OFFICE OF THE MAYOR

CITY OF BAYONNE

630 AVENUE C • BAYONNE, NEW JERSEY 07002-3898
TEL. (201) 858-6010 • FAX (201) 436-2413

JAMES DAVIS, *MAYOR*

October 18, 2017

Municipal Council
City of Bayonne
630 Avenue C
Bayonne, NJ 07002

RE: FINANCIAL AGREEMENT
BY AND BETWEEN
THE CITY OF BAYONNE
AND MAHALAXMI BAYONNE URBAN RENEWAL, LLC.
GOLDSBOROUGH DRIVE
BLOCK: 751 LOTS: 1

Dear Council Members:

Please be advised that I am in receipt of an application for a PILOT agreement from MAHALAXMI BAYONNE URBAN RENEWAL, LLC for the property known as BLOCK 751, Lot 1 on GOLDSBOROUGH DRIVE. I would ask that you consider this application at your next council meeting. I have also attached a copy of the proposed financial agreement for your consideration.

Very truly yours,

James Davis

JD/jfc
Enclosure

DONALD M. PEPE | Partner
dpepe@scarincihollenbeck.com
Direct Phone: 732-568-8370 | Fax: 732-695-8108

August 11, 2017

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

Re: Property Owner: Mahalaxmi Bayonne Urban Renewal, LLC
Project: Residential Rental Project (97 residential units)
Location: Goldsborough Drive, Bayonne, New Jersey
Block 751, Lot 1 - Thirty Year Tax Abatement

Dear Honorable Mayor:

On behalf of Mahalaxmi Bayonne Urban Renewal, LLC, we enclose a tax abatement application for the above subject project.

Should you have any questions, please do not hesitate to contact our office. Thank You.

Very truly yours,

Donald M. Pepe

DMP/pm
Encl.
cc: Mahalaxmi Bayonne Urban Renewal, LLC

Receipt of the enclosed is hereby acknowledged

By: _____

On _____

CERTIFIED APPLICATION TO THE CITY OF BAYONNE
FOR LONG TERM TAX EXEMPTION
OF
Mahalaxmi Bayonne 1 Urban Renewal, LLC ("Applicant")

In accordance with the Ordinances of the City of Bayonne, the Applicant herewith submits the following information in support of its application for a Long Term Tax Exemption pursuant to the Long Term Tax Exemption Law, N.J.S.A. §40:20-1 et seq.

Applicant: Mahalaxmi Bayonne Urban Renewal, LLC
2449 Kennedy Boulevard
Jersey City, NJ 07304

Project: Goldsborough Drive and Flagship Street, Bayonne, NJ
Block 751, Lot 1
Bayonne, NJ 07002, referred herein as "Project"

Applicant's Architect: Gro Architects, PLLC
275 Water Street, First Floor
New York, NY 10038
Richard@GroArc.com

Applicant's Attorney: Don Pepe, Esq.
Scarinci & Hollenbeck
130 Newman Springs Rd.
Building 3, Suite 310
Red Bank, NJ 07701
dpepe@sh-law.com

APPLICATION

1. Identification of the Property:

The land upon which the Project will be built is Block # 751 Lot 1.04 on the City of Bayonne Tax Map and located on the corner of Goldsborough Drive and Flagship Street in Bayonne, New Jersey (the "Property"). The Property is located within the Harbor Station South Redevelopment Plan.

2. Type of Development and Nature of Proposed Project:

The Property is currently vacant land. On July 11, 2017, Mahalaxmi Bayonne, LLC (an affiliate of the Applicant) received Preliminary and Final Major Site Plan Approval from the Planning Board of the City of Bayonne for the purpose of developing the Property with a new five (5) story mixed-use building with ninety-seven (97) market rate residential rental housing units and approx. 5,975 square feet of retail space with one hundred twenty-seven (127) parking spaces.

3. Type of Abatement Requested:

Mahalaxmi Bayonne Urban Renewal, LLC is currently seeking a Long Term Tax Exemption based on the location of the Property within a designated redevelopment area. The proposed Annual Service Charge is 10% of Annual Gross Revenue for Years 1 through 7, 11% for Years 8 through 24, and 12% through Years 25-30 for the residential units which initially translates to about $ 228,000 annually. The Annual Service Charge will be offset by a credit for land taxes which will be paid separately from the Annual Service Charge. Additionally, the Annual Service Charge will escalate over time in four stages in relation to the traditional assessment as follows:

(a) **Stage One:** From the date of issuance of a Certificate of Occupancy ("ASC Commencement Date") until the 7th anniversary of the ASC Commencement Date, the Annual Service Charge shall be the greater of 10% of the Annual Gross Revenue or 20% of the otherwise applicable taxes;

(b) **Stage Two:** From the first day after the 7th anniversary of the ASC Commencement Date until the 18th anniversary of the ASC Commencement Date, the Annual Service Charge shall be equal to the greater of be the greater of 11% of the Annual Gross Revenue or 40% of the otherwise applicable taxes;

(b) **Stage Three:** From the first day after the 18th anniversary of the ASC Commencement Date until the 24th anniversary of the ASC Commencement Date, the Annual Service Charge shall be equal to the greater of 11% of the Annual Gross Revenue or 60% of the otherwise applicable taxes;

(b) **Stage Four:** From the first day after the 24th anniversary of the ASC Commencement Date until the 30th anniversary of the ASC Commencement Date, the

Annual Service Charge shall be equal to the greater of 12% of the Annual Gross Revenue or 80% of otherwise applicable taxes.

4. Minimum Annual Service Charge:

The proposed Financial Agreement provides for a minimum annual service charge of $138,206.00.

5. Term of Abatement:

The term of the tax exemption being requested by the Applicant is the earlier of thirty-five (35) years from the adoption of the ordinance approving this abatement application or thirty (30) years from the date of substantial completion of the Development. The proposed Financial Agreement provides for a lease-up period of 18 months and allows for a partial assessment of incomplete improvements.

6. Estimated Total Cost of Development:

The estimated Construction Project Cost for the Development is approximately $25,000,000. The project will be financed by funds provided to the development by the Applicant or affiliated entities as well as construction financing and other financing from a Bank or third party lenders. The Applicant hopes to amortize the project over 30 years.

7. Financing Structure:

The Development is financed by capital provided by the members of Developer and third party lender financing. Upon substantial completion, Developer will seek permanent financing for the project.

8. Annual Gross Revenue and Expenses:

A schedule of projected Estimate of Annual Gross Revenue and Expenses is attached hereto as Exhibit A.

9. Construction Schedule:

The proposed Financial Agreement provides that the applicant shall diligently undertake to commence construction within the later of three (3) months of receipt of Project financing from a lender or the issuance of all building permits required to commence construction, but in no event later than eighteen (18) months of the Effective Date and diligently prosecute such construction to completion. In the event the applicant does not actually commence construction within twelve (12) months of the effective date, the financial agreement provides that City may terminate the Agreement upon thirty (30) days prior written notice, as set forth in Section 2.04 of the Financial Agreement.

10. Current Real Estate Tax Status:

Property is currently owned by the City of Bayonne and does not generate tax revenue.

11. Estimated Jobs to be created:

Based on the Applicant's past experience in the City and the projected scope of work at the Development, it is anticipated that the Development will generate approximately twenty (20) full time equivalent construction jobs and two (2) full time equivalent permanent jobs.

12. Form of Financial Agreement:

Attached is a proposed form of Financial Agreement between the Applicant and the City of Bayonne based on a form provided by the City.

Respectfully submitted:
Mahalaxmi Bayonne Urban Renewal, LLC

By: _____
Name: Sanjay Gupta
Title: Managing Member

EXHIBIT A

Projected Estimate of Rents and Expenses

WaterView at Bayonne Harbor
Estimate of Initial Rents

Residential Units	Units	Avg. Sq. Ft	Rent per Sq.Ft.	Monthly Rent	
The Soho (1bdrm- 1 bath)	36	820	2.00	1,650	$ 59,400.00
The Tribeca (1 bdrm-1 bath)	8	769	2.00	1,550	$ 12,400.00
The Chelsea (2 bdrm/ 1 den- 2 bat	8	1,218	2.00	2,400	$ 19,200.00
The Greenwich (2 bdrm- 2 bath	8	1,121	2.00	2,250	$ 18,000.00
The Flatiron (2 bdrm- 2 bath)	8	994	2.00	1,975	$ 15,800.00
The Central (I bdrm- 1 bath)	12	760	2.00	1,550	$ 18,600.00
The Bryant (2 bdrm- 1.5 bath)	8	808	2.00	1,600	$ 12,800.00
Various Residential Units	9	922	2.00	1,850	$ 16,650.00
Retail Space	2	2,988	1.50	4,500	$ 9,000.00
					$ 181,850.00
Less Vacancy 5%					$ (9,092.50)
Net Monthly Income					$ 172,757.50

$ 2,073,090.00	Annual Income	
$ 228,039.90	PILOT*	11%
$ 58,200.00	Water-Sewer	
$ 44,600.00	Common Electric	
$ 66,350.00	Repairs-Maintenance Elevator	
$ 115,792.00	Management 4%	
$ 65,000.00	Insurance	
$ 577,981.90	Yearly Expenses	
$ 1,495,108.10	Net Income	

Rental Rates reflect conservative absorption targets- Pilot payment will be based upon actual revenue realized

FINANCIAL AGREEMENT

BY AND BETWEEN

THE CITY OF BAYONNE

AND

Mahalaxmi Bayonne 1 Urban Renewal, LLC

DATED AS OF September 9, 2017

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FINANCIAL AGREEMENT

THIS FINANCIAL AGREEMENT (hereinafter this "**Agreement**"), made this__day of _____, 2017, (the "**Effective Date**") by and between **Mahalaxmi Bayonne Urban Renewal 1, LLC**, an urban renewal entity qualified to do business under the provisions of the Long Term Tax Exemption Law, N.J.S.A. 40A:20-1 et seq., as amended and supplemented (the "**Long Term Tax Exemption Law**"), with offices at 2449 Kennedy Boulevard, Jersey City, NJ 07304 (the "**Entity**") and the **City of Bayonne,** a municipal corporation in the County of Hudson and the State of New Jersey (the "**City**", and together with the Entity, the "**Parties**" or "**Party**").

WITNESSETH:

WHEREAS, the Entity or its affiliate is the owner or designated redeveloper of the property or identified on the Tax Maps of the City as Block 751, Lots 1.01, 1.02, 1.03, 1.04 and 1.05 (the "**Property**") and more particularly described by the metes and bounds description as set forth in the application submitted by the Entity for tax exemption (the **"Application**"); and

WHEREAS, the Property is located within the Harbor Station South redevelopment area (the "**Redevelopment Area**"), which has been designated as an area in need of redevelopment pursuant to the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq., as amended and supplemented (the "**Local Redevelopment and Housing Law**"); and

WHEREAS, pursuant to N.J.S.A. 40A:12A-7, on January 20, 2016, the City duly adopted Ordinance 0-16-1, approving the redevelopment plan entitled "Redevelopment Plan For The Peninsula at Bayonne Harbor - Harbor Station South" as amended by such ordinance (and as same may be further amended from time to time, the "**Redevelopment Plan**") for the Redevelopment Area; and

WHEREAS, the proposed project to be undertaken on the Property consists of the construction of a 5 story mixed use building consisting of 97 residential units and commercial space as approved by the City of Bayonne Planning Board on July 11, 2017 and memorialized in Resolution P-17-013 (the "**Project**"); and

WHEREAS, the Entity has submitted the Application to the City for the approval of an exemption for the Project pursuant to the Long Term Tax Exemption Law, which application is attached hereto as ***Exhibit B***; and

WHEREAS, on _____, the Municipal Council finally adopted _____, entitled, "Ordinance of the City of Bayonne, County of Hudson, New Jersey approving the Application and Agreement for tax exemption of **MAHALAXMI BAYONNE 1 URBAN RENEWAL** for the construction of the Project located on **Block 751, Lot 1.04,** a copy of which is attached hereto as ***Exhibit C*** (the "**Ordinance**"); and

WHEREAS, the City has undertaken a policy to encourage jobs, both construction related and permanent, and has determined to suspend certain affordable housing requirements in furtherance of such policy; and

WHEREAS, the City made the following findings with respect to the Project:

A. Relative Benefits of the Project:

i. The Project Site will hasten the improvement of previously underutilized property. The Project will generate significant amounts of new (otherwise unavailable) municipal revenues through the Annual Service Charge and water/sewer fees. In light of market conditions and other economic factors (including the extraordinary remediation and other development costs) impacting this Project, it is not financially feasible to undertake the development of this Project in the absence of the tax exemption. Accordingly, without the incentive tax exemption, it is unlikely that the Project would be undertaken. Without the Project, the benefits described above would not be realized.

B. Assessment of the Importance of the tax exemption in obtaining development of the Project and influencing the locational decisions of probable occupants:

i. The tax exemption permits the development of underutilized property and provides a stream of revenue in the form of the Annual Service Charges. The relative stability and predictability of the Annual Service Charges will allow the owners and, by extension, the occupants, of the Project to stabilize their expenses, which will ensure the likelihood of the success of the Project and ensure that it will have a positive impact on the surrounding area. Further, the relative stability and predictability of the Annual Service Charge makes the Project more attractive to investors and lenders needed to finance the Project. The tax exemption permits the development of the Project in an area that cannot otherwise be developed by reducing the expenses associated with the operation of the Project. Reduced expenses allows for more competitive rents in an otherwise less desirable location. As a result, the locational decisions of the probable tenants will be influenced positively by the tax exemption.

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

ARTICLE I

GENERAL PROVISIONS

SETION 1.01 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.

SECTION 1.02 General Definitions.

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

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

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 4.06 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 residential units of the Project and one hundred percent (100%) of the application fees, pet fees, parking fees, floor or view premiums, health club fees and any other charges that may be collected from tenants of 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 date of the Certificate of Occupancy for the first residential unit.

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.

Certificate of Occupancy - A Temporary or Permanent Certificate of Occupancy, as such term is defined in the New Jersey Administrative Code issued by the City as authorizing occupancy of a building, in whole or in part, pursuant to N.J.S.A. 52:27D-133.

County – The County of Hudson.

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 15.02.

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.54:5-104.29etseq., as the same may be amended or supplemented from time to time.

Land – The real property, but NOT the Improvements, are part of what is known as **Block 751, Lot 1.04 o**n the tax maps of the City of Bayonne, New Jersey, and more particularly described by the metes and bounds description set forth in ***Exhibit A*** 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.

Lease Up Expiration – The Lease Up Period shall expire eighteen (18) months after the issuance of the first Certificate of Occupancy for any residential unit in the Project (the "**Lease Up Expiration**") regardless of whether all of the residential units have received a Certificate of Occupancy.

Lease Up Period – That period of time, beginning on the date of the issuance of the first Certificate of Occupancy (Temporary or Permanent) allowing occupancy of any residential unit

in the Project and ending on the date of the Lease Up Expiration. During the Lease Up Period the Entity shall pay to the City the greater of:

A sum calculated as follows: (1) the total amount of the estimated Annual Service Charge for all residential units in the Project, as estimated by the Entity in its Tax Exemption (PILOT) Application, shall be divided by the number of all proposed residential units in the Project in order to obtain the estimated Annual Service Charge on a per residential unit basis; (2) the estimated per unit Annual Service Charge will again be divided by twelve (12) in order to calculate the monthly amount of the Annual Service Charge on a per residential unit basis; and (3) the resulting amount shall be multiplied by the number of residential units having been issued a Certificate of Occupancy, irrespective of whether the residential unit is actually occupied or generates any rental revenue. The payment shall be calculated as of the 1st day of the month during the Lease Up Period; or

A monthly amount equal to the Minimum Annual Service Charge divided by 12.

Material Conditions – As defined in Section 4.06 below.

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. 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 (see Section 4.03 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.

Site Plan – The approved site plan referenced in the resolution of the Bayonne Planning Board dated July 11, 2017 and memorialized in Resolution P-17-013 on August 8, 2017.

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 a Certificate(s) of Occupancy is issued for the entire Project, which categories of cost are as defined in N.J.S.A. 40A:20-3(h). There shall be included in Total Project Cost the actual costs incurred to construct the Improvements which are specifically described in the Application.

SECTION 1.03 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.

{End of Article I}

ARTICLE II

APPROVAL

SECTION 2.01 Approval of Tax Exemption

The City has granted and does hereby grant its approval for a tax exemption for the Project in accordance with the provisions of the Long Term Tax Exemption Law on the Property. Pursuant to the Ordinance, the Improvements to be constructed and maintained by the Entity shall be exempt from taxation as provided for herein.

SECTION 2.02 Approval of the Entity

Approval is granted to the Entity based on its representation that its Certificate of Incorporation attached to the Application as Exhibit 2 thereto contains all the requisite provisions of law, has been reviewed and approved by the Commissioner of the Department of Community Affairs, and has been filed with, as appropriate, the Department of Treasury, all in accordance with N.J.S.A. 40A:20-5.

SECTION 2.03 Improvements to be Constructed

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

SECTION 2.04 Construction Schedule

The Entity agrees to diligently undertake to commence construction within the later of three (3) months of receipt of Project financing from a lender or the issuance of all building permits required to commence construction, but in no event later than eighteen (18) months of the Effective Date and diligently prosecute such construction to completion subject only to "Force Majeure". In the event the Entity does not actually commence construction within twelve (12) months of the Effective date in accordance with plans submitted to and approved by the local construction official as provided by law, then the City may terminate the Agreement upon thirty (30) days prior written notice to the Entity, unless Entity is proceeding diligently with the finalization of the construction plans and commencement of construction.

SECTION 2.05 Ownership, Management and Control

The Entity represents that it or its affiliate is the Owner or designated redeveloper of the Property. 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 and in accordance with the Redevelopment Plan and all Applicable Laws.

SECTION 2.06 Financial Plan

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

SECTION 2.07 Affordable Housing

The Entity shall not be required to provide any affordable housing units within the project nor make any payments in lieu of such obligation. Redevelopment within the Redevelopment Area in accordance with this Plan shall not be subject to the City's affordable housing ordinances, including but not limited to any obligation to construct on-site or off-site affordable housing, or to make payments in lieu of construction.

SECTION 2.08 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. Any non-residential development fee, if any, shall be due and payable upon the issuance of a Certificate of Occupancy (Temporary or Permanent) for any part of the commercial space subject to such fee.

{End of Article II}

ARTICLE III

DURATION OF AGREEMENT

SECTION 3.01 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 Certificate of Occupancy 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. Prior to the issuance of a Certificate of Occupancy 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.

SECTION 3.02 Date of Termination

Upon any Termination of the tax exemption, as described in Section 3.01, the date of such Termination shall be deemed to be the last day of the fiscal year of the Entity.

SECTION 3.03 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.

{End of Article III}

ARTICLE IV

ANNUAL SERVICE CHARGE

SECTION 4.01 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, or any violation by the City of any provisions of this Agreement. The Entity's remedies shall be limited to those specifically set forth herein and otherwise provided by Applicable Law.

SECTION 4.02 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.

SECTION 4.04 Annual Service Charge Amount

Pursuant to N.J.S.A. 40A:20-12, the Annual Service Charge shall be an amount equal to a percentage of annual gross revenues as set forth below, except that, during the Lease Up Period the annual service charge shall be prorated in accordance with the Lease Up Period provisions as defined in in Article I above:

(a) **Stage One:** From the date of issuance of a Certificate of Occupancy ("ASC Commencement Date") until the 7th anniversary of the ASC Commencement Date, the Annual Service Charge shall be the greater of 10% of the Annual Gross Revenue or 20% of the otherwise applicable taxes;

(b) **Stage Two:** From the first day after the 7th anniversary of the ASC Commencement Date until the 18th anniversary of the ASC Commencement Date, the Annual Service Charge shall be equal to the greater of be the greater of 11% of the Annual Gross Revenue or 40% of the otherwise applicable taxes;

(b) **Stage Three:** From the first day after the 18th anniversary of the ASC Commencement Date until the 24th anniversary of the ASC Commencement Date, the Annual Service Charge shall be equal to the greater of 11% of the Annual Gross Revenue or 60% of the otherwise applicable taxes;

(b) **Stage Four:** From the first day after the 24th anniversary of the ASC Commencement Date until the 30th anniversary of the ASC Commencement Date, the Annual Service Charge shall be equal to the greater of 12% of the Annual Gross Revenue or 80% of otherwise applicable taxes.

Notwithstanding the above, the Annual Service Charge shall never be less than $138,206.00 (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.

SECTION 4.05 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 Redevelopment Entity shall be entitled to a credit for the amount, without interest, of the Land Tax Payments made on the Project 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 by

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. The Entity's failure to make the requisite Annual Service Charge payment and/or the requisite Land Tax Payment 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/or may declare a Default under this Agreement upon sixty (60) days written notice to the Entity.

SECTION 4.06 Administrative Fee

The Entity shall pay a fee of two thousand five hundred dollars ($2,500) to the City on the Effective Date to offset the costs and expenses of the City associated with this agreement and the application and analysis and other costs related to same.

The Entity shall also 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 4.04 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 4.06 for the term of the this Agreement.

SECTION 4.07 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.

SECTION 4.08 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.

SECTION 4.09 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.

SECTION 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.

{End of Article IV}

ARTICLE V

REMEDIES

SECTION 5.01 Dispute Resolution

In the event of a 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 and/or followed 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.

SECTION 5.02 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.

{End of Article V}

ARTICLE VI

CERTIFICATE OF OCCUPANCY

SECTION 6.01 Certificate of Occupancy

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

SECTION 6.02 Filing of Certificate of Occupancy

It shall be the responsibility of the Entity to promptly file with both the Tax Assessor and the Tax Collector a copy of any Temporary or Permanent Certificate of Occupancy issued for the Project.

Failure of the Entity to file such issued Certificate of Occupancy as required by the preceding paragraph shall not militate against any action or non-action, taken by the City, including, if appropriate retroactive billing with interest for any charges determined to be due, in the absence of such filing by the Entity.

SECTION 6.03 Issuance of Certificate of Occupancy

Subject to the terms and condition herein, the City may issue separate Certificates of Occupancy for Individual Units.

{End of Article VI}

ARTICLE VII

ANNUAL AUDITS

SECTION 7.01 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.

SECTION 7.02 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.

SECTION 7.03 Total Project Cost Audit: Within ninety (90) days after the final Certificate of Occupancy is issued for the Project, 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 11 to the Application.

SECTION 7.04 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.

SECTION 7.05 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.

SECTION 7.06 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.

SECTION 7.07 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.

{End of Article VII}

ARTICLE VIII

ASSIGNMENT AND/OR ASSUMPTION

SECTION 8.01 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. 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 or transfer 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, unless transfer is to a related entity for tax planning purposes.

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 or transfer 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 8.01(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, unless sale/ transfer is to a related entity for estate planning or other family transfer purpose.

SECTION 8.02 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.

SECTION 8.03 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 and/or assign the lease to the Land and/or Improvements, and that any such encumbrance or assignment shall not be deemed to be a violation of this Agreement.

{End of Article VIII}

ARTICLE IX

WAIVER

SECTION 9.01 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.

{End of Article X}

ARTICLE X

NOTICE

SECTION 10.01 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 or by commercial overnight delivery service with package tracking capabilities and for which proof of delivery is available, as follows:

When sent to the Entity it shall be addressed as follows:

Mahalaxmi Bayonne 1 Urban Renewal, LLC
2449 Kenendy Boulevard,
Jersey City, NJ 07304
Raj@guptadevelopment.com

with copies to:

Don Pepe, Esq.
Scarinci & Hollenbeck
130 Newman Springs Rd.
Building 3, Suite 310
Red Bank, NJ 07701
dpepe@sh-law.com

When sent to the City, it shall be addressed as follows:

City Clerk
City of Bayonne
630 Avenue C
Bayonne, New Jersey 07002

with copies to

City of Bayonne
Law Department
630 Avenue C
Bayonne, New Jersey 07002

<<DevelopmentCounsel>>

The notice to the City shall identify the subject with the tax block and lot as well as the tax account numbers of the tax parcels comprising the Property.

{End of Article XI}

ARTICLE XI

COMPLIANCE

SECTION 11.01 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.

{End of Article XII}

ARTICLE XII

CONSTRUCTION

SECTION 12.01 Construction

This Agreement shall be construed and enforced in accordance with the laws of the State of New Jersey, and without regard to or aid or any presumption or other rule requiring construction against the Party 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.

{End of Article XIII}

ARTICLE XIII

INDEMNIFICATION

SECTION 13.01 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.

{End of Article XIV}

ARTICLE XIV

DEFAULT

SECTION 14.01 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.

SECTION 14.02 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, or if not, 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.

SECTION 14.03 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.

SECTION 14.04 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 15.02, the City has the right to terminate this Agreement upon thirty (30) days written notice to the Entity (the "**Notice of Termination**").

SECTION 14.05 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.

SECTION 14.06 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.

{End of Article XIV}

ARTICLE XV

MISCELLANEOUS

SECTION 15.01 Conflict

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

SECTION 15.02 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.

SECTION 15.03 Entire Document

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

SECTION 15.04 Good Faith

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

SECTION 15.05 Recording

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

SECTION 15.06 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.

SECTION 15.07 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.

SECTION 15.08 Financing Matters

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

SECTION 15.09 Counterparts

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

SECTION 15.10 Amendments

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

SECTION 15.11 Certification

The City Clerk shall certify to the Tax Assessor, pursuant to N.J.S.A. 40A:20-12, that a 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, etseq. 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.

SETION 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.

SECTION 15.13 Effect of Amendment and Restatement

This Amended 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, including, but not limited to the Original Agreement.

{End of Article XV}

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

Mahalaxmi Bayonne 1 Urban Renewal, LLC, a New Jersey limited liability company

By: _____, Managing Member

_____

By:
Title:

THE CITY OF BAYONNE

By: _____
James Davis
Mayor

STATE OF NEW JERSEY :

: ss

COUNTY OF HUDSON :

The foregoing instrument was acknowledged before me this __day of _____, 20__, by **Mahalaxmi Bayonne 1 Urban Renewal, LLC** a New Jersey limited liability company, by _____, its Member, on behalf of the entity.

_____
Notary Public

Commission Expiration: _____

LIST OF EXHIBITS

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

ARTICLE XVI **Property Description**
ARTICLE XVII **Application with Exhibits**
ARTICLE XVIII **Ordinance**