

## **TAX LIABILITY RELIEF AGREEMENT**

**THIS TAX LIABILITY RELIEF AGREEMENT** (hereinafter "Agreement"), made this \_\_\_\_ day of \_\_\_\_\_, 202\_ by and between \_\_\_\_\_, with an address of \_\_\_\_\_ (the "Owner") and the **City of Newark**, a municipal corporation in the County of Essex and the State of New Jersey (the "City").

### **WITNESSETH:**

**WHEREAS**, the Owner currently owns property located at \_\_\_\_\_ within the City of Newark and identified on the City's tax map as Block \_\_, Lots \_\_ (the "Property"); and

**WHEREAS**, the Owner has a retail tenant ("Tenant") within the property that is acknowledged by the Owner to be affected by the Coronavirus Pandemic and associated curfew implemented by the City of Newark and the State of New Jersey; and

**WHEREAS**, the Owner is currently experiencing financial hardship due to the difficulty of obtaining contractual rent from the affected Tenant due to a severe reduction in business resulting from Governmental restrictions on business due to Coronavirus; and

**WHEREAS**, the Owner wishes to retain the Tenant within the Property;

**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**      Governing Law. This Agreement shall be governed by the provisions of (a) N.J.S.A. 54:1 et seq., (b) the Laws of the State of New Jersey, (c) the Code of the City of Newark, and (d) it is expressly understood and agreed that the City expressly relies upon the facts, data, and representations contained within the Owner's Application (which is attached hereto) in executing this contract.

### **SECTION 1.02**      General Definitions

(a)      The following terms shall have the respective meanings ascribed to such terms in the preambles:

City  
Application  
Ordinance  
Owner  
Tenant  
Property  
Agreement

(b)      The following terms as used in this Agreement shall, unless the context clearly requires otherwise, have the following meanings:

Assessed amount – The amount of assessment to be removed from the Property's full conventional assessment in acknowledgement of the loss of rental income from the Property and for the retention and non-eviction of the Tenant.

Best Efforts – Best Efforts shall be indicated by compliance with the following requirements:

(a) The Owner or its designee shall meet with the Tax Assessor and/or his or her designee prior to, or contemporaneous with, applying for a change in assessment on the Property;

(b) The Owner or its designee shall provide the Tax Assessor and the Municipal Council (Office of the City Clerk) with an income and expense report for the prior tax year as well as a copy of the Owner's lease with the Tenant in the Property; and

(c) The Owner or its designee shall, throughout the duration of the Agreement, lower the contractual rent with the Tenant so as to effectively adjust for market conditions. The Owner shall provide the Assessor and the Municipal Council (Office of the City Clerk)

with a report on its efforts after six (6) months and again at the end of the Agreement period.

Contractual Rent - The amount of rent due from the Tenant to the Owner on the Tenant's lease during the year for which this agreement corresponds.

Retain - The agreement of the Owner to not evict the Tenant.

Material Condition – Shall have the meaning applied to such term as set forth in **Sections 2.01, 2.02, and 5.01** hereof.

Pay-to-Play Ordinance - shall mean Ordinance 6PSF-a 050411 adopted by the City Council of the City of Newark on May 4, 2011 establishing pay-to-play requirements for redevelopers.

Tax Assessor - The tax assessor for the City.

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

### **SECTION 1.03**      Exhibits Incorporated

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

#### Exhibits

- |           |                                                                                        |
|-----------|----------------------------------------------------------------------------------------|
| Exhibit A | Application                                                                            |
| Exhibit B | Copy of Lease with Tenant                                                              |
| Exhibit C | Copy of the Property's IRS Form 8825 or 1040E                                          |
| Exhibit D | Certification of Owner stating lack of income from Tenant due to Coronavirus           |
| Exhibit E | Certification of Tenant stating lack of income and payment to Owner due to Coronavirus |

## **ARTICLE II**

### **APPROVAL**

#### **SECTION 2.01**      City Approval of Tax Assessment

Pursuant to this Agreement, the Property, and all Improvements related thereto, shall have a reduction in assessed valuation as provided for herein. The Property shall be as described in the Application and this Agreement and the Owner hereby expressly covenants, warrants and represents that the Tenant of the Property and a signatory to this agreement shall not be evicted for non-payment of rent during the Term. The Owner's agreement not to evict the Tenant is a material condition to this agreement.

#### **SECTION 2.02**      Owner Pass-Through of Benefit Conferred by City

The Owner hereby covenants that the benefit of this Agreement is to allow the Tenant to remain within the Property and to assist the owner in carrying costs of the Property due to the Coronavirus effects. The Owner covenants that the benefit will be conferred to the Tenant in the form of a reduction of rent due for the year this agreement is in effect. This is a material condition to this agreement.

## **ARTICLE III**

### **DURATION OF AGREEMENT**

#### **SECTION 3.01**      Term

(a) It is hereby expressly understood and agreed by the parties that this Agreement, including the obligation to make payments of taxes required and the tax liability relief granted and referred to in Section 2.01 hereof, shall commence on the date of agreement and, provided that there shall not be a default under this Agreement, remain in effect, for a period of twelve (12) calendar months. Upon the expiration of the Agreement granted and provided for herein, the Property, and 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 City.

(b) Upon the expiration of this Agreement, all restrictions and limitations imposed upon the Owner and the Property shall terminate.

(c) The Owner and Tenant shall have the option to renew this agreement upon approval of the Tax Assessor and City for twelve (12) additional months.

#### **SECTION 3.02**      Apportionment

Notwithstanding anything contained in this Agreement to the contrary, in the event that this 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 City 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 Agreement there shall be a default by the Owner of any or all of the provisions of this Agreement, which default shall not have otherwise been cured or remedied in accordance with the terms hereof or thereof, the City may terminate this Agreement and the Property, including the Land and any Improvements related thereto, shall thereafter be assessed and taxed according to the general law applicable to all other property located within the City and without regard to leased-fee vacancy.

**ARTICLE IV**

**ADDITIONAL PROPERTY COVENANTS**

**SECTION 4.01**      Ownership, Management and Control

The Owner represents that it is the owner of the Property referred to in this Agreement.

**ARTICLE V**

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

**SECTION 5.01**      Certificate of Occupancy

It is understood and agreed that the Owner shall remain obligated to keep the Property current and in compliance with the Building and Occupational codes of the City of Newark and the State of New Jersey. This Section is hereby declared to be a material condition of this Agreement.

**ARTICLE VI**

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

**SECTION 6.01**      Sale and/or Transfer As permitted pursuant to N.J.S.A. 40A:21-12, in the event that the Owner and/or Tenant shall sell, or otherwise transfer, the Property or Tenant Business, prior to the termination of this Agreement, and provided there does not exist a default hereunder, it is understood and agreed that the City hereby consents to the sale of the Property, or any Improvements related thereto, and that this Agreement shall continue and inure to the new owner of the Property, and the Improvements related thereto, and all of the rights, duties, responsibilities and obligations of the Owner and/or Tenant hereunder shall automatically become the rights, duties, responsibilities and obligations of the subsequent owner and/or tenant.

**SECTION 6.02**      Subordination of Fee Title

It is expressly acknowledged, understood and agreed that the Owner has the right to encumber the fee title to the Property, including the Land and any Improvements related thereto, and that any such encumbrance shall not be deemed to be a violation of this Agreement.

## **ARTICLE VII**

**SECTION 7.01**      Filing of County Board Tax Appeal

It is expressly acknowledged, understood and agreed that the Owner will file a tax appeal with the Essex County Board of Taxation upon approval of the application for the purpose of effectuating this agreement. The filing must be for 2020 prior to the tax appeal deadline which is May 7<sup>th</sup>, 2020. This is a material condition to this 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, by facsimile, with acknowledgment of receipt, or by commercial overnight courier, as follows:

When sent to the Owner:

with copy to:

When sent to the Tenant:

with copy to:

The Owner has an affirmative duty to provide the City with the new information in the event that the address for the Owner changes. The Owner 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:

Tax Assessor  
City Hall, Room 101  
920 Broad Street  
Newark, New Jersey 07102

With Copy to:

City Clerk

City Hall, Room 309  
920 Broad Street  
Newark, New Jersey 07102

AND

Corporation Counsel  
City Hall, Room 316  
920 Broad Street  
Newark, New Jersey 07102

The notice to the City shall identify the subject with the tax account numbers of the tax parcels comprising the Property.

## **ARTICLE IX**

### **CONSTRUCTION**

#### **SECTION 9.01**      Construction

This 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 drafting or causing this Agreement to be drafted since counsel for the Owner, the Tenant, and the City have combined in their review and approval of same.

## **ARTICLE X**

### **DEFENSE/INDEMNIFICATION**

#### **SECTION 10.01**      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 Owner and/or Tenant by allegation of any breach, Default or a violation of any of the provisions of this Agreement, the provisions of the Act or any other applicable law, and/or in any way related to the Property, the Owner and/or Tenant 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 Owner and/or Tenant and/or by reason of any



breach, Default or a violation of any of the provisions of this Agreement, or any other applicable law, and/or in any way related to the Property, 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 Owner and Tenant hereby consents, the expense thereof to be borne by the Owner and/or Tenant.

## **ARTICLE XI** **DEFAULT**

### **SECTION 11.01**      Default

A default hereunder shall be deemed to have occurred if the Owner and/or Tenant fails to conform to the terms of this Agreement, it being hereby expressly acknowledged and understood by the parties hereto that in the event of a default by the Owner and/or Tenant which default shall not otherwise be cured or remedied in accordance with the terms of this Agreement, the liability relief and provisions granted herein shall cease and shall have no further force and effect and the Property and the Land and the Improvements related thereto shall thereafter be assessed and taxed according to the general law applicable to all other non-exempt property located within the City and Section 3.03 hereof.

### **SECTION 11.02**      Cure Upon Default

Should the Owner or Tenant be in default of any obligation under this Agreement, the City shall notify the Owner or Tenant in writing of said default. The notice shall set forth with particularity the basis of said default. Except as otherwise limited by law, the Owner or Tenant shall have ninety (90) days to cure any default. Upon such default and cure period, the City shall have the right to proceed against the Property, including the Land and any Improvements related thereto, pursuant to any and all applicable provisions of law.

### **SECTION 11.03**      Remedies

In the event of a default of this 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 Act. In the event the Superior Court shall not entertain jurisdiction or, in the event of a breach of Material Conditions, then the parties shall submit the dispute to the American Arbitration Association in New Jersey to be determined in accordance with its rules and regulations in such a fashion to accomplish the purpose of said laws. Costs for said arbitration shall be paid by the non-prevailing party.

**SECTION 11.04**      Remedies Upon Default Cumulative; No Waiver

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 Owner, Tenant, or the Property, including the Land and any Improvements related thereto, because of the Owner's failure to pay the tax payments based off of this tax liability relief. This right shall only apply to arrearages that are due and owing at the time, and the bringing of any action for tax payments based off of the tax liability relief or for breach of covenant(s) or the resort of any other remedy herein provided for the recovery of tax payments, and it shall not be construed as a waiver of any of the rights the City may have pursuant to applicable law.

**ARTICLE XII**  
**MISCELLANEOUS**

**SECTION 12.01**      Conflict

The parties agree that in the event of a conflict between the Application and this Agreement, the language in this 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 Agreement. This Agreement and the Application 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 Agreement shall be effective, or otherwise have any force and effect without the express written consent of the parties hereto.

**SECTION 12.03**      Municipal Services

The Owner shall make payments for municipal services, including water and sewer charges and any services that create a lien on the party with or superior to the lien for the Land Taxes, as required by law. Nothing herein is intended to release Owner from its obligation to make such payments.

**SECTION 12.04**      Waste and Refuse Disposal

The Owner shall comply with the City of Newark Mandatory Recycling Ordinance 6S&FA 120689 to ensure that used corrugated cardboard, glass bottles and jars, food and beverage cans, newspapers and magazines and other recyclables deemed mandatory by the City of Newark are separated from waste and refuse emanating from the herein Property for the purpose of recycling. The Owner shall be responsible to cause all solid waste, refuse or recyclable materials generated by the Property and tenants to be collected and disposed of at the sole expense of the Owner. Such collection and disposal shall be performed by a collector, hauler or scavenger licensed for such activities by the State of New Jersey. The Director of the Department of Public Works of the City may establish regulations for the collection, storage, disposal and recycling of solid waste, refuse and recyclable materials, with which the Owner agrees to comply. The Owner shall post a sign to identify the company or companies responsible for collection of solid waste, refuse and recyclable materials from the Property. For each such company, the sign shall clearly indicate the name, address and telephone number, the types of materials the company is responsible to collect as well as the days and times at which such collection will occur. Such sign shall be prominently displayed by affixing it to the inside of a window, near the principal entrance of the Property so as to be easily visible from outside the structure. If this is not possible, such sign shall be prominently displayed inside the building in a public corridor near the principal entrance.

**SECTION 12.05**      Delivery to Tax Assessor.      The City Clerk shall deliver to the Tax Assessor a certified copy of the Resolution along with an executed copy of this Agreement. Upon such delivery, the Tax Assessor shall implement this Agreement based off of the new tax assessment, granted and provided herein and shall continue to enforce it, without further certification by the City Clerk, until the expiration of the Agreement in accordance with the terms hereof.

**SECTION 12.06**      Inspections

The property owner and tenant shall permit the inspection of its property, buildings, equipment and other facilities by the assessor of the municipality or other duly authorized representatives of the municipality. Such inspections shall be made during regular business hours in the presence of an officer or agent of the property owner. To the extent reasonably practical, the inspection shall not materially interfere with the operation of the improvements.

**SECTION 12.07**     Amendments

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

**SECTION 12.08**     Entire Document

All conditions in the Application are incorporated in this Agreement and made a part hereof.

**SECTION 12.09**     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.

**ARTICLE XIII**  
**COMPLIANCE**

**SECTION 13.01**     Statutes and Ordinances

The Owner and Tenant hereby expressly agree at all times prior to the expiration or termination of this Agreement to remain bound by the applicable provisions of Federal and State law, including the Acts and any applicable lawful ordinances and resolutions of the City. The Owner's or Tenant's failure to comply with any such statutes, ordinances or resolutions shall constitute a violation and breach of this Agreement.

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

For the Owner

\_\_\_\_\_

By: \_\_\_\_\_  
Name:  
Title:

For the Tenant

\_\_\_\_\_

By: \_\_\_\_\_  
Name:  
Title:

STATE OF \_\_\_\_\_ )

)

COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by \_\_\_\_\_, a \_\_\_\_\_, by \_\_\_\_\_, its \_\_\_\_\_, on behalf of the Owner.

\_\_\_\_\_

Notary Public

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

THE CITY OF NEWARK

By: \_\_\_\_\_  
Mayor

APPROVED AS TO FORM AND LEGALITY

\_\_\_\_\_  
Corporation Counsel

ATTEST:

\_\_\_\_\_  
City Clerk

**SCHEDULE 1**  
**METES AND BOUNDS DESCRIPTION**  
**OF PROPERTY**

## **EXHIBITS**