

City Clerk File No. Ord. 11-108

Agenda No. 3.A 1st Reading

Agenda No. 4.A 2nd Reading & Final Passage



# ORDINANCE OF JERSEY CITY, N.J.

COUNCIL AS A WHOLE  
offered and moved adoption of the following ordinance:

## CITY ORDINANCE 11-108

**TITLE:** AN ORDINANCE AMENDING CHAPTER 254 (PROPERTY MAINTENANCE) TO PROVIDE FOR THE MAINTENANCE OF VACANT AND ABANDONED PROPERTIES IN THE CITY OF JERSEY CITY AND TO ESTABLISH A REGISTRATION FEE FOR SUCH PROPERTIES

WHEREAS, the City of Jersey City currently has over 950 structures that have been identified by Housing Code Enforcement as vacant or abandoned, in whole or part; and

WHEREAS, many owners of or other parties responsible for these structures, neglect them, and fail to maintain, adequately secure them, or restore them to productive use; and

WHEREAS, many of these structures are in violation of state and local housing and property maintenance statutes, regulations or municipal ordinances; and

WHEREAS, vacant land and vacant and abandoned structures cause considerable harm to the health, safety and general welfare of the community, including diminution of neighboring property values, loss of property tax revenues, accumulation of trash and debris, increased risk of fire, potential increases in criminal activity, and public health risks; and

WHEREAS, the City of Jersey City incurs considerable expense in addressing the problems resulting from vacant and abandoned structures, including but not limited to police calls, fire calls and property inspections; and

WHEREAS, it is in the public interest for the City of Jersey City to establish minimum standards of accountability for the owners or other persons or entities responsible for abandoned or vacant land and structures in order to protect the health, safety and general welfare of the residents of the City of Jersey City; and

WHEREAS, it is in the best interests of the City of Jersey City to inspect vacant properties, require registration of such properties by their owners, and ensure compliance with this Ordinance.

NOW THEREFORE BE IT ORDAINED, by the Municipal Council of

the City of Jersey City that the following §254-21.1 through §254-21.8 of the Jersey City Code is hereby adopted.

**§254-21.1 Purpose**

The purpose of this Section is to require accountability from the owners of vacant and abandoned properties within the City of Jersey City by establishing a system of registration and the maintenance plan approval, and impose the fees to fund these efforts which will protect public health, safety and general welfare of the citizens and improve unsightly neighborhoods, require secure structures, prevent structural deterioration, and protect neighborhood property values and safety.

**§254-22.2 Definitions**

The following words, terms and phrases, when used in this division, shall have the meaning ascribed to them in this section, except where the context clearly indicates a different meaning.

*Abandoned Property* defined in accordance with N.J.S.A. 55:19-78 means improved real property that has not been legally occupied for six months and which meets any one of the criteria set forth in N.J.S.A. 55:19-78.

*Vacant Property* means any property used or to be used as a residence which is (i) not legally occupied or (ii) at which substantially all lawful construction operations or residential occupancy has ceased, and which is in such condition that it cannot legally be re-occupied without repair or rehabilitation; provided, however, that any property with all "building systems" in working order that is also being actively marketed by its owner for sale or rental, shall not be deemed vacant.

*Evidence of Vacancy* means any condition that on its own, or combined with other conditions present would lead a reasonable person to believe that the property is or has been vacant for six or more months. Such conditions include, but are not limited to, overgrown or dead vegetation, accumulation of newspapers, circulars, flyers or mail, past due utility notices or disconnected utilities, accumulation of trash, junk or debris, the absence of window coverings such as curtains, blinds or shutters, the absence of furnishings or personal items consistent with residential habitation, statements by neighbors, delivery agents, or government employees that the property is vacant or abandoned.

*Owner* means any person, co-partnership, agent, operator, firm, association, corporation, or fiduciary having a legal or equitable interest in the Property; or appears on the official records of the state, country, or municipality as holding title to the property; or otherwise exercises control of the property, including the trustee or guardian of the estate of any such person, and the executor or administrator of the estate of such

person if ordered to take possession of real property by a court.

Property means any unimproved or improved real property, or portion thereof, located in the City of Jersey City, including the buildings or structures located on the property regardless of condition.

**§254-21.3 General Requirements**

- a. Effective October 15, 2011, the Owner of any property which is, becomes or is found to be vacant shall within sixty (60) days (or within thirty (30) days of assuming ownership of such property) file a registration statement for each such property with the City Division of Housing Code Enforcement (HCE) on forms provided by HCE for such purposes. The registration shall remain valid until the subsequent October 15. The Owner shall be required to renew the registration annually as long as the Property remains vacant or abandoned and shall pay a registration or renewal fee in the amount prescribed in §254-21.7.
- b. The owner of property which was vacant prior to October 1, 2011, shall file a registration statement for that property on or before October 31, 2011. The registration statement shall include the information required under §254-21.4 of this Chapter, as well as any additional information that the HCE may reasonably require.
- c. The Owner shall notify the HCE within thirty (30) days of any change in the registration information by filing an amended registration statement on a form provided by the HCE for such purpose.
- d. The registration statement shall be deemed prima facie proof of the statements therein contained in any administrative enforcement proceeding or court proceeding instituted by the City of Jersey City against the Owner or Owners of the property.

**§254-21.4 Registration Requirements**

The Owner shall provide the following information to HCE on a form or form(s) prescribed by HCE:

- a) Name, address, email address and contact telephone number of the Owner;
- b) Name, address, email address and contact telephone number of any local agent(s) or representative for the property;
- c) Name, address, email address and contact telephone number of the person assigned to the property for the security and maintenance of the property;

- d) Common address and tax assessor's block and lot designation of the Property;
- e) The date on which the Property became vacant;
- f) Proof of utility (gas, electric, water) connections or disconnections; and
- g) Any other information reasonably required by the HCE to ensure the safety of all persons and to prevent neglect.
- h) By designating an authorized agent under the provisions of this section the Owner consents to receive any and all notices of code violations concerning the registered vacant property and all process in any court proceeding or administrative enforcement proceeding brought to enforce code provisions concerning the registered building by service of the notice of process on the authorized agent. Any owner who has designated an authorized agent under the provisions of this section shall be deemed to consent to the continuation of the agent's designation for the purposes of this section until the Owner notifies the HCE of a change of an authorized agent or until the owner files a new annual registration statement.

**§254-21.5 Property Inspection.**

After filing a registration statement or a renewal of a registration statement and upon reasonable notice, the Owner of any Vacant Property shall provide access to the City to conduct an exterior and interior inspection of the building to determine compliance with the municipal code, during the period covered by the initial registration or any subsequent renewal.

**§254-21.6 Requirements for Owners of Vacant Property**

The Owner of any Property that has become Vacant, and any person maintaining, operating or collecting rent for any such Property shall, within 30 days:

- a) enclose and secure the property against unauthorized entry in accordance with the applicable provisions of the Code of the City of Jersey City.
- b) post a sign affixed to the Property indicating the name, address and telephone number of the Owner, the Owner's authorized agent for the purpose of service of process (if designated pursuant to this Chapter) and the person responsible for day-to-day supervision and management of the Property, if such person is different from the owner or authorized agent. The sign shall be of a size and placed in such a location so as to be legible from the nearest public street or sidewalk, whichever is nearer, but shall be no smaller than 18" x 24"; and
- c) secure the Property from unauthorized entry and maintain the sign until the Property is again legally occupied or demolished or until repair or rehabilitation of the Property is complete.

**§254-21.7 Vacant Property Deemed Abandoned Property; List of Abandoned Property to be Maintained by the Director of Housing and Economic Development; Remedies for Abandoned Property**

If the Director of HED determines that Vacant Property as defined herein has been abandoned as defined in N.J.S.A. 55:19-81, the Director shall place the property on a list of Abandoned Properties to be maintained by the Director in accordance with N.J.S.A. 55:19-55. The Abandoned Property list shall become effective either upon the expiration date of the period for appeal with respect to any property placed on the list or upon the denial of an appeal brought by the Owner. Thereafter, the municipality may pursue any statutory remedy with respect to properties on the Abandoned Property list, including the sale of tax sale certificate subject to the condition that the purchase or assignee shall be obliged to complete any rehabilitation or repairs required to render the Property eligible for removal from the Abandoned Property list.

**§254-21.8 Fees**

The initial registration fee for each Vacant Property shall be Two Hundred Fifty Dollars (\$250.00). The fee for subsequent renewals shall be Five Hundred Dollars (\$500.00). The renewal fee for the annual registration shall be due by October 1<sup>st</sup> of each year. The registration fee will not be prorated or refunded.

**§254.21.9 Violations and Penalties**

Any person violating any of the provisions of this chapter shall, upon conviction, be punished as provided for in Chapter 1, General Provisions, §1-25.

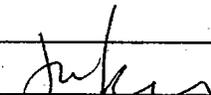
- A. All Ordinances and parts of Ordinances inconsistent herewith are hereby repealed.
- B. This Ordinance shall be a part of the Jersey City Code as though codified and fully set forth therein. The City shall have this Ordinance codified and incorporated in the official copies of the Jersey City Code.
- C. This Ordinance shall take effect at the time and in the manner as provided by law.
- D. The City Clerk and the Corporation Counsel be and hereby are authorized and directed to change any chapter numbers, article numbers and section numbers in the event the codification of this Ordinance reveals that there is conflict between those numbers and the existing code.

NOTE: All new material is underlined; words in [brackets] omitted. For purposes of advertising only, new matter is indicated by boldface and repealed matter is indicated by *italic*.

APPROVED AS TO LEGAL FORM

  
Asst. Corporation Counsel

APPROVED: \_\_\_\_\_

APPROVED:   
Business Administrator

- Certification Required
- Not Required

# Ordinance of the City of Jersey City, N.J.

ORDINANCE NO. Ord. 11-108

TITLE: 3.A 8/31/11 4.A SEP 14 2011



An ordinance amending Chapter 254 (Property Maintenance) to provide for the maintenance of vacant and abandoned properties in the City of Jersey City and to establish a registration fee for such properties.

RECORD OF COUNCIL VOTE ON INTRODUCTION											
AUG 31, 2011 <b>9-0</b>											
COUNCILPERSON	AYE	NAY	N.V.	COUNCILPERSON	AYE	NAY	N.V.	COUNCILPERSON	AYE	NAY	N.V.
SOTTOLANO	✓			GAUGHAN	✓			BRENNAN	✓		
DONNELLY	✓			FULOP	✓			AHMAD	✓		
LOPEZ	✓			RICHARDSON	✓			VELAZQUEZ	✓		

✓ Indicates Vote

N.V.-Not Voting (Abstain)

RECORD OF COUNCIL VOTE TO CLOSE PUBLIC HEARING											
SEP 14 2011 <b>8-0</b>											
Councilperson <b>GAUGHAN</b>				moved, seconded by Councilperson <b>SOTTOLANO</b>				to close P.H.			
COUNCILPERSON	AYE	NAY	N.V.	COUNCILPERSON	AYE	NAY	N.V.	COUNCILPERSON	AYE	NAY	N.V.
SOTTOLANO	✓			GAUGHAN	✓			BRENNAN	✓		
DONNELLY	✓			FULOP	✓			AHMAD	✓		
LOPEZ	✓			RICHARDSON	✓			VELAZQUEZ	ABSENT		

✓ Indicates Vote

N.V.-Not Voting (Abstain)

**YVONNE BALCAZ**  
**CATHERINE GRIMM**

RECORD OF COUNCIL VOTE ON AMENDMENTS, IF ANY											
Councilperson _____				moved to amend* Ordinance, seconded by Councilperson _____				& adopted			
COUNCILPERSON	AYE	NAY	N.V.	COUNCILPERSON	AYE	NAY	N.V.	COUNCILPERSON	AYE	NAY	N.V.
SOTTOLANO				GAUGHAN				BRENNAN			
DONNELLY				FULOP				AHMAD			
LOPEZ				RICHARDSON				VELAZQUEZ			

✓ Indicates Vote

N.V.-Not Voting (Abstain)

RECORD OF FINAL COUNCIL VOTE											
SEP 14 2011 <b>8-0</b>											
COUNCILPERSON	AYE	NAY	N.V.	COUNCILPERSON	AYE	NAY	N.V.	COUNCILPERSON	AYE	NAY	N.V.
SOTTOLANO	✓			GAUGHAN	✓			BRENNAN	✓		
DONNELLY	✓			FULOP	✓			AHMAD	✓		
LOPEZ	✓			RICHARDSON	✓			VELAZQUEZ	ABSENT		

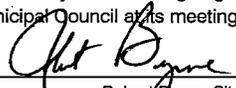
✓ Indicates Vote

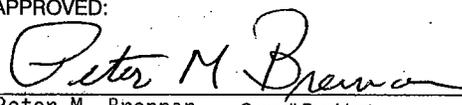
N.V.-Not Voting (Abstain)

Adopted on first reading of the Council of Jersey City, N.J. on AUG 31 2011

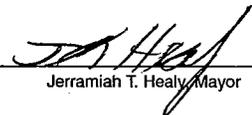
Adopted on second and final reading after hearing on SEP 14 2011

This is to certify that the foregoing Ordinance was adopted by the Municipal Council at its meeting on SEP 14 2011

  
Robert Byrne, City Clerk

APPROVED:   
Peter M. Brennan, Council President

\*Amendment(s):

Date: SEP 14 2011  
APPROVED:   
Jerramiah T. Healy, Mayor

Date SEP 19 2011

Date to Mayor SEP 15 2011

City Clerk File No. Ord. 11-109

Agenda No. 3.B. 1st Reading

Agenda No. 4.B 2nd Reading & Final Passage



# ORDINANCE OF JERSEY CITY, N.J.

COUNCIL AS A WHOLE  
offered and moved adoption of the following ordinance:

CITY ORDINANCE *11-109*

**TITLE: ORDINANCE APPROVING A 30 YEAR TAX EXEMPTION FOR A MARKET RATE RESIDENTIAL CONDOMINIUM PROJECT TO BE CONSTRUCTED BY COMMUNITY ASSET PRESERVATION ALLIANCE OF JERSEY CITY #2 URBAN RENEWAL, LLC, AN URBAN RENEWAL ENTITY, PURSUANT TO THE LONG TERM TAX EXEMPTION LAW N.J.S.A. 40A:20-1 ET SEQ.**

**THE MUNICIPAL COUNCIL OF THE CITY OF JERSEY CITY DOES ORDAIN:**

**WHEREAS**, Community Asset Preservation Alliance of Jersey City #2 Urban Renewal, LLC, is an urban renewal entity, formed and qualified to do business under the provisions of the Long Term Tax Exemption Law of 1992, as amended and supplemented, N.J.S.A. 40A:20-1 et seq. (Entity); and

**WHEREAS**, the Entity owns certain property known as Block 2052, Lot ADUP.99, on the City's Official Tax map, and more commonly known by the street address of 305 Whiton Street, Jersey City, and more specifically described by metes and bounds, in the application [Property], also commonly known as All Saints School; and

**WHEREAS**, the Property is located within the Morris Canal Redevelopment Plan Area as required by N.J.S.A. 40A:20-4 and N.J.S.A. 40A:12A-5(g).; and

**WHEREAS**, the Entity has applied for a 30 year long term tax exemption to rehabilitate an existing school on the Property to create approximately four (4) low and moderate income and 21 emerging market (i.e., market rate) owner occupied residential condominium units, and four (4) on-site parking spaces (Project); and

**WHEREAS**, the owner received the site plan approval for the Project from the Planning Board on July, 2011; and

**WHEREAS**, Community Asset Preservation Alliance of Jersey City #2 Urban Renewal, LLC, has agreed to:

1. pay the greater of (i) the Minimum Annual Service Charge or (ii) 8% of Annual Gross Revenue for the low and moderate units; 14% for years 1 through 5, and 16% for years 6 through 30 of Annual Gross Revenue for the emerging market units; and 15% of Annual Gross Revenue of the parking revenue, which total sum is estimated to be \$53,357 (in year 1); and which shall be subject to statutory staged increases over the term of the tax exemption; and
2. pay an annual sum equal to 2% of each prior year's Annual Service Charge as an Administrative Fee or \$1,067; and
3. pay to City for remittance to Hudson County, an equal to 5% of the Annual Service Charge upon receipt of that charge or \$2,668; and
4. provide employment and other economic opportunities for City residents and businesses;

**WHEREAS**, the City hereby determines that the relative benefits of the project outweigh the cost of the tax exemption, for the following reasons:

1. the current real estate taxes presently generate \$0.00 revenue, whereas, the Annual Service Charge as estimated, will generate revenue of more than \$53,357 to the City and an additional sum of approximately \$2,668 to Hudson County;
2. it is expected that the Project will create approximately 75 jobs during construction and one (1) new permanent job;
3. the Project will stabilize and contribute to the economic growth of businesses in the surrounding area;
4. the Project will further the overall redevelopment objectives of the Morris Canal Redevelopment Plan Area;
5. The benefits of the Project outweigh its costs notwithstanding that the City's impact analysis, on file with the Office of the City Clerk, indicates that the costs to the City exceed the amount of the Service Charge; and

**WHEREAS**, the City hereby determines that the tax exemption is important in obtaining development of the project and influencing the locational decisions of probable occupants for the following reasons:

1. the relative stability and predictability of the Annual Service Charges will make the Project more attractive to investors needed to finance the Project;
2. the relative stability and predictability of the Annual Service Charges will allow the owner to stabilize its operating budget, allowing a high level of maintenance to the building over the life of the Project, which will attract purchasers to the Project and insure the likelihood of the success of the Project; and

**WHEREAS**, Community Asset Preservation Alliance of Jersey City #2 Urban Renewal, LLC, has initially complied with Executive Order 2002-005 concerning "Disclosure of Lobbyist Representative Status" by filing an appropriate letter in the Office of the City Clerk; and

**WHEREAS**, Community Asset Preservation Alliance of Jersey City #2 Urban Renewal, LLC, does not need to comply with the City of Jersey City's Ordinance 07-123 requiring Apprenticeships and Project Labor Agreement since it is affordable housing and total construction costs are only \$3.6 million; and

**WHEREAS**, on August 19, 2011, the Tax Exemption Committee reviewed the application and voted to recommend the approval of the tax exemption to the Mayor.

**NOW, THEREFORE, BE IT ORDAINED** by the Municipal Council of the City of Jersey City that:

A. The application of Community Asset Preservation Alliance of Jersey City #2 Urban Renewal, LLC, an urban renewal company, formed and qualified to do business under the provisions of the Long Term Tax Exemption Law of 1992, as amended and supplemented, N.J.S.A. 40A:20-1 et seq., a copy of which is on file in the office of the City Clerk, for Block 2052, Lot ADUP.99, more commonly known by the street address of 305 Whiton Street, Jersey City, and more specifically described by metes and bounds in the application, is hereby approved.

B. The Mayor or Business Administrator is hereby authorized to execute a tax exemption Financial Agreement and a Project Employment and Contracting Agreement. The Financial Agreement shall include at a minimum the following terms and conditions:

1. Term: the earlier of 35 years from the adoption of the within Ordinance or 30 years from the date the project is Substantially Complete;

- 2. Annual Service Charge: each year the greater of:
  - (a) the Minimum Annual Service Charge equal to taxes on land only would be \$2,840; or
  - (b) 8% of Annual Gross Revenue for the low and moderate income units; 14% for years 1 through 5, and 16% for years 6 through 30 of Annual Gross Revenue for the emerging market (i.e., market rate) units; and 15% of Annual Gross Revenue for the parking, which sum is estimated to be \$53,357 (in year 1), which shall be subject to statutory increases during the term of the tax exemption.
- 3. Administrative Fee: 2% of the prior year's Annual Service Charge or \$1,067;
- 4. County Payment: an additional 5% of the Annual Service Charge for remittance by the City to Hudson County or \$2,668;
- 5. Project: rehabilitate an existing school on the property to create approximately 25 low, moderate and emerging market residential condominium units, of which four (4) units will be affordable to families of low and moderate income, and 21 units will be owner occupied emerging market units, and four (4) on-site parking spaces;
- 6. An obligation to execute a Project Employment and Contracting Agreement to insure employment and other economic benefits to City residents and businesses;
- 7. This Ordinance will sunset and the Tax Exemption will terminate unless construction of the Project begins within two (2) years of the adoption of the within Ordinance.
- C. The City Clerk shall deliver a certified copy of the Ordinance and Financial Agreement to the Tax Assessor and Director of the Division of Local Government Services.
- D. The application is on file with the office of the City Clerk. The Financial Agreement and Project Employment and Contracting Agreement shall be in substantially the form on file in the Office of the City Clerk, subject to such modification as the Business Administrator or Corporation Counsel deems appropriate or necessary.
- E. All ordinances and parts of ordinances inconsistent herewith are hereby repealed.
- F. This ordinance shall be part of the Jersey City Code as though codified and fully set forth therein. The City Clerk shall have this ordinance codified and incorporated in the official copies of the Jersey City Code.
- G. This ordinance shall take effect at the time and in the manner provided by law.
- H. The City Clerk and Corporation Counsel be and they are hereby authorized and directed to change any chapter numbers, article numbers and section numbers in the event that the codification of this ordinance reveals that there is a conflict between those numbers and the existing code, in order to avoid confusion and possible accidental repealers of existing provisions.

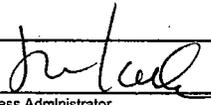
**NOTE:** All material is new; therefore underlining has been omitted. For purposes of advertising only, new matter is indicated by **bold face** and repealed matter by *italic*.

JM/he  
8/19/11

APPROVED AS TO LEGAL FORM

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

APPROVED: \_\_\_\_\_

APPROVED:   
\_\_\_\_\_  
Business Administrator

Certification Required

Not Required

# Ordinance of the City of Jersey City, N.J.

ORDINANCE NO. Ord. 11-109

TITLE: 3.B 8/31/11 4.B SEP 14 2011



Ordinance approving a 30-year tax exemption for a market rate residential condominium project to be constructed by Community Asset Preservation Alliance of Jersey City #2 Urban Renewal, LLC, an urban renewal entity, pursuant to the long term tax exemption law N.J.S.A. 40a:20-1 et seq.

RECORD OF COUNCIL VOTE ON INTRODUCTION								AUG 31, 2011 <u>9-0</u>			
COUNCILPERSON	AYE	NAY	N.V.	COUNCILPERSON	AYE	NAY	N.V.	COUNCILPERSON	AYE	NAY	N.V.
SOTTOLANO	✓			GAUGHAN	✓			BRENNAN	✓		
DONNELLY	✓			FULOP	✓			AHMAD	✓		
LOPEZ	✓			RICHARDSON	✓			VELAZQUEZ	✓		

✓ Indicates Vote

N.V.-Not Voting (Abstain)

RECORD OF COUNCIL VOTE TO CLOSE PUBLIC HEARING								SEP 14 2011 <u>8-0</u>			
Councilperson <u>RICHARDSON</u>				moved, seconded by Councilperson <u>SOTTOLANO</u>				to close PH.			
COUNCILPERSON	AYE	NAY	N.V.	COUNCILPERSON	AYE	NAY	N.V.	COUNCILPERSON	AYE	NAY	N.V.
SOTTOLANO	✓			GAUGHAN	✓			BRENNAN	✓		
DONNELLY	✓			FULOP	✓			AHMAD	✓		
LOPEZ	✓			RICHARDSON	✓			VELAZQUEZ	<u>ABSENT</u>		

✓ Indicates Vote

YVONNE BALZER  
ESTHER WINTNER

N.V.-Not Voting (Abstain)

RECORD OF COUNCIL VOTE ON AMENDMENTS, IF ANY											
Councilperson _____				moved to amend* Ordinance, seconded by Councilperson _____				& adopted			
COUNCILPERSON	AYE	NAY	N.V.	COUNCILPERSON	AYE	NAY	N.V.	COUNCILPERSON	AYE	NAY	N.V.
SOTTOLANO				GAUGHAN				BRENNAN			
DONNELLY				FULOP				AHMAD			
LOPEZ				RICHARDSON				VELAZQUEZ			

✓ Indicates Vote

N.V.-Not Voting (Abstain)

RECORD OF FINAL COUNCIL VOTE											
SEP 14 2011 <u>8-0</u>											
COUNCILPERSON	AYE	NAY	N.V.	COUNCILPERSON	AYE	NAY	N.V.	COUNCILPERSON	AYE	NAY	N.V.
SOTTOLANO	✓			GAUGHAN	✓			BRENNAN	✓		
DONNELLY	✓			FULOP	✓			AHMAD	✓		
LOPEZ	✓			RICHARDSON	✓			VELAZQUEZ	<u>ABSENT</u>		

✓ Indicates Vote

N.V.-Not Voting (Abstain)

Adopted on first reading of the Council of Jersey City, N.J. on AUG 31 2011

Adopted on second and final reading after hearing on SEP 14 2011

This is to certify that the foregoing Ordinance was adopted by the Municipal Council at its meeting on SEP 14 2011

Robert Byrne  
Robert Byrne, City Clerk

APPROVED: Peter M. Brennan  
Peter M. BRENNAN, Council President

Date: SEP 14 2011

APPROVED: Jeremiah T. Healy  
Jeremiah T. Healy, Mayor

Date SEP 19 2011

Date to Mayor SEP 15 2011

\*Amendment(s):

Rev. 8-04-11  
Long Term Tax Exemption  
N.J.S.A. 40A:20-1, et seq.  
(Affordable Housing Condominium Residential)

Re: Block 2052, Lot ADUP.99  
Approximately .23 Acres  
305 Whiton Street  
Morris Canal Redevelopment Plan Area

### **PREAMBLE**

**THIS FINANCIAL AGREEMENT**, [Agreement] is made as of this \_\_\_\_ day of \_\_\_\_\_, 2011 by and between **COMMUNITY ASSET PRESERVATION ALLIANCE OF JERSEY CITY #2 URBAN RENEWAL, LLC**, an urban renewal entity formed and qualified to do business in the State of New Jersey under the provisions of the Long Term Tax Exemption Law of 1992, as amended and supplemented, N.J.S.A. 40A:20-1 et seq., having its principal office at c/o Community Asset Preservation Alliance #2 of Jersey City, 16-18 W. Lafayette Street, Trenton, NJ 08608 [Entity], and the **CITY OF JERSEY CITY**, a Municipal Corporation of the State of New Jersey, having its principal office at 280 Grove Street, Jersey City, New Jersey 07302 [City].

### **RECITALS**

#### **WITNESSETH:**

**WHEREAS**, the Entity is the Owner of certain property designated as Block 2052, Lot ADUP.99, more commonly known by the street address of 305 Whiton Street, Jersey City, also commonly known as All Saints School, and more particularly described by the metes and bounds description set forth as Exhibit 1 to this Agreement; and

**WHEREAS**, this property is located within the boundaries of the Morris Canal Redevelopment Plan Area; and

**WHEREAS**, the Entity plans to rehabilitate an existing school on the property to create approximately four (4) low and moderate income and 21 emerging market (i.e., market rate) owner occupied residential condominium units, and four (4) on-site parking spaces [Project]; and

**WHEREAS**, on July 29, 2011, the Entity filed an Application with the City for approval of a 30 year long term tax exemption for the Project; and

**WHEREAS**, the City based in part the Fiscal Impact Analysis on file with the Office of the

City Clerk, made the following findings:

A. Relative Benefits of the Project when compared to the costs:

1. the current real estate taxes presently generate \$0.00 revenue, whereas, the annual service charge as estimated, will generate revenue to the City of approximately \$53,357 (for year 1) and an additional sum of approximately \$2,668 to Hudson County;
2. it is expected that the Project will create approximately 75 jobs during construction and 1 new permanent job;
3. the project should stabilize and contribute to the economic growth of existing local business and to the creation of new businesses, which will cater to the new residents;
4. the Project will further the redevelopment objectives of the Morris Canal Redevelopment Plan;
5. the project, containing 25 residential units of low and moderate income affordable housing advance an inherently beneficial public purpose notwithstanding that the City's fiscal impact analysis, on file with the Office of the City Clerk, indicates that the service charges generated by the Project will not outweigh the actual costs to the City; and

B. Assessment of the Importance of the Tax Exemption in obtaining development of the project and influencing the locational decisions of probable occupants:

1. the relative stability and predictability of the annual service charges will make the Project more attractive to investors and lenders needed to finance the Project; and
2. the relative stability and predictability of the service charges will allow the owner to stabilize its operating budget, allowing a high level of maintenance to the building over the life of the Project, which will attract low income owners to the Project and insure the likelihood of the success of the Project and a positive impact on the surrounding area; and

**WHEREAS**, by the adoption of Ordinance \_\_\_\_\_ on \_\_\_\_\_, the Municipal Council approved the above findings and the tax exemption application and authorized the execution of this Agreement;

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

## ARTICLE I - GENERAL PROVISIONS

### **Section 1.1 Governing Law**

This Agreement shall be governed by the provisions of the Long Term Tax Exemption Law, as amended and supplemented, N.J.S.A. 40A:20-1 et seq., Executive Order of the Mayor, 02-003, Ordinance 02-075 and Ordinance 03-107, which authorized the execution of this Agreement. It being expressly understood and agreed that the City expressly relies upon the facts, data, and representations contained in the Application, attached hereto as Exhibit 3, in granting this tax exemption.

### **Section 1.2 General Definitions**

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

i. Affordable Moderate Income- a person or household whose total Gross Annual Income is equal to or less than 80% of the median gross income figure established by geographic region and household size using the income guidelines approved for use by the NJ Council on Affordable Housing pursuant to N.J.A.C. 5:92012 or as it may be amended.

ii. Allowable Net Profit- The amount arrived at by applying the Allowable Profit Rate to Total Project Cost pursuant to N.J.S.A. 40A:20-3(c).

iii. Allowable Profit Rate - The percentage per annum arrived at by adding 1.25% to the annual interest percentage rate payable on the Entity's initial permanent mortgage financing. If the initial permanent mortgage is insured or guaranteed by a governmental agency, the mortgage insurance premium or similar charge shall be considered as interest for this purpose. If there is no permanent mortgage financing, or if the financing is internal or undertaken by a related party, the Allowable Profit Rate shall be arrived at by adding 1.25% per annum to the interest rate per annum which the municipality determines to be the prevailing rate on mortgage financing on comparable improvements in Hudson County. The provisions of N.J.S.A. 40A:20-3(b) are incorporated herein by reference.

iv. Annual Service Charge - The amount the Entity has agreed to pay the City for municipal services supplied to the Project, which sum is in lieu of any taxes on the Improvements, pursuant to N.J.S.A. 40A:20-12.

v. 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 a certification of Total Project Cost and clear computation of Net Profit. The contents of the Auditor's Report shall have been prepared in conformity with generally accepted accounting principles and shall contain at a minimum the following: a balance sheet, a statement of income, a statement of retained earnings or changes in stockholders' equity, a statement of cash flows, descriptions of accounting policies, notes to financial statements and appropriate schedules and explanatory material results of operations, cash flows and any other items required by Law. The Auditor's Report shall be certified as to its conformance with such principles by a certified public accountant who is licensed to practice that profession in the State of New Jersey.

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

vii. 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.

viii. Emerging Market Units - Market rate units.

ix. Entity - Shall Mean Community Asset Preservation Alliance of Jersey City #2 Urban Renewal, LLC, which Entity is formed and qualified pursuant to N.J.S.A. 40A:20-5. It shall also include any subsequent purchasers or successors in interest of the Project, provided they are formed and operate under by Law and the transfer has been duly approved by the City.

x. Gross Revenue - As a condominium project, the amount equal to the annual aggregate constant payments to principal and interest, assuming a purchase money mortgage encumbering the condominium unit to have been in an original amount equal to the initial value of the unit with its appurtenant interest in the common elements as stated in the master deed, if unsold by the Entity, or, if the unit is held by a unit purchaser, from time to time, the most recent true consideration paid for a deed to the condominium unit in a bona fide arm's length sale transaction, but not less than the initial assessed valuation of the condominium unit assessed at one hundred (100%) per cent of true value, plus the total amount of common expenses charged to the unit pursuant to the bylaws of the condominium association. The constant payments to principal and interest shall be calculated by assuming a loan amount as stated above at the prevailing lawful interest rate for mortgage financing on comparable properties within the municipality as of the date of the recording of the unit deed, for

a term equal to the full term of the exemption from taxation stipulated in the financial agreement.

xi. Improvements or Project - Any building, structure or fixture permanently affixed to the land and to be constructed and tax exempted under this Agreement.

xii. In Rem Tax Foreclosure or Tax Foreclosure - A summary proceeding by which the City may enforce a lien for taxes due and owing by tax sale, under N.J.S.A. 54:5-1 to 54:5-129 et seq.

xiii. Land Taxes - The amount of taxes assessed on the value of land, on which the project is located and, if applicable, taxes on any pre-existing improvements. Land Taxes are not exempt; however, Land Taxes are applied as a credit against the Annual Service Charge.

xiv. Land Tax Payments - Payments made on the quarterly due dates, including approved grace periods if any, for Land Taxes as determined by the Tax Assessor and the Tax Collector.

xv. Law - Law shall refer to the Long Term Tax Exemption Law, as amended and supplemented, N.J.S.A. 40A:20-1, et seq.; Executive Order of the Mayor Cunningham, relating to long term tax exemption, as it may be amended and supplemented; which authorized the execution of this Agreement and all other relevant Federal, State or City statutes, ordinances, resolutions, rules and regulations.

xvi. Minimum Annual Service Charge - The Minimum Annual Service Charge shall be the amount of the total taxes levied against the land in the area covered by the Project in the last full tax year in which the area was subject to taxation, which amount the parties agree is \$28,248.

The Minimum Annual Service Charge shall be paid in each year in which the Annual Service Charge, calculated pursuant to N.J.S.A. 40A:20-12 or this Financial Agreement, would be less than the Minimum Annual Service Charge.

xvii. Net Profit - The Gross Revenue of the Entity less all operating and non-operating expenses of the Entity, all determined in accordance with generally accepted accounting principles and the provisions of N.J.S.A. 40A:20-3(c). Included in expenses shall be an amount sufficient to amortize (utilizing the straight line method-equal annual amounts) the Total Project Cost over the life of the Improvements based upon objective business criteria which period shall not be less than the term of this Agreement.

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

xix. Substantial Completion - The determination by the City that the Project, in whole or in part, is ready for the use intended, which ordinarily shall mean the date on which the Project receives, or is eligible to receive any Certificate of Occupancy for any portion of the Project.

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

xxi. Total Project Cost - The total cost of constructing the Project through the date a Certificate(s) of Occupancy is issued for the entire Project, which categories of cost are set forth in N.J.S.A. 40A:20-3(h). There shall be included in Total Project Cost the actual costs incurred by the Entity and certified by an independent and qualified architect or engineer, which are associated with site remediation and cleanup of environmentally hazardous materials or contaminants in accordance with State or Federal law. The Entity agrees that final Total Project costs shall not be less than its estimated Total Project Cost.

## ARTICLE II - APPROVAL

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

The City hereby grants its approval for a tax exemption for all the Improvements to be constructed and maintained in accordance with the terms and conditions of this Agreement and the provisions of the Law which Improvements shall be constructed on certain property known on the Official Tax Assessor's Map of the City as: Block 2052, Lot ADUP.99, more commonly known by the street address of 305 Whiton Street, Jersey City, also commonly known as All Saints School, and described by metes and bounds in Exhibit 1 attached hereto.

### **Section 2.2 Approval of Entity**

Approval is granted to the Entity whose Certificate of Formation is attached hereto as Exhibit 4. Entity represents that its Certificate contains all the requisite provisions of Law; has been reviewed and approved by the Commissioner of the Department of Community Affairs; and has been filed with, as appropriate, the Secretary of State or Office of the Hudson County Clerk, all in accordance with N.J.S.A. 40A:20-5.

### **Section 2.3 Improvements to be Constructed**

Entity represents that it will rehabilitate an existing school on the property to create approximately four (4) low and moderate income and 21 emerging market (i.e., market rate) owner occupied residential condominium units, and four (4) on-site parking spaces, all of which is more

specifically described in the Application attached hereto as Exhibit 3. The units shall be occupied by persons of moderate income at prices affordable to such persons.

#### **Section 2.4 Construction Schedule**

The Entity agrees to diligently undertake to commence construction and complete the Project in accordance with the Estimated Construction Schedule, attached hereto as Exhibit 5.

#### **Section 2.5 Ownership, Management and Control**

The Entity represents that it is the owner of the property upon which the Project is to be constructed. During construction, the Entity represents that it will manage and control the Project. Upon Substantial Completion, the units will be owned by bona fide individual subsequent successor unit purchasers and the common elements will be controlled and managed by the condominium association.

#### **Section 2.6 Financial Plan**

The Entity represents that the Improvements shall be financed in accordance with the Financial Plan attached hereto as Exhibit 6. The Plan sets forth estimated Total Project Cost, the amortization rate on the Total Project Cost, the source of funds, the interest rates to be paid on construction financing, the source and amount of paid-in capital, and the terms of any mortgage amortization.

#### **Section 2.7 Statement of Initial Sales Prices**

The Entity represents that its good faith projection of the initial sales price is set forth in Exhibit 7, attached hereto.

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

#### **Section 3.1 Term**

So long as there is compliance with the Law and this Agreement, it is understood and agreed by the parties hereto that this Agreement shall remain in effect for the earlier of: 35 years from the date of the adoption of Ordinance\_\_\_\_\_, which approved this exemption or 30 years from the date of Substantial Completion of the Project. The tax exemption shall only be effective during the period of usefulness of the Project and shall continue in force only while the Project is owned by an entity formed and operating under the Law and the property is occupied by persons of moderate income at rents affordable to such persons.

### **ARTICLE IV - ANNUAL SERVICE CHARGE**

#### **Section 4.1 Annual Service Charge**

In consideration of the tax exemption, the Entity shall make payment to the City of an amount equal to the greater of: the Minimum Annual Service Charge or an Annual Service Charge equal to 8% of the Annual Gross Revenue of the low and moderate income residential units and 14% for years 1 through 5, and 16% for years 6 through 30 of Annual Gross Revenue of the emerging market (i.e., market rate) units. The Annual Service Charge shall be billed initially based upon the Entity's estimates of Annual Gross Revenue which shall not be less than the estimate of Gross Revenue as set forth in its Financial Plan, attached hereto as Exhibit 6. Thereafter, the Annual Service Charge shall be adjusted in accordance with this Agreement.

A Minimum Annual Service Charge shall be due beginning on the effective date of this Agreement. The Annual Service Charge shall be due on the first day of the month following the Substantial Completion of the Project. In the event the Entity fails to timely pay the Minimum Annual Service Charge or the Annual Service Charge, the unpaid amount shall bear the highest rate of interest permitted in the case of unpaid taxes or tax liens on the land until paid..

County Service Charge: an amount equal to 5% of the Annual Service Charge upon receipt of that charge, for remittance to the County by the City.

#### **Section 4.2 Staged Adjustments**

The Annual Service Charge shall be adjusted, in Stages over the term of the tax exemption in accordance with N.J.S.A. 40A:20-12(b) as follows:

i. Stage One: From the 1st day of the month following Substantial Completion and for each of the 15<sup>th</sup> year thereafter, the Annual Service Charge shall be 8% of Annual Gross Revenue for the low and moderate units; 14% for years 1 through 5, and 16% for years 6 through 30 of Annual Gross Revenue for the emerging market (i.e., market rate) units; and 15% of Annual Gross Revenue of the parking revenue;

ii. Stage Two: Beginning on the 1st day of the 16th year following Substantial Completion until the last day of the 21st year, an amount equal to the greater of the Annual Service Charge or 20% of the amount of the taxes otherwise due on the value of the Land and Improvements;

iii. Stage Three: Beginning on the 1st day of the 22nd year following the Substantial Completion until the last day of the 27th year, an amount equal to the greater of the Annual Service Charge or 40% of the amount of the taxes otherwise due on the value of the land and Improvements.

iv. Stage Four: Beginning on the 1st day of the 28th year following Substantial Completion until the last day of the 29th year, an amount equal to the greater of the Annual Service Charge or 60% of the amount of the taxes otherwise due on the value of the Land and Improvements.

v. Final Stage: Beginning on the 1st day of the 30th year following Substantial completion through the date the tax exemption expires, an amount equal to the greater of the Annual Gross Revenue or 80% of the amount of the taxes otherwise due on the value of the Land and Improvements.

#### **Section 4.3 Credits**

The Entity is required to pay both the Annual Service Charge and the Land Tax Payments. The Entity is obligated to make timely Land Tax Payments, including any tax on the pre-existing improvements, in order to be entitled to a Land Tax credit against the Annual Service Charge for the subsequent year. The Entity shall be entitled to credit for the amount, without interest, of the Land Tax Payments made in the last four preceding quarterly installments against the Annual Service Charge. In any year that the Entity fails to make any Land Tax Payments when due and owing, such delinquency shall render the Entity ineligible for any Land Tax Payment credits against the Annual Service Charge for that year. No credit will be applied against the Annual Service Charge for partial payments of Land Taxes. In addition, the City shall have, among this remedy and other remedies, the right to proceed against the property pursuant to the In Rem Tax Foreclosure Act, N.J.S.A. 54:5-1, et seq. and/or declare a Default and terminate this Agreement.

#### **Section 4.4 Quarterly Installments**

The Entity expressly agrees that the Annual Service Charge shall be made in quarterly installments on those dates when real estate tax payments are due; subject, nevertheless, to adjustment for over or underpayment within thirty (30) days after the close of each calendar year. In the event that the Entity fails to pay the Annual Service Charge, the unpaid amount shall bear the highest rate of interest permitted in the case of unpaid taxes or tax liens on the land until paid.

#### **Section 4.5 Administrative Fee**

The Entity shall also pay an annual Administrative Fee to the City in addition to the Annual Service Charge and Land Taxes. The Administrative Fee shall be calculated as two (2%) percent of each prior year's Annual Service Charge. This fee shall be payable and due on or before December 31st of each year, and collected in the same manner as the Annual Service Charge. In

the event that the Entity fails to timely pay the Administrative Fee, the amount unpaid shall bear the highest rate of interest permitted in the case of unpaid taxes or tax liens on the land until paid.

#### **Section 4.6 Material Conditions**

It is expressly agreed and understood that the timely payments of Land Taxes, Minimum Annual Service Charges, Annual Service Charges, including adjustments thereto, Administrative Fees, and any interest thereon, are Material Conditions of this Agreement.

### **ARTICLE V - PROJECT EMPLOYMENT AND CONTRACTING AGREEMENT**

#### **Section 5.1 Project Employment and Contracting Agreement**

In order to provide City residents and businesses with certain employment and other economic related opportunities, the Entity is subject to the terms and conditions of the Project Employment and Contracting Agreement, attached hereto as Exhibit 8.

### **ARTICLE VI - CERTIFICATE OF OCCUPANCY**

#### **Section 6.1 Certificate of Occupancy**

It is understood and agreed that it shall be the obligation of the Entity to obtain all Certificates of Occupancy in a timely manner so as to complete construction in accordance with the proposed construction schedule attached hereto as Exhibit 5. The failure to secure the Certificates of Occupancy shall subject the property to full taxation for the period between the date of Substantial Completion and the date the Certificate of Occupancy is obtained.

#### **Section 6.2 Filing of Certificate of Occupancy**

It shall be the primary responsibility of the Entity to forthwith file with both the Tax Assessor and the Tax Collector a copy of each Certificate of Occupancy.

Failure of the Entity to file such issued Certificate of Occupancy 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.

#### **Section 6.3 Construction Permits**

The estimated cost basis disclosed by the Entity's application and proposed Financial Agreement may, at the option of the City, be used as the basis for the construction cost in the issuance of any construction permit(s) for the Project.

### **ARTICLE VII - ANNUAL REPORTS**

### **Section 7.1 Accounting System**

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

### **Section 7.2 Periodic Reports**

A. Auditor's Report: Within ninety (90) days after the close of each fiscal or calendar year, depending on the Entity's accounting basis that this Agreement shall continue in effect, the Entity shall submit to the Municipal Council, the Tax Collector and the City Clerk, who shall advise those municipal officials required to be advised, and the NJ Division of Local Government Services in the Department of Community Affairs, its Auditor's Report for the preceding fiscal or calendar year. The Auditor's Report shall include, but not be limited to: Rental schedule of the urban renewal Project, and the terms and interest rate on any mortgage(s) associated with the purchase or construction of the Project and such details as may relate to the financial affairs of the Entity and to its operation and performance hereunder, pursuant to the Law and this Agreement. The Report shall clearly identify and calculate the Net Profit for the Entity during the previous year.

B. Total Project Cost Audit: Within ninety (90) days after the Substantial Completion of the Project, the Entity shall submit to the Municipal Council, the Tax Collector and the City Clerk, who shall advise those municipal officials required to be advised, an audit of Total Project Cost, certified as to actual construction costs by an independent and qualified architect, utilizing the form attached hereto as Exhibit 9, and as to all other costs, certified its conformance with generally accepted accounting principles, by a certified public accountant who is licensed to practice that profession in the State of New Jersey.

C. Disclosure Statement: On the anniversary date of the execution of this Agreement, and each and every year thereafter while this agreement is in effect, the Entity shall submit to the 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.

### **Section 7.3 Inspection/Audit**

The Entity shall permit the inspection of its property, equipment, buildings and other facilities of the Project and, if deemed appropriate or necessary, any other related Entity by

representatives duly authorized by the City and the NJ Division of Local Government Services in the Department of Community Affairs. It shall also permit, upon request, examination and audit of its books, contracts, records, documents and papers by representatives duly authorized by the City and NJ Division of Local Government Services in the DCA. 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.

All costs incurred by the City to conduct the audit, including reasonable attorneys' fees if appropriate, shall be billed to the Entity and paid to the City as part of the Entity's Annual Service Charge. Interest shall accrue at the same rate as for a delinquent service charge.

## **ARTICLE VIII- LIMITATION OF PROFITS AND RESERVES**

### **Section 8.1 Limitation of Profits and Reserves**

During the period of tax exemption as provided herein, the Entity shall be subject to a limitation of its profits and the dividend payable by it pursuant to the provisions of N.J.S.A. 40A:20-15.

Pursuant to N.J.S.A. 40A:20-14(b) there is expressly excluded from the calculation of Annual Gross Revenue and net Profit in the determination of Excess profit, any gain realized by the Entity on the sale of any condominium unit, whether or not taxable under federal or state law.

The Entity shall have the right to establish a reserve against vacancies, unpaid rentals, and reasonable contingencies in an amount equal to five (5%) percent of the Gross Revenues of the Entity for the last full fiscal year preceding the year and may retain such part of the excess Net Profits as is necessary to eliminate a deficiency in that reserve, as provided in N.J.S.A. 40A:20-15. The reserve is to be non-cumulative, it being intended that no further credits thereto shall be permitted after the reserve shall have attained the allowable level of 5% percent of the preceding year's Gross Revenues.

### **Section 8.2 Annual Payment of Excess Net Profit**

In the event the Net Profits of the Entity, in any fiscal year, shall exceed the allowable Net Profits for such period, then the Entity, within ninety (90) days after the end of such fiscal year, shall pay such excess Net Profits to the City as an additional service charge; provided, however, that the Entity may maintain a reserve as determined pursuant to aforementioned paragraph 8.1.

### **Section 8.3 Payment of Reserve/ Excess Net Profit Upon Termination, Expiration or Sale**

The date of termination, expiration or sale shall be considered to be the close of the fiscal year of the Entity. Within ninety (90) days after such date, the Entity shall pay to the City the amount of the reserve, if any, maintained by it pursuant to this section and the excess Net Profit, if any.

## **ARTICLE IX - ASSIGNMENT AND/OR ASSUMPTION**

### **Section 9.1 Approval**

Except as set forth in Section 9.2, any sale or transfer of the Project, must be approved in advance by Ordinance of the Municipal Council. The failure of the Entity to obtain the City's approval when required shall cause this Agreement to terminate in accordance with the terms hereof. It is understood and agreed that the City, on written application by the Entity, will not unreasonably withhold its consent to a sale of the Project and the transfer of this Agreement provided 1) the new Entity does not own any other Project subject to long term tax exemption at the time of transfer; 2) the new Entity is formed and eligible to operate under the Law; 3) the Entity is not then in default of this Agreement or the Law; 4) the Entity's obligations under this Agreement is fully assumed by the new Entity and 5) the Entity shall have paid over to the City 2% of the value of the Project (Land and Improvements) at the time of the sale or assignment which ordinarily shall mean the consideration stated in the deed conveying title to the new Entity. Notwithstanding anything herein to the contrary, the 2% payment shall not apply to a transfer pursuant to a foreclosure judgment or deed in lieu of foreclosure obtained by a lender financing the project.

### **Section 9.2 Application Fee**

Where the consent or approval of the City is sought for approval of a change in ownership or sale or transfer of the Project, the Entity shall be required to pay to the City a new tax exemption application fee for the legal and administrative services of the City, as it relates to the review, preparation and/or submission of documents to the Municipal Council for appropriate action on the requested assignment. The fee shall be non-refundable.

The conveyance of a condominium unit bona fide unit purchaser grantee shall not require consent or approval of the City. Upon the filing of a master deed creating a condominium pursuant to N.J.S.A. 46:8B-1 et. seq., by the Entity, each unit of the condominium, whether owned by the Entity or a successor unit purchaser/grantee shall continue to be subject to the provisions of this Agreement and this tax exemption approved thereunder shall be unaffected by the recording of the master deed or any subsequent deed conveying the condominium unit.

## **ARTICLE X - COMPLIANCE**

### **Section 10.1 Operation**

During the term of this Agreement, the Project shall be maintained and operated in accordance with the provisions of the Law. The operation of the Project under this Agreement shall not only be terminable as provided by N.J.S.A. 40A:20-1, et seq., as currently amended and supplemented, but also by a Default under this Agreement. The Entity's failure to comply with the Law shall constitute a Default under this Agreement and the City shall, among its other remedies, have the right to terminate the tax exemption.

### **Section 10.2 Disclosure of Lobbyist Representative**

During the term of this Agreement, the Entity must comply with Executive Order 2002-005, and Ordinance 02-075, requiring Written Disclosure of Lobbyist Representative Status. The Entity's failure to comply with the Executive Order or the Ordinance shall constitute a Default under this Agreement and the City shall, among its other remedies, have the right to terminate the tax exemption.

## **ARTICLE XI - DEFAULT**

### **Section 11.1 Default**

Default shall be failure of the Entity to conform with the terms of this Agreement or failure of the Entity to perform any obligation imposed by the Law, beyond any applicable notice, cure or grace period.

### **Section 11.2 Cure Upon Default**

Should the Entity be in Default, the City shall send written notice to the Entity of the Default [Default Notice]. The Default Notice shall set forth with particularity the basis of the alleged Default. The Entity shall have sixty (60) days, from receipt of the Default Notice, to cure any Default which shall be the sole and exclusive remedy available to the Entity. However, if, in the reasonable opinion of the City, the Default cannot be cured within sixty (60) days using reasonable diligence, the City will extend the time to cure.

Subsequent to such sixty (60) days, or any approved extension, the City shall have the right to terminate this Agreement in accordance with Section 12.1.

Should the Entity be in default failure to pay any charges defined as Material Conditions the Entity shall have thirty (30) (not 60) days from the Entity's receipt of a Default Notice to cure.

### **Section 11.3 Remedies Upon Default**

The City shall, among its other remedies, have the right to proceed against the property pursuant to the In Rem Tax Foreclosure Act, N.J.S.A. 54:5-1, et seq. and/or may declare a Default and terminate this Agreement. Any default arising out of the Entity's failure to pay Land Taxes, the Minimum Annual Service Charge, Administrative Fees, Additional Consideration or the Annual Service Charges shall not be subject to the default procedural remedies as provided in Article XI herein, but shall allow the City to proceed immediately to terminate the Agreement as provided in Article XII. 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. No termination of any provision of this Agreement shall deprive the City of any of its remedies or actions against the Entity because of its failure to pay Land Taxes, the Minimum Annual Service Charge, Annual Service Charge, or Administrative Fees. This right shall apply to arrearages that are due and owing at the time or which, under the terms hereof, would in the future become due as if there had been no termination. Further, the bringing of any action for Land Taxes, the Minimum Annual Service Charge, the Annual Service Charge, Administrative Fees or for breach of covenant or the resort to any other remedy herein provided for the recovery of Land Taxes shall not be construed as a waiver of the rights to terminate the tax exemption or proceed with a tax sale or Tax Foreclosure action or any other specified remedy.

In the event of a Default on the part of the Entity to pay any charges set forth in Article IV, the City among its other remedies, reserves the right to proceed against the Entity's land and property, in the manner provided by the In Rem Foreclosure Act, and any act supplementary or amendatory thereof. Whenever the word taxes appear, or is applied, directly or impliedly to mean taxes or municipal liens on land, such statutory provisions shall be read, as far as is pertinent to this Agreement, as if the charges were taxes or municipal liens on land.

## **ARTICLE XII- TERMINATION**

### **Section 12.1 Termination Upon Default of the Entity**

In the event the Entity fails to cure or remedy the Default within the time period provided in Section 11.2, the City may terminate this Agreement upon thirty (30) days written notice to the Entity [Notice of Termination].

### **Section 12.2 Voluntary Termination by the Entity**

The Entity may after the expiration of one year from the Substantial Completion of the Project notify the City that as of a certain date designated in the notice, it relinquishes its status as a tax exempt Project. As of the date so set, the tax exemption, the Annual Service Charges and the profit and dividend restrictions shall terminate.

### **Section 12.3 Final Accounting**

Within ninety (90) days after the date of termination, whether by affirmative action of the Entity or by virtue of the provisions of the Law or pursuant to the terms of this Agreement, the Entity shall provide a final accounting and pay to the City the reserve, if any, pursuant to the provisions of N.J.S.A. 40A:20-13 and 15 as well as any excess Net Profits. 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.

### **Section 12.4 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 XIII - DISPUTE RESOLUTION**

### **Section 13.1 Arbitration**

In the event of a breach of the within Agreement by either of the parties hereto or a dispute arising between the parties in reference to the terms and provisions as set forth herein, either party may apply to the Superior Court of New Jersey by an appropriate proceeding, to settle and resolve the dispute in such fashion as will tend to accomplish the purposes of the Law. In the event the Superior Court shall not entertain jurisdiction, 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 the Long Term Tax Exemption Law. The cost for the arbitration shall be borne equally by the parties. The parties agree that the Entity may not file an action in Superior Court or with the Arbitration Association unless the Entity has first paid in full all charges defined in Article IV, Section 4.7 as Material Conditions.

## **ARTICLE XIV - WAIVER**

### **Section 14.1 Waiver**

Nothing contained in this Financial Agreement or otherwise shall constitute a waiver or relinquishment by the City of any rights and remedies, including, without limitation, the right to terminate the Agreement and tax exemption for violation of any of the conditions provided herein. Nothing herein shall be deemed to limit any right of recovery of any amount which the City has under law, in equity, or under any provision of this Agreement.

## **ARTICLE XV - INDEMNIFICATION**

### **Section 15.1 Defined**

It is understood and agreed that in the event the City shall be named as party defendant in any action alleging any breach, default or a violation of any of the provisions of this Agreement and/or the provisions of N.J.S.A. 40A:20-1 et seq., the Entity shall indemnify and hold the City harmless against any and all liability, loss, cost, or expense (including attorneys' fees and costs, through trial and all stages of any appeal, including the cost of enforcing this indemnity) of any nature whatsoever arising out of or in connection with this Agreement. In addition, the Entity expressly waives all statutory or common law defenses or legal principles which would defeat the purposes of this indemnification. The Entity also agrees to defend the suit at its own expense, counsel for the City to be selected by the City, subject to the reasonable consent of the Entity, which shall not be unreasonably withheld. However, the City maintains the right to intervene in its own defense, to which intervention the Entity consents; the expense thereof to be borne by the City.

## **ARTICLE XVI- NOTICE**

### **Section 16.1 Certified Mail**

Any notice required hereunder to be sent by either party to the other shall be sent by certified or registered mail, return receipt requested.

### **Section 16.2 Sent by City**

When sent by the City to the Entity the notice shall be addressed to:

Community Asset Preservation Alliance of  
Jersey City #2 Urban Renewal, LLC  
16-18 W. Lafayette Street  
Trenton, NJ

with copy to:

Connell Foley, LLP  
Harborside Financial Center  
2510 Plaza Five

Jersey City, NJ 07311-4029  
Attn: Charles Harrington, Esq.

unless prior to giving of notice the Entity shall have notified the City in writing otherwise.

In addition, provided the City is sent a formal written notice in accordance with this Agreement, of the name and address of Entity's Mortgagee, the City agrees to provide such Mortgagee with a copy of any notice required to be sent to the Entity.

### **Section 16.3 Sent by Entity**

When sent by the Entity to the City, it shall be addressed to:

City of Jersey City, Office of the City Clerk  
City Hall  
280 Grove Street  
Jersey City, New Jersey 07302,

with copies sent to the Corporation Counsel, the Business Administrator, and the Tax Collector unless prior to the giving of notice, the City shall have notified the Entity otherwise. The notice to the City shall identify the Project to which it relates, (i.e., the Urban Renewal Entity and the Property's Block and Lot number).

## **ARTICLE XVII-SEVERABILITY**

### **Section 17.1 Severability**

If any term, covenant or condition of this Agreement or the Application, except a Material Condition, shall be judicially declared 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 term, covenant or condition of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

If a Material Condition shall be judicially declared to be invalid or unenforceable and provided the Entity is not in Default of this Agreement, the parties shall cooperate with each other to take the actions reasonably required to restore the Agreement in a manner contemplated by the parties and the Law. This shall include, but not be limited to the authorization and re-execution of this Agreement in a form reasonably drafted to effectuate the original intent of the parties and the Law. However, the City shall not be required to restore the Agreement if it would modify a Material

Condition, the amount of the periodic adjustments or any other term of this Agreement which would result in any economic reduction or loss to the City.

## ARTICLE XVIII - MISCELLANEOUS

### **Section 18.1 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 of 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 combined in their review and approval of same.

### **Section 18.2 Conflicts**

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

### **Section 18.3 Oral Representations**

There have been no oral representations made by either of the parties hereto which are not contained in this Agreement. This Agreement, the Ordinance authorizing the Agreement, and the Application constitute the entire Agreement between the parties and there shall be no modifications thereto other than by a written instrument approved and executed by both parties and delivered to each party.

### **Section 18.4 Entire Document**

This Agreement and all conditions in the Ordinance of the Municipal Council approving this Agreement are incorporated in this Agreement and made a part hereof.

### **Section 18.5 Good Faith**

In their dealings with each other, utmost good faith is required from the Entity and the City.

## ARTICLE XIX - EXHIBITS

### **Section 19. Exhibits**

The following Exhibits are attached hereto and incorporated herein as if set forth at length herein:

1. Metes and Bounds description of the Project;

2. Ordinance of the City authorizing the execution of this Agreement;
3. The Application with Exhibits;
4. Certificate of the Entity;
5. Estimated Construction Schedule;
6. The Financial Plan for the undertaking of the Project;
7. Good Faith Estimate of Unit Sales Prices;
8. Project Employment and Contracting Agreement & Project Labor Agreement;
9. Architect's Certification of Actual Construction Costs.

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

**ATTEST:**

**COMMUNITY ASSET PRESERVATION ALLIANCE  
OF JERSEY CITY #2 URBAN RENEWAL, LLC**

\_\_\_\_\_  
**SECRETARY**

\_\_\_\_\_  
**PRESIDENT**

**ATTEST:**

**CITY OF JERSEY CITY**

\_\_\_\_\_  
**ROBERT BYRNE  
CITY CLERK**

\_\_\_\_\_  
**JOHN KELLY  
BUSINESS ADMINISTRATOR**

## PROJECT EMPLOYMENT & CONTRACTING AGREEMENT

This Project Employment & Contracting Agreement is made on the \_\_\_ day of \_\_\_\_, 2011, between the **CITY OF JERSEY CITY [City]** and **COMMUNITY ASSET PRESERVATION ALLIANCE OF JERSEY CITY #2 URBAN RENEWAL, LLC**, having its principal office at c/o Community Asset Preservation Alliance #2 of Jersey City, 16-18 W. Lafayette Street, Trenton, NJ 08608. Recipient agrees as follows:

### **I. Definitions:**

The following words and terms, when used in this agreement, shall have the following meanings unless the context clearly indicates otherwise.

1. "City" means the Business Administrator of the City of Jersey City, or his designee, including any person or entity which enters into a contract with the City to implement, in whole or in part, this agreement.
2. "Construction Contract" means any agreement for the erection, repair, alteration or demolition of any building, structure, bridge, roadway, or other improvement on a Project Site.
3. "Contractor" means any party performing or offering to perform a prime contract on behalf of the Recipient.
4. "DEO" means the Division of Economic Opportunity under the Department of Administration, located at 1 Journal Square Plaza, 2<sup>nd</sup> Floor, Jersey City, NJ 07306, Telephone #(201) 547-5611. DEO is in charge of Project Employment & Contracting coordination and monitoring on projects receiving abatements.
5. "Economic Incentive" means a tax abatement or exemption for a property or project which requires approval of the Municipal Council and which reduces the annual amount of taxes otherwise due, by \$25,000 or more in the aggregate;
6. "Employment" means any job or position during the construction and operational phase of the project. It includes positions created as a result of internal promotions, terminations, or expansions within the Recipient's work force which are to be filled by new employees. However, positions filled through promotion from within the Recipient's existing work force are not covered positions under this agreement.
7. "Local Business" means a bona fide business located in Jersey City.
8. Mayor Jerramiah T. Healy's Business Cooperative Program means the group within DEO under the Department of Administration responsible for collecting local and minority business contracts and capability information. This group operates the Supplier Alert service which is to be used by the Recipient to meet their good faith business contracting and

construction subcontracting goals.

9. "Minority" means a person who is African, Hispanic, Asian, or American Indian defined as follows:
  - a) "African-American" means a person having origins in any of the black racial groups of Africa.
  - b) "Hispanic" means a person of Mexican, Puerto Rican, Cuban, Central or South American or other Latino culture or origin, regardless of race, excluding, however, persons of European origin.
  - c) "Asian" means a person having origins in any of the original people of the Far East, Southeast Asia, and subcontinent India, Hawaii or the Pacific Islands.
  - d) "American Indian" means a person having origins in any of the original people of North America who maintains cultural identification through tribal affiliation or community recognition.
10. "Minority or Woman Owned Local Business" means a bona fide business located in Jersey City which is fifty-one (51%) percent or more owned and controlled by either a Minority or woman.
11. "Non-Traditional Jobs" means jobs which are held by less than twenty (20%) percent women, as reported by the New Jersey Department of Labor, Division of Labor Market, and Demographic Research for Jersey City, which report shall be on file with the City Clerk.
12. "Permanent Jobs" mean newly created long term salaried positions, whether permanent, temporary, part time or seasonal.
13. "Project or Project Site" means the specific work location or locations specified in the contract.
14. The "Project Employment & Contracting Coordinator" is a member of the DEO staff under the Department of Administration who is in charge of coordinating Project Employment & Contracting projects. Contractors and developers engaged in projects covered by Project Employment & Contracting Agreements will direct inquiries to the Project Employment & Contracting Coordinator.
15. The "Project Employment & Contracting Monitor" or "Monitor" is a member of the DEO staff under the Department of Administration directly under the command of the Project Employment & Contracting Coordinator, who is in charge of monitoring the site, collecting the reports and documentation, and other day-to-day Project Employment & Contracting housekeeping as stipulated by this agreement.
16. The "Project Employment & Contracting Officer" or "Officer" is an employee of the

Recipient who is designated by the Recipient to make sure the Recipient is in compliance with the Recipient's Project Employment & Contracting agreement.

17. "Recipient" means any individual, partnership, association, organization, corporation or other entity, whether public or private, or for profit or non-profit, or agent thereof, which receives an Economic Incentive and shall include any Contractor, Subcontractor or agent of the Recipient.
18. "The Registry" or "Jersey City Employment Registry" means a list maintained by the City or its designee of Jersey City residents seeking employment and Local Businesses, including Minority or Woman Owned Local Businesses, seeking contracts.
19. "Subcontract" means a binding legal relationship involving performance of a contract that is part of a prime contract.
20. "Subcontractor" means a third party that is engaged by the prime Contractor to perform under a subcontract all or part of the work included in an original contract.
21. "Substantial Completion" means the determination by the City that the Project, in whole or in part, is ready for the use intended, which ordinarily shall mean the date on which the Project receives, or is eligible to receive any Certificate of Occupancy for any portion of the Project.

## **II. Purpose:**

The City wishes to assure continuing employment opportunities for City residents, particularly residents who are Minorities, and business opportunities for Local Businesses, especially Minority and Women Owned Local Businesses, with employers located in or relocating to the City who are the Recipients of Economic Incentives. The City has determined to accomplish that goal by requiring the Recipient of an Economic Incentive to act in Good Faith, as defined herein, and discharge its obligations under this Agreement. To the extent mandated by State and Federal law and so long as the Entity discharges its Good Faith obligations under this agreement, the City acknowledges that the Recipient and its contractors are free to hire whomever they choose.

## **III. Good Faith Goals:**

In the event the Recipient is able to demonstrate that its work force already meets the goals set forth below or is able to meet such goals during the term of this agreement, the Recipient will not be required to comply with the interviewing or reporting obligations set forth in Section VI 1., A-L (Construction Jobs) and Section VI, 2., A-J (Permanent Jobs). All goals for Construction Jobs shall be calculated as a percentage of the total number of work hours in each trade from the beginning of the project to its completion.

1. **Employment:** The Recipient shall make a Good Faith effort to achieve the goal of a work force representing fifty-one (51%) percent City residents, fifty-one (51%) percent of whom are residents who are Minorities and, in Non-Traditional Jobs, six point nine (6.9%) percent of whom

are residents who are women, it being understood that one employee may satisfy more than one category.

2. **Business Contracting:** The Recipient shall make a Good Faith effort to achieve the goal of awarding twenty (20%) percent of the dollar amount of its contracts to Local Businesses, fifty-one (51%) percent of which shall be Minority or Women Owned Local Businesses. If fifty-one (51%) percent of Minority or Women Owned Local Businesses cannot be obtained, that percentage of contracts must still be applied to local vendors.

#### **IV. Recipient Designee:**

The Recipient shall designate a principal officer of its firm to be responsible for administering the agreement detailed herein and to report to and confer with the City in order to discharge its Good Faith obligations as defined in this agreement. This officer should be designated as the Project Employment & Contracting Officer.

The Recipient should send a letter of introduction regarding the "Project Employment & Contracting Compliance Officer" to the Project Employment & Contracting Coordinator prior to any preconstruction meetings. An example of this letter can be found in Appendix A. This principle officer should also be present for all preconstruction meetings.

The Recipient should send a letter regarding the "Project Employment & Contracting Compliance Officer" to the employees of the Recipient's company. An example of this letter can be found in Appendix AZ

#### **V. Term:**

This agreement shall be in effect for a period co-terminus with the effective period of the tax exemption [the Economic Incentive]. Thus, it will commence on the date the City Council adopted Ordinance \_\_\_\_\_ approving the tax exemption and terminate the earlier of 35 years from the date of the adoption of that Ordinance or 30 years from the date of Substantial Completion of the Project.

#### **VI. Good Faith Defined:**

1. **Construction Jobs:** Good Faith shall mean compliance with all of the following conditions:

##### **A. Initial Manning Report:**

- i) Prior to the commencement of their work on the Project, each Contractor /Subcontractor shall prepare an Initial Manning Report.
- ii) The Initial Manning Report should contain an estimate of the total hours in each construction trade or craft and the number of hours to be worked by City residents, including a list of the number of minority residents and women residents that will work in each trade or craft, including the work hours to be performed by such employees of any and all Contractors and Subcontractors. Attached hereto as

Appendix B is the Recipient's Initial Manning Report.

- iii) The Initial Manning Report shall be filed with the Project Employment and Contracting Monitor, who must accept said Report prior to the Recipient entering into any construction contract. An example of this acceptance letter is given in Appendix C.

B. Developer's Contracting Obligations

- i) Once the developer submits the project's initial manning report, he/she must forward a letter with requests for quotation or bid to Mayor Jerramiah T. Healy's Business Cooperative Program for local and minority vendors for any construction or building operating goods, services and sub-contracting opportunities. An example of this letter is given in Appendix D.
- ii) The developer shall make a good faith effort to contact those businesses and individuals who submit bids. This effort must be documented by letter, which will be sent to Mayor Jerramiah T. Healy's Business Cooperative Program at DEO under the Department of Administration. An example of this letter can be found in Appendix D2.

C. Contractor's/Subcontractor's Compliance Statement

Prior to commencement of their work on the Project, each Contractor or Subcontractor must agree in writing to comply with this agreement and the employment goals elaborated herein. An example of this Compliance Statement can be found in Appendix E.

D. Union Statement of Using Its Best Efforts

- i) Prior to commencement of their work on the Project, the contractor/subcontractor must submit a statement expressing its adherence to the Project Employment & Contracting Agreement to each union with which he/she has a collective bargaining agreement covering workers to be employed on the project.
- ii) The Compliance Statement shall include a union statement for the particular union to sign, which claims the union will use its best efforts to comply with the employment goals articulated in the Project Employment & Contracting agreement. This compliance statement is detailed in Appendix F. A copy of the signed compliance statement must be sent to the Project Employment & Contracting Monitor in DEO under the Department of Administration before work starts in order for a developer to be in compliance.
- iii) The Recipient will require the Contractor or Subcontractor to promptly notify the City of any refusal or failure of a union to sign the statement. If a particular union refuses to sign a statement, the Recipient will document its efforts to obtain such

statement and the reasons given by the union for not signing such statement, and submit such documentation to the Project Employment & Contracting Monitor in DEO under the Department of Administration.

E. Sub-Contractors

The developer shall require that each prime contractor be responsible for the compliance of his/her subcontractors with the aforementioned Project Employment & Contracting requirements during the performance of the contract. Whenever the contractor sub-contracts a portion of the work on the project, the contractor shall bind the subcontractor to the obligations contained in these supplemental conditions to the full extent as if he/she were the contractor.

F. Union Apprentices

The contractor is responsible for assuring that resident and minority apprentices account for at least fifty (50%) percent of the total hours worked by union apprentices on the job in each trade listed in which apprentices are employed, according to the apprentice-to-journey-worker ratio contained in the collective bargaining agreement between the various unions, and shall hold each of his/her subcontractors to this requirement. The Recipient will require the contractor or subcontractor to promptly notify the City of any refusal of a union to utilize resident and minority apprentices.

G. Monthly Manning Report

- i) The Recipient will cause the Contractor to complete and submit Monthly Project Manning Reports to the Project Employment & Contracting Monitor in DEO under the Department of Administration by the seventh day of the month following the month during which the work is performed, for the duration of the contract.
- ii) The report will accurately reflect the total hours in each construction trade or craft and the number of hours worked by City residents, including a list of the number of minority resident and women resident workers in each trade or craft, and will list separately the work hours performed by such employees of the Contractor and each of its Subcontractors during the previous month. The Monthly Manning Report shall be in the form attached hereto as Appendix G.
- iii) The Recipient is responsible for maintaining or causing the Contractor to maintain records supporting the reported work hours of its Contractors or Subcontractors.

H. Monthly Certified Payroll Report

- i) The Recipient will cause the Contractor to furnish the Project Employment & Contracting Monitor with copies of its weekly Certified Payroll reports. The reports will specify the residence, gender and ethnic/racial origin of each worker, work hours and rate of pay and benefits provided. The Certified Payroll report shall be in the form attached hereto as Appendix H.

- ii) Payroll reports must be submitted on a monthly basis with the Monthly Manning Report or the Recipient is no longer in compliance.

I. Equal Employment Opportunity Reports

Prior to commencement of work on the Project, the Recipient will request copies of the most recent Local Union Report (EEO-3) and Apprenticeship Information Report (EEO-2) which are required to be filed with the US Commission of Equal Employment Opportunity Commission by the collective bargaining unit. These reports will be forwarded to the Project Employment & Contracting Monitor within one month of the signing of the Project Employment & Contracting Agreement.

J. Other Reports

In addition to the above reports, the Recipient shall furnish such reports or other documents to the City as the City may request from time to time in order to carry out the purposes of this agreement.

K. Records Access

The Recipient will insure that the City will have reasonable access to all records and files reasonably necessary to confirm the accuracy of the information provided in the reports.

L. Work Site Access For Monitor

- i) The City will physically monitor the work sites subject to this agreement to verify the accuracy of the monthly reports. Each work site will be physically monitored approximately once every two weeks, and more frequently if it is deemed reasonably necessary by the City. The City's findings shall be recorded in a "Site Visit Report." An example of a bi-weekly site visit report can be found in Appendix I.
- ii) The Recipient shall require the Contractor and Sub-contractor to cooperate with the City's site monitoring activities and inform the City as to the dates they are working at the Project site. This includes specifically instructing the on-site construction manager about the monitoring process, and informing him/her that the monitor will contact him/her to set up an initial meeting. In the case of projects with multiple locations, the Recipient shall inform the City of the dates they are working at each site location(s) where they are working, in order to facilitate the monitoring.

2. **Permanent Jobs:** Good Faith shall mean compliance with all of the following conditions:

A. Pre-hiring Job Awareness: At least eight (8) months prior to the hiring of a Recipient's permanent workforce, the Project Employment & Contracting officer for the Recipient will sit down with the head of the Registry to discuss how the Recipient plans to hire its permanent workforce. The following issues should be covered in this meeting:

- i) whether subcontractors will be used in the hiring process.
- ii) the specific types of jobs that need to be filled.
- iii) the qualifications needed for these particular jobs.
- iv) possible training programs offered by the permanent employer.
- v) the Recipient's goals and how it plans to meet these goals.
- vi) any other issues which need to be addressed by the Registry.

1. Subcontractor Notification -- If the Recipient decides to subcontract any portion or all of its permanent workforce, then the Recipient must receive a signed acknowledgment from the subcontracting party that it will abide by the Project Employment & Contracting Agreement before said subcontractor begins staffing permanent employees. The Recipient must forward a copy of the signed acknowledgment to the Project Employment & Contracting Monitor. An example of this signed acknowledgment can be found in Appendix E.

2. Subcontractor Pre-Hiring Job Awareness Meeting -- Each subcontractor hired to staff permanent job positions must appoint a Project Employment & Contracting Officer to meet with the head of the Registry to discuss the same issues presented above in VI 2.A(I-vi).

3. Subcontractors of Subcontractors--Subcontractors of subcontractors are subject to the same requirements for the initial subcontractors above in Section VI 2.A.

B. Documentation of Hiring Plan--Once the Pre-Hiring Job Awareness Meeting has taken place, the Recipient must put together a document with goals and totals for future permanent employment needs. This plan should summarize all that was discussed in the Pre-Hiring Awareness Meeting, list estimates for manpower needs, set residential and minority employment goals commensurate with the Project Employment & Contracting Agreement, and show how the Recipient plans to meet these goals. An example of this plan is found in Appendix J.

C. Pre-Hiring Notification: At least ten (10) working days prior to advertising for any employees, the Recipient or the Recipient's subcontractor shall provide the Registry with a written notice, which shall state the job title, job description and minimum qualifications, rate of pay, hours of work and the hiring date for each position to be filled, in qualitative and objective terms which will enable the Registry to refer qualified applicants to the Recipient.

D. Advertisement: At the request of the City, or because the City does not have qualified applicants to refer to the Recipient, the Recipient will place an advertisement for the jobs in a newspaper which is regularly published in Jersey City. The Recipient must furnish the Project Employment & Contracting Coordinator in DEO under the Department of Administration with a copy of this advertisement.

E. Pre-Hiring Interview: The Recipient shall interview any qualified applicants referred to it from the Registry, to be maintained by the City or its designee. In the event advertisement is required, the Recipient agrees to interview any qualified persons responding to the advertisement.

F. Semi-Annual Employment Reports: The Recipient will submit written semi-annual employment reports to the Project Employment & Contracting Monitor in the form to be provided

by the City. The report will describe the job, whether the job is held by a City resident, minority resident or woman resident. The report will explain in writing the reasons why any qualified applicant referred by the Registry (or in the event advertisement is required, any qualified person responding to the advertisement) was not hired. An example of this report is found in Appendix K.

G. Record Access: The Recipient shall provide the City with reasonable access to all files and records including payroll and personnel information reasonably necessary to confirm the accuracy of the information set forth in the semi-annual reports.

H. Work Place Access: The Recipient shall provide the City with reasonable access to the site to physically monitor the work site to verify the accuracy of the information set forth in the semi-annual reports.

I. Other Reports, Documents: In addition to the above reports, the Recipient shall furnish such reports or other documents that the City may request from time to time in order to implement the purposes of this agreement.

J. Incorporation of Agreement: The Recipient shall incorporate the provisions of this Agreement in all contracts, agreements and purchase orders for labor with any service, maintenance, security or management agent or Contractor engaged by the Recipient whose personnel will be assigned to the Recipient project.

### 3. Business Contracting

Good Faith shall mean compliance with all of the following conditions:

1) Solicitation of Businesses:

a) One month before accepting bids for goods and services, the Recipient must forward a letter with requests for quotation or bid to Mayor Jerramiah T. Healy's Business Cooperative Program for local and local minority vendors for any construction or building operating goods, services and subcontracting opportunities. An example of this letter can be found in Appendix D.

b) After submission of bids, the Recipient will document whether the bid was accepted or rejected, and state the reason why. An example of this documentation can be found in Appendix D2.

i) Semi-Annual Purchasing Reports: The Recipient will submit written semi-annual purchasing reports which will include a list of all contracts awarded over a six month period and the dollar amounts of these contracts. The reports will specify the number and dollar amount of contracts awarded to Local Businesses and Minority or Women Owned Local Businesses. An example of these reports can be found in Appendix L.

ii) No Utilization of Local and Local Minority Vendors As Conduits For

## Vendors That Are Not Local Or Minority Owned:

The Recipient pledges not to use local and local minority vendors solely as conduits for vendors that are not local and minority owned. Any discovery by DEO under the Department of Administration of a Recipient, either knowingly or unknowingly, using the masthead of a local or minority owned business as a way to get credit for local or minority employment when it should not, will immediately subject the Recipient to the penalties listed in Section VIII (d) below.

### **4. Summation of Documentation Needed For Compliance with Agreement**

1. Letter Designating Project Employment & Contracting Officer (Appendix A)
2. Letter designating Project employment & Contracting Officer to Recipient's Employees (App.) AZ
3. Example of Initial Manning Report (Appendix B)
4. Letter Of Acceptance of Initial Manning Report (Appendix C)
5. Letter From Developer Forwarding Requests for Quotation or Bid for Minority and Residential Vendors from Mayor Jerramiah T. Healy's Business Cooperative Program (Appendix D)
6. Documentation of Bid Submission (Appendix D2)
7. Letter Expressing Project Employment & Contracting Obligations to Contractors/ Subcontractors (Appendix E)
8. Union Statement of Best Efforts (Appendix F)
9. Example of Monthly Manning Report (Appendix G)
10. Example of Monthly Certified Payroll Report (Appendix H)
11. Example of Bi-Weekly Site Visit Report (Appendix I)
12. Example of Documentation of Hiring Plan (Appendix J)
13. Example of Semi-Annual Employment Report (Appendix K)
14. Example of Semi-Annual Purchasing Report (Appendix L)

### **VII. Notices of Violation:**

1. **Advisory Notice:** The City will issue a written Advisory Notice to the Recipient if there is non-compliance with a Good Faith requirement as defined in this agreement. The Advisory Notice shall explain in sufficient detail the basis of the alleged violation. The Recipient shall have four (4) working days to correct the violation. An example of an Advisory Notice can be found in Appendix M.
2. **Violation Notice:** If the alleged violation set forth in the Advisory Notice has not been corrected to the satisfaction of the City within four (4) working days, the City shall then issue a Violation Notice to the Recipient. The Violation Notice shall explain in sufficient detail the basis of the alleged, continuing violation. The Recipient will have three (3) working days to correct the violation. An example of a Violation Notice can be found in Appendix N.
3. **Correcting the Violation:** Either or both the Advisory Notice or the Violation Notice may be considered corrected if the Recipient satisfies the requirements of this agreement and so advises the City in writing, subject to confirmation by the City.

4. **Extension of Time to Correction:** Either the Advisory Notice or the Violation Notice may be held in abeyance and the time for correction extended if the Recipient enters into satisfactory written agreement with the City for corrective action which is designed to achieve compliance. If Recipient fails to abide by the terms of such agreement the violation will be considered not corrected.
5. **Meetings Concerning Violations:** The City may provide an opportunity for a meeting with the Recipient, his Contractors or Subcontractors in an effort to achieve compliance; or may respond to Recipient's request for a meeting after the Recipient has made timely submission of a written explanation pursuant to the above. The meeting shall be requested no later than two days after the alleged violator has submitted the written explanation.
6. **Interviews Relating to Violations:** The City may conduct interviews and may request additional information from appropriate parties as is considered necessary to determine whether the alleged violation has occurred.
7. **Determination of Violation:** The City shall issue a determination of whether the Recipient is in violation of this agreement as soon as possible but not later than thirty days after the delivery of the Violation Notice to the Recipient. If the City determines that the Recipient is in violation, the City shall be entitled to the liquidated damages provided below.

#### **VIII. Liquidated Damages/Interest:**

While reserving any other remedies the City may have at law or equity for a material breach of the above terms and conditions, the parties agree that damages for violations of this agreement by the Recipient cannot be calculated within any reasonable degree of mathematical certainty. Therefore, the parties agree that upon the occurrence of a material breach of any of the above terms and conditions and after notice and expiration of any period to correct the violation, the City will be entitled to liquidated damages from the Recipient in the following amounts:

- a) failure to file Initial Manning Reports (Construction Jobs) or Pre-Hiring Notification (Permanent Jobs) or Pre-Contracting Notification (Business Contracting): an amount equal to a Five (5%) percent increase in the estimated annual payment in lieu of taxes;
- b) failure to conduct Pre-hiring Interviews or submit Compliance Statement (Construction Jobs) or Solicit Bids (Business Contracting): an amount equal to Three (3%) percent increase in the estimated annual payment in lieu of taxes;
- c) failure to allow record or work place access or submit any other required reports (all categories): an amount equal to Two (2%) percent increase in the estimated annual payment in lieu of taxes.
- d) the use of the local or local minority business' masthead for labor or work supplied by a non local or local minority vendor: An amount equal to Five (5%) percent

increase in the estimated annual payment in lieu of taxes. Interest shall be charged on any damages at the legal rate of interest as calculated by the Tax Collector.

- e) the late payment of any liquidated sum shall accrue interest at the rate of 8%.

**IX. Commercial Tenants at the Project Site:**

1. The Recipient shall send all tenants of commercial space within the Project Site a letter and a Tenant Employment Services Guide in the form attached as Appendix O.
2. The Recipient shall solicit information from tenants of commercial space about the composition of the work force of each tenant. The information solicited will be submitted to the Project Employment & Contracting Monitor, which shall provide the Recipient with a questionnaire in the form attached as Appendix P.
3. The Recipient will send the results of its solicitation to the Project Employment & Contracting Monitor no later than October 31 of each year.
4. The Recipient shall send all tenants of commercial space within the Project Site a Supplier Alert Service Registration Package in the form attached as Appendix Q.

**X. Notices**

Any notice required hereunder to be sent by either party to the other, shall be sent by certified mail, return receipt requested, addressed as follows:

1. When sent by the City to the Recipient it shall be addressed to:

Community Asset Preservation Alliance of  
Jersey City #2 Urban Renewal, LLC  
16-18 W. Lafayette Street  
Trenton, NJ

with copy to:

Connell Foley, LLP  
Harborside Financial Center  
2510 Plaza Five  
Jersey City, NJ 07311-4029  
Attn: Charles Harrington, Esq.

2. When sent by the Recipient to the City, it shall be addressed to:

Project Employment & Contracting Monitor  
Department of Administration  
Division of Economic Opportunity

1 Journal Square Plaza  
2<sup>nd</sup> Floor  
Jersey City, New Jersey 07306

with separate copies to the Mayor and the Business Administrator; unless prior to giving of such notice, the City or the Recipient shall have notified the other in writing.

**XI. Adoption, Approval, Modification:**

This agreement shall take effect on the date that the Economic Incentive is approved by the Municipal Council.

**XII. Controlling Regulations and Laws:**

To the extent required by State and Federal Law and so long as the Entity discharges its Good Faith obligations under this agreement, the City agrees and acknowledges that the Recipient and its contractors are free to hire whomever they choose. If this agreement conflicts with any collective bargaining agreement, the City agrees to defer to such agreements so long as the Recipient provides the City with a copy of the offending provision in the collective bargaining agreement.

**ATTEST:**

**CITY OF JERSEY CITY**

\_\_\_\_\_  
**Robert Byrne**  
City Clerk

\_\_\_\_\_  
**John Kelly**  
Business Administrator

**WITNESS:**

**COMMUNITY ASSET PRESERVATION ALLIANCE  
OF JERSEY CITY #2 URBAN RENEWAL, LLC**

\_\_\_\_\_  
**Secretary**

\_\_\_\_\_  
**, President**

City Clerk File No. Ord. 11-110

Agenda No. 3.C. 1st Reading

Agenda No. 4.C 2nd Reading & Final Passage



## ORDINANCE OF JERSEY CITY, N.J.

COUNCIL AS A WHOLE  
offered and moved adoption of the following ordinance:

CITY ORDINANCE 11-110

**TITLE: ORDINANCE 1) RESCINDING ORDINANCE 06-023; AND 2) CONSENTING TO THE SALE AND ASSIGNMENT THE TAX EXEMPTION FINANCIAL AGREEMENT, AS AMENDED, FROM UNICO-JERSEY CITY HOUSING, INC., TO 500 MANILA AVE., LLC, PURSUANT TO THE NEW JERSEY HOUSING AND MORTGAGE FINANCE AGENCY LAW, N.J.S.A. 55:14K-1**

**THE MUNICIPAL COUNCIL OF THE CITY OF JERSEY CITY DOES ORDAIN:**

**WHEREAS**, Unico Jersey City Housing, Inc., is a limited dividend corporation sponsor, formed and qualified to do business under the provisions of the Limited Dividend Housing Corporation Law, N.J.S.A. 55:16-18 [Original Entity]; and

**WHEREAS**, the Entity owns certain property known as Block 213, Plot A, Block 214, Plot B and Block 215, Plot A on the City's Official Tax map (between Manila Avenue, Marin Boulevard, 6<sup>th</sup> and 9<sup>th</sup> Streets), and more commonly known by the street address of 500 Manila Avenue, Jersey City, New Jersey [Property], all of which is located within the boundaries of the Paulus Hook NDP Area 1 District; and

**WHEREAS**, by the adoption of a Municipal Council Resolution on March 20, 1973, the Municipal Council of the City of Jersey City approved a tax exemption under the Limited Dividend Housing Corporation Law, N.J.S.A. 55:16-18, and authorized the execution of a financial agreement, for 203 units of housing; and

**WHEREAS**, by a Resolution adopted on October 2, 1973, as amended on November 20, 1973, Unico Jersey City Housing, Inc., (Unico) leased parking facilities, a baseball field and other property [City Property] to the City of Jersey City for the sum of \$90,000 on the condition that ownership would revert to the City for \$1.00 upon the expiration of the NJHMFA mortgage that funded the construction of the Project; and

**WHEREAS**, the Entity and the City executed a Financial Agreement on or about March 20, 1973 [Financial Agreement], and Lease; and

**WHEREAS**, the parties agree that the tax exemption expires no later than the maturity date of the NJHMFA mortgage or November 1, 2022; and

**WHEREAS**, in 2006 Unico Jersey City Housing, Inc., applied for an amendment to and transfer of the tax exemption to Unico Towers, LLC, which was approved by the adoption of Ordinance 06-023 on February 22, 2006; and

**WHEREAS**, Unico Towers, LLC, never executed a Financial Agreement with the City as authorized by Ordinance 06-023; and

**WHEREAS**, on June 7, 2011, the Original Entity applied to the City to rescind Ordinance 06-023 and for consent to the sale of the project to 500 Manila Ave., LLC [the New Entity], a sponsor, formed and qualified to do business under the provisions of the Housing and Mortgage Finance Agency Law, N.J.S.A. 55:14K-1 et seq.; and

**ORDINANCE 1) RESCINDING ORDINANCE 06-023; AND 2) CONSENTING TO THE SALE AND ASSIGNMENT THE TAX EXEMPTION FINANCIAL AGREEMENT, AS AMENDED, FROM UNICO-JERSEY CITY HOUSING, INC., TO 500 MANILA AVE., LLC, PURSUANT TO THE NEW JERSEY HOUSING AND MORTGAGE FINANCE AGENCY LAW, N.J.S.A. 55:14K-1**

**WHEREAS**, the application is made to enable the original investors to withdraw equity and to replenish the Project's reserves, which are currently very low; and

**WHEREAS**, the application is made under the Housing and Mortgage Finance Agency Law, N.J.S.A. 55:14K-1 et. seq., because the Limited Dividend Housing Corporation Law, N.J.S.A. 55:16-1 et. seq., was repealed in 1991 which means that a new corporation cannot be formed under the Limited Dividend Housing Corporation as a matter of law; and

**WHEREAS**, while the New Entity will assume the NJHMFA mortgage, and the Original Entity's obligations under the NJHMFA mortgage will terminate; and

**WHEREAS**, upon dissolution of the Original Entity, any surplus will be paid as agreed upon by the City of Jersey City and the State of New Jersey, as originally required by the Limited Dividend Housing Corporation Law, N.J.S.A. 55:16-5; and

**WHEREAS**, the New Entity will execute a new Financial Agreement and continue to pay the equivalent of 15% of annual gross revenue less revenue by converting it to 11% of Annual Gross Revenue including all utilities, and the term will not be extended beyond November 1, 2022, the original expiration date; and

**WHEREAS**, the New Entity will also replenish the Project's reserves and apply to subdivide the City Property, perfect the City's interest by recording the Lease and City option for \$1.00, and seek the consent of the NJHMFA to discharge its mortgage as to the City Property, so that it can be conveyed to the City as soon as possible; and

**WHEREAS**, it is within the sound discretion of the Municipality to whether approve or disapprove the sale assignment or amendment of this tax exemption; and

**WHEREAS**, on August 19, 2011, the Tax Exemption Committee reviewed the application and voted to recommend the approval of the tax exemption to the Mayor.

**NOW, THEREFORE, BE IT ORDAINED** by the Municipal Council of the City of Jersey City that:

A. The Application of Unico Jersey City Housing, Inc., an urban renewal company formed and qualified to do business under the provisions of the Limited Dividend Housing Corporation Law, N.J.S.A. 55:16-18, as amended and supplemented, attached hereto, for the assignment and amendment of a tax exemption for Block 213, Plot A (Manila and 6<sup>th</sup> street), Block 214, Plot B (Henderson and 7<sup>th</sup> Street) and Block 215, Plot A (Manila and 6<sup>th</sup>) and more commonly known by the street address of 500 Manila Avenue, to 500 Manila Ave., LLC, pursuant to the Housing and Mortgage Finance Agency Law, N.J.S.A. 55:14K-1 et seq., is hereby approved, subject to the following:

- (a) Term: the earlier of the existing NJHMFA mortgage expires on November 1, 2022, or the date such mortgage is otherwise terminated; and
- (b) Service Charge: 11% of all Annual Gross Revenue defined to include all utilities, which shall be subject to the Service Charge, which sum is estimated to be \$278,729; and
- (c) Administrative fee: 2% of the Annual Service Charge, which sum is estimated to be \$5,575; and
- (d) Project: Preservation of 203 units of affordable rental housing for senior citizens, replenishing of the Project's reserves and rehabilitation and repair of the units from the Project reserves pursuant to the requirements of the NJHMFA; and

**ORDINANCE 1) RESCINDING ORDINANCE 06-023; AND 2) CONSENTING TO THE SALE AND ASSIGNMENT THE TAX EXEMPTION FINANCIAL AGREEMENT, AS AMENDED, FROM UNICO-JERSEY CITY HOUSING, INC., TO 500 MANILA AVE., LLC, PURSUANT TO THE NEW JERSEY HOUSING AND MORTGAGE FINANCE AGENCY LAW, N.J.S.A. 55:14K-1**

- (e) Property: Block 213, Plot A; Block 214, Plot B; and Block 215, Plot A on the City's Tax map and more commonly known by the street address of 500 Manila Avenue, Jersey City, New Jersey; and
- (f) City Property: portions of Block 213, Plot A; Block 214, Plot B; and Block 215, Plot A, described by the metes and bounds in Exhibit A, shall be subdivided forthwith and conveyed to the City in fee simple and free of any liens as soon as possible but not later than November 1, 2022. 500 Manila Ave., LLC, shall cooperate with the City and the NJHMFA to obtain the approval of the NJHMFA to discharge of the NJHMFA mortgage as to the City Property as soon as possible. A lease of the City Property shall be memorialized by the Entity and New Entity. In addition, a recorded option of the City to purchase the City Property for \$1.00 shall be executed by the Entity and the New Entity and recorded by the New Entity.

B. The Mayor or Business Administrator is hereby authorized to execute a consent to assignment and assumption agreement with 500 Manila Ave., LLC, and Unico Jersey City Housing, Inc., as well as any other documents appropriate or necessary to effectuate the sale and transfer of the Project, the tax exemption financial agreement and conveyance of the City Property, and the purposes of this ordinance.

C. The agreements shall be in substantially the form attached hereto, subject to such modifications as the Business Administrator and Corporation Counsel deems appropriate or necessary.

D. All ordinances, including Ordinance 06-023, and parts of ordinances inconsistent herewith are hereby repealed.

E. This ordinance shall be part of the Jersey City Code as though codified and fully set forth therein. The City Clerk shall have this ordinance codified and incorporated in the official copies of the Jersey City Code.

F. This ordinance shall take effect at the time and in the manner provided by law.

G. The City Clerk and Corporation Counsel be and they are hereby authorized and directed to change any chapter numbers, article numbers and section numbers in the event that the codification of this ordinance reveals that there is a conflict between those numbers and the existing code, in order to avoid confusion and possible accidental repealers of existing provisions.

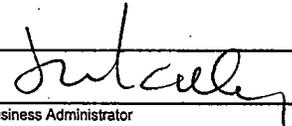
**NOTE:** All material is new; therefore underlining has been omitted. For purposes of advertising only, new matter is indicated by **bold face** and repealed matter by *italic*.

JM/he  
8/19/11

APPROVED AS TO LEGAL FORM

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

APPROVED: \_\_\_\_\_

APPROVED:   
\_\_\_\_\_  
Business Administrator

Certification Required   
Not Required

# Ordinance of the City of Jersey City, N.J.

ORDINANCE NO. Ord 11-110

TITLE: 3.C 8/31/11 4.C SEP 14 2011



Ordinance 1) rescinding Ordinance 06-023; and 2) consenting to the sale and assignment of the tax exemption financial agreement, as amended, from Unico-Jersey City Housing, Inc., to 500 Manila Ave., LLC, pursuant to the New Jersey Housing and Mortgage Finance Agency Law, N.J.S.A. 55:14k-1.

RECORD OF COUNCIL VOTE ON INTRODUCTION								AUG 31, 2011 9-0			
COUNCILPERSON	AYE	NAY	N.V.	COUNCILPERSON	AYE	NAY	N.V.	COUNCILPERSON	AYE	NAY	N.V.
SOTTOLANO	✓			GAUGHAN	✓			BRENNAN	✓		
DONNELLY	✓			FULOP	✓			AHMAD	✓		
LOPEZ	✓			RICHARDSON	✓			VELAZQUEZ	✓		

✓ Indicates Vote

N.V.-Not Voting (Abstain)

RECORD OF COUNCIL VOTE TO CLOSE PUBLIC HEARING								SEP 14 2011 8-0			
Councilperson <u>RICHARDSON</u>				moved, seconded by Councilperson <u>BRENNAN</u>				to close PH.			
COUNCILPERSON	AYE	NAY	N.V.	COUNCILPERSON	AYE	NAY	N.V.	COUNCILPERSON	AYE	NAY	N.V.
SOTTOLANO	✓			GAUGHAN	✓			BRENNAN	✓		
DONNELLY	✓			FULOP	✓			AHMAD	✓		
LOPEZ	✓			RICHARDSON	✓			VELAZQUEZ	<u>ABSENT</u>		

✓ Indicates Vote

N.V.-Not Voting (Abstain)

YVONNE DALCER  
ESTHER MINTNER

RECORD OF COUNCIL VOTE ON AMENDMENTS, IF ANY											
Councilperson _____				moved to amend* Ordinance, seconded by Councilperson _____				& adopted			
COUNCILPERSON	AYE	NAY	N.V.	COUNCILPERSON	AYE	NAY	N.V.	COUNCILPERSON	AYE	NAY	N.V.
SOTTOLANO				GAUGHAN				BRENNAN			
DONNELLY				FULOP				AHMAD			
LOPEZ				RICHARDSON				VELAZQUEZ			

✓ Indicates Vote

N.V.-Not Voting (Abstain)

RECORD OF FINAL COUNCIL VOTE											
								SEP 14 2011 8-0			
COUNCILPERSON	AYE	NAY	N.V.	COUNCILPERSON	AYE	NAY	N.V.	COUNCILPERSON	AYE	NAY	N.V.
SOTTOLANO	✓			GAUGHAN	✓			BRENNAN	✓		
DONNELLY	✓			FULOP	✓			AHMAD	✓		
LOPEZ	✓			RICHARDSON	✓			VELAZQUEZ	<u>ABSENT</u>		

✓ Indicates Vote

N.V.-Not Voting (Abstain)

Adopted on first reading of the Council of Jersey City, N.J. on AUG 31 2011  
 Adopted on second and final reading after hearing on SEP 14 2011

This is to certify that the foregoing Ordinance was adopted by the Municipal Council at its meeting on SEP 14 2011

Robert Byrne  
Robert Byrne, City Clerk

APPROVED:  
Peter M. Brennan  
Peter M. Brennan, Council President

\*Amendment(s):

Date: SEP 14 2011  
 APPROVED:  
Jeremiah T. Healy  
Jeremiah T. Healy, Mayor

Date SEP 19 2011

Date to Mayor SEP 15 2011

**CONSENT TO ASSIGNMENT AND ASSUMPTION OF THE AMENDED  
AND RESTATED FINANCIAL AGREEMENT AND OPTION TO PURCHASE,  
AMONG UNICO-JERSEY CITY HOUSING, INC.,  
500 MANILA AVE., LLC  
AND THE CITY OF JERSEY CITY**

**THIS AGREEMENT** is dated the \_\_\_\_ day of \_\_\_\_\_, 2011, between the **CITY OF JERSEY CITY [City]**, located at 280 Grove Street, Jersey City, New Jersey 07302, **UNICO-JERSEY CITY HOUSING, INC.**, a New Jersey limited liability company having an office at 500 Manila Avenue, Jersey City, NJ 07302 [Original Entity]; and **500 MANILA AVE., LLC**, a sponsor under the New Jersey NJHMFA Law, having an office at 217 Commercial Street, Suite 300, Portland, ME [New Entity].

**WHEREAS**, Unico Jersey City Housing, Inc., is a limited dividend corporation sponsor, formed and qualified to do business under the provisions of the Limited Dividend Housing Corporation Law, N.J.S.A. 55:16-18 [Original Entity]; and

**WHEREAS**, the Entity owns certain property known as Block 213, Plot A (Manila and 6<sup>th</sup> Street), Block 214, Plot B (Henderson and 7<sup>th</sup> Street) and Block 215, Plot A (8<sup>th</sup> and 9<sup>th</sup> Streets) on the City's Official Tax map, and more commonly known by the street address of 500 Manila Avenue, Jersey City, New Jersey [Property], all of which is located within the boundaries of the Paulus Hook NDP Area 1 District; and

**WHEREAS**, by the adoption of a Municipal Council Resolution on March 20, 1973, the Municipal Council of the City of Jersey City approved a 47 year tax exemption under the Limited Dividend Housing Corporation Law, N.J.S.A. 55:16-18, and authorized the execution of a financial agreement, for 203 units of housing; and

**WHEREAS**, by a Resolution adopted on October 2, 1973, as amended on November 20, 1973, Unico Jersey City Housing, Inc., (Unico) leased parking facilities, a baseball field and other property [City Property] to the City of Jersey City for the sum of \$90,000 on the condition that ownership would revert to the City for \$1.00 upon the expiration of the NJHMFA mortgage that funded the construction of the Project; and

**WHEREAS**, the Entity and the City executed a Financial Agreement on or about March 20, 1973 [Financial Agreement], and Lease; and

**WHEREAS**, the parties agree that the tax exemption expires no later than the maturity date of the NJHMFA mortgage or November 1, 2022; and

**WHEREAS**, in 2006 Unico Jersey City Housing, Inc., applied for an amendment to and transfer of the tax exemption to Unico Towers, LLC, which was approved by the adoption of Ordinance 06-023 on February 22, 2006; and

**WHEREAS**, Unico Towers, LLC, never executed a Financial Agreement with the City as authorized by Ordinance 06-023; and

**WHEREAS**, on June 7, 2011, the Original Entity applied to the City to rescind Ordinance 06-023 and for consent to the sale of the project to 500 Manila Ave., LLC [the New Entity], a sponsor, formed and qualified to do business under the provisions of the Housing and Mortgage Finance Agency Law, N.J.S.A. 55:14K-1 et seq.; and

**WHEREAS**, the application is made to enable the original investors to withdraw equity and to replenish the Project's reserves, which are currently very low; and

**WHEREAS**, the application is made under the Housing and Mortgage Finance Agency Law, N.J.S.A. 55:14K-1 et seq., because the Limited Dividend Housing Corporation Law, N.J.S.A. 55:16-1 et seq., was repealed in 1991 which means that a new Limited Dividend Housing Corporation to transfer to, can not be created as a matter of law; and

**WHEREAS**, while the New Entity will assume the NJHMFA mortgage; and

**WHEREAS**, upon dissolution of the Original Entity of the New Entity, any surplus will be paid 50/50 to the City of Jersey City and the State of New Jersey as originally required by the Limited Dividend Housing Corporation Law, N.J.S.A. 55:16-5; and

**WHEREAS**, the New Entity will also replenish the Project's reserves and apply to subdivide the City Property, and execute and record an Option by the City to buy the Property for \$1.00, and seek the consent of the NJHMFA to discharge its mortgage as to the City Property, so that the City can exercise this option as soon as possible; and

**WHEREAS**, it is within the sound discretion of the Municipality to whether approve or disapprove the sale assignment or amendment of this tax exemption.

**NOW, THEREFORE**, it is hereby agreed by and between the parties as follows:

1. The Application of Unico Jersey City Housing, Inc., an urban renewal company formed and qualified to do business under the provisions of the Limited Dividend Housing Corporation Law, N.J.S.A. 55:16-18, as amended and supplemented, attached hereto, for the assignment and amendment of a tax exemption for Block 213, Plot A (Manila and 6<sup>th</sup> street), Block 214, Plot B (Henderson and 7<sup>th</sup> Street) and Block 215, Plot A (Manila and 6<sup>th</sup>) and more commonly known by the street address of 500 Manila Avenue, to 500 Manila Ave., LLC, pursuant to the Housing and Mortgage Finance Agency Law, N.J.S.A. 55:14K-1 et seq., to 500 Manila Ave., LLC, was approved, by the adoption of Ordinance \_\_\_\_\_ on \_\_\_\_\_, 2011.

2. Simultaneously herewith, the City and New Entity have executed an Amended and Restated Financial Agreement attached as Exhibit C, which is intended to replace the Financial Agreement executed on or about March 20, 1973.

3. The Original Entity hereby consents to the assignment of the Financial Agreement to the New Entity.

4. The New Entity hereby agrees to assume all obligations previously belonging to the Original Entity under the Financial Agreement dated March 20, 1973.

5. City Property: portions of Block 213, Plot A; Block 214, Plot B; and Block 215, Plot A, depicted on the tax map attached hereto as Exhibit A, shall be subdivided forthwith by 500 Manila Ave., LLC, and conveyed to the City in fee simple and free of any liens as soon as possible but not later than November 1, 2022. 500 Manila Ave., LLC, shall cooperate with the City and the NJHMFA to obtain the approval of the NJHMFA to discharge of the NJHMFA mortgage as to the City Property as soon as possible. Pending the subdivision and conveyance, attached as Exhibit B, an Option to Purchase for \$1.00 is simultaneously executed by the Entity and the New Entity, in favor of the City. The New Entity shall record the Option to Purchase with the County Register forthwith,

Any and all capitalized terms in this Agreement shall be defined in accordance with and by reference to the Financial Agreement and/or N.J.S.A. 40A:20-1 et seq.

IN WITNESS WHEREOF, the parties hereto have entered into this Agreement as of the date first set forth above.

**ATTESTED:**

**CITY OF JERSEY CITY**

\_\_\_\_\_  
**ROBERT BYRNE**  
**CITY CLERK**

\_\_\_\_\_  
**JOHN KELLY**  
**BUSINESS ADMINISTRATOR**

**WITNESS:**

**UNICO-JERSEY CITY HOUSING, INC.,**  
**[Original Entity]**

\_\_\_\_\_  
**WITNESS:**

\_\_\_\_\_  
**By:**

**500 MANILA AVE., LLC [New Entity]**

\_\_\_\_\_  
**By:**

Rev. 8-19-11  
HMFA  
N.J.S.A. 55:14K-1 et seq.

Re: 500 Manila Street  
Block 215, Lot A  
Paulus Hook NDP Area 1 District

**PREAMBLE**

**THIS AMENDED AND RESTATED FINANCIAL AGREEMENT,** [Agreement] made this \_\_\_\_ day of \_\_\_\_\_, 2011, by and between **500 MANILA AVE., LLC**, is a Limited Liability Company is a qualified housing sponsor under the Limited Dividend Housing Corporation Law, N.J.S.A. 55:14K-1 et seq., having its principal office at 217 Commercial Street, Suite 300, Portland, ME, and the **CITY OF JERSEY CITY**, a Municipal Corporation in the County of Hudson and the State of New Jersey, [City], having its principal office at 280 Grove Street, Jersey City, New Jersey 07302.

**RECITALS**

**WITNESSETH:**

**WHEREAS**, the Entity is the Owner under a Deed dated \_\_\_\_\_, of certain property designated as Block 213, Plot A, Block 214, Plot B and Block 215, Plot A, more commonly known by the street address of 500 Manila Street, Jersey City, NJ, and more particularly described by the metes and bounds description set forth as Exhibit 1 to this Agreement; and

**WHEREAS**, this property is located within the boundaries of the Paulus Hook NDP Area 1 District; and

**WHEREAS**, Unico Jersey City Housing, Inc., is a limited dividend corporation sponsor, formed and qualified to do business under the provisions of the Limited Dividend Housing Corporation Law, N.J.S.A. 55:16-18 [Original Entity]; and

**WHEREAS**, the Entity owns certain property known as Block 213, Plot A, Block 214, Plot B and Block 215, Plot A on the City's Official Tax map (between Manila Avenue, Marin Boulevard, 6<sup>th</sup> and 9<sup>th</sup> Streets), and more commonly known by the street address of 500 Manila Avenue, Jersey City, New Jersey [Property], all of which is located within the boundaries of the Paulus Hook NDP Area 1 District; and

**WHEREAS**, by the adoption of a Municipal Council Resolution on March 20, 1973, the Municipal Council of the City of Jersey City approved a tax exemption under the Limited Dividend Housing Corporation Law, N.J.S.A. 55:16-18, and authorized the execution of a financial agreement, for 203 units of housing; and

**WHEREAS**, by a Resolution adopted on October 2, 1973, as amended on November 20, 1973, Unico Jersey City Housing, Inc., (Unico) leased parking facilities, a baseball field and other property [City Property] to the City of Jersey City for the sum of \$90,000 on the condition that ownership would revert to the City for \$1.00 upon the expiration of the NJHMFA mortgage that funded the construction of the Project; and

**WHEREAS**, the Entity and the City executed a Financial Agreement on or about March 20, 1973 [Financial Agreement], and Lease; and

**WHEREAS**, the parties agree that the tax exemption expires no later than the maturity date of the NJHMFA mortgage or November 1, 2022; and

**WHEREAS**, in 2006 Unico Jersey City Housing, Inc., applied for an amendment to and transfer of the tax exemption to Unico Towers, LLC, which was approved by the adoption of Ordinance 06-023 on February 22, 2006; and

**WHEREAS**, Unico Towers, LLC, never executed a Financial Agreement with the City as authorized by Ordinance 06-023; and

**WHEREAS**, on June 7, 2011, the Original Entity applied to the City to rescind Ordinance 06-023 and for consent to the sale of the project to 500 Manila Ave., LLC [the New Entity], a sponsor, formed and qualified to do business under the provisions of the Housing and Mortgage Finance Agency Law, N.J.S.A. 55:14K-1 et seq.; and

**WHEREAS**, the application is made to enable the original investors to withdraw equity and to replenish the Project's reserves, which are currently very low; and

**WHEREAS**, the application is made under the Housing and Mortgage Finance Agency Law, N.J.S.A. 55:14K-1 et. seq., because the Limited Dividend Housing Corporation Law, N.J.S.A. 55:16-1 et. seq., was repealed in 1991 which means that a new corporation cannot be formed under the Limited Dividend Housing Corporation as a matter of law; and

**WHEREAS**, while the New Entity will assume the NJHMFA mortgage, and the Original Entity's obligations under the NJHMFA mortgage will terminate; and

**WHEREAS**, upon dissolution of the Original Entity, any surplus will be paid as agreed upon by the City of Jersey City and the State of New Jersey, as originally required by the Limited Dividend Housing Corporation Law, N.J.S.A. 55:16-5; and

**WHEREAS**, the New Entity will execute a new Financial Agreement and continue to pay the equivalent of 15% of annual gross revenue less revenue by converting it to 11% of Annual Gross Revenue including all utilities, and the term will not be extended beyond November 1, 2022, the original expiration date; and

**WHEREAS**, the New Entity will also replenish the Project's reserves and apply to subdivide the City Property, perfect the City's interest by recording the Lease and City option for \$1.00, and seek the consent of the NJHMFA to discharge its mortgage as to the City Property, so that it can be conveyed to the City as soon as possible; and

**WHEREAS**, it is within the sound discretion of the Municipality to whether approve or disapprove the sale assignment or amendment of this tax exemption.

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

**ARTICLE I - GENERAL PROVISIONS**

**Section 1.1 Governing Law**

This Agreement shall be governed by the provisions of the Limited Dividend Housing Corporation Law, N.J.S.A. 55:14K-1 et seq., Executive Order of E.O. 02-003, and Ordinance \_\_\_\_\_, which authorized the execution of this Agreement. It being expressly understood and agreed that the City expressly relies upon the facts, data, and representations contained in the Application, attached hereto as Exhibit 3, in granting this tax exemption. All ordinances, including Ordinance 06-023, and parts of ordinances inconsistent herewith are hereby repealed.

**Section 1.2 General Definitions**

Unless specifically provided otherwise or the context otherwise requires, when used

in this Agreement, the following terms shall have the following meanings:

- i. Agency- The New Jersey Housing and Mortgage Finance Agency.
- ii. Annual Gross Revenue- The total gross income, including any and all revenue derived from or generated by the Project of whatever kind or amount, whether received as rent from any tenants or income or fees from third parties, including but not limited to fees or income paid or received for parking, laundry, or other services, including any Section 8 certificate revenue derived from the Project, including all rent and other income, with an allowable vacancy rate of up to 5%. It includes the water and sewer charges. It does not include the cost of insurance, gas, electricity, other utilities, garbage removal and insurance charges even if paid for directly by the Tenant, if such expense is ordinarily paid for by the Landlord.
- iii. Annual Service Charge - 11% of all Annual Gross Revenue;
- iv. 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 a certification of Total Project Cost and clear computation of Net Profit. The contents of the Auditor's Report shall have been prepared in conformity with generally accepted accounting principles and shall contain at a minimum the following: a balance sheet, a statement of income, a statement of retained earnings or changes in stockholder's equity, statement of cash flows, descriptions of accounting policies, notes to financial statements and appropriate schedules and explanatory material results of operations, cash flows and any other items reasonably required by the City or its auditors. The Auditor's Report shall be certified as to its conformance with such principles by a certified public accountant who is licensed to practice that profession in the State of New Jersey.
- v. Certificate of Occupancy - Document, whether temporary or permanent, issued by the City authorizing occupancy of a building, in whole or in part, pursuant to N.J.S.A. 52:27D-133.
- vi. 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.

vii. Entity - The term Entity within this Agreement shall mean 500 Manila Ave., LLC, which Entity is formed and qualified pursuant to Law. It shall also include any subsequent purchasers or successors in interest of the Project, provided they are formed and operate under by Law and the transfer has been duly approved by the City.

viii. Improvements or Project - Any building, structure or fixture permanently affixed to the land and to be constructed and tax exempted under this Agreement.

ix. In Rem Tax Foreclosure or Tax Foreclosure - A summary proceeding by which the City may enforce a lien for taxes due and owing by tax sale, under N.J.S.A. 54:5-1 to 54:5-129 et seq.

x. Land Taxes - The amount of taxes assessed on the value of land, on which the project is located and, if applicable, taxes on any pre-existing improvements. are not exempt; however, are applied as a credit against the Annual Service Charge.

xi. Land Tax Payments - If the law requires, payments made on the quarterly due dates, including approved grace periods if any, for as determined by the Tax Assessor and the Tax Collector.

xii. Law - Law shall refer to the Limited Dividend Housing Corporation Law, N.J.S.A. 55:14K-1 et seq.; Executive Order 02-003, relating to long term tax exemption, as it may be amended and supplemented; Ordinance \_\_\_\_\_ which authorized the execution of this Agreement and all other relevant Federal, State or City statutes, ordinances, resolutions, rules and/or regulations.

xiii. Minimum Annual Service Charge - The Minimum Annual Service Charge shall be the amount of the total taxes that would have been levied against all real property in the area covered by the Project in the last full tax year preceding the recording of the new HMFA mortgage which amount the parties agree is approximately \$278,729. The Minimum Annual Service Charge shall be paid in each year in which the Annual Service Charge, calculated pursuant to the Financial Agreement would be less than the Minimum Annual Service Charge.

xiv. Pronouns - He or it shall mean the masculine, feminine or neuter

gender, the singular, as well as the plural, as context requires.

xv. Substantial Completion - The determination by the City that the Project, in whole or in part, is ready for the use intended, which ordinarily shall mean the date on which the Project receives, or is eligible to receive any Certificate of Occupancy for any portion of the Project.

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

## **ARTICLE II - APPROVAL**

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

The City hereby grants its approval for a tax exemption for all land and Improvements maintained in accordance with the terms and conditions of this Agreement and the provisions of the Law which Improvements shall be constructed on certain property known on the Official Tax Assessor's Map of the City as: Block 213, Plot A, Block 214, Plot B, and 215, Plot A, more commonly known by the street address of 500 Manila Avenue, Jersey City, NJ, and described by metes and bounds in Exhibit 1 attached hereto.

### **Section 2.2 Approval of Entity**

Approval is granted to the Entity whose Certificate of Formation is attached hereto as Exhibit 4. Entity represents that its Certificate contains all the requisite provisions of Law; has been reviewed and approved by the Commissioner of the Department of Community Affairs; and has been filed with, as appropriate, the Secretary of State or Office of the Hudson County Clerk.

### **Section 2.2 Improvements to be Constructed**

Entity represents that it will Preservation of 203 units of affordable rental housing for senior citizens, replenishing of the Project's reserves and rehabilitation and repair of the units from the Project reserves pursuant to the requirements of the NJHMFA, all of which is more specifically described in the Application attached hereto as Exhibit 3.

### **Section 2.3 Construction Schedule**

The Entity agrees to diligently undertake to commence construction and complete the Project in accordance with the Estimated Construction Schedule, attached hereto as

Exhibit 5.

**Section 2.4 Ownership, Management and Control**

The Entity represents that it is the owner of the property upon which the Project is to be constructed. Upon completion, the Entity represents that it will manage and control the Improvements.

**Section 2.5 Financial Plan**

The Entity represents that the Improvements shall be financed in accordance with the Financial Plan attached hereto as Exhibit 6. The Plan sets forth estimated Total Project Cost, the amortization rate on the Total Project Cost, the source of funds, the interest rates to be paid on construction financing, the source and amount of paid-in capital, and the terms of any mortgage amortization.

**Section 2.6 Statement of Rental Schedules and Lease Terms**

The Entity represents that its good faith projections of the initial rental schedules and lease terms are set forth in Exhibit 7, attached hereto.

**ARTICLE III - DURATION OF AGREEMENT**

**Section 3.1 Term**

So long as there is compliance with the Law and this Agreement, it is understood and agreed by the parties hereto that this Agreement shall remain in effect for 47 years from the date of the adoption of the original Resolution on March 20, 1973, authorizing the original Financial Agreement, which the parties agree expires no later than November 1, 2011, but no more than the term of the recorded HMFA mortgage as funded and approved by the Agency. The tax exemption shall only be effective only while the Project is owned by an entity formed and operating as a housing sponsor under the Law and subject to an HMFA mortgage. Thereafter, the tax exemption shall expire and the land and improvements thereon shall be assessed and taxed according to the general law applicable to other non-exempt property in the City.

**ARTICLE IV - ANNUAL SERVICE CHARGE**

**Section 4.1 Annual Service Charge**

In consideration of the tax exemption, the Entity shall make payment to the City of

an amount equal to the greater of: the Minimum Annual Service Charge or the Annual Service Charge. The Annual Service Charge shall be billed initially based upon the Entity's estimates of Annual Gross Revenue as set forth in its Financial Plan, attached hereto as Exhibit 6. Thereafter, the Annual Service Charge shall be adjusted in accordance with this Agreement.

A Minimum Annual Service Charge shall be due beginning on the date this Agreement is executed. The Annual Service Charge or Minimum Annual Service Charge, as the case may be, shall be due on the first day of the month following the Substantial Completion of the Project. In the event the Entity fails to timely pay the Minimum Annual Service Charge or the Annual Service Charge, the amount unpaid shall bear the highest rate of interest permitted in the case of unpaid taxes or tax liens on land until paid.

**Section 4.2 Administrative Fee**

The Entity shall also pay an annual administrative fee to the City in addition to the Minimum or Annual Service Charge. This administrative fee shall equal two (2%) percent of the Annual Service Charge and shall be payable and due on or before December 31st of each year and collected in the same manner as the Annual Service Charge.

**Section 4.3 Land Tax**

Land shall be exempt from taxes.

**Section 4.4 Quarterly Installments**

The Entity expressly agrees that the Annual Service Charge shall be made in quarterly installments on those dates when real estate tax payments are due; subject, nevertheless, to adjustment for over or underpayment within thirty (30) days after the close of each calendar year. In the event that the Entity fails to pay the Annual Service Charge, the amount unpaid shall bear the highest rate of interest permitted in the case of unpaid taxes or tax liens on the land until paid.

**Section 4.5 Material Conditions**

It is expressly agreed and understood that the timely payments of, Minimum Annual Service Charges, Annual Service Charges, including adjustments thereto, Administrative Fees, and any interest thereon, are Material Conditions of this Agreement.

## **ARTICLE V - PROJECT EMPLOYMENT & CONTRACTING AGREEMENT**

### **Section 5.1 Project Employment Agreement**

In order to provide City residents and businesses with certain employment and other economic related opportunities, the Entity is subject to the terms and conditions of the Project Employment & Contracting Agreement, attached hereto as Exhibit 8.

## **ARTICLE VI - CERTIFICATE OF OCCUPANCY**

### **Section 6.1 Certificate of Occupancy**

It is understood and agreed that it shall be the obligation of the Entity to obtain all Certificates of Occupancy in a timely manner. .

### **Section 6.2 Filing of Certificate of Occupancy**

It shall be the primary responsibility of the Entity to forthwith file with both the Tax Assessor and the Tax Collector a copy of each Certificate of Occupancy.

Failure of the Entity to file such issued Certificate of Occupancy as required by the preceding paragraph, shall not mitigate 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.

### **Section 6.3 Construction Permits**

The estimated cost basis disclosed by the Entity's application and proposed Financial Agreement may, at the option of the City, be used as the basis for the construction cost in the issuance of any construction permit(s) for the Project.

## **ARTICLE VII - ANNUAL REPORTS**

### **Section 7.1 Accounting System**

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

### **Section 7.2 Periodic Reports**

A. Auditor's Report: Within ninety (90) days after the close of each fiscal or calendar year, depending on the Entity's accounting basis that this Agreement shall continue in effect, the Entity shall submit to the Municipal Council, the Tax Collector and the City Clerk, who shall advise those municipal officials required to be advised, and the NJ

Division of Local Government Services in the Department of Community Affairs, its Auditor's Report for the preceding fiscal or calendar year. The Auditor's Report shall include, but not be limited to: Rental schedule of the urban renewal Project, and the terms and interest rate on any mortgage(s) associated with the purchase or construction of the Project and such details as may relate to the financial affairs of the Entity and to its operation and performance hereunder, pursuant to the Law and this Agreement. The Report shall clearly identify and calculate the Net Profit for the Entity during the previous year.

B. Total Project Cost Audit: Within ninety (90) days after the Substantial Completion of the Project, the Entity shall submit to the Municipal Council, the Tax Collector and the City Clerk, who shall advise those municipal officials required to be advised, an audit of Total Project Cost, certified as to actual construction costs by an independent and qualified architect, utilizing the form attached hereto as Exhibit 9, and as to all other costs, certified its conformance with generally accepted accounting principles, by a certified public accountant who is licensed to practice that profession in the State of New Jersey.

C. Disclosure Statement: On the 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 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.

### **Section 7.3 Mortgage**

Within ninety (90) days after the date the Entity closes on its loan with the Agency, the Entity shall file with the City a fully executed copy of the Note and a recorded copy of the HMFA Mortgage.

### **Section 7.4 Inspection/Audit**

The Entity shall permit the inspection of its property, equipment, buildings and other facilities of the Project and, if deemed appropriate or necessary, any other related Entity by representatives duly authorized by the City and the NJ Division of Local Government

Services in the Department of Community Affairs. It shall also permit, upon request, examination and audit of its books, contracts, records, documents and papers. Such 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.

All costs incurred by the City to conduct the audit, including reasonable attorneys' fees if appropriate, shall be billed to the Entity and paid to the City as part of the Entity's Annual Service Charge. Interest shall accrue at the same rate as for a delinquent service charge.

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

**Section 8.1 Limitation of Profits and Reserves**

During the period of tax exemption as provided herein, the Entity's return on investment shall be limited in accordance with the regulations and conditions imposed by the Agency pursuant to N.J.S.A. 55:14K-7(6) or any other Law applicable.

**ARTICLE IX - ASSIGNMENT AND/OR ASSUMPTION**

**Section 9.1 Prior Approval of Sale**

Any change made in the ownership of the Project and sale or transfer of the Project, shall be void unless approved in advance by Ordinance of the Municipal Council. It is understood and agreed that the City, on written application by the Entity, will not unreasonably withhold its consent to a sale of the Project and the transfer of this Agreement provided 1) the new Entity is formed and eligible to operate under the Law; 2) the Entity is not then in default of this Agreement or the Law; and 3) the Entity's obligations under this Agreement are fully assumed by the new Entity.

**Section 9.2 Transfer or Lease to Tax Exempt Organization or Public Body.**

In the event that the Entity transfers, sells, demises, conveys, or in any manner relinquishes ownership or title, including a lease to the land or improvements, covered by this tax exemption agreement, to a tax exempt non-profit organization or institution, including any public body, during the term of the tax exemption agreement, that would adversely impact the City's anticipated economic interests by reducing in any way taxes or the service charge due the City under this agreement or by law, it is understood and agreed

by the Entity that it first obtain the consent of the City to the transfer or lease. It is further understood that it may be grounds for the City to withhold its approval if the City's economic interests are adversely effected thereby.

**Section 9.3 Project Severability.**

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 Municipal 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.

**ARTICLE X - COMPLIANCE**

**Section 10.1 Operation**

During the term of this Agreement, the Project shall be maintained and operated in accordance with the provisions of the Law. Operation of Project under this Agreement shall not only be terminable as provided by N.J.S.A. 55:14K-1, et seq., as currently amended and supplemented, but also by a Default under this Agreement. The Entity's failure to comply with the Law shall constitute a Default under this Agreement and the City shall, among its other remedies, have the right to terminate the tax exemption.

**ARTICLE XI - DEFAULT**

**Section 11.1 Default**

Default shall be failure of the Entity to conform with the terms of this Agreement or failure of the Entity to perform any obligation imposed by the Law, beyond any applicable notice, cure or grace period.

**Section 11.2 Cure Upon Default**

Should the Entity be in Default, the City shall send written notice to the Entity of the Default [Default Notice]. The Default Notice shall set forth with particularity the basis of the alleged Default. The Entity shall have sixty (60) days, from receipt of the Default Notice, to cure any Default which shall be the sole and exclusive remedy available to the Entity. However, if, in the reasonable opinion of the City, the Default cannot be cured within sixty (60) days using reasonable diligence, the City will extend the time to cure.

Subsequent to such sixty (60) days, or any approved extension, the City shall have the right to terminate this Agreement in accordance with Section 12.1.

Should the Entity be in default failure to pay any charges defined as Material Conditions in Section 4.5, shall not be subject to the default procedural remedies as provided in this Article but shall allow the City to proceed immediately to terminate the Agreement as provided in Article XII herein.

### **Section 11.3 Remedies Upon Default**

The City shall, among its other remedies, have the right to proceed against the property pursuant to the In Rem Tax Foreclosure Act, N.J.S.A. 54:5-1, et seq. and/or may declare a Default and terminate this Agreement. Any default arising out of the Entity's failure to pay, the Minimum Annual Service Charge, Administrative Fees, or the Annual Service Charges shall not be subject to the default procedural remedies as provided in Article XI or the Annual Service Charges shall not be subject to the default procedural remedies as provided in Article XI herein but shall allow the City to proceed immediately to terminate the Agreement as provided in Article XII herein. 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. No determination of any provision of this Agreement shall deprive the City of any of its remedies or actions against the Entity because of its failure to pay the Minimum Annual Service Charge, Annual Service Charge, or Administrative Fees. This right shall apply to arrearages that are due and owing at the time or which, under the terms hereof, would in the future become due as if there had been no determination. Further, the bringing of any action for the Minimum Annual Service Charge, the Annual Service Charge, Administrative Fees or for breach of covenant or the resort to any other remedy herein, shall not be construed as a waiver of the rights to terminate the tax exemption or proceed with a tax sale or Tax Foreclosure action or any other specified remedy.

In the event of a Default on the part of the Entity to pay any charges set forth in Article IV, the City among its other remedies, reserves the right to proceed against the Entity's land and property, in the manner provided by the In Rem Foreclosure Act, and any

act supplementary or amendatory thereof. Whenever the word taxes appear, or is applied, directly or impliedly to mean taxes or municipal liens on land, such statutory provisions shall be read, as far as is pertinent to this Agreement, as if the charges were taxes or municipal liens on land.

## **ARTICLE XII- TERMINATION**

### **Section 12.1 Termination Upon Default of the Entity**

In the event the Entity fails to cure or remedy the Default within the time period provided in Section 11.2, the City may terminate this Agreement upon thirty (30) days written notice to the Entity [Notice of Termination].

### **Section 12.2 Voluntary Termination by the Entity**

The Entity may after the expiration of one year from the Substantial Completion of the Project notify the City that as of a certain date designated in the notice, it relinquishes its status as a tax exempt Project. As of the date so set, the tax exemption, the Annual Service Charges and the profit and dividend restrictions shall terminate.

### **Section 12.3 Final Accounting**

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

### **Section 12.4 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 XIII - DISPUTE RESOLUTION**

### **Section 13.1 Superior Court**

In the event of a breach of the within Agreement by either of the parties hereto or a dispute arising between the parties in reference to the terms and provisions as set forth

herein, either party may apply to the Superior Court of New Jersey by an appropriate proceeding, to settle and resolve the dispute in such fashion as will tend to accomplish the purposes of the Law. The parties agree that the Entity may not file an action in Superior Court unless the Entity has first paid in full all charges defined in Article III, Section 4.8 as Material Conditions.

#### **ARTICLE XIV - WAIVER**

##### **Section 14.1 Waiver**

Nothing contained in this Financial Agreement or otherwise shall constitute a waiver or relinquishment by the City of any rights and remedies, including, without limitation, the right to terminate the Agreement and tax exemption for violation of any of the conditions provided herein. Nothing herein shall be deemed to limit any right of recovery of any amount which the City has under law, in equity, or under any provision of this Agreement.

#### **ARTICLE XV - INDEMNIFICATION**

##### **Section 15.1 Defined**

It is understood and agreed that in the event the City shall be named as party defendant in any action (other than an action commenced by the Entity) alleging any breach, default or a violation of any of the provisions of this Agreement and/or the provisions of the Law, the Entity shall indemnify and hold the City harmless, and the Entity agrees to defend the suit at its own expense. However, the City maintains the right to intervene as a party thereto, to which intervention the Entity consents; the expense thereof to be borne by the Entity.

#### **ARTICLE XVI- NOTICE**

##### **Section 16.1 Certified Mail**

Any notice required hereunder to be sent by either party to the other shall be sent by certified or registered mail, return receipt requested.

##### **Section 16.2 Sent by City**

When sent by the City to the Entity the notice shall be addressed to:

500 Manila Ave., LLC  
217 Commercial Street, Suite 300  
Portland, ME

And

Anthony W. Tozzi, Esq.  
9 Noa Court  
Hamilton, NJ 08690

and

New Jersey Housing and Mortgage Finance Agency  
637 South Clinton Avenue  
P.O. Box 18550  
Trenton, NJ 08650-2085

unless prior to giving of notice the Entity shall have notified the City in writing otherwise.

In addition, provided the City is sent a formal written notice in accordance with this Agreement, of the name and address of Entity's Mortgagee, the City agrees to provide such Mortgagee with a copy of any notice required to be sent to the Entity.

**Section 16.3 Sent by Entity**

When sent by the Entity to the City, it shall be addressed to:

City of Jersey City, Office of the City Clerk  
City Hall  
280 Grove Street  
Jersey City, New Jersey 07302,

with copies sent to the Corporation Counsel, the Business Administrator, and the Tax Collector unless prior to the giving of notice, the City shall have notified the Entity otherwise. The notice to the City shall identify the Project to which it relates, (i.e., the Urban Renewal Entity and the Property's Block and Lot number).

**ARTICLE XVII-SEVERABILITY**

**Section 17.1 Severability**

If any term, covenant or condition of this Agreement or the Application, except a Material Condition, shall be judicially declared 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 term, covenant or condition of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

If a Material Condition shall be judicially declared to be invalid or unenforceable and provided the Entity is not in Default of this Agreement, the parties shall cooperate with each other to take the actions reasonably required to restore the Agreement in a manner contemplated by the parties. This shall include, but not be limited to the authorization and re-execution of this Agreement in a form reasonably drafted to effectuate the original intent of the parties. However, the City shall not be required to restore the Agreement if it would modify a Material Condition, the net amount of the service charge, or any other term of this Agreement which would result in any economic reduction or loss to the City.

## **ARTICLE XVIII - MISCELLANEOUS**

### **Section 18.1 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 of 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 combined in their review and approval of same.

### **Section 18.2 Conflicts**

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

### **Section 18.3 Oral Representations**

There have been no oral representations made by either of the parties hereto which are not contained in this Agreement. This Agreement, the Ordinance authorizing the Agreement, and the Application constitute the entire Agreement between the parties and there shall be no modifications thereto other than by a written instrument approved and executed by both parties and delivered to each party.

### **Section 18.4 Entire Document**

This Agreement and all conditions in the Ordinance of the Municipal Council approving this Agreement are incorporated in this Agreement and made a part hereof. The original financial agreement dated March 20, 1973, is hereby replaced in its entirety by this Amended Financial Agreement.

**Section 18.5 Good Faith**

In their dealings with each other, utmost good faith is required from the Entity and the City.

**ARTICLE XIX - EXHIBITS**

**Section 19 Exhibits**

The following Exhibits are attached hereto and incorporated herein as if set forth at length herein:

1. Metes and Bounds description of the Project;
2. Ordinance of the City authorizing the execution of this Agreement;
3. The Application with Exhibits;
4. Certificate of the Entity;
5. Estimated Construction Schedule;
6. The Financial Plan for the undertaking of the Project;
7. Initial Rental Schedules and Lease Terms;
8. Project Employment & Contracting Agreement;
9. Architect's Certification of Actual Construction Costs;
10. Written approval of HMFA mortgage loan, including the amount and term thereof.

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

**ATTEST:**

**500 MANILA AVE., LLC**

\_\_\_\_\_  
**SECRETARY**

\_\_\_\_\_  
**MEMBER MANAGER**

**ATTEST:**

**CITY OF JERSEY CITY**

\_\_\_\_\_  
**ROBERT BYRNE  
CITY CLERK**

\_\_\_\_\_  
**JOHN KELLY  
BUSINESS ADMINISTRATOR**

## PROJECT EMPLOYMENT & CONTRACTING AGREEMENT

This Project Employment & Contracting Agreement is made on the \_\_\_ day of \_\_\_\_\_, 2011, between the **CITY OF JERSEY CITY [City]** and **500 MANILA AVE., LLC**, having its principal office at 217 Commercial Street, Suite 300, Portland, ME. Recipient agrees as follows:

### **I. Definitions:**

The following words and terms, when used in this agreement, shall have the following meanings unless the context clearly indicates otherwise.

1. "City" means the Business Administrator of the City of Jersey City, or his designee, including any person or entity which enters into a contract with the City to implement, in whole or in part, this agreement.
2. "Construction Contract" means any agreement for the erection, repair, alteration or demolition of any building, structure, bridge, roadway, or other improvement on a Project Site.
3. "Contractor" means any party performing or offering to perform a prime contract on behalf of the Recipient.
4. "DEO" means the Division of Economic Opportunity under the Department of Administration, located at 1 Journal Square Plaza, 2<sup>nd</sup> Floor, Jersey City, NJ 07306; Telephone #(201) 547-5611. DEO is in charge of Project Employment & Contracting coordination and monitoring on projects receiving abatements.
5. "Economic Incentive" means a tax abatement or exemption for a property or project which requires approval of the Municipal Council and which reduces the annual amount of taxes otherwise due, by \$25,000 or more in the aggregate;
6. "Employment" means any job or position during the construction and operational phase of the project. It includes positions created as a result of internal promotions, terminations, or expansions within the Recipient's work force which are to be filled by new employees. However, positions filled through promotion from within the Recipient's existing work force are not covered positions under this agreement.
7. "Local Business" means a bona fide business located in Jersey City.
8. Mayor Jerramiah T. Healy's Business Cooperative Program means the group within DEO under the Department of Administration responsible for collecting local and minority business contracts and capability information. This group operates the Supplier Alert service which is to be used by the Recipient to meet their good faith business contracting and construction subcontracting goals.

9. "Minority" means a person who is African, Hispanic, Asian, or American Indian defined as follows:
  - a) "African-American" means a person having origins in any of the black racial groups of Africa.
  - b) "Hispanic" means a person of Mexican, Puerto Rican, Cuban, Central or South American or other Latino culture or origin, regardless of race, excluding, however, persons of European origin.
  - c) "Asian" means a person having origins in any of the original people of the Far East, Southeast Asia, and subcontinent India, Hawaii or the Pacific Islands.
  - d) "American Indian" means a person having origins in any of the original people of North America who maintains cultural identification through tribal affiliation or community recognition.
10. "Minority or Woman Owned Local Business" means a bona fide business located in Jersey City which is fifty-one (51%) percent or more owned and controlled by either a Minority or woman.
11. "Non-Traditional Jobs" means jobs which are held by less than twenty (20%) percent women, as reported by the New Jersey Department of Labor, Division of Labor Market, and Demographic Research for Jersey City, which report shall be on file with the City Clerk.
12. "Permanent Jobs" mean newly created long term salaried positions, whether permanent, temporary, part time or seasonal.
13. "Project or Project Site" means the specific work location or locations specified in the contract.
14. The "Project Employment & Contracting Coordinator" is a member of the DEO staff under the Department of Administration who is in charge of coordinating Project Employment & Contracting projects. Contractors and developers engaged in projects covered by Project Employment & Contracting Agreements will direct inquiries to the Project Employment & Contracting Coordinator.
15. The "Project Employment & Contracting Monitor" or "Monitor" is a member of the DEO staff under the Department of Administration directly under the command of the Project Employment & Contracting Coordinator, who is in charge of monitoring the site, collecting the reports and documentation, and other day-to-day Project Employment & Contracting housekeeping as stipulated by this agreement.
16. The "Project Employment & Contracting Officer" or "Officer" is an employee of the Recipient who is designated by the Recipient to make sure the Recipient is in compliance with the Recipient's Project Employment & Contracting agreement.

17. "Recipient" means any individual, partnership, association, organization, corporation or other entity, whether public or private, or for profit or non-profit, or agent thereof, which receives an Economic Incentive and shall include any Contractor, Subcontractor or agent of the Recipient.
18. "The Registry" or "Jersey City Employment Registry" means a list maintained by the City or its designee of Jersey City residents seeking employment and Local Businesses, including Minority or Woman Owned Local Businesses, seeking contracts.
19. "Subcontract" means a binding legal relationship involving performance of a contract that is part of a prime contract.
20. "Subcontractor" means a third party that is engaged by the prime Contractor to perform under a subcontract all or part of the work included in an original contract.
21. "Substantial Completion" means the determination by the City that the Project, in whole or in part, is ready for the use intended, which ordinarily shall mean the date on which the Project receives, or is eligible to receive any Certificate of Occupancy for any portion of the Project.

## **II. Purpose:**

The City wishes to assure continuing employment opportunities for City residents, particularly residents who are Minorities, and business opportunities for Local Businesses, especially Minority and Women Owned Local Businesses, with employers located in or relocating to the City who are the Recipients of Economic Incentives. The City has determined to accomplish that goal by requiring the Recipient of an Economic Incentive to act in Good Faith, as defined herein, and discharge its obligations under this Agreement. To the extent mandated by State and Federal law and so long as the Entity discharges its Good Faith obligations under this agreement, the City acknowledges that the Recipient and its contractors are free to hire whomever they choose.

## **III. Good Faith Goals:**

In the event the Recipient is able to demonstrate that its work force already meets the goals set forth below or is able to meet such goals during the term of this agreement, the Recipient will not be required to comply with the interviewing or reporting obligations set forth in Section VI 1., A-L (Construction Jobs) and Section VI, 2., A-J (Permanent Jobs). All goals for Construction Jobs shall be calculated as a percentage of the total number of work hours in each trade from the beginning of the project to its completion.

1. **Employment:** The Recipient shall make a Good Faith effort to achieve the goal of a work force representing fifty-one (51%) percent City residents, fifty-one (51%) percent of whom are residents who are Minorities and, in Non-Traditional Jobs, six point nine (6.9%) percent of whom are residents who are women, it being understood that one employee may satisfy more than one category.

2. **Business Contracting:** The Recipient shall make a Good Faith effort to achieve the goal of awarding twenty (20%) percent of the dollar amount of its contracts to Local Businesses, fifty-one (51%) percent of which shall be Minority or Women Owned Local Businesses. If fifty-one (51%) percent of Minority or Women Owned Local Businesses cannot be obtained, that percentage of contracts must still be applied to local vendors.

**IV. Recipient Designee:**

The Recipient shall designate a principal officer of its firm to be responsible for administering the agreement detailed herein and to report to and confer with the City in order to discharge its Good Faith obligations as defined in this agreement. This officer should be designated as the Project Employment & Contracting Officer.

The Recipient should send a letter of introduction regarding the "Project Employment & Contracting Compliance Officer" to the Project Employment & Contracting Coordinator prior to any preconstruction meetings. An example of this letter can be found in Appendix A. This principle officer should also be present for all preconstruction meetings.

The Recipient should send a letter regarding the "Project Employment & Contracting Compliance Officer" to the employees of the Recipient's company. An example of this letter can be found in Appendix AZ

**V. Term:**

This agreement shall be in effect for a period co-terminus with the effective period of the tax exemption [the Economic Incentive]. Thus, it will commence on the date the City Council adopted Ordinance \_\_\_\_\_ approving the tax exemption and terminate the earlier of 47 years from the date of the adoption of the original Resolution on March 20, 1973, authorizing the original Financial Agreement.

**VI. Good Faith Defined:**

1. **Construction Jobs:** Good Faith shall mean compliance with all of the following conditions:

A. Initial Manning Report:

- i) Prior to the commencement of their work on the Project, each Contractor /Subcontractor shall prepare an Initial Manning Report.
- ii) The Initial Manning Report should contain an estimate of the total hours in each construction trade or craft and the number of hours to be worked by City residents, including a list of the number of minority residents and women residents that will work in each trade or craft, including the work hours to be performed by such employees of any and all Contractors and Subcontractors. Attached hereto as Appendix B is the Recipient's Initial Manning Report.

- iii) The Initial Manning Report shall be filed with the Project Employment and Contracting Monitor, who must accept said Report prior to the Recipient entering into any construction contract. An example of this acceptance letter is given in Appendix C.

B. Developer's Contracting Obligations

- i) Once the developer submits the project's initial manning report, he/she must forward a letter with requests for quotation or bid to Mayor Jerramiah T. Healy's Business Cooperative Program for local and minority vendors for any construction or building operating goods, services and sub-contracting opportunities. An example of this letter is given in Appendix D.
- ii) The developer shall make a good faith effort to contact those businesses and individuals who submit bids. This effort must be documented by letter, which will be sent to Mayor Jerramiah T. Healy's Business Cooperative Program at DEO under the Department of Administration. An example of this letter can be found in Appendix D2.

C. Contractor's/Subcontractor's Compliance Statement

Prior to commencement of their work on the Project, each Contractor or Subcontractor must agree in writing to comply with this agreement and the employment goals elaborated herein. An example of this Compliance Statement can be found in Appendix E.

D. Union Statement of Using Its Best Efforts

- i) Prior to commencement of their work on the Project, the contractor/subcontractor must submit a statement expressing its adherence to the Project Employment & Contracting Agreement to each union with which he/she has a collective bargaining agreement covering workers to be employed on the project.
- ii) The Compliance Statement shall include a union statement for the particular union to sign, which claims the union will use its best efforts to comply with the employment goals articulated in the Project Employment & Contracting agreement. This compliance statement is detailed in Appendix F. A copy of the signed compliance statement must be sent to the Project Employment & Contracting Monitor in DEO under the Department of Administration before work starts in order for a developer to be in compliance.
- iii) The Recipient will require the Contractor or Subcontractor to promptly notify the City of any refusal or failure of a union to sign the statement. If a particular union refuses to sign a statement, the Recipient will document its efforts to obtain such statement and the reasons given by the union for not signing such statement, and submit such documentation to the Project Employment & Contracting Monitor in DEO under the Department of Administration.

E. Sub-Contractors

The developer shall require that each prime contractor be responsible for the compliance of his/her subcontractors with the aforementioned Project Employment & Contracting requirements during the performance of the contract. Whenever the contractor sub-contracts a portion of the work on the project, the contractor shall bind the subcontractor to the obligations contained in these supplemental conditions to the full extent as if he/she were the contractor.

F. Union Apprentices

The contractor is responsible for assuring that resident and minority apprentices account for at least fifty (50%) percent of the total hours worked by union apprentices on the job in each trade listed in which apprentices are employed, according to the apprentice-to-journey-worker ratio contained in the collective bargaining agreement between the various unions, and shall hold each of his/her subcontractors to this requirement. The Recipient will require the contractor or subcontractor to promptly notify the City of any refusal of a union to utilize resident and minority apprentices.

G. Monthly Manning Report

- i) The Recipient will cause the Contractor to complete and submit Monthly Project Manning Reports to the Project Employment & Contracting Monitor in DEO under the Department of Administration by the seventh day of the month following the month during which the work is performed, for the duration of the contract.
- ii) The report will accurately reflect the total hours in each construction trade or craft and the number of hours worked by City residents, including a list of the number of minority resident and women resident workers in each trade or craft, and will list separately the work hours performed by such employees of the Contractor and each of its Subcontractors during the previous month. The Monthly Manning Report shall be in the form attached hereto as Appendix G.
- iii) The Recipient is responsible for maintaining or causing the Contractor to maintain records supporting the reported work hours of its Contractors or Subcontractors.

H. Monthly Certified Payroll Report

- i) The Recipient will cause the Contractor to furnish the Project Employment & Contracting Monitor with copies of its weekly Certified Payroll reports. The reports will specify the residence, gender and ethnic/racial origin of each worker, work hours and rate of pay and benefits provided. The Certified Payroll report shall be in the form attached hereto as Appendix H.
- ii) Payroll reports must be submitted on a monthly basis with the Monthly Manning Report or the Recipient is no longer in compliance.

I. Equal Employment Opportunity Reports

Prior to commencement of work on the Project, the Recipient will request copies of the most recent Local Union Report (EEO-3) and Apprenticeship Information Report (EEO-2) which are required to be filed with the US Commission of Equal Employment Opportunity Commission by the collective bargaining unit. These reports will be forwarded to the Project Employment & Contracting Monitor within one month of the signing of the Project Employment & Contracting Agreement.

J. Other Reports

In addition to the above reports, the Recipient shall furnish such reports or other documents to the City as the City may request from time to time in order to carry out the purposes of this agreement.

K. Records Access

The Recipient will insure that the City will have reasonable access to all records and files reasonably necessary to confirm the accuracy of the information provided in the reports.

L. Work Site Access For Monitor

- i) The City will physically monitor the work sites subject to this agreement to verify the accuracy of the monthly reports. Each work site will be physically monitored approximately once every two weeks, and more frequently if it is deemed reasonably necessary by the City. The City's findings shall be recorded in a "Site Visit Report." An example of a bi-weekly site visit report can be found in Appendix I.
- ii) The Recipient shall require the Contractor and Sub-contractor to cooperate with the City's site monitoring activities and inform the City as to the dates they are working at the Project site. This includes specifically instructing the on-site construction manager about the monitoring process, and informing him/her that the monitor will contact him/her to set up an initial meeting. In the case of projects with multiple locations, the Recipient shall inform the City of the dates they are working at each site location(s) where they are working, in order to facilitate the monitoring.

2. **Permanent Jobs:** Good Faith shall mean compliance with all of the following conditions:

A. Pre-hiring Job Awareness: At least eight (8) months prior to the hiring of a Recipient's permanent workforce, the Project Employment & Contracting officer for the Recipient will sit down with the head of the Registry to discuss how the Recipient plans to hire its permanent workforce. The following issues should be covered in this meeting:

- i) whether subcontractors will be used in the hiring process.
- ii) the specific types of jobs that need to be filled.
- iii) the qualifications needed for these particular jobs.
- iv) possible training programs offered by the permanent employer.

- v) the Recipient's goals and how it plans to meet these goals.
- vi) any other issues which need to be addressed by the Registry.

1. Subcontractor Notification -- If the Recipient decides to subcontract any portion or all of its permanent workforce, then the Recipient must receive a signed acknowledgment from the subcontracting party that it will abide by the Project Employment & Contracting Agreement before said subcontractor begins staffing permanent employees. The Recipient must forward a copy of the signed acknowledgment to the Project Employment & Contracting Monitor. An example of this signed acknowledgment can be found in Appendix E.

2. Subcontractor Pre-Hiring Job Awareness Meeting -- Each subcontractor hired to staff permanent job positions must appoint a Project Employment & Contracting Officer to meet with the head of the Registry to discuss the same issues presented above in VI 2.A(I-vi).

3. Subcontractors of Subcontractors--Subcontractors of subcontractors are subject to the same requirements for the initial subcontractors above in Section VI 2.A.

B. Documentation of Hiring Plan--Once the Pre-Hiring Job Awareness Meeting has taken place, the Recipient must put together a document with goals and totals for future permanent employment needs. This plan should summarize all that was discussed in the Pre-Hiring Awareness Meeting, list estimates for manpower needs, set residential and minority employment goals commensurate with the Project Employment & Contracting Agreement, and show how the Recipient plans to meet these goals. An example of this plan is found in Appendix J.

C. Pre-Hiring Notification: At least ten (10) working days prior to advertising for any employees, the Recipient or the Recipient's subcontractor shall provide the Registry with a written notice, which shall state the job title, job description and minimum qualifications, rate of pay, hours of work and the hiring date for each position to be filled, in qualitative and objective terms which will enable the Registry to refer qualified applicants to the Recipient.

D. Advertisement: At the request of the City, or because the City does not have qualified applicants to refer to the Recipient, the Recipient will place an advertisement for the jobs in a newspaper which is regularly published in Jersey City. The Recipient must furnish the Project Employment & Contracting Coordinator in DEO under the Department of Administration with a copy of this advertisement.

E. Pre-Hiring Interview: The Recipient shall interview any qualified applicants referred to it from the Registry, to be maintained by the City or its designee. In the event advertisement is required, the Recipient agrees to interview any qualified persons responding to the advertisement.

F. Semi-Annual Employment Reports: The Recipient will submit written semi-annual employment reports to the Project Employment & Contracting Monitor in the form to be provided by the City. The report will describe the job, whether the job is held by a City resident, minority resident or woman resident. The report will explain in writing the reasons why any qualified applicant referred by the Registry (or in the event advertisement is required, any qualified person responding to the advertisement) was not hired. An example of this report is found in Appendix K.

G. Record Access: The Recipient shall provide the City with reasonable access to all files and records including payroll and personnel information reasonably necessary to confirm the accuracy of the information set forth in the semi-annual reports.

H. Work Place Access: The Recipient shall provide the City with reasonable access to the site to physically monitor the work site to verify the accuracy of the information set forth in the semi-annual reports.

I. Other Reports, Documents: In addition to the above reports, the Recipient shall furnish such reports or other documents that the City may request from time to time in order to implement the purposes of this agreement.

J. Incorporation of Agreement: The Recipient shall incorporate the provisions of this Agreement in all contracts, agreements and purchase orders for labor with any service, maintenance, security or management agent or Contractor engaged by the Recipient whose personnel will be assigned to the Recipient project.

### 3. Business Contracting

Good Faith shall mean compliance with all of the following conditions:

1) Solicitation of Businesses:

a) One month before accepting bids for goods and services, the Recipient must forward a letter with requests for quotation or bid to Mayor Jerramiah T. Healy's Business Cooperative Program for local and local minority vendors for any construction or building operating goods, services and subcontracting opportunities. An example of this letter can be found in Appendix D.

b) After submission of bids, the Recipient will document whether the bid was accepted or rejected, and state the reason why. An example of this documentation can be found in Appendix D2.

i) Semi-Annual Purchasing Reports: The Recipient will submit written semi-annual purchasing reports which will include a list of all contracts awarded over a six month period and the dollar amounts of these contracts. The reports will specify the number and dollar amount of contracts awarded to Local Businesses and Minority or Women Owned Local Businesses. An example of these reports can be found in Appendix L.

ii) No Utilization of Local and Local Minority Vendors As Conduits For Vendors That Are Not Local Or Minority Owned:

The Recipient pledges not to use local and local minority vendors solely as conduits for vendors that are not local and minority owned. Any discovery by DEO under the Department of Administration of a Recipient, either knowingly or unknowingly, using the masthead of a local or minority owned

business as a way to get credit for local or minority employment when it should not, will immediately subject the Recipient to the penalties listed in Section VIII (d) below.

**4. Summation of Documentation Needed For Compliance with Agreement**

1. Letter Designating Project Employment & Contracting Officer (Appendix A)
2. Letter designating Project employment & Contracting Officer to Recipient's Employees (App.) AZ
3. Example of Initial Manning Report (Appendix B)
4. Letter Of Acceptance of Initial Manning Report (Appendix C)
5. Letter From Developer Forwarding Requests for Quotation or Bid for Minority and Residential Vendors from Mayor Jerramiah T. Healy's Business Cooperative Program (Appendix D)
6. Documentation of Bid Submission (Appendix D2)
7. Letter Expressing Project Employment & Contracting Obligations to Contractors/ Subcontractors (Appendix E)
8. Union Statement of Best Efforts (Appendix F)
9. Example of Monthly Manning Report (Appendix G)
10. Example of Monthly Certified Payroll Report (Appendix H)
11. Example of Bi-Weekly Site Visit Report (Appendix I)
12. Example of Documentation of Hiring Plan (Appendix J)
13. Example of Semi-Annual Employment Report (Appendix K)
14. Example of Semi-Annual Purchasing Report (Appendix L)

**VII. Notices of Violation:**

1. **Advisory Notice:** The City will issue a written Advisory Notice to the Recipient if there is non-compliance with a Good Faith requirement as defined in this agreement. The Advisory Notice shall explain in sufficient detail the basis of the alleged violation. The Recipient shall have four (4) working days to correct the violation. An example of an Advisory Notice can be found in Appendix M.
2. **Violation Notice:** If the alleged violation set forth in the Advisory Notice has not been corrected to the satisfaction of the City within four (4) working days, the City shall then issue a Violation Notice to the Recipient. The Violation Notice shall explain in sufficient detail the basis of the alleged, continuing violation. The Recipient will have three (3) working days to correct the violation. An example of a Violation Notice can be found in Appendix N.
3. **Correcting the Violation:** Either or both the Advisory Notice or the Violation Notice may be considered corrected if the Recipient satisfies the requirements of this agreement and so advises the City in writing, subject to confirmation by the City.
4. **Extension of Time to Correction:** Either the Advisory Notice or the Violation Notice may be held in abeyance and the time for correction extended if the Recipient enters into satisfactory written agreement with the City for corrective action which is designed to achieve compliance. If Recipient fails to abide by the terms of such agreement the violation

will be considered not corrected.

5. Meetings Concerning Violations: The City may provide an opportunity for a meeting with the Recipient, his Contractors or Subcontractors in an effort to achieve compliance; or may respond to Recipient's request for a meeting after the Recipient has made timely submission of a written explanation pursuant to the above. The meeting shall be requested no later than two days after the alleged violator has submitted the written explanation.
6. Interviews Relating to Violations: The City may conduct interviews and may request additional information from appropriate parties as is considered necessary to determine whether the alleged violation has occurred.
7. Determination of Violation: The City shall issue a determination of whether the Recipient is in violation of this agreement as soon as possible but not later than thirty days after the delivery of the Violation Notice to the Recipient. If the City determines that the Recipient is in violation, the City shall be entitled to the liquidated damages provided below.

#### **VIII. Liquidated Damages/Interest:**

While reserving any other remedies the City may have at law or equity for a material breach of the above terms and conditions, the parties agree that damages for violations of this agreement by the Recipient cannot be calculated within any reasonable degree of mathematical certainty. Therefore, the parties agree that upon the occurrence of a material breach of any of the above terms and conditions and after notice and expiration of any period to correct the violation, the City will be entitled to liquidated damages from the Recipient in the following amounts:

- a) failure to file Initial Manning Reports (Construction Jobs) or Pre-Hiring Notification (Permanent Jobs) or Pre-Contracting Notification (Business Contracting): an amount equal to a Five (5%) percent increase in the estimated annual payment in lieu of taxes;
- b) failure to conduct Pre-hiring Interviews or submit Compliance Statement (Construction Jobs) or Solicit Bids (Business Contracting): an amount equal to Three (3%) percent increase in the estimated annual payment in lieu of taxes;
- c) failure to allow record or work place access or submit any other required reports (all categories): an amount equal to Two (2%) percent increase in the estimated annual payment in lieu of taxes.
- d) the use of the local or local minority business' masthead for labor or work supplied by a non local or local minority vendor: An amount equal to Five (5%) percent increase in the estimated annual payment in lieu of taxes. Interest shall be charged on any damages at the legal rate of interest as calculated by the Tax Collector.
- e) the late payment of any liquidated sum shall accrue interest at the rate of 8%.

**IX. Commercial Tenants at the Project Site:**

1. The Recipient shall send all tenants of commercial space within the Project Site a letter and a Tenant Employment Services Guide in the form attached as Appendix O.
2. The Recipient shall solicit information from tenants of commercial space about the composition of the work force of each tenant. The information solicited will be submitted to the Project Employment & Contracting Monitor, which shall provide the Recipient with a questionnaire in the form attached as Appendix P.
3. The Recipient will send the results of its solicitation to the Project Employment & Contracting Monitor no later than October 31 of each year.
4. The Recipient shall send all tenants of commercial space within the Project Site a Supplier Alert Service Registration Package in the form attached as Appendix Q.

**X. Notices**

Any notice required hereunder to be sent by either party to the other, shall be sent by certified mail, return receipt requested, addressed as follows:

1. When sent by the City to the Recipient it shall be addressed to:

500 Manila Ave., LLC  
217 Commercial Street, Suite 300  
Portland, ME

and

Anthony W. Tozzi, Esq.  
9 Noa Court  
Hamilton, NJ 08690

and

New Jersey Housing and Mortgage Finance Agency  
637 South Clinton Avenue  
P.O. Box 18550  
Trenton, NJ 08650-2085

2. When sent by the Recipient to the City, it shall be addressed to:

Project Employment & Contracting Monitor  
Department of Administration  
Division of Economic Opportunity  
1 Journal Square Plaza  
2<sup>nd</sup> Floor  
Jersey City, New Jersey 07306

with separate copies to the Mayor and the Business Administrator; unless prior to giving of such notice, the City or the Recipient shall have notified the other in writing.

**XI. Adoption, Approval, Modification:**

This agreement shall take effect on the date that the Economic Incentive is approved by the Municipal Council.

**XII. Controlling Regulations and Laws:**

To the extent required by State and Federal Law and so long as the Entity discharges its Good Faith obligations under this agreement, the City agrees and acknowledges that the Recipient and its contractors are free to hire whomever they choose. If this agreement conflicts with any collective bargaining agreement, the City agrees to defer to such agreements so long as the Recipient provides the City with a copy of the offending provision in the collective bargaining agreement.

**ATTEST:**

**CITY OF JERSEY CITY**

\_\_\_\_\_  
**Robert Byrne**  
City Clerk

\_\_\_\_\_  
**John Kelly**  
Business Administrator

**WITNESS:**

**500 MANILA AVE., LLC**

\_\_\_\_\_  
**Secretary**

\_\_\_\_\_  
**President**

City Clerk File No. Ord. 11-111

Agenda No. 3.D. 1st Reading

Agenda No. 4.D 2nd Reading & Final Passage



## ORDINANCE OF JERSEY CITY, N.J.

COUNCIL AS A WHOLE  
offered and moved adoption of the following ordinance:

CITY ORDINANCE *11-111*

**TITLE: AN ORDINANCE APPROVING A FIVE (5) YEAR TAX EXEMPTION PURSUANT TO THE PROVISIONS OF N.J.S.A. 40A:21-1, ET SEQ., AND SECTION 304-9 OF THE MUNICIPAL CODE FOR PROPERTY DESIGNATED AS BLOCK 2050, LOT 29, ON THE CITY'S TAX MAP AND MORE COMMONLY KNOWN BY THE STREET ADDRESS OF 302-306 COMMUNIPAW AVENUE AND 5 MONITOR STREET**

**THE MUNICIPAL COUNCIL OF THE CITY OF JERSEY CITY DOES ORDAIN:**

**WHEREAS**, the City of Jersey City as an area in need of rehabilitation, is authorized to adopt an ordinance to utilize tax exemptions pursuant to N.J.S.A. 40A:21-1, et seq., the Five (5) Year Exemption and Abatement Law; and

**WHEREAS**, pursuant to N.J.S.A. 40A:21-1 et seq., the City of Jersey City adopted Ordinance 05-060 (Section 304-1 et seq. of the Municipal Code), and as amended by Ordinance 07-146, to allow Five (5) Year Tax Exemptions which allows the Tax Assessor to regard the full and true value or a portion thereof of certain improvements as not increasing the full and true value of certain property for a period of five (5) years, provided the owner's application is approved by the Tax Assessor and by Ordinance of the Municipal Council; and

**WHEREAS**, pursuant to N.J.S.A. 40A:21-9 and Section 304-12 of the Municipal Code, a tax exemption for a newly constructed mixed use building, is permitted for a period of five (5) years; and

**WHEREAS**, Capital Development Realty Group, LLC, is the owner of a newly constructed mixed use building with 15 residential units, a commercial/retail space on the ground floor and 15 on-site parking spaces, located in Block 2050, Lot 29 on the City's Tax Map and more commonly known by the street address of 302-306 Communipaw Avenue and 5 Monitor Street, Jersey City, N.J.; and

**WHEREAS**, the Tax Assessor will certify Capital Development Realty Group, LLC, improvements costs when the Certificate of Occupancy is issued; and

**WHEREAS**, on July 27, 2011, the owner filed an application to tax exempt the newly constructed mixed use building, a copy of which application is attached hereto; and

**WHEREAS**, as determined by the assessor on October 1<sup>st</sup> of the year following completion, the owner estimates that it will pay the City (in addition to the full taxes on the land, which shall continue to be conventionally assessed and taxed) a tax payment for the new improvements on the property, as follows:

- (a) Year 1: the tax year in which the structure will be completed. \$0 taxes;
- (b) Year 2: the second tax year, 39% of actual full taxes, estimated to be \$13,647;
- (c) Year 3: the third tax year, 59% of actual full taxes, estimated to be \$20,645;
- (d) Year 4: the fourth tax year, 79% of actual full taxes, estimated to be \$27,643; and
- (e) Year 5: the fifth tax year, 80% of actual full taxes, estimated to be \$27,993;

AN ORDINANCE APPROVING A FIVE (5) YEAR TAX EXEMPTION PURSUANT TO THE PROVISIONS OF N.J.S.A. 40A:21-1, ET SEQ., AND SECTION 304-9 OF THE MUNICIPAL CODE FOR PROPERTY DESIGNATED AS BLOCK 2050, LOT 29, ON THE CITY'S TAX MAP AND MORE COMMONLY KNOWN BY THE STREET ADDRESS OF 302-306 COMMUNIPAW AVENUE AND 5 MONITOR STREET

WHEREAS, the Tax Assessor has determined that the full and true value of the new improvements will generate an additional tax payment of \$31,008 a year upon completion; and

WHEREAS, the applicant has agreed that in the event the Citywide revaluation results in a decrease in the estimated amount of actual taxes otherwise due, then for purposes of calculating a tax payment hereunder and for the five (5) year period, the amount shall be calculated on the higher of the amount estimated hereunder or the actual taxes otherwise due; and

WHEREAS, the application for tax exemption was complete and timely filed; the application was approved by the Tax Assessor and the newly constructed multiple dwelling and commercial space will be eligible for tax exemption pursuant to N.J.S.A. 40A:21-9 and Section 304-12 of the Municipal Code; and

WHEREAS, upon the expiration of the tax exemption, it is estimated that the total assessment will be approximately \$3,227,057 Dollars, that will generate a total tax payment of \$34,991; and

WHEREAS, on August 4, 2011, the Tax Exemption Committee met and voted to recommend the approval of the tax exemption to the Mayor.

**NOW, THEREFORE, BE IT ORDAINED** by the Municipal Council of the City of Jersey City that:

1. The application, attached hereto, for a five (5) year tax exemption for the full and true value of the newly constructed mixed use building with 15 residential units, a commercial/retail space on the ground floor and 15 on-site parking spaces, located in Block 2050, Lot 29 on the City's Tax Map and more commonly known by the street address of 302-306 Communipaw Avenue and 5 Monitor Street, Jersey City, N.J., is hereby approved.

2. The Mayor or Business Administrator is hereby authorized to execute a tax exemption agreement which shall contain at a minimum, the following terms and conditions:

- (a) tax payment on the new improvements shall be:
  - (i) Year 1: the tax year in which the structure will be completed. \$0 taxes;
  - (ii) Year 2: the second tax year, 39% of actual full taxes, estimated to be \$13,647;
  - (iii) Year 3: the third tax year, 59% of actual full taxes, estimated to be \$20,645;
  - (iv) Year 4: the fourth tax year, 79% of actual full taxes, estimated to be \$27,643; and
  - (v) Year 5: the fifth tax year, 80% of actual full taxes, estimated to be \$27,993.

The applicant has agreed that in the event the Citywide revaluation results in a decrease in the amount of actual taxes otherwise due for purposes of calculating a tax payment hereunder; during this five (5) year period, the amount due hereunder shall be calculated on the higher of the amount estimated above or the actual taxes due after the revaluation; and

(b) The project shall be subject to all federal, state and local laws, and regulations on pollution control, worker safety, discrimination in employment, zoning, planning, and building code requirements pursuant to N.J.S.A. 40A:21-11(b).

(c) If, during any tax year prior to the termination of the tax agreement, the property owner ceases to operate or disposes of the property, or fails to meet the conditions for qualifying, then the tax which would have otherwise been payable for each tax year shall become due and payable from the property owner as if no exemption and abatement had been granted. The tax collector shall, within 15 days thereof, notify the owner of the property of the amount of taxes due.

AN ORDINANCE APPROVING A FIVE (5) YEAR TAX EXEMPTION PURSUANT TO THE PROVISIONS OF N.J.S.A. 40A:21-1, ET SEQ., AND SECTION 304-9 OF THE MUNICIPAL CODE FOR PROPERTY DESIGNATED AS BLOCK 2050, LOT 29, ON THE CITY'S TAX MAP AND MORE COMMONLY KNOWN BY THE STREET ADDRESS OF 302-306 COMMUNIPAW AVENUE AND 5 MONITOR STREET

(d) With respect to the disposal of the property, where it is determined that the new owner of the property will continue to use the property pursuant to the conditions which qualified the property, no tax shall be due, the exemption shall continue, and the agreement shall remain in effect.

(e) At the termination of a tax exemption agreement, the new improvements shall be subject to all applicable real property taxes as provided by State law and regulation and local ordinance; but nothing herein shall prohibit a project, at the termination of an agreement, from qualifying for, or receiving the full benefits of, any other tax preferences provided by law.

3. The form of tax exemption agreement is attached hereto as Exhibit B, subject to such modification as the Corporation counsel or Business Administrator deems necessary.

4. The Tax Assessor shall send a copy of the fully executed Financial Agreement will be sent to the Director of the Division of Local Government Services in the Department of Community Affairs within thirty (30) days of execution pursuant to N.J.S.A. 40a:21-11(d).

A. All ordinances and parts of ordinances inconsistent herewith are hereby repealed.

B. This ordinance shall be part of the Jersey City Code as though codified and fully set forth therein. The City Clerk shall have this ordinance codified and incorporated in the official copies of the Jersey City Code.

C. This ordinance shall take effect at the time and in the manner provided by law.

D. The City Clerk and Corporation Counsel be and they are hereby authorized and directed to change any chapter numbers, article numbers and section numbers in the event that the codification of this ordinance reveals that there is a conflict between those numbers and the existing code, in order to avoid confusion and possible accidental repealers of existing provisions.

**NOTE:** All material is new; therefore underlining has been omitted. For purposes of advertising only, new matter is indicated by **bold face** and repealed matter by *italic*.

JM/he  
8/16/11

\_\_\_\_\_  
Ed Toloza, Tax Assessor

APPROVED AS TO LEGAL FORM

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

APPROVED: \_\_\_\_\_

APPROVED: \_\_\_\_\_  
Business Administrator

Certification Required

Not Required

# Ordinance of the City of Jersey City, N.J.

ORDINANCE NO. Ord. 11-111

TITLE: 3.D 8/31/11 4.D SEP 14 2011



An ordinance approving a five (5) year tax exemption pursuant to the provisions of N.J.S.A. 40a:21-1, et seq., and Section 304-9 of the municipal code for property designated as Block 2050, Lt 29, on the City's tax map and more commonly known by the street address of 302-306 Communipaw Avenue and 5 Monitor Street.

RECORD OF COUNCIL VOTE ON INTRODUCTION								AUG 31, 2011 9-0			
COUNCILPERSON	AYE	NAY	N.V.	COUNCILPERSON	AYE	NAY	N.V.	COUNCILPERSON	AYE	NAY	N.V.
SOTTOLANO	✓			GAUGHAN	✓			BRENNAN	✓		
DONNELLY	✓			FULOP	✓			AHMAD	✓		
LOPEZ	✓			RICHARDSON	✓			VELAZQUEZ	✓		

✓ Indicates Vote

N.V.-Not Voting (Abstain)

RECORD OF COUNCIL VOTE TO CLOSE PUBLIC HEARING								SEP 14 2011 8-0			
Councilperson <u>RICHARDSON</u> moved, seconded by Councilperson <u>SOTTOLANO</u> to close PH.											
COUNCILPERSON	AYE	NAY	N.V.	COUNCILPERSON	AYE	NAY	N.V.	COUNCILPERSON	AYE	NAY	N.V.
SOTTOLANO	✓			GAUGHAN	✓			BRENNAN	✓		
DONNELLY	✓			FULOP	✓			AHMAD	✓		
LOPEZ	✓			RICHARDSON	✓			VELAZQUEZ	ABSENT		

✓ Indicates Vote

YVONNE BALCER

N.V.-Not Voting (Abstain)

RECORD OF COUNCIL VOTE ON AMENDMENTS, IF ANY											
Councilperson _____ moved to amend* Ordinance, seconded by Councilperson _____								_____ & adopted			
COUNCILPERSON	AYE	NAY	N.V.	COUNCILPERSON	AYE	NAY	N.V.	COUNCILPERSON	AYE	NAY	N.V.
SOTTOLANO				GAUGHAN				BRENNAN			
DONNELLY				FULOP				AHMAD			
LOPEZ				RICHARDSON				VELAZQUEZ			

✓ Indicates Vote

N.V.-Not Voting (Abstain)

RECORD OF FINAL COUNCIL VOTE								SEP 14 2011 8-0			
COUNCILPERSON	AYE	NAY	N.V.	COUNCILPERSON	AYE	NAY	N.V.	COUNCILPERSON	AYE	NAY	N.V.
SOTTOLANO	✓			GAUGHAN	✓			BRENNAN	✓		
DONNELLY	✓			FULOP	✓			AHMAD	✓		
LOPEZ	✓			RICHARDSON	✓			VELAZQUEZ	ABSENT		

✓ Indicates Vote

N.V.-Not Voting (Abstain)

Adopted on first reading of the Council of Jersey City, N.J. on AUG 31 2011

Adopted on second and final reading after hearing on SEP 14 2011

This is to certify that the foregoing Ordinance was adopted by the Municipal Council at its meeting on SEP 14 2011

Robert Byrne  
Robert Byrne, City Clerk

APPROVED:

Peter M. Brennan  
Peter M. Brennan, Council President

Date: SEP 14 2011

APPROVED:  
Jerramiah T. Healy  
Jerramiah T. Healy, Mayor

Date: SEP 19 2011

Date to Mayor SEP 15 2011

8-16-11

**TAX AGREEMENT**  
**FIVE YEAR/NEW CONSTRUCTION**

**THIS AGREEMENT** made on this \_\_\_\_ day of \_\_\_\_\_, 2011, by and between the **CITY OF JERSEY CITY** [City], a municipal corporation organized under the Laws of the State of New Jersey and having its principal place of business at 280 Grove Street, Jersey City, New Jersey, and, **CAPITAL DEVELOPMENT REALTY GROUP, LLC**, [Applicant], whose principal place of business is 81-83 Vesey Street, Newark, NJ 07105.

**WITNESSETH:**

**WHEREAS**, the Municipal Council has indicated by its intention to utilize the five year tax exemption provisions authorized by Article VIII, Section I, paragraph VI of the NJ State Constitution and the Five Year Exemption Law, N.J.S.A. 40A:21-1 et seq. for improvements and projects by the adoption of Ordinance 05-060, as amended by Ordinance 07-146; and

**WHEREAS**, the Applicant is owner of certain property located at 302-306 Communipaw Avenue and 5 Monitor Street, in the City of Jersey City, County of Hudson and State of New Jersey, designated as Block 2050, Lot 29 on the Tax Assessor's Map, more commonly known by the street address of 302-306 Communipaw Avenue and 5 Monitor Street and more particularly described in the metes and bounds description attached hereto as Exhibit A [Property];

**WHEREAS**, on or about July 27, 2011, the Applicant applied for a five year tax exemption to construct a new mixed use building with 15 residential units, a commercial/retail space on the ground floor and 15 on-site parking spaces [Improvements] pursuant to N.J.S.A. 40A:21-1 et seq and Section 304-12 of the Municipal Code [Law]; and

**WHEREAS**, the City has reviewed the application, approved the construction of the Improvements and authorized the execution of a Tax Exemption Agreement by the adoption of Ordinance \_\_\_\_ on \_\_\_\_.

**NOW, THEREFORE, IN CONSIDERATION** of the mutual promises and covenants hereinafter contained, the parties hereto agree as follows:

**ARTICLE I: APPROVAL OF TAX EXEMPTION**

The City hereby agrees to a tax exemption for the construction of a new mixed use building with 15 residential units, a commercial/retail space on the ground floor and 15 on-site parking spaces [Improvements] on the Property, as further described in the Application, attached hereto as Exhibit B, pursuant to the provisions of N.J.S.A. 40A:21-1 et seq. and Ordinance \_\_\_\_ which authorized the execution of this Tax Agreement [Law], subject to the

terms and conditions hereof.

## **ARTICLE II: IN LIEU OF TAX PAYMENTS**

The Applicant agrees to make payments on the new Improvements, (separate and apart from taxes on the land and existing improvements which shall continue to be subject to conventional assessment and taxation and for which the Applicant shall receive no credit against the in lieu of tax payment) in lieu of full property tax payments according to the following schedule and estimates:

1. For the full calendar year of 2013, no payment in lieu of taxes;
2. For the full calendar year of 2014, thirty-nine (39%) percent of the actual taxes otherwise due, currently estimated to be the sum of \$13,647;
3. For the full calendar year of 2015, fifty-nine (59%) percent of the actual taxes otherwise due, currently estimated to be the sum of \$20,645;
4. For the full calendar year of 2016, seventy-nine (79%) percent of the actual taxes otherwise due, currently estimated to be the sum of \$27,643; and
5. For the full calendar year of 2017 eighty (80%) percent of the actual taxes otherwise due, currently estimated to be the sum of \$27,993.

In the event a City-wide revaluation results in an increase or decrease in the amount of taxes otherwise due, payment shall be the higher of either the taxes estimated above or the amount of actual taxes after the City-wide revaluation.

## **ARTICLE III: APPLICATION FEE**

The Applicant agrees to pay the sum of **\$3,000** to the City on or before the date this Agreement is executed. Failure to make such payment shall cause the tax exemption to terminate.

## **ARTICLES IV: FEDERAL, STATE AND LOCAL LAW**

The construction of the Improvements is subject to all applicable federal, State and local laws and regulations on pollution control, worker safety, discrimination in employment, housing provision, zoning, planning and building code requirements.

## **ARTICLE V: TERM OF EXEMPTION**

The Tax Exemption granted shall be valid and effective for a period of five (5) full calendar years from the date of Substantial Completion of the Project, which shall ordinarily

mean the date on which the City issues, or the Project is eligible to receive, a Certificate of Occupancy, whether temporary or final, for part or the whole of the Project. During the term of the tax exemption, the Applicant shall make an in lieu of tax payment to the City in accordance with the schedule set forth above. Prior to the commencement of the tax exemption, and upon expiration thereof, the Applicant shall pay full conventional taxes on the Improvements.

#### **ARTICLE VI: REVALUE**

The applicant has agreed that in the event the revalue results in a decrease in the amount of actual taxes otherwise due for purposes of calculating a tax payment hereunder and for the five (5) year period, the amount shall be calculated on the higher of the amount estimated hereunder or the actual taxes.

#### **ARTICLE VII: COUNTY EQUALIZATION AND SCHOOL AID**

Pursuant to N.J.S.A. 40A:21-11(c), the percentage, which the payment in lieu of taxes for the tax exempt property bears to the property tax which would have been paid had an exemption not been granted for the property under this Agreement, shall be applied to the valuation of the property to determine the reduced valuation of the property to be included in the valuation of the City for determining equalization for county tax apportionment and school aid, during the term of the tax exemption agreement covering this property. At the expiration or termination of this Agreement, the reduced valuation procedure required under the Law shall no longer apply.

#### **ARTICLE VIII: OPERATION OR DISPOSITION OF PROPERTY**

If during any year prior to the termination of this Agreement, the Applicant ceases to operate or disposes of the Property, or fails to meet the conditions for qualifying for tax exemption under this Agreement or pursuant to Law, then the tax which would have otherwise been payable for each and every year, shall become due and payable from the Applicant as if no exemption had been granted. The Tax Collector shall, within 15 days thereof, notify the owner of the Property of the amount of taxes due.

However, with respect to the disposal of the property, if it is determined that the new owner will continue to use the property pursuant to the conditions which qualify the property for exemption, the tax exemption shall continue and this Agreement shall remain in full force and effect.

#### **ARTICLE IX: TERMINATION/ELIGIBILITY FOR ADDITIONAL TAX EXEMPTION**

Upon the termination of this Agreement for tax exemption, the Project shall be subject to all applicable real property taxes as provided by State Laws and Regulations and City Ordinances. However, nothing herein shall be deemed to prohibit the Project, at the

termination of this Agreement, from qualifying for and receiving the full benefits of any other tax preferences allowed by law. Furthermore, nothing herein shall prohibit the Applicant from exercising any rights under any other tax provisions of State law or City Ordinances.

In the event the owner elects to terminate this tax abatement after the revalue, the owner shall pay the City the difference of 100% of the full amount of the taxes otherwise due from 2011 to the date of termination.

#### **ARTICLE X: PROJECT EMPLOYMENT AGREEMENT**

In order to provide City residents and businesses with employment and other economic opportunities, the Applicant agrees to comply with the terms and conditions of the Project Employment Agreement which is attached hereto as Exhibit C.

#### **ARTICLE XI: NOTICES**

All notices to be given with respect to this Agreement shall be in writing. Each notice shall be sent by registered or certified mail, postage prepaid, return receipt requested, to the party to be notified at the addresses set forth below or at such other address as either party may from time to time designate in writing:

**Notice to City:** Business Administrator  
City Hall, 280 Grove Street  
Jersey City, New Jersey 07302

**Notice to Applicant:** Capital Development Realty Group, LLC  
81-83 Vesey Street  
Newark, NJ 07105

#### **ARTICLE XII: GENERAL PROVISIONS**

This Agreement contains the entire Agreement between the parties and cannot be amended, changed or modified except by written instrument executed by the parties hereto.

In the event that any provisions or term of this Agreement shall be held invalid or unenforceable by an Court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof; provided, however, that the City continues to receive the full benefit of any economic term hereunder.

This Agreement shall be governed by and construed in accordance with the Laws of the State of New Jersey.

This agreement may be executed in several counterparts, each of which shall constitute but one and the same instrument.



APPLICATION FOR EXEMPTION AND/OR ABATEMENT FOR THE IMPROVEMENT, CONVERSION OR CONSTRUCTION OF PROPERTY PURSUANT TO P.L. 1991, C.441 (N.J.S.A. 40A:21-1 et seq.) AND AUTHORIZED BY MUNICIPAL ORDINANCE. (Italicized words are defined in law excerpts on reverse side)

Municipality City of Jersey City County Hudson

This application must be filed with the assessor within 30 days following completion of the improvement, conversion or conversion alteration, or construction.

I. I/we, Jack Pires, Mgr Member: Capital Development Realty Group LLC, residing/having offices at 81-83 Vesey Street (Name of Applicant) (Address)

in the Municipality of City of Newark in the County of Essex

hereby make claim for a tax exemption and/or abatement of taxes, pursuant to P.L.1991, Chapter 441, and the authorizing municipal ordinance, for premises located at 302-306 Communipaw Avenue and 5 Monitor Street which is further described as Block 2050, Lot 29 on the Tax Map of the municipality.

II. COMPLETE THE APPLICABLE SECTION "A" OR "B"

The following statements are made in support of this claim:

- A. The subject property is a one or two family dwelling upon which claimant has completed: New construction; Conversion or conversion alteration of a building or structure into a dwelling; Improvement of an existing dwelling. B. The subject property is a multiple dwelling, commercial or industrial structure: Improvement to a multiple dwelling; Conversion or conversion alteration of building or structure to a multiple dwelling; Improvement to a commercial or industrial building or structure; Construction of multiple dwelling under tax agreement; Construction of commercial or industrial structure under tax agreement.

III. ALL APPLICANTS MUST COMPLETE THIS SECTION

- A. Date of completion of new construction, conversion, or improvement No CO issued, 19. B. Total cost of project \$ 2,879,482.00 [See note]. C. Brief description of the nature and type of construction, conversion, or improvement.

15 residential rental unity (2-low income; 1-mod income and 2-workforce eligible; remainder market rate units), one commercial/retail unit and 15 on-site parking spaces. Currently owned by bank through foreclosure. Under contract.

IV. Prior exemptions and/or abatement granted under P.L.1991, c.441 amount to \$ 0.00;

(State "none" if no prior exemptions have been granted on subject premises.)

Attached hereto is proof of all matters required (Assessor may require copy of ordinance, evidence of governing body's approval of categories of improvements or specific project improvements, and such additional proof as may be required to establish eligibility.)

Attached hereto is a copy of the tax agreement, if applicable, executed between the municipality and claimant. There are no delinquent or unpaid property taxes or penalties for non-payment of taxes due on the property.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Date 7/22/2011

Signature [Handwritten Signature]

Title (if any) Jack Pires, Managing Member

Date [ ] Approved [ ] Disapproved

(Assessor)

This form is prescribed by the Director, Division of Taxation, in the Department of the Treasury, as required by law and may be reproduced for distribution, but no alteration may be made therein without prior approval.

III (B) Note: Includes \$2,650,000.00 purchase price.