

O-16-52
08/24/16

ORDINANCE OF THE CITY OF BAYONNE, COUNTY OF HUDSON, NEW JERSEY APPROVING A FINANCIAL AGREEMENT WITH BAYONNE ENERGY CENTER URBAN RENEWAL, LLC

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 (the “**State**”), 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/or an area in need of redevelopment; and

WHEREAS, the Municipal Council of the City (the “**Municipal Council**”) identified certain properties in the City, designated as Block 482, Lots 10 and 11 on the City’s Tax Maps (the “**Study Area**”), to be considered for designation as a non-condemnation “area in need of redevelopment” under the Redevelopment Law; and

WHEREAS, by Resolution No. 16-02-17 adopted on February 17, 2016, the Municipal Council authorized and directed the Planning Board to conduct a preliminary investigation to determine whether the Study Area constitutes a non-condemnation “area in need of redevelopment” according to the criteria set forth in *N.J.S.A. 40A:12A-5*; and

WHEREAS, Suzanne T. Mack, P.P., AICP, then City Planner of the City of Bayonne, Division of Planning & Zoning, and Peter Van den Kooy, P.P., AICP, of Matrix New World Engineering, P.C. prepared a written report, which included the Property, entitled “Area in Need of Redevelopment Study Block 482, Lots 10 and 11, City of Bayonne, New Jersey” dated February 22, 2016; and

WHEREAS, on March 15, 2016, the Planning Board held a public hearing, duly noticed under the Redevelopment Law, and any persons interested in or affected by a determination that the Property is a non-condemnation area in need of redevelopment were given an opportunity to be heard, and any objections to such a determination and evidence in support of those objections, were received and considered and made part of the public record; and

WHEREAS, by Resolution 16-06-16-064 adopted on March 16, 2016, the Municipal Council adopted a Resolution formally designating the Property as a non-condemnation “area in need of redevelopment” (the “**Redevelopment Area**”); and directing the Planning Board to prepare and review a Redevelopment Plan, and transmit its recommendations relating to the Redevelopment Plan to the Municipal Council in accordance with the provisions of *N.J.S.A. 40A:12A-7* of the Redevelopment Law; and

WHEREAS, the Redevelopment Area includes certain properties located at Constable Hook (A/K/A New Hook Road), which properties are identified as Block 482, Lots 10, and 11, on the official Tax Map of the City (the “**Property**”); and

WHEREAS, the City of Bayonne, Division of Planning and Zoning, Department of Municipal Services, prepared a redevelopment plan entitled the “Redevelopment Plan For Block 482, Lots 10 and 11, City of Bayonne, Hudson County, New Jersey” dated March 29, 2016, (the “**Redevelopment Plan**”) for the Municipal Council’s consideration; and

WHEREAS, on April 12, 2016 the Planning Board reviewed the Redevelopment Plan and adopted a Resolution, which recommended the adoption of the Redevelopment Plan to the Municipal Council and concluded that said Plan is consistent with the Master Plan of the City of Bayonne (the “**Resolution**”); and

WHEREAS, on May 18, 2016, the Municipal Council adopted Ordinance #0-16-25 adopting a Redevelopment Plan for the Property; and

WHEREAS, BAYONNE ENERGY CENTER URBAN RENEWAL, LLC proposes to install and operate an approximately 130-megawatt electric power generating plant (the “**Project**”) on the property consistent with the Redevelopment Plan; and

WHEREAS, BAYONNE ENERGY CENTER URBAN RENEWAL, LLC has applied to the City Council for tax exemption pursuant to the New Jersey Long Term Tax Exemption Law, N.J.S.A. 40A:20-1 et. seq. (the “**Exemption Law**”) with respect to the Project; and

WHEREAS, the City Council finds that the requested tax exemptions will benefit the City and its inhabitants by furthering the redevelopment of the property which had remained vacant for many years, and that the benefits would substantially outweigh the costs, if any, associated with the tax exemptions; and

WHEREAS, the City Council further finds that the requested tax exemptions are important to the City and that without the incentive of the tax exemptions, it is unlikely that the Project will be undertaken; and

WHEREAS, as part of its application for a tax exemption, BAYONNE ENERGY CENTER URBAN RENEWAL, LLC has submitted a form of Financial Agreement (the “**Financial Agreement**”) providing for payments in lieu of taxes, a copy of which is attached to this Ordinance; and

WHEREAS, BAYONNE ENERGY CENTER URBAN RENEWAL, LLC has presented to this body certain financial information, copies of which are attached as exhibits to this Ordinance; and

WHEREAS, the City Council deems it to be in the best interest of the City to pass an Ordinance authorizing the City to enter into the proposed Financial Agreement with BAYONNE ENERGY CENTER URBAN RENEWAL, LLC on the terms and conditions stated in the applicable form of Financial Agreement attached to this Ordinance.

NOW THEREFORE, be it Ordained that the City Council of the City of Bayonne does hereby adopt the tax exemptions for BAYONNE ENERGY CENTER URBAN RENEWAL, LLC as follows:

Section 1. The development of the Project is hereby approved for the

grant of a tax exemption under the Exemption Law by virtue of, pursuant to, and in conformity with the provisions of the Exemption Law.

Section 2. The Mayor is hereby authorized to execute the Financial Agreement with BAYONNE ENERGY CENTER URBAN RENEWAL, LLC in substantially the form attached hereto and subject to any further review, analysis or modifications that counsel may deem appropriate.

Section 3. During the term of the tax exemption with respect to BAYONNE ENERGY CENTER URBAN RENEWAL, LLC there shall be paid to the City in lieu of any taxes to be paid on the improvements of the Project, an annual service charge determined as provided in the Financial Agreement.

Section 4. Counsel is authorized to prepare, and the Mayor is hereby authorized to execute, any additional documents that may be necessary to implement and carry out the intent of the Financial Agreement.

FINANCIAL AGREEMENT
BETWEEN
BAYONNE ENERGY CENTER URBAN RENEWAL II, LLC
AND
THE CITY OF BAYONNE

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THIS FINANCIAL AGREEMENT ("Agreement") made this ____ day of _____, 2016 (“**Effective Date**”), by and between **BAYONNE ENERGY CENTER URBAN RENEWAL II, LLC**, an urban renewal entity 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.* (the “**LTTE Law**”), having its principal offices at 125 West 55th Street, New York, New York 10019 (as further defined in Section 1.2 herein, the “**Entity**”), and the **CITY OF BAYONNE**, a municipal corporation in the County of Hudson and the State of New Jersey, having its principal office at the Municipal Building, 630 Avenue C, Bayonne, New Jersey 07002 (the “**City**” and, as with the Entity, a “**Party**” hereinafter both being referred to as “**Party/Parties**”).

WITNESSETH:

WHEREAS, Block 482, Lots 10 and 11, as identified on the tax maps of the City (as further defined in Section 1.2 herein, the “**Project Site**”) has been included in the Block 482 Lots 10 and 11 redevelopment area; and

WHEREAS, pursuant to the Local Redevelopment and Housing Law, *N.J.S.A. 40A:12A-1 et seq.*, improvements to property located within a redevelopment area may qualify for long term tax exemptions under the LTTE Law; and

WHEREAS, the City Council has adopted a redevelopment plan for the revitalization and redevelopment of the Project Site, a copy of which redevelopment plan is attached hereto as Exhibit A (the “**Redevelopment Plan**”); and

WHEREAS, the owner of the Project Site has ground leased the Property to Ground Lessee,

WHEREAS, the Entity has leased the Project Site from the Ground Lessee and will construct, or cause to be constructed thereon, the Improvements (as defined in Section 1.2 of this Agreement) (the leasing of the Project Site and the construction and maintenance of the Project Improvement are defined herein as the “**Project**”); and

WHEREAS, the Entity will sublet the Project Site and the Project Improvements to the Operating Company (as defined in Section 1.2 of this Agreement), which will install and operate an approximately 130-megawatt electric power generating plant (the “**Generating Facility**”); and

WHEREAS, it is the intent of the Entity and the City that the calculations and determinations to be made under this Agreement with respect to any Net Profit (as defined in Section 1.2 herein) shall be based solely on, and with reference to, the Gross Revenues (as defined in Section 1.2 herein), excluding the revenues of the Operating Company (as defined in Section 1.2 herein), and any other entity, whether affiliated or unaffiliated with the Entity that is not organized as an urban renewal entity pursuant to the LTTE Law; and

WHEREAS, the Project will conform to all applicable municipal zoning ordinances as amended by the Redevelopment Plan and will be in conformance with the master plan of the City; and

WHEREAS, the Entity filed the application attached hereto as Exhibit B (the “**Application**”) seeking approval of an urban renewal project and this Agreement; and

WHEREAS, the City has made the following findings:

1. The Project Site is currently not developed to its maximum potential. The annual real estate taxes currently generated by the undeveloped Project Site are approximately Seventy-Six Thousand Seven Hundred Forty Dollars and Zero Cents (\$76,740.00). In contrast, the estimated Annual Service Charge (as defined in Section 1.2 herein), to be generated by the Project, beginning in its first full year of operation, is \$456,000.00 (estimated). Upon expiration of the exemption, the Project Improvements will be fully assessed and conventionally taxed.

2. In light of market conditions and other factors currently impacting investment risk, it is not financially feasible to undertake the development of the Project in the absence of the tax exemption provided by this Agreement;

3. The Project will result in the creation of 150 construction jobs and, upon completion and full operation, approximately 3 permanent jobs; and

4. The Project is consistent with the Redevelopment Plan, will further its objectives, and will contribute to the economic growth of the City in general.

WHEREAS, by Resolution #XXX, adopted on XX, 2016, a copy of which is attached hereto as Exhibit C (the “**Resolution**”), the City Council approved the Application and by Ordinance #XXX, adopted on XXX, 2016, a copy of which is attached hereto as Exhibit D (the “**Ordinance**”), the City Council 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

1.1 Governing Law.

This Agreement shall be governed by the provisions of (a) the Long Term Tax Exemption Law, the Local Redevelopment and Housing Law, (b) the Ordinance, and (c) all other Applicable Laws. It is expressly understood and agreed that the City expressly relies upon the facts, data, and representations contained in the Application in granting this tax exemption.

1.2 General Definitions.

The following terms shall have the meanings assigned to such term in the preambles hereof:

Agreement

Application
City
Entity
Effective Date
Generating Facility
Local Redevelopment and Housing Law
Long Term Tax Exemption Law
Ordinance
Party/Parties
Project Site
Redeveloper
Redevelopment Agreement
Redevelopment Area
Redevelopment Plan

1.3 Defined Terms.

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

Administrative Fee – The annual fee paid to the City by the Entity, as set forth in Section 4 of the Agreement.

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

Allowable Profit Rate - The greater of (a) twelve percent (12%) or (b) the percentage per annum arrived at by adding one and one-quarter percent (1¼%) 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 the greater of (x) twelve percent (12%) or (y) the percentage per annum arrived at by adding one and one-quarter percent (1¼%) to the interest rate per annum that the City determines to be the prevailing rate of mortgage financing on comparable improvements in the county. The provisions of N.J.S.A. 40A:20-3(b) are incorporated herein by reference.

Annual Gross Revenue – Pursuant to N.J.S.A. 40A:20-3(a), the annual gross revenue shall be calculated as one hundred percent (100%) of the rental charges generated from the Project.

Annual Service Charge - The amount the Entity has agreed to pay the City, or its designee, pursuant to Article IV for municipal services supplied to the Project, which sum, after appropriate credit for Land Taxes, is in lieu of any taxes on the Improvements to the property, which amount shall be prorated in the year in which the Annual Service Charge begins and the year in which the Annual Service Charge terminates.

Annual Service Charge Start Date – The Annual Service Charge Start Date shall be the earlier of the first day of the month following the date of completion as defined herein or the first day of the month following substantial completion of the project for its intended purpose.

Applicable Law – All federal, State and local laws, ordinances, approvals, rules, regulations and requirements applicable thereto including, but not limited to, the Local Redevelopment and Housing Law, the Long Term Tax Exemption Law, as applicable, relevant construction codes including construction codes governing access for persons with disabilities, and such zoning, sanitary, pollution and other environmental safety ordinances, laws and such rules and regulations thereunder, including all applicable environmental laws, applicable federal and State labor standards and all applicable laws or regulations with respect to the payment of prevailing wages.

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 as provided in N.J.S.A. 40A:20-3(c). The contents of the Auditor's Report shall have been prepared in conformity with generally accepted accounting principles. 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.

Base Annual Service Charge – Three Hundred Fifty Thousand Dollars (\$350,000). This is the minimum annual service charge to be paid following the Annual Service Charge Start Date (substantial completion of the project) and is provided as a floor against unexpected changes in or arguments concerning project costs. The parties agree that project costs attributable to real property are estimated at \$22,800,000 (Twenty to Million Eight Hundred Thousand Dollars) but, in avoidance of doubt, agree that if final costs attributable to real property prove to be less than that amount the Annual Service Charge following the Annual Service Charge Start Date (substantial completion of the project) shall not be less than \$350,000.

County – The County of Hudson.

Date of Completion – the sooner of the date the Entity notifies the City that the Project Improvements are substantially complete or the date it is determined by the Building Department that the improvements are either complete for use or actually in use for their intended purpose.

Debt Service - the amount required to make annual payments of principal and interest or the equivalent thereof on any construction mortgage, permanent mortgage or other financing including returns on institutional equity financing and market rate related party debt for a project for a period equal to the term of the tax exemption granted by this Agreement.

Default - A breach or the failure of either Party to perform any obligation imposed upon such Party by the terms of this Agreement, or under Applicable Law, beyond any applicable grace or cure periods after written notice of such failure.

Default Notice – As defined in Section 14.2.

Financial Plan – The financial plan attached to the Exemption (PILOT) Application.

Improvements - Any building, structure or fixture permanently affixed to the Land and to be constructed and exempt under this Agreement.

In Rem Tax Foreclosure - A summary proceeding by which the City may enforce the lien for taxes due and owing by a tax sale in accordance with the provisions of N.J.S.A. 54:5-1 et seq.

In Rem Tax Foreclosure Act – N.J.S.A. 54:5-104.29 et seq., as the same may be amended or supplemented from time to time.

Land – The real property, but NOT the Improvements, known as Block 482, Lots 10 and 11 on the tax maps of the City of Bayonne, New Jersey, and more particularly described by the metes and bounds description set forth in *Exhibit G* of this Agreement.

Land Taxes - The amount of taxes assessed on the value of the Land, in the event it is determined that the Land is not exempt, exclusive of the value of any Improvements related thereto, in accordance with Applicable Laws.

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.

Material Conditions – As defined in Section 4.7 of this Agreement.

Minimum Annual Service Charge – The amount of the total taxes levied against the Property (Land and Improvements) in the last full year prior to this Agreement which is estimated at \$76,740 and subject to verification as of the effective date. Notwithstanding any provision of the Agreement to the contrary, the Annual Service Charge shall never be reduced below the Minimum Annual Service Charge through any tax appeal on the Land or Improvements, or both, or any other legal proceeding regarding the Project during the period that this Agreement is in force and effect. Further, following the Annual Service Charge Start Date the Minimum Annual Service Charge shall be Equal to the higher of the Base Annual Service Charge (\$350,000) or the Annual Service Charge as calculated in Article IV below.

Net Profit – The Annual Gross Revenue of the Entity pertaining to the Property, 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), which includes, but is not limited to, the Debt Service and an annual amount sufficient to amortize (utilizing the straight line method-equal annual amounts) the Total Project Cost over the term of the exemption granted pursuant to this Agreement as well as all other expenses permitted under the provisions of N.J.S.A. 40A:20-3(c).

Partial Assessment – Assessment upon a partially completed improvement, that is, an improvement that is partially constructed as of October 1 of the pre-tax year and has not at that time received a temporary or permanent certificate of occupancy allowing the start of the

exemption period and the Annual Service Charge under this Agreement. It is understood and agreed, that prior to the annual service charge start date, all such partially completed improvement shall not be exempt and shall be subject to ad valorem taxation in addition to the land taxes. Following the Annual Service Charge Start Date completed improvements shall be exempt and the entity shall (in addition to the land tax credit) be entitled to a credit against the following years annual service change for the taxes actual paid on any partial improvements in the year preceding the annual service charge start date.

Site Plan – The approved site plan referenced in the resolution of the Bayonne Planning Board dated November 9, 2015 and memorialized in Resolution P-15-022.

State – The State of New Jersey.

Tax Assessor – The City tax assessor.

Tax Collector – The City tax collector.

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

Termination – Expiration of the term of this Agreement in accordance with Section 3.01 or any action or omission which by operation of the terms of this Agreement shall cause the Entity to relinquish or forfeit the tax exemption granted pursuant to this Agreement.

Total Project Cost – The total cost of construction and/or rehabilitation of the Project through the Date of Completion, which categories of cost are as defined in N.J.S.A. 40A:20-3(h) and Exhibit H. There shall be included in Total Project Cost the actual costs incurred to construct the Improvements which are specifically described in the Application.

Unavoidable Delay - Delay caused by governmental action, or lack thereof; shortages or unavailability of materials; labor disputes (including, but not limited to, strikes, slow downs, job actions, picketing or secondary boycotts); fire, explosion or other casualty; delays in transportation; delays due to adverse weather conditions, acts of God; directives or requests by any governmental entity, authority, agency or department; any court or administrative orders or regulations; acts of declared or undeclared war, warlike conditions in this or any foreign country, acts of terrorism, public disorder, riot or civil commotion.

1.4 Interpretation and Construction.

In this Agreement, unless the context otherwise requires:

The terms “hereby”, “hereof”, “hereto”, “herein”, “hereunder” and any similar terms, as used in this Agreement, refer to this Agreement, and the term “hereafter” means after, and the term “heretofore” means before the date of delivery of this Agreement.

Words importing a particular gender mean and include correlative words of every other gender and words importing the singular number mean and include the plural number and vice versa.

Words importing persons mean and include firms, associations, partnerships (including limited partnerships), trusts, corporations, limited liability companies and other legal entities, including public or governmental bodies, as well as natural persons.

Any headings preceding the texts of the several Articles and Sections of this Agreement, and any table of contents or marginal notes appended to copies hereof, shall be solely for convenience of reference and shall not constitute a part of this Agreement, nor shall they affect its meaning, construction or effect.

Unless otherwise indicated, all approvals, consents and acceptances required to be given or made by any person or Party hereunder shall not be unreasonably withheld, conditioned, or delayed.

All notices to be given hereunder and responses thereto shall be given, unless a certain number of days is specified, within a reasonable time, which shall not be less than ten (10) days nor more than twenty (20) days, unless the context dictates otherwise.

All exhibits referred to in this Agreement and attached hereto are incorporated into this Agreement and made a part hereof by reference, provided however, in the event of a conflict between the language and/or provisions of a referenced exhibit and the language and/or provisions of the body of this Agreement, the language of the body of this Agreement shall control.

ARTICLE II - APPROVAL

2.1 Approval of Financial Agreement

The City hereby grants approval of a tax exemption for the Project to be developed and maintained by the Entity in accordance with the provisions of the LTTE Law and the terms and conditions set forth in this Agreement.

2.2 Approval of Entity

Approval is granted to the Entity whose certificate of formation is attached hereto as Exhibit I. The Entity represents that its certificate of formation contains all the provisions required by the LTTE Law, has been reviewed and approved by the Commissioner of the Department of Community Affairs and has been filed in accordance with *N.J.S.A. 40A:20-5*.

2.3 Project Improvements to be Developed

The Entity represents that it will construct or cause to be constructed the Project Improvements on the Project Site, in accordance with the Redevelopment Plan.

2.4 Construction Schedule and Force Majeure

The Entity agrees to diligently undertake to commence and complete redevelopment of the Project Site in accordance with the Estimated Construction Schedule, attached hereto as Exhibit J, subject to reasonable modifications as may be necessary to allow for the time required to obtain necessary governmental approvals and permits, and other factors beyond the Entity's reasonable control.

For the purposes of any of the provisions of this Agreement, neither the City nor the Entity shall be considered in breach of, or in default with respect to its obligations hereunder (other than with respect to the Entity's obligation to pay Land Taxes, the Administrative Fee and the Minimum Annual Service Charge or Annual Service Charge, as applicable, which obligation shall be paid as and when due without regard to this Section 2.4(ii)) because of any enforced delay in the performance of such obligations arising from causes beyond its reasonable control and without its fault or negligence, including, but not restricted to, acts of God, acts of the public enemy, terrorism, acts or omissions of the other Parties (including litigation by third parties), fires, floods, epidemics, quarantine restrictions, strikes, freight, energy shortages, embargoes, unusual or severe weather, or delays of subcontractors due to any of the foregoing such causes, litigation or other dispute resolution proceedings with respect to the Project or this Agreement, and actions or inactions by any federal, state or local governmental or quasi-governmental authority with respect to the governmental approvals or the development of the Project, if such actions or inactions are not caused by the Entity. It is the purpose and intent of this provision that in the event of the occurrence of any such enforced delay, the time or times for performance of the obligations of the City or the Entity shall be extended for the period of the enforced delay.

2.5 Ownership, Management and Control

The Entity represents that (a) it is a lessee of the Project Site; (b) it will construct the Project Improvements or cause them to be constructed; (c) it will lease the Project Improvements to the Operating Company; and (d) on and after the Annual Service Charge Start Date, the Operating Company will operate the Project Improvements. The Entity expressly covenants, warrants and represents that upon completion, the Project, including all land and improvements, shall be used, managed and operated for the purposes set forth in the Application, in accordance with the Redevelopment Plan and all applicable laws.

2.6 Financial Plan

The Entity represents that construction of the Project Improvements will be funded through internal sources or external financing in the overall amount of approximately \$22,800,000. The Project Improvements shall be financed as described in the Application.

2.7 Projected Revenues, Lease Terms, and Other Representations and Covenants Regarding Use, Management, and Operation of the Project by the Entity

The Entity represents that its good faith projections of its revenues, the anticipated terms of its lease with the Operating Company, and other representations and covenants required under *N.J.S.A. 40A:20-9* are set forth in the Application.

2.8 Non-Residential Development Fee

Any non-residential development within the redevelopment area shall comply with the Statewide Non-Residential Development Fee Act (*N.J.S.A. 40:55D-8.1 et seq.*), as applicable, and any payment made thereunder shall not be a set-off or credit against the Entity's other obligations under this Agreement. Payment of any required non-residential development fee is a material

condition of this Agreement and a failure of the Entity to make timely payment of any such fee shall be a default under this Agreement.

ARTICLE III - DURATION OF AGREEMENT

3.1 Term

This Agreement is effective on the Effective Date. So long as there is compliance with the Applicable Laws and this Agreement, it is understood and agreed by the Parties that this Agreement, including the obligation to pay Annual Service Charges under Article IV and the tax exemption granted and referred to in Section 2.01, shall remain in effect until the earlier of (i) thirty five (35) years from the date of the Effective Date or (ii) thirty (30) years from the Annual Service Charge Start Date for the Project. The tax exemption provided for in this Agreement shall only be effective during the period of usefulness of the Project following substantial completion of the project elements as defined herein, which shall be demonstrated by delivery to the Tax Assessor of a Completion and shall continue in force only while the Project is leased by a corporation, association or other entity formed and operating under the Long Term Tax Exemption Law. Upon Termination, the tax exemption for the Project shall expire and the Land and Improvements shall thereafter be assessed and taxed according to the general laws applicable to other non-exempt property in the City which includes partial assessment of incomplete improvements. Upon Termination all restrictions and limitations upon the Entity shall terminate upon the Entity's rendering and the City's acceptance of its final accounting, pursuant to N.J.S.A. 40A:20-13. Notwithstanding the above, the City may terminate this Agreement for the entity's failure to comply with the construction schedule as set forth in Article II above, unless the delay is caused by a force majeure event as set forth in Article 2.4.

3.2 Date of Termination

Upon any Termination of the tax exemption, as described in Section 3, the date of such Termination shall be deemed to be the last day of the fiscal year of the Entity.

3.3 Voluntary Termination by Entity

The Entity may at any time after the expiration of one year from the completion of the Project notify the City that as of a certain date designated in the notice, it relinquishes its status under the Long Term Tax Exemption Law. Upon Termination of the Agreement, all restrictions and limitations upon the Entity shall terminate upon the Entity's rendering and the City's acceptance of its final accounting, pursuant to N.J.S.A. 40A:20-13.

ARTICLE IV - ANNUAL SERVICE CHARGE

4.1 Annual Service Charge Consent

The Entity hereby consents and agrees to the amount of Annual Service Charge and to the liens described in this Agreement, and the Entity shall not contest the validity or amount of any such lawfully imposed lien. Notwithstanding anything herein to the contrary, the Entity's obligation to pay the Annual Service Charge shall be absolute and unconditional and shall not be subject to any defense, set-off, recoupment or counterclaim under any circumstances, including without limitation any loss of the status of the Entity as an urban renewal entity qualified under and as defined in the Long Term Tax Exemption Law. The Entity's remedies shall be limited to those specifically set forth herein and otherwise provided by Applicable Law.

4.2 Payment of Annual Service Charge

In consideration of the tax exemption, the Entity shall make payment of the Annual Service Charge commencing on the Annual Service Charge Start Date.

Payment of the Annual Service Charge shall be made to the City on a quarterly basis on February 1, May 1, August 1, and November 1 after the Annual Service Charge Start Date in accordance with the City's tax collection schedule, subject, nevertheless, to adjustment for over or underpayment within ninety (90) days after the close of each calendar year. The obligation to pay the Annual Service Charge shall continue until the Termination of the Agreement.

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

In accordance with the Long Term Tax Exemption Law, specifically N.J.S.A. 40A:20-12, in the event of any change in the tax-exemption status as provided herein during any tax year, including but not limited to any Termination, the procedure for the apportionment of any taxes and/or Annual Service Charge, as the case may be, shall be the same as in the case of other changes in tax exemption status to any other property located within the City during the tax year, in accordance with Applicable Law.

4.3 Annual Service Charge Amount

In consideration of the tax exemption, the Entity shall, as of the Annual Service Charge Start Date, make payment to the City of an Annual Service Charge equal to:

i. The greater of the Base Annual Service Charge (\$350,000) or 2% of the Total Project Cost (as set forth in the Application), such amount, itself increased by an additional 2% of that number each year beginning on the 11th anniversary of the Annual Service Charge Start Date. For Example: If the Cost of the Project is \$22,800,000 the annual service charge "ASC" (before credits for land taxes shall be) shall be \$456,000 in years 1 thru 10 (calculated at \$22,800,000 X .02); in year 11 of this example the ASC would be \$465,120 (calculated at \$465,120 * 1.02). The intent of the 2% per year escalation in years 11 through 30 is to allow for predicable yet mildly progressive taxation.

ii. Upon completion of the Project Improvements, the actual construction costs shall be certified by an independent and qualified architect or engineer pursuant to *N.J.S.A. 40A:20-3(h)(4)* and *N.J.S.A. 40A:20-8(c)*. The Minimum Annual Service Charge or the Annual Service Charge, as the case may be, shall first begin to accrue on the first day of the month following the Annual Service Charge Start Date. The City shall remit to the County of Hudson five percent (5%) of the Annual Service Charge received each year from the Entity, pursuant to *N.J.S.A. 40A:20-12(b)(2)(e)*.

iii. Notwithstanding the tax provisions of the LTTE Law or any provision of this Agreement to the contrary, the Annual Service Charge shall never be reduced below the Minimum Annual Service Charge through any tax appeal on the land and/or Project Improvements or any other legal proceeding regarding the Project during the term of this Agreement.

iv. If the Entity fails to timely pay the Minimum Annual Service Charge or Annual Service Charge, the amount unpaid shall bear the highest rate of interest permitted in the case of unpaid taxes or tax liens in the City until paid.

4.4 Schedule of Staged Adjustments

The Annual Service Charge shall be reviewed and, if and as necessary, adjusted in stages over the term of this Agreement in accordance with *N.J.S.A. 40:20-12(b)* as follows:

- i. Stage One (years 1-10): For each of the first ten (10) years following the Annual Service Charge Start Date, the Annual Service Charge shall be the amount due pursuant to Section 4.1 of this Agreement;
- ii. Stage Two (years 11-15): Beginning with the eleventh (11th) year following the Annual Service Charge Start Date and for each of the four (4) succeeding years thereafter, an amount equal to the greater of the amount due pursuant to Section 4.1 of this Agreement or twenty (20%) percent of the amount of the taxes otherwise due on the value of the land and Project Improvements;
- iii. Stage Three (years 16-20): Beginning with the sixteenth (16th) year following the Annual Service Charge Start Date and for each of the four (4) succeeding years thereafter, an amount equal to the greater of the amount due pursuant to Section 4.1 of this Agreement or forty percent (40%) of the amount of the taxes otherwise due on the value of the land and Project Improvements;
- iv. Stage Four (years 21-25): Beginning with the twenty-first (21st) year following the Annual Service Charge Start Date and for each of the four (4) succeeding years thereafter, an amount equal to the greater of the amount due pursuant to Section 4.1 of this Agreement or sixty percent (60%) of the amount of the taxes otherwise due on the value of the land and Project Improvements.
- v. Final Stage (year 26-30): For the twenty-sixth (26th) year following the Annual Service Charge Start Date and for each of the four (4) succeeding years thereafter, an amount equal to the

greater of the amount due pursuant to Section 4.1 of this Agreement or eighty percent (80%) of the amount of the taxes otherwise due on the value of the land and Project Improvements.

So long as the Annual Service Charge is effective, as distinguished from taxes otherwise due, the Administrative Fee shall apply.

Notwithstanding the above, the Annual Service Charge shall never be less than the amount of the total taxes levied against the Property (Land and Improvements) in the last full year prior to this Agreement (the “**Minimum Annual Service Charge**”). Notwithstanding any provision of the Agreement to the contrary, the Annual Service Charge shall never be reduced below the Minimum Annual Service Charge through any tax appeal on the Land and/or Improvements or any other legal proceeding regarding the Project during the period that this Agreement is in force and effect.

4.5 Land Subject to Taxation, Land Tax Credit

Land Taxes shall be separately assessed for the Property and the Entity shall be obligated to make payment of Land Taxes according to the general laws applicable to all other tax ratables. The Entity is required to pay both the Land Tax Payments and the Annual Service Charge.

However, the Entity shall be entitled to credit for the amount, without interest, of the Land Tax Payments, made on the project area in the last four preceding quarterly installments against the Annual Service Charge in the following year, provided however, that the amount of said land tax credit allowed for any year shall not exceed the amount of the annual service charge calculated upon the project improvements for the year in which the credit is applied and shall not carry over into future years; the intent being to assure that the credit for land taxes shall be applied to the next following year only and shall never operate to reduce the amount of the “minimum annual service charge” due under this Agreement.

The Entity is required to pay the full Land Tax Payments in any given year and no credits will be applied against the Annual Service Charge for partial payment of the Land Taxes, except in the first and last years of the exemption, when the credit shall be prorated in accordance with the prorating of the annual service charge. The Entity's failure to make the requisite Annual Service Charge payment or the requisite Land Tax Payment, or both, in a timely manner shall constitute a violation and breach of this Agreement. 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 may declare a Default under this Agreement upon sixty (60) days written notice to the Entity.

4.6 Administrative Fee

The Entity shall pay annually an administrative fee to the City in addition to the Annual Service Charge. The Administrative Fee shall be computed as two percent (2%) of the greater of the Annual Service Charge or Minimum Annual Service Charge required pursuant to Section 4.3 above. 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 the Entity fails to pay the Administrative Fee when due and owing, the amount unpaid shall bear the highest rate of interest permitted under applicable New Jersey law in the case of unpaid taxes or tax liens until paid. Notwithstanding the foregoing, the City may, in its sole discretion, reduce or waive the Administrative Fee to the extent the Entity can justify a financial need for a waiver or reduction; provided, that, any reduction or waiver of the Administrative Fee by the City shall not be deemed to be a reduction or waiver of the Entity's obligations under this Section 4.6 for the term of this Agreement.

4.7 Material Conditions

It is expressly agreed and understood that all payments of Annual Service Charges and any interest payments, penalties or costs of collection due thereon, Land Taxes, if applicable, and the Administrative Fee are material conditions of this Agreement (the "**Material Conditions**"). If any other term, covenant or condition of this Agreement, as to any person or circumstance shall, to any extent, 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 held invalid or unenforceable, shall not be affected thereby, and each remaining term, covenant or condition of this Agreement shall be valid and enforced to the fullest extent permitted by Applicable Law.

4.8 No Reduction in Payment of the Annual Service Charge

Neither the amounts nor dates established for payment of the Annual Service Charge, as provided in the preceding sections shall be reduced, amended or otherwise modified during the Term of this Agreement.

4.9 Annual Service Charges as Municipal Lien

In accordance with the provisions of the Long Term Tax Exemption Law, the Annual Service Charge shall be and constitute a continuous municipal lien on the Property and the Improvements.

4.10 Security for Payment of Annual Service Charges

In order to secure the full and timely payment of the Annual Service Charges, the City on its own behalf reserves the right to prosecute an In Rem Tax Foreclosure action against the Property, as more fully set forth in this Agreement.

ARTICLE V - REMEDIES

5.1 Dispute Resolution

In the event of a Default or breach of this Agreement by any of the Parties or a dispute arising between the Parties in reference to the terms and provisions as set forth herein, then the

Parties shall submit the dispute to an arbitrator mutually selected and agreed to by the Parties. If the Parties cannot agree upon an arbitrator, then each Party shall select an arbitrator, who in turn will mutually select a third arbitrator. The arbitrator retained to resolve the dispute shall abide by the rules and regulations of arbitration as set forth by the American Arbitration Association in the State of New Jersey in such a fashion to accomplish the purpose of said laws. Costs for said arbitration shall be paid by the non-prevailing Party. The demand for arbitration shall be filed in writing and shall be made within a reasonable time after a dispute or breach occurs. The award rendered by the arbitrator shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

5.2 Remedies

In the event of a Default on the part of the Entity to pay any installment of the Annual Service Charge required by Article IV, the City in addition to its other remedies, reserves the right to proceed against the Project, in the manner provided by Applicable Law, including the Tax Sale Law and the In rem Tax Foreclosure Act, and any act supplementary or amendatory thereof. Whenever the word "Taxes" appears, or is applied, directly or implied, to mean taxes or municipal liens on land, such statutory provisions shall be read, as far as it is pertinent to this Agreement, as if the Annual Service Charges were taxes or municipal liens on land. In either case, however, the Entity does not waive any defense it may have to contest the rights of the City to proceed in the above-mentioned manner.

ARTICLE VI - OMITTED

ARTICLE VII - ANNUAL AUDITS

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 and as otherwise prescribed by Applicable Law.

7.2 Periodic Reports

Auditor's Report: Within ninety (90) days after the close of each fiscal or calendar year, depending on the Entity's accounting basis, for the duration of this Agreement, the Entity shall submit to the Mayor, Municipal Council, the Tax Collector and the City Clerk, who shall advise those municipal officials required to be advised, and the Division of Local Government Services in the Department of Community Affairs, its Auditor's Report for the preceding fiscal or calendar year pursuant to N.J.S.A. 40A:20-3(c). The Report shall clearly identify and calculate the Net Profit for the Entity during the previous year. The Entity assumes all costs associated with preparation of the periodic reports.

Total Project Cost Audit: Within ninety (90) days after the Date of Completion, the Entity shall, unless this Agreement is terminated, submit to the Mayor, 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 in the form attached as Exhibit to the Application.

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

7.3 Inspection

The Entity shall permit the inspection of its property, equipment, buildings and other facilities of the Project and, if deemed appropriate or necessary, by representatives duly authorized by the City and Division of Local Government Services in the Department of Community Affairs pursuant to N.J.S.A. 40A:20-9(e). The Entity shall also permit, upon written request, examination and audit of its books, contracts, records, documents and papers relating to the Project by representatives duly authorized by the City and Division of Local Government Services in the Department of Community Affairs pursuant to N.J.S.A. 40A:20-9(e). Such inspection shall be made upon ten (10) days' written notice during the Entity's regular business hours, in the presence of an officer or agent designated by the Entity. To the extent reasonably possible, the inspection will not materially interfere with construction or operation of the Project.

7.4 Limitation on Profits and Reserves

During the period of tax exemption as provided herein, the Entity shall be subject to a limitation of its profits and dividends pursuant to the provisions of N.J.S.A. 40A:20-15. Pursuant to N.J.S.A. 40A:20-3(b) and (c), this calculation shall be completed in accordance with generally accepted accounting principles.

The Entity shall have the right to establish a reserve against vacancies, unpaid rentals, and reasonable contingencies in an amount up to ten percent (10%) of the Annual 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 shall be noncumulative.

There is expressly excluded from calculation of Annual Gross Revenue and from Net Profit as set forth in N.J.S.A. 40A:20-3 for the purpose of determining compliance with N.J.S.A. 40A:20-15 or N.J.S.A. 40A:20-16, any gain realized by the Entity on the sale of all or a portion of the Project, whether or not taxable under Applicable Law.

7.5 Payment of Dividend and Excess Profit Charge

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 Section 7.04. The calculation of Net Profit and Allowable Net Profit shall be made in the manner required pursuant to N.J.S.A. 40A:20-3(c) and 40A:20-15.

The Parties agree that any excess Net Profit will be retained by the City as additional Annual Service Charge.

ARTICLE VIII - ASSIGNMENT AND/OR ASSUMPTION

8.1 Approval of Sale of Project to Entity Formed and Eligible to Operate Under Applicable Law

The Entity shall not voluntarily transfer more than ten percent (10%) of the Project (excluding leases), until it has removed itself and the Project from all restrictions under this Agreement. Nothing herein shall prohibit transfer of the ownership interest in the Entity itself, or require any consent to such transfer, provided that the transfer, if greater than ten percent (10%), is disclosed to the City in the annual Auditor's Report or in correspondence sent to the City in advance of the Annual Auditor's Report. The Entity shall, however, be permitted to transfer all or any portion of the Project to another urban renewal entity approved by the City as follows:

A. As permitted by N.J.S.A. 40A:20-10(a), it is understood and agreed that the City, on written application by the Entity after completion of the Project, will consent to a sale of the Project and the transfer of this Agreement provided: (i) the transferee entity does not own or lease any other Project subject to long term tax exemption at the time of transfer; (ii) the transferee entity is formed and eligible to operate under the Long Term Tax Exemption Law; (iii) the Entity is not then in Default of this Agreement or the Long Term Tax Exemption Law; (iv) the Entity's obligations under this Agreement are fully assumed by the transferee entity; (v) the transferee entity agrees to abide by all terms and conditions of this Agreement including, without limitation, the filing of an application pursuant to N.J.S.A. 40A:20-8, and any other terms and conditions of the City in regard to the Project; and (vi) the principal owners of the transferee entity possess the same or better business reputation, financial qualifications and credit worthiness as the Entity and are otherwise reputable. The Entity shall pay an administrative transfer fee equal to two percent (2%) of the then applicable Annual Service Charge for that portion of the Project being transferred for processing any such application by the Entity.

B. As permitted by N.J.S.A. 40A:20-10(c), it is understood and agreed, on written application by the Entity after the Annual Service Charge Start Date has occurred, that the City will consent to a sale to another urban renewal entity purchasing the Project in fee simple and the transfer of the tax exemption by this Agreement (reflected in a new financial agreement incorporating all the terms of this Agreement for the period remaining on the tax exemption (the "**Transferee Agreement**")), provided: (i) the transferee entity does not own or lease any other Project subject to long term tax exemption at the time of transfer; (ii) the transferee entity is

formed and eligible to operate under the Long Term Tax Exemption Law; (iii) the Entity is not then in Default of this Agreement or the Long Term Tax Exemption Law; (iv) the Entity's obligations under this Agreement are fully assumed by the transferee entity in the Transferee Agreement; and (v) the transferee entity agrees to all terms and conditions of this Agreement in the Transferee Agreement. Accordingly, the applicable Annual Service Charge will be paid by the transferee entity pursuant to the Transferee Agreement. In the event that the transfer contemplated in this Section 8.1(B) is for less than the whole of the Project, the Annual Service Charge to be paid each by the Entity and the transferee entity after the transfer shall be pro-rated based on the land area being transferred compared to the total land area for the Project. The Entity shall pay an administrative transfer fee equal to two percent (2%) of the then applicable Annual Service Charge for that portion of the Project being transferred for processing any such application by the Entity.

8.2 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 Land which are basic to, embraced in, or underlying the exempt Improvements.

8.3 Subordination of Fee Title

It is expressly understood and agreed that the Entity has the right, subordinate to the lien of the Annual Service Charges and to the rights of the City hereunder, to encumber or assign, or both, the lease to the Land or Improvements, or both, and that any such encumbrance or assignment shall not be deemed to be a violation of this Agreement.

8.4 Collateral Assignment

The City and the Entity agree that an assignment, pledge, hypothecation, or other transfer of the Entity's interest in this Agreement as security for any financing of the Project Improvements shall not be regarded by the City as a Default under this Agreement. The Entity shall give the City written notice of any such security arrangement (each, a "**Security Agreement**"), together with the name and address of the secured Party or Parties, or any agent thereof (each, a "**Secured Party**"). In the absence of a Default, the City will not unreasonably withhold, delay or condition its consent to the assignment or transfer of this Agreement by a Secured Party to a qualified urban renewal entity, or other exercise of a Secured Party's rights under a Security Agreement, to the extent the City's consent is required under this Agreement or the LTTE Law. The City agrees to provide its consent to such assignment or transfer, together with any other certificates, opinions, and other documents as such Secured Party shall reasonably request and shall not unreasonably withhold, delay or condition its consent to any commercially reasonable amendment(s) of this Agreement that any Secured Party shall request.

ARTICLE IX - WAIVER

9.1 Waiver

Nothing contained in this Agreement or otherwise shall constitute a waiver or relinquishment by the City or the Entity of any rights and remedies provided by the Applicable Law except for the express waiver herein of certain rights of acceleration and certain rights 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 that the City or the Entity has under law, in equity, or under any provision of this Agreement.

ARTICLE X - NOTICE

10.1 **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.

10.2 **Sent by City**

When sent by the City to the Entity, unless the Entity shall have notified the City in writing otherwise, notice shall be addressed to:

Bayonne Energy Center Urban Renewal II, LLC
c/o Macquarie Infrastructure Corporation, LLC
125 West 55th Street
New York, New York 10019
Attention: General Counsel

with copies sent to:

John A. Hoffman, Esq.
Wilentz, Goldman & Spitzer P.A.
90 Woodbridge Center Drive
Woodbridge, New Jersey 07095

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.

10.3 **Sent by Entity**

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

City Clerk

City of Bayonne
Municipal Building
630 Avenue C
Bayonne, New Jersey 07002

with a copy sent to:

John "Jay" Coffey, II
Law Director
City of Bayonne
Municipal Building
630 Avenue C
Bayonne, New Jersey 07002

Any notice to the City shall fully identify the Project to which it relates, (i.e., the full name of the Entity and the location of the Project Site, identified by Block and Lot numbers).

ARTICLE XI - COMPLIANCE

11.1 Statutes and Ordinances

The Entity hereby agrees at all times prior to the expiration or Termination of this Agreement to remain bound by the provisions of Applicable Law and any lawful ordinances and resolutions of the City, including, but not limited to, the Long Term Tax Exemption Law. The Entity's failure to comply with such statutes or ordinances shall constitute a violation and breach of the Agreement.

ARTICLE XII - CONSTRUCTION

12.1 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 or any presumption or other rule requiring construction against the Party drawing or causing this Agreement to be drawn since counsel for both the Entity and the City have combined in their review and approval of same.

ARTICLE XIII - INDEMNIFICATION

13.1 Indemnification

It is understood and agreed that in the event the City shall be named as a party defendant in any action brought against the City or the Entity by allegation of any breach, Default or a violation of any of the provisions of this Agreement and/or the provisions of the Long Term Tax Exemption Law or any other Applicable Law, the Entity shall indemnify and hold the City

harmless from and against all liability, losses, damages, demands, costs, claims, actions or expenses (including reasonable attorneys' fees and expenses) of every kind, character and nature arising out of or resulting from the action or inaction of the Entity and/or by reason of any breach, Default or a violation of any of the provisions of this Agreement, the provisions of N.J.S.A. 40A:20-1 et seq., and/or any other Applicable Law except for any misconduct by the City or any of its officers, officials, employees or agents, and the Entity shall defend the suit at its own expense. However, the City maintains the right to intervene as a party thereto, to which intervention the Entity hereby consents, the expense thereof to be borne by the Entity.

ARTICLE XIV - DEFAULT

14.1 Default

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

14.2 Cure Upon Default

Should a Party be in Default of any obligation under this Agreement, the non-defaulting Party shall notify the defaulting Party and any mortgagee, if applicable, of the Entity in writing of said Default (the “**Default Notice**”). Said Default Notice shall set forth with particularity the basis of said Default. Except as otherwise limited by law, the defaulting Party shall have sixty (60) days to cure any Default (other than a Default in payment of any installment of the Annual Service Charge which default must be cured within ten (10) days from the date of its receipt of the Default Notice) provided such cure can reasonably be effected within such sixty (60) day period in which case Entity shall have such additional time to cure as reasonably necessary to effect same. In the event of any uncured Default by the Entity, the City shall have the right to proceed against the Property pursuant to Applicable Law. Upon any Default in payment of any installment of the Annual Service Charge, the City shall have the right to proceed to In Rem Tax Foreclosure consistent with the provisions and procedures of the In Rem Tax Foreclosure Act.

14.3 Remedies Upon Default Cumulative; No Waiver

Subject to the other terms and conditions of this Agreement, all of the remedies provided in this Agreement to the City, and all rights and remedies granted to them by law and equity shall be cumulative and concurrent and no determination of the invalidity of any provision of this Agreement shall deprive the City of any of their remedies or actions against the Entity because of Entity's failure to pay Land Taxes, the Annual Service Charge, and/or the Administrative Fee 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 Land Taxes, Annual Service Charges, Administrative Fee or other charges, or for breach of covenant or the resort of any other remedy herein provided for the recovery of Land Taxes, Annual Service Charges, Administrative Fee or other charges

shall not be construed as a waiver of the right to proceed with an In Rem Tax Foreclosure action consistent with the terms and provisions of this Agreement.

14.4 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 14.2, the City has the right to terminate this Agreement upon thirty (30) days written notice to the Entity (the “**Notice of Termination**”).

14.5 Final Accounting

Within ninety (90) days after the date of Termination, 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.

14.6 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 XV - MISCELLANEOUS

15.1 Conflict

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

15.2 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 of the City authorizing this Agreement, and the Application constitute the entire agreement between the Parties and there shall be no modifications thereto other than by a written instrument executed by the Parties hereto and delivered to each of them.

15.3 Entire Document

This Agreement, with all attachments and exhibits, the Resolution, the Application, and the Ordinance shall constitute the entire agreement between the Parties, shall be incorporated herein by reference thereto and there shall be no modifications thereto other than by a written instrument approved and executed by, and delivered to, each Party. All prior agreements and understandings, if any, are superseded.

15.4 Good Faith

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

15.5 Recording

This entire Agreement will be filed and recorded with the Hudson County Clerk by the Entity at the Entity's expense.

15.6 Municipal Services

The Entity shall make payments for municipal services, including water and sewer charges and any services that create a lien on a parity with or superior to the lien for Land Taxes (but only if the land is determined not to be exempt pursuant to the Long Term Tax Exemption Law) and Annual Service Charges, as required by law. Nothing herein is intended to release Entity from its obligation to make such payments.

15.7 Annual Service Charge Paid to County

Pursuant to N.J.S.A. 40A:20-12, the City shall remit five percent (5%) of the Annual Service Charge to Hudson County.

15.8 Financing Matters

The financial information required by the final paragraph of N.J.S.A. 40A:20-9 are set forth in the Application.

15.9 Counterparts

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

15.10 Amendments

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

15.11 Certification

The City Clerk shall certify to the Tax Assessor, pursuant to N.J.S.A. 40A:20-12, that an Agreement with an urban renewal entity, i.e., the Entity, for the development of the Redevelopment Area, has been entered into and is in effect as required by N.J.S.A. 40A:20-1, et seq. Delivery by the City Clerk to the Tax Assessor of a certified copy of Ordinance No. _____ adopted by the Municipal Council on _____ approving the tax exemption described herein and this Agreement shall constitute the required certification. Upon certification as required hereunder, the Tax Assessor shall implement the exemption and continue to enforce that exemption without further certification by the clerk until the expiration of the entitlement to exemption by the terms of this Agreement or until the Tax Assessor has been duly notified by the Clerk that the exemption has been terminated.

Further, upon the adoption of this Agreement, a certified copy of the Ordinance, Ordinance No. _____ adopted by the Municipal Council approving the tax exemption described herein and this Agreement shall forthwith be transmitted to the Director of the Division of Local Government Services by the City Clerk.

15.12 Severability

If any one or more of the covenants, agreements or provisions herein contained shall be held to be illegal or invalid in a final proceeding, then any such covenants, agreements or provisions shall be null and void and shall be deemed separable from the remaining covenants, agreements or provisions and shall in no way affect the validity of any of the other provisions hereof.

15.13 Entire Agreement

This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes all negotiations or previous agreements between the Parties with respect to all or any part of the subject matter hereof

ARTICLE XVI - EXHIBITS

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

- A. Redevelopment Plan
- B. Application
- C. Resolution
- D. Ordinance
- E. Project Improvements
- F. Concept Plan
- G. Metes and Bounds Description of Project Site
- H. Estimated Total Project Cost
- I. Certificate of Formation of the Entity
- J. Estimated Construction Schedule
- K. Architect's Certificate of Actual Construction Costs (Form)

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

ATTEST:

BAYONNE ENERGY CENTER URBAN
RENEWAL II, LLC

By: BAYONNE ENERGY CENTER, LLC,
Its Sole Member

Name:
Title:

By: _____
Name:
Title:

ATTEST:

THE CITY OF BAYONNE

City Clerk

By: _____
Name:
Title:

EXHIBIT A
(to Financial Agreement)

Redevelopment Plan

EXHIBIT B
(to Financial Agreement)

Application for Long Term Tax Exemption

See following pages.

EXHIBIT C
(to Financial Agreement)

Resolution Approving Project Application

To be provided.

EXHIBIT D
(to Financial Agreement)

Ordinance Approving Financial Agreement
(Without Attachments)

To be provided.

EXHIBIT E
(to Financial Agreement)

Project Improvements

The Project consists of the following improvements:

1. Civil site work (roads, stormwater control grading, pilings, concrete and fill) at a cost of \$6,212,830
2. Balance of plant-Mechanical (certain above and below ground-piping, certain pumps and valves affixed to realty) at a cost of \$4,634,217
3. Balance of plant – Electrical (certain wiring and electrical components integrated with realty) at a cost of \$6,209,320
4. Instrumentation (certain conduit cable, gauges, and temperature probes integrated with realty) at a cost of \$150,000
5. Contractor General Conditions, engineering, construction equipment, construction management, indirects and profit at a cost of \$1,068,205

EXHIBIT F
(to Financial Agreement)

Concept Plan

See following page.

EXHIBIT G
(to Financial Agreement)

Metes and Bounds Description of Project Site

DESCRIPTION OF PROPERTY

ALL THAT CERTAIN PIECE OR PARCEL OF LAND SITUATED IN THE CITY OF BAYONNE, COUNTY OF HUDSON, AND STATE OF NEW JERSEY, BEING FURTHER DESCRIBED AS FOLLOWS;

BLOCK 482, LOT 10

BEGINNING AT A POINT HAVING COORDINATES OF NORTH 662913.42 EAST: 605707.89 IN THE NEW JERSEY STATE PLANE COORDINATE SYSTEM OF 1983, THENCE;

- 1) SOUTH 37°34'14" EAST (RECORD SOUTH 27°48'00" EAST) A DISTANCE OF 21.98' TO A POINT, THENCE;
- 2) SOUTH 53°05'46" WEST (RECORD SOUTH 62°52'00" EAST) A DISTANCE OF 39.25' TO A POINT, THENCE;
- 3) SOUTH 36°54'14" EAST (RECORD SOUTH 27°08'00" EAST) A DISTANCE OF 46.12' TO A POINT, THENCE;
- 4) SOUTH 53°05'46" WEST (RECORD SOUTH 62°52'00" WEST) A DISTANCE OF 19.97" TO A POINT ,THENCE;
- 5) SOUTH 36°54'14" EAST (RECORD SOUTH 27°08'00" EAST) A DISTANCE OF 580.89' TO A POINT, THENCE;
- 6) NORTH 54°45'34" EAST (RECORD NORTH 64°31'35" EAST) A DISTANCE OF 105.91' TO A POINT, THENCE;
- 7) NORTH 36°54'14" WEST (RECORD NORTH 27°08'00" WEST) A DISTANCE OF 634.97' TO A POINT, THENCE;
- 8) SOUTH 73°06'46" WEST (RECORD SOUTH 82°53'00" WEST) A DISTANCE OF 49.92 ' TO A POINT OR PLACE OF BEGINNING.

CONTAINING: 1.521 ACRES OF LAND (66,248.09 SQUARE FEET), MORE OR LESS. SUBJECT TO ANY EASEMENTS, COVENANTS OR RESTRICTIONS THAT MAY EXIST.

DESCRIPTION OF PROPERTY

ALL THAT CERTAIN PIECE OR PARCEL OF LAND SITUATED IN THE CITY OF BAYONNE, COUNTY OF HUDSON, AND STATE OF NEW JERSEY, BEING FURTHER DESCRIBED AS FOLLOWS;

BLOCK 482, LOT 11

BEGINNING AT A POINT HAVING COORDINATES OF NORTH 663375.87 EAST: 605352.14 IN THE NEW JERSEY STATE PLANE COORDINATE SYSTEM OF 1983, THENCE;

- 1) SOUTH 37°34'14" EAST (RECORD NORTH 27°48'00" WEST) A DISTANCE OF 583.45' TO A POINT, THENCE;
- 2) NORTH 73°06'46" EAST (RECORD SOUTH 82°53'00" WEST) A DISTANCE OF 49.92 ' TO A POINT, THENCE;
- 3) SOUTH 36°54'14" EAST (RECORD NORTH 27°08'00" WEST) A DISTANCE OF 634.97' TO A POINT, THENCE;
- 4) NORTH 54°45'34" EAST (RECORD SOUTH 64°35'16" WEST) A DISTANCE OF 146.69" TO A POINT ,THENCE;
- 5) NORTH 36°54'14" WEST (RECORD SOUTH 27°08'00" EAST) A DISTANCE OF 441.05' TO A POINT, THENCE;
- 6) NORTH 13°56'46" WEST (RECORD SOUTH 23°43'00" WEST) A DISTANCE OF 48.08' TO A POINT, THENCE;
- 7) NORTH 36°54'14" WEST (RECORD SOUTH 27°08'00" EAST) A DISTANCE OF 161.84' TO A POINT, THENCE;
- 8) NORTH 53°05'46" EAST (RECORD NORTH 62°51'57" EAST) A DISTANCE OF 1.27' TO A POINT, THENCE;
- 9) NORTH 36°54'14" WEST (RECORD SOUTH 27°08'00" EAST) A DISTANCE OF 316.70' TO A POINT, THENCE;
- 10) NORTH 76°06'14" WEST (RECORD SOUTH 66°20'00" EAST) A DISTANCE OF 373.94' TO A POINT OR PLACE OF BEGINNING.

CONTAINING: 4.716 ACRES OF LAND (205,417.11 SQUARE FEET), MORE OR LESS. SUBJECT TO ANY EASEMENTS, COVENANTS OR RESTRICTIONS THAT MAY EXIST.

EXHIBIT H
(to Financial Agreement)

Estimated Total Project Cost

	<u>Real Property</u>	<u>Category Total</u>	<u>Real Property %</u>
Cost of Land and Improvements to the entity	\$2,550,000	\$2,550,000	100%
Architect, engineer and attorney fees	\$750,000	\$2,750,000	27%
Surveying and testing charges	\$200,000	\$200,000	100%
Construction costs, Incl EPC OH/Profit	\$18,274,572	\$122,636,891	15%
Insurance, interest and finance costs during construction*	\$50,000	\$300,000	17%
Costs of obtaining initial permanent financing	n/a	n/a	
Commissions and other expenses paid or payable in connection with the initial leasing	n/a	n/a	
Real estate taxes and assessments during the construction period	\$115,110	\$115,110	100%
Developers overhead, 5% of construction costs**	<u>\$860,318</u>	<u>\$5,643,039</u>	<u>15%</u>
TOTAL	\$22,800,000	\$134,195,040	17%

*No debt financing during construction

** 5% of actual constructions costs (excluding EPC OH/Profit) of \$17,206,366

EXHIBIT I
(to Financial Agreement)

Certificate of Formation of the Entity

See following pages.

EXHIBIT J
(to Financial Agreement)

Estimated Construction Schedule

The construction of the Project will commence, following completion of civil, electrical and mechanical engineering, between July 2016 and March 2017 and is scheduled to be completed by approximately March 2019.

EXHIBIT K
(to Financial Agreement)

Architect's/Engineer's Certificate of Actual Construction Costs (Form)

See following pages. The Entity reserves the right to substitute such other form as may be used in the Project by agreement of the parties to the construction contract.