

O-22-07  
2/16/22

**ORDINANCE OF THE CITY OF BAYONNE, COUNTY OF HUDSON, NEW JERSEY AUTHORIZING FIVE (5) YEAR TAX EXEMPTION ON THE ASSESSED VALUE OF NEW IMPROVEMENTS ONLY FOR THE NEWLY CONSTRUCTED EIGHTEEN UNIT MULTI-FAMILY BUILDING WITH RESPECT TO THE PARCEL OF LAND LOCATED AT BLOCK 445, LOT 6 (A/K/A 172 AVENUE F) ON THE TAX MAP OF THE CITY OF BAYONNE.**

**WHEREAS**, the City of Bayonne, in the County of Hudson, New Jersey (the "City"), a public body corporate and politic of the State of New Jersey, is authorized pursuant to the Local Redevelopment and Housing Law, *N.J.S.A. 40A:12A-1 et seq.* (the "Redevelopment Law") to determine whether certain parcels of land within the City constitute an area in need of rehabilitation; and

**WHEREAS**, on February 4, 1998 by resolution No. 98-02-04-040 the entire City was designated as an area in need of rehabilitation pursuant to the Redevelopment Law; and

**WHEREAS**, pursuant to the Five Year Exemption and Abatement Law, *N.J.S.A. 40A:21-1 et seq.* (the "Five Year Law") improvements to property located within an area in need of rehabilitation or redevelopment may qualify for short term tax exemptions; and

**WHEREAS**, on May 22, 2013 the Municipal Council adopted Ordinance No. O-13-15 authorizing tax exemptions for the construction of 'multiple dwellings' (as defined in the Hotel and Multiple Dwelling Law, *N.J.S.A. 55:13A-1 et seq.*) in the City as authorized under *N.J.S.A. 40A:21-8* of the Five Year Law; and

**WHEREAS**, **172 Ave F, LLC** is the owner of and has developed a parcel of land located at **BLOCK 445, LOT 6**, (with a property address commonly known as "**172 Avenue F**") which is also known as the "Project Area") on the tax map of the City and constructed thereon certain real estate improvements consisting of a **multi-family** development of **six stories, containing eighteen (18) residential units and a total of 21 parking spaces located in an enclosed garage within the improvement** (the "Project"); and

**WHEREAS**, **172 Ave F, LLC** has submitted an application to the City requesting a tax exemption under the Five Year Law for itself and/or on behalf of the new owners of the **residential units** seeking a 5 year exemption agreement on the improvements; and

**WHEREAS**, the Municipal Council has determined that the authorization of a tax exemption for the aforesaid Project is in the best interests of the City and facilitates the goals of rehabilitation and productive use;

**NOW THEREFORE BE IT ORDAINED**, by the Municipal Council of the City of Bayonne, in the County of Hudson, New Jersey, as follows:

**Section 1.** The aforementioned recitals are incorporated herein as though fully set forth at length.

**Section 2.** The Municipal Council hereby approves an individual tax agreement for the exemption of real estate taxes on the improvements to be made on the parcels set forth above and any future lot(s) created or designated by virtue of the development thereof in the Project Area allowing for a 5 Year exemption on the improvements, but not the land, as provided in the TAX AGREEMENT attached hereto. Each such agreement is intended to apply to the individual parcel involved for the five years following substantial completion of the property provided that the terms of the agreement are met and shall be executed with respect to each such parcel by the owner of that parcel following the effective date of this ordinance. Each such Tax Agreement shall be for no longer than five (5) years and only applicable to the assessed value of the new improvement (building) constructed on that parcel as such value is determined by the City Tax Assessor. Each such Tax Agreement shall also provide that; at all relevant times herein, the land values (land assessment) for the Project will NOT be subject to any Exemption or Abatement and that Land Taxes paid in full throughout any period of exemption on the improvement. If the effective date of this ordinance is subsequent to the date of substantial completion, the exemption shall nonetheless be credited from the first day of the Tax Year following substantial completion provided that the application was timely filed within 30 days of substantial completion and all other terms of the agreement are met. If the date of substantial completion should be prior to the effective date of this ordinance, the Mayor, in consultation with legal counsel to the City, is hereby authorized to execute this Tax Agreement, with such modifications or revisions deemed necessary by the Mayor, and to prepare, amend or execute any other agreements necessary to effectuate the Tax Agreement and this Ordinance.

**Section 3.** Within thirty (30) days of its execution, the City Clerk shall forward a copy of the Tax Agreement to the Director of the Division of Local Government Services in the Department of Community Affairs as prescribed by *N.J.S.A. 40A:21-11(d)*.

**Section 4.** If any part of this Ordinance shall be deemed invalid, such parts shall be severed and the invalidity thereby shall not affect the remaining parts of this Ordinance.

**Section 5.** This Ordinance shall take effect in accordance with all applicable laws.

**Section 6.** This Ordinance shall take effect in accordance with all applicable laws.

# EXHIBIT A

# TAX AGREEMENT

## **TAX AGREEMENT**

**THIS TAX AGREEMENT** (hereinafter “Agreement” or “Tax Agreement”), made this \_\_\_\_ day of \_\_\_\_\_, 2021 by and between CITY OF BAYONNE, a municipal corporation of the State of New Jersey (the “State”) with offices at 630 Avenue C, Bayonne, New Jersey, 07002 (the “City”) and 172 Ave F, LLC, a New Jersey limited liability company with offices at 386 Rt. 59, Suite 200, Airmont, New York 10952, and its respective successors and assigns (the “Redeveloper”).

### **WITNESSETH:**

**WHEREAS**, the Municipal Council of the City (the “Municipal Council”) has adopted an ordinance designating the entire City as an area in need of rehabilitation under the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq. (the “Redevelopment Law”);

**WHEREAS**, pursuant to and in accordance with the provisions of the Five-Year Exemption and Abatement Law, *N.J.S.A. 40A:21-1 et seq.* (the “Tax Exemption Law” and together with the Redevelopment Law, the “Acts”), the City is authorized to provide for a tax exemption and for payments in lieu of taxes in an area in need of rehabilitation; and

**WHEREAS**, on December 10, 2014, the Municipal Council adopted Ordinance 0-14-42 permitting tax exemptions for the construction of multiple dwellings (as such term is defined in the Tax Exemption Law) in the City and authorizing tax agreements for same; and

**WHEREAS**, the Redeveloper has submitted an application to the City for a tax exemption, all in accordance with the Tax Exemption Law, including without limitation *N.J.S.A. 40A:21-9* (the “Exemption Application”, a copy of which is attached hereto as Exhibit A and the Exemption Application was accepted and approved pursuant to Ordinance O-\_\_-\_\_ of the Municipal Council duly adopted on \_\_\_\_\_ (the “Ordinance,” attached hereto as Exhibit B which authorized the execution of a tax agreement with the Redeveloper; and

**WHEREAS**, the City and the Redeveloper have reached agreement with respect to, among other things, the terms and conditions relating to the tax exemption and payments in lieu of taxes and desire to execute a Tax Agreement in the form attached hereto.

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

**SECTION 1.01**      General Definitions

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

Acts Agreement City  
Exemption Application  
Ordinance  
Redeveloper  
Redevelopment Agreement  
Redevelopment Law  
Redevelopment Plan  
Project Area  
State  
Tax Agreement  
Tax Exemption Law

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

Completion Date — Shall mean the earlier of the date on which the project is substantially complete or issued a temporary or permanent certificate or certificates of occupancy allowing use on all of its units. The 5 year exemption period provided by this agreement will not begin until January 1 of the year next following such completion with any completed or partially completed improvements being subject to normal taxation up until that January 1 date following completion of the project.

Certificate of Occupancy - The document issued by the City in accordance with the New Jersey Administrative Code, authorizing the occupancy of a building or structure, or a portion thereof, on the Project Area.

Improvements — Shall mean, individually or collectively, as the case may be, the improvements approved by the City to be constructed on, in or under the Project Area in accordance with the Approved Plans and the Exemption Application.

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

Material Condition — Shall have the meaning applied to such term as set forth in Section 4.4 hereof.

Project — Shall have the meaning ascribed to such term in the Exemption Application.

Project Completion Date - The date on which the City of Bayonne Department of Municipal Services Building Department issued the Certificate of Occupancy: August 9, 2021.

Tax Assessor - The tax assessor for the City

Tax Sale Law— *N.J.S.A. 54:5-1 et seq.*, as the same may be amended and supplemented from time to time.

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

## ARTICLE I

### **SECTION 1.02**      Exhibits Incorporated

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

Schedules

Schedule 1      Metes and bounds description of all real property located within the Project Area

Exhibit A      Exemption Application

Exhibit B      Ordinance Approving this Agreement

## ARTICLE II APPROVAL

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

Pursuant to the Ordinance, the Project Area, including any and all Improvements related thereto, shall be exempt from real property taxation as provided for herein and in the Tax Exemption Law. The Project shall be as described in the Exemption Application and the Redeveloper hereby expressly covenants, warrants and represents that the Project Area, including any Improvements related thereto, shall be used, managed and operated for the purposes set forth in the Exemption Application, the Acts and all applicable law. Prior to January 1, 2021, the Project Area, including any and all Improvements related thereto, shall be assessed and taxed according to the general law applicable to all other non-exempt property located within the City.

### **SECTION 2.02**      City Approval of Project to be Undertaken by the Redeveloper

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

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

The Redeveloper hereby covenants, warrants and represents that it will construct and/or renovate the Project Area in accordance with applicable regulations and the approved site plan.

## ARTICLE III DURATION OF AGREEMENT

### **SECTION 3.01** Term

- (a) It is hereby expressly understood and agreed by the parties that this Agreement, including the obligation to make payments in lieu of taxes required under Article IV hereof and the tax exemption granted and referred to in Section 2.01 hereof, shall, commence on January of the year following the Project Completion Date and shall, provided that there shall not be a default under this Tax Agreement, remain in effect, for a period of five (5) years from the Project Completion Date. Upon the expiration of the tax exemption granted and provided for herein, the Project Area, including any Improvements related thereto, shall thereafter be assessed and taxed according to the general law applicable to all other non-exempt property located within the City.
- (b) Upon the expiration of the tax exemption provided for herein, all restrictions and limitations of this Tax Agreement imposed upon the Redeveloper and the Project Area, including any Improvements related thereto, excluding (i) the requirement to make payment of any payments in lieu of taxes due and owing hereunder, and (ii) any and all related and available remedies of the City, shall terminate.

### **SECTION 3.02** Apportionment

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

### **SECTION 3.03** Termination

- (a) If at any time during the term of this Tax Agreement there shall be a default by the Redeveloper of any or all of the provisions of this Tax Agreement, which default shall not have otherwise been cured or remedied in accordance with the terms hereof or thereof, this Tax Agreement shall automatically terminate and the Project Area, including any Improvements related thereto, shall thereafter be assessed and taxed according to the general law applicable to all other non-exempt property located within the City.
- (b) In accordance with the Tax Exemption Law, including without limitation *N.J.S.A. 40A:21-12*, in the event that the City shall terminate this Tax Exemption Agreement in accordance with the terms hereof, the real property taxes that would have otherwise been due in each Tax Year governed by this Tax Agreement, if not for the tax exemption granted herein, shall become due and payable.



ARTICLE IV ANNUAL SERVICE CHARGE

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

The Redeveloper shall make payments in lieu of taxes commencing on January 1 of the year following the Project Completion Date.

**SECTION 4.02**      Payments in Lieu of Taxes

The Redeveloper shall make payments in lieu of taxes to the City, on a tax phase- in basis, for the improvements completed at the property, beginning January 1st of the Tax Year following the Project Completion Date:

First year at 0% of the Taxes Otherwise Due on the Improvement Value - Land Taxes NOT exempt or abated.

Second Year at 20% of the Taxes Otherwise Due on the Improvement Value - Land Taxes NOT exempt or abated.

Third Year at 40% of the Taxes Otherwise Due on the Improvement Value - Land Taxes NOT exempt or abated.

Fourth Year at 60% of the Taxes Otherwise Due on the Improvement Value - Land Taxes NOT exempt or abated.

Fifth Year at 80% of the Taxes Otherwise Due on the Improvement Value - Land Taxes NOT exempt or abated.

(a) Notwithstanding anything herein, the Redeveloper hereby expressly acknowledges, understands, and agrees that, in addition to the payments in lieu of taxes, it shall be responsible for the payment (without any credit whatsoever hereunder) of all Taxes assessed against the value of the land on which these improvements are located as well as on the value of those improvements prior to January 1 of the first year following the Project Completion Date.

(b) Land Taxes as well as Payment in Lieu of Taxes on Improvements as provided herein shall be due and payable in quarterly installments on those dates when real property taxes are otherwise due and payable.

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

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

**SECTION 4.03**      Municipal Charges

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

**SECTION 4.04**      Material Conditions

It is expressly agreed and understood that all payments of payments in lieu of taxes, land taxes and other municipal charges, and any interest payments, penalties or costs of collection due thereon is a material condition of this Agreement (“Material Conditions”). If any other term, covenant or condition of this Tax Agreement or the Exemption Application, as to any person or circumstance shall, to any extent, be determined to be invalid or unenforceable by virtue of a non-appealable order of a court of competent jurisdiction, the remainder of this Tax Agreement or the application of such term, covenant or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each remaining term, covenant or condition of this Tax Agreement shall be valid and enforced to the fullest extent permitted by law.

ARTICLE V  
CERTIFICATE OF OCCUPANCY AND NO FURTHER ACTION LETTER

**SECTION 5.01**      Filing of Certificate of Occupancy

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

ARTICLE VI  
SALE AND/OR TRANSFER; CHANGE IN USE

**SECTION 6.01**      Sale and/or Transfer

In the event that the Redeveloper shall sell, or otherwise transfer, the Project Area, or any Improvements related thereto, prior to the term of this Tax Agreement, this Tax Agreement shall automatically terminate and the Project Area, including the Improvements, shall be assessed and taxed according to the general law applicable to all other non-exempt property located within the City and Section 3.03 hereof, unless the City shall determine, in its sole discretion, that the new owner of the Project Area, including the Improvements related thereto, shall continue to operate, maintain and utilize the Project Area, including the Improvements related thereto, pursuant to the terms hereof and the conditions which originally qualified the Project Area, including the Improvements related thereto, for the tax exemption granted herein. In the event of such sale and/or transfer of the Project Area, or any Improvements related thereto, and provided that this Tax Agreement shall not otherwise be terminated in accordance with the terms hereof, all of the rights, duties, responsibilities and obligations of the Redeveloper hereunder shall automatically become the rights, duties, responsibility and obligations of the subsequent owner.

**SECTION 6.02**      Change in Use

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

**SECTION 6.03**      Subordination of Fee Title

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

**SECTION 6.04**      Operation of Project

At all times during the term of this Agreement, the Project Area, including any Improvements related thereto, shall be operated in accordance with all applicable laws and shall be subject to all applicable laws and regulations regarding pollution control, worker safety, discrimination in employment, housing provision, zoning, planning and building code requirements.

ARTICLE VII  
WAIVER

**SECTION 7.01**      Waiver

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

ARTICLE VIII  
NOTICE

**SECTION 8.01**      Notice

Any notice required hereunder to be sent by any party to another party shall be sent to all other parties hereto simultaneously by certified or registered mail, return receipt requested, hand delivery, or reputable overnight delivery service for next business day delivery, as follows:

- (a) When sent to the Redeveloper:

172 Ave F, LLC  
386 Rt. 59, Suite 200  
Airmont, New York 10952  
Attn: Steven Gelbtuch

with copy to:

Cecilia I. Lassiter, Esq.  
Sills Cummis & Gross, P.C.  
One Riverfront Plaza  
Newark, New Jersey 07102

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

- (c) When sent to the City:

City of Bayonne  
630 Avenue C  
Bayonne, NJ 07002  
Attn: Business Administrator

with copy to:

Office of the City Attorney  
630 Avenue C  
Bayonne, NJ 07002  
Attn: John F. Coffey II, Esq.

ARTICLE IX  
COMPLIANCE

**SECTION 9.01**      Statutes and Ordinances

The Redeveloper hereby expressly agrees at all times prior to the expiration or other termination of this Tax Agreement to remain bound by the provisions of all federal and State law, including without limitation, the Acts and any lawful ordinances and resolutions of the City. The Redeveloper's failure to comply with such statutes, ordinances or resolutions shall constitute a violation and breach of this Tax Agreement.

ARTICLE X  
CONSTRUCTION

**SECTION 10.01**     Construction

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



ARTICLE XI  
INDEMNIFICATION

**SECTION 11.01**      Indemnification

(a) It is hereby expressly acknowledged, understood and agreed that in the event the City shall be named as party defendant in any action by reason of any breach, default or a violation of any of the provisions of this Tax Agreement and/or the provisions of the Acts by the Redeveloper, or any challenge to the validity of this Tax Agreement, the Redeveloper shall indemnify and hold the City harmless from and against all liability, losses, damages, demands, costs, claims, actions or expenses (including attorneys' fees and expenses) of every kind, character and nature arising out of or resulting from the action or inaction of the Redeveloper and/or by reason of any breach, default or a violation of any of the provisions of this Tax Agreement, the provisions of the Acts, and/or any Federal or State law and/or any challenge to the validity of this Tax Agreement.

(b) In the event the Redeveloper alone is named a party defendant to any action of the type set forth in subsection (a) above, the City maintains the right to intervene as a party thereto, to which intervention the Redeveloper hereby expressly consents, and to carry out their own defense, the reasonable cost of which shall be borne by the Redeveloper.

## ARTICLE XII DEFAULT

### **SECTION 12.01**      Default

A default hereunder shall be deemed to have occurred if the Redeveloper fails to conform to the terms of this Tax Agreement, or fails to perform any obligation imposed upon the Redeveloper by statute, ordinance or lawful regulation, it being hereby expressly acknowledged and understood by the parties hereto that in the event of a default by the Redeveloper which default shall not otherwise be cured or remedied in accordance with the terms of this Tax Agreement, as applicable, the tax exemption granted herein shall immediately cease and shall have no further force and effect and the Project Area and the Improvements related thereto shall thereafter be assessed and taxed according to the general law applicable to all other non-exempt property located within the City and Section 3.03 hereof.

### **SECTION 12.02**      Cure Upon Default

Should the Redeveloper be in default of any obligation under this Tax Agreement, the City shall notify the Redeveloper in writing of said default. Said notice shall set forth with particularity the basis of said default. Except as otherwise limited by law, the Redeveloper shall have ninety (90) days to cure any default (other than a default in payment of any installment of the payments in lieu of taxes in which case there shall be no cure period). In the case of a default which cannot with diligence be remedied or cured, or the remedy or cure of which cannot be commenced, within the time periods set forth herein, the Redeveloper shall have such additional time as reasonably necessary to remedy or cure such default provided that the Redeveloper shall at all times be acting with diligence, and in good faith, to remedy or cure such default as soon as practicable. Upon such default and cure period, the City shall have the right to proceed against the Project Area, including any Improvements related thereto, pursuant to any and all applicable provisions of law.

### **SECTION 12.03**      Remedies

In the event of a default of this Tax Agreement by any of the parties hereto or a dispute arising between the parties in reference to the terms and provisions as set forth herein, other than those items specifically included as Material Conditions herein, any party may apply to the Superior Court of New Jersey by an appropriate proceeding, to settle and resolve said dispute in such fashion as will tend to accomplish the purposes of the Acts. In the event the Superior Court shall not entertain jurisdiction or, in the event of a breach of Material Condition, then the parties shall submit the dispute to the American Arbitration Association in New Jersey to be determined in accordance with its rules and regulations in such a fashion to accomplish the purpose of said laws. Costs for said arbitration shall be paid by the non-prevailing party. In the event of a default on the part of the Redeveloper to pay any installment of the payments in lieu of taxes required by Article IV hereof, the City, in addition to its other remedies, specifically and without limitation, reserves the right to proceed against the Project Area, including any Improvements related thereto, in the manner provided by law, including without limitation, the Tax Sale Law, and any act supplementary or amendatory thereof. Whenever the word "Taxes" appears, or is applied, directly or implied, to mean taxes or municipal liens on land, such statutory provisions shall be read, as far as it is pertinent to this Tax Agreement, as if the payments in lieu of taxes were taxes or municipal liens on land. In either case, however, the Redeveloper does not waive any defense it may have to contest the rights of the City to proceed in the above-mentioned manner.

**SECTION 12.04 Remedies Upon Default Cumulative: No Waiver**

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

## ARTICLE XIII MISCELLANEOUS

### **SECTION 13.01**     Conflict

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

### **SECTION 13.02**     Oral Representations

There have been no oral representations made by any of the parties hereto which are not contained in this Tax Agreement. This Tax Agreement, the Ordinance, and the Exemption Application constitute the entire agreement between the parties and there shall be no modifications thereto other than by a written instrument executed by the parties hereto and delivered to each of them. Notwithstanding anything contained herein to the contrary, no waiver of any rights granted hereunder and no modification or amendment to this Tax Agreement shall be effective, or otherwise have any force and effect without the express written consent of the parties hereto.

### **SECTION 13.03**     Redeveloper's Consent

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

### **SECTION 13.04**     Filing with Local Government Services

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

### **SECTION 13.05**     Recording

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

**SECTION 13.06**      Deliver to Tax Assessor

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

**SECTION 13.07**      Amendments

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

**SECTION 13.08**      Good Faith

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

**SECTION 13.09**      Entire Document

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

**SECTION 13.10**      Counterparts

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

[The Remainder of this page is intentionally left blank — signature page to follow]

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

ATTEST:

172 Ave F, LLC, a \_\_\_\_\_  
Limited Liability Company

\_\_\_\_\_

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

ATTEST:

CITY OF BAYONNE

\_\_\_\_\_  
By: **Robert F. Sloan, Esq., City Clerk**

\_\_\_\_\_  
By: **James M. Davis, Mayor**

STATE OF NEW JERSEY :  
COUNTY OF HUDSON :

The foregoing instrument was acknowledged before me this \_\_\_ day  
of \_\_\_\_\_, 2021, by the City of Bayonne (the “City”), a municipal corporation of  
the State of New Jersey, by James M. Davis, its Mayor, on behalf of the City.

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Attorney-at-Law  
State of New Jersey

STATE OF NEW JERSEY :  
COUNTY OF HUDSON :

I CERTIFY that on \_\_\_\_\_, 2018 \_\_\_\_\_ personally came before me and stated under oath to my satisfaction that this person (or if more than one, each person):

- (a) was the maker of the attached instrument;
- (b) was authorized to and did execute this instrument as \_\_\_\_\_ of 172 Ave F, LLC, the entity named in this instrument; and,
- (c) executed this instrument as the act of the entity named in this instrument.

\_\_\_\_\_  
Attorney-at-Law  
State of New Jersey



SCHEDULE 1

Metes and Bounds Description  
Of Project Area

EXHIBIT A  
Exemption Application



RIDER FOR APPLICATION OF 172 AVE F, LLC FOR A 5-YEAR TAX EXEMPTION  
/ ABATEMENT

Applicant: 172 Ave F, LLC  
386 Rt. 59, Suite 200  
Airmont, New York 10952

Property: 172 Avenue F  
Block 445, Lot 6  
Bayonne, New Jersey

Project: 172 Avenue F Multi-Family Project

Applicant's Architect: DAL Design Group  
11 West 8<sup>th</sup> Street  
Bayonne, New Jersey 07002

Applicant's Attorney: Cecilia Lassiter, Esq.  
Sills Cummis & Gross, P.C.  
One Riverfront Plaza  
Newark, New Jersey 07102  
(973) 643-5590

LIST OF EXHIBITS:

A. Description of Property

B. Rental Analysis

C. Tax Abatement Analysis

D. Site Plan

E. Estimated Construction Costs

F. Income and Expense Statement

G. Disclosure Statement



1. Identification of the Property:

The land upon which the Project is located is designated as Block 445, Lot 6 on the Tax Map of the City of Bayonne, more commonly known as 175 Avenue F (the “Property”). All of the improvements that will be the subject of this tax abatement application will be maintained/landscaped in accordance with applicable requirements

The metes and bounds descriptions of the Property are attached hereto as Exhibit A and set forth on the site plan attached as Exhibit D.

2. Type of Project:

This project consist of an eighteen (18) unit multi-family improvement with eleven (11) two-bedroom units and seven (7) one-bedroom units with twenty-one (21) garage parking spaces (the “Project”).

The number, size, and anticipated rents are set forth in Exhibit B (income from tenant parking spaces are included in these numbers).

3. Type of Exemption/Abatement Requested:

Pursuant to N.J.S.A. 40A:21-1 et seq. and Section 10-1 et seq. of the City of Bayonne Ordinance, the Applicant seeks a five-year tax abatement to be implemented on a phased basis (and to be set forth in a Financial Agreement with the City), such abatement to commence on the first day of the first year following the Project Completion Date and ending on the date that is one day prior to the fifth anniversary of the tax exemption commencement date. Based upon the computations set forth in Exhibit C, the Project will generate estimated tax payments on the proposed improvements as follows:

Year	Tax Payment
Year 1	--
Year 2	\$28,236.80
Year 3	\$57,603.07
Year 4	\$88,132.70
Year 5	\$119,860.47
After abatement expiration	\$152,822.10

The estimated land taxes for the Property are approximately \$21,535.31.

4. Description of the Project:

The Applicant obtained approval from the City of Bayonne Planning Board to construct a six story building consisting of eighteen (18) multi-family units with eleven (11) two-bedroom units and seven (7) one-bedroom units and twenty-one (21) parking spaces to be located in an enclosed garage with mechanical lifts. In the addition, the improvement has amenities

including a gym and usable space on a roof terrace. The Applicant will construct and maintain ownership interest in the Project.

For more detailed information regarding the Project, see Exhibit D

5. Estimated Costs:

The Project's estimated construction costs are \$5,700,000, estimated costs for permits, connection and other fees are \$200,000.00 and other estimated soft costs are \$700,000.00. Additionally, architectural, engineering, surveying, and construction manager fees will be approximately \$480,000.00.

A breakdown of estimated construction costs is set forth in Exhibit E.

6. Financial Structure: Construction Mortgage of \$3,500,000.00 and private equity of \$3,500,000.00

7. Annual Gross Revenue and Expenses:

The Project Income and Expense Statement is attached hereto as Exhibit F.

8. Construction Schedule:

The construction of the Project commenced on or about June, 2018, framing commenced on or about June, 2019. The electrical and plumbing improvements were completed on or around June, 2020, and painting commenced on or about May, 2021. The Project construction was completed on August 9, 2021.

9. Estimated Jobs to be Created:

The Applicant affirms that the Project generated approximately 12 full time equivalent construction jobs during the term of construction. Additionally, the Project could generate employment opportunities for local service contractors for maintenance of the Project after construction.

10. Compliance with the City Zoning Ordinance:

The Applicant certifies that the Project meets the requirements of the City Zoning Ordinance, as approved by Planning Board Resolution P-16-016 (adopted on June 14, 2016), which granted preliminary and final major site plan and bulk variance approval, and was amended from a nineteen (19) bedroom unit improvement to an eighteen (18) bedroom unit improvement with the 19<sup>th</sup> unit being used as fitness center.

11. Disclosure Statement:

A Disclosure Statement listing the names and address of the members of the Applicant is attached hereto as part of Exhibit G.



## 12. Reasons for Approval/Benefits to the City:

Despite its desirable location, the Property remained unproductive for years. Although the Applicant obtained approval from the City of Bayonne Planning Board, the financing of the Project is still difficult, if not impossible, without real property tax relief. The high cost of the Project resulting in the high improvement value of the Project cause full traditional property taxes to overwhelm the economics of the Project before the revenues of the Project can stabilize. Without the abatement, the Project could not be fully realized.

The Project has resulted in the addition of temporary construction jobs, which were available to local residents. The Project will generate an estimated \$152,822.10 in additional revenue to the City annually beginning five years after the Project Completion Date. Further, the City will begin to realize 20% of such revenue following one year after the Project Completion Date, ramping up to 40%, 60%, and 80% each year thereafter before converting to full property taxes following the fifth year.

EXHIBIT A

(Application)

172 Ave F, LLC

Description of the Property

Address:

172 Ave F, City of Bayonne, New Jersey

Block 445, Lot 6

Metes and bounds description of property is attached hereto and set forth in Exhibit D.

EXHIBIT B  
(Application)  
172 Ave F, LLC  
RENTAL ANALYSIS

Unit Breakdown

Residential

Number	Bedroom Units	Rent Per Month Per Apartment	Total Monthly Rent
7	1-Bedroom Units	\$2,000.00	\$168,000.00
11	2-Bedroom Units	\$2,400.00	\$316,800.00
			\$484,800.00

EXHIBIT C  
(Application)  
172 Ave F, LLC  
TAX ABATEMENT ANALYSIS

EXHIBIT D  
(Application)  
172 Ave F, LLC  
SITE PLAN

EXHIBIT E  
(Application)

172 Ave F, LLC  
ESTIMATED CONSTRUCTION COSTS

1. Hard construction cost = \$5,700,000.00
2. Permits/connections/fees = \$ 200,000.00
3. Soft costs = \$ 700,000.00
4. AE and CM = \$480,000.00

EXHIBIT F  
(Application)

172 Ave F, LLC  
INCOME AND EXPENSE STATEMENT

Number of Floors	# of Units	Land Description	Block/Lot
6	18 residential	5,400 SF	445/6

EXHIBIT G  
172 Ave F, LLC  
DISCLOSURE STATEMENT

NAME OF ENTITY: 172 Ave F, LLC



THE FOLLOWING LIST REPRESENTS THE NAMES OF ALL MEMBERS OWNING A 10% OR GREATER INTEREST IN THE ABOVE ENTITY.

Steven Gelbtuch- 6 Salem Court, Spring Valley, NY 10977

Naftali Amsel- 1 Green Hill Lane, Spring Valley, NY 10977

Exhibit B  
(Tax Agreement)

ORDINANCE OF THE CITY OF BAYONNE, COUNTY OF HUDSON, NEW JERSEY  
AUTHORIZING THE EXECUTION OF A TAX AGREEMENT