

TAX AGREEMENT

THIS TAX AGREEMENT (the “**Tax Agreement**”) is made this day of , 2023 between FLEET ABERDEEN II LLC, a New Jersey limited liability company with an address of 237A Millburn Ave, Millburn New Jersey 07041 (“**Redeveloper**”) and the TOWNSHIP OF ABERDEEN, a municipal corporation of the State of New Jersey with offices at One Aberdeen Square, Aberdeen, New Jersey 07747 (the “**Township**”).

WITNESSETH:

WHEREAS, pursuant to New Jersey’s Five-Year Exemption and Abatement Law, N.J.S.A. 40A:21-1, et. seq. (the “**Five-Year Exemption Law**”), a municipality having within its corporate limits areas in need of rehabilitation or redevelopment may, by ordinance, utilize the authority granted to municipalities under Article VIII, Section I, paragraph 6 of the New Jersey Constitution to provide for the exemption and/or abatement of real property taxes of dwellings, multiple dwellings, or commercial and industrial structures, or all of these; and

WHEREAS, the New Jersey Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq. (the “**Redevelopment Law**”) provides statutory authority for a municipality to designate an area within its corporate limits as an “area in need of redevelopment;” and

WHEREAS, on February 21, 2006, the Township Council of the Township of Aberdeen by resolution established that the real property identified as Block 155, Lot 1 on the Tax Map of the Township of Aberdeen (the “**Glassworks Redevelopment Area**”), met the requirements of an “area in need of redevelopment” in accordance with the Redevelopment Law; and

WHEREAS, also on February 21, 2006, the Township by resolution designated Somerset Development, LLC (“**Somerset**”) as the “redeveloper” of the Glassworks Redevelopment; and

WHEREAS, Somerset and the Township entered into that certain Master Redevelopment Agreement dated August 2006 (the “**MRA**”), as amended by that certain First Amendment to MRA dated April 14, 2016, that certain Second Amendment to MRA dated August 3, 2016, and that certain Third Amendment to MRA, dated October 19, 2020 as further amended from time to time (all, collectively, the “**Redevelopment Agreement**”); and

WHEREAS, the Redevelopment Agreement provides that the Township will implement the provisions of the Five-Year Exemption Law in the Glassworks Redevelopment Area to provide for the exemption and/or abatement of real property taxes of the for-sale market-rate residential units developed within the Glassworks Redevelopment Area (each a “**Unit**” and, collectively, the “**Units**”); and

WHEREAS, the Township has adopted Ordinance 10-2019, which implements the Five-year Exemption Law for the Units; and

WHEREAS, on September 19, 2013, the Township of Aberdeen Planning Board (the “**Planning Board**”) granted preliminary and final major site plan approval for Phase I

(consisting of 6 sections) (“**Phase 1**”) of the Glassworks Redevelopment Area; and

WHEREAS, on September 16, 2015, the Planning Board approved an amendment to the Phase 1 phasing plan, which provided for the development to be undertaken in two Phases (i.e., Phase 1 and Phase 2); and

WHEREAS, Phase 1 is contemplated to be undertaken in several sub-phases (i.e., Phases 1A through 1F); and

WHEREAS, Phase 1D is expected to include 71 residential townhouse units (“**Phase 1D**”), and (ii) Phase 1F is expected to include 46 residential townhouse units (“**Phase 1F**”, and together with Phase 1D, the “**Project**”), along with associated site improvements; and

WHEREAS, the Township adopted Resolutions No. _____ and _____, pursuant to which each of Redeveloper and NVR, Inc., d/b/a Ryan Homes, a Virginia corporation (“**NVR**”) were designated as Qualified Developers and authorizing (1) the sale of a portion of the Glassworks Redevelopment Area to Redeveloper and/or NVR, and (2) the execution by Somerset, NVR, Redeveloper and/or the Township, as applicable, of a partial assignment and assumption of the Redevelopment Agreement; and

WHEREAS, the Redeveloper and NVR submitted a joint application for a five-year tax abatement (the “**Application**”) to the Township in accordance with Ordinance 10-2019 and the Five-Year Exemption Law for the Units to be developed in Phase 1D and Phase 1F (the “**Project Units**”); and

WHEREAS, the Application was accepted and approved pursuant to Ordinance ____ - ____ which authorized the execution of this Agreement with Redeveloper for the abatement for the Project Units; and

WHEREAS, the Township and the Redeveloper have reached agreement with respect to, among other things, the terms and conditions relating to the tax exemption and payments in lieu of taxes and desire to execute this Agreement, and the execution of this Agreement was authorized by Resolution No. _____.

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

ARTICLE I **GENERAL PROVISIONS**

SECTION 1.01 General Definitions

The defined terms noted in the “Whereas” clauses above shall have the meanings ascribed to them therein. All definitions set forth in the Five-Year Exemption Law are incorporated herein by reference. Additionally, the following terms as used in this Tax Agreement shall, unless the context clearly requires otherwise, have the following meanings:

Assessor means the Township's tax assessor.

Completion Date means January 1st following the date on which the temporary or final Certificate of Occupancy has been issued for each Project Unit.

Certificate of Occupancy means the document issued by the Township in accordance with the New Jersey Administrative Code, authorizing the occupancy of multiple dwelling unit, or a portion thereof, on the Exemption Area.

In Rem Tax Foreclosure means a summary proceeding by which the Township may enforce the lien for taxes or other municipal charges due and owing by a tax sale, all in accordance with the Tax Sale Law, N.J.S.A. 54:5-1 et seq.

Project means structures and improvements comprising the construction of market-rate townhome units within the Exemption Area in accordance with the Phase 1D and 1F Approval and the Redevelopment Agreement, to be constructed on Land Units 15, 16, 17 and 18 located in Block 155, Lot 1.

Project Unit means each of the townhome units to be constructed in accordance with the Phase 1D and Phase 1F Approval and the Redevelopment Agreement which are to be the individual and separate units of multiple dwellings.

Redeveloper means Fleet Aberdeen II LLC, and upon a transfer of all or a portion of the Property to NVR, NVR, and in accordance with the Five-Year Exemption Law and Five-Year Exemption Ordinance, where the context so indicates, includes any successor owner of any Project Unit that will continue to use the Project Unit pursuant to the conditions which qualified the Project Unit initially under this Tax Agreement.

Redevelopment Agreement means that Redevelopment Agreement by and between Township of Aberdeen, New Jersey, as Redevelopment Entity and Somerset Development, LLC, dated September 12, 2006, as amended from time to time and as partially assigned and assumed by Fleet or NVR.

Tax Year means a twelve (12) month period which is determined to be a tax year in accordance with the Township's tax calendar as prescribed by all applicable law.

SECTION 1.02 **Exhibits Incorporated**

All exhibits and schedules referred to in this Tax Agreement and attached hereto are incorporated herein and made part hereof. Such exhibits and schedules include:

Exhibit A	Exemption Application
Exhibit B	Exemption Approval Ordinance
Exhibit C	Phase 1D and Phase 1F Approval
Exhibit D	Approved Site Plan for Project

ARTICLE II APPROVAL

SECTION 2.01 Township Approval of Tax Exemption

Pursuant to the Five-Year Exemption Ordinance, each Project Unit, including any and all improvements related thereto, shall be exempt from real property taxation as provided for herein. Redeveloper hereby expressly covenants, warrants and represents that the Project, including any improvements related thereto, shall be used, managed and operated for the purposes set forth in the Exemption Application and in accordance with the Redevelopment Agreement, and all applicable law. Prior to each Project Unit's Completion Date, all real property within the Exemption Area, including any and all improvements related thereto, shall be assessed and taxed according to the general law applicable to all other non-exempt property located within the Township. After each Project Unit's Completion Date, the parties hereto acknowledge and agree that the real property taxes for the land comprising the Exemption Area shall continue to be assessed and taxed according to the general law and shall not be deemed to be subject to exemption under this Tax Agreement.

SECTION 2.02 Township Approval of Project to be Undertaken by the Redeveloper

Approval is hereby granted by the Township to the Redeveloper for the development, financing, acquisition, construction, management and operation of the Project, which shall in all respects comply and conform to the Redevelopment Agreement, the Phase 1D and Phase 1F Approval, and all applicable statutes of the State, and the lawful regulations made pursuant thereto, governing land, building(s) and the use thereof.

SECTION 2.03 Improvements to be Constructed

The Redeveloper hereby covenants, warrants and represents that it will construct the Project in accordance with the Phase 1D and 1F Approval and Redevelopment Agreement.

ARTICLE III DURATION OF AGREEMENT

SECTION 3.01 Term

It is hereby expressly understood and agreed by the parties that this Agreement, including the obligation to make payments in lieu of taxes required under Article IV hereof and the tax exemption granted and referred to in Section 2.01 hereof, shall commence as to each Project Unit, on that Project Unit's Completion Date and shall, provided that there shall not be a default under this Tax Agreement, remain in effect for a period of five (5) years from the commencement of the tax exemption for such Project Unit. Upon the expiration of the tax exemption granted and provided for herein, each Project Unit within the Exemption Area, including any improvements related thereto, shall thereafter be assessed and taxed according to the general law applicable to all other non-exempt property located within the Township.

Upon the expiration of the tax exemption provided for herein, all restrictions and limitations of this Tax Agreement imposed upon the Redeveloper and the Exemption Area, including any improvements related thereto, excluding (i) the requirement to make payment of any payments in lieu of taxes due and owing hereunder, and (ii) any and all related and available remedies of the Township, shall terminate.

SECTION 3.02 **Apportionment**

Notwithstanding anything contained in this Tax Agreement to the contrary, in the event that this Tax Agreement shall be terminated, the procedure for the apportionment of any taxes and/or payments in lieu of taxes, as applicable, shall be the same as would otherwise be applicable to, in accordance with the laws of the State, any other property located within the Township upon a change in the exemption or tax status of such property.

SECTION 3.03 **Termination**

If at any time during the term of this Tax Agreement there shall be a default by the Redeveloper or any successor Project Unit owner (a “**Defaulting Party**”) of any or all of the provisions of this Tax Agreement, including but not limited to the requirements of Article IV, which default shall not have otherwise been cured or remedied in accordance with the terms hereof, this Tax Agreement shall automatically terminate only as to the Project Unit(s) owned by the Defaulting Party (the “**Defaulting Units**”), including any improvements related thereto, and the Defaulting Units shall thereafter be assessed and taxed according to the general law applicable to all other non-exempt property located within the Township.

In accordance with the Tax Exemption Law, including without limitation N.J.S.A. 40A:21-12, in the event that the Township shall terminate this Tax Exemption Agreement in accordance with the terms hereof as to any Defaulting Party, the real property taxes that would have otherwise been due in each Tax Year governed by this Tax Agreement, if not for the tax exemption granted herein, shall become due and payable.

ARTICLE IV **PAYMENT IN LIEU OF TAXES**

SECTION 4.01 **Commencement of Payment in Lieu of Taxes**

Redeveloper shall make payments in lieu of taxes on each Project Unit commencing on the Completion Date for such Project Unit.

SECTION 4.02 **Payments in Lieu of Taxes**

(a) The Redeveloper (or Project Unit Purchaser, as applicable) shall make payments in lieu of taxes to the Township, on a tax phase-in basis for each Project Unit, as follows:

- (1) In the first full year after completion, no payment in lieu of taxes otherwise due;
- (2) In the second full year after completion, an amount not less than twenty percent (20%) of taxes otherwise due;
- (3) In the third full year after completion, an amount not less than forty percent (40%) of taxes otherwise due;
- (4) In the fourth full year after completion, an amount not less than sixty percent (60%) of taxes otherwise due; and
- (5) In the fifth full year after completion, an amount not less than eighty percent (80%) of taxes otherwise due.

(b) Payments in lieu of taxes shall be due and payable in quarterly installments on those dates when real property taxes are otherwise due and payable.

(c) If any installment of the payments in lieu of taxes is not paid to the Township in accordance with this Tax Agreement on the date and in the full amount scheduled to be paid, the Redeveloper hereby expressly waives any objection or right to challenge the use by the Township of the enforcement of remedies to collect such installment of the payment in lieu of taxes as are afforded the Township by law, including without limitation the Tax Sale Law.

(d) In the event that the Redeveloper fails to timely pay any installment of the payments in lieu of taxes, the amount past due shall bear the highest rate of interest permitted under applicable State law in the case of unpaid taxes or tax liens on land until paid.

SECTION 4.03 Municipal Charges

The Redeveloper hereby expressly acknowledges, understands, and agrees that, in addition to the payments in lieu of taxes, it shall be responsible for the payment (without any credit whatsoever hereunder) of all other applicable municipal charges that may, from time to time, be lawfully assessed upon each Project Unit, including, without limitation, any and all special benefit assessments, water and sewer charges, and other municipal charges, whether presently existing or hereinafter imposed, and that the Township may enforce such assessments and charges in any manner (including, but not limited to, foreclosure or tax sale) permitted by applicable law.

SECTION 4.04 Consent of the Redeveloper to the Payments in Lieu of Taxes

The Redeveloper hereby consents and agrees to the amount of the payments in lieu of taxes and to the liens established in this Agreement, and the Redeveloper shall not contest the validity or amount of the payments in lieu of taxes or any such lien. Subject to the terms of this Agreement, the Redeveloper's obligation to pay the payments in lieu of taxes shall be absolute and unconditional and shall not be subject to any defense, set-off, recoupment or counterclaim

under any circumstances. The Redeveloper's remedies shall be limited to those specifically set forth herein and otherwise provided by law. Notwithstanding the foregoing, the Redeveloper and/or successor Project Unit owner may contest the Tax Assessor's initial determination of real property and improvement value as to any Project Unit so as to establish the initial valuation of said Project Unit for the first year of the exemption provided by this Agreement and, in the event of any revaluation during the term of this Agreement, the Redeveloper or its successor Project Unit owner may contest the amount of such revaluation.

SECTION 4.05 **Material Conditions**

It is expressly agreed and understood that all payments of payments in lieu of taxes and other municipal charges, and any interest payments, penalties or costs of collection due thereon are material conditions of this Agreement ("Material Conditions"). If any other term, covenant or condition of this Tax Agreement or the Exemption Application, as to any person or circumstance shall, to any extent, be determined to be invalid or unenforceable by virtue of a non-appealable order of a court of competent jurisdiction, the remainder of this Tax 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 Tax Agreement shall be valid and enforced to the fullest extent permitted by law, and the court shall be authorized to reform any provision of this Tax Agreement that may be found to be not in accordance with applicable law as may be required to cause that provision to comply with the requirements of applicable law.

ARTICLE V **CERTIFICATE OF OCCUPANCY AND NO FURTHER ACTION LETTER**

SECTION 5.01 **Certificate of Occupancy**

It is understood and agreed that the Redeveloper shall remain obligated to make application for and make all good faith efforts which are reasonable to obtain Certificate(s) of Occupancy in a timely manner for each Project Unit.

SECTION 5.02 **Filing of Certificate of Occupancy**

It shall be the primary responsibility of the Redeveloper to forthwith file with the Tax Assessor, Tax Collector, and Chief Financial Officer of the Township a copy of any such Certificate of Occupancy.

ARTICLE VI **SALE AND/OR TRANSFER; CHANGE IN USE**

SECTION 6.01 **Sale and/or Transfer**

Upon any purchasers acceptance of a deed from Redeveloper conveying title to its Project Unit, each Project Unit shall be subject to the terms of the tax exemption under the Tax Agreement, whether owned by the Redeveloper or a successor Project Unit owner; provided,

that, all references to the “Redeveloper” under this Tax Agreement and the rights and obligations of the Redeveloper shall be deemed to apply to any and all successor Project Unit owners for the term of this Tax Agreement. During the term of this Tax Agreement, all purchasers of a Project Unit shall not be required to secure the consent of the Township, but all purchasers shall be deemed to accept each and every term of this Tax Agreement as it relates to such purchasers of any Project Unit. For the avoidance of doubt, upon the conveyance of title to a Project Unit, Redeveloper shall not longer be responsible for any obligation or liability relating to such Project Unit and arising after the date of transfer, and the Project Unit Owner shall be solely responsible for same. The parties shall not be jointly and severally liable for any liability following such conveyance, and instead each party shall bear its own liability hereunder for the Project Units owned by such party.

Except as provided above, in the event that the Redeveloper shall sell, or otherwise transfer, the real property comprising the Exemption Area, prior to the term of this Tax Agreement, this Tax Agreement shall automatically terminate and the Exemption Area, including any improvements related thereto, shall be assessed and taxed according to the general law applicable to all other non-exempt property located within the Township and Section 3.03 hereof, unless the Township shall determine, in its sole discretion, that the new owner of the Exemption Area, including the improvements related thereto, shall continue to operate, maintain and utilize the Exemption Area, including the improvements related thereto, pursuant to the terms hereof and the conditions which originally qualified the Exemption Area, including the improvements related thereto, for the tax exemption granted herein. Notwithstanding the generality of the foregoing, the parties hereto acknowledge and agree that in connection with the sale of all or a portion of the Property to NVR, and in accordance with Township Resolution No. _____, Redeveloper shall be permitted to sell, transfer, assign or otherwise convey all or a portion of this Agreement, as applicable, to NVR, so long as NVR assumes all of the rights, duties, responsibilities and obligations of the Redeveloper hereunder with respect to the portion of the Property so transferred. In the event of such sale and/or transfer of the Exemption Area, or any improvements related thereto, and provided that this Tax Agreement shall not otherwise be terminated in accordance with the terms hereof, all of the rights, duties, responsibilities and obligations of the Redeveloper hereunder shall automatically become the rights, duties, responsibilities and obligations of the subsequent owner.

In the event that Redeveloper erects and/or otherwise places or displays any signage within the Glassworks Redevelopment Area pertaining to the Project, including but not limited to the advertising of the Project Units for sale, Redeveloper acknowledges and agrees that such signage shall not include or make any reference to the eligibility of any of the Project Units to any exemption to real property taxation as is provided by the terms of this Tax Agreement.

SECTION 6.02 **Change in Use**

In the event that the Redeveloper shall cease to operate and utilize the Exemption Area for the purpose set forth herein and in the Redevelopment Agreement, this Tax Agreement shall automatically terminate and the Exemption Area, shall be assessed and taxed according to the general law applicable to all other non-exempt property located within the Township and Section 3.03 hereof.

SECTION 6.03 Subordination of Fee Title

It is expressly acknowledged, understood and agreed that the Redeveloper has the right, subordinate to the lien, as a matter of law, of this Tax Agreement, the payments in lieu of taxes, and to the rights of the Township hereunder, to encumber the fee title to the Exemption Area, including any improvements related thereto, and that any such subordinate encumbrance shall not be deemed to be a violation of this Tax Agreement.

ARTICLE VII WAIVER

SECTION 7.01 Waiver

Nothing contained in this Tax Agreement or otherwise shall constitute a waiver or relinquishment by the Township of any rights and remedies provided by law, including without limitation, the right to terminate this Tax Agreement. Nothing herein shall be deemed to limit any right of recovery that the Township has under law, in equity, or under any provision of this Tax Agreement.

ARTICLE VIII NOTICE

SECTION 8.01 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, hand delivery, or reputable overnight delivery service for next business day delivery, as follows:

(a) When sent to the Redeveloper:

Fleet Aberdeen II LLC
237A Millburn Ave
Millburn, NJ 07041
Attn: Paul Schneier

With a copy to:

Giordano, Halleran & Ciesla, P.C.
125 Half Mile Road
Suite 300
Red Bank, New Jersey 07701
Attn: Brian J. Shemesh, Esq.

(b) When sent to any subsequent owner, other than the Redeveloper, as may be permitted in accordance with Section 6.01 hereof, it shall be addressed to such owner's address as set forth in

the tax records of the Township;

(c) When sent to the Township:

Township of Aberdeen
One Aberdeen Square
Aberdeen, NJ 07747

With a copy to:

Joseph M. DeCotiis, III, Esq.
DeCotiis, Fitzpatrick, Cole & Giblin LLP
61 South Paramus Road
Suite 250
Paramus, New Jersey 07652

ARTICLE IX CONSTRUCTION

SECTION 9.01 Construction

This Tax Agreement shall be construed and enforced in accordance with the laws of the State, and without regard to or aid or any presumption or other rule requiring construction against the party drawing or causing this Tax Agreement to be drawn since counsel for both the Redeveloper and the Township have combined in their review and approval of same.

ARTICLE X INDEMNIFICATION

SECTION 10.01 Indemnification

It is hereby expressly acknowledged, understood and agreed that in the event the Township shall be named as party defendant in any action by reason of any breach, default or a violation of any of the provisions of this Tax Agreement and/or the provisions of Five-Year Exemption Law by the Redeveloper, or any challenge to the validity of this Tax Agreement, the Redeveloper shall indemnify and hold the Township harmless from and against all liability, losses, damages, demands, costs, claims, actions or expenses (including attorneys' fees and expenses) of every kind, character and nature arising out of or resulting from the action or inaction of the Redeveloper and/or by reason of any breach, default or a violation of any of the provisions of this Tax Agreement, the provisions of the Five-Year Exemption Law, and/or any Federal or State law and/or any challenge to the validity of this Tax Agreement or the Redevelopment Agreement; provided, that Redeveloper shall not be responsible or liable for any indemnity or loss which arises out of or relates to Township's negligence or willful misconduct.

In the event the Redeveloper alone is named a party defendant to any action of the type

set forth in this Section 10.01, the Township maintains the right to intervene as a party thereto, to which intervention the Redeveloper hereby expressly consents, and to carry out their own defense, the reasonable cost of which shall be borne by the Redeveloper.

ARTICLE XI DEFAULT

SECTION 11.01 Default

A default hereunder shall be deemed to have occurred if the Redeveloper fails to conform to the terms of this Tax Agreement or the Five-Year Exemption Law, it being hereby expressly acknowledged and understood by the parties hereto that in the event of a default by the Redeveloper which default shall not otherwise be cured or remedied in accordance with the relevant provisions of the Five-Year Exemption Ordinance, the tax exemption granted herein shall immediately cease and shall have no further force and effect and the Project Unit(s) related thereto shall thereafter be assessed and taxed according to the general law applicable to all other non-exempt property located within the Township and Section 3.03 hereof. Upon a sale or transfer as set forth in Section 6.01 hereof, the owner of each Project Unit shall be separately responsible for his own tax obligation pursuant to this Tax Agreement and no default hereunder with respect to one Project Unit shall be deemed to be a default with respect to any other Project Unit, except that where more than one Project Unit is owned by a delinquent owner, the exemption as to all Project Units owned by said delinquent owner is subject to termination unless such delinquency is cured as set forth in the Five-Year Exemption Ordinance.

SECTION 11.02 Cure Upon Default

Should the Redeveloper be in default of any obligation under this Tax Agreement, the Township shall notify the Redeveloper in writing of said default. Said notice shall set forth with particularity the basis of said default. Except as otherwise limited by law, the Redeveloper shall have thirty (30) days to cure any default. In the case of a default which cannot with diligence be remedied or cured, or the remedy or cure of which cannot be commenced, within the time periods set forth herein, the Redeveloper shall have such additional time as reasonably necessary to remedy or cure such default provided that the Redeveloper shall at all times act with diligence, and in good faith, to remedy or cure such default as soon as practicable. Upon such default and cure period, the Township shall have the right to proceed against the Defaulting Unit, pursuant to any and all applicable provisions of law.

SECTION 11.03 Remedies

In the event of a default of this Tax Agreement by any of the parties hereto or a dispute arising between the parties in reference to the terms and provisions as set forth herein, other than those items specifically included as Material Conditions herein, any party may apply to the Superior Court of New Jersey by an appropriate proceeding, to settle and resolve said dispute in such fashion as will tend to accomplish the purposes of the Five-Year Exemption Law. In the event of a default on the part of the Redeveloper to pay any installment of the payments in lieu of

taxes required by Article IV hereof, the Township, in addition to its other remedies, specifically and without limitation, reserves the right to proceed against the Defaulting Unit, in the manner provided by law, including without limitation, 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 Tax Agreement, as if the payments in lieu of taxes were taxes or municipal liens on land. In either case, however, the Redeveloper does not waive any defense it may have to contest the rights of the Township to proceed in the above-mentioned manner.

SECTION 11.04 Remedies Upon Default Cumulative; No Waiver

Subject to the provisions of Section 12.03 hereof and the other terms and conditions of this Tax Agreement, all of the remedies provided in this Tax Agreement to the Township, and all rights and remedies granted to it by law and equity shall be cumulative and concurrent and no determination of the invalidity of any provision of this Tax Agreement shall deprive the Township of any of their remedies or actions against the Redeveloper, because of the Redeveloper's failure to pay the payments in lieu of taxes and/or any applicable municipal service 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 payments in lieu of taxes or other charges, or for breach of covenant or the resort of any other remedy herein provided for the recovery of payments in lieu of taxes or other charges shall not be construed as a waiver of the right to proceed with an In Rem Foreclosure action consistent with the terms and provisions of the Tax Sale Law and this Tax Agreement. In addition to all of its other rights and remedies, in the event of a default of this Tax Agreement, the Township may terminate this Tax Agreement and the tax exemption granted herein shall immediately cease and shall have no further force and effect and the Exemption Area, including any Improvements related thereto, shall thereafter be assessed and taxed according to the general law applicable to all other non-exempt property located within the Township and Section 3.03 hereof.

ARTICLE XII MISCELLANEOUS

SECTION 12.01 Conflict

The parties agree that in the event of a conflict between the Exemption Application and this Tax Agreement, the language in this Tax Agreement shall govern and prevail.

SECTION 12.02 Oral Representations

There have been no oral representations made by any of the parties hereto which are not contained in this Tax Agreement. This Tax Agreement, the Five-Year Exemption Ordinance, the Exemption Application, and the Redevelopment Agreement constitute the entire agreement between the parties and there shall be no modifications thereto other than by a written instrument executed by the parties hereto and delivered to each of them. Notwithstanding anything contained herein to the contrary, no waiver of any rights granted hereunder and no modification or amendment to this Tax Agreement shall be effective, or otherwise have any force and effect

without the express written consent of the parties hereto.

SECTION 12.03 **Redeveloper's Consent**

The Redeveloper hereby acknowledges, consents and agrees (a) to the amount of the payments in lieu of taxes and to the liens established in this Tax Agreement, (b) that it shall not contest the validity or amount of any such lien, except as provided herein and (c) that its remedies shall be limited to those specifically set forth herein and otherwise provided by law.

SECTION 12.04 **Filing with Local Government Services**

In accordance with the Tax Exemption Law, including without limitation N.J.S.A., 40A:21-11, within thirty (30) days of the execution of this Tax Agreement, the Township shall cause this Tax Agreement to be filed with the Director of the Division of Local Government Services in the Department of Community Affairs of the State.

SECTION 12.05 **Recording**

This entire Tax Agreement and the Ordinance shall be filed and recorded with the Monmouth County Clerk such that this Tax Agreement and the Ordinance shall be reflected upon the land records of the County of Monmouth as a municipal lien upon and a covenant running with the Exemption Area, including any Improvements related thereto.

SECTION 12.06 **Delivery to Tax Assessor**

The Clerk of the Township shall deliver to the Tax Assessor a certified copy of the Five-Year Exemption Ordinance along with an executed copy of this Tax Agreement. Upon such delivery, the Tax Assessor shall implement the tax exemption granted and provided herein and shall continue to enforce the tax exemption, without further certification by the Township Clerk, until the expiration of the tax exemption in accordance with the terms hereof.

SECTION 12.07 **Amendments**

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

SECTION 12.08 **Good Faith**

In their dealings with each other, the parties agree that they shall act in good faith.

SECTION 12.09 **Entire Document**

All conditions in the Five-Year Exemption Ordinance and the Exemption Application are incorporated in this Tax Agreement and made a part hereof the Five-Year Exemption Law.

SECTION 12.10 **Counterparts**

This Tax 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.

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

ATTEST:

REDEVELOPER:

FLEET ABERDEEN II LLC

By:_____

Name:_____

Title:_____

ATTEST:

TOWNSHIP OF ABERDEEN

Melissa Pfeifer, Clerk

Fred Tagliarini, Mayor