliver to the Tax Assessor a certified copy of the Ordinance along with an executed copy of this Financial Agreement. Upon such delivery, the Tax Assessor shall implement the tax exemption granted as of the Effective Date and certain requirements will be effective as provided herein and shall continue to enforce the tax exemption, without further certification by the City Clerk, until the expiration of the tax exemption in accordance with the terms hereof.

15.08 Validity. The Entity fully and freely holds the City harmless and assumes any and all risk that may affect the current or future validity of this Financial Agreement. In no event shall the City be liable to the Entity, or otherwise subject to damages, in the event that this Financial Agreement is deemed to be unenforceable.

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

15.10 Amendments. This Agreement may not be amended, changed, modified, altered or terminated without the written consent of the Parties hereto and subject to City Council approval.

[Signature Pages to Follow]

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

NORMAN TOWERS COMMUNITY PARTNERS, LP

By: [Signature]
Name: Seth Gellis
Title: Authorized Signator

STATE OF NEW JERSEY)

COUNTY OF ESSEX)

The foregoing instrument was acknowledged before me this 6th day of MARCH, 2020, by SETH GELLIS, a _____, by _____, its _____, on behalf of the company.

[Signature]
Notary Public
Commission Expiration: 10/25/2022

MERRY C. WISLER
NOTARY PUBLIC OF NEW JERSEY
Comm. # 2426578
My Commission Expires 10/25/2022

THE CITY OF EAST ORANGE

By: [Signature]
Mayor

APPROVED AS TO FORM AND LEGALITY

[Signature] 3/17/2020
Corporation Counsel

APPROVED AS TO FORM

Director of Economic and Housing Development

ATTEST

[Signature]
City Clerk
3-16-2020

EXHIBIT A

ORDINANCE APPROVING TAX EXEMPTION AND FINANCIAL AGREEMENT

EXHIBIT B

**THE ENTITY'S APPLICATION FOR TAX
EXEMPTION PURSUANT TO N.J.S.A. 55:14K-37**

APPLICATION FOR LONG-TERM EXEMPTION AND/OR ABATEMENT FOR THE
IMPROVEMENT, CONVERSION OR CONSTRUCTION OF PROPERTY PURSUANT TO
CHAPTER 248 OF THE CITY OF EAST ORANGE ORDINANCE AND IN ACCORDANCE WITH
N.J.S.A.40A:20-1 ET SEQ.,

Municipality: EAST ORANGE; County: ESSEX

Norman Towers Community Partners, LP, having offices care of Community Preservation Partners, 17782 Sky Park Circle, Irvine, CA 92614 hereby make claim for a tax exemption, pursuant to N.J.S.A. 55:14K-37, and the authorizing municipal ordinance, for premises located at 500 North Walnut Street, East Orange, New Jersey which is further described as Block 320, Lot 11 on the Tax Map of the municipality of East Orange, New Jersey.

All qualified applicants, before proceeding with any project, shall provide the City with this completed application in the manner and form as required by all applicable law and regulation as may be amended from time to time, and such Application shall include at minimum the following:

I. CONTACT INFORMATION

PRIMARY CONTACT PERSON:

Contact Person Name: **Seth Gellis**

Contact Person Phone Number:

Office: (949) 236-8280

Mobile: (949) 278-3658

Contact Person E-Mail Address: **sgellis@cpp-housing.com**

SECONDARY CONTACT PERSON:

Contact Person Name: **Jeff Moelis**

Contact Person Phone Number:

Office: (212) 233-0495, ext. 109

Mobile: (917) 306-2170

Contact Person E-Mail Address: **jmoelis@lmdevpartners.com**

II. BRIEF PROJECT DESCRIPTION: Project involves the purchase, preservation and renovation of an existing 406 unit affordable HUD Section 8 age-restricted residential housing project.

III. SUBMITTAL OF DOCUMENTS

1. Include with this application as "EXHIBIT A" an "ALTA/ACSM LAND TITLE SURVEY" for the Property which the Tax Exemption is sought that shall be in accordance with the then-current "Accuracy Standards for Land Title Surveys" ("Accuracy Standards") as adopted, from time to time by the National Society of Professional Surveyors and the American Land Title Association and incorporated herein by reference including, but not limited to, the following:

(a) A record description of the property to be surveyed or, in the case of an original survey, the record description of the parent parcel that contains the property to be surveyed. Complete copies of the record description of the property (or, in the case of an original survey, the parent parcel), any record easements benefitting the property; the record easements or servitudes and covenants burdening the property ("Record Documents"); documents of record referred to in the Record Documents; and any other documents

containing desired appropriate information affecting the property being surveyed and to which the survey shall make reference shall be provided to the surveyor for notation on the plat or map of survey;

(b) the name, address, telephone number, and signature of the professional land surveyor who performed the survey, his or her official seal and registration number, the date the survey was completed, the dates of all of the surveyor's revisions and the caption "ALTA/ACSM Land Title Survey";

(c) A survey boundary drawn to a convenient scale, with that scale clearly indicated. A graphic scale, shown in feet or meters or both, shall be included. A north arrow shall be shown and when practicable, the plat or map of survey shall be oriented so that north is at the top of the drawing. Symbols or abbreviations used shall be identified on the face of the plat or map by use of a legend or other means. If necessary for clarity, supplementary or exaggerated diagrams shall be presented accurately on the plat or map. The plat or map shall be a minimum size of 8½ by 11 inches;

(d) All data necessary to indicate the mathematical dimensions and relationships of the boundary represented, with angles given directly or by bearings, and with the length and radius of each curve, together with elements necessary to mathematically define each curve. The point of beginning of the surveyor's description shall be shown as well as the remote point of beginning if different. A bearing base shall refer to some well-fixed line, so that the bearings may be easily reestablished. The North arrow shall be referenced to its bearing base and should that bearing base differ from record title, that difference shall be noted;

(e) Both the record and measured bearings, angles, and distances shall be clearly indicated. If the record description fails to form a mathematically closed figure, the surveyor shall so indicate;

(f) tax map block and lot numbers, adjoining lot owners, a vicinity map, corresponding street addresses and all current tax map information; and

(g) Any such other information the governing body shall require;

Survey is attached as Exhibit A.

2. Include with the application as "EXHIBIT B" a general statement of the nature of the Project (affordable housing, market-rate, commercial, industrial, residential, senior housing, single-family, multiple dwelling, etc.) and that the undertaking conforms to all applicable municipal ordinances, and that the project accords with the redevelopment plan and master plan of the municipality, or, in the case of a redevelopment relocation housing project, provides for the relocation of residents displaced or to be displaced from a redevelopment area, or, in the case of a low and moderate income housing project, the housing units are restricted to occupation by low and moderate income households. A description of the proposed project outlining the area included and a description of each unit thereof if the project is to be undertaken in units and setting forth architectural and site plans as required.

(a) If the Project contains commercial or industrial structures, a description of any lease agreement between the Applicant and past, present and proposed occupants and a rent roll listing such occupants; or

(b) If the Project contains dwelling structures, a description detailing: the number and types of dwelling units; common elements or general common elements, and a statement of the proposed initial rentals or sales prices of the dwelling units according to type;

Statement of nature of the Project is attached as Exhibit B.

3. Include with this application a as "EXHIBIT C" a statement of the reasons for seeking a Tax Exemption, and a description of the benefits to be realized by the City if a Tax Exemption is granted;

State of reasons for seeking Tax Exemption is attached as Exhibit C.

4. Include with this application as "EXHIBIT D" a statement justifying the requested term or duration of the Tax Exemption being sought;

Statement justifying request term of the Tax Exemption is attached as Exhibit D.

5. Include with this application as "EXHIBIT E" a detailed description of the improvements to be made to the Property, including architectural and site plans, and A statement prepared by a qualified architect

or engineer of the estimated cost of the proposed project in the detail required, including the estimated cost of each unit to be undertaken;

Detailed description of improvements to be made to the Property is attached as Exhibit E.

6. Include with this application as "EXHIBIT F" a statement disclosing the uses and sources and amounts of private capital to be utilized in funding the Project, which shall set forth, among other things, pecuniary and ownership interests and obligations associated with such funding sources including amount of stock or other securities to be issued, certified by the Applicant, and the proprietary or ownership interest obtained in consideration therefore;

Uses and Sources statement is attached as Exhibit F.

7. Include with this application as "EXHIBIT G" a fiscal plan and cash flow statement for the Project outlining, among other things, the schedule of annual gross revenue, the estimated expenditures for operation and maintenance, payments for interest, amortization of debt and reserves, and payments to the municipality, each such item certified by Applicant;

Fiscal Plan is attached as Exhibit G.

8. Include with this application as "EXHIBIT H" a detailed construction and/or improvement schedule indicating the date of project commencement and completion and significant milestones;

Construction Schedule is attached as Exhibit H.

9. Include with this application as "EXHIBIT I" a statement as to the fair market value of the Property as of the date of the filing of the Application and a statement of estimated fair market value after completion of the Project;

Statement of fair market value of Property is attached as Exhibit I.

10. Include with this application as "EXHIBIT J" a statement of the tax levy on the Property for the year in which the Application is filed. In the case of tax exempt property, the projected tax levy shall be stated as if the property had not been tax exempt;

Statement of current tax levy on the Property is attached as Exhibit J.

11. Include with this application as "EXHIBIT K" The status of all municipal taxes, fees and charges due and payable to the City arising from or imposed on the Property or any other property within the City that is owned by the Developer or any principal of the Developer or anyone with a pecuniary, ownership or other interest in the Project;

Status of municipal taxes, fees and charges due on the Property is attached as Exhibit K.

12. Include with this application as "EXHIBIT L" Disclosure statements as to all parties, including parent and subsidiary companies, having any interest in the Property or the Project or any other contracts or Financial Agreements then in force and effect in which any of those parties have any interest;

Ownership Disclosure Statement is attached as Exhibit L.

13. Include with this application as "EXHIBIT M" a certification by the Developer that construction and or improvements of the Project has not and will not commence prior to the final approval and full execution of the Financial Agreement;

Developer Certification that construction has not commenced and will not commence prior to final approval and execution of the Financial Agreement is attached as Exhibit M.

14. Include with this application as "EXHIBIT N" the Developer's estimate of the number, classes and type of temporary jobs to be created by the project during the term of its construction and the number, classes and type of permanent jobs to be created by the project within one year after its completion. The Application shall set forth the project employment plan of the Developer and a certification by the Developer that such plan complies with the City's employment policy as delineated;

Developer's estimate of temporary and permanent job creation is attached as Exhibit N.

15. Include with this application as "EXHIBIT O" a certification by the Developer that the Project meets the requirements of the laws of this State for consideration for tax exemption. Where those Laws require the property to have been declared blighted by the City and a redevelopment plan to have been adopted by the City or to be an area in need of rehabilitation, the Developer shall further certify that the proposed project complies with the redevelopment plan as adopted;

Developer certification of compliance with laws is attached as Exhibit O.

16. Include with this application as "EXHIBIT P" a certification by the Developer that he or she has made diligent inquiry to confirm the accuracy of all information contained in the Application and that the information is true and correct to the Developer's knowledge. The certification shall contain the original signature of the Developer notarized or witnessed. In the case of a corporation, the Developer shall submit a notarized corporate resolution, with the seal of the corporation and the signature of the secretary of the corporation, authorizing the signatory to bind the corporation or similar bona fide evidence of authorization. In the case of a partnership the Developer shall submit a copy of the partnership agreement, certified to be in full force and effect, authorizing the signatory to bind the partnership or other similar bona fide evidence of authorization;

Developer certification of diligent inquiry is attached as Exhibit P.

17. Include with this application as "EXHIBIT Q" a financial agreement, prepared by the Applicant, which shall be presented in such form as required by applicable law and regulation and as approved by the Corporation Counsel;

Proposed Financial Agreement is attached as Exhibit Q.

18. Payment of the applicable non-refundable fee according to the following schedule:

Fee Schedule.

a. The review fee shall be equal to:

(a) 1% of the total cost of improvement up to \$50,000.00.

(b) 1.2% of the total cost of improvement from \$50,001.00 to \$150,000.00.

(c) 1.4% of the total cost of improvement from \$150,001.00 to \$300,000.00.

(d) 1.6% of the total cost of improvement from \$300,001.00 to \$500,000.00.

(e) \$10,000.00 for projects where the total estimated cost of improvement is \$500,001.00 and above.

b. As it pertains to Section 248-5(F)(2) and 248-13 of the East Orange Municipal Code, the resubmission fee for conditionally rejected Applications shall be 50% of the initial review fee set forth in Section 248-4(C) of the East Orange Municipal Code.

c. The review fee for a second Application shall be as set forth in Section 248-4(C) of the East Orange Municipal Code.

19. If necessary, other documents or pertinent information as the Committee deems necessary or appropriate will need to be submitted.

IV. SUBMISSION OF APPLICATION. One original and fifteen copies of the Application shall be submitted to the Director of Policy, Planning & Development, either in person or by certified mail, at his or her office.

V. SIGNING OF APPLICATION. I certify that the foregoing statements made by me are true. I am aware that if any off the foregoing statements made by me are willfully false, I am subject to punishment.

Date _____ Signature  _____

Title (if any) Authorized Signatory for the GP _____

Date _____

OFFICE USE ONLY:

Approved _____ Disapproved (Assessor) _____

Exhibit A: SURVEY OF THE PROPERTY

Exhibit B: Nature of the Project and Proposed Improvements

Norman Towers is a senior 62+ 406-unit acquisition/rehab project located at 500 N. Walnut, St, East Orange, NJ 07017 (Essex County), which is located on the border Bloomfield, NJ.

Originally built in 1980, the property consists of 406 affordable senior units in a single 16-story tower situated on a 4.82-acre site. The property is subject to a 20-year HAP contract, which was renewed in 2010 and which provides a subsidy to all 405 revenue-producing units (there is also a two-bedroom staff unit). There are ten years of affordability remaining under the HAP contract and no regulatory agreements on the property to protect the seniors from displacement if the property is sold to a market-rate buyer.

Community Preservation Partners East and the project's co-general partner, L+M Development Partners, propose to recapitalize and refinance the property using 4% LIHTC and Tax-Exempt Bonds in order to protect and preserve the residents and the project's affordability. It is anticipated that the tax-exempt bonds will be issued by NJHMFA via a conduit structure and 4% tax credits.

The project will benefit from the co-developer, L+M, acting as the general contractor, via their construction division, L+M Builders Group LLC.

The scope of work will be defined by CPP and its construction management team working with L+M's development and construction divisions, their sub-contractors, the project architect, and will take into consideration input from the property staff, residents, and community leaders.

The renovation will be conducted in-place with no tenant displacement, and it will address first and foremost life safety issues, but also be focused on addressing any deferred maintenance. In addition, an energy efficiency scope will be a priority along with accessibility upgrades and providing space for enhanced services for residents. The development team is also looking to create relationships with the neighboring adult daycare and rehabilitation center to assist our residents in aging in place.

A rent study has been engaged by Novogradac, and their concluded rents have been used as the basis for the financing plan for the community.

The construction loan closing is anticipated in June of 2020 with project completion in August of 2021. The financing includes a taxable loan for the amount over the 55% bonds. A construction loan shall be used to fund the renovation with the bonds coming in at or just after completion and staying outstanding for the term of the loan, which is anticipated to be for 17 years.

Upon closing, L+M's property management division, C+C Apartment Management LLC, will take over management from the current property manager, a subsidiary of the Seller.

Examples of the Bellflower Friendship Manor, a senior community that CPP & L&M completed together, can be virtually toured by visiting the link below. Other virtual tours of CPP's communities are available on our company website and can be accessed by going to the properties tab. Northgate towers is another excellent example of our community programming and People First approach to ownership. The photos of the spaces included below are representative of the reprogramming that will occur at Norman towers to enhance the quality of the lives for our residents.

Link: <http://www.cpp-housing.com/bellflower-friendship-manor/>

Representative examples of quality/ look and feel of the units:

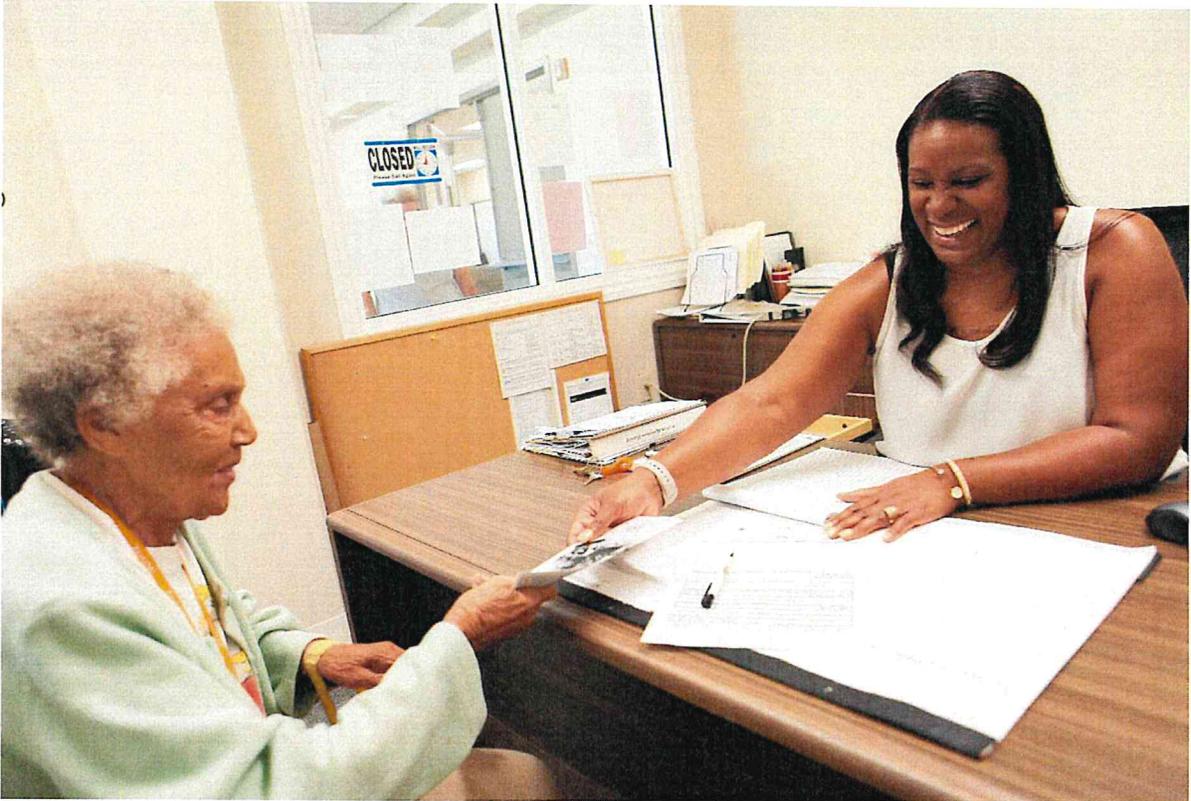




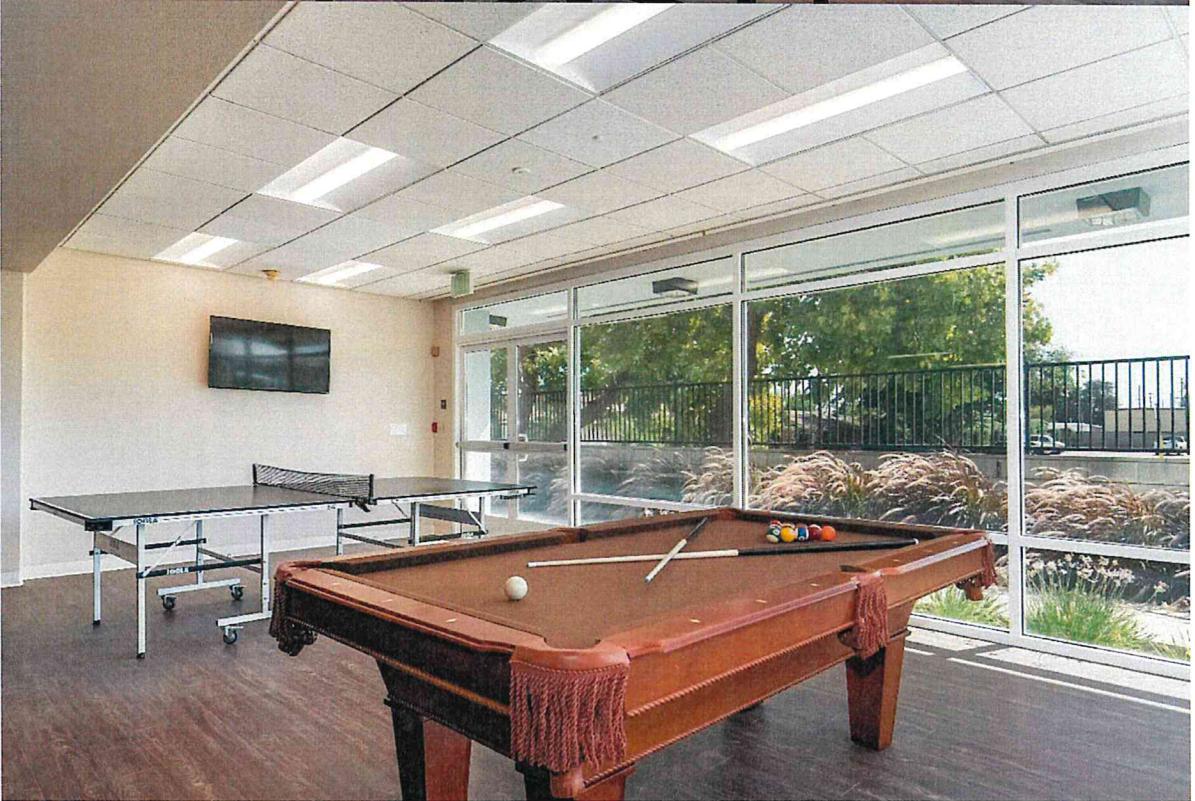


Representative example of Community Room Programming:

Lounge/ Kitchen Areas









Movie & Yoga Rooms



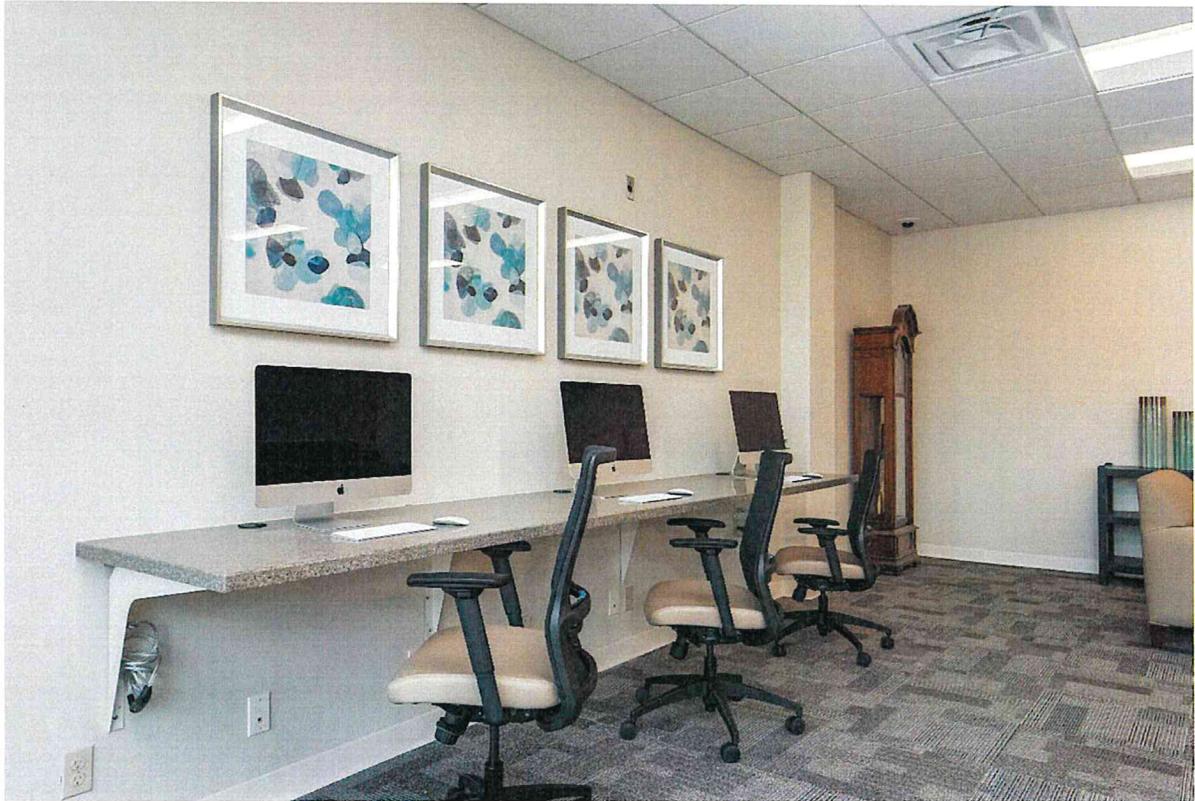




Laundry Room



Lounges & Computer Rooms







Exercise Rooms



Art Rooms



Exterior Amentities (Place and Purpose)











Exhibit C: Benefits to the City of East Orange

The granting of an HMFA PILOT for the Norman Towers preservation and renovation project will create the following benefits for the City of East Orange:

- Predictable tax revenue generation from the property over the 30 year term of the PILOT at a level that is at least equal to current real estate taxes paid by the property
- Preservation of 406 affordable, age-restricted residential rental units which would otherwise have been converted to market-rate rentals
- Substantial renovation of tenant units including new kitchens and bathrooms
- Reconfiguration and renovation of building common areas and reprogramming of first floor space to provide better amenities and service options
- Updating of all life safety systems
- Job creation, both temporary and permanent, in the local community, by way of construction and service employment.

Exhibit D: Justification for Term

The applicant request a thirty (30) year PILOT term.

The 30 year term is in line with other tax abatements granted to projects of similar, scope and scale in the City of East Orange. Most important, the planned HMFA financing will have a 30 year term and the financing plan assumes a 30 year PILOT co-terminus with the HMFA financing to provide a predictable real estate tax structure to enhance project viability. Furthermore, the 30 year term and predictable, stable real estate tax structure is what will enable the applicant to undertake the scale of renovations programmed for the Project. The applicant plans a comprehensive renovation of the Project in an amount projected to exceed \$21million, including the renovation of all tenant kitchens and bathrooms, renovation of common areas as well as a complete redesign and reconfiguration of the first floor to transform that area from administrative areas and under-utilized common areas into a fresh and vibrant tenant communal space with associated amenities.

Exhibit E: Description of Improvements Including Cost

The applicant will begin the renovation and rehabilitation of Norman Towers soon after closing on its purchase of the property. As previously described in this application, the estimated cost of the project will exceed \$21 million and construction is projected to be complete within twenty-four months of receipt of all applicable permits. The applicant estimates that it will commence construction on or about June 2020 and complete the project by June 2022.

The applicant's plan to renovate and rehabilitate Norman Towers is projected to include the following scope of work:

Apartment Renovation

- New kitchen cabinets and stone countertops
- New energy star kitchen appliances
- New kitchen sinks and faucets
- Addition of microwave with vent over stove
- New vinyl plank floors and cove base throughout entire unit
- Possible addition of kitchen bar countertop
- New bathroom faucets and supplies
- New tile floors in the bathroom
- New bathroom vanities
- New medicine cabinets
- New low flow toilets
- New low flow shower heads, valves and trim kits
- Install new tub surrounds and tub liners
- New intercoms
- Updated electric breakers
- New LED light fixtures in the kitchen, living room, and bathrooms
- Addition of ceiling fans in the living room
- Replace or repair windows as needed
- New vertical blinds
- Duct cleaning and sealing
- Programmable thermostats
- New register grills
- Paint in the kitchens and bathrooms and full unit, as needed
- Bring UFAS unit up to current standard

Common Area and Community Room Enhancements

- Reconfiguration of first floor and basement community room and offices to possibly include:
 - Expand community room on first floor, incorporate zero walls/disappearing sliding glass doors to the outdoor patio and garden space creating a continuation of the community room to outdoors.

- Media and audio installation to community room and outdoor community space
- Improvements to the staff and community kitchens
- Upgrades to and potential expansion of community library, art room, activities room, social and community meeting room, billiards and game room
- Upgrade of community laundry facilities
- Relocate and improve management and resident service offices
- Updates to the main entrance and lobby area
- Improve the concierge/building security desk
- Install vinyl plank flooring, LED lighting and paint in all hallways and common areas
- Update FF&E throughout common areas

Possible Building Amenities that will be added to the property

- Property wide WIFI
- Computer room
- Fitness center
- Package storage
- Amazon lockers
- Carports
- Dog run
- Community garden
- Built-in BBQs and picnic/dining area on the patio
- Outdoor games such as chess boards and shuffleboard.
- Wellness office
- Conference room for building and community use

Additional Amenities to Remain in Place

- 26 Passenger bus that runs routine trips to retail and medical facilities
- Resident safety check program
- In unit emergency call system
- Interior and exterior cameras with 24/7 monitoring
- Onsite manager and maintenance units

General Renovation Activities

- New paint scheme
- Building façade improvements such as accent paint and lighting
- New pathway lighting
- New mailboxes
- Security camera system upgrade
- Asphalt repairs (seal and restripe)
- Site signage
- Landscaping and tree trimming
- Power wash exterior of buildings
- New water heaters
- Hydro jet sewer lines

- Installation of water shut-off valves
- New roof mounted LED wall packs with photocells
- Improvements to the path of travel and parking spaces to meet current ADA standards

Exhibit F: SOURCES AND USES

Norman Towers 406 Units	Construction Financing	Perm S&U
Sources and Uses of Funds		
Debt:		
Permanent Loan		91,344,000
Construction Tax Free Bonds	72,200,000	-
Construction Taxable Bonds	28,644,000	-
Deferred Developer Fee	9,398,171	939,225
Project:		
Capitalized Interest	6,801,244	6,801,244
Equity:		
Tax Credit Equity @ \$0.98	21,362,487	39,321,432
TOTAL SOURCES	138,405,901	138,405,901
Property Acquisition	94,000,000	94,000,000
Interim Interest	-	-
Renovation Costs	21,302,008	21,302,008
Indirect Costs:		
Soft Costs	4,155,429	4,155,429
Financing Placement	2,749,050	2,749,050
Capitalized Interest	6,801,244	6,801,244
Developer Fee	9,398,171	9,398,171
TOTAL USES	138,405,901	138,405,901

Exhibit G: FISCAL PLAN AND PROJECT PRO FORMA

Norman Towers - Project Pro Forma

PILOT Year	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16
Income																
Potential Gross Annual Rental Income	9,570,000	9,761,400	9,956,628	10,155,761	10,358,876	10,566,053	10,777,374	10,992,922	11,212,780	11,437,036	11,665,777	11,899,092	12,137,074	12,379,815	12,627,412	12,879,960
Vacancy & Collection Loss (%)	(478,500)	(488,070)	(497,831)	(507,788)	(517,944)	(528,303)	(538,869)	(549,646)	(560,639)	(571,852)	(583,289)	(594,955)	(606,854)	(618,951)	(631,371)	(643,998)
Effective Gross Annual Rental Income	9,091,500	9,273,330	9,458,797	9,647,973	9,840,932	10,037,751	10,238,506	10,443,276	10,652,141	10,865,184	11,082,488	11,304,138	11,530,220	11,760,825	11,996,041	12,235,962
TV Service Fee, Store Rental, AT&T Lease, Laundry, Sundry	170,522	173,932	177,411	180,959	184,578	188,270	192,035	195,876	199,794	203,790	207,865	212,023	216,263	220,588	225,000	229,500
Other Income (2% Growth)																
Projected Annual Gross Revenue	9,262,022	9,447,262	9,636,208	9,828,932	10,025,510	10,226,021	10,430,541	10,639,152	10,851,935	11,068,974	11,290,353	11,516,160	11,746,483	11,981,413	12,221,041	12,465,462
Expense																
Management Fee	227,288	231,833	236,470	241,199	246,023	250,944	255,963	261,082	266,304	271,630	277,062	282,603	288,256	294,021	299,901	305,899
Payroll & Benefits	1,365,099	1,406,052	1,448,234	1,491,681	1,536,431	1,582,524	1,630,000	1,678,900	1,729,267	1,781,145	1,834,579	1,889,616	1,946,305	2,004,694	2,064,835	2,126,780
Office, Admin. & Accounting	108,679	111,939	115,297	118,756	122,319	125,988	129,768	133,661	137,671	141,801	146,055	150,437	154,950	159,598	164,386	169,318
Marketing/Advertising	25,000	25,500	26,025	26,576	27,153	27,756	28,386	29,043	29,727	30,438	31,176	31,941	32,733	33,553	34,401	35,276
Water/Sewer	132,229	136,196	140,282	144,490	148,825	153,297	157,898	162,625	167,504	172,529	177,705	183,036	188,527	194,183	200,008	206,008
Gas	154,149	158,773	163,537	168,443	173,496	178,701	184,062	189,584	195,271	201,129	207,163	213,378	219,780	226,373	233,164	240,159
Electric	132,343	136,313	140,403	144,615	148,953	153,422	158,024	162,765	167,648	172,678	177,858	183,194	188,689	194,350	200,181	206,186
General Repairs & Maint.	175,878	181,154	186,589	192,186	197,952	203,890	210,007	216,307	222,796	229,480	236,365	243,456	250,759	258,282	266,031	274,012
Contracts Services	167,599	172,627	177,806	183,140	188,634	194,293	200,122	206,126	212,309	218,679	225,239	231,996	238,956	246,125	253,509	261,114
Amenities & Services	314,692	324,133	333,857	343,872	354,189	364,814	375,759	387,031	398,642	410,602	422,920	435,607	448,676	462,136	476,000	490,280
Insurance	145,000	149,350	153,831	158,445	163,199	168,095	173,138	178,332	183,682	189,192	194,868	200,714	206,735	212,937	219,326	225,905
Replacement Reserve	121,800	125,454	129,218	133,094	137,087	141,200	145,436	149,799	154,293	158,921	163,689	168,600	173,658	178,867	184,233	189,760
PILOT (@ 11.02% of AGR)	1,020,675	1,041,088	1,061,910	1,083,148	1,104,811	1,126,907	1,149,446	1,172,435	1,195,883	1,219,801	1,244,197	1,269,081	1,294,462	1,320,352	1,346,759	1,373,694
Total Operating Expenses	4,090,430	4,200,663	4,313,954	4,430,388	4,550,057	4,673,050	4,799,463	4,929,393	5,062,939	5,200,206	5,341,298	5,486,324	5,635,397	5,788,631	5,946,147	6,108,064
Net Operating Income	5,171,592	5,246,599	5,322,254	5,398,543	5,475,454	5,552,971	5,631,078	5,709,759	5,788,996	5,868,768	5,949,056	6,029,836	6,111,087	6,192,782	6,274,895	6,357,398
Debt Service (refer to Sources and Uses)	(4,497,823)	(4,497,823)	(4,497,823)	(4,497,823)	(4,497,823)	(4,497,823)	(4,497,823)	(4,497,823)	(4,497,823)	(4,497,823)	(4,497,823)	(4,497,823)	(4,497,823)	(4,497,823)	(4,497,823)	(4,497,823)
Cash Flow after Debt Service	673,769	748,777	824,431	900,721	977,631	1,055,148	1,133,255	1,211,936	1,291,173	1,370,945	1,451,233	1,532,013	1,613,264	1,694,959	1,777,072	1,859,575
Total Project Cost	138,405,901															

Norman Towers - Project Pro Forma

PILOT Year	17	18	19	20	21	22	23	24	25	26	27	28	29	30
Income														
Potential Gross Annual Rental Income	13,137,559	13,400,310	13,668,317	13,941,683	14,220,517	14,504,927	14,795,025	15,090,926	15,392,744	15,700,599	16,014,611	16,334,904	16,661,602	16,994,834
Vacancy & Collection Loss (-%)	(656,878)	(670,016)	(683,416)	(697,084)	(711,026)	(725,246)	(739,751)	(754,546)	(769,637)	(785,030)	(800,731)	(816,745)	(833,080)	(849,742)
Effective Gross Annual Rental Income	12,480,681	12,730,295	12,984,901	13,244,599	13,509,491	13,779,681	14,055,274	14,336,380	14,623,107	14,915,569	15,213,881	15,518,158	15,828,522	16,145,092
	234,090	238,772	243,547	248,418	253,387	258,454	263,624	268,896	274,274	279,759	285,355	291,062	296,883	302,821
Other Income (2% Growth)														
Projected Annual Gross Revenue	12,714,771	12,969,067	13,228,448	13,493,017	13,762,877	14,038,135	14,318,898	14,605,276	14,897,381	15,195,329	15,499,235	15,809,220	16,125,405	16,447,913
Expense														
Management Fee	312,017	318,257	324,623	331,115	337,737	344,492	351,382	358,409	365,578	372,889	380,347	387,954	395,713	403,627
Payroll & Benefits	2,190,583	2,256,301	2,323,990	2,393,709	2,465,521	2,539,486	2,615,671	2,694,141	2,774,965	2,858,214	2,943,961	3,032,279	3,123,248	3,216,945
Office, Admin. & Accounting	174,397	179,629	185,018	190,569	196,286	202,174	208,240	214,487	220,922	227,549	234,376	241,407	248,649	256,109
Marketing/Advertising	4,017,661	4,132,190	4,256,826	4,383,751	4,513,780	4,650,764	4,790,256	4,933,962	5,081,952	5,234,443	5,391,478	5,553,225	5,719,819	5,891,437
Water/Sewer	212,189	218,554	225,111	231,864	238,820	245,985	253,364	260,965	268,794	276,858	285,164	293,719	302,530	311,606
Gas	247,364	254,785	262,428	270,301	278,410	286,763	295,365	304,226	313,353	322,754	332,436	342,409	352,682	363,262
Electric	212,372	218,743	225,305	232,064	239,026	246,197	253,583	261,190	269,026	277,097	285,410	293,972	302,791	311,875
General Repairs & Maint.	282,252	290,699	299,420	308,402	317,655	327,184	337,000	347,110	357,523	368,249	379,296	390,675	402,395	414,467
Contracts Services	268,947	277,016	285,326	293,886	302,702	311,784	321,137	330,771	340,694	350,915	361,443	372,286	383,454	394,958
Amenities & Services	504,988	520,138	535,742	551,814	568,369	585,420	602,982	621,072	639,704	658,895	678,662	699,022	719,993	741,592
Insurance	232,682	239,663	246,853	254,258	261,986	269,743	277,835	286,170	294,755	303,598	312,706	322,087	331,750	341,702
Replacement Reserve	195,453	201,317	207,356	213,577	219,984	226,584	233,381	240,383	247,594	255,022	262,673	270,553	278,670	287,030
PILOT (@ 11.02% of AGR)	1,401,168	1,429,191	1,457,775	1,486,930	1,516,669	1,547,002	1,577,943	1,609,501	1,641,691	1,674,525	1,708,015	1,742,176	1,777,020	1,812,560
Total Operating Expenses	6,274,510	6,445,614	6,621,508	6,802,929	6,988,619	7,179,321	7,375,786	7,577,766	7,785,420	7,998,910	8,218,403	8,444,071	8,676,092	8,914,648
Net Operating Income	6,440,261	6,523,453	6,606,940	6,690,688	6,774,659	6,858,814	6,943,112	7,027,510	7,111,961	7,196,419	7,280,832	7,365,149	7,449,312	7,533,265
Debt Service (refer to Sources and Uses)	(4,497,823)	(4,497,823)	(4,497,823)	(4,497,823)	(4,497,823)	(4,497,823)	(4,497,823)	(4,497,823)	(4,497,823)	(4,497,823)	(4,497,823)	(4,497,823)	(4,497,823)	(4,497,823)
Cash Flow after Debt Service	1,942,438	2,025,630	2,109,117	2,192,865	2,276,836	2,360,991	2,445,289	2,529,687	2,614,138	2,698,596	2,783,010	2,867,326	2,951,489	3,035,442
Total Project Cost														

Norman Towers 406 Units	Construction Financing	Perm S&U
Sources and Uses of Funds		
Debt:		
Permanent Loan		91,344,000
Construction Tax Free Bonds	72,200,000	-
Construction Taxable Bonds	28,644,000	-
Deferred Developer Fee	9,398,171	939,225
Project:		
Capitalized Interest	6,801,244	6,801,244
Equity:		
Tax Credit Equity @ \$0.98	21,362,487	39,321,432
TOTAL SOURCES	138,405,901	138,405,901
Property Acquisition	94,000,000	94,000,000
Interim Interest	-	-
Renovation Costs	21,302,008	21,302,008
Indirect Costs:		
Soft Costs	4,155,429	4,155,429
Financing Placement	2,749,050	2,749,050
Capitalized Interest	6,801,244	6,801,244
Developer Fee	9,398,171	9,398,171
TOTAL USES	138,405,901	138,405,901

Exhibit H: Construction Timeline

- Projected Construction Commencement: June 2020
- USFA Units Start July 1 2020 to finish September 31 2020
- Standard Units start June 10 2020 to finish May 10 2021
- Building Exterior summer 2020 schedule due weather pressure washing, Rotunda foundation boundary fencing lighting cleaning painting stucco June 1 to September 31 2020
- Building Exterior summer 2021 schedule due weather Asphalt security gates, ADA Path of travel rotunda completion common areas landscaping disappearing door connection May 15 to August 31 2021
- Hallways top down start July 10 2020 to finish August 10 2021
- Building interior Common areas start October 15 2020 to finish April 15 2021
- Carport start May 1 2021 finish June 31 2021
- Mechanical start July 1 2020 to finish August 31 2020
- Finish clean up entire site punch walk turn over start July 1 2021 to finish August 31 2021
- Certificate of Completion: projected by September 2021

Exhibit I: Fair Market Value

Estimated at Present Fair Market Value: **\$94,000,000**

Estimated Fair Market Value after Completion: **\$115,302,000**

Exhibit J: 2018 Tax Levy

2019 Tax Levy on the property is \$1,005,526.50.

Exhibit K: Municipal Charges

All relevant municipal taxes and charges are paid current.

Exhibit L: OWNERSHIP DISCLOSURE

AFFIDAVIT OF OWNERSHIP DISCLSOURE FOR LIMITED PARTNERSHIP

STATE OF NEW JERSEY)

COUNTY OF ESSEX) SS.:

SETH GELLIS, Manager of NORMAN TOWERS COMMUNITY PARTNERS, LP (the "LP"), being duly sworn upon his oath, deposes and says:

I am the Authorized Signatory of the LP which is a California limited partnership having principal offices at 17782 Sky Park Circle, Irvine, CA 92614.

In conformity with the requirements of N.J.S.A. 52:25-24.2 and any other applicable municipal ordinances, this Affidavit is submitted in connection the LP application for a payment in lieu of tax (PILOT) agreement pursuant N.J.S.A. 44:14k-37 (HMFA PILOT).

<u>Authorized Signatory</u>	<u>BUSINESS</u>	<u>PHONE</u>	<u>EMAIL</u>
Seth Gellis 17782 Sky Park Circle Irvine, CA 92614	<u>BACKGROUND</u> Executive/Developer	(949)236-8120	sgellis@cpp-housing.com

Ownership is as presented in the attached Org Chart, Exhibit A:



Seth Gellis, Authorized Signatory

Subscribed and sworn to before me
this ____ day of December, 2019.

Notary Public

Exhibit A

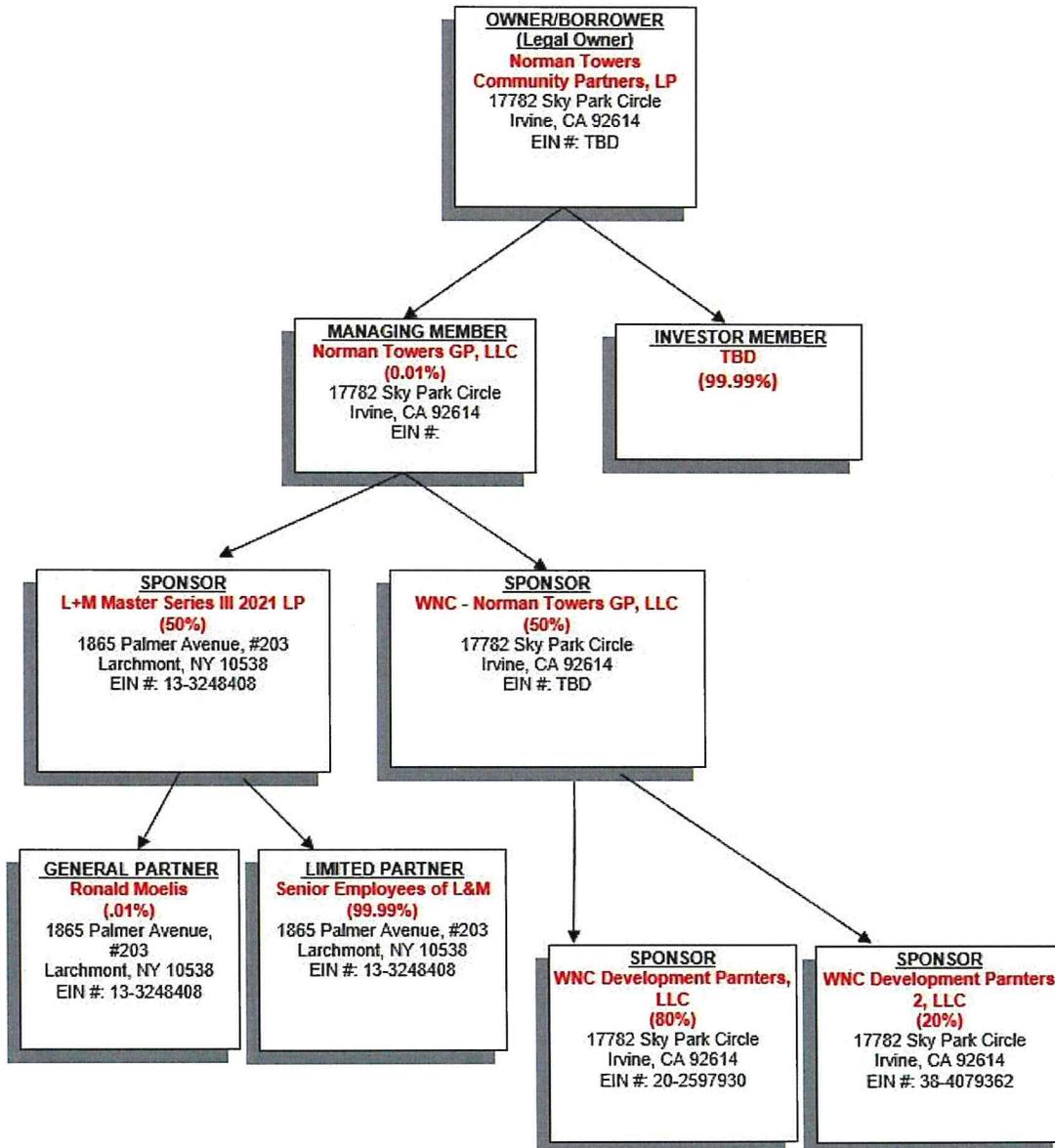


Exhibit M: Certification

Construction activities will not begin prior to final approval and full execution of the relevant Financial Agreement.

Exhibit N: Job Creation

Based on our estimates, this project will create between 50 and 70 construction jobs and preserve the 24 full and part-time jobs at the Project upon completion of the project. All construction jobs and any new permanent jobs will be open to applications from East Orange residents.

Exhibit O: HMFA FINANCING AND LOCATION IN AN URBAN ENTERPRISE ZONE

The project will be financed with HMFA financing and as such is eligible for tax exemption pursuant to N.J.S.A. 55:14k-37. Furthermore, the project is also located in an Urban Enterprise Zone, which also allows for PILOT eligibility pursuant to N.J.S.A. 40A:12A-5g.

Exhibit P: Certification of Accuracy

To the best of our knowledge, after diligent inquiries were made, the information contained herein is true and correct as of this date.

X 

Seth Gellis, Manager

Norman Towers Community Partners, LP

FINANCIAL AGREEMENT

THIS FINANCIAL AGREEMENT (hereinafter the “**Agreement**” or the “**Financial Agreement**”), made this ____ day of _____, 2020, by and between **NORMAN TOWERS COMMUNITY PARTNERS, LP** having its principal office at 17782 Sky Park Circle, Irvine, CA (the “**Entity**”) and the **CITY OF EAST ORANGE**, a municipal corporation in the County of Essex and the State of New Jersey (the “**City**”) (collectively, the “**Parties**”) having offices at 44 City Hall Plaza, East Orange, New Jersey 07018.

WITNESSETH:

WHEREAS, the Entity has applied for a long term tax exemption pursuant to the New Jersey Housing and Mortgage Finance Agency Law of 1983, as amended and supplemented, *N.J.S.A.* 55:14K-1 *et seq.* (the “**HMFA Law**”) for a project to preserve and significantly rehabilitate a four hundred six (406) unit HUD Section 8 age-restricted housing complex located at 500 North Walnut Street and identified on the City’s tax maps as Block 320, Lot 11 (the “**Property**”) in order to construct certain substantial renovations as described more fully within the Application, as such term is defined herein (collectively, the “**Project**”);

WHEREAS, the City has adopted an ordinance approving a long term tax exemption for the Project as authorized by *N.J.S.A.* 55:14-K-37 and wishes to enter into this Financial Agreement in order to memorialize the terms and conditions applicable to this long term tax exemption, a copy of which Ordinance is attached hereto as **EXHIBIT A**.

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

ARTICLE I GENERAL PROVISIONS

1.01 Governing Law. This Financial Agreement shall be governed by the provisions of (a) the HMFA Law, (b) the Ordinance pursuant to which the Municipal Council approved the Application, and (c) all other relevant Federal, State or City statutes, ordinances, resolutions, rules and/or regulations. It is expressly understood and agreed that the City expressly relies upon the facts, data, and representations contained within the Entity’s tax exemption Application attached hereto in granting this tax exemption.

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

Agency Mortgage – The mortgage on the Property in favor of the HMFA pursuant to the HMFA Law.

Annual Gross Revenue – The total annual gross rents and other income of the Entity from the Project. For the avoidance of doubt, the entire gross rents received by the Entity including the tenant share and HUD share of such rents shall be treated as Annual Gross Revenue under this Agreement.

Annual Service Charge – The amount the Entity has agreed to pay the City pursuant to Article IV hereof for municipal services supplied to the Project, which amount is in lieu of any real estate taxes on the Property, which amount shall be pro-rated in the year in which the Annual Service Charge begins and the year in which the Annual Service Charge terminates.

Annual Service Charge Start Date – The Annual Service Charge Start Date shall be the date on which the Project achieves Substantial Completion.

Application - The application filed by the Entity for a tax exemption for the Project which is attached hereto as **EXHIBIT B**.

Auditor's Report – A complete financial statement outlining the financial status of the Project (for a period of time as indicated by context), which shall also include, among other things, a certification of Annual Gross Revenue for the Project and the Annual Service Charge due to the City for each year that this Agreement is in effect. The contents of the Auditor's Report shall be prepared in conformity with generally accepted accounting principles and 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 Completion – AIA G704 Form as submitted by the Architect with respect to the Project.

City – Shall be as defined in the preamble.

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 the Law, beyond any applicable grace or cure periods.

Default Notice – Shall be as defined in Section 11.02.

Director – The Director of the City's Department of Policy, Planning and Development.

Effective Date – The date of this Agreement.

Entity - The term Entity within this Agreement shall mean Norman Towers Community Partners, LP.

HMFA – The New Jersey Housing and Mortgage Finance Agency.

HMFA Law – The *New Jersey Housing and Mortgage Finance Agency Law of 1983*, as amended and supplemented, *N.J.S.A. 55:14K-1 et seq.*

Improvements - Shall mean the existing building on the Land and any and all other improvements to be constructed on, in or under the Land in accordance with the terms hereof, including the interior rehabilitation and renovation of tenant rental units and common area and tenant amenity space.

In Rem Tax Foreclosure - A summary proceeding by which the City may enforce the lien for taxes due and owing by a tax sale, which shall be governed by the Tax Sale Law.

Land – The land, but not the Improvements, comprising the real property commonly known as 500 North Walnut Street and identified on the City’s tax maps as Block 320, Lot 11, and more particularly described by the metes and bounds description set forth within Exhibit A of this Agreement.

Law – The term shall refer to the HMFA Law, the Ordinance pursuant to which the Municipal Council approved the Application, and all other relevant Federal, State or City statutes, ordinances, resolutions, rules and/or regulations applicable to this Agreement.

Material Conditions – Shall be as defined in Section 4.06.

Minimum Annual Service Charge - The minimum annual service charge shall be \$1,005,526.50. The Minimum Annual Service Charge shall be paid in each year in which the Annual Service Charge would be less than the Minimum Annual Service Charge.

Notice of Termination – Shall be as defined in Section 11.05.

Ordinance – The ordinance adopted by the Municipal Council approving the tax exemption for the Property.

Parties – Shall be as defined in the preamble.

Project – The project to preserve and significantly rehabilitate a four hundred six (406) unit HUD Section 8 age-restricted housing complex as described more fully within the Application.

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

Property – Has the meaning as set forth in the Recitals hereof.

State – The State of New Jersey.

Substantial Completion – The determination by the City that the Project has been substantially completed, which shall mean the date on which a Certificate of Completion is received by the Entity and delivered to the Director or should have been received by the Entity and delivered to the Director.

Tax Sale Law - Shall mean N.J.S.A. 54:5-1 et seq., as amended or supplemented from time to time.

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

1.03 Exhibits and Recitals Incorporated. The Application (including all exhibits to the Application), attached to this Financial Agreement as Exhibit B are incorporated herein and made part hereof.

ARTICLE II **APPROVALS**

2.01 City Approval of Tax Exemption. Pursuant to the Ordinance and in accordance with N.J.S.A. 55:14K-37, the Project Land and Improvements shall be exempt from taxation as provided for herein and under the HMFA Law. Such tax exemption shall constitute a single continuing exemption from local property taxation commencing on the Annual Service Charge Start Date and continuing for the term of the Agency Mortgage. Prior to commencement of the Annual Service Charge on the Annual Service Charge Start Date, the Entity shall continue to pay real estate taxes on the Land and Improvements, however, in accordance with N.J.S.A. 55:14K-37 during the period of construction of the Project, the Project's real estate taxes shall remain at their current level and there shall not be any increase reflecting partial incremental increase in the value of the Property by way of any partial assessments, added assessments or omitted assessments. The Project shall be as described in the Application and the Entity hereby expressly covenants, warrants and represents that the Property, including any Improvements related thereto, shall be used, managed and operated for the purposes set forth in the Application and in accordance with the Law. In the event that the Project, or any portion thereof, shall be utilized for any other purpose other than as set forth in the Application, the Agreement shall terminate and the Improvements and the Land shall thereafter be assessed and taxed according to the general law applicable to other non-exempt property in the City.

ARTICLE III **DURATION OF AGREEMENT**

3.01 Term. It is expressly understood and agreed by the Parties that this Financial Agreement shall become effective on the Effective Date and shall remain in effect until the earlier of: (i) twenty-five (25) years from the Annual Service Charge Start Date, (ii) the Entity's voluntary termination of this Agreement, or (iii) the continuance of a Default as set forth within Article XII of this Agreement beyond the applicable notice and cure periods set forth therein; provided, however, that the exemption from taxation and the Entity's obligation to make payments in lieu of taxes shall not extend beyond the date on which the Agency Mortgage is paid in full. Upon the expiration of the tax exemption provided for herein, all restrictions and limitations of this Financial Agreement imposed upon the Entity and the Property shall terminate

upon the end of the fiscal year of the Entity and the Property shall thereafter be assessed and taxed according to the general law applicable to other non-exempt property in the City; provided, however, that any and all related remedies available to the City shall survive the termination of this Agreement.

ARTICLE IV
ANNUAL SERVICE CHARGE

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

4.02 Commencement of Annual Service Charge. The Annual Service Charge shall commence on the first day of the month following the Annual Service Charge Start Date. The Annual Service Charge will be prorated in the year in which the Annual Service Charge Start Date begins and terminates. The Annual Service Charge shall continue for the full term of this Agreement in accordance with the terms contained herein.

4.03 Annual Gross Revenue. (a) Annual Gross Revenue shall be calculated as the total annual gross rents and other income of the Entity from the Project.

(b) All other revenue generated by the Project, including without limitation, revenue from vending and laundry machines, shall be included as Annual Gross Revenue for annual service charge purposes.

4.04 Calculation of Annual Service Charges. The Annual Service Charge during the term shall be the greater of (i) 11.02% of Annual Gross Revenue or (ii) the Minimum Annual Service Charge.

In no event shall the Annual Service Charge in any year after the Annual Service Charge Start Date be less than the Minimum Annual Service Charge. The Minimum Annual Service Charge shall not be reduced through any tax appeal on Land and/or Improvement during the period the Agreement is in force and effect.

4.05 Annual Service Charge Installments. Payment of the Annual Service Charge shall be paid to the City on a quarterly basis on February 1, May 1, August 1, and November 1 after the Annual Service Charge Start Date, subject, nevertheless, to adjustment for over or underpayment within thirty (30) days after completion of and submission to the City of the Annual Audit. In the event that the Entity fails to timely pay any installment, the amount past due shall bear the rate of interest permitted under applicable New Jersey law and then being assessed by the City against other delinquent taxpayers in the case of unpaid taxes or tax liens on the land until paid.

4.06 Material Conditions and Severability. It is expressly agreed and understood that all payments of Annual Service Charges and any interest payments, penalties or costs of collection due thereon and payment of water and sewer charges, are material conditions of this Agreement (“Material Conditions”). If any other term, covenant or condition of this Financial Agreement or the Application, as to any person or circumstance shall, to any extent, be determined to be invalid or unenforceable, the remainder of this Agreement or the application of such term, covenant or condition to persons or circumstances other than those 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 law.

4.07 Payments. Neither the Entity nor the City may alter the amounts or dates as established in this Article IV, other than as set forth herein.

4.08 Annual Service Charge as Municipal Lien. The Annual Service Charge and other related municipal charges shall be a continuous, municipal lien on the Land and Improvements and any subsequent Annual Service Charge, including any interest, penalties or costs of collection thereof, shall be added and shall relate back to and part of the initial municipal lien. The Entity hereby acknowledges, understands and agrees that the Annual Service Charge shall constitute an automatic, enforceable and perfected statutory municipal lien for all purposes, including specifically and without limitation, the Federal bankruptcy code, regardless of whether the amount of the Annual Service Charge has been determined.

4.09 Annual Service Charge Payment Report. Included with each quarterly payment of the Annual Service Charge, the Entity shall submit a report to the City setting forth the calculation of the total quarterly payment amount.

ARTICLE V

ADDITIONAL PROJECT COVENANTS

5.01 Improvements to be Constructed. The Entity represents that it will significantly rehabilitate the four hundred six (406) unit housing complex, including without limitation, those improvements as set forth in the Application attached hereto as Exhibit B. The Entity shall commence the Project in accordance with the schedule set forth within the Application and shall complete the Project within thirty-six (36) months of the adoption of the ordinance approving this Financial Agreement. The Entity may apply to the Director for extensions to these deadlines so long as it files such extension request in writing and shows good cause for the extension. The Director shall have sole reasonable discretion as to whether to grant or deny any extension request sought hereunder.

5.02 Construction Schedule. The Entity agrees to diligently undertake to commence construction of the Project in accordance with Section 5.01 of this Financial Agreement. Failure to commence or complete construction in accordance with that schedule shall be an event of Default governed by Article XIII of this Agreement.

5.03 Ownership, Management and Control. The Entity represents that it is the contract purchaser of the Property upon which the Project is to be constructed, and that it shall be the owner of the Property upon which the Project is to be constructed prior to the commencement of construction pursuant to Section 5.01 of this Financial Agreement.

ARTICLE VI
CERTIFICATE OF OCCUPANCY/CERTIFICATE OF COMPLETION

6.01 Certificate of Occupancy; Certificate of Completion. It is understood and agreed by the Parties that to the extent that a Certificate of Occupancy is required to be issued upon Substantial Completion of the Project, it shall be the obligation of the Entity to make all good faith efforts to obtain the Certificates of Occupancy for the Property and the Improvements related thereto in a timely manner. In the event that a Certificate of Occupancy is not required to be issued for the Project, then upon Substantial Completion of the Project it shall be the obligation of the Entity to deliver a Certificate of Completion to the Director.

6.02 Filing of Certificate of Occupancy or Certificate of Completion. It shall be the primary responsibility of the Entity to forthwith file with both the Tax Assessor and the Tax Collector a copy of the Certificate of Occupancy or Certificate of Completion issued for the Project. Failure of the Entity to file such issued Certificate of Occupancy or Certificate of Completion as required by the preceding paragraph shall not militate against any action or non-action, taken by the City, including, if appropriate, retroactive billing with interest for any charges determined to be due, in the absence of such filing by the Entity.

ARTICLE VII
CITY DETERMINATIONS

7.01 Benefits and Importance of Tax Exemption. The City 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 preservation and substantial renovation of four hundred six (406) HUD Section 8 age restricted affordable housing units. Additionally, the City has determined that:

(a) the benefits of the Project, including (i) the construction of the Improvements, (ii) the creation of between [INSERT] and [INSERT] construction jobs, and (iii) the preservation and/or creation of between [INSERT] and [INSERT] full- and part-time permanent jobs, outweigh any costs associated with the tax exemption; and

(b) without the tax exemption granted herein, the Project would not otherwise be undertaken and the Property likely would revert to market-rate housing upon expiration of the existing HAP contract thereby displacing the current residents.

ARTICLE VIII
REPORTS AND AUDITS

8.01 Accounting System. The Entity agrees to maintain a system of accounting and internal controls established and administered in accordance with generally accepted accounting principles.

8.02 Annual Audit. Within one hundred twenty (120) days after the close of each fiscal or calendar year following issuance of the Certificate of Completion (as the case may be), depending on the Entity's accounting basis, during the term of this Agreement, the Entity shall submit to the Mayor, Municipal Council, the Tax Collector and the City Clerk, who shall advise those municipal officials required to be advised, a certified Auditor's Report of the operation of the Project setting forth the Annual Gross Revenue of the Project.

8.03 Disclosure Statement. On each anniversary date of the execution of this Agreement, if there has been a change in ownership or interest from the prior year's filing, the Entity shall submit to the Mayor, Municipal Council, the Tax Collector and the City Clerk, who shall advise those municipal officials required to be advised, a disclosure statement listing the persons having an ownership interest in the Project, and the extent of the ownership interest of each, and such additional information as the City may request from time to time.

8.04 Inspection. The Entity shall permit the inspection of its property, equipment, buildings and other facilities of the Project by representatives duly authorized by the City. It shall also permit, upon request, examination and audit of its books, contracts, records, documents and papers. Such examination or audit shall be made during the reasonable hours of the business day, in the presence of an officer or agent designated by the Entity. To the extent reasonably possible, the inspection will not materially interfere with construction or operation of the Project.

ARTICLE IX

SALE AND/OR ASSIGNMENT PROVISIONS

9.01 Approval. (a) It is understood and agreed that the City, on written application by the Entity after completion of the Project, may consent to a sale of the entire Project and the transfer of this Agreement provided: 1) the transferee entity qualifies under the HMFA Law and assumes the Agency Mortgage; 2) the Entity is not then in Default of this Agreement or the Law; 3) the Entity's obligations under this Agreement are fully assumed by the transferee entity; 4) the transferee entity agrees to abide by all terms and conditions of this Agreement; and 5) the principal owners of the transferee entity possess the same or better business reputation, financial qualifications and credit worthiness as the Entity and are otherwise reputable. The City may levy an administrative fee of two percent (2%) of the then applicable Annual Service Charge for the Project being transferred for processing any such application by the Entity.

(b) The Parties hereto acknowledge that the Entity shall transfer a portion of its membership interest to one or more tax credit investors in connection with the financing of the Project. The City agrees that its consent is not required for this transfer.

(c) The City hereby further consents to any of the following future transfers:

(i) transfers of membership interests in the Entity between or among existing members of the Entity or those entities as set forth in the Application;

- (ii) transfers of membership interests in the Entity of less than ten percent (10%); and
- (iii) transfers of membership interests in the Entity to an affiliate of the Entity or an affiliate of one of the partners in the Entity.
- (iv) transfers of the Project to an entity controlled by the principals of the Entity.

(d) Any other transfer, including without limitation, any transfer of a portion of the Project shall be deemed a Default hereunder.

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

9.03 Subordination of Fee Title. It is expressly understood and agreed that the Entity has the right, subordinate to the lien of the Annual Service Charges and to the rights of the City hereunder, to encumber and/or assign the fee title to the Land and/or Improvements for the sole purpose of obtaining financing for use in the Project, and that any such encumbrance or assignment shall not be deemed to be a violation of this Agreement.

ARTICLE X WAIVER

10.01 No Waiver. 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 Law except for the express waiver herein of certain rights of acceleration and certain rights to terminate this Financial Agreement and tax exemption for violation of any of the conditions provided herein. Nothing herein shall be deemed to limit any right of recovery that the City or the Entity has under law, in equity, or under any provision of this Financial Agreement.

ARTICLE XI NOTICE

11.01 Notice. Any notice required hereunder to be sent by any party to another party shall be sent to all other parties hereto simultaneously by certified or registered mail, return receipt requested, or by commercial overnight courier, as follows:

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

CPP East, LLC
11951 Freedom Drive, Suite 1204
Reston, Virginia 20190
Attention: Seth Gellis
Phone: (703) 936-2182
Email: sgellis@cpp-housing.com

With a copies to:

Community Preservation Partners, LLC
17782 Sky Park Circle
Irvine, California 93614
Attention: Anand Kannan
Phone: (949) 236-8278
Email: akannan@wnc.com

Jeffrey Moelis
L+M Development Partners
2 Park Avenue, 23rd Floor
New York, NY 10016

Cannon Heyman & Weiss, LLP
54 State Street, 5th Floor
Albany, New York 12207
Attn: David Kuracina, Esq.
Phone: (518) 465-1500
Email: dkuracina@chwattys.com

Michael J. Caccavelli, Esq.
Pearlman & Miranda, LLC
110 Edison Place, Suite 301
Newark, New Jersey 07102

The Entity has an affirmative duty to provide the City with the new information in the event that the address for the Entity changes. The Entity must provide the City with the name and address of the registered agent or party authorized to accept service of process on their behalf.

When sent to the City, it shall be addressed to the City Administrator, 44 City Hall Plaza, East Orange, New Jersey 07019 with copies sent to Corporation Counsel, and the Director of Policy, Planning & Development at the same address, unless prior to the giving of notice the City shall have notified the Entity otherwise.

ARTICLE XII
DEFENSE/INDEMNIFICATION

12.01 Defense/Indemnification. It is understood and agreed that in the event the City shall be named as party in any action brought against the City or Entity by allegation of any breach, Default or a violation of any of the provisions of this Agreement, the provisions of the HMFA Law or any other applicable law, and/or in any way related to the Project, the Entity shall, at its sole cost and expense, defend, 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 the action or inaction of the Entity and/or by reason of any breach, Default or a violation of any of the provisions of this Agreement, the provisions of the HMFA Law or any other applicable law, and/or in any way related to the Project, except for any misconduct by the City or any of its officers, officials, employees or agents. However, 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 Entity.

ARTICLE XIII DEFAULT

13.01 Default. Default shall be any failure of the Entity to conform to the terms of this Agreement and/or any failure of the Entity to perform any obligation imposed upon the Entity by statute, ordinance or lawful regulation beyond any applicable notice, cure or grace period.

13.02 Cure Upon Default. Should the Entity be in Default of any obligation under this Agreement, the City shall notify the Entity and any mortgagee of the Entity in writing of said Default ("Default Notice"). Said Default Notice shall set forth with particularity the basis of said Default. Except as otherwise limited by law, the Entity shall have sixty (60) days to cure any Default (other than a Default in payment of any installment of the Annual Service Charge) from the date of its receipt of the Default Notice. In the event of any uncured Default, the City shall have the right to proceed against the Property pursuant to applicable provisions of the Law and the Financial Agreement. Upon any Default in payment of any installment of the Annual Service Charge, the City shall have the right to proceed to In Rem Tax Foreclosure consistent with the provisions and procedures of the In Rem Tax Foreclosure law.

13.03 Remedies. In the event of any dispute between the Parties, other than a dispute arising from the failure of the Entity to timely pay any portion of the Annual Service Charge or any other financial obligation required by this Agreement, the Parties shall submit the dispute for arbitration to a third party neutral to be selected by mutual consent of the Parties. In the event of a Default on the part of the Entity to pay any installment of the Annual Service Charge required by Article IV above, the City in addition to its other remedies, reserves the right to proceed against the Entity's land and premises, in the manner provided by law, including the Tax Sale Law, and any act supplementary or amendatory thereof. Whenever the word "Taxes" appears, or is applied, directly or implied, to mean taxes or municipal liens on land, such statutory provisions shall be read, as far as it is pertinent to this Agreement, as if the Annual Service 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.

13.04 Remedies Upon Default Cumulative; No Waiver. Subject to the other terms and conditions of this Agreement, all of the remedies provided in this Agreement to the City, and all rights and remedies granted to it by law and equity shall be cumulative and concurrent and no determination of the invalidity of any provision of this Agreement shall deprive the City of any of its remedies or actions against the Entity because of Entity's failure to pay the Annual Service Charge and/or any applicable water and sewer charges and interest payments. This right shall only apply to arrearages that are due and owing at the time, and the bringing of any action for Annual Service Charges or other charges, or for breach of covenant or the resort of any other remedy herein provided for the recovery of Annual Service Charges or other charges shall not be construed as a waiver of the right to proceed with In Rem Tax Foreclosure proceedings consistent with the terms and provisions of this Agreement.

13.05 Termination Upon Default of the Entity. In the event the Entity fails to cure or remedy the Default, including without limitation a Default as described in Section 14.01, within the time period provided in Section 14.02, the City may terminate this Agreement upon thirty (30) days written notice to the Entity ("Notice of Termination").

13.06 Final Accounting. Within ninety (90) days after the date of Termination, the Entity shall provide a final accounting to the City. For purposes of rendering a final accounting, the Termination of the Agreement shall be deemed to be the end of the fiscal year for the Entity.

13.07 Conventional Taxes. Upon Termination or expiration of this Agreement, the tax exemption for the Project shall expire and the Land and the Improvements thereon shall thereafter be assessed and conventionally taxed according to the general law applicable to other nonexempt taxable property in the City.

**ARTICLE XIV
RESERVED**

**ARTICLE XV
MISCELLANEOUS**

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

15.02 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 of the City authorizing this Agreement, and the Application constitute the entire agreement between the Parties regarding the long term tax exemption for the Property and there shall be no modifications thereto other than by a written instrument executed by the Parties hereto and delivered to each of them.

15.03 Entire Document. All conditions in the Ordinance of the City Council approving this Agreement are incorporated in this Agreement and made a part hereof.

15.04 Construction. This Financial Agreement shall be construed and enforced in accordance with the laws of the State of New Jersey, and without regard to or aid or any presumption or other rule requiring construction against the party drawing or causing this Agreement to be drawn since counsel for both the Entity and the City have had the opportunity to review and approve the Financial Agreement.

15.05 RESERVED.

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 parity with or superior to the lien for the Annual Service Charges, as required by law. Nothing herein is intended to release Entity from its obligation to make such payments.

15.07 Delivery to Tax Assessor. Upon the full execution of this Financial Agreement, the Clerk of the City shall deliver to the Tax Assessor a certified copy of the Ordinance along with an executed copy of this Financial Agreement. Upon such delivery, the Tax Assessor shall implement the tax exemption granted as of the Effective Date and certain requirements will be effective as provided herein and shall continue to enforce the tax exemption, without further certification by the City Clerk, until the expiration of the tax exemption in accordance with the terms hereof.

15.08 Validity. The Entity fully and freely holds the City harmless and assumes any and all risk that may affect the current or future validity of this Financial Agreement. In no event shall the City be liable to the Entity, or otherwise subject to damages, in the event that this Financial Agreement is deemed to be unenforceable.

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

15.10 Amendments. This Agreement may not be amended, changed, modified, altered or terminated without the written consent of the Parties hereto and subject to City Council approval.

[Signature Pages to Follow]

EXHIBIT A

ORDINANCE APPROVING TAX EXEMPTION AND FINANCIAL AGREEMENT

EXHIBIT B

**THE ENTITY'S APPLICATION FOR TAX
EXEMPTION PURSUANT TO N.J.S.A. 55:14K-37**