

City Clerk File No. Ord. 10-012

Agenda No. 3.A 1st Reading

Agenda No. \_\_\_\_\_ 2nd Reading & Final Passage



# ORDINANCE OF JERSEY CITY, N.J.

COUNCIL AS A WHOLE

offered and moved adoption of the following ordinance:

CITY ORDINANCE 10-012

TITLE: Ordinance Creating Community Services Block Grant Board in the Department of Housing, Economic Development and Commerce.

Council offered and moved adoption of the following Ordinance:

Whereas, 42 U.S.C. Sec 9910 requires tripartite boards from public organizations in order to be considered an eligible entity for purposes of administering Community Service Block Grants; and

Whereas, the board is required to be composed of members of low income individual families; elected officials and major groups and interests in the community served; and

Whereas, a public organization such as Jersey City is required to have a minimum of 1/3 of the tripartite board membership comprised of representatives of low income individuals and families.

NOW THEREFORE, the Municipal Council of Jersey City does Ordain:

Section 1. Community Service Block Grant Board.

There is hereby established a Community Service Block Grant Board which shall be reconstituted and continued in the Department of Housing, Economic Development and Commerce.

Section 2. Membership on the Administering Board shall consist of the following three members:

(1) Public Official: An elected or public official, member of the City Council, or their designee.

(2) Representative of low income individuals and families: The Jersey City Tenants Affairs Board shall be entitled to elect one representative.

(3) Private Representation: One member shall be selected who is representative of major groups and interests in the community served.

Section 3. Appointment of members.

All members other than the representative of the Jersey City Tenants Affairs Board shall be appointed by the Mayor and all members shall serve for a term of two years which may be renewed once, but total service not to exceed 6 years, except public officials who shall serve the term of their elected public offices.

Section 4. Administering Board.

The Administering Board shall have the following powers:

A) To organize itself adopt rules and procedures for its internal organization.

B) To review and make recommendations to the Department of Housing, Economic Development and Commerce to federal, state and private agencies for social services.

C) To review and make recommendations to the Department of Housing, Economic Development and Commerce and the Municipal Council upon existing social services programs under the auspices of the Department of Housing, Economic Development and Commerce.

D) To participate in the development of programs designed to serve low income individuals and families.

E) To advise the Municipal Council in social service policies and standards and program and administrative and financial policies.

F) The Director of the Department of Housing, Economic Development and Commerce is authorized to assist the Administering Board in fulfilling its responsibilities.

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

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

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

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

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

APPROVED AS TO LEGAL FORM

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

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

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

Certification Required

Not Required

**JERSEY CITY LAW DEPARTMENT**

**Memorandum**

**DATE:** February 17, 2010  
**TO:** William Matsikoudis, Corporation Counsel   
**FROM:** Vincent Signorile, Assistant Corporation Counsel VS  
**SUBJECT:** Tripartite CSBG Board Revised Ordinance

---

The Community Service Block Grant (CSBG) Board ordinance as originally drafted did not include the provision under public officials that the board include elected officials or public officials as one-third membership of the board.

Title II, sec: 676B (a) (2) (A) sets forth that the board shall be selected to include one-third of public officials who are either elected or appointed public officials or their representative. The amendment conforms the ordinance with the authorizing statute 42 U.S.C. sec. 9910 to authorize the appointment of a public official or their designee to the board.

The amendment adds the word public official to the public official membership of the Board.

Please have this substituted for the ordinance on the current agenda.

VS/dc

City Clerk File No. Ord. 10-013

Agenda No. 3.B 1st Reading

Agenda No. \_\_\_\_\_ 2nd Reading & Final Passage



# ORDINANCE OF JERSEY CITY, N.J.

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

CITY ORDINANCE 10-013

TITLE:

**ORDINANCE OF THE MUNICIPAL COUNCIL OF THE CITY OF JERSEY CITY ADOPTING AMENDMENTS TO THE LAND DEVELOPMENT ORDINANCE PERMITTING MEDICAL OFFICE USE IN THE R-1 ZONING DISTRICT ALONG A PORTION OF PALISADE AVENUE**

**WHEREAS**, the Municipal Council, pursuant to N.J.S.A. 40:55D-62, may adopt or amend a zoning ordinance relating to the nature and extent of the uses of land and of buildings and structures thereon; and

**WHEREAS**, several variances have been granted in past years to allow ground floor medical office use on lots on certain blocks along Palisade Avenue in the vicinity of Christ Hospital; and

**WHEREAS**, the granting of said use variances has been noted in the Annual Zoning Reports of the Zoning Board of Adjustment for several years along with the recommendation that use standards along this portion of Palisade Avenue be reexamined; and

**WHEREAS**, the proposed amendments address both the recommendations of the Annual Zoning Reports and are reflective of existing conditions on these certain blocks; and

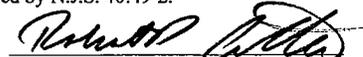
**WHEREAS**, the Planning Board of Jersey City, at its meeting of January 19, 2010, did discuss and approve a motion recommending that the Municipal Council adopt the amendments contained herein; and

**WHEREAS**, the amendments to the Land Development Ordinance are attached hereto and made a part hereof, and are available for public inspection at the Office of the City Clerk, City Hall, 280 Grove Street, Jersey City, NJ;

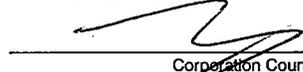
**NOW, THEREFORE, BE IT ORDAINED** by the Municipal Council of the City of Jersey city that the Land Development Ordinance, be and hereby is amended as per the attached document;

**BE IT FURTHER ORDAINED THAT:**

- A. All ordinances and parts of ordinances inconsistent herewith are hereby repealed.
- B. This ordinance shall be a part of the Jersey City Code as though codified and set forth fully herein. The City Clerk shall have this ordinance codified and incorporated in the official copies of the Jersey City Code.
- C. This ordinance shall take effect at the time and in the manner as provided by law.
- D. The City Clerk and the Corporation Council be and they are hereby authorized and directed to change any chapter numbers, article numbers and section numbers in the event that the codification of this ordinance reveals that there is a conflict between those numbers and the existing code, in order to avoid confusion and possible repealers of existing provisions.
- E. The City Clerk is hereby directed to give notice at least ten days prior to hearing on the adoption of this Ordinance to the County Planning board and to all other persons entitled thereto pursuant to N.J.S. 40:55D-15 and N.J.S. 40:55D-63 (if required). Upon the adoption of this Ordinance after public hearing thereon, the City Clerk is further directed to publish notice of the passage thereof and to file a copy of the Ordinance as finally adopted with the Hudson County Planning Board as required by N.J.S. 40:55D-16. The clerk shall also forthwith transmit a copy of this Ordinance after final passage to the Municipal Tax Assessor as required by N.J.S. 40:49-2.

  
Robert D. Cotter, AICP, PP, Director  
Division of City Planning

APPROVED AS TO LEGAL FORM

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

APPROVED: 

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

Certification Required

Not Required

**ORDINANCE FACT SHEET**

**1. Full Title of Ordinance:**

**ORDINANCE OF THE MUNICIPAL COUNCIL OF THE CITY OF JERSEY CITY  
ADOPTING AMENDMENTS TO THE LAND DEVELOPMENT ORDINANCE PERMITTING  
MEDICAL OFFICE USE IN THE R-1 ZONING DISTRICT ALONG A PORTION OF  
PALISADE AVENUE**

**2. Name and Title of Person Initiating the Ordinance, etc.:**

Carl S. Czaplicki, Director, Department of Housing, Economic Development, and Commerce

**3. Concise Description of the Plan Proposed in the Ordinance:**

Amends the R-1 One and Two Family Zoning District of the Land Development Ordinance (Zoning Ordinance) to allow for ground floor medical offices as conditional uses on the west side of Palisade Avenue from St. Paul's Avenue to Waverly Street.

**4. Reasons (Need) for the Proposed Program, Project, etc.:**

The amendments will facilitate appropriate and compatible development along this portion of Palisade Avenue, which is directly across from the Medical zoning district and where a large number of properties already have ground floor medical uses that existed prior to adoption of the 2001 Land Development Ordinance (LDO), or were approved by variance after adoption of the LDO.

The granting of said use variances has been noted in the Annual Zoning Reports of the Zoning Board of Adjustment for several years along with the recommendation that use standards along this portion of Palisade Avenue be reexamined.

**5. Anticipated Benefits to the Community:**

Facilitation of more appropriate, compatible development.

**6. Cost of Proposed Plan, etc.:**

None

**7. Date Proposed Plan will commence:**

Upon approval

**8. Anticipated Completion Date: N/A**

**9. Persons Responsible for Coordinating Proposed Program, Project, etc.:**

Carl S. Czaplicki, Director, Dept of HEDC  
Robert D. Cotter, City Planning Director  
Anthony J. Lambiase, Director, Division of Zoning

**10. Additional Comments: None**

**I Certify that all the Facts Presented Herein are Accurate.**

  
\_\_\_\_\_  
Division Director

FEB 2, 2010  
\_\_\_\_\_  
Date

*Deary*  
  
\_\_\_\_\_  
Department Director Signature

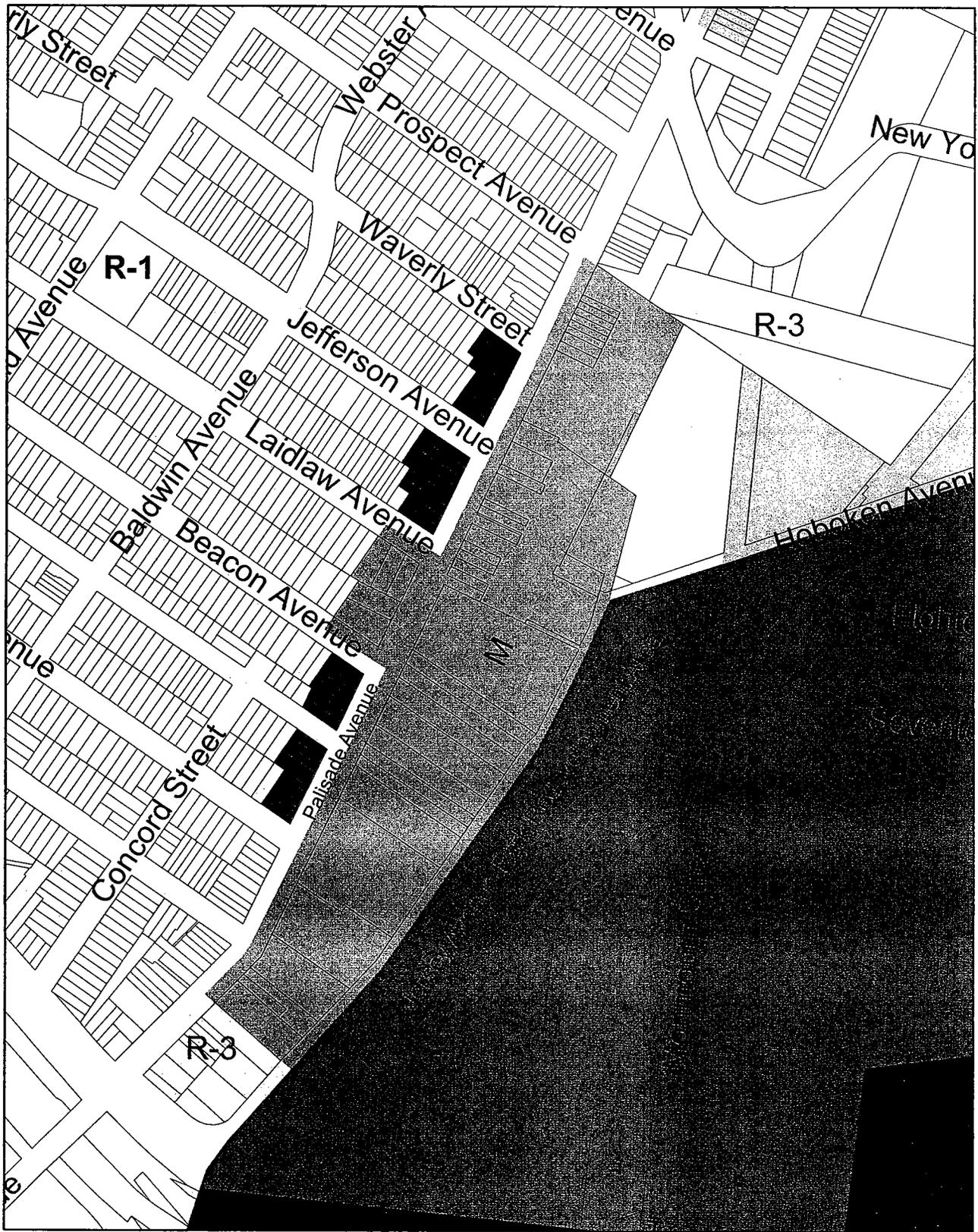
FEB 2, 2010  
\_\_\_\_\_  
Date

## **SUMMARY STATEMENT**

### **ORDINANCE OF THE MUNICIPAL COUNCIL OF THE CITY OF JERSEY CITY ADOPTING AMENDMENTS TO THE LAND DEVELOPMENT ORDINANCE PERMITTING MEDICAL OFFICE USE IN THE R-1 ZONING DISTRICT ALONG A PORTION OF PALISADE AVENUE**

This Ordinance will amend Article V: R-1 One and Two Family Housing of the Land Development Ordinance (Zoning Ordinance) to allow ground floor medical offices as conditional uses on the west side of Palisade Avenue from St. Paul's Avenue to Waverly Street in order to facilitate development that is compatible with the existing neighborhood along that particular part of Palisade Avenue.

# Proposed Medical Office Use in the R-1 Zone



## Legend

 R-1 Ground Floor Medical Office as Conditional Use



City Clerk File No. Ord. 10-014

Agenda No. 3.C 1st Reading

Agenda No. \_\_\_\_\_ 2nd Reading & Final Passage



# ORDINANCE OF JERSEY CITY, N.J.

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

CITY ORDINANCE 10-014

TITLE: **ORDINANCE AMENDING AND SUPPLEMENTING CHAPTER 12 (MUNICIPAL  
AUTHORITIES) ARTICLE IV (MUNICIPAL UTILITIES AUTHORITY)**

**THE MUNICIPAL COUNCIL OF THE CITY OF JERSEY CITY HEREBY ORDAINS:**

A. The following amendments to Chapter 12 (Municipal Authorities) Article IV (Municipal Utilities Authority) are hereby adopted:

### MUNICIPAL AUTHORITIES

#### ARTICLE IV

#### Municipal Utilities Authority

#### §12-6. Members.

The Jersey City Municipal Utilities Authority shall consist of members of the Sewerage Authority holding office at the time of this reorganization, together with any successors in such membership appointed as if said Sewerage Authority had originally been created pursuant to the Municipal and County Utilities Authorities Law (N.J.S.A. 40:14B-4).

The Incinerator Authority is established pursuant to Law [~~N.J.S.A. 40B-1 et seq.~~] N.J.S.A. 40:66A-1 et seq.

The Board may provide its members with compensation for their services in the form of medical health care, prescription, optical or dental insurance coverage. Effective June 1, 2010, no board member shall receive compensation of any kind, including but not limited to, salary, medical health coverage, life insurance, prescription, optical or dental coverage. No board members shall receive any other compensation of any kind whatsoever, except as provided herein.

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

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

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

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

**NOTE:** New matter is underlined; deleted matter in [brackets] For purposes of advertising only, new matter is indicated by **bold face** and repealed matter by *italic*.

2/18/10

APPROVED AS TO LEGAL FORM

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

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

Corporation Counsel

Business Administrator

Certification Required

Not Required

City Clerk File No. Ord. 10-015

Agenda No. 3.D 1st Reading

Agenda No. \_\_\_\_\_ 2nd Reading & Final Passage



# ORDINANCE OF JERSEY CITY, N.J.

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

CITY ORDINANCE 10-015

TITLE: **ORDINANCE AMENDING AND SUPPLEMENTING CHAPTER 12 (MUNICIPAL  
AUTHORITIES) ARTICLE II (INCINERATOR AUTHORITY)**

**THE MUNICIPAL COUNCIL OF THE CITY OF JERSEY CITY HEREBY ORDAINS:**

A. The following amendments to Chapter 12 (Municipal Authorities) Article II (Incinerator Authority) are hereby adopted:

### MUNICIPAL AUTHORITIES

#### ARTICLE II Incinerator Authority

**§12-2. Authority Established; membership.**

A. The Incinerator Authority is established pursuant to Law ~~[N.J.S.A. 40B-1 et seq.]~~ N.J.S.A. 40:66A-1 et seq.

B. No Change.

C. The Board may provide its members with compensation for their services in the form of medical health care, prescription, optical or dental insurance coverage. Effective June 1, 2010, no board member shall receive compensation of any kind, including but not limited to, salary, medical health coverage, life insurance, prescription, optical or dental coverage. No board members shall receive any other compensation of any kind whatsoever, except as provided herein.

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

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

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

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

**NOTE:** New matter is underlined; deleted matter in [brackets] For purposes of advertising only, new matter is indicated by **bold face** and repealed matter by *italic*.

2/18/10

APPROVED AS TO LEGAL FORM

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

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

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

Business Administrator

Certification Required

Not Required



# ORDINANCE OF JERSEY CITY, N.J.

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

CITY ORDINANCE 10-016

TITLE:

**ORDINANCE AMENDING AND SUPPLEMENTING CHAPTER 53 (PERSONNEL) ARTICLE VI (VACATION LEAVE AND OTHER BENEFITS FOR NONUNION, UNCLASSIFIED PERSONNEL AND NONUNION MANAGERIAL PERSONNEL)**

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

A. The following amendments and supplements to Chapter 53 (Personnel) and of the Jersey City Code are adopted.

### ARTICLE VI

Vacation Leave and Other Benefits for Nonunion,  
Unclassified Personnel and Nonunion Managerial Personnel

**§ 53-40. Established Benefits for Managerial Employees.**

Effective immediately, no member of the Municipal Council shall receive any financial incentive from the City to waive any of the medical or health benefits listed below: Notwithstanding any other section of the City Code, nonunion managerial personnel shall receive the following benefits:

- |    |                                      |            |
|----|--------------------------------------|------------|
| A. | Medical health coverage.             | No Change. |
| B. | Life insurance.                      | No Change. |
| C. | Prescription plan.                   | No Change. |
| D. | (Benefits for newly hired employees) | No Change. |
| E. | Optical plan.                        | No Change. |
| F. | Dental plan.                         | No Change. |
| G. | Deferred compensation.               | No Change. |
| H. | Employee Assistance.                 | No Change. |
| I. | Sick leave.                          | No Change. |
| J. | Annual leave.                        | No Change. |
| K. | Personal days.                       | No Change. |
| L. | Longevity.                           | No Change. |
| M. | Holidays.                            | No Change. |
| N. | Tuition reimbursement.               | No Change. |

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

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

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

ORDINANCE AMENDING AND SUPPLEMENTING CHAPTER 53 (PERSONNEL) ARTICLE VI (VACATION LEAVE AND OTHER BENEFITS FOR NONUNION, UNCLASSIFIED PERSONNEL AND NONUNION MANAGERIAL PERSONNEL)

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

NOTE: New matter is underlined; deleted matter in ~~brackets~~ For purposes of advertising only, new matter is indicated by **bold face** and repealed matter by *italic*.

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

APPROVED AS TO LEGAL FORM

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

Business Administrator

Corporation Counsel

Certification Required

Not Required

City Clerk File No. Ord. 10-017

Agenda No. 3.F 1st Reading

Agenda No. \_\_\_\_\_ 2nd Reading & Final Passage



# ORDINANCE OF JERSEY CITY, N.J.

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

CITY ORDINANCE 10-017

TITLE: **ORDINANCE ESTABLISHING POLICIES AND PROCEDURES FOR JC1TV**

COUNCIL AS A WHOLE OFFERED AND MOVED ADOPTION OF THE FOLLOWING  
ORDINANCE:

**WHEREAS**, the goal of JC1TV is to create greater awareness of local government and facilitate community's participation in local decision making process; and

**WHEREAS**, the goal is to make public proceedings and events more accessible to Jersey City residents by providing coverage of City Council meetings and other Boards via cable television; and

**WHEREAS**, JC1TV can promote special events in the community sponsored by the City and civic affiliated organizations; and

**WHEREAS**, JC1TV can provide supplement public safety and disaster preparedness activities/information pertaining to the City of Jersey City; and

**WHEREAS**, JC1TV can serve as an invaluable tool to document and archive City events and activities.

**THEREFORE, BE IT ORDAINED**, by the Municipal Council of the City of Jersey City hereby enacts policies and procedures for JC1TV.

A. The following amendments to Chapter 116 (Cable Television) are hereby adopted:

**§ 116.1 through 116.3** No change

**§ 116.4** Introduction

JC1TV is a cable channel granted to the City for the purpose of cable casting government television programming, including but not limited to coverage of the City Council meetings and relevant public board meetings.

**§ 116.5** Purpose

JC1TV exists to provide citizens of Jersey City with local government information and to assist the City departments with video production services. Specific objectives include:

- (a) provide information about programs and services offered by City departments, agencies, boards, commissions and government supported agencies.
- (b) expand citizens' awareness of government and its decision-making processes by exposing them to government meetings and civic events.
- (c) enhance existing public information materials by using cable television as a public information tool.

- (d) provide and distribute programming of interest to the residents that will inform, educate and enlighten, as well as encourage participation in government services, activities and decision making.
- (e) increase the cost efficiency of service delivery by departments and agencies.

**§ 116.6      Programming Priorities**

- A. In the event of an emergency, JC1TV will be available as needed, and emergency information shall have priority over all other programming. JC1TV will work with the Director of Emergency Services to coordinate the use and programming of the channel during emergencies.
- B. Coverage of City Council meetings from commencement to time of adjournment.
- C. Meetings and programs sponsored by regional, state and federal agencies dealing with topics pertaining to the City of Jersey City and of general interest.
- D. The dissemination of information generated by the programs, services and functions of City departments and other governmental agencies.
- E. Reoccurring programs and information series or one-time special or non-regular informational programs.
- F. Public service announcements for City services and programs.

**§ 116.7      Programming Formats and Scheduling**

- A. City Council coverage will be televised according to the following guidelines:
  - (1) coverage of City Council meetings shall be covered gavel-to-gavel excluding non-public agenda items and sessions which by law, exclude the public;
  - (2) public meeting coverage shall not be edited or subject to editorial comment. Editing for technical difficulties is permitted;
  - (3) coverage will be focused on a primarily recognized speaker, and on any visually displayed information that may be showing;
  - (4) a City-operated character message may indicate the name of the officially recognized speaker and may include the identification of the matter being considered and the date;
  - (5) public City Council meetings are to be televised at least four times before the next City Council meeting and with two showings beginning between the times of 6 p.m. and 9 p.m. Council meetings will take priority over other regular scheduled programming;
  - (6) In consultation with Comcast, which televises City Council meetings, City Council caucus coverage will be televised at least twice between the time of the caucus and time of the regularly scheduled subsequent Council meeting. One caucus showing will be aired during the times of 9 a.m.-5 p.m. and subsequent showing beginning between the times of 6 p.m.-9 p.m.

**§ 116.8      Channel Policies**

JC1TV shall be guided by the following policies:

- A. Non-editorial: the channel shall provide direct, non-editorial information concerning the operations, services and deliberations of government to the citizens of Jersey City;

- B. Non-political: the channel is not intended as a mechanism for building support for a particular ballot issue or candidate for public office. This provision does not preclude the cable casting of non-partisan programs sponsored by a neutral third party designed to inform the citizens of election issues and candidates. Declared candidates for any elective office and persons advocating any cause, viewpoint or proposed policy of a partisan nature will not be eligible to appear on the channel 130 days prior to an election, unless they appear in a forum in which all candidates or sides of an issue are given equal time. For purposes of policy, a person is considered to be a candidate from the time of announcing publicly for any public office until the election has been held. This policy does not apply to persons who receive incidental air time as part of a public meeting being televised, nor to officials acting as part of the regular duties when such actions do not involve partisan policies;
- C. Neutrality: in any program concerning subjects that may be interpreted to be materially controversial, JC1TV will maintain a position of neutrality, providing unbiased information. Requests for presentation of an opposing viewpoint during a legislative meeting will be directed to the appropriate agency for action on their agenda;
- D. Non-commercial: JC1TV will not televise any paid advertising or any program that depicts a product, business and/or service that has the purpose of benefitting a profit-making enterprise;
- E. Non-discriminatory: JC1TV shall not discriminate in the delivery of its services on the basis of race, color, creed, national origination, sex, sexual orientation or mental or physical ability or any other protected category;
- F. Non-sectarian Programming: JC1TV will not televise any program that exposes or promotes any particular religious group or belief;
- G. Live Coverage: JC1TV will give priority to live coverage of meetings;
- H. Acquired or Pre-produced Programming: to minimize resources, JC1TV will seek out high quality pre-produced programming that addresses the needs and interests of the citizens of Jersey City and that meets the priorities spelled out in §116.6

**§ 116.9      Programming Restriction:**

The following programming is restricted:

- A. any obscene or salacious material;
- B. any material which violates Federal, State or Local laws

**§ 116.10      Copyright of Programs**

Programs containing copyrighted materials will be used only if copyright clearance has been obtained. The ownership and copyright for any program produced by the City of Jersey City shall be held by the City.

- B. All ordinances and parts of ordinances inconsistent herewith are hereby repealed.
- C. The City Clerk shall have this ordinance codified and incorporated in the official copies of the Jersey City Code.
- D. This ordinance shall take effect at the time and in the manner as provided by law.

- E. The City Clerk and the Corporation Counsel may change any chapter numbers, article numbers and section numbers if codification of this ordinance reveals a conflict between those numbers and the existing code, in order to avoid confusion and possible accidental repealers of existing provisions.

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

APPROVED AS TO LEGAL FORM

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

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

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

Certification Required

Not Required

City Clerk File No. Ord. 10-020

Agenda No. 3.G 1st Reading

Agenda No. \_\_\_\_\_ 2nd Reading & Final Passage



# ORDINANCE OF JERSEY CITY, N.J.

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

CITY ORDINANCE 10-020

**TITLE: ORDINANCE APPROVING A 30 YEAR TAX EXEMPTION FOR A MIXED AFFORDABLE AND MARKET RATE RENTAL HOUSING PROJECT TO BE CONSTRUCTED BY AHM HOUSING ASSOCIATES IV, LLC, A QUALIFIED HOUSING SPONSOR UNDER THE NEW JERSEY MORTGAGE HOUSING FINANCE AGENCY LAW N.J.S.A. 55:14K-1 ET SEQ.**

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

**WHEREAS**, AHM Housing Associates IV, LLC, is a qualified housing sponsor under the New Jersey Mortgage Housing Finance Agency Law N.J.S.A. 55:14K-1 et seq.; and

**WHEREAS**, AHM Housing Associates IV, LLC, is the ground lessee of certain property known as Block 1651 Lots 14, 13 and 11 (formerly Lot 6) on City's Tax map and more commonly known by the street address of 320, 324 and 328 Duncan Avenue, Jersey City, New Jersey [Property] for a period coterminous with the term of the tax exemption; and

**WHEREAS**, AHM Housing Associates IV, LLC, proposes to construct a housing project to be regulated and financed pursuant to the provisions of the New Jersey Housing and Mortgage Finance Agency Law, N.J.S.A. 55:14K-1 et seq. on the Property; and

**WHEREAS**, AHM Housing Associates IV, LLC, applied for a 30 year tax exemption to construct certain improvements on the Property to create a total of fifty-six (56) residential rental apartments, consisting of five (5) moderate income units, twenty-nine (29) low income units, sixteen (16) very low income units, for a total of fifty (50) affordable units, and six (6) market rate rental units; and

**WHEREAS**, AHM Housing Associates IV, LLC, has agreed to pay a service charge estimated to be, based upon 6.28% of annual gross revenue for years 1-10; 10% for years 11-20; and 15% for years 21-30, and

**WHEREAS**, the work to be performed under the federal assistance program funding this project will be done in accordance with 12 USC 1701 (U) and 24 CFR 135, section 3, which maintains training and employment for low income residents and contracts to be awarded to low income Jersey City residents or businesses; and

**WHEREAS**, AHM Housing Associates IV, LLC, will also provide employment and other economic opportunities for City residents and businesses in accordance with a Project Employment Agreement; and

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

1. The City will apply to receive credit for creating fifty (50) very low, low and moderate income rental housing against the units needed within the City of Jersey City as determined by the New Jersey Council on Affordable Housing and six (6) units will be market units, constituting a typical Hope VI Project; and

**ORDINANCE APPROVING A 30 YEAR TAX EXEMPTION FOR A MIXED AFFORDABLE AND MARKET RATE RENTAL HOUSING PROJECT TO BE CONSTRUCTED BY AHM HOUSING ASSOCIATES IV, LLC, A QUALIFIED HOUSING SPONSOR UNDER THE NEW JERSEY MORTGAGE HOUSING FINANCE AGENCY LAW N.J.S.A. 55:14K-1 ET SEQ.**

2. There is an especially compelling need for decent safe and affordable housing for low income families, who are currently paying over 30% of their income for housing; and
3. The project will generate approximately 70 full-time construction jobs and 3 permanent jobs.
4. The construction of the improvements will stabilize the neighborhood and should generate additional tax revenue; and

**WHEREAS**, the City hereby determines that the tax exemption is necessary to insure the success of the project for the following reasons:

1. The reduced tax payments allow the owner to stable its operating budget, allowing a high level of maintenance to the building over the life of the project;
2. The reduction in taxes makes the Project attractive to investors of low income housing tax credits and makes the project eligible for financing from the New Jersey Housing and Mortgage Finance Agency, needed to fund the Project; and
3. The reduced tax payments will allow the owner to maintain the low and moderate income units at the lowest rents possible within the income guidelines; and

**WHEREAS**, the Mayor recommends this tax abatement application, which was also approved for recommendation by the Tax Abatement Committee on January 28, 2010.

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

1. The application of AHM Housing Associates IV, LLC, a qualified housing sponsor under the New Jersey Mortgage Housing Finance Agency Law N.J.S.A. 55:14K-1 et seq.; for a tax exemption is hereby approved subject to the following terms and conditions:
  - (a) Term: 30 years or earlier, upon the expiration of the affordability controls or the term of the HMFA mortgage;
  - (b) Service Charge: 6.28% of Annual Gross Revenue, estimated to be \$27,834, based upon 6.28% of annual gross revenue for years 1-10; \$54,028, based upon 10% for years 11-20 and \$98,790, based upon 15% for years 21-30.
  - (c) Project: a total of fifty-six (56) residential rental housing, of which a total of fifty (50) units are low or moderate income to be applied against the units needed within the City of Jersey City as determined by the New Jersey Council on Affordable Housing; and
  - (d) Property: Block 1651, Lots 14, 13 and 11 (formerly Lot 6) on the City's Tax map and more commonly known by the street address of 320, 324 and 328 Duncan Avenue, Jersey City, New Jersey.
2. The Mayor or Business Administrator is authorized to execute a tax exemption Financial Agreement, which includes a Project Employment Agreement in substantially the form on file in the Office of the City Clerk, subject to such modification as the Business Administrator and Corporation Counsel deems appropriate or necessary.

**ORDINANCE APPROVING A 30 YEAR TAX EXEMPTION FOR A MIXED AFFORDABLE AND MARKET RATE RENTAL HOUSING PROJECT TO BE CONSTRUCTED BY AHM HOUSING ASSOCIATES IV, LLC, A QUALIFIED HOUSING SPONSOR UNDER THE NEW JERSEY MORTGAGE HOUSING FINANCE AGENCY LAW N.J.S.A. 55:14K-1 ET SEQ.**

- 3. All ordinances and parts of ordinances inconsistent herewith are hereby repealed.
- 4. This ordinance shall be part of the Jersey City Code as though codified and fully set forth therein. The City Clerk shall have this ordinance codified and incorporated in the official copies of the Jersey City Code.
- 5. This ordinance shall take effect at the time and in the manner provided by law.
- 6. The City Clerk and Corporation Counsel be and they are hereby authorized and directed to change any chapter numbers, article numbers and section numbers in the event that the codification of this ordinance reveals that there is a conflict between those numbers and the existing code, in order to avoid confusion and possible accidental repealers of existing provisions.

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

*JM/he*  
*2/3/10*

APPROVED AS TO LEGAL FORM

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

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

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

Certification Required

Not Required

Rev. 2-3-10  
Long Term Tax Exemption  
HMFA  
N.J.S.A. 55:14K-1 et seq.

Re: 320, 324 and 328 Duncan Avenue  
Block 1651, Lots 14, 13 and 11 (formerly Lot 6)

### **PREAMBLE**

**THIS FINANCIAL AGREEMENT**, [Agreement] made this \_\_\_ day of \_\_\_\_\_, 2010, by and between **AHM HOUSING ASSOCIATES IV, LLC**, is a qualified housing sponsor under the New Jersey Mortgage Housing Finance Agency N.J.S.A. 55:14K-1 et seq., having its principal office at c/o Pennrose Properties, LLC, One Brewery Park, 1301 N. 31<sup>st</sup> Street, Philadelphia, PA 19121-4495 [Entity], and the **CITY OF JERSEY CITY**, a Municipal Corporation in the County of Hudson and the State of New Jersey, [City], having its principal office at 280 Grove Street, Jersey City, New Jersey 07302.

### **RECITALS**

#### **WITNESSETH:**

**WHEREAS**, the real property on which the Project is to be located is owned by the Jersey City Housing Authority [JCHA] and is described as Block 1651, Lots 14, 13 and 11 (formerly Lot 6), more commonly known by the street address of 320, 324 and 328 Duncan Avenue, Jersey City, NJ 07306, and more particularly described by the metes and bounds description set forth as Exhibit 1 to this Agreement; and

**WHEREAS**, the JCHA has made an application for a subdivision of the property. It is anticipated that, after the subdivision, the property will be located on Block 1651, Lots 14, 13 and 11 (formerly Lot 6) [the Property];

**WHEREAS**, the Entity has executed a long-term ground lease for the Property with the JCHA and has contracted to construct certain improvements on the Property, to create a total of fifty-six (56) residential rental apartments, consisting of five (5) moderate income units, twenty-nine (29) low income units, sixteen (16) very low income units, for a total of fifty (50) affordable units and six (6) market rate rental units [the "Project"];and

**WHEREAS**, the City of Jersey City found and determined that the proposed Project will meet existing housing needs.

**WHEREAS**, on \_\_\_\_\_, 2010, the Entity's Application for a tax exemption for the Project was approved by the City by the adoption of Ordinance 10-\_\_\_; and

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

## **ARTICLE I - GENERAL PROVISIONS**

### **Section 1.1 Governing Law**

This Agreement shall be governed by the provisions of the New Jersey Housing and Mortgage Finance Agency Law, N.J.S.A. 55:14K-1 et seq., Executive Order of E.O. 02-003, and Ordinance 10-\_\_\_, which authorized the execution of this Agreement. It being expressly understood and agreed that the City expressly relies upon the facts, data, and representations contained in the Application, attached hereto as Exhibit 3, in granting this tax exemption.

### **Section 1.2 General Definitions**

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

- i. Agency- The New Jersey Housing and Mortgage Finance Agency.
- ii. Annual Gross Revenue- The total gross income, including any and all revenue derived from or generated by the Project of whatever kind or amount, whether received as rent from any tenants or income or fees from third parties, including but not limited to fees or income paid or received for parking, laundry, or other services, including any Section 8 certificate revenue derived from the Project, including all rent and other income, with an allowable vacancy rate of up to 5%. It also includes the cost of insurance, gas, electricity, water and sewer charges, other utilities, garbage removal and insurance charges even if paid for directly by the Tenant, if such expense is ordinarily paid for by the Landlord.
- iii. Annual Service Charge -Estimated Service Charge: \$27,834 in year one to 10, and increase throughout the term of the abatement to approximately \$54,028, based upon 10% of actual gross revenue in years 11-20; and \$98,790, based upon 15% of

actual gross revenue for years 21-30.

iv. Auditor's Report - A complete financial statement outlining the financial status of the Project (for a period of time as indicated by context), which shall also include a certification of Total Project Cost and clear computation of Net Profit. The contents of the Auditor's Report shall have been prepared in conformity with generally accepted accounting principles and shall contain at a minimum the following: a balance sheet, a statement of income, a statement of retained earnings or changes in stockholder's equity, statement of cash flows, descriptions of accounting policies, notes to financial statements and appropriate schedules and explanatory material results of operations, cash flows and any other items reasonably required by the City or its auditors. The Auditor's Report shall be certified as to its conformance with such principles by a certified public accountant who is licensed to practice that profession in the State of New Jersey.

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

vi. Default - Shall be a breach of or the failure of the Entity to perform any obligation imposed upon the Entity by the terms of this Agreement, or under the Law, beyond any applicable grace or cure periods.

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

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

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

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

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

xii. Law - Law shall refer to the New Jersey Housing and Mortgage Finance Agency Law, N.J.S.A. 55:14K-1 et seq.; Executive Order 02-003, relating to long term tax exemption, as it may be amended and supplemented; Ordinance 10-\_\_\_, which authorized the execution of this Agreement and all other relevant Federal, State or City statutes, ordinances, resolutions, rules and/or regulations.

xiii. Minimum Annual Service Charge - The Minimum Annual Service Charge shall be the amount of the total taxes that would have been levied against all real property in the area covered by the Project in the last full tax year preceding the recording of the HMFA mortgage which amount the parties agree would have been \$27,834. The Minimum Annual Service Charge shall be paid in each year in which the Annual Service Charge, calculated pursuant to the Financial Agreement would be less than the Minimum Annual Service Charge.

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

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

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

## **ARTICLE II - APPROVAL**

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

The City hereby grants its approval for a tax exemption for all the Improvements to be constructed and maintained in accordance with the terms and conditions of this Agreement and the provisions of the Law which Improvements shall be constructed on certain property known on the Official Tax Assessor's Map of the City as: Block 1651, Lots 14, 13 and 11 (formerly Lot 6), more commonly known by the street address of 320, 324 and 328 Duncan Avenue, Jersey City, NJ, and described by metes and bounds in Exhibit 1 attached hereto.

**Section 2.2 Approval of Entity**

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

**Section 2.3 Improvements to be Constructed**

Entity represents that it will construct certain improvements on the Property to create a total of fifty-six (56) residential rental apartments, consisting of five (5) moderate income units, twenty-nine (29) low income units, sixteen (16) very low income units, for a total of fifty (50) affordable units and six (6) market rate rental units, all of which is more specifically described in the Application attached hereto as Exhibit 3.

**Section 2.4 Construction Schedule**

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

**Section 2.5 Ownership, Management and Control**

The Entity represents that it is the owner of the property upon which the Project is to be constructed. Upon construction, the Entity represents that the Improvements will be managed and controlled by the Entity.

**Section 2.6 Financial Plan**

The Entity represents that the Improvements shall be financed in accordance with

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

**Section 2.7 Statement of Rental Schedules and Lease Terms**

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

**ARTICLE III - DURATION OF AGREEMENT**

**Section 3.1 Term**

So long as there is compliance with the Law and this Agreement, it is understood and agreed by the parties hereto that this Agreement shall remain in effect for the earlier of: thirty five (35) years from the date of the adoption of Ordinance 10-\_\_\_, which approved this exemption or thirty (30) years from the date of the recording of the HMFA mortgage as funded and approved by the Agency. The tax exemption shall only be effective only while the Project is owned by an entity formed and operating as a housing sponsor under the Law and subject to an HMFA mortgage. Thereafter, the tax exemption shall expire and the land and improvements thereon shall be assessed and taxed according to the general law applicable to other non-exempt property in the City.

**ARTICLE IV - ANNUAL SERVICE CHARGE**

**Section 4.1 Annual Service Charge**

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

A Minimum Annual Service Charge shall be due beginning on the date this Agreement is executed. The Annual Service Charge or Minimum Annual Service Charge, as the case may be, shall be due on the first day of the month following the Substantial

Completion of the Project. In the event the Entity fails to timely pay the Minimum Annual Service Charge or the Annual Service Charge, the amount unpaid shall bear the highest rate of interest permitted in the case of unpaid taxes or tax liens on land until paid.

#### **Section 4.2 Administrative Fee**

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

#### **Section 4.3 Land Tax Credit**

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

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

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

**Section 4.5 Material Conditions**

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

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

**Section 5.1 Project Employment Agreement**

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

**ARTICLE VI - CERTIFICATE OF OCCUPANCY**

**Section 6.1 Certificate of Occupancy**

It is understood and agreed that it shall be the obligation of the Entity to obtain all Certificates of Occupancy in a timely manner. The failure to secure the Certificates of Occupancy shall subject the property to full taxation.

**Section 6.2 Filing of Certificate of Occupancy**

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

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

**Section 6.3 Construction Permits**

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

**ARTICLE VII - ANNUAL REPORTS**

**Section 7.1 Accounting System**

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

## **Section 7.2 Periodic Reports**

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

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

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

## **Section 7.3 Mortgage**

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

the HMFA Mortgage.

**Section 7.4 Inspection/Audit**

The Entity shall permit the inspection of its property, equipment, buildings and other facilities of the Project and, if deemed appropriate or necessary, any other related Entity by representatives duly authorized by the City and the NJ Division of Local Government Services in the Department of Community Affairs. It shall also permit, upon request, examination and audit of its books, contracts, records, documents and papers. Such examination or audit shall be made during the reasonable hours of the business day, in the presence of an officer or agent designated by the Entity.

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

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

**Section 8.1 Limitation of Profits and Reserves**

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

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

**Section 9.1 Prior Approval of Sale**

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

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

In the event that the Entity transfers, sells, demises, conveys, or in any manner

relinquishes ownership or title, including a lease to the land or improvements, covered by this tax exemption agreement, to a tax exempt non-profit organization or institution, including any public body, during the term of the tax exemption agreement, that would adversely impact the City's anticipated economic interests by reducing in any way taxes or the service charge due the City under this agreement or by law, it is understood and agreed by the Entity that it first obtain the consent of the City to the transfer or lease. It is further understood that it may be grounds for the City to withhold its approval if the City's economic interests are adversely effected thereby.

**Section 9.3 Severability.**

It is an express condition of the granting of this tax exemption that during its duration, the Entity shall not, without the prior consent of the Municipal Council by Ordinance, convey, mortgage or transfer, all or part of the Project so as to sever, disconnect, or divide the improvements from the lands which are basic to, embraced in, or underlying the exempted improvements.

**ARTICLE X - COMPLIANCE**

**Section 10.1 Operation**

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

**ARTICLE XI - DEFAULT**

**Section 11.1 Default**

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

**Section 11.2 Cure Upon Default**

Should the Entity be in Default, the City shall send written notice to the Entity of the

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

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

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

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

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

Consideration, or for breach of covenant or the resort to any other remedy herein provided for the recovery of Land Taxes shall not be construed as a waiver of the rights to terminate the tax exemption or proceed with a tax sale or Tax Foreclosure action or any other specified remedy.

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

## **ARTICLE XII- TERMINATION**

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

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

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

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

### **Section 12.3 Final Accounting**

Within ninety (90) days after the date of termination, whether by affirmative action of the Entity or by virtue of the provisions of the Law or pursuant to the terms of this Agreement, the Entity shall provide a final accounting to the City. For purposes of rendering a final accounting the termination of the Agreement shall be deemed to be the end of the fiscal year for the Entity.

### **Section 12.4 Conventional Taxes**

Upon Termination or expiration of this Agreement, the tax exemption for the

Project shall expire and the land and the Improvements thereon shall thereafter be assessed and conventionally taxed according to the general law applicable to other nonexempt taxable property in the City.

### **ARTICLE XIII - DISPUTE RESOLUTION**

#### **Section 13.1 Arbitration**

In the event of a breach of the within Agreement by either of the parties hereto or a dispute arising between the parties in reference to the terms and provisions as set forth herein, either party may apply to the Superior Court of New Jersey by an appropriate proceeding, to settle and resolve the dispute in such fashion as will tend to accomplish the purposes of the Law. In the event the Superior Court shall not entertain jurisdiction, then the parties shall submit the dispute to the American Arbitration Association in New Jersey to be determined in accordance with its rules and regulations in such a fashion to accomplish the purpose of the Long Term Tax Exemption Law. The cost for the arbitration shall be borne equally by the parties. The parties agree that the Entity may not file an action in Superior Court or with the Arbitration Association unless the Entity has first paid in full all charges defined in Article III, Section 4.8 as Material Conditions.

### **ARTICLE XIV - WAIVER**

#### **Section 14.1 Waiver**

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

### **ARTICLE XV - INDEMNIFICATION**

#### **Section 15.1 Defined**

It is understood and agreed that in the event the City shall be named as party defendant in any action (other than an action commenced by the Entity) alleging any breach, default or a violation of any of the provisions of this Agreement and/or the provisions of the Law, the Entity shall indemnify and hold the City harmless, and the Entity agrees to defend

the suit at its own expense. However, the City maintains the right to intervene as a party thereto, to which intervention the Entity consents; the expense thereof to be borne by the Entity.

## ARTICLE XVI- NOTICE

### **Section 16.1 Certified Mail**

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

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

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

AHM Housing Associates IV, LLC  
c/o Pennrose Properties, LLC  
One Brewery Park  
1301 N. 31<sup>st</sup> Street  
Philadelphia, PA 19121-4495

and

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

and

Trenk, DiPasquale, Webster,  
Della, Fera & Sodono, P.C.  
347 Mt. Pleasant Avenue, Suite 300  
West Orange, New Jersey 07052  
Att: Elnardo J. Webster, Esq.

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

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

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

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

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

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

#### **ARTICLE XVII-SEVERABILITY**

##### **Section 17.1 Severability**

If any term, covenant or condition of this Agreement or the Application, except a Material Condition, shall be judicially declared to be invalid or unenforceable, the remainder of this Agreement or the application of such term, covenant or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term, covenant or condition of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

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

#### **ARTICLE XVIII - MISCELLANEOUS**

##### **Section 18.1 Construction**

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

##### **Section 18.2 Conflicts**

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

of conflict between the Agreement and the Law, the Law shall govern and prevail.

**Section 18.3 Oral Representations**

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

**Section 18.4 Entire Document**

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

**Section 18.5 Good Faith**

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

**ARTICLE XIX - EXHIBITS**

**Section 19 Exhibits**

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

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

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

**ATTEST:**

**AHM ASSOCIATES IV, L.L.C.**

---

**SECRETARY**

---

**MEMBER MANAGER**

**ATTEST:**

**CITY OF JERSEY CITY**

---

**ROBERT BYRNE  
CITY CLERK**

---

**BRIAN O'REILLY  
BUSINESS ADMINISTRATOR**

## PROJECT EMPLOYMENT & CONTRACTING AGREEMENT

This Project Employment & Contracting Agreement is made on the \_\_\_\_ day of \_\_\_\_\_, 2010, between the **CITY OF JERSEY CITY** [City] and **AHM HOUSING ASSOCIATES IV, LLC**, having its principal office at AHM Housing Associates, LLC c/o Pennrose Properties, LLC, One Brewery Park, 1301 N. 31<sup>st</sup> Street, Philadelphia, PA 19121-4495. Recipient agrees as follows:

### **I. Definitions:**

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

1. "City" means the Business Administrator of the City of Jersey City, or his designee, including any person or entity which enters into a contract with the City to implement, in whole or in part, this agreement.
2. "Construction Contract" means any agreement for the erection, repair, alteration or demolition of any building, structure, bridge, roadway, or other improvement on a Project Site.
3. "Contractor" means any party performing or offering to perform a prime contract on behalf of the Recipient.
4. "DEO" means the Division of Economic Opportunity under the Department of Administration, located at 121-125 Newark Avenue, Jersey City, NJ 07302, Telephone #(201) 547-5611. DEO is in charge of Project Employment & Contracting coordination and monitoring on projects receiving abatements.
5. "Economic Incentive" means a tax abatement or exemption for a property or project which requires approval of the Municipal Council and which reduces the annual amount of taxes otherwise due, by \$25,000 or more in the aggregate;
6. "Employment" means any job or position during the construction and operational phase of the project. It includes positions created as a result of internal promotions, terminations, or expansions within the Recipient's work force which are to be filled by new employees. However, positions filled through promotion from within the Recipient's existing work force are not covered positions under this agreement.
7. "Local Business" means a bona fide business located in Jersey City.
8. Acting Mayor Jerramiah T. Healy's Business Cooperative Program means the group within DEO under the Department of Administration responsible for collecting local and minority business contracts and capability information. This group operates the Supplier Alert service which is to be used by the Recipient to meet their good faith business contracting and construction subcontracting goals.

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

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

## **II. Purpose:**

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

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

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

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

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

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

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

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

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

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

This agreement shall be in effect for a period co-terminus with the effective period of the tax exemption [the Economic Incentive]. Thus, it will commence on the date the City Council adopted Ordinance 09-034, approving the tax exemption and terminate the earlier of 35 years from the date of the adoption of that Ordinance or 30 years from the date of Substantial Completion of the Project.

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

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

A. Initial Manning Report:

- i) Prior to the commencement of their work on the Project, each Contractor /Subcontractor shall prepare an Initial Manning Report.
- ii) The initial manning report should contain an estimate of the total work force to be used at the Project Site, including the work force of any and all Contractors and Subcontractors. It should also describe the specific construction trades and crafts, and indicate the projected use of City residents, City resident Minorities and City resident women. Attached hereto as Appendix B is the Recipient’s Initial Manning Report.
- iii) The Initial Manning Report shall be filed with the Project Employment and

Contracting Monitor, who must accept said Report prior to the Recipient entering into any construction contract. An example of this acceptance letter is given in Appendix C.

B. Developer's Contracting Obligations

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

C. Contractor's/Subcontractor's Compliance Statement

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

D. Union Statement of Using Its Best Efforts

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

E. Sub-Contractors

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

F. Union Apprentices

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

G. Monthly Manning Report

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

H. Monthly Certified Payroll Report

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

I. Equal Employment Opportunity Reports

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

J. Other Reports

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

K. Records Access

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

L. Work Site Access For Monitor

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### 3. Business Contracting

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

1) Solicitation of Businesses:

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

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

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

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

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

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

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

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

**VII. Notices of Violation:**

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

will be considered not corrected.

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

### **VIII. Damages:**

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

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

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

1. The Recipient shall send all tenants of commercial space within the Project Site a letter and a Tenant Employment Services Guide in the form attached as Appendix O.

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

#### **X. Notices**

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

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

A. Harry Moore Phase IV  
AHM Housing Associates IV, LLC  
c/o Pennrose Properties, LLC  
One Brewery Park  
1301 N. 31<sup>st</sup> Street  
Philadelphia, PA 19121-4495

and

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

and

Trenk, DiPasquale, Webster,  
Della, Fera & Sodono, P.C.  
347 Mt. Pleasant Avenue, Suite 300  
West Orange, New Jersey 07052  
Att: Elnardo J. Webster II, Esq.

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

Project Employment & Contracting Monitor  
Department of Administration  
Division of Economic Opportunity  
121-125 Newark Avenue  
3rd Floor  
Jersey City, New Jersey 07302

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

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

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

**XII. Controlling Regulations and Laws:**

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

**ATTEST:**

**CITY OF JERSEY CITY**

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

\_\_\_\_\_  
**Brian O'Reilly**  
Business Administrator

**WITNESS:**

**AHM HOUSING ASSOCIATES IV, LLC**

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

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

City Clerk File No. Ord. 10-021

Agenda No. 3.H 1st Reading

Agenda No. \_\_\_\_\_ 2nd Reading & Final Passage



# ORDINANCE OF JERSEY CITY, N.J.

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

CITY ORDINANCE 10-021

**TITLE:**

**AN ORDINANCE APPROVING A FIVE (5) YEAR TAX EXEMPTION PURSUANT TO THE PROVISIONS OF N.J.S.A. 40A:21-1, ET SEQ., AND SECTION 304-12 OF THE MUNICIPAL CODE FOR PROPERTY DESIGNATED AS BLOCK 60.12, LOT 5, ON THE CITY'S TAX MAP AND MORE COMMONLY KNOWN BY THE STREET ADDRESS OF 359 SKINNER MEMORIAL DRIVE**

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

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

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

**WHEREAS**, pursuant to N.J.S.A. 40A:21-9 and Section 304-12 of the Municipal Code, a tax exemption for a new six (6) story Commercial Rental Redevelopment Project containing approximately seventy-five thousand (75,000) square feet of commercial space, is permitted for a period of five (5) years; and

**WHEREAS**, Jersey City Medical Complex, LLC, is the owner of a newly constructed commercial building, located in Block 60.12, Lot 5 on the City's Tax Map and more commonly known by the street address of 359 Skinner Memorial Drive, Jersey City, N.J.; and

**WHEREAS**, on January 20, 2010, the owner filed an application to tax exempt the newly constructed commercial building, a copy of which application is attached hereto; and

**WHEREAS**, as determined by the assessor on October 1<sup>st</sup> of the year following completion, the owner proposes to pay the City (in addition to \$31,139 in the full taxes on the land, which shall continue to be conventionally assessed and taxed) a tax payment for the new improvements on the property, as follows:

- (a) 2010: the tax year in which the structure will be completed. \$0 taxes;
- (b) 2011: the second tax year, 39% of actual full taxes, estimated to be \$109,299;
- (c) 2012: the third tax year, 59% of actual full taxes, estimated to be \$165,350;

**AN ORDINANCE APPROVING A FIVE (5) YEAR TAX EXEMPTION PURSUANT TO THE PROVISIONS OF N.J.S.A. 40A:21-1, ET SEQ., AND SECTION 304-12 OF THE MUNICIPAL CODE FOR PROPERTY DESIGNATED AS BLOCK 60.12, LOT 5, ON THE CITY'S TAX MAP AND MORE COMMONLY KNOWN BY THE STREET ADDRESS OF 359 SKINNER MEMORIAL DRIVE**

(d) 2013: the fourth tax year, 79% of actual full taxes, estimated to be \$221,401; and

(e) 2014: the fifth tax year, 80% of actual full taxes, estimated to be \$224,204;

**WHEREAS**, the Tax Assessor has determined that the full and true value of the new construction is \$19,445,271 Dollars, that generates an additional tax payment of \$875,950 a year; and

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

**WHEREAS**, upon the expiration of the tax exemption, the total assessment will be \$19,445,271 Dollars, that will generate a total tax payment of \$875,950; and

**WHEREAS**, on January 28, 2010, the tax abatement application was considered by the Mayor's Tax Abatement Committee, who voted to recommend approval of the application to the Municipal Council.

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

1. The application, attached hereto, for a five (5) year tax exemption for the full and true value of the new six (6) story commercial building, located in Block 60.12, Lot 5, and more commonly known by the street address of 359 Skinner Memorial Drive, Jersey City, N.J. [Property or Project], is hereby approved.

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

(a) in addition to land taxes, presently \$31,139, the tax payment on the new improvements shall be:

(i) Year 1: the tax year in which the structure will be completed. \$0 taxes;

(ii) Year 2: the second tax year, 39% of actual full taxes, estimated to be \$109,299;

(iii) Year 3: the third tax year, 59% of actual full taxes, estimated to be \$165,350;

(iv) Year 4: the fourth tax year, 79% of actual full taxes, estimated to be \$221,401; and

(v) Year 5: the fifth tax year, 80% of actual full taxes, estimated to be \$224,204.

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

AN ORDINANCE APPROVING A FIVE (5) YEAR TAX EXEMPTION PURSUANT TO THE PROVISIONS OF N.J.S.A. 40A:21-1, ET SEQ., AND SECTION 304-9 OF THE MUNICIPAL CODE FOR PROPERTY DESIGNATED AS BLOCK 60.12, LOT 5, ON THE CITY'S TAX MAP AND MORE COMMONLY KNOWN BY THE STREET ADDRESS OF 359 SKINNER MEMORIAL DRIVE

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

(d) With respect to the conveyance or disposal of the property, where it is determined that the new owner of the property will continue to use the property pursuant to the conditions which qualified the property, the exemption shall continue, and the agreement shall remain in effect.

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

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

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

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

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

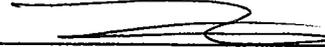
C. This ordinance shall take effect at the time and in the manner provided by law.

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

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

JM/he  
2/2/10

APPROVED AS TO LEGAL FORM

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

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

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

Certification Required   
Not Required

2-2-10

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

**THIS AGREEMENT** made on this \_\_\_\_ day of \_\_\_\_\_, 2010, by and between the **CITY OF JERSEY CITY** [City], a municipal corporation organized under the Laws of the State of New Jersey and having its principal place of business at 280 Grove Street, Jersey City, New Jersey, and, **JERSEY CITY MEDICAL OFFICE COMPLEX, LLC** [Applicant], whose principal place of business is 839 North Jefferson Street, Ste. 600, Milwaukee, Wisconsin 53202.

**WITNESSETH:**

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

**WHEREAS**, the Applicant is owner of certain property located at 359 Skinner Memorial Drive, in the City of Jersey City, County of Hudson and State of New Jersey, designated as Block 60.12, Lot 5, on the Tax Assessor's Map, more commonly known by the street address of 359 Skinner Memorial Drive, and more particularly described in the metes and bounds description attached hereto as Exhibit A [Property];

**WHEREAS**, on or about January 20, 2010, the Applicant applied for a five year tax exemption to construct a new Commercial Rental Redevelopment Project on the Property containing approximately seventy-five thousand (75,000) square feet of commercial space [Improvements] pursuant to N.J.S.A. 40A:21-1 et seq and Section 304-12 of the Municipal Code [Law]; and

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

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

**ARTICLE I: APPROVAL OF TAX EXEMPTION**

The City hereby agrees to a tax exemption for the construction of a new Commercial Rental Redevelopment Project containing approximately seventy-five thousand (75,000) square feet of commercial space [Improvements] on the Property, as further described in the Application, attached hereto as Exhibit B, pursuant to Law and Ordinance \_\_\_\_ which

authorized the execution of this Tax Agreement [Law], subject to the terms and conditions hereof.

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

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

1. For the full calendar year of 2010, no payment in lieu of taxes;
2. For the full calendar year of 2011, thirty-nine (39%) percent of the actual taxes otherwise due, currently estimated to be the sum of \$109,299;
3. For the full calendar year of 2012, fifty-nine (59%) percent of the actual taxes otherwise due, currently estimated to be the sum of \$165,350;
4. For the full calendar year of 2013, seventy-nine (79%) percent of the actual taxes otherwise due, currently estimated to be the sum of \$221,401; and
5. For the full calendar year of 2014, eighty (80%) percent of the actual taxes otherwise due, currently estimated to be the sum of \$224,204.

## **ARTICLE III: APPLICATION FEE**

The Applicant has paid the sum of **\$3,500** to the City on or before the date this Agreement is executed. Failure to make such payment shall cause the tax exemption to terminate.

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

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

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

The Tax Exemption granted shall be valid and effective for a period of five (5) full calendar years from the date of Substantial Completion of the Project, which shall ordinarily mean the date on which the City issues, or the Project is eligible to receive, a Certificate of Occupancy, whether temporary or final, for part or the whole of the Project. During the term of the tax exemption, the Applicant shall make an in lieu of tax payment to the City in accordance with the schedule set forth above. Prior to the commencement of the tax

**ARTICLE IX: PROJECT EMPLOYMENT AGREEMENT**

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

## **ARTICLE X: NOTICES**

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

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

**Notice to Applicant:** Jersey City Medical Complex, LLC  
839 North Jefferson Street, Ste. 600  
Milwaukee, Wisconsin 53202

**And:** George L. Garcia, Esq.  
Garcia & Turula, LLC  
3 Second Street  
Jersey City, NJ 07311

## **ARTICLE XI: GENERAL PROVISIONS**

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

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

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

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

**IN WITNESS WHEREOF**, the City and the Applicant have caused this Agreement to be executed on the date and year first above written.

**WITNESS:**

**JERSEY CITY MEDICAL COMPLEX, LLC**

\_\_\_\_\_

BY: \_\_\_\_\_

**ATTEST:**

**CITY OF JERSEY CITY**

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

BY: \_\_\_\_\_  
**Brian O'Reilly**  
**Business Administrator**

**APPLICATION FOR TAX EXEMPTION  
OF**

**Jersey City Medical Complex, LLC**

In compliance with Executive Order 02-003 of the Mayor of City of Jersey City, the Applicant herewith submits the following information in support of its application for a Five Year Tax Exemption under and pursuant to N.J.S.A. 40A:21-1 et seq.

Applicant: Jersey City Medical Complex, LLC  
839 North Jefferson Street, Ste. 600  
Milwaukee, Wisconsin 53202

Project: Medical Office Building  
Jersey City Medical Center Campus  
359 Skinner Memorial Drive  
Jersey City, New Jersey  
Block 60.12, Lot 5

The medical office building is referred to herein as the "Project."

Applicant's Attorney: Garcia & Turula, LLC  
Harborside Plaza 10  
3 Second Street  
Jersey City, New Jersey 07311  
Attn: George L. Garcia, Esq.

## LIST OF EXHIBITS

- A. - Description of Property;
- B. - Estimated Cost of Project Construction;
- C. - Estimated Tax Computation;
- D. - Municipal Land Use Approvals;
- E and E-1 - Disclosure Statement and Certificate of Formation;
- F - Certification of Compliance with State and Local laws
- G. - Certification of Diligent Inquiry
- K. - Proposed Tax Agreement

**1. Identification of the Property:**

The Property is located at Skinner Memorial Drive, Jersey City, New Jersey and is more particularly known as Block 60.12, Lot 5, on the official tax map of the City of Jersey City, State of New Jersey. The Property is more particularly described on Exhibit A attached hereto and made a part hereof.

**2. General Statement of the Nature of the Project:**

The Project is located within the Jersey City Medical Center Campus. The Project is being constructed on a newly created 29,998 square foot lot. Previously, this parcel was tax exempt and vacant. Once the Project is completed, the newly created parcel shall become tax ratable for the City. The Project consists of a 75,000 square foot medical office building. Primarily, the Project will be leased for medical purposes. The Jersey City Medical Center will be leasing a portion of the Project. The Project is in close proximity to the Light Rail and allows for easy access to the Jersey City Medical Center. It is anticipated that the Project will create valuable synergies for the Jersey City Medical Center.

**3. Term of Abatement:**

The Applicant requests that the term of the exemption be for five (5) years beginning on the date of completion of the Project (the "Exemption Commencement Date") and ending on the date that is one day prior to the fifth anniversary of the Exemption Commencement Date.

**4. Improvements to be Constructed:**

The Project is being constructed on a newly create 29,998 square foot lot. Previously, this parcel was tax exempt and vacant. The Project consists of a 75,000 square foot medical office building. Primarily, the Project will be leased for medical purposes.

**5. Estimated Total Cost of the Project:**

The construction cost of the Project, as indicated on Exhibit B, is estimated to be \$19,445,271.00 is calculated in accordance with the provisions of N.J.S.A. 40A:21-3(j). Construction costs have been estimated based upon the information compiled by the Applicant.

**6. Financing Structure:**

The Project will be financed through private capital financing and a permanent mortgage through institutional lender.

**7. Exemption Requested:**

The Applicant seeks a five (5) year tax exemption under and pursuant to N.J.S.A. 40A:21-1, et seq. (the "Five Year Exemption and Abatement Law") for the development of a rental commercial Project. The Applicant requests that the tax agreement be based on the following formula:

Project Taxes During the Term of Exemption

Year One:	\$ 31,139	(Land tax only)
Year Two:	\$140,438	(39% of real estate taxes on improvement)
Year Three:	\$196,489	(59% of real estate taxes on improvement)
Year Four:	\$252,540	(79% of real estate taxes on improvement)
Year Five:	\$255,343	(80% of real estate taxes on improvement)

Following the expiration of the term of the exemption, the Applicant will pay full real estate taxes.

A fiscal plan for the management of the Project and a calculation and breakdown of the aforementioned real estate taxes is set forth in Exhibit C attached hereto.

Based on the above formula it is estimated that the Project will generate real estate taxes payable to the City of Jersey City in the amount of approximately \$875,950.00 during the term of the exemption.

**8. Construction Schedule:**

It is anticipated that the construction of the Project will be substantially complete in January 2010.

**9. Municipal Land Use Approvals:**

On May 13<sup>th</sup>, 2008, the Applicant obtained amendments to the preliminary and final site plan approved by the Jersey City Planning Board for the Project. A copy of the Planning Board's resolution is attached hereto as Exhibit D.

**10. Real Estate Tax Assessments:**

The total real estate tax assessment for the Property at which the Project is to be located for the year 2009 was valued as follows: the Land was assessed at \$0.00 and the Improvements were assessed at \$0.00 for a Total Assessment of \$0.00 in the fiscal year of 2009.

**11. Real Estate Taxes Levied:**

The total payment for the municipal real estate taxes for 2009 was approximately \$0.00.

**12. Status of Municipal Taxes and Other Charges:**

The Applicant is the Lessee of the Property known as Block 60.12, lot 5 on the official tax map of the City of Jersey City. To the best of the Applicant's knowledge and belief, all real estate taxes and other assessments against the property have been paid in full. The Applicant will pay or cause all real estate taxes or other assessments due on the property to be paid prior to the execution of the Financial Agreement.

**13. Disclosure Statement and Certificate of Formation:**

A Disclosure Statement is attached hereto as Exhibit E. The Applicant is a limited liability company organized under the laws of the State of New Jersey. A copy of the Certificate of Formation and Amendments thereto are attached hereto as part of Exhibit E-1.

**14. Estimated Jobs Created:**

The Applicant estimates that construction of the Project will generate more than one hundred (100) jobs over the construction period. The Project will create approximately 100 permanent fulltime: management, clerical, medical and service jobs and positions.

**16. Compliance with State and Local Law:**

A Certification by the Applicant that the Project meets the requirements of the laws of the State of New Jersey and the City of Jersey City is attached hereto as Exhibit F.

**17. Certification of Truthfulness and Diligent Inquiry:**

A Certification of the Applicant that all information contained in the application is true and correct to the best of its knowledge after having made diligent inquiry is attached hereto as Exhibit G.

**18. Tax Agreement:**

The proposed Tax Agreement for the Applicant is attached hereto as Exhibit H.

**19. Fee:**

The fee for this application is \$3,500.00 and submitted herewith.

**EXHIBIT A**

**LEGAL DESCRIPTION**

Address:

Skinner Memorial Drive  
Jersey City, New Jersey  
Block 60.12, Lot 5

(SEE METES AND BOUNDS DESCRIPTION ATTACHED)

**EXHIBIT B**

**Estimated Cost of Project Construction**

The Estimated Cost is calculated pursuant to N.J.S.A. 40A:21-3(j) as follows:

**Cost<sup>1</sup>:**

a.	Direct Labor and Materials (inclusive of contractor's fees):	\$18,254,008.00
b.	Architectural:	\$ 836,697.00
c.	Engineering:	\$ 354,566.00
<b>Estimated Cost:</b>		<b>\$19,445,271.00</b>

---

<sup>1</sup> N.J.S.A. 40A:21-3(j) states estimated "costs" does not include land costs, soft costs (other than architectural and engineering costs), and financing costs. For the foregoing reason the cost differs from the total project costs calculated under the Long Term Tax Exemption Law and set out in the Financial Agreement.

Exhibit C					
		<b>FISCAL PLAN</b>			
		<b>and</b>			
		<b>ESTIMATED TAX COMPUTATION FOR YEAR 2010</b>			
Equalization Ratio			26.75		
Tax Rate (per thousand)			\$60.01		
Potential			<b>Total</b>		
Various office leases			\$1,916,194.00		
Total Gross Income			\$1,916,194.00		
Vacancy (7%)			\$ 134,133.58		
Effective Gross Income			\$ 1,782,060.42		
<i>Operating Expenses</i>					
12% of Effective Gross Income (subject to adj.)			\$ 229,943.28		
Total Operating Expenses			\$ 229,943.28		
Project Net Operating Income			\$ 1,552,117.14	(per projected taxes)	
Market Value - Cap Rate @ 8.00%			\$ 19,401,464.25		
Assessment			\$ 5,189,891.69		
Annual Real Estate Tax Assessment for 2010			\$ 311,393.50		

Exhibit C (cont.)

STIMATED TAX PAYMENTS FOR FIVE (5) YEAR TERM OF EXEMPTION

Based on 2010 Tax Rate and Equalization Ration

YEAR	1	2	3	4	5	Total
Projected Tax Rate	\$60.01	\$60.01	\$60.01	\$60.01	\$60.01	
Land Tax	\$31,139	\$31,139	\$31,139	\$31,139	\$31,139	\$155,695
Tax on Improvement	\$280,255	\$280,255	\$280,255	\$280,255	\$280,255	\$1,401,275
Phase-In	0%	39%	59%	79%	80%	
Exempted Tax	\$280,255	\$139,817	\$83,766	\$27,715	\$24,912	\$556,464
Taxes Payable	\$31,139	\$140,438	\$196,489	\$252,540	\$255,343	\$875,950

**EXHIBIT D**

**ZONING APPROVALS**

**(SEE ATTACHED)**

**EXHIBIT E**

**DISCLOSURE STATEMENT**

**NAME OF ENTITY:** Jersey City Medical Complex, LLC

**ADDRESS:** 839 North Jefferson Street  
Milwaukee, WI 53202

<b>NAME</b>	<b>ADDRESS</b>	<b>PERCENT OWNED</b>
<u>Owner of Jersey City Medical Complex, LLC</u>		
Landmark Healthcare Properties Fund, LLC	839 North Jefferson Street Milwaukee, WI 53202	100%
<u>Owner of Landmark Healthcare Properties Fund, LLC</u>		
Landmark Healthcare Companies, LLC	839 North Jefferson Street Milwaukee, WI 53202	100%
<u>Owners of Landmark Healthcare Companies, LLC</u>		
Joseph W. Checota	839 North Jefferson Street Milwaukee, WI 53202	50%
Nicholas F. Checota	839 North Jefferson Street Milwaukee, WI 53202	30%
Benjamin Checota	839 North Jefferson Street Milwaukee, WI 53202	10%
Ellen Checota	839 North Jefferson Street Milwaukee, WI 53202	10%
<b>Total:</b>		<b>100%</b>

I CERTIFY THAT THE ABOVE REPRESENTS THE NAMES AND ADDRESSES OF ALL MEMBERS IN THE ABOVE LIMITED PARTNERSHIP. IF ONE OR MORE OF THE ABOVE NAMED IS ITSELF AN ENTITY, THE APPLICANT WILL PROVIDE THE NAMES AND ADDRESSES OF ANY ENTITY OWING A 10% OR GREATER INTEREST THEREIN.

I FURTHER CERTIFY THAT NO OFFICER OR EMPLOYEE OF THE CITY OF JERSEY CITY HAS ANY INTEREST, DIRECT OR INDIRECT, IN THIS ENTITY.

I CERTIFY THAT THE FOREGOING STATEMENTS MADE BY ME ARE TRUE. I AM AWARE THAT IF ANY OF THE FOREGOING STATEMENTS MADE BY ME ARE WILLFULLY FALSE, I AM SUBJECT TO PUNISHMENT.

DATE:

Jersey City Medical Complex, LLC

By:   
Nicholas F. Checota, Manager

**EXHIBIT E-1**

**CERTIFICATION OF FORMATION**

**(SEE ATTACHED)**

NEW JERSEY DEPARTMENT OF TREASURY  
DIVISION OF REVENUE, BUSINESS GATEWAY SERVICES

CERTIFICATE OF REGISTRATION

JERSEY CITY MEDICAL COMPLEX LLC  
0400198164

The above-named FOREIGN LIMITED LIABILITY COMPANY was duly filed in accordance with New Jersey State Law on 09/27/2007 and was assigned identification number 0400198164. Following are the articles that constitute its original certificate.

1. **Name:**  
JERSEY CITY MEDICAL COMPLEX LLC
  2. **The Registered Agent:**  
CORPORATION SERVICE COMPANY
  3. **The Registered Office:**  
830 BEAR TAVERN ROAD  
WEST TRENTON, NJ 08628
  4. **Business Purpose:**  
Real Estate
  5. **Incorporated Under the Laws of:**  
DELAWARE on 09/21/2007
  6. **Effective Date of this filing is:**  
09/27/2007
  7. **Date FLC intends to start business activity in NJ:**  
10/01/2007
  8. **The Main Business Address:**  
839 N. JEFFERSON STREET  
SUITE 200  
MILWAUKEE, WI 53202
- Signatures:**  
NICHOLAS F. CHECOTA  
GENERAL PARTNER

Continued on next page ...

NEW JERSEY DEPARTMENT OF TREASURY  
DIVISION OF REVENUE, BUSINESS GATEWAY SERVICES

CERTIFICATE OF REGISTRATION

JERSEY CITY MEDICAL COMPLEX LLC  
0400198164



IN TESTIMONY WHEREOF, I have  
hereunto set my hand and  
affixed my Official Seal  
at Trenton, this  
09/28/2007

A handwritten signature in cursive script, appearing to read "Michellene Davis".

Michellene Davis  
Treasurer of the State of New Jersey

EXHIBIT F

**COMPLIANCE WITH STATE AND LOCAL LAWS**

**CERTIFICATION**

The undersigned being a member of Jersey City Medical Complex, LLC, the Applicant under this application, hereby certifies that:

1. The Project meets the requirements of the laws of the State of New Jersey and the City of Jersey City for consideration for granting the tax exemption requested in this application.
2. The foregoing statements made by me this 14<sup>th</sup> day of January, 2010 are true to the best of my knowledge and I understand that if it is willfully false, I am subject to punishment.

Jersey City Medical Complex, LLC

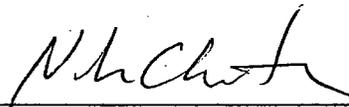
By:   
\_\_\_\_\_  
Nicholas F. Checota, Manager

**EXHIBIT G**  
**CERTIFICATION**  
**DILIGENT INQUIRY**

The undersigned being a member of Jersey City Medical Complex, LLC, the Applicant under this application and the developer of the a proposed Project to be located at 377 Skinner Memorial Drive, Jersey City, New Jersey hereby certifies that:

1. All information contained in the application for the five (5) year tax exemption is true and correct to the developer's knowledge, after he has made diligent inquiry to confirm the accuracy of all information.
2. The foregoing statements made by me this 14<sup>th</sup> day of January, 2010 are true to the best of my knowledge and I understand that if it is willfully false, I am subject to punishment.

Jersey City Medical Complex, LLC

By:   
\_\_\_\_\_  
Nicholas F. Checota, Manager

**EXHIBIT H**

**PROPOSED TAX AGREEMENT**

**FOR**

**JERSEY CITY MEDICAL COMPLEX, LLC**

**(SEE ATTACHED)**

**DRAFT**

9-15-03

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

**THIS AGREEMENT** made on this \_\_\_\_\_ day of \_\_\_\_\_, 2010, by and between the **CITY OF JERSEY CITY** [City], a municipal corporation organized under the Laws of the State of New Jersey and having its principal place of business at 280 Grove Street, Jersey City, New Jersey, and, **JERSEY CITY MEDICAL COMPLEX, LLC**, [Applicant], whose principal place of business is 839 North Jefferson Street, Ste. 600 Milwaukee, Wisconsin 53202.

**WITNESSETH:**

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

**WHEREAS**, the Applicant is owner of certain property located at Skinner Memorial Drive, in the City of Jersey City, County of Hudson and State of New Jersey, designated as Block 60.12, Lot 5, on the Tax Assessor's Map, more commonly known by the street address of Skinner Memorial Drive, Jersey City, and more particularly described in the metes and bounds description attached hereto as Exhibit A [Property];

**WHEREAS**, on or about January 19<sup>th</sup>, 2010, the Applicant applied for a five year tax exemption for a new medical office building on the Property [Improvements] pursuant to N.J.S.A. 40A:21-1 et seq and Ordinance 08-062; and

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

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

# DRAFT

## ARTICLE I: APPROVAL OF TAX EXEMPTION

The City hereby agrees to a tax exemption for the construction of a new Multiple Dwelling [Improvements] on the Property, as further described in the Application, attached hereto as Exhibit B, pursuant to the provisions of N.J.S.A. 40A:21-1 et seq. and Ordinance \_\_\_\_\_ which authorized the execution of this Tax Agreement [Law], subject to the terms and conditions hereof.

## ARTICLE II: IN LIEU OF TAX PAYMENTS

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

1. For the full calendar year of \_\_\_\_\_, no payment in lieu of taxes;
2. For the full calendar year of \_\_\_\_\_, thirty-nine (39%) percent of the actual taxes otherwise due, currently estimated to be the sum of \$ \_\_\_\_\_;
3. For the full calendar year of \_\_\_\_\_, fifty-nine (59%) percent of the actual taxes otherwise due, currently estimated to be the sum of \$ \_\_\_\_\_;
4. For the full calendar year of \_\_\_\_\_, seventy-nine (79%) percent of the actual taxes otherwise due, currently estimated to be the sum of \$ \_\_\_\_\_; and
5. For the full calendar year of \_\_\_\_\_, eighty (80%) percent of the actual taxes otherwise due, currently estimated to be the sum of \$ \_\_\_\_\_.

## ARTICLE III: APPLICATION FEE

The Applicant has paid the sum of \$3,500.00 to the City before the execution of this Agreement. Failure to make such payment shall cause the tax exemption to terminate.

## **DRAFT**

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

The Improvements were constructed in accordance with all applicable federal, State and local laws and regulations on pollution control, worker safety, discrimination in employment, housing provision, zoning, planning and building code requirements.

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

The Tax Exemption granted shall be valid and effective for a period of five (5) full calendar years from the date of Substantial Completion of the Project, which shall ordinarily mean the date on which the City issues, or the Project is eligible to receive, a Certificate of Occupancy, whether temporary or final, for part or the whole of the Project. During the term of the tax exemption, the Applicant shall make an in lieu of tax payment to the City in accordance with the schedule set forth above. Prior to the commencement of the tax exemption, and upon expiration thereof, the Applicant shall pay full conventional taxes on the Improvements.

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

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

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

In the event that during any year prior to the termination of this Agreement, the Applicant ceases to operate or disposes of the Property, or fails to meet the Conditions for Qualifying, as set forth under N.J.S.A. 40A:21-1, et seq., for tax exemption under this Agreement or pursuant to Law, then the tax which would have otherwise been payable for that year, but not previous years, shall become due and payable from the Applicant as if no exemption had been granted. However, with respect to the disposal of the property, in the event it is determined that the new owner will continue to use the property pursuant to the Conditions for Qualifying the property for exemption, the tax exemption shall continue and this Agreement shall remain in full force and effect.

# DRAFT

## ARTICLE VIII: TERMINATION/ELIGIBILITY FOR ADDITIONAL TAX EXEMPTION

Upon the termination of this Agreement for tax exemption, the Project shall be subject to all applicable real property taxes as provided by State Laws and Regulations and City Ordinances. However, nothing herein shall be deemed to prohibit the Project, at the termination of this Agreement, from qualifying for and receiving the full benefits of any other tax preferences allowed by law. Furthermore, nothing herein shall prohibit the Applicant from exercising any rights under any other tax provisions of State law or City Ordinances.

## ARTICLE IX: PROJECT EMPLOYMENT AGREEMENT

Not applicable as Project has been completed.

## ARTICLE X: NOTICES

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

<b>Notice to City:</b>	Business Administrator City Hall, 280 Grove Street Jersey City, New Jersey 07302
<b>Notice to Applicant:</b>	Jersey City Medical Complex, LLC 839 North Jefferson Street, Ste. 600 Milwaukee, Wisconsin 53202
<b>With a copy to:</b>	Garcia Turula, LLC Harborside Plaza X, Suite 1201 3 Second Street Jersey City, New Jersey 07311 Attn.: George L. Garcia, Esq.



City Clerk File No. Ord. 10-022

Agenda No. 3. I 1st Reading

Agenda No. \_\_\_\_\_ 2nd Reading & Final Passage



## ORDINANCE OF JERSEY CITY, N.J.

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

CITY ORDINANCE 10-022

**TITLE: ORDINANCE APPROVING 1) AN \$8,000,000 LOAN TO THE CITY OF JERSEY CITY TO BE GUARANTEED BY THE UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT PURSUANT TO §108 OF THE HOUSING AND COMMUNITY DEVELOPMENT ACT OF 1974, AS AMENDED, AND 2) A RE-LOANING OF THE PROCEEDS TO STATUE OF LIBERTY HARBOR NORTH REDEVELOPMENT URBAN RENEWAL, LLC**

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

**WHEREAS**, pursuant to a Resolution adopted on December 19, 2007, the City of Jersey City (City) applied for a loan guarantee from the Secretary (Secretary) of the United States Department of Housing and Urban Development (HUD) pursuant to §108 of the Housing and Community Redevelopment Act of 1974 (Loan Guarantee) to be given in accordance with a certain contract for loan guarantee assistance under §108 of the Housing and Community Development Act of 1974, as amended, 42 U.S.C. §5308 (the HUD Contract) in order to help fund costs associated with the construction of a full service hotel consisting of approximately 300 rooms with approximately 248,000 square feet of space all to be located in the City of Jersey City, County of Hudson, State of New Jersey (the Project); and

**WHEREAS**, the City obtained approval for a loan (Section 108 Loan) in the aggregate amount of Eight Million (\$8,000,000) Dollars by issuing one or more nonrecourse promissory note(s) (the HUD Guaranteed Notes) having a maximum term of twenty (20) years, to be guaranteed by the Loan Guarantee, which enables the City to borrow from and sell the HUD Guaranteed Notes to lending institutions and/or to the public through underwritten public offerings; and

**WHEREAS**, the proceeds to be obtained from the HUD Guaranteed Notes are to be re-lent (Developer's Loan) by the City to Statue of Liberty Harbor North Redevelopment Urban Renewal, LLC (Developer) to finance costs associated with construction of the Project, under the same repayment terms of the HUD Guaranteed Notes, pursuant to the terms and conditions of a certain Loan Agreement by and between the City and the Developer (the Loan Agreement); and

**WHEREAS**, the Section 108 Loan from the City to the Developer is to be evidenced by a promissory note in favor of the City and secured in a manner as hereinafter described (Developer's Note); and

**WHEREAS**, federal law requires that the City pledge to the Secretary its entitlement of certain Community Development Block Grant monies (CDBG monies) as security for the Loan Guarantee so that if the Secretary is required to pay under the Loan Guarantee on account of a default by the City under HUD Guaranteed Notes, the Secretary can be reimbursed out of the pledged CDBG monies (the City's pledge); and

**WHEREAS**, as a condition of, and security for, the loan from the City to the Developer, the Developer shall provide, or cause to be provided a 2<sup>nd</sup> mortgage in favor of the City, to be subject only to a 1<sup>st</sup> mortgage of no more than Twenty One Million Five Hundred Thousand (\$21,500,000) Dollars and One Million Two Hundred Fifty (\$1,250,000) Dollars as a debt service reserve as permitted by 24 CFR 570; and an agreement to pay off the loan in full on or before the date the Developer receives its permanent construction financing for the Project; and

**WHEREAS**, payments by the Developer under the Developer's Note are to be used by the City to service the HUD Guaranteed Notes, with such proceeds shall be to the extent required by HUD, paid to, or over to, a Fiscal Agent (the Fiscal Agent) acting for the City under and pursuant to the terms of a certain Fiscal Agency Agreement to be entered into by the City and the Fiscal Agent (the Fiscal Agency Agreement); and

2010017

**ORDINANCE APPROVING 1) AN \$8,000,000 LOAN TO THE CITY OF JERSEY CITY TO BE GUARANTEED BY THE UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT PURSUANT TO §108 OF THE HOUSING AND COMMUNITY DEVELOPMENT ACT OF 1974, AS AMENDED, AND 2) A RE-LOANING OF THE PROCEEDS TO STATUE OF LIBERTY HARBOR NORTH REDEVELOPMENT URBAN RENEWAL, LLC**

**WHEREAS**, as additional security for the City's obligation to repay the HUD Guaranteed Notes, the City shall assign to HUD, in accordance with the terms of a certain Collateral of Assignment of Security Documents (the Collateral of Assignment of Security Documents), without recourse, certain of its rights, title and interest in, among other things, the Developer's Note, the Loan Agreement, the Mortgage and One Million Two Hundred Fifty Thousand (\$1,250,000) Dollars of the debt service reserve to be funded by the Developer from sources other than the loan proceeds (collectively together with the Collateral of Assignment of Security Documents, the Security Documents) all of which shall be held by a financial institution selected by the City acceptable by HUD (the Custodian) in accordance with a certain Custodian Agreement (the Custodian Agreement) between the Custodian and City; and

**WHEREAS**, the project will assist the City in obtaining its economic development objectives including the expansion of economic opportunities for low and moderate income residents of the City by creating new jobs, the creation of additional revenues for the City, and the indirect benefits associated with the project, and in connection with such objectives and other HUD requirements, the Developer and the City shall enter into a certain project labor agreement (the Project Labor Agreement) and a certain subgrantee agreement (the Subgrantee Agreement).

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

1. The 108 Loan to the City of Jersey City be and it is hereby approved.
2. The acceptance of the Loan Guarantee be and it is hereby approved.
3. The making of a Developer's Loan be and it is hereby approved.
4. The Mayor or the Business Administrator on behalf of the City be and hereby is authorized, to finalize, execute and deliver:
  - (A) the HUD contract including all attachment and exhibits thereto, if any and which is incorporated reference herein pursuant to which among other things, the City and HUD shall agree to the terms by which HUD shall guarantee the HUD Guaranteed Notes;
  - (B) To the extent HUD required by the Fiscal Agency Agreement, including all attachments and exhibits thereto, if any, which is incorporated by reference pursuant to which among other things, collections and advances with respect to the HUD Guaranteed Notes shall be administered by the Fiscal Agent;
  - (C) The Loan Agreement, dated July 30, 2009, including any amendments or addendums, and all attachments and exhibits thereto, if any, and which is incorporated by reference pursuant to which the City shall extend to the Developer's loan to the Developers;
  - (D) The Collateral of Assignment Security Documents, including all attachments and exhibits thereto, if any, and which is incorporated by reference, pursuant to which certain of the City's rights, title and interest in, among other things, Developers Note, the Loan Agreement, 2<sup>nd</sup> mortgage, which shall be subject only to a first mortgage in a maximum sum of \$Twenty One Million two Hundred Thousand (\$21,500,000) Dollars and the One Million Two Hundred Fifty Thousand (\$1,250,000) Dollars of the debt service reserve to be funded by the Developer from sources other than the loan proceeds, which shall be assigned to HUD.
  - (E) The Custodian Agreement, including all attachments and exhibits thereto, if any, and which is incorporated by reference, pursuant to which, among other things, the City shall deposit with the Custodian the Security Documents.
  - (F) The Project Labor Agreement and the Subgrantee Agreement, including all attachments and exhibits thereto, if any, and which are incorporated by reference, pursuant to which collectively, the Developer shall agree to comply with the employment objectives and other HUD requirements with respect to the project.

**ORDINANCE APPROVING 1) AN \$8,000,000 LOAN TO THE CITY OF JERSEY CITY TO BE GUARANTEED BY THE UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT PURSUANT TO §108 OF THE HOUSING AND COMMUNITY DEVELOPMENT ACT OF 1974, AS AMENDED, AND 2) A RE-LOANING OF THE PROCEEDS TO STATUE OF LIBERTY HARBOR NORTH REDEVELOPMENT URBAN RENEWAL, LLC**

- (G) Any and all documents, certificates and instruments deemed appropriate or necessary by the Mayor, the Business Administrator and the Corporation Council of the City of Jersey City in connection with the transaction contemplated herein and by the documents described in (A) through (F) above.
- 4. All agreements shall be substantially in the form of the copy which is on file in the Office of the City Clerk, subject to such modification as the Corporation Counsel or Business Administrator deems appropriate or necessary.
- 5. All of the above terms and conditions, shall be 1<sup>st</sup> subject to the approval of the United States Department of Housing and Urban Development (HUD).
  - A. All ordinances and parts of ordinances inconsistent herewith are hereby repealed.
  - B. This ordinance shall be a part of the Jersey City Code as though codified and fully set forth therein. The City shall have this ordinance codified and incorporated in the official copies of the Jersey City Code.
  - C. This ordinance shall take effect in the manner as prescribed by law.
  - D. The City Clerk and the Corporation Counsel be and they are hereby authorized and directed to change any chapter numbers, article numbers and section numbers in the event that the codification of this ordinance reveals that there is a conflict between those numbers and the existing code, in order to avoid confusion and possible accidental repealers of existing provisions.

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

*JM/he*  
*2/4/10*

APPROVED AS TO LEGAL FORM

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

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

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

Certification Required   
Not Required



# CITY OF JERSEY CITY

## Office of the Corporation Counsel

280 Grove Street  
Jersey City, New Jersey 07302  
Telephone: (201) 547-4667  
Fax: (201) 547-5230

Jerramiah Healy, Mayor  
Brian O'Reilly, Business Administrator

Bill Matsikoudis, Corporation Counsel

February 3, 2010

Council President and Members of the Municipal Council  
City Hall-280 Grove Streets  
Jersey City, NJ 07302

**Re: Ordinance Authorizing the City to Borrow \$8 Million Dollars in CDBG Funds and to Distribute those funds to the Statue of Liberty Harbor North Redevelopment Urban Renewal, LLC**

Dear Council President and Members of the Municipal Council:

The above referenced Ordinance was tabled at a previous council meeting due to concerns that Statue of Liberty Harbor North Urban Renewal, LLC ("Developer") was not required to post adequate security to protect the City's interest in the loan and property. Since then, the Administration has negotiated an additional \$1,250,000 of security to protect the City's interest to be funded by separate funds, not from loan proceeds.

The Developer purchased 2.2 acres of property [located at the foot of Marin Blvd., along the waterfront], for \$15,640,000 (plus \$667,500 for riparian rights). Thus, the JCRA was paid over \$16 million. The Developer also obtained site plan approval for a project consisting of 470 residential units and a 300 room first class hotel.

The property is contaminated and needs to be remediated in order for the project to proceed. A portion of the \$8 million dollar loan proceeds will be utilized for remediation. The Developer has entered into an \$3.9 million dollar remediation contract and has received DEP approval of its remediation plans. The \$8 million in loan proceeds are to be coupled with \$1.9 million dollars in federal grants that collectively will be utilized for the remediation and development of the property. The City will not be able to utilize the \$1.9 million federal dollars in grant proceeds if this loan is not executed.

Under the previously proposed agreement, the Developer would have established a security reserve of \$1 million dollars *from the \$8 million dollars in loan proceeds*. Under the new negotiated agreement, the \$8 million dollars in loan proceeds will be completely dedicated to the remediation and development of the site and the Developer will have to create a security account of \$1,250,000 of its own proceeds.

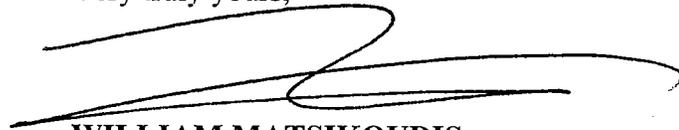
City of Jersey City  
Office of the Corporation Counsel

The Developers primary loan on the property will be capped at \$21 million dollars. The City's interest to secure the \$8million loan will be in a secondary position. A recent appraisal, which is available to the Council, values the property, with approvals, at over \$50 million dollars. Accordingly, the City's interest should be adequately protected.

The Developer has agreed to provide significant additional security. The City's security interest should be adequately protected. These loan proceeds will enable the environmental remediation of an important piece of waterfront property and also support an extremely beneficial project for the City. Accordingly, the Administration strongly recommends that the City Council approve this Ordinance at this time. In the event that this Ordinance is rejected, the City stands to lose \$1.9 million federal dollars for to the environmental remediation of the property which would at best, seriously delay its remediation. Moreover, we would lose the opportunity to see 470 residential units and a \$88 million dollar 300 room hotel to be developed, which will provide hundreds of construction jobs as well as approximately 250 long term jobs. Finally, the City will receive significant tax revenue when the hotel is completed both from real estate taxes and the hotel tax.

For these reasons, we respectfully request that the City Council approve this Ordinance.

Very truly yours,



**WILLIAM MATSIKLOUDIS**  
**CORPORATION COUNSEL**

WM/igp

c: Brian O'Reilly, Business Administrator  
Rosemary McFadden, Deputy Mayor  
Robert Byrne, City Clerk  
Joanne Monahan, First Assistant Corporation Counsel  
Robert Antonicello, Executive Director, JCRA

## ENVIRONMENTAL INDEMNITY AGREEMENT

THIS ENVIRONMENTAL INDEMNITY AGREEMENT (the "Agreement") is made on May \_\_, 2009, by **STATUE OF LIBERTY HARBOR NORTH REDEVELOPMENT URBAN RENEWAL, LLC**, a limited liability company organized and existing under the laws of the State of New Jersey, whose address is 776 Mountain Blvd., Watchung, New Jersey 07069 ("**Indemnitor**") and **THE CITY OF JERSEY CITY**, a municipal corporation of the State of New Jersey, having an address at City Hall, 280 Grove Street, Jersey City, New Jersey 07032 ("**City**").

A. The City is prepared to make a loan and subgrant to or on behalf of the above Indemnitors or entities in which the above Indemnitors have an interest (the "**Loan**") secured by, among other things, a mortgage instrument from the Indemnitor to the City (said mortgage instrument, together with all amendments, modifications or supplements thereof being herein collectively called the "**Mortgage**") which will encumber the real property described on Exhibit A attached hereto and made a part hereof (said real property, together with all improvements, equipment and other property now or hereafter located therein or thereon, being hereinafter collectively called the "**Property**");

B. To induce the City to agree to make the Loan, the Indemnitor has agreed to enter into this Agreement.

**NOW, THEREFORE**, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, the Indemnitor hereby covenants, warrants, represents and agrees as follows:

**1. City Rights Under the Agreement.** The City's rights under this Agreement shall be in addition to all rights of the City under the Mortgage, any note or notes secured by the Mortgage (the "**Note**") and any guaranty or guarantees (whether of payment or performance) given to the City in connection with the Loan and under any other documents or instruments evidencing or securing the Loan (the Mortgage, the Note, any such guaranty or guarantees and such other documents or instruments, as amended or modified from time to time, being herein called the "**Loan Documents**"). Payments, if any, by the Indemnitor as required under this Agreement shall not reduce the Indemnitor's obligations and liabilities under any of the Loan Documents. Any default by the Indemnitor under this Agreement (including any breach of any representation or warranty made by the Indemnitor) shall, at the City's option, constitute a default and an "Event of Default" under the Note, the Mortgage or any of the other Loan Documents after the expiration of any applicable cure period.

**2. Definitions.** For purposes of this Agreement, the following terms shall have the following meanings:

(a) "**Environmental Laws**" means all federal, state or commonwealth and local laws, regulations, statutes, codes, rules, resolutions, directives, orders, executive orders, consent orders, guidance from regulatory agencies, policy statements, judicial decrees, standards,

permits, licenses and ordinances, or any judicial or administrative interpretation of any of the foregoing, pertaining to the protection of land, water, air, health, safety or the environment, whether now or in the future enacted, promulgated or issued, including the laws of the state where the Mortgage is or is to be recorded.

(b) **“Regulated Substances”** includes any substances, chemicals, materials or elements that are prohibited, limited or regulated by the Environmental Laws, or any other substances, chemicals, materials or elements that are defined as “hazardous” or “toxic,” or otherwise regulated, under the Environmental Laws, or that are known or considered to be harmful to the health or safety of occupants or users of the Property. The term Regulated Substances shall also include any substance, chemical, material or element (i) defined as a “hazardous substance” under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (“**CERCLA**”) (42 U.S.C. §§ 9601, *et seq.*), as amended by the Superfund Amendments and Reauthorization Act of 1986, and as further amended from time to time, and regulations promulgated thereunder; (ii) defined as a “regulated substance” within the meaning of Subtitle I of the Resource Conservation and Recovery Act (42 U.S.C. §§ 6991-6991i), and regulations promulgated thereunder; (iii) designated as a “hazardous substance” pursuant to Section 311 of the Clean Water Act (33 U.S.C. § 1321), or listed pursuant to Section 307 of the Clean Water Act (33 U.S.C. § 1317); (iv) defined as “hazardous”, “toxic”, or otherwise regulated, under any Environmental Laws adopted by the state in which the Property is located, or its agencies or political subdivisions; (v) which is petroleum, petroleum products or derivatives or constituents thereof; (vi) which is asbestos or asbestos-containing materials; (vii) the presence of which requires notification, investigation or remediation under any Environmental Laws or common law; (viii) the presence of which on the Property causes or threatens to cause a nuisance upon the Property or to adjacent properties or poses or threatens to pose a hazard to the health or safety of persons on or about the Property; (ix) the presence of which on adjacent properties would constitute a trespass by the Indemnitor; (x) which is urea formaldehyde foam insulation or urea formaldehyde foam insulation-containing materials; (xi) which is lead base paint or lead base paint-containing materials; (xii) which are polychlorinated biphenyls or polychlorinated biphenyl-containing materials; (xiii) which is radon or radon-containing or producing materials; or (xiv) which by any laws of any governmental authority requires special handling in its collection, storage, treatment, or disposal.

(c) **“Contamination”** means the seeping, spilling, leaking, pumping, pouring, emitting, using, emptying, discharging, injecting, escaping, leaching, dumping, disposing, releasing or the presence of Regulated Substances at, under or upon the Property or into the environment, or arising from the Property or migrating to or from the Property, which may require notification, treatment, response or removal action or remediation under any Environmental Laws.

**3. Representations and Warranties.** The Indemnitor hereby represents and warrants that, except as is otherwise set forth on Schedule I attached hereto:

(a) no Contamination is present at, on or under the Property and no Contamination is being emitted from the Property onto any surrounding or adjacent areas.

(b) all activities and operations at the Property have been and are being conducted in compliance with all Environmental Laws, and the Indemnitor has obtained all permits, licenses, consents and approvals required under the Environmental Laws for the conduct of operations and activities at the Property, and all such permits, licenses, consents and approvals are in full force and effect.

(c) the Property has never been used to generate, manufacture, refine, transport, handle, transfer, produce, treat, store, dispose of or process any Regulated Substances, except in compliance with all Environmental Laws and in such a manner that no Contamination has been released on or under the Property.

(d) no underground or aboveground storage tanks subject to regulation under any Environmental Laws are, or to the best of the Indemnitor's knowledge, after due inquiry and investigation, have been, located on or under the Property.

(e) no measurable levels of radon or radon containing or producing products are present in the existing structures on the Property. If at any time during the term of the Loan, measurable amounts of radon are detected in any structures on the Property, the Indemnitor hereby agrees, at its sole expense, to take all actions necessary to reduce such radon gas to acceptable levels.

(f) no civil, administrative or criminal proceeding is pending or threatened against the Indemnitor relating to the condition of or activities at the Property, nor has any notice of any violation or potential liability under any Environmental Laws been received, nor has the Indemnitor reason to believe such notice will be received or proceedings initiated, nor has the Indemnitor entered into any consent, decree or judicial order or settlement affecting the Property, nor has the Indemnitor or the Property been the subject of any other administrative or judicial order or decree.

(g) the Property is not listed or proposed for listing on the National Priorities List pursuant to Section 9605 of CERCLA, or on the Comprehensive Environmental Response, Compensation and Liability Information System or on any similar state or local list of environmentally problematic/regulated sites.

(h) no portion of the Property constitutes wetland or other "water of the United States", flood plain or flood hazard area, or coastal zone, as defined by the applicable Environmental Laws.

(i) no lien has been attached to any revenues or any real or personal property owned by the Indemnitor and located in the state where the Property is located, including the Property, for damages or cleanup, response or removal costs, under any Environmental Laws, or arising from an intentional or unintentional act or omission in violation thereof by the Indemnitor, or any previous owner or operator of the Property.

(j) no Contamination has been discharged or emitted from the Property into waters on, under or adjacent to the Property, or onto lands from which Regulated Substances might seep, flow or drain into such waters.

(k) to the best of the Indemnitor's knowledge, after due inquiry and investigation, no report, analysis, study or other document prepared by or for any person exists identifying that any Contamination has been, or currently is, located upon or under the Property.

(l) neither the transaction contemplated by the Loan Documents nor any other transaction involving the sale, transfer or exchange of the Property will trigger or has triggered any obligation under the Environmental Laws to make a filing, provide a deed notice, provide disclosure or take any other action, or in the event that any such transaction-triggered obligation does arise or has arisen under any Environmental Laws, all such actions required thereby have been taken.

(m) the execution, delivery and performance by the Indemnitor of this Agreement does not and will not contravene any (i) law or governmental rule, regulation or order which is applicable to the Indemnitor and no authorization, approval or other action by, and no notice to or filing with, any governmental entity is required for the due execution, delivery and performance by the Indemnitor of this Agreement, or (ii) contractual restriction which is binding upon or which affects the Indemnitor, and does not and will not result in or require the creation of any lien, security interest or other charge or encumbrance upon or with respect to any property of the Indemnitor.

(n) this agreement is a legal, valid and binding obligation of the Indemnitor, enforceable against the Indemnitor in accordance with its terms.

**4. Environmental Covenants.** The Indemnitor hereby covenants and agrees as follows:

(a) to cause all activities at the Property during the term of the Loan to be conducted in compliance with all Environmental Laws;

(b) to provide the City with copies of all: (i) correspondence, notices of violation, summons, orders, complaints or other documents received by the Indemnitor, its lessees, sublessees, occupants or assigns, pertaining to compliance with any Environmental Laws; (ii) reports of previous environmental investigations undertaken at the Property which the Indemnitor knows of, or has or can obtain possession; (iii) licenses, certificates and permits required by the Environmental Laws; (iv) a description of the operations and processes of the Indemnitor; and (v) any other information that the City may reasonably request.

(c) not to generate, manufacture, refine, transport, transfer, produce, store, use, process, treat, dispose of, handle, or in any manner deal with, any Regulated Substances on any part of the Property, nor permit others to engage in any such activity on the Property, except for (i) those Regulated Substances which are used or present in the ordinary course of the Indemnitor's business in compliance with all Environmental Laws, are listed on Schedule I attached hereto and have not been released into the environment in such a manner as to constitute Contamination

hereunder, and (ii) those Regulated Substances which are naturally occurring on the Property, but only in such naturally occurring form;

(d) not to cause or permit, as a result of any intentional or unintentional act or omission on the part of the Indemnitor or any tenant, subtenant, occupant or assigns, the presence of Regulated Substances or Contamination on the Property, except for (i) those Regulated Substances which are used or present in the ordinary course of the Indemnitor's business in compliance with all Environmental Laws, are listed on Schedule I attached hereto and have not been released into the environment in such a manner as to constitute Contamination hereunder, and (ii) those Regulated Substances which are naturally occurring on the Property, but only in such naturally occurring form.

(e) to give notice and a full description to the City immediately upon the Indemnitor's acquiring knowledge of (i) any and all enforcement, clean-up, removal or other regulatory actions threatened, instituted or completed by any governmental authority with respect to the Indemnitor or the Property; (ii) all claims made or threatened by any third party against the Indemnitor or the Property relating to damage, contribution, compensation, loss or injury resulting from any Regulated Substances or Contamination; and (iii) the presence of any Contamination on, under, from or affecting the Property;

(f) to timely comply with any Environmental Laws requiring the removal, treatment, storage, processing, handling, transportation or disposal of such Regulated Substances or Contamination and provide the City with satisfactory evidence of such compliance;

(g) to conduct and complete all investigations, studies, sampling and testing, as well as all remedial, removal and other actions necessary to clean up and remove all Contamination on, under, from or affecting the Property, all in accordance with the Environmental Laws; and

(h) to continue to have all necessary licenses, certificates and permits required under the Environmental Laws relating to the Indemnitor and its Property, facilities, assets and business.

##### **5. City's Right to Conduct an Investigation.**

(a) The City may, at any time and at its sole discretion, commission an investigation into the presence of Regulated Substances or Contamination on, from or affecting the Property, or the compliance with Environmental Laws at, or relating to, the Property. Such an investigation performed by the City shall be at the Indemnitor's expense if the performance of the investigation is commenced (i) upon the occurrence of a default hereunder or of a default or "Event of Default" under the Note, the Mortgage or any other Loan Document; or (ii) because the City has a reasonable belief that the Indemnitor has violated any provision of this Agreement (including any representation, warranty or covenant). All other investigations performed by the City shall be at the City's expense. In connection with any such investigation, the Indemnitor, its tenants, subtenants, occupants and assigns, shall comply with all reasonable requests for information made by the City or its agents and the Indemnitor represents and warrants that all responses to any such requests for information will be correct and complete. The Indemnitor shall provide the City and its agents with rights of access to all areas of the Property and permit

the City and its agents to perform testing (including any invasive testing) necessary or appropriate, in the City's reasonable judgment, to perform such investigation.

(b) The City is under no duty, however, to conduct such investigations of the Property and any such investigations by the City shall be solely for the purposes of protecting the City's security interest in the Property and preserving its rights under the Loan Documents. No site visit, observation, or testing by the City shall constitute a waiver of any default of the Indemnitor or be characterized as a representation regarding the presence or absence of Regulated Substances or Contamination at the Property. The City owes no duty of care to protect the Indemnitor or any third party from the presence of Regulated Substances, Contamination or any other adverse condition affecting the Property nor shall the City be obligated to disclose to the Indemnitor or any third party any report or findings made in connection with any investigation done on behalf of the City.

## **6. Indemnification.**

(a) The Indemnitor covenants and agrees, at its sole cost and expense, to indemnify, defend, protect, save and hold harmless the City (including the City as holder of the Mortgage, as mortgagee in possession, or as successor in interest to the Indemnitor as owner of the Property by virtue of a foreclosure or acceptance of a deed in lieu of foreclosure) and all of its officers, directors, employees and agents, any participant in the Loan, and their respective successors and assigns, against and from any and all Environmental Damages (as defined in subsection (b) below), which may at any time be imposed upon, threatened against, incurred by or asserted or awarded against the City (whether before or after the release, satisfaction or extinguishment of the Mortgage) and arising from or out of:

(i) the Indemnitor's failure to comply with any of the provisions of this Agreement, including the Indemnitor's breach of any covenant, representation or warranty contained in this Agreement; or

(ii) any Contamination, or threatened release of any Regulated Substances or Contamination, on, in, under, affecting or migrating or threatening to migrate to or from all or any portion of the Property, any surrounding areas or other property or any persons; or

(iii) any violation of, or noncompliance with, or alleged violation of, or noncompliance with, the Environmental Laws by the Property or the Indemnitor, including costs to remove any environmentally related lien imposed upon the Property; or

(iv) the willful misconduct, error or omission or negligent act or omission of the Indemnitor; or

(v) any judgment, lien, order, complaint, notice, citation, action, proceeding or investigation pending or threatened by or before any governmental authority or any private party litigant, including any environmental regulatory body, or before any court of law (including any private civil litigation) with respect to the Indemnitor's business, assets, property or facilities, or the Property, in connection with any Regulated Substances, Contamination or any Environmental

Laws (including the assertion that any lien existing or arising pursuant to any Environmental Laws takes priority over the lien of the Mortgage); or

(vi) the enforcement of this Agreement or the assertion by the Indemnitor of any defense to its obligations hereunder.

The Indemnitor's indemnification obligations set forth in this Section 6 shall be in effect and enforceable regardless of whether any such indemnification obligations arise before or after foreclosure of the Mortgage or other taking of title to all or any portion of the Property by the City or any affiliate of the City, and whether the underlying basis of any claim arose from events prior to the Indemnitor acquiring ownership of the Property.

(b) For the purposes of this Agreement, "**Environmental Damages**" shall mean all claims, judgments, damages, losses, penalties, fines, liabilities (including strict liability), encumbrances, liens, costs and expenses of investigation and defense of any claim, whether or not such claim is ultimately defeated, and of any good faith settlement, of whatever kind or nature, contingent or otherwise, matured or unmatured, foreseeable or unforeseeable, including reasonable attorneys' fees and disbursements and consultants' fees, any of which are incurred at any time, and including:

(i) damages for personal injury, or injury to property or natural resources, occurring upon or off of the Property, including lost profits, consequential damages, punitive damages, the cost of demolition and rebuilding of any improvements on real property, interest and penalties;

(ii) fees incurred for the services of attorneys, consultants, contractors, experts, laboratories and all other costs and expenses incurred in connection with investigation, remediation or post-remediation monitoring, operation and maintenance, of any Regulated Substances or Contamination or violation of any Environmental Laws including the preparation of any feasibility studies or reports or the performance of any cleanup, remediation, removal, response, abatement, contaminant, closure, restoration, treatment, investigation work or monitoring work required by any Environmental Laws, or reasonably necessary to make full economic use of the Property or any other property or otherwise expended in connection with such conditions, including any and all Corrective Work under Section 7, and further including any attorneys' fees, costs and expenses incurred in enforcing this Agreement or collecting any sums due hereunder;

(iii) any additional costs required to take necessary precautions to protect against a release of Regulated Substances or Contamination on, in, under or affecting the Property into the air, any body of water, any other public domain or any surrounding or adjoining areas;

(iv) any costs incurred to comply, in connection with all or any portion of the Property or any area surrounding or adjoining the Property, with all Environmental Laws;

(v) liability to any third persons or governmental agency for costs expended in connection with the items referenced in clause (ii) above; and

(vi) diminution in the value of the Property, and damages for the loss of business and restriction on the use or adverse impact on the marketing of rentable or usable space or of any amenity of the Property.

(c) Promptly after the receipt by the City of written notice of any demand or claim or the commencement of any action, suit or proceeding concerning the Indemnitor or the City in connection with the Property, the City shall endeavor to notify the Indemnitor thereof in writing. The failure by the City promptly to give such notice shall not relieve the Indemnitor of any liability to the City hereunder.

#### **7. Indemnitor's Obligation to Perform Corrective Work.**

(a) The Indemnitor shall have the obligation to promptly commence and perform any corrective work required to address any Environmental Damages, including any actions required by the Indemnitor under Section 6 (“**Corrective Work**”) after the occurrence of any of the following: (i) the Indemnitor obtains actual knowledge of any Contamination on, in, under, affecting, or migrating to or from the Property or any surrounding areas; or (ii) an event occurs for which the City can seek indemnification from the Indemnitor pursuant to Section 6.

(b) The Indemnitor shall provide to the City written notification at least twenty (20) days prior to the commencement of any such Corrective Work, and shall give the City a monthly report, during the performance of such Corrective Work, on the Indemnitor's progress with respect thereto, and shall promptly give the City such other information with respect thereto as the City shall reasonably request. Such written notice shall contain the name of the person or entity performing such Corrective Work and shall be accompanied by: (i) written evidence, satisfactory in form and content to the City, showing that such person or entity is fully insured against any and all injury and damages caused by or resulting from the performance of such Corrective Work; and (ii) copies of the plans for such Corrective Work, approved in writing by the appropriate governmental authorities.

(c) Any Corrective Work conducted by the Indemnitor shall be diligently performed and shall comply with all Environmental Laws and all other applicable laws to correct, contain, clean up, treat, remove, resolve, dispose of or minimize the impact of all Regulated Substances or Contamination.

(d) Any failure by the City to object to any actions taken by the Indemnitor shall not be construed to be an approval by the City of such actions. This Agreement shall not be construed as creating any obligation for the City to initiate any contests or to perform or review the Indemnitor's or any other party's performance of, any Corrective Work, or disburse any funds for any contests or the performance of any Corrective Work.

**8. City's Right to Select Engineers, Consultants and Attorneys.** Without limiting the other provisions hereof, in the event any claim (whether or not a judicial or administrative action is involved) is asserted against the City with respect to Regulated Substances, Environmental Laws or Contamination, the City shall have the right to select the engineers, other consultants

and attorneys for the City's defense or guidance, determine the appropriate legal strategy for such defense, and compromise or settle such claim, all in the City's sole discretion, and the Indemnitor shall be liable to the City in accordance with the terms hereof for liabilities, costs and expenses incurred by the City in this regard.

**9. Indemnitor's Obligation to Deliver Property.** The Indemnitor agrees that, in the event the Mortgage is foreclosed (whether judicially or by power of sale) or the Indemnitor tenders a deed in lieu of foreclosure, the Indemnitor shall deliver the Property to the City free of any and all Regulated Substances, (except for (a) those Regulated Substances which are used or present in the ordinary course of the Indemnitor's business in compliance with all Environmental Laws, are listed on Schedule I hereto and have not been released into the environment in such a manner as to constitute Contamination hereunder, and (b) those Regulated Substances which are naturally occurring on the Property, but only in such naturally occurring form) or Contamination in a condition such that the Property conforms with all Environmental Laws and such that no remedial or removal action will be required with respect to the Property. The Indemnitor's obligations as set forth in this Section are strictly for the benefit of the City and any successors and assigns of the City as holder of any portion of the Loan and shall not in any way impair or affect the City's right to foreclose against the Property.

**10. City's Right to Cure.** In addition to the other remedies provided to the City in the Mortgage and the other Loan Documents, should the Indemnitor fail to abide by any provisions of this Agreement, the City may, should it elect to do so, perform any Corrective Work and any other such actions as it, in its sole discretion, deems necessary to repair and remedy any damage to the Property caused by Regulated Substances or Contamination or any such Corrective Work. In such event, all funds expended by the City in connection with the performance of any Corrective Work, including all attorneys' fees, engineering fees, consultant fees and similar charges, shall become a part of the obligation secured by the Mortgage and shall be due and payable by the Indemnitor on demand. Each disbursement made by the City pursuant to this provision shall bear interest at the lower of the Default Rate (as defined in the Note) or the highest rate allowable under applicable laws from the date the Indemnitor shall have received written notice that the funds have been advanced by the City until paid in full.

**11. Scope of Liability.** The liability under this Agreement shall in no way be limited or impaired by (a) any extension of time for performance required by any of the Loan Documents; (b) any sale, assignment or foreclosure of the Note or Mortgage, the acceptance of a deed in lieu of foreclosure or trustee's sale, or any sale or transfer of all or part of the Property; (c) the discharge of the Note or the reconveyance or release of the Mortgage; (d) any exculpatory provisions in any of the Loan Documents limiting the City's recourse; (e) the accuracy or inaccuracy of the representations and warranties made by the Indemnitor, or any other obligor under any of the Loan Documents; (f) the release of the Indemnitor or any guarantor or any other person from performance or observance of any of the agreements, covenants, terms or conditions contained in any of the Loan Documents by operation of law, the City's voluntary act or otherwise; (g) the release or substitution, in whole or in part, of any security for the Note or other obligations; or (h) the City's failure to record the Mortgage or file any UCC financing statements (or the City's improper recording or filing of any thereof) or to otherwise perfect, protect, secure or insure any security interest or lien given as security for the Note or other obligations; and, in

any such case, whether with or without notice to the Indemnitor or any guarantor or other person or entity and with or without consideration.

**12. Notices.** All notices, demands, requests, consents, approvals and other communications required or permitted hereunder must be in writing and will be effective upon receipt. Such notices and other communications may be hand-delivered, sent by facsimile transmission with confirmation of delivery and a copy sent by first-class mail, or sent by nationally recognized overnight courier service, to the address of the City or the Indemnitor set forth above or to such other address as the City or the Indemnitor may give to the other in writing for such purpose.

**13. Preservation of Rights.** No delay or omission on the City's part to exercise any right or power arising hereunder will impair any such right or power or be considered a waiver of any such right or power, nor will the City's action or inaction impair any such right or power. The City's rights and remedies hereunder are cumulative and not exclusive of any other rights or remedies which the City may have under other agreements, at law or in equity. Any representations, warranties, covenants or indemnification liabilities for breach thereof contained in this Agreement shall not be affected by any knowledge of, or investigations performed by, the City. Any one or more persons or entities comprising the Indemnitor, or any other party liable upon or in respect of this Agreement or the Loan, may be released without affecting the liability of any party not so released.

**14. Illegality.** In case any one or more of the provisions contained in this Agreement should be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby.

**15. Changes in Writing.** No modification, amendment or waiver of any provision of this Agreement nor consent to any departure by the Indemnitor therefrom will be effective unless made in a writing signed by the City, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. No notice to or demand on the Indemnitor in any case will entitle the Indemnitor to any other or further notice or demand in the same, similar or other circumstance.

**16. Successors and Assigns; Survival.** This Agreement will be binding upon the Indemnitor and its heirs, administrators, successors and assigns, and will inure to the benefit of the City and its successors and assigns as well as any persons or entities who acquire title to or ownership of the Property from, or through action by, the City (including at a foreclosure, sheriff's or judicial sale); provided, however, that the Indemnitor may not assign this Agreement in whole or in part without the City's prior written consent and the City at any time may assign this Agreement in whole or in part. The Indemnitor's obligations under this Agreement shall survive any judicial foreclosure, foreclosure by power of sale, deed in lieu of foreclosure, transfer of the Property by the Indemnitor or the City and payment of the Loan in full.

**17. Interpretation.** In this Agreement, unless the City and the Indemnitor otherwise agree in writing, the singular includes the plural and the plural the singular; references to statutes are to be construed as including all statutory provisions consolidating, amending or replacing the statute referred to; the word “or” shall be deemed to include “and/or”, the words “including”, “includes” and “include” shall be deemed to be followed by the words “without limitation”; and references to sections or exhibits are to those of this Agreement unless otherwise indicated. Section headings in this Agreement are included for convenience of reference only and shall not constitute a part of this Agreement for any other purpose. If this Agreement is executed by more than one party as Indemnitor, the obligations of such persons or entities will be joint and several.

**18. Governing Law and Jurisdiction.** This Agreement has been delivered to and accepted by the City and will be deemed to be made in the State where the City’s office indicated above is located. **THIS AGREEMENT WILL BE INTERPRETED AND THE RIGHTS AND LIABILITIES OF THE PARTIES HERETO DETERMINED IN ACCORDANCE WITH THE LAWS OF THE STATE WHERE THE CITY’S OFFICE INDICATED ABOVE IS LOCATED, EXCLUDING ITS CONFLICT OF LAWS RULES.** The Indemnitor hereby irrevocably consents to the exclusive jurisdiction of any state or federal court in the county or judicial district where the City’s office indicated above is located; provided that nothing contained in this Agreement will prevent the City from bringing any action, enforcing any award or judgment or exercising any rights against the Indemnitor individually, against any security or against any property of the Indemnitor within any other county, state or other foreign or domestic jurisdiction. The Indemnitor acknowledges and agrees that the venue provided above is the most convenient forum for both the City and the Indemnitor. The Indemnitor waives any objection to venue and any objection based on a more convenient forum in any action instituted under this Agreement.

**19. WAIVER OF JURY TRIAL. THE INDEMNITOR IRREVOCABLY WAIVES ANY AND ALL RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING OR CLAIM OF ANY NATURE RELATING TO THIS AGREEMENT, ANY DOCUMENTS EXECUTED IN CONNECTION WITH THIS AGREEMENT OR ANY TRANSACTION CONTEMPLATED IN ANY OF SUCH DOCUMENTS. THE INDEMNITOR ACKNOWLEDGES THAT THE FOREGOING WAIVER IS KNOWING AND VOLUNTARY.**

REST OF PAGE LEFT INTENTIONALLY BLANK  
Signatures on Separate Page

**WITNESS** the due execution hereof as a document under seal, as of the date first written above.

**WITNESS/ATTEST:**

\_\_\_\_\_

**STATUE OF LIBERTY  
HARBOR NORTH REDEVELOPMENT  
URBAN RENEWAL, LLC**

**By:** \_\_\_\_\_  
**[Name, Title]**

## **GUARANTY**

THIS GUARANTY (the "Guaranty") made by **THE TRAMZ HOTEL GROUP, LLC** a Limited Liability Company of the State of New York having its principal office at 776 Mountain Blvd., Watchung, New Jersey 07069 (the "Guarantor"), in favor of **THE CITY OF JERSEY CITY**, having offices located at City Hall, 280 Grove Street, Jersey City, New Jersey 07302 (the "City").

### **WITNESSETH:**

WHEREAS, on this date, pursuant to a certain BEDI Subgrant Agreement (the "BEDI Subgrant Agreement") among the City and Statue of Liberty Harbor North Redevelopment Urban Renewal, LLC (the "Recipient"), the Recipient will receive a \$1,900,000.00 grant from the City (the "Grant"); and

WHEREAS, pursuant to the terms of the BEDI Subgrant Agreement, upon the occurrence of a default all monies advanced thereunder may be converted by the City to a loan (the "Loan"); and

WHEREAS, the Guarantor acknowledges that it is a condition precedent to the City extending the Grant that the Guarantor shall have executed this Guaranty and that the City is relying upon this Guaranty in extending the Grant; and

WHEREAS, the Guarantor deems it to be to its business and financial advantage and benefit, necessary and convenient to the conduct, promotion and attainment of its business and in furtherance of its corporate purposes to execute, deliver and perform under this Guaranty and the other documents contemplated hereby and thereby; and

WHEREAS, the Guarantor will materially benefit from the Grant made to the Recipient.

NOW, THEREFORE, in consideration of the premises and in order to induce the City to make the Grant, the Guarantor hereby agrees with the City as follows:

1. **OBLIGATIONS GUARANTEED.** The Guarantor hereby, irrevocably and unconditionally guarantees the full, prompt and unconditional payment, when due, whether by acceleration or otherwise, of any and all liabilities, indebtedness or obligations of the Recipient owed to the City arising out of or related to the Loan (including reasonable attorneys' fees), costs and expenses of collection incurred by the City in enforcing any of such Loan (the "Obligations of the Recipients" or "Obligations").

This Guaranty is a continuing guaranty and nothing shall terminate, discharge or satisfy the liability of the Guarantor hereunder until the Obligations of the Recipient shall have been satisfied in full.

2. **NO LIMITATION ON LIABILITY.** Without incurring responsibility to the Guarantor and without impairing or releasing the obligations of the Guarantor to the City, the

City may, at any time, and from time to time, without the consent of, or notice to, any Guarantor, upon any terms or conditions, and in whole or in part:

(a) Change the manner, place, or terms of payment, and/or change or extend the time for payment, or renew or alter, any of the Obligations, or any security therefor, and the Guaranty herein made shall apply to the Obligations as so changed, extended, renewed, or altered;

(b) Sell, exchange, release, surrender, subordinate, realize upon, or otherwise deal with in any manner and in any order, any property by whomsoever at any time pledged, mortgaged, or in which a security interest is given to secure, or howsoever securing the Obligations;

(c) Exercise or refrain from exercising any rights against any Recipient or any other person or entity obligated with respect to the Loan (an "Obligor") (including the Guarantor) or against any collateral for the Obligations or otherwise act or refrain from acting;

(d) Settle or compromise any Obligations, dispose of any collateral therefore, with or without consideration, or settle or compromise any liability incurred directly or indirectly in respect thereof or hereof, and subordinate the payment of all or any part thereof to the payment of any Obligations;

(e) Apply any sums by whomsoever paid or howsoever realized to any Obligations;

(f) Add, release, settle, modify, or discharge the obligation of any Obligor or any other party who is in any way obligated for any of the Obligations;

(g) Accept any additional security for the Obligations in any order deemed appropriate by the City;

(h) Take any other action which might constitute a defense available to, or a discharge of, any Recipient or any other Obligor (including the Guarantor), in respect of the Obligations.

The validity, irregularity, or unenforceability of all or any part of the Obligations or any document or instrument relating thereto, or the lack of validity, enforceability, perfection, impairment or loss of any liens or security interests granted in connection therewith, whether caused by any action or inaction of the City, or otherwise, shall not affect, impair, or be a defense to any Guarantor's obligations under this Guaranty.

### 3. REMEDIES.

(a) Upon the conversion of the Grant to Loan at the City's option, all Obligations shall immediately become due and payable in full, all without protest, presentment, demand or further notice of any kind to the Guarantor, all of which are expressly waived. Upon

the conversion of the Grant to Loan, the City may, at its option, exercise any and all rights and remedies it has under this Guaranty, any other documents and/or applicable law, including, without limitation, the right to change and collect interest on the principal portion of the Obligations at the Default Rate, as defined in the EDI Grant Agreement, whether by acceleration or otherwise, and after the entry of a judgment in favor of the City with respect to any or all of the Obligations. Upon the occurrence and continuation of any such default, the City may proceed to protect and enforce the City's rights hereunder and/or under applicable law by action at law, in equity or other appropriate proceeding including, without limitation, an action for specific performance to enforce or aid in the enforcement of any provision contained herein or in any other document or instrument.

(b) The rights, powers, remedies and privileges of the City provided in this Guaranty and the other documents and instruments are cumulative and not exclusive of any right, power, remedy or privilege provided by law or equity. No failure or delay on the part of the City in the exercise of any right, power, remedy or privilege shall operate as a waiver thereof, nor shall any single or partial exercise preclude any other or further exercise thereof, of the exercise of any other right, power, remedy or privilege.

#### 4. CONTINUATION OF GUARANTY.

(a) Settlement of any claim by the City against any Obligor, whether in any proceeding or not, and whether voluntary or involuntary, shall not reduce the amount due under the terms of this Guaranty except to the extent of the amount actually paid by the Recipient or any other Obligor and legally retained by the City in connection with the settlement.

(b) If, after receipt of any payment of all or any part of the Obligations or the obligations of the Guarantor to the City, the City is compelled or agrees, for settlement purposes, to surrender such payment to any person or entity for any reason (including, without limitation, a determination that such payment is void or voidable as a preference or fraudulent conveyance, an impermissible setoff, or a diversion of trust funds), then this Guaranty and the other documents and instrument executed in connection therewith shall continue in full force and effect or be reinstated, as the case may be, and the Guarantor shall be liable for, and shall indemnify, defend and hold harmless the City with respect to the full amount so surrendered.

The provisions of this Subsection 4(b) shall survive the termination of this Guaranty and shall be and remain effective notwithstanding the payments of the Obligations, the cancellation, release or termination of the Guaranty or any other document and instrument executed in connection therewith, the release of any security interest, lien or encumbrance securing the Obligations, or any other action which the City may have taken in reliance upon its receipt of such payment. Any cancellation, release or termination of the Guaranty, release of any encumbrance, security interest or lien or other such action shall be deemed to have been conditioned upon any payment of the Obligations having become final and irrevocable.

5. SEVERAL OBLIGATIONS. If the Obligations of the Recipient are also guaranteed by any other person or entity, the obligation of such other person or entity and each of the Guarantor's obligations hereunder shall be deemed to be several, and the release by the

City of any such other guarantor, or settlement with such other guarantor or the revocation or impairment of such guaranty, shall not operate to prejudice the City's rights against any Guarantor hereunder.

6. AMENDMENT OR WAIVER. No waiver of any of the City's rights hereunder and no modification or amendment of this Guaranty, shall be deemed to be made by the City unless the same shall be in writing, duly signed on behalf of the City by the Mayor or the Business Administrator, and each such waiver, if any, shall apply only with respect to the specific instance involved, and shall in no way impair the rights or the obligations of any Guarantor to the City in any other respect at any other time.

7. WAIVER OF RIGHTS AS CREDITOR. Until all Obligations of the Recipient have been fully satisfied, each Guarantor hereby irrevocably waives and releases any and all legal and equitable rights to recover from each Obligor (i) any sums paid by the Guarantor under the terms of this Guaranty and/or other documents and instrument executed in connection therewith, including, without limitation, all rights of subrogation and all other rights that would result in the Guarantor being deemed a creditor of each said Obligor under the Federal Bankruptcy Code, and any other law, and (ii) any and all claims the Guarantor has or may have against each Obligor which are not related to or arising from or in connection with this Guaranty or other documents and instrument executed in connection therewith.

If any payment is made to the Guarantor on account of the foregoing rights contrary to the foregoing, each and every amount so paid will forthwith be turned over to the City to be credited and applied upon any of the Obligation of the Recipients whether matured or unmatured.

8. WAIVER OF MARSHALLING; PRESERVATION. The City shall be under no duty or obligation to any Guarantor or anyone else to, nor shall the City have any liability whatsoever to any Guarantor or anyone else for failing to: (i) preserve, protect or marshal any collateral it may hold; (ii) preserve or protect the rights of any Obligor against any person claiming an interest in any collateral it may hold adverse to that of any Obligor; (iii) realize upon any collateral it may hold in any particular order or manner or seek repayment of the Obligations from any particular source; or (iv) permit any substitution or exchange of all or any part of any collateral it may hold or release any part of any collateral it may hold from any lien, even if that substitution or release would leave the City adequately secured.

9. NOTICES. All notices, requests and other communications pursuant to this Guaranty shall be in writing, either by letter (delivered by hand or overnight delivery or sent certified mail, return receipt requested) addressed to the City at City Hall, 280 Grove Street, Jersey City, New Jersey 07302, Attention: Business Administrator, with a copy to the Division of Community Development, 30 Montgomery Street, 4th Floor, Jersey City, New Jersey 07302, Attention: Director, or at such other address as either may give notice to the other as herein provided. Any notice, request or communication hereunder shall be deemed to have been given five (5) days from when deposited in the mails, postage prepaid, or in the case of hand or overnight delivery, when delivered, addressed as aforesaid except where otherwise provided in this Guaranty, provided, however, that notice of a change of address, as hereinabove provided,

shall be deemed to have been given only when actually received by the party to which it is addressed.

10. **TERMS.** All other capitalized terms not otherwise defined herein shall have the same meaning ascribed to them in the BEDI Grant Agreement. The words importing the singular number mean and include the plural number and vice versa, and words of the masculine gender mean and include correlative words of the feminine and/or neuter gender and vice versa.

11. **GOVERNING LAW.** This Guaranty shall be construed in accordance with and governed by the laws of the State of New Jersey.

12. **SUCCESSORS AND ASSIGNS.** This Guaranty shall be binding upon the Guarantor, as well as each of its successors or assigns, and inure to the benefit of the City and the City's successors and assigns.

13. **SEVERABILITY.** The illegality or unenforceability of any provision of this Guaranty or any instrument or note required hereunder shall not in any way affect or impair the legality or enforceability of the remaining provisions of this Guaranty or any instrument or note required hereunder.

14. **CONSENT TO JURISDICTION AND SERVICE OF PROCESS.** The Guarantor hereby consents that any action or proceeding against it may be commenced and maintained in any court within the State of New Jersey or in the United States District Court for the District of New Jersey by service of process on the Guarantor by mailing copies thereof by registered or certified mail, shall be commenced and maintained only in a court in the federal judicial district or county in which the City has its principal place of business in New Jersey.

15. **HEADINGS.** The headings of sections and paragraphs have been included herein for convenience only and shall not be considered in interpreting this Guaranty.

16. **JUDICIAL PROCEEDING; WAIVERS.**

(a) THE GUARANTOR AGREES THAT ANY SUIT, ACTION OR PROCEEDING, WHETHER CLAIM OR COUNTERCLAIM, BROUGHT OR INSTITUTED BY ANY PARTY HERETO OR ANY SUCCESSOR OR ASSIGN OF ANY PARTY, ON OR WITH RESPECT TO THIS GUARANTY OR THE DEALINGS OF THE PARTIES WITH RESPECT HERETO, OR THERETO, SHALL BE TRIED ONLY BY A COURT AND NOT BY A JURY.

(b) THE GUARANTOR AND THE CITY HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHT TO A TRIAL BY JURY IN ANY SUCH SUIT, ACTION OR PROCEEDING.

(c) THE GUARANTOR ACKNOWLEDGES AND AGREES THAT THIS SECTION IS A SPECIFIC AND MATERIAL ASPECT OF THIS GUARANTY AND THAT THE CITY WOULD NOT EXTEND THE GRANT IF THE WAIVERS SET FORTH IN THIS

SECTION WERE NOT A PART OF THIS GUARANTY. THE GUARANTOR HEREBY WAIVES PRESENTMENT, NOTICE OF DISHONOR AND PROTEST OF ALL INSTRUMENTS INCLUDED IN OR EVIDENCING THE OBLIGATIONS OR THE COLLATERAL, IF ANY, AND ALL OTHER NOTICES AND DEMANDS WHATSOEVER, WHETHER OR NOT RELATING TO SUCH INSTRUMENTS.

17. TERMINATION. The Guarantors obligations under this Guaranty shall terminate sixty (60) days after the City has confirmed in writing to the Guarantor that the City has received all information and/or reporting requirements verifying that the Recipient has fully complied with all of its obligations under that BEDI Grant Agreement.

IN WITNESS WHEREOF, the Guarantor has executed this Instrument under seal this \_\_\_ day of \_\_\_\_\_, 2009.

ATTEST:

TRAMZ HOTEL GROUP, LLC

\_\_\_\_\_

\_\_\_\_\_

## GUARANTY

THIS GUARANTY (the "Guaranty") made by **THE TRAMZ HOTEL GROUP, LLC** a Limited Liability Company of the State of New York having its principal office at 776 Mountain Blvd., Watchung, New Jersey 07069 (the "Guarantor"), in favor of **THE CITY OF JERSEY CITY**, having offices located at City Hall, 280 Grove Street, Jersey City, New Jersey 07302 (the "City").

### WITNESSETH:

**WHEREAS**, Statue of Liberty Harbor North Redevelopment Urban Renewal, LLC, a New Jersey limited liability company ("**Borrower**"), has borrowed the sum of \$8,000,000.00 (the "**Loan**") from City, evidenced by Borrower's Promissory Note dated July 30, 2009 (as it may be amended, the "**Note**") and that certain Loan Agreement by and between City and Borrower dated July 30, 2009 (as it may be amended, the "**Loan Agreement**"), and secured by, among other things, a Mortgage, dated July 30, 2009 (as it may be amended, the "**Mortgage**").

**WHEREAS**, the Note, the Loan Agreement, the Mortgage and the other documents, certificates, instruments and agreements executed by Borrower in connection with the Loan or to otherwise evidence or secure the Loan, and all renewals, supplements, or amendments thereto or a part thereof, are collectively referred to as the "Loan Documents".

**WHEREAS**, the Guarantor acknowledges that it is a condition precedent to the City extending the Loan that the Guarantor shall have executed this Guaranty and that the City is relying upon this Guaranty in extending the Loan; and

**WHEREAS**, the Guarantor deems it to be to its business and financial advantage and benefit, necessary and convenient to the conduct, promotion and attainment of its business and in furtherance of its corporate purposes to execute, deliver and perform under this Guaranty and the other documents contemplated hereby and thereby; and

**WHEREAS**, as a condition of making the Loan, Guarantor has agreed to guaranty, absolutely and unconditionally, payment of the Obligations (as defined below), subject to the terms and conditions set forth in this Guaranty.

**WHEREAS**, the Guarantor will materially benefit from the Loan.

**NOW, THEREFORE**, in consideration of the premises and in order to induce the City to make the Loan, the Guarantor hereby agrees with the City as follows:

1. **OBLIGATIONS GUARANTEED.** The Guarantor hereby, irrevocably and unconditionally guarantees the full, prompt and unconditional payment, when due, whether by acceleration or otherwise, of any and all liabilities, indebtedness or obligations of the Borrower owed to the City arising out of or related to the Loan (including reasonable attorneys' fees), costs and expenses of collection incurred by the City in enforcing any of such Loan (the "Obligations of the Borrowers" or "Obligations").

This Guaranty is a continuing guaranty and nothing shall terminate, discharge or satisfy the liability of the Guarantor hereunder until the Obligations of the Borrower shall have been satisfied in full.

2. NO LIMITATION ON LIABILITY. Without incurring responsibility to the Guarantor and without impairing or releasing the obligations of the Guarantor to the City, the City may, at any time, and from time to time, without the consent of, or notice to, any Guarantor, upon any terms or conditions, and in whole or in part:

(a) Change the manner, place, or terms of payment, and/or change or extend the time for payment, or renew or alter, any of the Obligations, or any security therefor, and the Guaranty herein made shall apply to the Obligations as so changed, extended, renewed, or altered;

(b) Sell, exchange, release, surrender, subordinate, realize upon, or otherwise deal with in any manner and in any order, any property by whomsoever at any time pledged, mortgaged, or in which a security interest is given to secure, or howsoever securing the Obligations;

(c) Exercise or refrain from exercising any rights against any Borrower or any other person or entity obligated with respect to the Loan (an "Obligor") (including the Guarantor) or against any collateral for the Obligations or otherwise act or refrain from acting;

(d) Settle or compromise any Obligations, dispose of any collateral therefore, with or without consideration, or settle or compromise any liability incurred directly or indirectly in respect thereof or hereof, and subordinate the payment of all or any part thereof to the payment of any Obligations;

(e) Apply any sums by whomsoever paid or howsoever realized to any Obligations;

(f) Add, release, settle, modify, or discharge the obligation of any Obligor or any other party who is in any way obligated for any of the Obligations;

(g) Accept any additional security for the Obligations in any order deemed appropriate by the City;

(h) Take any other action which might constitute a defense available to, or a discharge of, any Borrower or any other Obligor (including the Guarantor), in respect of the Obligations.

The validity, irregularity, or unenforceability of all or any part of the Obligations or any document or instrument relating thereto, or the lack of validity, enforceability, perfection, impairment or loss of any liens or security interests Loaned in connection therewith, whether caused by any action or inaction of the City, or otherwise, shall not affect, impair, or be a defense to any Guarantor's obligations under this Guaranty.

### 3. REMEDIES.

(a) Upon the occurrence of an Event of Default with respect to the Obligations, Guarantor agrees to pay or perform on demand (either oral or written) such Guaranty Obligations. City shall not be under a duty to protect, secure or insure or be required to liquidate any security or lien provided by the Mortgage or other such collateral held by City prior to making such demand. The City may, at its option, exercise any and all rights and remedies it has under this Guaranty, any other documents and/or applicable law, including, without limitation, the right to charge and collect interest on the principal portion of the Obligations at the Default Rate, as defined in the Loan Agreement, whether by acceleration or otherwise, and after the entry of a judgment in favor of the City with respect to any or all of the Obligations. Upon the occurrence and continuation of any such default, the City may proceed to protect and enforce the City's rights hereunder and/or under applicable law by action at law, in equity or other appropriate proceeding including, without limitation, an action for specific performance to enforce or aid in the enforcement of any provision contained herein or in any other document or instrument.

(b) The rights, powers, remedies and privileges of the City provided in this Guaranty and the other documents and instruments are cumulative and not exclusive of any right, power, remedy or privilege provided by law or equity. No failure or delay on the part of the City in the exercise of any right, power, remedy or privilege shall operate as a waiver thereof, nor shall any single or partial exercise preclude any other or further exercise thereof, of the exercise of any other right, power, remedy or privilege.

### 4. CONTINUATION OF GUARANTY.

(a) Settlement of any claim by the City against any Obligor, whether in any proceeding or not, and whether voluntary or involuntary, shall not reduce the amount due under the terms of this Guaranty except to the extent of the amount actually paid by the Borrower or any other Obligor and legally retained by the City in connection with the settlement.

(b) If, after receipt of any payment of all or any part of the Obligations or the obligations of the Guarantor to the City, the City is compelled or agrees, for settlement purposes, to surrender such payment to any person or entity for any reason (including, without limitation, a determination that such payment is void or voidable as a preference or fraudulent conveyance, an impermissible setoff, or a diversion of trust funds), then this Guaranty and the other documents and instrument executed in connection therewith shall continue in full force and effect or be reinstated, as the case may be, and the Guarantor shall be liable for, and shall indemnify, defend and hold harmless the City with respect to the full amount so surrendered.

The provisions of this Subsection 4(b) shall survive the termination of this Guaranty and shall be and remain effective notwithstanding the payments of the Obligations, the cancellation, release or termination of the Guaranty or any other document and instrument executed in connection therewith, the release of any security interest, lien or encumbrance securing the Obligations, or any other action which the City may have taken in reliance upon its receipt of such payment. Any cancellation, release or termination of the Guaranty, release of any

encumbrance, security interest or lien or other such action shall be deemed to have been conditioned upon any payment of the Obligations having become final and irrevocable.

5. SEVERAL OBLIGATIONS. If the Obligations of the Borrower are also guaranteed by any other person or entity, the obligation of such other person or entity and each of the Guarantor' obligations hereunder shall be deemed to be several, and the release by the City of any such other guarantor, or settlement with such other guarantor or the revocation or impairment of such guaranty, shall not operate to prejudice the City's rights against any Guarantor hereunder.

6. AMENDMENT OR WAIVER. No waiver of any of the City's rights hereunder and no modification or amendment of this Guaranty, shall be deemed to be made by the City unless the same shall be in writing, duly signed on behalf of the City by the Mayor or the Business Administrator, and each such waiver, if any, shall apply only with respect to the specific instance involved, and shall in no way impair the rights or the obligations of any Guarantor to the City in any other respect at any other time.

7. WAIVER OF RIGHTS AS CREDITOR. Until all Obligations of the Borrower have been fully satisfied, each Guarantor hereby irrevocably waives and releases any and all legal and equitable rights to recover from each Obligor (i) any sums paid by the Guarantor under the terms of this Guaranty and/or other documents and instrument executed in connection therewith, including, without limitation, all rights of subrogation and all other rights that would result in the Guarantor being deemed a creditor of each said Obligor under the Federal Bankruptcy Code, and any other law, and (ii) any and all claims the Guarantor has or may have against each Obligor which are not related to or arising from or in connection with this Guaranty or other documents and instrument executed in connection therewith.

If any payment is made to the Guarantor on account of the foregoing rights contrary to the foregoing, each and every amount so paid will forthwith be turned over to the City to be credited and applied upon any of the Obligation of the Borrowers whether matured or unmatured.

8. WAIVER OF MARSHALLING; PRESERVATION. The City shall be under no duty or obligation to any Guarantor or anyone else to, nor shall the City have any liability whatsoever to any Guarantor or anyone else for failing to: (i) preserve, protect or marshal any collateral it may hold; (ii) preserve or protect the rights of any Obligor against any person claiming an interest in any collateral it may hold adverse to that of any Obligor; (iii) realize upon any collateral it may hold in any particular order or manner or seek repayment of the Obligations from any particular source; or (iv) permit any substitution or exchange of all or any part of any collateral it may hold or release any part of any collateral it may hold from any lien, even if that substitution or release would leave the City adequately secured.

9. NOTICES. All notices, requests and other communications pursuant to this Guaranty shall be in writing, either by letter (delivered by hand or overnight delivery or sent certified mail, return receipt requested) addressed to the City at City Hall, 280 Grove Street, Jersey City, New Jersey 07302, Attention: Business Administrator, with a copy to the Division

of Community Development, 30 Montgomery Street, 4th Floor, Jersey City, New Jersey 07302, Attention: Director, or at such other address as either may give notice to the other as herein provided. Any notice, request or communication hereunder shall be deemed to have been given five (5) days from when deposited in the mails, postage prepaid, or in the case of hand or overnight delivery, when delivered, addressed as aforesaid except where otherwise provided in this Guaranty, provided, however, that notice of a change of address, as hereinabove provided, shall be deemed to have been given only when actually received by the party to which it is addressed.

10. **TERMS.** All other capitalized terms not otherwise defined herein shall have the same meaning ascribed to them in the Loan Agreement. The words importing the singular number mean and include the plural number and vice versa, and words of the masculine gender mean and include correlative words of the feminine and/or neuter gender and vice versa.

11. **GOVERNING LAW.** This Guaranty shall be construed in accordance with and governed by the laws of the State of New Jersey.

12. **SUCCESSORS AND ASSIGNS.** This Guaranty shall be binding upon the Guarantor, as well as each of its successors or assigns, and inure to the benefit of the City and the City's successors and assigns.

13. **SEVERABILITY.** The illegality or unenforceability of any provision of this Guaranty or any instrument or note required hereunder shall not in any way affect or impair the legality or enforceability of the remaining provisions of this Guaranty or any instrument or note required hereunder.

14. **CONSENT TO JURISDICTION AND SERVICE OF PROCESS.** The Guarantor hereby consents that any action or proceeding against it may be commenced and maintained in any court within the State of New Jersey or in the United States District Court for the District of New Jersey by service of process on the Guarantor by mailing copies thereof by registered or certified mail, shall be commenced and maintained only in a court in the federal judicial district or county in which the City has its principal place of business in New Jersey.

15. **HEADINGS.** The headings of sections and paragraphs have been included herein for convenience only and shall not be considered in interpreting this Guaranty.

16. **JUDICIAL PROCEEDING; WAIVERS.**

(a) **THE GUARANTOR AGREES THAT ANY SUIT, ACTION OR PROCEEDING, WHETHER CLAIM OR COUNTERCLAIM, BROUGHT OR INSTITUTED BY ANY PARTY HERETO OR ANY SUCCESSOR OR ASSIGN OF ANY PARTY, ON OR WITH RESPECT TO THIS GUARANTY OR THE DEALINGS OF THE PARTIES WITH RESPECT HERETO, OR THERETO, SHALL BE TRIED ONLY BY A COURT AND NOT BY A JURY.**

(b) THE GUARANTOR AND THE CITY HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHT TO A TRIAL BY JURY IN ANY SUCH SUIT, ACTION OR PROCEEDING.

(c) THE GUARANTOR ACKNOWLEDGES AND AGREES THAT THIS SECTION IS A SPECIFIC AND MATERIAL ASPECT OF THIS GUARANTY AND THAT THE CITY WOULD NOT EXTEND THE LOAN IF THE WAIVERS SET FORTH IN THIS SECTION WERE NOT A PART OF THIS GUARANTY. THE GUARANTOR HEREBY WAIVES PRESENTMENT, NOTICE OF DISHONOR AND PROTEST OF ALL INSTRUMENTS INCLUDED IN OR EVIDENCING THE OBLIGATIONS OR THE COLLATERAL, IF ANY, AND ALL OTHER NOTICES AND DEMANDS WHATSOEVER, WHETHER OR NOT RELATING TO SUCH INSTRUMENTS.

17. TERMINATION. The Guarantors obligations under this Guaranty shall terminate sixty (60) days after the City has confirmed in writing to the Guarantor that the Borrower has fully complied with all of its obligations under the Loan Documents.

IN WITNESS WHEREOF, the Guarantor has executed this Instrument under seal this \_\_\_ day of \_\_\_\_\_, 2010.

ATTEST:

TRAMZ HOTEL GROUP, LLC

\_\_\_\_\_

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

---

---

**MORTGAGE AND SECURITY AGREEMENT**

**by and between**

**STATUE OF LIBERTY  
HARBOR NORTH REDEVELOPMENT  
URBAN RENEWAL, LLC**

**Mortgagor,**

**AND**

**THE CITY OF JERSEY CITY**

**Mortgagee**

**Dated: \_\_\_\_\_, 2009**

## MORTGAGE AND SECURITY AGREEMENT

**MORTGAGE AND SECURITY AGREEMENT** dated \_\_\_\_\_, 2009 (together with any amendments or modifications hereto in effect from time to time, the "**Mortgage**"), between **STATUE OF LIBERTY HARBOR NORTH REDEVELOPMENT URBAN RENEWAL, LLC**, a limited liability company organized and existing under the laws of the State of New Jersey, whose address is 776 Mountain Blvd., Watchung, New Jersey 07069 ("**Mortgagor**") and **THE CITY OF JERSEY CITY**, a municipal corporation of the State of New Jersey, having an address at City Hall, 280 Grove Street, Jersey City, New Jersey 07032 ("**Mortgagee**").

### WITNESSETH:

**WHEREAS**, Mortgagor is indebted to Mortgagee in the principal sum of **Nine Million Nine Hundred Thousand and 00/100 (\$9,900,000.00) DOLLARS** (the "**Loan**"), together with interest thereon, as evidenced by a certain Promissory Note and BEDI Grant Agreement of even date herewith (collectively, the "**Note**"); and

**WHEREAS**, Mortgagor is the owner of fee simple title to those certain tracts of land located in the City of Jersey City, County of Hudson, State of New Jersey, as described in Schedule "A" attached hereto and made a part hereof (the "**Real Estate**"); and

**WHEREAS**, to induce Mortgagee to make the Loan and to secure payment of the Note and the other obligations described below, Mortgagor has agreed to execute and deliver this Mortgage.

### GRANTING CLAUSES

**NOW, THEREFORE**, to secure to Mortgagee (i) the repayment of all sums due under this Mortgage, the Note (and all extensions, renewals, replacements and amendments thereof) and the Loan Agreement of even date herewith (the "**Loan Agreement**") (collectively, together with the Mortgage, Note, the BEDI Grant Agreement and Loan Agreement, the "**Loan Documents**"); (ii) the performance of all terms, conditions and covenants set forth in the Loan Documents; (iii) all other obligations or indebtedness of Mortgagor to Mortgagee of whatever kind or character and whenever borrowed or incurred, including without limitation, principal, interest, fees, late charges and expenses, including attorneys' fees (subsections (i), (ii), and (iii) (collectively, the "**Liabilities**"), Mortgagor has mortgaged, granted and conveyed and by these presents **DOES HEREBY MORTGAGE, GRANT AND CONVEY TO MORTGAGEE, ITS SUCCESSORS AND ASSIGNS**, all of Mortgagor's right, title and interest now owned or hereafter acquired in and to each of the following (collectively, the "**Property**"):

(A) The Real Estate;

(B) Any and all buildings and improvements now or hereafter erected on, under or over the Real Estate (the "**Improvements**");

(C) Any and all fixtures, machinery, equipment and other articles of real, personal or mixed property, belonging to Mortgagor, at any time now or hereafter installed in, attached to or situated in or upon the Real Estate, or the buildings and improvements now or hereafter erected thereon, or used or intended to be used in connection with the Real Estate, or in the operation of the buildings and improvements, plant, business or dwelling situate thereon, whether or not such real, personal or mixed property is or shall be affixed thereto, and all replacements, substitutions and proceeds of the foregoing (all of the foregoing herein called the "**Service Equipment**"), including without limitation: (i) all appliances, furniture and furnishings; all articles of interior decoration, floor, wall and window coverings; all office, restaurant, bar, kitchen and laundry fixtures, utensils, appliances and equipment; all supplies, tools and accessories; all storm and screen windows, shutters, doors, decorations, awnings, shades, blinds, signs, trees, shrubbery and other plantings; (ii) all building service fixtures, machinery and equipment of any kind whatsoever; all lighting, heating, ventilating, air conditioning, refrigerating, sprinkling, plumbing, security, irrigating, cleaning, incinerating, waste disposal, communications, alarm, fire prevention and extinguishing systems, fixtures, apparatus, machinery and equipment; all elevators, escalators, lifts, cranes, hoists and platforms; all pipes, conduits, pumps, boilers, tanks, motors, engines, furnaces and compressors; all dynamos, transformers and generators; (iii) all building materials, building machinery and building equipment delivered on site to the Real Estate during the course of, or in connection with any construction or repair or renovation of the buildings and improvements; (iv) all parts, fittings, accessories, accessions, substitutions and replacements therefor and thereof; and (v) all files, books, ledgers, reports and records relating to any of the foregoing;

(D) Any and all leases, subleases, tenancies, licenses, occupancy agreements or agreements to lease all or any portion of the Real Estate, Improvements, Service Equipment or all or any other portion of the Property and all extensions, renewals, amendments, modifications and replacements thereof, and any options, rights of first refusal or guarantees relating thereto (collectively, the "**Leases**"); all rents, income, receipts, revenues, security deposits, escrow accounts, reserves, issues, profits, awards and payments of any kind payable under the Leases or otherwise arising from the Real Estate, Improvements, Service Equipment or all or any other portion of the Property including, without limitation, minimum rents, additional rents, percentage rents, parking, maintenance and deficiency rents (collectively, the "**Rents**"); all of the following personal property (collectively referred to as the "**Contracts**"): all accounts, general intangibles and contract rights (including any right to payment thereunder, whether or not earned by performance) of any nature relating to the Real Estate, Improvements, Service Equipment or all or any other portion of the Property or the use, occupancy, maintenance, construction, repair or operation thereof; all management agreements, franchise agreements, utility agreements and deposits, building service contracts, maintenance contracts, construction contracts and architect's agreements; all maps, plans, surveys and specifications; all warranties and guaranties; all permits, licenses and approvals; and all insurance policies, books of account and other documents, of whatever kind or character, relating to the use, construction upon, occupancy, leasing, sale or operation of the Real Estate, Improvements, Service Equipment or all or any other portion of the Property;

(E) Any and all estates, rights, tenements, hereditaments, privileges, easements, reversions, remainders and appurtenances of any kind benefiting or appurtenant to the Real Estate, Improvements or all or any other portion of the Property; all means of access to and from the Real Estate, Improvements or all or any other portion of the Property, whether public or private; all streets, alleys, passages, ways, water courses, water and mineral rights relating to the Real Estate, Improvements or all or any other portion of the Property; all rights of Mortgagor as declarant or unit owner under any declaration of condominium or association applicable to the Real Estate, Improvements or all or any other portion of the Property including, without limitation, all development rights and special declarant rights; and all other claims or demands of Mortgagor, either at law or in equity, in possession or expectancy of, in, or to the Real Estate, Improvements or all or any other portion of the Property (all of the foregoing described in this subsection E herein called the "**Appurtenances**"); and

(F) Any and all "proceeds" of any of the above-described Real Estate, Improvements, Service Equipment, Leases, Rents, Contracts and Appurtenances, which term "proceeds" shall have the meaning given to it in the Uniform Commercial Code, as amended, (the "**Code**") of the State in which the Property is located (collectively, the "**Proceeds**") and shall additionally include whatever is received upon the use, lease, sale, exchange, transfer, collection or other utilization or any disposition or conversion of any of the Real Estate, Improvements, Service Equipment, Leases, Rents, Contracts and Appurtenances, voluntary or involuntary, whether cash or non-cash, including proceeds of insurance and condemnation awards, rental or lease payments, accounts, chattel paper, instruments, documents, contract rights, general intangibles, equipment and inventory.

**TO HAVE AND TO HOLD** the above granted and conveyed Property unto and to the proper use and benefit of Mortgagee, its successors and assigns, forever.

**PROVIDED ALWAYS**, and these presents are upon the express condition, that if (i) all the Liabilities, including without limitation, all termination payments and any other amounts due under or in connection with any swap agreements secured hereunder, are paid in full, and (ii) each and every representation, warranty, agreement and covenant of this Mortgage and the other Loan Documents are complied with and abided by, then this Mortgage and the estate hereby created shall cease and be null and void and canceled of record.

The terms of the Loan Documents are hereby made a part of this Mortgage to the same extent and with the same effect as if fully set forth herein. All capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Loan Documents.

**AND** Mortgagor covenants and agrees with and represents to Mortgagee as follows:

1. **FUTURE ADVANCES; PROTECTION OF PROPERTY.** This Mortgage shall secure any additional loans as well as any and all present or future advances and readvances under the Liabilities made by Mortgagee to or for the benefit of Mortgagor or the Property, including, without limitation: (a) principal, interest, late charges, fees and other amounts due under the Liabilities or this Mortgage; (b) all advances by Mortgagee to Mortgagor or any other

person to pay costs of erection, construction, alteration, repair, restoration, maintenance and completion of any improvements on the Property; (c) all advances made or costs incurred by Mortgagee for the payment of real estate taxes, assessments or other governmental charges, maintenance charges, insurance premiums, appraisal charges, environmental inspection, audit, testing or compliance costs, and costs incurred by Mortgagee for the enforcement and protection of the Property or the lien of this Mortgage; and (d) all legal fees, costs and other expenses incurred by Mortgagee by reason of any default or otherwise in connection with the Liabilities. Mortgagor agrees that if, at any time during the term of this Mortgage or following a foreclosure hereof (whether before or after the entry of a judgment of foreclosure), Mortgagor fails to perform or observe any covenant or obligation under this Mortgage including, without limitation, payment of any of the foregoing, Mortgagee may (but shall not be obligated to) take such steps as are reasonably necessary to remedy any such nonperformance or nonobservance and provide payment thereof. All amounts advanced by Mortgagee shall be added to the amount secured by this Mortgage and the other Loan Documents (and, if advanced after the entry of a judgment of foreclosure, by such judgment of foreclosure), and shall be due and payable on demand, together with interest at the Default Rate set forth in the Note, such interest to be calculated from the date of such advance to the date of repayment thereof.

## 2. **REPRESENTATIONS, WARRANTIES AND COVENANTS.**

2.1. **Payment and Performance.** Mortgagor shall (a) pay to Mortgagee all sums required to be paid by Mortgagor under the Loan Documents, in accordance with their stated terms and conditions; (b) perform and comply with all terms, conditions and covenants set forth in each of the Loan Documents by which Mortgagor is bound; and (c) perform and comply with all of Mortgagor's obligations and duties as landlord under any Leases.

2.2. **Seisin and Warranty.** Mortgagor hereby warrants that (a) Mortgagor is seized of an indefeasible estate in fee simple in, and warrants the title to, the Property; (b) Mortgagor has the right, full power and lawful authority to mortgage, grant, convey and assign the same to Mortgagee in the manner and form set forth herein; and (c) this Mortgage is a valid and enforceable first lien on the Property. Mortgagor hereby covenants that Mortgagor shall (a) preserve such title and the validity and priority of the lien of this Mortgage and shall forever warrant and defend the same to Mortgagee against all lawful claims whatsoever; and (b) execute, acknowledge and deliver all such further documents or assurances as may at any time hereafter be required by Mortgagee to protect fully the lien of this Mortgage.

2.3. **Insurance.** (a) Mortgagor shall obtain and maintain at all times throughout the term of this Mortgage as required in the Loan Agreement.

2.4. **Taxes and Other Charges.** Mortgagor shall promptly pay and discharge all taxes, assessments, water and sewer rents, and other governmental charges imposed upon the Property when due, but in no event after interest or penalties commence to accrue thereon or become a lien upon the Property. Notwithstanding the foregoing, Mortgagor shall have the right to contest, at its own expense, by appropriate legal proceedings conducted in good faith and with due diligence, the amount or validity of such taxes, assessments, water and sewer rents, or other

governmental charges, provided that: (a) Mortgagor has established on its books or by deposit of cash with Mortgagee, at the option of Mortgagee, a reserve for the payment thereof in such amount as Mortgagee may require; and (b) such contest operates to prevent collection, stay any proceedings which may be instituted to enforce payment of such item, and prevent a sale of the Property to pay such item. Mortgagor shall promptly provide to Mortgagee, upon request, copies of receipted tax bills, canceled checks or other evidence satisfactory to Mortgagee evidencing that such taxes, assessments, water and sewer rents, and other governmental charges have been timely paid. Mortgagor shall not claim or demand or be entitled to any credit on account of the Liabilities for any part of the taxes paid with respect to the Property or any part thereof and no deduction shall otherwise be made or claimed from the taxable value of the Property, or any part thereof, by reason of this Mortgage.

2.5. **Escrows**. If required by Mortgagee, Mortgagor shall pay to Mortgagee at the time of each installment of principal and interest due under the Note, and commencing with the first payment due after the date of such request, a sum equal to (a) the amount of the next installment of taxes and assessments levied or assessed against the Property, and/or (b) the premiums which will next become due on the insurance policies required by this Mortgage, all in amounts as estimated by Mortgagee, less all sums already paid therefor or deposited with Mortgagee for the payment thereof, divided by the number of payments to become due before one (1) month prior to the date when such taxes and assessments and/or premiums, as applicable, will become due, such sums to be held by Mortgagee to pay the same when due. If such escrow funds are not sufficient to pay such taxes and assessments and/or insurance premiums, as applicable, as the same become due, Mortgagor shall pay to Mortgagee, upon request, such additional amounts as Mortgagee shall estimate to be sufficient to make up any deficiency. No amount paid to Mortgagee hereunder shall be deemed to be trust funds but may be commingled with general funds of Mortgagee and no interest shall be payable thereon. Upon the occurrence of an Event of Default, Mortgagee shall have the right, at its sole discretion, to apply any amounts so held against the Liabilities.

2.6. **Transfer of Title**. Without the prior written consent of Mortgagee in each instance, Mortgagor shall not cause or permit any transfer of the Property or any part thereof, whether voluntarily, involuntarily or by operation of law, nor shall Mortgagor enter into any agreement or transaction to transfer, or accomplish in form or substance a transfer, of the Property. A "**transfer**" of the Property includes: (a) the direct or indirect sale, transfer or conveyance of the Property or any portion thereof or interest therein; (b) the execution of an installment sale contract or similar instrument affecting all or any portion of the Property; (c) if Mortgagor, or any general partner or member of Mortgagor, is a corporation, partnership, limited liability company or other business entity, the transfer (whether in one transaction or a series of transactions) of any stock, partnership, limited liability company or other ownership interests in such corporation, partnership, limited liability company or entity; (d) if Mortgagor, or any general partner or member of Mortgagor, is a corporation, the creation or issuance of new stock by which a majority of such corporation's stock shall be vested in a party or parties who are not now stockholders; and (e) an agreement by Mortgagor leasing all or a substantial part of the Property for other than actual occupancy by a space tenant thereunder or a sale, assignment or other transfer of or the grant of a security interest in and to any Leases.

2.7. **No Encumbrances.** Except for the Permitted Encumbrances, Mortgagor shall not create or permit to exist any mortgage, pledge, lien, security interest (including, without limitation, a purchase money security interest), encumbrance, attachment, levy, distraint or other judicial process on or against the Property or any part thereof (including, without limitation, fixtures and other personalty), whether superior or inferior to the lien of this Mortgage, without the prior written consent of Mortgagee. If any lien or encumbrance is filed or entered without Mortgagor's consent, Mortgagor shall have it removed of record within thirty (30) days after it is filed or entered. For purposes of this paragraph, the Term "Permitted Encumbrances" shall mean (A) liens for taxes not then delinquent, or then being contested in good faith by the Developer and for which the Developer has maintained with the City reserves satisfactory to the City; (B) liens created or permitted by the Loan Agreement, or any other Loan Document; (C) any mechanic's, laborer's, materialman's, supplier's or vendor's lien or right in respect thereof, if payment is being contested in good faith by the Developer and for which the Developer has maintained reserves satisfactory to the City; (D) any encumbrances, easements and rights of way which do not materially impair the property affected thereby for the purpose for which it was acquired or is held by the Developer; (E) the mortgage and security agreement with respect to the Premises in favor of one or more lenders as security for the Developer's construction loan (including mezzanine financing, if any) for the Project in an aggregate amount not to exceed \$81,900,000.00, (F) liens in favor of or consented to in writing by the City and (G) liens in favor of EnviroFinance Group, LLC.

2.8. **Removal of Fixtures.** Mortgagor shall not remove or permit to be removed from the Property any fixtures presently or in the future owned by Mortgagor as the term "fixtures" is defined by the law of the state where the Property is located (unless such fixtures have been replaced with similar fixtures of equal or greater utility and value).

2.9. **Maintenance and Repair; Alterations.** Except in connection with the construction of the Project (as such term is defined in the Loan Agreement), (a) Mortgagor shall (i) abstain from and not permit the commission of waste in or about the Property; (ii) keep the Property, at Mortgagor's own cost and expense, in good and substantial repair, working order and condition; (iii) make or cause to be made, as and when necessary, all repairs and replacements, whether or not insurance proceeds are available therefor; and (iv) not remove, demolish, materially alter, discontinue the use of, permit to become vacant or deserted, or otherwise dispose of all or any part of the Property. All alterations, replacements, renewals or additions made pursuant hereto shall automatically become a part of the Property and shall be covered by the lien of this Mortgage.

(b) Mortgagee, and any persons authorized by Mortgagee, shall have the right, but not the obligation, to enter upon the Property at any reasonable time to inspect and photograph its condition and state of repair. In the event any such inspection reveals, in the sole discretion of Mortgagee, the necessity for any repair, alteration, replacement, clean-up or maintenance, Mortgagor shall, at the discretion of Mortgagee, either: (i) cause such work to be effected

immediately; or (ii) promptly establish an interest bearing reserve fund with Mortgagee in an amount determined by Mortgagee for the purpose of effecting such work.

2.10. **Compliance with Applicable Laws.** Mortgagor agrees to observe, conform and comply, and to cause its tenants to observe, conform and comply with all federal, state, county, municipal and other governmental or quasi-governmental laws, rules, regulations, ordinances, codes, requirements, covenants, conditions, orders, licenses, permits, approvals and restrictions, including without limitation, Environmental Laws (as defined below) and the Americans with Disabilities Act of 1990 (collectively, the "**Legal Requirements**"), now or hereafter affecting all or any part of the Property, its occupancy or the business or operations now or hereafter conducted thereon and the personalty contained therein, within such time as required by such Legal Requirements. Mortgagor represents and warrants that it has caused the Property to be designed, and upon completion of the Project, the Property shall be, in compliance with all Legal Requirements applicable to the Property.

2.11. **Damage, Destruction and Condemnation.** (a) If all or any part of the Property shall be damaged or destroyed, or if title to or the temporary use of the whole or any part of the Property shall be taken or condemned by a competent authority for any public or quasi-public use or purpose, there shall be no abatement or reduction in the amounts payable by Mortgagor under the Loan Documents and Mortgagor shall continue to be obligated to make such payments.

(b) If all or any part of the Property is partially or totally damaged or destroyed, Mortgagor shall give prompt notice thereof to Mortgagee, and Mortgagee may make proof of loss if not made promptly by Mortgagor.

(c) All insurance proceeds payable on account of damages or destruction and all awards as a result of a condemnation shall be distributed in the manner set forth in the Senior Loan Agreement as defined in Section 9.11 herein.

(d) Nothing herein shall relieve Mortgagor of its duty to repair, restore, rebuild or replace the Property following damage or destruction or partial condemnation if no or inadequate insurance proceeds or condemnation awards are available to defray the cost of repair, restoration, rebuilding or replacement.

2.12. **Required Notices.** Mortgagor shall notify Mortgagee within three (3) days of: (a) receipt of any notice from any governmental or quasi-governmental authority relating to the structure, use or occupancy of the Property or alleging a violation of any Legal Requirement; (b) a substantial change in the occupancy or use of all or any part of the Property; (c) receipt of any notice from the holder of any lien or security interest in all or any part of the Property; (d) commencement of any litigation affecting or potentially affecting the financial ability of Mortgagor or the value of the Property; (e) a pending or threatened condemnation of all or any part of the Property; (f) a fire or other casualty causing damage to all or any part of the Property; (g) receipt of any notice with regard to any Release of Hazardous Substances (as such terms are defined below) or any other environmental matter affecting the Property or Mortgagor's interest therein; (h) receipt of any request for information, demand letter or notification of potential

liability from any entity relating to potential responsibility for investigation or clean-up of Hazardous Substances on the Property or at any other site owned or operated by Mortgagor; (i) receipt of any notice from any tenant of all or any part of the Property alleging a default, failure to perform or any right to terminate its lease or to set-off rents; or (j) receipt of any notice of the imposition of, or of threatened or actual execution on, any lien on or security interest in all or any part of the Property.

2.13. **Books and Records; Inspection.** Mortgagor shall keep and maintain (a) complete and accurate books and records, in accordance with generally accepted accounting principles consistently applied, reflecting all items of income and expense in connection with the operation of the Property, and (b) copies of all written contracts, leases and other agreements affecting the Property. Mortgagee or its designated representatives shall, upon reasonable prior notice to Mortgagor, have (a) the right of entry and free access to the Property during business hours (which may be without notice in any case of emergency) to inspect the Property, and (b) the right to examine and audit all books, contracts and records of Mortgagor relating to the Property.

2.14. **Right to Reappraise.** Mortgagee shall have the right to conduct or have conducted by an independent appraiser acceptable to Mortgagee appraisals of the Property in form and substance satisfactory to Mortgagee at the sole cost and expense of Mortgagor; **provided, however,** that Mortgagor shall not be obligated to bear the expense of such appraisals so long as (a) no Event of Default exists, and (b) such appraisals are not required by applicable law, rule or regulation of any governmental authority having jurisdiction over Mortgagee. The cost of such appraisals, if chargeable to Mortgagor as aforesaid, shall be added to the Liabilities and shall be secured by this Mortgage in accordance with the provisions of Section 1 hereof.

3. **SECURITY AGREEMENT.** This Mortgage constitutes a security agreement under the Code and shall be deemed to constitute a fixture financing statement. Mortgagor hereby grants to Mortgagee a security interest in the personal and other property (other than real property) included in the Property, and all replacements of, substitutions for, and additions to, such property, and the proceeds thereof. Mortgagor shall, at Mortgagor's own expense, execute, deliver, file and refile any financing or continuation statements or other security agreements Mortgagee may require from time to time to perfect, confirm or maintain the lien of this Mortgage with respect to such property. A photocopy of an executed financing statement shall be effective as an original. Without limiting the foregoing, Mortgagor hereby irrevocably appoints Mortgagee attorney-in-fact for Mortgagor to execute, deliver and file such instruments for or on behalf of Mortgagor at Mortgagor's expense, which appointment, being for security, is coupled with an interest and shall be irrevocable. With respect to goods that become fixtures after the recording of this Mortgage and before the completion of construction of the Improvements, this Mortgage is, and shall be construed to be, a "Construction Mortgage" under the Code, and any mortgage given to refinance this Mortgage shall be, and shall be construed to be, a mortgage given to refinance a construction mortgage.

4. **ASSIGNMENT OF LEASES.**

4.1. Subject to the rights of EnviroFinance Group, LLC under an agreement between Borrower and EnviroFinance Group, Mortgagor hereby absolutely, presently and unconditionally conveys, transfers and assigns to Mortgagee all of Mortgagor's right, title and interest, now existing or hereafter arising, in and to the Leases and Rents. Mortgagor hereby agrees that all leases at the Property shall, at all times, be superior to the lien of this Mortgage. Notwithstanding that this assignment is effective immediately, so long as no Event of Default exists, Mortgagor shall have the privilege under a revocable license granted hereby to operate and manage the Property and to collect, as they become due, but not prior to accrual, the Rents. Mortgagor shall receive and hold such Rents in trust as a fund to be applied, and Mortgagor hereby covenants and agrees that such Rents shall be so applied, first to the operation, maintenance and repair of the Property and the payment of interest, principal and other sums becoming due under the Liabilities, before retaining and/or disbursing any part of the Rents for any other purpose. The license herein granted to Mortgagor shall automatically, without notice or any other action by Mortgagee, terminate upon the occurrence of an Event of Default, and all Rents subsequently collected or received by Mortgagor shall be held in trust by Mortgagor for the sole and exclusive benefit of Mortgagee. Nothing contained in this Section 4.1, and no collection by Mortgagee of Rents, shall be construed as imposing on Mortgagee any of the obligations of the lessor under the Leases.

4.2. Mortgagor shall timely perform all of its obligations under the Leases. Mortgagor represents and warrants that: (a) Mortgagor has title to and full right to assign presently, absolutely and unconditionally the Leases and Rents; (b) no other assignment of any interest in any of the Leases or Rents has been made; (c) there are no leases or agreements to lease all or any portion of the Property now in effect.

5. **DECLARATION OF NO OFFSET.** Mortgagor represents to Mortgagee that Mortgagor has no knowledge of any offsets, counterclaims or defenses to the Liabilities either at law or in equity. Mortgagor shall, within three (3) days upon request in person or within seven (7) days upon request by mail, furnish to Mortgagee or Mortgagee's designee a written statement in form satisfactory to Mortgagee stating the amount due under the Liabilities and whether there are offsets or defenses against the same, and if so, the nature and extent thereof.

6. **ENVIRONMENTAL MATTERS.**

6.1. **Definitions.** As used herein, "**Environmental Laws**" shall mean all existing or future federal, state and local statutes, ordinances, regulations, rules, executive orders, standards and requirements, including the requirements imposed by common law, concerning or relating to industrial hygiene and the protection of health and the environment including but not limited to: (a) those relating to the generation, manufacture, storage, transportation, disposal, release, emission or discharge of Hazardous Substances (as hereinafter defined); (b) those in connection with the construction, fuel supply, power generation and transmission, waste disposal or any other operations or processes relating to the Property; and (c) those relating to the atmosphere, soil, surface and ground water, wetlands, stream sediments and vegetation on, under, in or about

the Property. Any terms mentioned herein which are defined in any Environmental Law shall have the meanings ascribed to such terms in said laws; provided, however, that if any of such laws are amended so as to broaden any term defined therein, such broader meaning shall apply subsequent to the effective date of such amendment.

6.2. **Representations, Warranties and Covenants.** Except as may have been disclosed in environmental reports prepared for Mortgagee or environmental reports furnished to Mortgagee by Mortgagor, Mortgagor represents, warrants, covenants and agrees as follows:

(a) Neither Mortgagor nor the Property or any occupant thereof is in violation of or subject to any existing, pending or threatened investigation or inquiry by any governmental authority pertaining to any Environmental Law. Mortgagor shall not cause or permit the Property to be in violation of, or do anything which would subject the Property to any remedial obligations under, any Environmental Law, and shall promptly notify Mortgagee in writing of any existing, pending or threatened investigation or inquiry by any governmental authority in connection with any Environmental Law. In addition, Mortgagor shall provide Mortgagee with copies of any and all material written communications with any governmental authority in connection with any Environmental Law, concurrently with Mortgagor's giving or receiving of same.

(b) The use which Mortgagor or any other occupant of the Property makes or intends to make of the Property will not result in Release of any Hazardous Substances on or to the Property. During the term of this Mortgage, Mortgagor shall take all steps necessary to determine whether there has been a Release of any Hazardous Substances on or to the Property and if Mortgagor finds a Release has occurred, Mortgagor shall remove or remediate the same promptly upon discovery at its sole cost and expense.

(c) Mortgagor will and will cause its tenants to operate the Property in compliance with all Environmental Laws and, other than Permitted Substances, will not place or permit to be placed any Hazardous Substances on the Property.

(d) No lien has been attached to or threatened to be imposed upon the Property, and there is no basis for the imposition of any such lien based on any governmental action under Environmental Laws. Neither Mortgagor nor any other person is or will be involved in operations at the Property which could lead to the imposition of environmental liability on Mortgagor, or on any subsequent or former owner of the Property, or the creation of an environmental lien on the Property. In the event that any such lien is filed, Mortgagor shall, within (30) days from the date that the Mortgagor is given notice of such lien (or within such shorter period of time as is appropriate in the event that steps have commenced to have the Property sold), either: (i) pay the claim and remove the lien from the Property; or (ii) furnish a cash deposit, bond or other security satisfactory in form and substance to Mortgagee in an amount sufficient to discharge the claim out of which the lien arises.

6.3. **Right to Inspect and Cure.** Mortgagee shall have the right to conduct or have conducted by its agents or contractors such environmental inspections, audits and tests as

Mortgagee shall deem necessary or advisable from time to time at the sole cost and expense of Mortgagor; **provided, however,** that Mortgagor shall not be obligated to bear the expense of such environmental inspections, audits and tests so long as (a) no Event of Default exists, and (b) Mortgagee has no cause to believe in its sole reasonable judgment that there has been a Release or threatened Release of Hazardous Substances at the Property or that Mortgagor or the Property is in violation of any Environmental Law. The cost of such inspections, audits and tests, if chargeable to Mortgagor as aforesaid, shall be added to the Liabilities and shall be secured by this Mortgage. Mortgagor shall, and shall cause each tenant of the Property to, cooperate with such inspection efforts; such cooperation shall include, without limitation, supplying all information requested concerning the operations conducted and Hazardous Substances located at the Property. In the event that Mortgagor fails to comply with any Environmental Law, Mortgagee may, in addition to any of its other remedies under this Mortgage, cause the Property to be in compliance with such laws and the cost of such compliance shall be added to the sums secured by this Mortgage in accordance with the provisions of Section 1 hereof.

**7. EVENTS OF DEFAULT.** Each of the following shall constitute a default (each, an "Event of Default") hereunder:

7.1. Non-payment within fifteen (15) Business Days when due of any sum required to be paid to Mortgagee under any of the Loan Documents, including without limitation, principal and interest;

7.2. A breach of any covenant contained in Sections 2.3., 2.4., 2.6., 2.7. or 2.12. hereof;

7.3. A breach by Mortgagor of any other term, covenant, condition, obligation or agreement under this Mortgage, and the continuance of such breach for a period of thirty (30) days after written notice thereof shall have been given to Mortgagor;

7.4. An Event of Default under any of the other Loan Documents;

7.5. Any representation or warranty made by Mortgagor or by any Guarantor in any Loan Document or to induce Mortgagee to enter into the transactions contemplated hereunder shall prove to be false, incorrect or misleading in any material respect as of the date when made;

7.6. The filing by or against Mortgagor or any Guarantor of a petition seeking relief, or the granting of relief, under the Federal Bankruptcy Code or any similar federal or state statute; any assignment for the benefit of creditors made by Mortgagor or any Guarantor; the appointment of a custodian, receiver, liquidator or trustee for Mortgagor or any Guarantor or for any of the property of Mortgagor or such Guarantor, or any action by Mortgagor or any Guarantor to effect any of the foregoing; or if Mortgagor or any Guarantor becomes insolvent (however defined) or is not paying its debts generally as they become due;

7.7. The death, dissolution, liquidation, merger, consolidation or reorganization of Mortgagor or any Guarantor, or the institution of any proceeding to effect any of the foregoing;

7.8. A default under any other obligation by Mortgagor in favor of Mortgagee, including obligations arising under swap agreements (as defined in 11 U.S.C. §101), or under any document securing or evidencing such obligation, whether or not such obligation is secured by the Property;

7.9. The filing, entry or issuance of any judgment, execution, garnishment, attachment, distraint or lien against Mortgagor or its property, subject to the provisions of Section 2.7 hereof, if applicable; or

7.10. A default under any other obligation secured by the Property or any part thereof.

8. **REMEDIES.** If an Event of Default shall have occurred, Mortgagee may take any of the following actions:

8.1. **Acceleration.** Mortgagee may declare the entire amount of the Liabilities immediately due and payable, without presentment, demand, notice of any kind, protest or notice of protest, all of which are expressly waived, notwithstanding anything to the contrary contained in any of the Loan Documents. Mortgagee may charge and collect interest from the date of default on the unpaid balance of the Liabilities, at the Default Rate set forth in the Note. In addition, any and all accelerations of any portion of the remaining principal balance of the Liabilities (including, without limitation, foreclosure by Mortgagee under this Mortgage) shall be subject to the Prepayment Consideration (as defined and described in the Note), if any.

8.2. **Possession.** Mortgagee may enter upon and take possession of the Property, with or without legal action, lease the Property, collect therefrom all rentals and, after deducting all costs of collection and administration expense, apply the net rentals to any one or more of the following items in such manner and in such order of priority as Mortgagee, in Mortgagee's sole discretion, may elect: the payment of any sums due under any prior lien, taxes, water and sewer rents, charges and claims, insurance premiums and all other carrying charges, to the maintenance, repair or restoration of the Property, or on account of the Liabilities. Mortgagee is given full authority to do any act which Mortgagor could do in connection with the management and operation of the Property. This covenant is effective either with or without any action brought to foreclose this Mortgage and without applying for a receiver of such rents. In addition to the foregoing, upon the occurrence of an Event of Default, Mortgagor shall pay monthly in advance to Mortgagee or to any receiver appointed to collect said rents the fair and reasonable rental value for Mortgagor's use and occupation of the Property, and upon default in any such payment Mortgagor shall vacate and surrender the possession of the Property to Mortgagee or to such receiver. If Mortgagor does not vacate and surrender the Property then Mortgagor may be evicted by summary proceedings.

8.3. **Foreclosure.** Mortgagee may institute any one or more actions of mortgage foreclosure against all or any part of the Property, or take such other action at law, equity or by contract for the enforcement of this Mortgage and realization on the security herein or elsewhere provided for, as the law may allow, and may proceed therein to final judgment and execution for

the entire unpaid balance of the Liabilities. The unpaid balance of any judgment shall bear interest at the greater of (a) the statutory rate provided for judgments, or (b) the Default Rate. Without limiting the foregoing, Mortgagee may foreclose this Mortgage and exercise its rights as a secured party for all or any portion of the Liabilities which are then due and payable, subject to the continuing lien of this Mortgage for the balance not then due and payable. In case of any sale of the Property by judicial proceedings, the Property may be sold in one parcel or in such parcels, manner or order as Mortgagee in its sole discretion may elect. Mortgagor, for itself and anyone claiming by, through or under it, hereby agrees that Mortgagee shall in no manner, in law or in equity, be limited, except as herein provided, in the exercise of its rights in the Property or in any other security hereunder or otherwise appertaining to the Liabilities or any other obligation secured by this Mortgage, whether by any statute, rule or precedent which may otherwise require said security to be marshalled in any manner and Mortgagor, for itself and others as aforesaid, hereby expressly waives and releases any right to or benefit thereof. The failure to make any tenant a defendant to a foreclosure proceeding shall not be asserted by Mortgagor as a defense in any proceeding instituted by Mortgagee to collect the Liabilities or any deficiency remaining unpaid after the foreclosure sale of the Property.

8.4. **Appointment of Receiver.** Mortgagee may petition a court of competent jurisdiction to appoint a receiver of the Property only after EnviroFinance Group, LLC under the Senior Loan Agreement, as defined in Section 9.11 herein, has been paid off in full. Such appointment may be made either before or after sale, without notice, without regard to the solvency or insolvency of Mortgagor at the time of application for such receiver, without regard to the then value of the Property or whether the Property shall be then occupied as a homestead or not, and without regard to whether Mortgagor has committed waste or allowed deterioration of the Property, and Mortgagee or any agent of Mortgagee may be appointed as such receiver. Mortgagor hereby agrees that Mortgagee has a special interest in the Property and absent the appointment of such receiver the Property shall suffer waste and deterioration and Mortgagor further agrees that it shall not contest the appointment of a receiver and hereby so stipulates to such appointment pursuant to this paragraph. Such receiver shall have the power to perform all of the acts permitted Mortgagee pursuant to Section 8.2 above and such other powers which may be necessary or customary in such cases for the protection, possession, control, management and operation of the Property during such period.

8.5. **Rights as a Secured Party.** Mortgagee shall have, in addition to other rights and remedies available at law or in equity, the rights and remedies of a secured party under the Code. Mortgagee may elect to foreclose such of the Property as then comprise fixtures pursuant either to the law applicable to foreclosure of an interest in real estate or to that applicable to personal property under the Code. To the extent permitted by law, Mortgagor waives the right to any stay of execution and the benefit of all exemption laws now or hereafter in effect.

8.6. **Excess Monies.** Mortgagee may apply on account of the Liabilities any unexpended monies still retained by Mortgagee that were paid by Mortgagor to Mortgagee: (a) for the payment of, or as security for the payment of taxes, assessments or other governmental charges, insurance premiums, or any other charges; or (b) to secure the performance of some act by Mortgagor.

8.7. **Other Remedies.** Mortgagee shall have the right, from time to time, to bring an appropriate action to recover any sums required to be paid by Mortgagor under the terms of this Mortgage, as they become due, without regard to whether or not any other Liabilities shall be due, and without prejudice to the right of Mortgagee thereafter to bring an action of mortgage foreclosure, or any other action, for any default by Mortgagor existing at the time the earlier action was commenced. In addition, Mortgagee shall have the right to set-off all or any part of any amount due by Mortgagor to Mortgagee under any of the Liabilities, against any indebtedness, liabilities or obligations owing by Mortgagee in any capacity to Mortgagor, including any obligation to disburse to Mortgagor any funds or other property on deposit with or otherwise in the possession, control or custody of Mortgagee.

## 9. **MISCELLANEOUS.**

9.1. **Notices.** All notices and communications under this Mortgage shall be in writing and shall be given by either (a) hand-delivery, (b) first class mail (postage prepaid), or (c) reliable overnight commercial courier (charges prepaid), to the addresses listed in this Mortgage. Notice shall be deemed to have been given and received: (a) if by hand delivery, upon delivery; (b) if by mail, three (3) calendar days after the date first deposited in the United States mail; and (c) if by overnight courier, on the date scheduled for delivery. A party may change its address by giving written notice to the other party as specified herein.

9.2. **Remedies Cumulative.** The rights and remedies of Mortgagee as provided in this Mortgage or in any other Loan Document shall be cumulative and concurrent, may be pursued separately, successively or together, may be exercised as often as occasion therefor shall arise, and shall be in addition to any other rights or remedies conferred upon Mortgagee at law or in equity. The failure, at any one or more times, of Mortgagee to assert the right to declare the Liabilities due, grant any extension of time for payment of the Liabilities, take other or additional security for the payment thereof, release any security, change any of the terms of the Loan Documents, or waive or fail to exercise any right or remedy under any Loan Document shall not in any way affect this Mortgage or the rights of Mortgagee.

9.3. **No Implied Waiver.** Mortgagee shall not be deemed to have modified or waived any of its rights or remedies hereunder unless such modification or waiver is in writing and signed by Mortgagee, and then only to the extent specifically set forth therein. A waiver in one event shall not be construed as continuing or as a waiver of or bar to such right or remedy on a subsequent event.

9.4. **Partial Invalidity.** The invalidity or unenforceability of any one or more provisions of this Mortgage shall not render any other provision invalid or unenforceable. In lieu of any invalid or unenforceable provision, there shall be added automatically a valid and enforceable provision as similar in terms to such invalid or unenforceable provision as may be possible.

9.5. **Binding Effect.** The covenants, conditions, waivers, releases and agreements contained in this Mortgage shall bind, and the benefits thereof shall inure to, the parties hereto and their respective heirs, executors, administrators, successors and assigns and are intended and shall be held to be real covenants running with the land; provided, however, that this Mortgage cannot be assigned by Mortgagor without the prior written consent of Mortgagee, and any such assignment or attempted assignment by Mortgagor shall be void and of no effect with respect to Mortgagee.

9.6. **Modifications.** This Mortgage may not be supplemented, extended, modified or terminated except by an agreement in writing signed by the party against whom enforcement of any waiver, change, modification or discharge is sought.

9.7. **Commercial Loan.** Mortgagor represents and warrants that the loans or other financial accommodations included as Liabilities secured by this Mortgage were obtained solely for the purpose of carrying on or acquiring a business or commercial investment and not for residential, consumer or household purposes.

9.8. **Governing Law.** This Mortgage shall be governed by and construed in accordance with the substantive laws of the State of New Jersey without reference to conflict of laws principles.

9.9. **Joint and Several Liability.** If Mortgagor consists of more than one person or entity, the word "Mortgagor" shall mean each of them and their liability shall be joint and several.

9.10. **Non-Merger.** In the event Mortgagee shall acquire title to the Property by conveyance from Mortgagor or as a result of foreclosure, this Mortgage shall not merge in the fee estate of the Property but shall remain and continue as an existing and enforceable lien for the Liabilities secured hereby until the same shall be released of record by Mortgagee in writing.

9.11 **Subordination of Lien.** Notwithstanding any provisions of this Mortgage to the contrary, it is understood and agreed that the lien, terms, covenants and conditions of this Mortgage are and shall be subordinate in all respects, including right of payment, to "Senior Indebtedness". For purposes of this Mortgage, Senior Indebtedness shall be defined as any of the following partially or fully secured debt (i) Secured Loan and Security Agreement between Statue of Liberty Harbor North Redevelopment Urban Renewal, LLC and Envirofinance Group, LLC, dated June 26, 2008 (the "Senior Loan Agreement") secured by that certain Mortgage, Assignment of Rents and Leases, Collateral Assignment of Property Agreements, Security Agreement and fixture filing dated June 6, 2008 and recorded in the Hudson County Clerk's Office in Mortgage Book 17020, page 216, in the original principal amount of \$27,500,000.00, (ii) Future Construction Financing, (iii) Future mezzanine debt, (iv) future permanent financing and (v) indebtedness resulting from refinancing some or all of items (i) through (iv).

**WITNESS WHEREOF**, Mortgagor, intending to be legally bound, has duly executed and delivered this Mortgage and Security Agreement as of the day and year first above written.

**MORTGAGOR:**

**STATUE OF LIBERTY  
HARBOR NORTH REDEVELOPMENT  
URBAN RENEWAL, LLC**

By: \_\_\_\_\_  
[Name, Title]

**STATE OF NEW JERSEY, COUNTY OF HUDSON, SS.:**

**BE IT REMEMBERED**, that on this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_ before me, the subscriber, personally appeared \_\_\_\_\_, who acknowledged under oath, to my satisfaction, that this person (or if more than one, each person): (a) is the \_\_\_\_\_ of \_\_\_\_\_, a \_\_\_\_\_, the \_\_\_\_\_ named in the within instrument and is authorized to sign the within instrument on behalf of the limited liability company; and (b) as such officer, signed and delivered this instrument as the voluntary act and deed of the \_\_\_\_\_, made by virtue of authority from all of its members and managers.

\_\_\_\_\_

**SCHEDULE A  
DESCRIPTION OF PROPERTY**

## PROMISSORY NOTE

\$8,000,000

\_\_\_\_\_, 2009

For value received, the undersigned **STATUE OF LIBERTY HARBOR NORTH REDEVELOPMENT URBAN RENEWAL, LLC**, a limited liability company organized and existing under the laws of the State of New Jersey (the "Developer") promises to pay to **THE CITY OF JERSEY CITY**, a municipal corporation of the State of New Jersey (the "City"), EIGHT MILLION AND 00/100 DOLLARS (\$8,000,000.00), or such lesser principal amount as may be outstanding hereunder, at the time, in the manner and with interest at the rate or rates hereinafter provided, such amounts evidenced hereby having been advanced by the City to the Developer pursuant to the terms and conditions of a certain Loan Agreement of even date herewith by and among the City and the Developer, as amended from time to time (the "Loan Agreement"). All capitalized terms, not otherwise defined herein, shall have the same meanings ascribed to them in the Loan Agreement.

The City has obtained a Loan Guarantee from the Secretary of the United States Department of Housing and Urban Development ("HUD") pursuant to Section 108 of the Housing and Community Development Act of 1974 (P.L. 93-3 83) ("Loan Guarantee") in accordance with the terms set forth in a certain Contract for Loan Guarantee Assistance under Section 108 of the Housing and Community Development Act of 1974 as amended, 42 USC 5308 (the "HUD Contract"). The City shall issue a non-recourse Promissory Note (the "HUD Guaranteed Note") in the amount of this Note which shall be guaranteed by the Loan Guarantee. The HUD Guaranteed Notes may be sold to lending institutions or to the public through an underwritten public offering. The proceeds of the HUD Guaranteed Note are being re-lent by the City to the Developer (the "Loan") under the same terms and conditions of the Loan Agreement and the HUD Guaranteed Note. The Loan from the City to the Developers under the Loan Agreement is evidenced by and secured by, among other things, this Note, which shall be collaterally assigned, without recourse, to HUD pursuant to the terms and conditions of the HUD Contract.

To the extent the Developer is in receipt of funds prior to the date of the sale of the HUD Guaranteed Note to the underwriters in connection with the public offering (the "Public Offering") as contemplated under the HUD Contract (the "Public Offering Date"), interest on this Note, for each three month period ending February 1, May 1, August 1 and November 1 of each year (an "Interim Interest Payment Date") and for the period since the last Interim Interest Payment Date until the Public Offering Date, shall be payable on the second Business Day of the month immediately succeeding the day on which the City notifies the Developers with the total amount of interest due on this Note, which amount shall be the same amount of interest coming due under the HUD Guaranteed Note.

From and after the Public Offering Date, interest on this Note shall be due and payable on the first Business Day of each month (each an "Interest Payment Date") in an amount equal to one sixth of amount of interest to come due under the HUD Guaranteed Note(s) on the next succeeding February 1 and August 1, provided that, in the event there are fewer than six months between the Public Offering and the first of February 1 or August 1 to occur thereafter, with respect to said Interest Payment Dates, the Developers shall pay to the City the entire amount of interest coming due under the HUD Guaranteed Note on said February 1 or August 1 divided by

the number of months existing between the Public Offering and said February 1 or August 1. Interest shall be paid on the principle amount disbursed to the Recipient.

Notwithstanding anything contained herein to the contrary, prior to the Public Offering, the Developers will pay to the City interest payments hereunder such that by the tenth Business Day prior to each February 1, May 1, August 1 and November 1 of each year, the Developers shall have paid to the City sufficient money to pay the City's interest obligations coming due on the next succeeding February 1, May 1, August 1 and November 1 under the HUD Guaranteed Note(s). Notwithstanding anything contained herein to the contrary, after the Public Offering, the Developers will pay to the City interest payments hereunder such that by the first Business Day of each July and January of each year the Developers shall have paid to the City sufficient money to pay the City's interest obligations coming due on the next succeeding August 1 and February 1 under the HUD Guaranteed Note.

The Developers shall also pay all interest payment obligations of the City in connection with any prepayment, any conversion of the HUD Guaranteed Note to a fixed rate at the time of the Public Offering, any redemption of HUD Guaranteed Note, or defeasance.

The rate of interest payable under this Note shall be the same rate of interest payable under the HUD Guaranteed Note. Interest shall be calculated on the basis of a 360-day year consisting of twelve thirty-day months.

The principal amount of this Note shall be payable in annual installments on the first Business Day of July of each year, commencing on the first Business Day of July, 2014, in the amount of principal to come due on the next succeeding August 1 under the HUD Guaranteed Note(s), with a final installment due on the first Business Day of July, 2029 (the "Maturity Date"), at which time all principal, interest, penalties and fees, if any, shall be due and payable.

If any payment of principal or interest thereunder provided shall not be paid within ten (10) days from its due date, the Developers shall pay a late charge of two percent (2%) of the total principal, interest, charges and expenses overdue. In addition, if any payment of principal hereunder shall not be paid such that the interest accrues on any installment of principal and/or interest under the HUD Guaranteed Note, the Developers shall pay as such additional interest under the terms of this Note.

A default under this Note shall occur upon the occurrence and continuation of any Event of Default under the Loan Agreement. Upon the occurrence and continuation of the Event of Default the City may exercise any and all rights and remedies provided to it under the Loan Agreement, the terms and conditions of which are incorporated here by reference.

In the event and to the extent that the HUD Guaranteed Note may be prepaid, redeemed or defeased whether by the terms of the Loan Agreement, the HUD Contract or otherwise, the Developers shall be permitted to prepay, redeem and/or defease this Note.

IN WITNESS WHEREOF, the Developers have executed and delivered this Note on the date first noted above.

**STATUE OF LIBERTY  
HARBOR NORTH REDEVELOPMENT  
URBAN RENEWAL, LLC**

---

By: [Name], [Title]

Pay to the order of \_\_\_\_\_, without recourse to the undersigned.

ATTEST:

CITY OF JERSEY CITY

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

\_\_\_\_\_

## RESERVE FUND AGREEMENT

RESERVE FUND AGREEMENT (“**Agreement**”) made this \_\_\_ day of \_\_\_\_\_, 2010, by and between THE CITY OF JERSEY CITY, a municipal corporation of the State of New Jersey (the “**City**”) and STATUTE OF LIBERTY HARBOR NORTH REDEVELOPMENT URBAN RENEWAL, LLC, a limited liability company organized and existing under the laws of the State of New Jersey (“**Developer**”).

### Background

WHEREAS, on July 30, 2009, the Developer and the Business Administrator of the City executed a Loan Agreement (“**Loan Agreement**”) which set forth certain terms and conditions of a Loan to be made by the City to the Developer in connection with the Project (*terms used herein as Capitalized Terms and not otherwise defined herein shall have the meanings ascribed to such terms in the Loan Agreement*);

WHEREAS, Section 8.1(E) of the Loan Agreement required, among other things, as security for the timely payment and performance of the Note, the Loan and all of the other Obligations of the Developer, the establishment of a Reserve Fund;

WHEREAS, the parties are entering into this Agreement to establish the amount to be maintained in the Reserve Fund, the terms and conditions upon which any amounts in the Reserve Fund shall be held and disbursed, and to amend certain other provisions of the Loan Agreement relating to the security for the Loan;

NOW, THEREFORE, in consideration of the foregoing and the premises and covenants contained herein, the parties hereto, intending to be legally bound hereby, agree as follows:

1. Establishment of Reserve Fund.

The City shall establish the Reserve Fund to be held by or on behalf of the City, which Reserve Fund shall be held separate and apart of other funds or accounts held by or on behalf of the City, and shall be used solely in accordance with this Agreement. The City shall deposit into the Reserve Fund \$1,250,000 (“**Reserve Fund Amount**”) received by the Developer from funds other than proceeds of the Loan.

2. Delivery of and Maintenance of Reserve Fund Amount.

Concurrently with the execution hereof, Developer has deposited with the City the Reserve Fund Amount. While any Obligations of Developer remain outstanding, the Developer must maintain on deposit an amount equal to the Reserve Fund Amount. To the extent amounts are withdrawn from the Reserve Fund such that the amount on deposit therein is less than the Reserve Fund Amount, then the Developer shall immediately deliver to the City an amount which when added to the amounts on deposit therein equal the Reserve Fund Amount. Failure to do so will be deemed an Event of Default under the Loan Agreement.

3. Investment and Income.

Pending the use or disbursement of the Reserve Fund pursuant to this Agreement, the City shall invest the Reserve Fund in (a) direct obligations of, or obligations fully guaranteed by, the United States of America or any agency of the United States of America, (b) certificates of deposit or money market accounts of commercial banks having a combined capital, surplus and undivided profits of not less than Thirty Million Dollars (\$30,000,000), or (c) other investments of equal or greater security and liquidity; provided, however, that any investment shall be capable of being liquidated, without penalty or loss, not more than seven (7) days after such liquidation is requested in order to make a distribution required hereunder. Interest income shall be reinvested and shall be part of the Reserve Fund.

4. Disbursement of Reserve Fund Amount.

The City may withdraw any amount in the Reserve Fund as is necessary in its sole discretion to satisfy any Obligation of the Developer. Upon satisfaction of all the Obligations of the Developer the City shall return all amounts on deposit in the Reserve Fund to the Developer.

5. Amendment to Loan Agreement.

Section 8.1(B) of the Loan Agreement is hereby amended to revise the amount of the loan reflected in 8.1(B)(i) to be "\$21,500,000," and to add a sentence at the end of 8.1(B) to read as follows: "Notwithstanding the above, without the written consent of the City, the amount of the loan referred to in (i) may not exceed \$22,000,000, and the aggregate amount of the loans referred to in (ii) through (v) may not exceed \$81,900,000. Further, Schedule A to the Loan Agreement is amended in its entirety as reflected on Schedule A hereto in order to reflect Project Costs totaling \$8,000,000.

6. Miscellaneous

6.1 Notices. All notices, demands, requests, consents and other communications required hereunder shall be in writing and served by hand delivery, by certified mail, return receipt requested or by a recognized overnight delivery service as follows:

6.1.1 If to Developer:  
Statue of Liberty Harbor North Redevelopment  
Urban Renewal, LLC  
776 Mountain Boulevard  
Watchung, NJ 07069  
Attn:  
FAX:

6.1.2 If to the City:  
City of Jersey City  
City Hall

280 Grove Street  
Jersey City, NJ 07302  
Attn: Business Administrator  
FAX:

The designation of the person to be so notified or the address of such person for purposes of such notice may be changed from time to time by similar notice in writing to be effective ten (10) days after such change is supplied.

6.2 Benefit and Assignment. Except and as to the same extent that the Loan Agreement is permitted to be assigned and is so assigned, the rights and obligations of each party under this Agreement may not be assigned without the prior written consent of all other parties. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

6.3 Entire Agreement; Amendment; Amendment to Loan Agreement. This Agreement contains all the terms agreed upon by the parties with respect to the subject matter hereof. This Agreement may be amended only by a written instrument signed by the parties hereto. This Agreement amends the Loan Agreement to the extent of any inconsistency herewith.

6.4 Headings. The headings of the sections and subsections of this Agreement are for ease of reference only and do not evidence the intentions of the parties.

6.5 Governing Law. This Agreement shall be governed and regulated by, and the rights and liabilities of all parties hereto shall be construed and enforced in accordance with, the laws of the State of New Jersey without regard to principles of conflict of laws.

6.6 Counterparts. This Agreement may be signed in any number of counterparts with the same effect as if the signatures on all counterparts are upon the same instrument.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the date first above written.

**CITY OF JERSEY CITY**

BY: \_\_\_\_\_

**STATUE OF LIBERTY HARBOR  
NORTH REDEVELOPMENT URBAN  
RENEWAL, LLC**

BY: \_\_\_\_\_

**SCHEDULE A**  
**CONSTRUCTION PAYMENT SCHEDULE ESTIMATE**

---

**LOAN AGREEMENT**

**BY AND BETWEEN**

**THE CITY OF JERSEY CITY**

**AND**

**STATUE OF LIBERTY  
HARBOR NORTH REDEVELOPMENT  
URBAN RENEWAL, LLC**

Dated: \_\_\_\_\_

---

## TABLE OF CONTENTS

	Page
SECTION I DEFINITIONS .....	2
1.1 Capitalized Terms.....	2
SECTION II THE LOAN; MANNER OF PAYMENT .....	9
2.1 Amount.....	9
2.2 Note.....	9
2.3 Calculation and Payment of Interest Under the Loan.....	9
2.4 Payment of Principal Under the Loan.....	9
2.5 Manner of Payment.....	9
2.6 Payment on Non-Business Days.....	10
2.7 Late Payments.....	10
2.8 Prepayments or Redemption.....	10
2.9 Over-Advances.....	10
SECTION III REPRESENTATIONS AND WARRANTIES OF THE DEVELOPER ...	10
3.1 Developer's Warranty of Title.....	10
3.2 Valid Obligations.....	10
3.3 Organization and Power.....	10
3.4 Authorization.....	10
3.5 No Conflicting Agreements or Laws.....	11
3.6 Conflicting Proceedings.....	11
3.7 Compliance with Laws.....	11
3.8 Plans and Specifications, Costs and Construction Contracts.....	11
3.9 Taxes.....	11
3.10 Financial Information and Condition.....	11
3.11 Brokerage Commissions.....	12
3.12 ERISA.....	12
3.13 No Default.....	12
3.14 Judgments, Litigation and Consents.....	12
3.15 Developer's Due Diligence.....	12
3.16 No Inducement.....	12
3.18 Survival.....	12
SECTION IV AFFIRMATIVE COVENANTS OF THE F .....	12
4.1 Use of Proceeds.....	13
4.2 Compliance With Loan Documents.....	13
4.3 General Taxes.....	13
4.4 Real Estate Taxes and Assessments.....	13
4.5 Protect Property.....	13
4.6 Defend Title.....	13
4.7 Lien Notices.....	13
4.8 Further Assurances.....	13
4.9 Compliance with Law.....	13
4.10 Financial Information.....	13
4.11 Notices to the City.....	14
4.12 Certificate of Default.....	14

4.13	Accurate Records.....	14
4.14	Project Permits and Approvals.....	15
SECTION V NEGATIVE COVENANTS OF THE DEVELOPERS.....		16
5.1	Transfer or Liens.....	16
5.2	Use of Premises.....	16
5.3	Plans and Specifications.....	17
5.4	Destruction of Improvements.....	17
5.5	Waste.....	17
5.6	Abandonment, Cease Using.....	17
5.7	Change in Ownership.....	17
5.8	Other Names.....	17
5.9	Multi-Employer Plan.....	17
5.10	Expiration of Approvals.....	17
SECTION VI INSURANCE.....		17
SECTION VII ENVIRONMENTAL MATTERS.....		18
7.2	Environmental Compliance.....	20
7.3	Environmental Audits.....	20
7.4	Security For Cleanup.....	20
7.5	Indemnity.....	20
SECTION VIII SECURITY FOR THE LOAN AND OTHER OBLIGATIONS.....		20
8.1	General.....	20
8.2	No Abatement of Payments.....	22
8.3	Continuity of Obligation.....	22
SECTION IX ADVANCES.....		22
9.1	Funding, Loan Maximum.....	22
9.2	Advances.....	22
SECTION X EVENTS OF DEFAULT.....		26
10.1	Payments.....	26
10.2	Other Terms.....	26
10.3	Other Defaults.....	26
10.4	Representations.....	26
10.5	Failure to Obtain Permission.....	26
10.6	Pursue Approvals.....	26
10.7	Construction.....	26
10.8	Completion.....	26
10.9	Financial Information and Inspections.....	27
10.10	Failure to Maintain Insurance.....	27
10.11	Lien Defaults or Foreclosures.....	27
10.12	Warrants and Tax Liens.....	27
10.13	Judgments.....	27
10.14	Insolvency.....	27
10.15	Seizure of Property.....	27
10.16	Non-Permitted Encumbrance.....	27
10.17	Change in Ownership of Premises.....	27
10.18	Dissolution; Change in Ownership.....	27
10.19	Other Indebtedness.....	28

10.20	Continuing Enforceability.....	28
10.21	Adverse Change.....	28
10.22	Default Under HUD Contract.....	28
SECTION XI REMEDIES .....		28
11.1	Acceleration of Obligations.....	29
11.2	Draw on the Letter of Credit.....	<b>Error! Bookmark not defined.</b>
11.3	UCC Remedies.....	29
11.4	Collection Action.....	29
11.5	Setoff.....	29
11.6	Other Remedies.....	29
11.7	Increase in Interest.....	29
11.8	Stop Making Advances.....	29
11.9	Specific Performance.....	29
11.10	No Remedy Exclusive.....	29
SECTION XII COLLECTION EXPENSES AND DUTIES .....		30
12.1	Collection Expenses.....	30
12.2	Collection Duties. The City shall be under no duty or obligation to:.....	30
SECTION XIII CITY'S PERFORMANCE .....		30
SECTION XIV INDEMNIFICATION.....		31
SECTION XV DEFEASANCE.....		31
SECTION XVI MISCELLANEOUS .....		31
	Headings; Interpretation.....	32
16.2	Amendment.....	32
16.3	Exhibits, Schedules, Attachments and Preambles.....	32
16.4	Counterparts.....	32
16.5	Loan Documents; Successors and Assigns.....	32
16.6	Waivers.....	32
16.7	Governing Law.....	32
16.8	Severability.....	33
16.9	Incorporation of Terms.....	33
16.10	Notices.....	33
16.11	Survival of Representations, Warranties and Agreements.....	34
16.12	Term.....	34
16.13	Certain Fees. Costs, Penalties and Premiums.....	34
16.14	Assignment to HUD.....	34
SECTION XVII NO JURY TRIAL.....		35
4.15	Inspections.....	15
4.16	First Class Construction.....	15
4.17	Diligent Completion.....	15
4.18	Completion as Designed.....	15
4.19	Other Construction Requirements.....	15
4.20	Preservation of Existence.....	15

**THIS AGREEMENT** is made this \_\_\_\_\_ day of \_\_\_\_\_, 2009 by and between **THE CITY OF JERSEY CITY**, a municipal corporation of the State of New Jersey, having an address at City Hall, 280 Grove Street, Jersey City, New Jersey 07032 (the "City") and **STATUE OF LIBERTY HARBOR NORTH REDEVELOPMENT URBAN RENEWAL, LLC**, a limited liability company organized and existing under the laws of the State of New Jersey (the "Developer") having an address at 776 Mountain Blvd., Watchung, New Jersey 07069.

#### RECITALS

WHEREAS, the City obtained a Loan Guarantee from the Secretary ("Secretary") of the United States Department of Housing and Urban Development ("HUD") pursuant to Section 108 of the Housing and Community Development Act of 1974 (P.L. 93-3 83) ("Loan Guarantee") based on the terms set forth in that certain CONTRACT FOR LOAN GUARANTEE ASSISTANCE UNDER SECTION 108 OF THE HOUSING AND COMMUNITY DEVELOPMENT ACT OF 1974, AS AMENDED, 42 U.S.C. §5308, (the "HUD Contract") in order to help fund the costs of site acquisition, remediation, preparation for and construction of a 248,000 square foot Hilton brand luxury hotel to contain approximately 300 hotel rooms, meeting space, restaurants, retail shops and a fitness facility, as well as a 51,000 square foot attached parking garage (the "Project"), to be located on a 2.7 acre site on Marin Boulevard near the Liberty Harbor North Light Rail Station in the City of Jersey City, County of Hudson, State of New Jersey.

WHEREAS, the City will issue a non-recourse promissory note in the aggregate amount of EIGHT MILLION AND 00/100 DOLLARS (\$8,000,000.00) (the "HUD Guaranteed Note") having a maximum term of twenty (20) years (the "Loan Term"), which shall be guaranteed by the Loan Guarantee; and

WHEREAS, the proceeds obtained of the HUD Guaranteed Note shall be re-lent by the City to the Developer, under the same repayment terms of the HUD Guaranteed Note, who will be required to meet job creation and other requirements under the terms of the federal government's Section 108 program (the "Section 108 Program"); and

WHEREAS, consistent with the Section 108 Program, the Loan from the City to the Developer (the "Loan") is to be evidenced by a promissory note in favor of the City in the amount of EIGHT MILLION AND 00/100 DOLLARS (\$8,000,000.00) (the "Developers' Note") and secured in a manner as hereinafter described; and

WHEREAS, Federal law requires that the City pledge to the Secretary its entitlement to certain Community Development Block Grant monies ("CDBG Monies") as security for the Loan Guarantee so that if the Secretary is required to pay under the Loan Guarantee on account of a default by the City under the HUD Guaranteed Note, the Secretary can be reimbursed out of the pledged CDBG Monies (the "City's Pledge"); and

WHEREAS, as a condition of the Loan from the City to the Developer, the Developer shall provide, or cause to be provided, the Collateral (as hereafter defined);

WHEREAS, payments by the Developer under the Developer's Note are to be used by the City to service the HUD Guaranteed Note and

WHEREAS, as further security for the City's obligation to repay the HUD Guaranteed Note, the City shall collaterally assign to HUD, without recourse, certain of its rights, title and interest in the Collateral, all of which shall be held by a financial institution selected by the City, and acceptable to HUD (the "Custodian"); and

WHEREAS, the Project and the operation thereof will assist the City in obtaining its economic development objectives including the expansion of economic opportunities for low and moderate income persons, the creation of additional revenues for the City, and the indirect benefits associated with the Project.

NOW, THEREFORE, in consideration of the above-referenced loan and other good and valuable consideration, receipt of which is hereby acknowledged, the parties, intending to be legally bound hereby, agree as follows:

## **SECTION I DEFINITIONS**

### **1.1 Capitalized Terms.**

In this Agreement, unless a different meaning clearly appears from the context, the capitalized terms used in the recitals shall have the same meanings ascribed to them therein. In addition, other capitalized terms shall have the following meanings in this Agreement:

"Advance" or "Advances" means the disbursement to the Developer by the City of an amount of money pursuant to this Agreement.

"Affidavit of Title" means the affidavit of title given by the Developers to the City in connection with the Loan.

"Agreement" means this Loan Agreement and all amendments, restatements and modifications.

"Application and Certificate of Payment" means the requisition forms AIA Documents G702 and G703, or such similar form issued by the City which, together with the Request for Advance, shall be used by the Developers to apply for Advances.

"Architect" means GRAD Architects, the supervisory architect for the Developers, responsible for preparing the Plans and Specifications approved by the City.

"Building Equipment" means the Developers' chattels and articles of personal property of any kind and nature, and includes any fixtures, fittings, machinery, building materials, apparatus and equipment now or hereafter affixed or appurtenant to the Premises and used in

connection with the construction of the Project, or the operation of the buildings or improvements located on the Premises, together with any and all replacements thereof and additions thereto.

“Business Day” shall have the same meaning given to this term in the Fiscal Agency Agreement and Trust Agreement.

“City” means the City of Jersey City, a municipal corporation of the State of New Jersey, and its successor and assigns.

“Closing Date” means the date hereof.

“Collateral” means all those assets of the Developers in which the City has been or is in the future granted a subordinate mortgage, assignment or security interest with respect to the Loan, including without limitation, pursuant to this Agreement or the other Loan Documents.

“Completion Date” means the earlier to occur of (x) the date the Project is completed in accordance with the Plans and Specifications and the City’s engineer/architect has satisfactorily has concluded the same after inspecting the Project or (y) December 31, 2014.

“Construction Contract” means any contract or subcontract for construction, reconstruction, alteration, repair or maintenance work, which the Developer may undertake in connection with the Pier Phase.

“Construction Payment Schedule” means the Schedule A annexed hereto provided by the Developers according to which Advances will be made based upon the percentage of completion of the Project.

“Construction Period” means the period from the date hereof until the Completion Date.

“Contractor” means the general contractor, if any, and/or each subcontractor with whom the Developer or any general contractor has a Construction Contract or to whom it disburses or causes to be disbursed funds for the payment of construction, reconstruction, alteration or repair work undertaken in connection with the Project.

“Cost” or “Costs” means the aggregate cost of all labor, materials, equipment, fixtures, furnishings, and all other relevant costs necessary for the construction and completion of the Project.

“Default” means any event or condition constituting an Event of Default or that with notice and/or lapse of time could constitute an Event of Default.

“Default Rate” shall have the meaning ascribed to it in Subsection 11.7 hereof.

“DEP” or “NJDEP” means the New Jersey Department of Environmental Protection.

“Developers” means Statue Of Liberty Harbor North Redevelopment Urban Renewal, LLC, a limited liability company formed under the laws of the State of New Jersey and each of their successors and permitted assigns.

“Developer’s Authorized Representative” means an individual duly authorized by the Developer to act on its behalf.

“Employment Agreement” means the Project Employment Agreement of this same date between the City and the Developer, and all amendments, renewals, modifications and extensions thereof.

“Environmental Laws” shall mean all existing or future federal, state, and local statutes, ordinances, regulations, rules, executive orders, standards and requirements, including the requirements imposed by common law, concerning or relating to the protection of the environment, including but not limited to: (a) those relating to the generation, manufacture, storage, transportation, disposal, release, emission or discharge of Hazardous Substances; (b) those in connection with the construction, fuel supply, power generation and transmission, waste disposal or other operations or processes relating to the Premises; and (c) those relating to the atmosphere, soil, surface and groundwater, wetlands, streams, sediments and vegetation on the Premises.

“Engineer(s)” means LGA Engineering, Inc., the supervisory engineering firm with respect to the Project, approved by the City.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended.

“Event of Default” means any Event of Default as defined in this Agreement or the other Loan Documents.

“First Class Workmanship and Materials” means construction in a good, substantial and workmanlike manner, and the use of materials, fixtures, furnishings and equipment which are first quality and are not used or obsolete.

“Fiscal Agency Agreement” means the Amended and Restated Master Fiscal Agency Agreement between HUD and The Chase Manhattan Bank (formerly known as Chemical Bank) dated as of May 17, 2000, and all amendments, renewals, modifications and extensions thereof.

“Fiscal Agent” means any financial institution or other entity acting as fiscal agent under the Fiscal Agency Agreement with respect to the HUD Guaranteed Note.

“Fiscal Year” means the twelve month period declared by the Developers to the Internal Revenue Service to be its fiscal year.

“Government Obligation” means direct obligation of, or any obligation for which the full and timely payment of principal and interest is guaranteed by, the United States of America, including but not limited to, United States Treasury Certificates of Indebtedness, Notes and

Bonds - State and Local Government Series or certificate of ownership of the principal or interest on direct obligations of, or obligations unconditionally guaranteed by, the United States of America, which obligations are held in trust by a commercial bank which is a member of the Federal Reserve System and has capital and surplus (exclusive of undivided profits) in excess of \$100,000,000, or such other obligation included as a "Governmental Obligation" by HUD in connection with the HUD Guaranteed Note.

"Hazardous Substance(s)" means any and all pollutants and dangerous substances, including radon, and any and all "hazardous wastes" and "hazardous substances" as defined in ISRA, the Spill Compensation and Control Act (N.J.S.A. 58:10-23.11 et seq.); the Resource Conservation and Recovery Act (42 U.S.C. §6901 et seq), the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. §9601, et seq) or any other state or federal environmental law, rule or regulation, and all amendments and modifications thereof.

"HUD Assignment" means the Collateral Assignment of Security Documents of this same date by the City in favor of HUD as security for the City's obligation to repay the HUD Guaranteed Note.

"Indemnified Parties" means the City and HUD and any director, manager, officer, official, employee, member, councilperson, agent or attorney of the City and HUD.

"ISRA" means the Industrial Site Recovery Act, N.J.S.A. 13:1K-6 et seq., as amended from time to time, and any predecessor or any successor statute, along with all rules and regulations promulgated thereunder.

"Leases" means all leases, whether now or hereafter existing, between any Developer and any tenant of the Premises, including another Developer.

"Loan" means the loan from the City to the Developers in the maximum principal amount of up to Eight Million and 00/100 Dollars (\$8,000,000.00) to be used by the Developer during the Construction Period for construction of the Project.

"Loan Documents" means any or all of this Agreement, the Note, the Employment Agreement, and any or all documents, certificates, assignments and instruments executed in connection therewith and herewith, and all amendments, modifications, renewals and extensions of any of them.

"Loan Maximum" means the maximum aggregate amount to be advanced under the Loan, which is the sum of Eight Million and 00/100 Dollars (\$8,000,000.00).

"Note" or Developers' Note" means the Note of the Developer to the City in the principal amount of Eight Million and 00/100 Dollars (\$8,000,000.00) executed simultaneously herewith, and all amendments, renewals, modifications and extensions thereof.

"Obligation" or "Obligations" means any and all of the covenants, terms, conditions, agreements and obligations to be performed by the Developers under this Agreement, the Note

and the other Loan Documents and all extensions and/or renewals thereof and substitutions therefor, including payment for the protection of security therefor, whether or not secured by the Collateral mentioned herein, and all other indebtedness, monetary obligations, liabilities and duties of any kind of the Developers to the City, whether as borrower or as guarantor, direct or indirect, absolute or contingent, joint or several, due or not due, liquidated or unliquidated or now existing or in the future created.

“Permitted Encumbrances” means, as of any particular time, (A) liens for taxes not then delinquent, or then being contested in good faith by the Developer and for which the Developer has maintained with the City reserves satisfactory to the City; (B) liens created or permitted by this Agreement, or any other Loan Document; (C) any mechanic’s, laborer’s, materialman’s, supplier’s or vendor’s lien or right in respect thereof, if payment is being contested in good faith by the Developer and for which the Developer has maintained reserves satisfactory to the City; (D) any encumbrances, easements and rights of way which do not materially impair the property affected thereby for the purpose for which it was acquired or is held by the Developer; (E) the mortgage and security agreement with respect to the Premises in favor of one or more lenders as security for the Developer’s construction loan (including mezzanine financing, if any) for the Project (F) liens in favor of or consented to in writing by the City and (G) liens in favor of EnviroFinance Group.

“Person” or “Persons” means any one or more individuals, corporations, partnerships, limited liability companies, joint ventures, trusts, unincorporated organizations, governmental agencies or political subdivisions.

“Phase I Report” means the following following reports with respect to the Premises:

Preliminary Assessment/Site Investigation/Remedial Investigation/ Remedial Action Report prepared by Dresdner Robin for Jersey City Redevelopment Agency dated December 2000

Supplemental Remedial Investigation Report/Remedial Action Workplan Re: former Flintkote Site, 90-193 Luis Munoz Marin Boulevard, Block 60, Lot 40, 27A and 27C, Jersey City, New Jersey, prepared by Dresdner Robin for Jersey City Redevelopment Agency dated August 2002

Phase I Environmental Site Assessment Report Re: Proposed Tramz/Hilton Hotel, Luis Munoz Marin Boulevard, Jersey City, New Jersey prepared by Langan Engineering and Environmental Services, Inc. dated February 6, 2002.

Supplemental Remedial Action Workplan, Tramz Hotel – Block 24 Liberty Harbor North, former Flintkote Site, Marin Boulevard (Block 60/P/O Lots 27A, 27C and 40) Jersey City, New Jersey, prepared by Potomac-Hudson Environmental, Inc. for Tramz Hotels dated September, 2006 and 30 day notice PCB Remediation Report dated September 2000.

Memorandum of Agreement (MOA) and Supplemental Remedial Action Workplan, Tramz Hotel - Block 24 Liberty Harbor North, Former Flintkote Site, Marin Boulevard (Block 60/P/O Lots 27A, 27C and 40) Jersey City, New Jersey, prepared by Potomac-Hudson Environmental, Inc. for Tramz Hotels submitted under cover letter dated September 22, 2006

Perimeter Air Monitoring Plan Tramz Hotel, Block 24 Liberty Harbor North Former Flintkote Site, Marin Boulevard (Block 60, P/O Lots 27A, 27 C and 40), Jersey City, Hudson County, New Jersey prepared by Potomac Hudson Environmental, Inc. dated January 2008.

Health and Safety Plan Comments dated September 4, 2007, under cover memo dated September 5, 2007, for Flintkote Jersey City aka Tramz Hotel (Block 60, lots 27A, 27C, 40) from Harry Wetz (NJDEP Office of Site Safety and Health) to Chase Manager Ellen Hutchinson.

State of New Jersey Department of Environmental Protection Memorandum from Harry Wertz, Office of Site Safety and Health to Ellen Hutchinson, Bureau of Northern Field Operations dated September 5, 2007 re: Review and comments on site specific health and safety plan Flintkote Jersey City aka Tramz Hotel.

Site Specific Health and Safety Plan (HASP) Block 24-Liberty Harbor North, Marin Boulevard, Jersey City, New Jersey prepared for Tramz Hotels, prepared by Potomac Hudson Environmental, Inc. dated February 2008.

Letter to Ellen Hutchinson, NJDEP – Northern Regional Office from Potomac Hudson Environmental, Inc. dated February 21, 2008 re: Amendment to Remedial Action Workplan.

Supplemental RAW Addendum #1 submitted in letter format dated February 21, 2008, to Ellen Hutchinson, NJDEP - Northern Regional Office by Potomac Hudson Environmental, Inc. on behalf of Tramz Hotels for Block 24 – Liberty Harbor North.

Supplemental RAW Addendum #2 submitted in letter format dated June 16, 2008, to Ellen Hutchinson, NJDEP - Northern Regional Office by Potomac Hudson Environmental, Inc. on behalf of Tramz Hotels for Block 24 – Liberty Harbor North.

Technical Comments by NJDEP BEERA Technical Coordinator Jim Kealy in memo format to Case Manager Ellen Hutchinson on all submitted documents to date forwarded to EFG by email on August 6, 2007.

“Plan” means an employee pension benefit plan maintained for employees of any Developer or each guarantor as defined in Section 3(2) of ERISA.

“Plans and Specifications” means the plans and specifications for the Project delivered by the Developer to the City, which have been acknowledged by the City, as the same may be amended, modified or supplemented from time to time in accordance with the terms and provisions of this Agreement.

“Premises” means the real property located in the City of Jersey City, County of Hudson, State of New Jersey as further described in Schedule B hereto and all buildings and other improvements now or hereafter located thereon, including the Project.

“Project” means the construction on the Premises of a 350,995 square foot Hilton brand luxury hotel to contain approximately 300 hotel rooms, meeting space, restaurants, retail shops and a fitness facility, as well as a 21,604 square foot attached parking garage.

“Project Cost Statement” means a statement provided by the Developers to the City no later than the Closing Date, which estimates the total Costs of the Project, and includes estimates of the various hard costs and soft costs of the Project including, but not limited to site acquisition, remediation, and preparation; construction; and fit out and opening costs, which total Costs shall be approximately \$150,000,000.00.

“Remediation Plan” means the Remedial Action Work Plan (“RAWP”) submitted to the New Jersey Department of Environmental Protection (the “NJDEP”) and Region II of the Environmental Protection Agency (“EPA”) (as such RAWP shall be revised or amended from time to time with the approval of the NJDEP and EPA) describing the tasks and timelines for completing the Remediation in compliance with all Legal Requirements, provided however, that once a RAWP is finalized and approved by the NJDEP and EPA, the RAWP shall be deemed the Remediation Plan for all purposes.

“Request for Advance” means the form to be used by the Developers to request Advances, a copy of which is attached hereto as Schedule C, or any similar form substituted by the City.

“Subsidiary” means any entity which is owned and/or controlled, the majority of which is owned by any Developer either directly or through Subsidiaries.

“Taxes” means all taxes and assessments payable by Developer to the City, or any payments in lieu thereof pursuant to N.J.S.A. 40A:20-1 et seq.

“Trust Agreement” means that certain Trust Agreement dated as of January 1, 1995, between HUD and Chemical Bank, predecessor-in-interest to The Chase Manhattan Bank, as trustee, and all amendments, renewals, modifications and extensions thereof.

“Trustee” means any financial institution or other entity acting as trustee under the Trust Agreement with respect to the HUD Guaranteed Note.

## **1.2 Interpretations.**

Unless otherwise specified, the following rules of construction shall apply to this Agreement:

- (A) The term “any” shall be construed as if followed by the phrase “one or more”;
- (B) The term “including” shall be construed as if followed by the phrase “without limitation”;
- (C) Singular words include the plural and plural words include the singular;
- (D) Words suggesting any gender include each other gender; and
- (E) Titles, headings and subheadings are for organizational purposes only and neither add to, nor limit, the meaning of any provision.

## **SECTION II THE LOAN; MANNER OF PAYMENT**

The City, from time to time, agrees to lend to the Developer such amounts, and under such terms, determined as follows:

**2.1 Amount.** The aggregate amount of all Advances under the Loan will not exceed the Loan Maximum. Advances, shall be made in the amounts, for the purposes, and upon the terms and conditions, set forth in Section IX of this Agreement.

**2.2 Note.** The Loan Maximum shall be evidenced by the Note. Advances, interest and payments made hereunder shall be evidenced by the City’s records for the Loan. The failure of the City to make any such record shall not alter or impair the rights and remedies of the City if an Advance or other extension of credit has actually been made or the rights of the Developers if a payment has actually been delivered.

**2.3 Calculation and Payment of Interest Under the Loan.** Commencing on the Closing Date and continuing until all Obligations are satisfied in full, interest on the amount of principal disbursed on the Loan shall be calculated and paid in accordance with the terms and condition of the Note.

**2.4 Payment of Principal Under the Loan.** The balance of the outstanding principal amount of the Loan shall be due and payable in accordance with the terms and conditions of the Note, unless sooner paid or accelerated as provided and permitted herein.

**2.5 Manner of Payment.** All payments shall be delivered to the City in immediately available funds when due, in United States currency, at the City’s address set forth in the caption of this Agreement or to such other address as the City may designate in writing. Any delay by the City in submitting a statement of any amount due shall not relieve any duty to inquire as to the amount due and to make timely payments.

**2.6 Payment on Non-Business Days.** Any payment that is due on a day that is not a Business Day shall be made on the next succeeding Business Day.

**2.7 Late Payments.** If any payment is not received within ten (10) days from the date that payment is due, the City may charge a "late charge" equal to two percent (2%) of the total of principal, interest, charges and expenses overdue for the purpose of defraying the expenses incident to handling the delinquent payment. This late charge shall be in addition to, and not in lieu of, any other right or remedy the City may have as a result of a late payment.

**2.8 Prepayments or Redemption.** The Developer may only prepay or redeem the Note in accordance with the provisions of Section XV hereof.

**2.9 Over-Advances.** The Developer acknowledge that the City does not intend for the aggregate principal amount of the Advances comprising the Loan under the Note to exceed the Loan Maximum. Notwithstanding the foregoing, if, for any reason, the City shall make Advances in excess of the Loan Maximum, the Developers hereby covenant and agree to immediately repay those sums, together with the interest rate in effect for the Loan, and that such over-advances shall be secured by all Collateral.

### **SECTION III REPRESENTATIONS AND WARRANTIES OF THE DEVELOPER**

The Developer represents and warrants to the City that:

**3.1 Developer's Warranty of Title.** The Developer holds good and marketable fee title to the Premises and rights of ownership in all other of the Collateral free of all liens, restrictions, Taxes and encumbrances, other than any Permitted Encumbrances, and hereby warrants and agrees to forever defend that title against all claims whatsoever, except for Permitted Encumbrances, at the Developer's sole expense.

**3.2 Valid Obligations.** Each Loan Document, including, without limitation, this Agreement and the Note, is a valid and binding obligation of the Developer, enforceable in accordance with its terms. There are no setoffs, defenses, rights, claims or causes of action of any kind or nature whatsoever, which the Developer has or may assert against the City on the date hereof.

**3.3 Organization and Power.** Statue of Liberty Harbor North Redevelopment Urban Renewal, LLC, is a limited liability company duly organized, validity existing and in good standing under the laws of the State of New Jersey, and has (A) has obtained all approvals, licenses, permits and consents of all governmental authorities having jurisdiction over its business that are necessary to carry out its business and enter into the Loan Documents and (B) has full power, authority, franchises, licenses and right to enter into and perform each of the obligations contained within the Loan Documents to which it is a party and to carry on its business as it is now being conducted. No alternate or trade name is used by the Developer.

**3.4 Authorization.** Each of the Loan Documents (A) has been duly authorized by all requisite action and (B) has been duly executed on behalf of the Developer.

**3.5 No Conflicting Agreements or Laws.** The execution, delivery and performance of this Agreement and each other Loan Document will not violate any partnership or operating agreement, certificate of limited partnership or limited liability company, lease, indenture, agreement, instrument, law, ordinance, regulation, order or administrative ruling to which the Developer is subject or a party, or that affects or relates to the Premises or the Project.

**3.6 Conflicting Proceedings.** There exists no action, application, petition, proceeding or hearing pending or threatened against the Developer, the Premises or the Project that might (A) adversely affect the Developer's ability to perform the Agreement or any other Loan Document, (B) involve the possibility of any material adverse change in the Developer's economic condition, (C) involve the possibility of any limitation on any intended use(s) of the Premises or the Project, or (D) create a lien or security on or the value of the Premises.

**3.7 Compliance with Laws.** The Developer and the Premises are, and upon completion of the Project will be, in compliance with all laws, regulations, ordinances and codes that are applicable to the use and operation of the Premises and/or the Project. All present and planned uses of the Premises are or will be in full compliance with applicable zoning, environmental and building laws, ordinances, regulations, codes and developer's agreements, if any, applicable to the Premises or the Project. The Developer has obtained preliminary site plan approval and other permits necessary to commence construction of the Project. All approvals and permits received to date with respect to the Project are legally valid and are not subject to expiration prior to the anticipated completion of the Project. In addition, all rights to appeal from any decision or determination of a governmental authority or administrative authority have expired. To the knowledge of the Developer, there are no sewer connection bans applicable to the Project. Except as may be permitted by the NJDEP and any other governmental authorities having jurisdiction over the matter, no wetlands are to be disturbed in constructing the Project.

**3.8 Plans and Specifications, Costs and Construction Contracts.** The Developer has provided the City with the following prior to any Advances:

(A) A complete set of the Plans and Specifications and copies of all applicable, construction contracts, and all state, federal or local permits or approvals that the Developer has obtained or received to date.

(B) A complete Construction Payment Schedule and the Project Cost Statement.

**3.9 Taxes.** The Developer has filed all tax returns and reports required to be filed pursuant to applicable law and has paid all Taxes that are due and owing (including penalties, deficiency assessments and interest).

**3.10 Financial Information and Condition.** Each financial statement, if any, delivered to the City truly sets forth the financial condition of the Developer and the results of operations as of the date thereof and there has been no material adverse change in the financial condition of the Developer since the date(s) of the financial statement(s). Immediately prior to and after the

making of this Agreement, the Developer is not and will not be “insolvent” as that term is defined in N.J.S.A. 14A:1-2(k) or in 11 U.S.C.A. 101(31).

**3.11 Brokerage Commissions.** No person is entitled to receive from the Developer or any other Person any brokerage commission, finder’s fee or similar fee or payment in connection with the consummation of the transactions contemplated by this Agreement. In the event any claim is made for any such fee, the Developers is solely responsible for all such fees and/or payments.

**3.12 ERISA.** There has not occurred, and there is no circumstance or state of facts that, with notice or lapse of time would constitute, a “reportable event” or “termination event” under any Plan maintained for any employees of any Developer, as defined in ERISA.

**3.13 No Default.** As of the Closing Date, the Developer is not aware of any Default of any Obligation, including this Agreement or any other Loan Document.

**3.14 Judgments, Litigation and Consents.** There is no judgment, action or proceeding pending or, to the Developer’s knowledge, threatened against the Developer before any court or administrative agency and all authorizations, covenants and approvals of governmental bodies or agencies, required in connection with the performance of the Developer’s obligations hereunder have been or will be obtained when required hereunder or by law.

**3.15 Developer’s Due Diligence.** The Developer represents to the City that it has at all times pertinent to this Agreement and the other Loan Documents been represented by advisors of its own selection, including, but not limited to, attorneys-at-law and/or certified public accountants; that it acknowledges that it is informed by its advisors of its respective rights, duties, and obligations with respect to the Loan under all applicable laws, that it has no set-offs, defenses or counterclaims against the City with respect to the Loan, and that it shall be indebted to the City for the amounts stated in this Agreement.

**3.16 No Inducement.** The Developer further acknowledges and agrees that the City has made no statements, representations, warranties, agreements or provided information to it in order to induce the execution of this Agreement or the other Loan Documents.

**3.17 Survival.** All representations and warranties made by, or on behalf of, the Developers in any Loan Document or otherwise made to the City shall survive the Closing Date until such time as all Obligations hereunder have been fully and indefeasibly discharged.

#### **SECTION IV AFFIRMATIVE COVENANTS OF THE DEVELOPER**

The Developer agrees and covenants that, so long as this Agreement shall remain in effect or the Note or any of the Obligations shall be outstanding, it shall perform the following Obligations:

**4.1 Use of Proceeds.** Use the proceeds of all Advances as specified and warranted herein, and in no event for any purpose other than in the site acquisition, hazardous materials remediation, site preparation and construction/completion of the Project.

**4.2 Compliance With Loan Documents.** Promptly and fully perform all of its Obligations under the Loan Documents, including the prompt payment of all sums when due, and refrain from doing any act or acts that would violate any covenant under the Loan Documents.

**4.3 General Taxes.** Prepare and timely file all federal, state and local tax returns required to be filed and pay and discharge all Taxes, assessments and other governmental charges or levies of every kind and nature which shall be imposed, including, without limitation, all real estate taxes, assessments, water and sewer rents and charges, as well as all lawful claims which might become a lien or charge upon any Developer's property and assets or which shall become due and payable with respect thereto, except those claims which are contested in good faith and for which adequate reserves satisfactory to the City are maintained

**4.4 Real Estate Taxes and Assessments.** Pay all Taxes, assessments, water rents, governmental charges, utilities and other charges levied or assessed against all or any portion of the Premises or the Project.

**4.5 Protect Property.** Preserve and protect all of the properties and assets relating to the Premises and the Project, maintain the same in good repair, working order and condition, and from time to time make, or cause to be made, all needed and proper repairs, renewals, replacements and improvements thereto.

**4.6 Defend Title.** Warrant and defend title to all properties and assets relating to the Premises and the Project against any claims of third parties and keep all of the same and the rents, issues and profits therefrom free of all liens, encumbrances, attachments, levies, distraints, other judicial process and burdens of every nature, except for Permitted Encumbrances.

**4.7 Lien Notices.** Execute documents deemed necessary or advisable by the City to perfect or preserve any security interest granted herein or in the other Loan Documents, and pay the filing costs for same pursuant to law.

**4.8 Further Assurances.** Execute and deliver any further instrument and take any further action as may be requested from time to time by the City to better assure and confirm the rights of the City described herein and in the other Loan Documents.

**4.9 Compliance with Law.** Comply with all applicable federal, state, county and municipal laws, ordinances, rules and regulations now or hereafter in force, including without limitation those concerning environmental matters.

**4.10 Financial Information.** Furnish to the City the following financial information in form and content satisfactory to the City:

(A) within ninety (90) days after the end of each fiscal year, annual financial statements of each Developer prepared on an audited basis, in accordance with generally accepted accounting principles, by an independent certified public accountant acceptable to the City and to include balance sheets, annual operating statements sufficient in detail as to all items of income and expenses, and an annual cash flow statement and accompanying notes;

(B) such other information including books, records, operating statements, expense ledgers, tax filings and all other reports respecting the business and properties or the condition or operations, financial or otherwise, of the Developers with respect to the Premises and the Project as the City may from time to time reasonably request.

**4.11 Notices to the City.** Give prompt written notice to the City of:

(A) an Event of Default or a Default together with a specification of the same and a description of the action being taken to cure same;

(B) any material damage to the Premises or the Project or the threat of any condemnation proceeding affecting any of the same;

(C) all actions, suits, disputes and proceedings before any Court or governmental authority or instrumentality materially affecting the Developer or the Premises or the Project and, promptly thereafter, of any material development or change in the status of any such continuing action, suit, dispute or proceeding;

(D) any material labor controversy resulting in or threatening to result in a strike, lock-out, boycott, or any similar labor problems against the Developer or any other Person that affects the Project;

(E) any termination or attempted termination or material breach of the Construction Contract by any party; and

(F) any other matter which has or will result in a material adverse change in any Developer's financial condition and operations or on the Project.

**4.12 Certificate of Default.** Upon request by the City, deliver to the City within five (5) Business Days of demand, a certificate of the Developer's Authorized Representative either stating that such Authorized Representative is not aware of any condition, event or act which constitutes an Event of Default or Default, or if any such condition, event or act exists, specifying the same and describing the action being taken to cure same.

**4.13 Accurate Records.** Keep, maintain, and make available to the City full and accurate records and books of accounts, in which are recorded complete, true and correct entries of all dealings and transactions related to or made in conjunction with the Project and Premises and which are made in accordance with generally accepted accounting principles.

**4.14 Project Permits and Approvals.** Provide to the City copies of all permits and approvals received from any federal, state, county or municipal governmental authority in connection with the Project or the Premises.

**4.15 Inspections.** Permit the City, its duly authorized agents and officers, upon reasonable notice and at any reasonable time, to (A) enter upon and examine the Project and the Premises and (B) examine the records and books of accounts of the Developer and to make copies and extracts therefrom.

**4.16 First Class Construction.** Construct or cause the Project to be constructed diligently from the date hereof, using First Class Workmanship and Materials.

**4.17 Diligent Completion.** Take such action and institute such procedures as shall be necessary to complete construction of the Project and correct defective work, including causing and requiring any contractor or supplier to the Project to complete its contracts diligently and in accordance with their terms. In the event of any default by any contractor or subcontractor or supplier under any contract that materially affects the Developer's ability to proceed to complete the Project, promptly proceed, either separately or in conjunction with others, to exhaust its remedies against the said party.

**4.18 Completion as Designed.** Erect and complete, or cause to be erected and completed upon the Premises the Project, in accordance with the Plans and Specifications. The Plans and Specifications shall be deposited and held by the City and, after review and acceptance of the Plans and Specifications by the City, shall govern all matters that may arise with respect thereto. No substantial revision of the approved Plans and Specifications, which revisions either (A) affect the nature of the Project, or (B) decrease the Cost of the Project to less than \$100,000,000, may be made without the prior express written approval of the City. All revisions in the Plans and Specifications must be in writing, signed by the Developer and furnished to the City at such time or before the Developer make a request for an Advance. With respect to any substantial revisions requiring the City's approval, the City will endeavor to notify the Developer within a reasonable time after receipt of the Developer's request for revisions in the Plans and Specifications, whether such revisions have been approved or rejected.

**4.19 Other Construction Requirements.** Construct (A) the Project strictly in accordance with all applicable ordinances and statutes and in accordance with the requirements of all regulatory authorities having jurisdiction and in conformity with the requirements of the Board of Fire Underwriters or similar body; (B) the Project entirely on the Premises and not to encroach upon or overhang any easement or right-of-way, except to the extent permitted by such easements or rights of way, nor upon the land of others, except as may be permitted by separate agreement by the parties with ownership rights to such land; (C) the buildings wholly within the building restriction lines and in conformity with applicable use or other restrictions contained in prior conveyances, zoning ordinances or regulations or other agreements; (D) the Project in accordance with the developer's agreements, if any, applicable to the Project on the Premises.

**4.20 Preservation of Existence.** Preserve and maintain the Developer's existence, licenses, qualifications and good standing in its jurisdiction of formation and all authorizations, consents,

licenses, permits, registrations and qualifications that are necessary for the transaction of business, the operation of the Premises and the construction of the Project.

**4.21 Completion of the Project.** The Developers agree to cause the Project to be fully finished and completed on or before Completion Date.

**4.22 Payment of Expenses.** Pay or reimburse the City for all reasonable expenses in connection with the Loan including, but not limited to, the reasonable fees of its counsel (and any disbursements such counsel may incur), survey charges and recording and filing charges.

**4.23 Submission of Leases.** Submit to the City copies of all Leases for the Premises, to the extent same have not been previously provided to the City.

**4.24 Employment Records.** Within thirty (30) days of the effective date, and on or before May 1 of each year thereafter, furnish a written report to the City of the number and classification of employees at the Project as of the end of March of each year and evidencing the compliance by the Developers with the Employment Agreement.

**4.25 Equal Employment Opportunity.** Comply in all material respects with the Equal Employment Opportunity requirements of 42 U.S.C. Section 2000(e) et seq and the specific requirements set forth in Section 301 of Executive Order No. 11246, as amended, relating to discrimination provisions in federally assisted contracts.

**4.26 Section 108 Compliance.** Execute and deliver all certifications, agreements and other documents or opinion letters required by HUD in connection with the Section 108 Program, including, without limitation, amendments to the Loan Documents as may be required by HUD after the Closing Date, and in all respects comply with any and all regulations promulgated by HUD under the Section 108 program, and any and all obligations which would otherwise be obligations of the City under the HUD Contract and HUD Note. This shall specifically include compliance with those items detailed in Exhibit D and Exhibit E attached hereto and incorporated herein by reference to the extent same are applicable or as may be made applicable by an future law, regulation, executive order, or OMB Circular.

## **SECTION V NEGATIVE COVENANTS OF THE DEVELOPERS**

The Developer covenants and agrees as part of its Obligations that, so long as this Agreement shall remain in effect or the Note or any of the Obligations shall be outstanding, it shall not:

**5.1 Transfer or Liens.** Make, permit or suffer to exist any pledge, mortgage, assignment, lien, encumbrance, security agreement, option or transfer of any kind with respect to the Collateral, the Premises or the Project, except with respect to a Permitted Encumbrance.

**5.2 Use of Premises.** Permit any portion of the Premises to be utilized for anything other than the Project unless approved in advance by the Business Administrator or the Mayor of the City.

**5.3 Plans and Specifications.** Substantially revise the Plans and Specifications contrary to the provisions of Subsection 4.18 hereof, except as expressly permitted by the City in writing through its Business Administrator or the Mayor.

**5.4 Destruction of Improvements.** Remove or demolish any improvements now or hereafter erected upon the Premises, except in accordance with the Plans and Specifications, or make structural alterations to said improvements, unless the Developers furnish to the City copies of the proposed revisions therefor and the City gives its prior written consent to the work.

**5.5 Waste.** Commit, suffer permit or consent to waste of the Premises or the Project.

**5.6 Abandonment, Cessation.** Abandon, stop, desert or hold in abeyance construction of the Project or cease using the Project for thirty (30) continuous days.

**5.7 Change in Ownership.** Except as maybe otherwise permitted herein, permit any change in or any pledge of, any of the ownership interests or membership interests of the Developer, without the City's prior written approval.

**5.8 Other Names.** Use or adopt any name other than that set forth in the caption of this Agreement unless, in advance of using any other name, the City has been provided with appropriate fictitious or trade name certificates and current judgment, tax and UCC-1 search reports for any name.

**5.9 Multi-Employer Plan.** Become a party to, or a participant in, a "multi-employer plan" as that phrase is defined under ERISA.

**5.10 Expiration of Approvals.** Permit the expiration or termination of any permit or approval previously received and material to the timely construction and completion of the Project.

## SECTION VI INSURANCE

**6.1 Insurance Coverage.** The Developer shall keep the Project insured as follows:

(A) **Builders and Casualty Insurance.** Maintain extended coverage builders insurance and casualty insurance written in the name of the Developer in the broadest "all risks" form available on a full replacement cost basis covering all the Project, including all Building Equipment, fixtures and improvements. That insurance shall be in amounts that are no less than the full insurable value of the Project, including all Building Equipment (without any deduction for depreciation) and shall be in amounts reasonably satisfactory to the City. The "all risk" coverage shall include, but not be limited to, loss or damage by fire, other physical loss or damage and coverage against theft, vandalism and malicious mischief

(B) **Liability Insurance.** Maintain comprehensive general liability insurance in the name of the Developers, including a contractual liability endorsement and a completed

operations and personal injury coverage, with a combined single limit for any one occurrence in amounts reasonably satisfactory to the City.

(C) Flood Insurance. If any portion of the Premises is located in a flood hazard area for which insurance is available under the Flood Disaster Protection Act of 1973 or the National Flood Insurance Act of 1968, maintain flood insurance on that portion in an amount reasonably satisfactory to the City.

(D) Business and/or Lost Rental Interruption Insurance. Business interruption and/or lost rental insurance in amounts sufficient to pay all expenses and obligations of the Developer during any period the Project is not operational or in use.

(E) Policy Terms. All policies shall meet the following requirements:

(i) overall blanket or excess coverage policies may be supplied; provided, however, that all insurance shall be in amounts sufficient to prevent the insured from being a co-insurer and that the amount of the casualty insurance coverage attributable to the Premises is clearly set forth; and

(ii) all policies shall (a) name the City "and its successors and/or assigns as their interests may appear" as "additional insured" with respect to the insurance described in Section 6.1(B) hereof (b) contain an endorsement stating that, as to the interest of the City, such policy "shall not be impaired, invalidated or affected by (1) any statement, act or neglect of any insured, loss payee or other Person, (2) any failure to make any report to the insurer, (3) the institution of any foreclosure or other proceeding to execute upon any lien, (4) any use of the property for purposes that are more hazardous than the terms of such policy or (5) any change in the ownership of the Property", and (c) contain a provision stating that such policy "shall not be canceled or modified except after thirty (30) days prior written notice delivered to the City at Division of Community Development, 30 Montgomery Street, Room 402, Jersey City, New Jersey 07302 or as subsequently directed in writing by the City; and

(iii) all policies shall be in a form reasonably acceptable to the City and shall be issued by insurers duly licensed and authorized to conduct that type of insurance business in the jurisdiction where the Premises are located. The City shall have the right, at any time, to reject insurance provided by an insurance company that does not have a policyholder's rating of "A" or better and a financial rating of "AAA" or better in the then current edition of Best's Insurance Guide; and

(iv) all policies of insurance or satisfactory endorsements thereof, together with a paid receipt, shall be deposited with the City prior to the Closing Date and at least thirty (30) days prior to the expiration of any such policies, the Developer shall furnish paid receipts and other evidence satisfactory to the City that all such policies have been renewed or replaced.

## **SECTION VII ENVIRONMENTAL MATTERS**

**7.1 Environmental Representations.** The Developer hereby represents and warrants to the City that:

(A) The Developer, nor to the best knowledge of the Developer, any other existing or former occupant of the Premises, except to the extent disclosed in the Phase I Report, has (i) generated, stored, treated, discharged, handled, refined, spilled, released or disposed of any Hazardous Substances in violation of any applicable law or regulation, (ii) received any notice, or is on notice, of any claim, investigation, cleanup or testing program government expenditures, litigation or administrative proceeding, actual or threatened, or any order, writ or judgment that relates to any discharge, spill, handling, refining, release, emission seepage, leaching or disposal of pollutants of any kind including any Hazardous Substances, on or by any occupant of, the Premises;

(B) No Hazardous Substances have been, except to the extent disclosed in the Phase I Report, or will be, generated, stored, located, treated, discharged, handled, refined, spilled, released or disposed of on or by any occupant of, the Premises, other than the common cleaning and maintenance agents in small quantities for standard maintenance uses;

(C) In connection with any prior acquisition, sale, closing, transfer or change in control of the Premises by any of the Developers or any party related thereto, the above mentioned activity or event did not require any party to comply with ISRA or the regulations of the NJDEP with respect thereto;

(D) The Premises have not been, and will not be, used as a “major facility”, as that term is defined in N.J.S.A. 58:10-23.11(b)(1);

(E) The Standard Industrial Classification Code Number for the activities now or formerly conducted on or at the Premises is not the number of an industrial facility under ISRA;

(F) There are no known underground storage tanks on the Premises or, if there are, the Developer has registered its underground tanks pursuant to and has otherwise complied with the provisions of the Federal Underground Storage Tank Law (42 U.S.C.. 6901 et seq.) and the New Jersey Underground Storage Tank Act (N.J.S.A. 58:10A-21 et seq.) and the regulations promulgated thereunder and all tanks have been tested by a licensed testing company and were found to be in satisfactory condition;

(G) The Developers and the Premises are now in compliance, and the Developers shall cause the Premises to continue to comply with all terms and provisions of the Freshwater Wetlands Protection Act (N.J.S.A. 13:9B-1 et seq.), as amended from time to time and all regulations thereunder; and

(H) No fill other than as permitted by applicable laws or regulations was imported to the Premises in connection with the construction of the Project.

**7.2 Environmental Compliance.** The Developer shall not make or permit any use of the Premises that would cause or permit the Premises to be a material violation of, or to do anything which would subject the Premises to any remedial obligations under, any Environmental Laws.

**7.3 Environmental Audits.** Except for existing conditions disclosed in the Phase I Report and not caused by the Developer or a related party thereto, should the New Jersey Department of Environmental Protection after reasonable investigation or based upon material evidence conclude there is any adverse environmental condition or Hazardous Substance on the Premises, the City may require that the Developer to retain a qualified and licensed environmental engineer to conduct a full environmental audit of the Premises, which engineer and audit, including testing and sampling procedures, shall be reasonably acceptable to the City and which audit report shall be delivered to the City within thirty (30) days, or such other greater reasonable time, of the City's initial request and shall be prepared at the Developers' sole expense.

**7.4 Security For Cleanup.** Except for existing conditions disclosed in the Phase I Report, subsequent remedial investigations and Remedial Plan and not caused by the Developer or a related party thereto, if any environmental audit, investigation, environmental report or governmental investigation or order indicates that there may exist any damage or risk to the Premises, or any liability of the Developer relating to any Hazardous Substance(s) or other environmental condition(s) with respect to the Premises, the City may require the Developers to furnish immediately an indemnity bond in an amount determined by the City, in its absolute discretion, to be sufficient to pay all actual and estimated cleanup costs and to protect against any liens that may arise with respect to such potential cleanup costs. The City's demand that the Developer post any bond or other security shall not be a waiver of any Event of Default or of any other right or remedy available to the City.

**7.5 Indemnity.** Except for existing conditions disclosed in the Phase I Report, subsequent remedial investigations and Remedial Plan and not caused by the Developer or any related party thereto, the Developers hereby agree to indemnify and save harmless the City from any and all costs, including legal and environment consultant's fees, associated with any environmental audit, cleanup, removal or restoration involving the Premises. This indemnity shall survive termination of this Agreement and/or repayment of the Loan.

## **SECTION VIII SECURITY FOR THE LOAN AND OTHER OBLIGATIONS**

**8.1 General.** As security for the timely payment and performance of the Note, the Loan and all of the other Obligations:

(A) A second lien on the Premises, established through an appropriate and properly recorded mortgage (the "Mortgage").

(B) It is understood and agreed that the lien, terms, covenants and conditions of the Mortgage are and shall be subordinate in all respects, including right of payment, to "Senior Indebtedness". For purposes of the Mortgage, Senior Indebtedness shall be defined as any of the following partially or fully secured debt (i) Secured Loan and Security Agreement between

Statue of Liberty Harbor North Redevelopment Urban Renewal, LLC and Envirofinance Group, LLC, dated June 26, 2008 and recorded in the Hudson County Clerk's Office in Mortgage Book 17020, page 216, in the original principal amount of \$27,500,000.00, (ii) Future Construction Financing, (iii) Future mezzanine debt, (iv) future permanent financing and (v) indebtedness resulting from refinancing some or all of items (i) through (iv).

(C) Any and all rights, titles, and interests of the Developer in and to any leases covering the Property. Subject to the rights of EnviroFinance Group, LLC under an agreement between Borrower and EnviroFinance Group, LLC, such rights, titles, and interests of the Developer shall be the subject of a collateral assignment of leases and rents (the "Collateral Assignment of Leases and Rents).

(D) Any and all rights, titles, and interests of the Developer in and to any licenses, permits, and other agreements covering the Property. Such rights, titles, and interests shall be the subject of a collateral assignment of interest in licenses, permits, and other agreements (the "Collateral Assignment of Interest in Licenses, Permits, and Agreements"), which shall be in a form acceptable to the Secretary.

(E) A security interest in and to amounts deposited into a designated reserve fund (the 'Reserve Fund'), pledged to the Secretary of HUD, in which there shall be established and maintained a balance of not less than \$1,000,000 or such lower amount as may be agreed to in writing by the Secretary.

(F) A Guaranty Agreement executed by TRAMZ HOTEL GROUP, LLC, guarantying performance of the obligations contained herein in the event of a default by the Developer.

**8.2 No Abatement of Payments.** If any of the Premise or Project shall be damaged or destroyed, in whole or in part, by fire or any other casualty, or if title to or the temporary use of the whole or any part of the Premises or the Project shall be taken or condemned by a competent authority for any public use or purpose, there shall be no abatement or reduction in the Developers' Obligations under this Agreement, the Note, the other Loan Documents.

**8.3 Continuity of Obligation.** The obligation of the Developer to make payments and to perform all of its Obligations under this Agreement and the other Loan Documents shall be absolute and unconditional, irrespective of any defense, or any rights of setoff, recoupment or counterclaim that the Developer might otherwise have against the City. The Developer shall not suspend or discontinue any such Obligation or terminate this Agreement for any cause, including any acts or circumstances that may constitute failure of consideration, failure of title or commercial frustration of purpose, or any damage to or destruction of title to or the right or temporary use of all or part of the Project or Premises, or any change in the laws of the United States, the State of New Jersey or any political subdivision of either thereof.

## **SECTION IX ADVANCES**

**9.1 Funding, Loan Maximum.** So long as there shall exist no Default or Event of Default and the Developer shall have otherwise fulfilled the requirements and conditions of this Agreement and the other Loan Documents, the City agrees to make Advances to the Developer pursuant hereto, within thirty (30) days after submission of a Request for Advance and satisfaction of all other requirements set forth herein, written notice not to exceed the Loan Maximum, in the amounts and for the purposes described on the Construction Payments Schedule.

**9.2 Advances.** Funds under the Loan will be disbursed solely for costs which in the case of construction costs have been approved by the Developer, the Architect or the Engineer, the City's architect/engineer and the City's Director of Housing Economic Development and Commerce. With each such request for payment of Cost, the Developers shall prepare and submit a Request for Advance and an Application and Certificate of Payment to the City. With each such request for payment of funds from the Loan, in the case of construction costs, the Architect or the Engineer will inspect the work completed to date and covered by the Application and Certificate of Payment to ensure that such work meets all applicable specifications. Upon the City's architect/engineer's approval of the construction work covered by the Application and Certificate of Payment, the City will make a payment of the total request submitted, provided the Loan maximum has not been exceeded. Funds under the Loan shall be disbursed only to the account of Envirofinance Gropu FBO Statue of Liberty Harbor North Redevelopment Urban Renewal, LLC, Wells Fargo account No. xxxxxxxxxx

**9.3 Availability of Advances.** All Advances to the Developer are to be funded to the Contractors in accordance with the written instructions of the Developers.

**9.4 City's Authority to Disburse Loan Amounts to Other Persons.** During the existence of any Event of Default under this Agreement or any other Loan Document, the Developer hereby irrevocably authorize the City to provide Advances directly to the general contractor, subcontractors, and other persons to pay for completion of the Project, but the City is under no

consents to personal jurisdiction in the State of New Jersey for purposes of actions arising under or relating to the Loan Documents.

**16.8 Severability.** The terms, covenants and conditions of this Agreement and all other Loan Documents shall be deemed to be severable. If one or more of the provisions, terms, covenants or clauses, paragraphs or subparagraphs of this Agreement or any other Loan Document is adjudged to be unlawful, unconstitutional, unenforceable, void or of no effect for any reason whatsoever, such adjudication shall in no way affect the other provisions, terms, covenants or clauses, paragraphs or subparagraphs of this Agreement or the Loan Documents which have not been so adjudged. In the event of an adjudication as described aforesaid, this Agreement and the other Loan Documents shall be construed as though the affected provision, term, covenant or clause, paragraph or subparagraph had not been included.

**16.9 Incorporation of Terms.** The Loan Documents to be executed, acknowledged and delivered pursuant to this Agreement shall be made subject to all the terms and conditions contained in this Agreement to the same extent and effect as if this Agreement were fully set forth in and made a part of each of the Loan Documents. This Agreement is made subject to all the conditions, stipulations, agreements and covenants contained in the other Loan Documents to the same extent and effect as if each of the other Loan Documents were fully set forth herein and made a part hereof Notwithstanding any of the foregoing, if any provision in any Loan Document is inconsistent with this Agreement, the provision will be construed in a manner most favorable to the City.

**16.10 Notices.** All notices, demands, requests, consents and other communications required hereunder shall be in writing and served by hand delivery, by certified mail, return receipt requested or by a recognized overnight delivery service as follows:

to the City:

City Hall  
280 Grove Street,  
Jersey City, New Jersey 07302  
Attention: Business Administrator,  
Telecopy No. (201) 547-6566

with a copy to:

the Division of Community Development  
30 Montgomery Street, 4th Floor  
Jersey City, New Jersey 07302  
Attention: Director  
Telecopy No.: (201) 547-6910,

to the Developers:

Statue of Liberty Harbor North Redevelopment Urban Renewal, LLC  
776 Mountain Blvd.  
Watchung, NJ 07069

With a copy to:  
Richard A. Giuditta, Jr.  
Bevan, Mosca, Giuditta & Zarillo  
776 Mountain Blvd.  
Watchung, NJ 07069

Notices and other written communications shall be deemed to have been properly served upon delivery to the designated address provided, however, that any notice or other communication sent by certified mail, return receipt requested, shall be deemed to have been properly served on the third Business Day after mailing, regardless of when it is actually received.

**16.11 Survival of Representations, Warranties and Agreements.** All representations, warranties and agreements of the Developers made herein or in any other Loan Document shall survive the execution of this Agreement and the Loan Documents and any investigation made by or on behalf of any party. Consummation of the transactions contemplated hereby shall not be deemed or construed to be a waiver of any right or remedy possessed by any party hereto, notwithstanding that such party knew or should have known at the time of closing that such right or remedy existed.

**16.12 Term.** This Agreement and the other Loan Documents shall become effective upon execution and delivery by the parties hereto, shall remain in full force and effect from the date hereof and, subject to the provisions hereof, shall expire on such date as the Note and the interest thereon and all other expenses or sums to which the City is entitled, and all other Obligations have been fully paid and satisfied.

**16.13 Certain Fees, Costs, Penalties and Premiums.** The Developer covenants and agrees to pay all fees and costs that are due and payable to the Fiscal Agent, the Trustee, the Custodian or to the underwriters or otherwise payable by the City under or in connection with the HUD Contract (including all attorney's fees and expenses incurred in connection with the public offering of the HUD Guaranteed Note) and hereby expressly authorizes and directs the City to pay such costs and fees out of the proceeds of the HUD Guaranteed Note. The Developer also agrees to pay all liabilities and out-of-pocket expenses incurred by the Fiscal Agent and the Trustee as to which the City is required to indemnify and to defend and hold the Fiscal Agent and the Trustee harmless. Furthermore, the Developer agrees to pay all other fees, costs, expenses, premiums and/or penalties imposed by HUD on the City resulting from the Developer's failure to comply the provision of this Agreement and the other Loan Documents or arising as a result of an Event of Default and to indemnify the City for any obligations of the City to indemnify HUD under the HUD Guaranteed Note or the HUD Contract.

**16.14 Assignment to HUD.** The parties hereto acknowledge and agree that the City shall assign its rights hereunder and under certain Loan Documents to HUD in accordance with the terms and conditions of the HUD Assignment and that the City shall retain the right thereunder to jointly enforce the provision of this Agreement and the other Loan Documents.

**SECTION XVII  
NO JURY TRIAL**

IN ANY LITIGATION RELATING TO ANY LOAN DOCUMENT, THE CITY AND THE DEVELOPER HEREBY WAIVE THEIR RIGHT TO TRIAL BY JURY. THE PARTIES ACKNOWLEDGE THAT THEY HAVE CONSULTED WITH THEIR RESPECTIVE COUNSEL SPECIFICALLY ON THE RAMIFICATIONS OF WAIVING THE RIGHT TO REQUEST TRIAL BY JURY PRIOR TO AGREEING TO THIS PROVISION.

**(signatures on following page)**

IN WITNESS WHEREOF, the parties hereto have signed, sealed and delivered this Agreement,  
all this day of , 2009.

**CITY OF JERSEY CITY**

BY: \_\_\_\_\_

**STATUE OF LIBERTY HARBOR  
NORTH REDEVELOPMENT URBAN  
RENEWAL, LLC**

BY: \_\_\_\_\_

**SCHEDULE A  
CONSTRUCTION PAYMENT SCHEDULE ESTIMATE**

<b>Activity</b>	<b>Amount</b>	<b>Date</b>
<b>Site Acquisition</b>	<b>\$2,000,000</b>	<b>At closing</b>
<b>Site Preparation</b>	<b>\$1,000,000</b>	<b>July 1 – July 31, 2009</b>
<b>Environmental clean up</b>	<b>\$4,000,000</b>	<b>August 2009 – April 2010</b>

SCHEDULE B

[Legal Description]

**SCHEDULE C**

**STATUE OF LIBERTY HARBOR NORTH  
REDEVELOPMENT URBAN RENEWAL, LLC**

Disbursement Request

**SECTION 108 LOAN AND BEDI GRANT**

Affidavits of borrower  
Certification of City architect, and authorizations from  
The Director, Jersey City Department of Housing,  
Economic Development and Commerce

Request no \_\_\_\_\_

date: \_\_\_\_\_

Written request for disbursement from Bank, on behalf of the City of Jersey City (the "Lender") to Statue of Liberty Harbor North Redevelopment Urban Renewal, LLC ("borrower").

State of New Jersey;  
County of Hudson ss.:

Owner's Affidavit

Borrower hereby makes this affidavit, expressly recognizing that any false statement may subject the signer to punishment under penalties for perjury, in order to obtain a payment money prom under the construction loan agreement and mortgages.

Borrower being duly sworn states the following to be true:

1. The date and number of this request are set forth above.
2. All terms in this request shall have and are used with the meanings specified in the Loan Agreement.
3. Borrower is the Owner of the property known as \_\_\_\_\_.
4. The name of the persons, firms or corporation to whom the payments request hereby are due; the amounts to be paid; and the general classification and description of the project costs for which each obligation request to be paid hereby was incurred are as set forth below:

	<u>Loan</u>	<u>Grant</u>
Original loan/grant amount	\$	\$

Amount drawn to date		
Interest due		
Total amount drawn to date		
Balance of funds available		
Total draws requested		
Net hard costs		
Soft costs		
Net amount payable		
Loan balance after this draw		

5. Such project costs have been made or incurred by the borrower and have been paid by the borrower, if payment to the borrower is requested, or, if payment to the borrower is not requested, are presently due to the persons to whom payment is requested, are valid project costs under the contracts and proper charges and no part thereof was included in any other request previously filed with the servicer under the provisions thereof.

6. Except for project costs requested hereby, there are no outstanding statements which are now due and payable for labor, wages, materials, supplies or services in connection with the purchase, construction and installation of the Project which, if unpaid, might become the basis of a vendors', mechanics', laborers' or materialmen's statutory or other similar lien upon the Project, the Premises or any part thereof. Borrower confirms that in connection with the construction on the Premises, no stop work notice, lien claim or mechanic's notice of intention has been filed with the county clerk register, nor has borrower received a copy of any stop notice, lien claim or mechanic's notice of intention, nor has borrower received any claim for payment from anyone other the general contractor, except (check one)-  none  as set fourth on an attached rider making reference this request and describing, (claimant, nature of work, and amount of claim), (1) all disputed statements and the reason for such disputes, and (2) all statements in process but not yet presented to the lender for payment.

7 the following amounts are due to the persons and companies identified below for. Labor and materials actually used in the construction on the property.

NAME OF PERSON OR COMPANY	AIA REQUEST #	AMOUNT DUE
_____	_____	
_____	_____	
_____	_____	
_____	_____	
_____	_____	
_____	_____	
_____	_____	
TOTAL		

Borrower has not been reimbursed for these amounts that were paid by borrower to the persons and companies identified below for labor and materials actually used in the construction on the property.

8. The construction on the property (check one).

- HAS NOT
- HAS BEEN SUBSTANTIALLY COMPLETED.

9. This affidavit is being given in accordance with sections 2A:44-89 of the New Jersey Mechanics Lien Law.

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

Subscribed and sworn to before me  
this \_\_\_ day of \_\_\_\_\_, 2009

\_\_\_\_\_  
Notary Public, State of New Jersey

**LENDER'S ARCHITECT/ENGINEER CERTIFICATION**

I, \_\_\_\_\_, as Lender's architect/engineer, hereby certify:

- (1) That funds requested under this requisition as shown on the attached AIA form(s) represent work, in place on the project of a value equal to or greater than the amount of this requisition and has been added since the date of the last requisition
- (2) All work, has been performed in conformance with (check one):  
  
[  ] applicable building codes or [  ] authorized site plans and approved amendments thereto.

Date: \_\_\_\_\_ by: \_\_\_\_\_  
lender's engineer

City of Jersey City, Director Housing Economic  
Development and Commence

Based upon the representations made herein, payment is hereby authorized.

Date: \_\_\_\_\_ by: \_\_\_\_\_  
Darice Toon, director

**SCHEDULE D  
GENERAL TERMS AND CONDITIONS**

**1) COMPLIANCE WITH FEDERAL REGULATIONS**

The Developer agrees to comply with all applicable federal regulations governing the loan of money under which this Agreement is made available as they apply as of the date of the Agreement, and as such regulations may be amended by the Federal Government or agencies.

**2) COMPLIANCE WITH PROCUREMENT STANDARDS**

The Developer shall comply with the requirements of Attachment "0", "Procurement Standards", of OMB Circular A-I 10, "Grants and Agreements With Institutions of Higher Education, Hospitals, and Other Non-profit Organizations", specifically.

- A) Developers that are private, non-profit organizations may use their own procurement policies and procedures. However, all the standards set forth in Attachment "0" must be adhered to.
- B) The Department of Housing and Urban Development requires Developers to obtain competitive proposals for professional services whereby competitors qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. Public Notice for request for proposals must be published at least once in a newspaper of general circulation in the City.

**3) COMPLIANCE WITH UNIFORM ADMINISTRATIVE REQUIREMENTS AND COST PRINCIPALS**

The Developer shall comply with all requirements and Standards of OMB Circular No. A-122, "Cost Principal for Non-Profit Organizations" or OMB Circular No. A-21, "cost principles for Educational Institutions," as applicable, and the following attachments to OMB Circular A-I 10.

- A) Attachment "A", "Cash Depositories," except for paragraph 4 concerning deposit insurance;
- B) Attachment "B", Bonding and Insurance";
- C) Attachment "C", "Retention and Custodial Requirements for Records", except that in lieu of the provisions in paragraph 4, the retention period for records pertaining to individual CDBG activities starts from the date of submission of the annual performance and evaluation report, as prescribed in 24 CFR 570.507, in which the specific activity is reported on for the final time;
- D) Attachment "F", "Standards for Financial Management Systems";

- E) Attachment "H", "Monitoring and Reporting Program Performance," paragraph 2;
- F) Attachment "N", "Property Management Standards," except for paragraph 3 concerning the standards for real property and except that paragraphs 6 and 7 are modified so that in all cases in which personal property is sold, the proceeds shall be program income and that personal property not needed by the Developer for CDBG activities shall be transferred to the City for the CDBG program or shall be retained after compensating the City; and
- G) Attachment "O", "Procurement Standards."

**4) COMPLIANCE REGARDING AUDITS AND INSPECTIONS**

At any time during normal business hours, and as often as the City may deem necessary, there shall be made available to the City or to the Federal Government for examination, all of the Developer's records with respect to all matters covered by this Agreement. The Developer will permit the City and the Federal Government to audit, examine and make excerpts or transcripts.

Developers that receive \$25,000 or more a year in Federal financial assistance of any form shall have an audit made in accordance with the Single Audit Act of 1984 (Public Law 98-502). The Single Audit shall be conducted in the manner specified in OMB Circular A-133, "Audits of Institutions of Higher Education and Other Non-profit Institutions". The audit must be submitted to the Division of Community Development within 60 days of the end of the Developer's fiscal year.

**5) COMPLIANCE WITH TERMS OF AGREEMENT, SUSPENSION, TERMINATION**

- A) Prior to the receipt of funds, if the Developer materially fails to comply with any term or provision of this Agreement, whether stated in a federal statute or regulation, as assurance or in an application, or if the Developer breaches any term or provision of this Agreement, the City may take one or more of the following actions:
  - (i) Temporarily withhold cash payments pending correction of the deficiency by the Developer;
  - (ii) Disallow all or part of the cost of the activity or action not in compliance;
  - (iii) Wholly or in part suspend or terminate the Agreement and the subgrant for the Developer's project;
  - (iv) Take such other remedies as may be legally available to the City.

With respect to such action by the City, the Developer shall be afforded an

opportunity for such hearing or appeal to which the Developer is entitled by applicable statute or regulation.

Costs incurred by Developer during suspension or after termination are not allowable unless expressly authorized by the City in the notice of suspension or termination. However, costs resulting from obligations properly incurred by the Developer before the effective date of the suspension or termination, and not in anticipation of such action, may be allowed if they are noncancellable and would be allowable if the Agreement were not suspended or terminated.

- B) Except as provided in A) above, this Agreement may be terminated in whole or in part only in the following manner:
  - (I) by the City with the consent of the Developer. The parties shall mutually agree upon the termination conditions including the effective date and, in the case of partial termination, the portion to be terminated.
  - (ii) by the Developer or the City upon written notification to the other party setting forth the reasons and basis for such desired termination, the effective date and, in the case of a partial termination, the portion to be terminated. However, in the case of partial termination, if the City determines that the remaining portion of the program will not accomplish the purposes for which the award was made, the City may terminate the award in its entirety.
- C) It is further expressly understood and agreed that should the funding for Title I of the Housing and Community Development Act of 1974, as amended, be terminated for any reason by the Department of Housing and Urban Development, then in such event, this Agreement shall be terminated on the effective date of the termination date of the program by the Department of Housing and Urban Development, and there shall be no further liability by and between the parties hereto.
- D) Notwithstanding anything herein to the contrary, upon termination of this Agreement for any reason whatsoever, the Developer agrees to cooperate fully in accounting for funds expended in the program under the contract and agrees to file and submit all such necessary final reports and data as may be required by the City or the Department of Housing and Urban Development.

## 6) PROGRAM INCOME REQUIREMENTS

All Program Income, as defined in 24 CFR 570.500 (a) (1) & (2), earned during any period under which the Developer is assisted, shall be retained and recorded as part of the financial transactions of the grant program. Program income in the form of repayments to, or interest earned on, a revolving fund as defined in 24 CFR 570.500 (b) shall be: a) substantially disbursed from the fund before additional cash withdrawals are made from

the U.S. Treasury for the same eligible activity; or (b) returned to Jersey City in the form of program income as outlined in the scope of services for Developer.

Proceeds from the sale or other disposition of personal property shall be governed in accordance with 24 CFR 85.32.

## **7) INSURANCE REQUIREMENTS**

Projects located in special flood hazard areas are subject to the mandatory purchase of flood insurance; refer to Section 20 (herein) for the specific requirements.

## **8) COMPLIANCE WITH EQUAL EMPLOYMENT OPPORTUNITY REQUIREMENTS**

The Developer shall incorporate the requirements of paragraph (A) of this section, in all of its contracts for program work, except contracts governed by paragraph (B) of this section, and will require all of its contractors for such work to incorporate such requirements in all subcontracts for program work.

### **A) Activities and Contracts Not Subject to Executive Order 11246, as amended.**

The Developer agrees that if any activities under this Agreement are not subject to Executive Order 11246, as amended, then the Developer shall not discriminate against any employee, or applicant for employment, because of race, color, religion, sex, national origin, disability, marital or familial status. The Developer shall take affirmative action to insure that applicants for employment are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, national origin, disability, marital status or familial status. Such actions, shall include but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination, rates of pay, or other forms of compensation and selection for training and apprenticeship. The Developer shall post in conspicuous places, available to employees and applicants for employment, notices to be provided by the government setting forth the provision of this nondiscrimination clause. The Developer shall state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, disability, marital status or familial status.

### **B) In Regard to Contracts Subject to Executive Order 11246, As Amended.**

- (I)** The Developer will not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, disability, marital status or family status. The Developer will take affirmative action to insure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, national origin, disability, marital status or family status. Such actions shall include, but not be limited to, the following:

employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoffs or termination; rates of pay or other forms of compensation; and selection for training including apprenticeship. The Developer agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provision of this nondiscrimination clause.

- (ii) The Developer will, in all solicitations or advertisements for employees placed by or on behalf of the Developer state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, disability, marital status or family status.
- (iii) The Developer will send to each labor union or representative of workers with which he has a collective bargaining Agreement, or other Agreement or understanding, a notice to be provided by the contract compliance officer advising said labor union or workers representative of workers with union or workers representative of workers with which he has a collective bargaining Agreement, or other Agreement or understanding, a notice to be provided by the contract compliance officer advising said labor union or workers representative of the Developer commitment under this Section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (iv) The Developer will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations and relevant orders of the Secretary of Labor.
- (v) The Developer will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations and orders of the Secretary of Labor, issued pursuant thereto, and will permit access to all books, records and accounts by the Department and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.
- (vi) In the event of the Developer's non-compliance with the non-discrimination clauses of the Agreement, or with any of such rules, regulations, or orders, this Agreement may be canceled, terminated or suspended, in whole or in part, and the Developer may be declared ineligible for further government Agreements or federally assisted construction Agreement procedures authorized in Executive Order 11246 of September 24, 1965, or by rule, regulation or order of the Secretary of Labor, or as otherwise provided by law.
- (vii) The Developer will include the portion of the sentence immediately preceding paragraph (I) and the provisions of paragraphs (I) through (vii) in every subcontract or purchase order unless exempted by rules,

regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Developer will take such action with respect to any subcontract or purchase order as the Department may direct as a means of enforcing such provisions, including sanctions for non-compliance; provided, however, that in the event a Developer becomes involved in, or is threatened with, litigation with a contractor or vendor as a result of such direction by the Department, the Developer may request the United States to enter into such litigation to protect the interest of the United States.

**9) COPELAND “ANTI-KICKBACK” ACT**

This Developer will comply with all provisions of the Copeland “Anti-Kickback” Act (U.S.C. 874) as supplemented in Department of Labor Regulations (29 CFR Part 3). This requirement pertains to all contracts and subcontractors construction and/or repair.

**10) NON-DISCRIMINATION UNDER TITLE VI OF THE CIVIL RIGHTS ACT OF 1964, AS AMENDED**

This Developer Agreement is subject to the requirements of Title VI of the Civil Rights Act of 1964 (P.O. 88-352) and HUD regulations with respect thereto, including the regulations under 24 CFR Part 1. In regard to the sale, lease or other transfer of land acquired, cleared or improved with assistance provided under this Agreement, the Developer shall cause or require a covenant running with the land to be inserted in the deed or lease of such transfer, prohibiting discrimination upon the basis of race, color, religion, sex, national origin, disability, marital status or family status in the sale, lease or rental, or in the use of occupancy of such land, or in any improvements erected to be created thereon, providing that the City and the United States are beneficiaries of and entitled to enforce such covenants. The Developer, in undertaking its obligation to carry out the program assisted hereunder, agrees to take such measures as are necessary to enforce such covenant, and will not itself so discriminate.

**11) COMPLIANCE WITH SECTION 109 OF THE HOUSING AND COMMUNITY DEVELOPMENT ACT OF 1974, AS AMENDED**

The Developer will comply with Section 109 of the Housing and Community Development Act of 1974, and the regulations issued pursuant thereto (24 CFR 570.602), which provides that no person in the United States shall, on the ground of race, color, national origin, sex, disability or familial status be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or part with Title I funds.

**12) COMPLIANCE WITH AFFIRMATIVE ACTION**

The Developer agrees that it shall be committed to and carry out an affirmative action

program in keeping with the principles as provided in Executive Order 11246, as amended.

**13) COMPLIANCE WITH “SECTION 3” IN THE PROVISION OF TRAINING EMPLOYMENT AND BUSINESS OPPORTUNITIES.**

A) The Developer agrees that in planning, and carrying out the project described in Section 1 of Attachment “A”, to the greatest extent feasible:

(I) Training and employment opportunities will be given to low and moderate income persons residing in the municipality of Jersey City; and

(ii) Contracts for work in connection with the project will be awarded to eligible business concerns which are located in or owned in substantial part by, persons residing in Jersey City.

B) The Developer shall insert, or require the insertion of, the following clause in all contracts and subcontracts for work financed in whole or in part with assistance provided under this Agreement:

The work to be performed under this contract is on a project assisted under a program providing direct Federal financial assistance from the Department of Housing and Urban Development, and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended (12 USC 1701 U). Section 3 requests that to the greatest extent feasible opportunities for training and employment be given to lower-income residents of the project area and contracts for work in connection with the project be awarded to businesses located in, or owned in substantial part by persons residing in, the project area. The contractor agrees to make a good faith effort to fulfill these requirements, to document this effort, and to provide copies of such documentation to the City with each request for payment.

C) The Developer further agrees to provide documentation of all activities undertaken to comply with these requirements to the City with each request for payment. HUD regulations at 24 CFR Part 135 are recommended as guidance regarding expectations for compliance with Section 3.

**14) FEDERAL LABOR STANDARDS REQUIREMENTS**

The Developer agrees that, except with respect to the rehabilitation of residential property designed for residential use for less than eight (8) families, the Developer and all contractors engaged under contracts in excess of \$2,000 for the construction, completion or repair of any building or work financed in whole or in part with assistance provided under this Agreement, shall comply with HUD requirements pertaining to such contracts, and the applicable 3 and 5 and 5a governing the payment of wages and the ratio of apprentices and trainees to journeyman provided, that if wage rates higher than those

required under the regulations are imposed by State or local law, nothing hereunder is intended to relieve the Developer of its obligation, if any, to require payment of the higher rates. The Developer shall cause, or require to be inserted in full, in all such contracts subject to such regulations, provisions meeting the requirements of 29 CFR 5.5 and, for such Agreements in excess of \$10,000, 29 CFR 5a.3.

No award of the contract covered under this Section of the Agreement shall be made to any contractor who is at the time ineligible under the provisions of any applicable regulations of the Department of Labor to receive an award of such contract.

**15) COMPLIANCE HOURS AND WAGE REQUIREMENTS**

The Developer agrees to comply with the requirements of the Secretary of Labor in accordance with the Davis-Bacon Act as amended (40 U.S.C. 276A-27A-5) and to comply with the provision of Contract Work Hours and Safety Standards Act (40 U.S.C. 327-28) and all regulations issued pursuant to the above acts, and with all other applicable Federal laws and regulations pertaining to labor standards insofar as these acts apply to the performance of this Agreement.

**16) COMPLIANCE WITH SECTION 504 OF THE REHABILITATION ACT OF 1973**

No qualified individual with disabilities shall, solely on the basis of disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity that receives Federal financial assistance in accordance with Section 504 of the Rehabilitation Act of 1973 (PL 93-112).

**17) COMPLIANCE WITH AIR AND WATER ACTS**

This Agreement is subject to the requirements of the Clean Air Act, as amended, 42 U.S.C 1857 et. seq., the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et. seq. and the Regulations of the Environmental Protection Agency with respect thereto, at 40 CFR Part 15, as amended from time to time. In compliance with said regulations, the Developer shall cause or require to be inserted in full in all contracts or subcontracts with respect to any nonexempt transaction thereunder funded with assistance provided under this Agreement, the following requirements:

- A) That it will enter into a stipulation with any contractor that any facility to be utilized in the performance of any nonexempt contract or subcontract is not listed on the list of Violating Facilities issued by the Environmental Protection Agency (EPA) pursuant to 40 CFR 15:20.
- B) The Developer agrees to comply with all of the requirements of Section 114 of the Clean Air Act, as amended, (42 U.S.C. 1857 c-8) and Section 308 of the Federal Water Pollution Control Act, as amended, (33 U.S.C. 1318) relating to inspection, monitoring, entry, reports and information, as well as other requirements specified

in said Section 114 and Section 308, and all regulations and guidelines issued thereunder.

- C) The Developer will provide prompt notice to be given of any notification received from the Director, Office of the Federal Activities, EPA, indicating that a facility utilizing or to be utilized for the Agreement is under consideration to be listed on the EPA list of Violating Facilities.
- D) The Developer agrees that he will include, or cause to be included, the criteria and requirements in Paragraph A) through Paragraph D) of this section in every nonexempt subcontract, and require that the contractor will take such action as the government may direct as a means of enforcing such provisions. In no event shall any amount of the assistance under this Agreement be utilized with respect to a facility which has given rise to a conviction under Section 113 © (1) of the Clean Air Act or Section 309 © of the Federal Water Pollution Control Act.
- E) The Developer agrees to comply with all of the requirements, standards, orders of Section 306 of the Clean Air Act (42 U.S.C. 1857(h)), Section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738 and Environmental Protection Agency regulations (40 CFR Part 15). This regulation pertains to all subrecipients who receive amounts in excess of \$100,000.

**18) ENERGY POLICY AND CONSERVATION ACT**

All construction which is the subject of this Agreement shall be accomplished in conformity with mandatory standards and policies relating to energy efficiency which are contained in the State Energy Conservation Plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 95-1 63).

**19) RETAINAGE OF COPYRIGHTS/PATENTS**

The Developer agrees to include the City of Jersey City in all patent rights; copyrights and rights in data with respect to any discovery or invention which

**20) FLOOD INSURANCE PROTECTION REQUIREMENTS**

The Developer agrees to comply with the requirements of the Flood Disaster Protection Act of 1973 (P.L. 93-234). No portion of the assistance provided under this Developer Agreement is approved for acquisition or construction purposes, as defined under Section 3 (a) of said Act, for use in an area identified by the Secretary as having special flood hazards which is located in a community not then in compliance with the requirements for participation in the national flood insurance program pursuant to Section 201 (d) of said Act; and the use of any assistance provided under this Agreement for such acquisition or construction in such identified areas in communities then participating in the National Flood Insurance Program shall be subject to the mandatory purchase of flood insurance

requirements of Section 102 (d) of said Act.

Any contract or Agreement for the sale, lease, or other transfer of land acquired, cleared or improved with assistance provided under this Agreement shall contain, if such land is located in an area identified by the Secretary as having special flood hazards and in which the sale of flood insurance has been made available under the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4001 et. seq. provisions obligating the transferee and its successors or assigns to obtain and maintain, during the ownership of such land, such flood insurance as required with respect to financial assistance for acquisition or construction purposes under Section 102 (a) of the Flood Disaster Protection Act of 1973. Such provisions shall be required notwithstanding the fact that the construction on such land is not itself funded with assistance provided under this Developer Agreement.

**21) ARCHITECTURAL COMPLIANCE**

The Developer agrees to comply with the requirements of the Architectural Barriers Act of 1968, 42 U.S.C. 4151, insofar as it applies to the performance of this Developer Agreement.

**22) COMPLIANCE WITH SECTION 106 OF THE NATIONAL HISTORIC PRESERVATION ACT**

The Developer agrees that prior to approval of the expenditure of funds, it shall take into account the effect of the undertaking on any district, site, building, structure or object that is included or eligible for inclusion in/on the National Register. The City shall afford the Advisory Council and the State Historic Preservation Officer a reasonable opportunity to comment with regard to such undertaking.

No member, officer, or employee of the Developer, or its designees or agents, and no member of the governing body of the locality who exercises any functions or responsibilities with respect to the program during his tenure or for one year thereafter, shall have any interest, direct or indirect, in any contract or subcontract, resulting from this Developer Agreement. The Developer shall incorporate, or cause to incorporate, in all such contracts or subcontracts a provision prohibiting such interest pursuant to the purposes of this section.

**23) INTEREST OF MEMBERS, OFFICERS, OR EMPLOYEES OF DEVELOPER**

No member, officer, or employee of the Developer, or its designees or agents, and no member of the governing body of the locality who exercises any functions or responsibilities with respect to the program during his tenure or for one year thereafter, shall have any interest, direct or indirect, in any contract or subcontract, resulting from this Developer Agreement. The Developer shall incorporate, or cause to incorporate, in all such contracts or subcontracts a provision prohibiting such interest pursuant to the purposes of this section.

**24) INTEREST OF CERTAIN FEDERAL OFFICIALS**

No member of or delegate to the Congress of the United States of America, and no Resident Commissioner, shall be admitted to any share or part of this Developer Agreement, or to any benefit to arise from the same.

**25) PROHIBITION AGAINST PAYMENTS OF BONUS OR COMMISSION**

The assistance provided under this Developer Agreement shall not be used in the payment of any bonus or commission for the purpose of obtaining HUD approval of the application for such assistance, or HUD approval of applications for additional assistance, nor any other approval or concurrence of HUD required under this Developer Agreement, Title I of the Housing and Community Development Act of 1974 or HUD regulations with respect thereto; provided, however, that reasonable fees or bona fide technical consultant managerial or other such services, other than actual solicitation, are not hereby prohibited if otherwise eligible as program costs.

**26) HATCH ACT**

The Developer agrees that no funds provided under this Developer Agreement, nor any personnel employed in the administration of this Developer Agreement, shall be in any way or to any extent engaged in the conduct of political activities in contravention of Chapter 15, Title V, United States Code.

**27) CONSTITUTIONAL PROHIBITION**

In accordance with First Amendment Church/State Principles, as a general rule, Section 108 assistance may not be used for religious activities or provided to primarily religious entities for any activities, including secular activities. The following restrictions and limitations therefore apply to the use of Section 108 funds.

- A) Section 108 funds may not be used for the acquisition of property or the construction or rehabilitation (including historic preservation and removal of architectural barriers) of structures to be used for religious purposes or which will otherwise promote religious interests. This limitation includes the acquisition of property for ownership by primarily religious entities and the construction or rehabilitation (including historic preservation and removal of architectural barriers) of structures owned by such entities (except as permitted under paragraph 29 (B) of this section with respect to rehabilitation and under paragraph 29 (D) of this section with respect to repairs undertaken in connection with public services) regardless of the use to be made of the property or structure. Property owned by primarily religious entities may be acquired with UDAG funds at no more than fair market value for a non-religious use.
- B) Section 108 funds may be used to rehabilitate buildings owned by primarily religious entities to be used for a wholly secular purpose under the following

condition:

- (i) The building (or portion thereof) that is to be improved with the Section 108 fund assistance has been leased to an existing or newly established wholly secular entity (which may be an entity established by the religious entity);
- (ii) The Section 108 assistance is provided to the lessee (and not the lessor) to make the improvements;
- (iii) The leased premises will be used exclusively for secular purposes available to persons regardless of religion;
- (iv) The lease payments do not exceed the fair market rent of the premises as they were before the improvements are made;
- (v) The portion of the cost of any improvements that also serve a non-leased part of the building will be allocated to and paid for by the lessor;
- (vi) The lessor enters into a binding agreement that unless the lessee, or a qualified successor lessee, retains the use of the leased premises for a wholly secular purpose for at least the useful life of the improvements, the lessor will pay to the lessee an amount equal to the residual value of the improvements;
- (vii) The lessee must remit the amount received from the lessor under subparagraph (B) (vi) of this section to the recipient or subrecipient from which the Section 108 funds were derived.

The lessee can also enter into a management contract authorizing the lessor religious entity to use the building for its intended secular purpose, e.g., homeless shelter, provision of public services. In such case, the religious entity must agree in the management contract to carry out the secular purpose in a manner free from religious influences in accordance with the principles set forth in paragraph 29(c) of this section.

**SCHEDULE "E"**  
**(RECORD KEEPING)**

The Developer shall establish and maintain sufficient records to enable the City to determine whether the recipient has met the requirements of the Department of Housing and Urban Development. At a minimum, the following records are needed:

- 1) Records providing a full description of each activity assisted (or being assisted) with Section 108 funds, including its location the amount of Section 108 funds budgeted, obligated and expended for the activity, and the provision under which it is eligible.
- 2) Records demonstrating that the activity undertaken shall be as required in the national objective criteria set forth in 24 CFR Part 570.208.
- 3) Records which demonstrate that the recipient has made the determinations required as a condition of eligibility of certain activities, as prescribed 24 CFR Part 570.201 (f), 570.201 (I), 570.202 (b) (3), 570.203 (b), 570.204 (a), and 570.206 (f).
- 4) Records which demonstrate compliance with 24 CFR Part 570.505 regarding any change of use of real property acquired or improved with UDAG assistance.
- 5) Records which demonstrate compliance with the citizen participation requirements prescribed in section 104 (a) (3) of the Act, and in 24 CFR Part 570.30 1 (b).
- 6) Documentation of actions undertaken to meet the requirements of 24 CFR Part 570.607(b) which implements Section 3 of the Housing Development Act of 1968, as amended (12 U.S.C. 1701U) relative to the hiring and training of low/mod income persons and the use of local businesses.
- 7) The Federal Employer Identification Number and Data indicating the racial/ethnic character of each business with Section 108 funds, data indicating which of those entities are women's business enterprises as defined in Executive Order 12138, the amount of the contract or subcontract, and documentation of recipient's Affirmative steps to assure that minority business and women's business enterprises have an equal opportunity to obtain or complete for contracts and subcontracts as sources of supplies, equipment, construction and services. Such affirmative steps may include, but are not limited to, technical assistance open to all businesses but designed to enhance opportunities for these enterprises and special outreach efforts to inform them of contract opportunities. Such steps shall not include preferring any business in the award of any contract or subcontract solely or in part on the basis of race or gender.
- 8) Documentation of the affirmative action measures the recipient has taken to overcome prior discrimination, where the courts or HUD have found that the recipient has previously discriminated against persons on the ground of race, color,

national origin or sex in administering a program or activity funded in whole or in part with Section 108 funds.

- 9) Financial records, in accordance with the applicable requirements listed in 24 CFR Part 570.502.
- 10) Records required to be maintained in accordance with other applicable laws and regulations set forth in Subpart M of this part.
- 11) Other records required by the City to document compliance with new or modified requirements set forth in applicable laws and regulations.

### **RETENTION OF RECORDS**

Financial records, supporting documents statistical records, and all other records pertinent to this Developer Agreement shall be retained by the Developer for a period of three years from the date of its last annual performance report on the project except as follows:

- (I) Records that are the subject of any finding, concern, or issue raised by any Federal agency or the City shall be retained for at least three years after final resolution of such matters with the Federal government and the City.

## PROMISSORY NOTE

.\$8,000,000

\_\_\_\_\_,2009

For value received, the undersigned **STATUE OF LIBERTY HARBOR NORTH REDEVELOPMENT URBAN RENEWAL, LLC**, a limited liability company organized and existing under the laws of the State of New Jersey (the "Developer") promises to pay to **THE CITY OF JERSEY CITY**, a municipal corporation of the State of New Jersey (the "City"), EIGHT MILLION AND 00/100 DOLLARS (\$8,000,000.00), or such lesser principal amount as may be outstanding hereunder, at the time, in the manner and with interest at the rate or rates hereinafter provided, such amounts evidenced hereby having been advanced by the City to the Developer pursuant to the terms and conditions of a certain Loan Agreement of even date herewith by and among the City and the Developer, as amended from time to time (the "Loan Agreement"). All capitalized terms, not otherwise defined herein, shall have the same meanings ascribed to them in the Loan Agreement.

The City has obtained a Loan Guarantee from the Secretary of the United States Department of Housing and Urban Development ("HUD") pursuant to Section 108 of the Housing and Community Development Act of 1974 (P.L. 93-3 83) ("Loan Guarantee") in accordance with the terms set forth in a certain Contract for Loan Guarantee Assistance under Section 108 of the Housing and Community Development Act of 1974 as amended, 42 USC 5308 (the "HUD Contract"). The City shall issue a non-recourse Promissory Note (the "HUD Guaranteed Note") in the amount of this Note which shall be guaranteed by the Loan Guarantee. The HUD Guaranteed Notes may be sold to lending institutions or to the public through an underwritten public offering. The proceeds of the HUD Guaranteed Note are being re-lent by the City to the Developer (the "Loan") under the same terms and conditions of the Loan Agreement and the HUD Guaranteed Note. The Loan from the City to the Developers under the Loan Agreement is evidenced by and secured by, among other things, this Note, which shall be collaterally assigned, without recourse, to HUD pursuant to the terms and conditions of the HUD Contract.

To the extent the Developer is in receipt of funds prior to the date of the sale of the HUD Guaranteed Note to the underwriters in connection with the public offering (the "Public Offering") as contemplated under the HUD Contract (the "Public Offering Date"), interest on this Note, for each three month period ending February 1, May 1, August 1 and November 1 of each year (an "Interim Interest Payment Date") and for the period since the last Interim Interest Payment Date until the Public Offering Date, shall be payable on the second Business Day of the month immediately succeeding the day on which the City notifies the Developers with the total amount of interest due on this Note, which amount shall be the same amount of interest coming due under the HUD Guaranteed Note.

From and after the Public Offering Date, interest on this Note shall be due and payable on the first Business Day of each month (each an "Interest Payment Date") in an amount equal to one sixth of amount of interest to come due under the HUD Guaranteed Note(s) on the next succeeding February 1 and August 1, provided that, in the event there are fewer than six months between the Public Offering and the first of February 1 or August 1 to occur thereafter, with respect to said Interest Payment Dates, the Developers shall pay to the City the entire amount of interest coming due under the HUD Guaranteed Note on said February 1 or August 1 divided by

the number of months existing between the Public Offering and said February 1 or August 1. Interest shall be paid on the principle amount disbursed to the Recipient.

Notwithstanding anything contained herein to the contrary, prior to the Public Offering, the Developers will pay to the City interest payments hereunder such that by the tenth Business Day prior to each February 1, May 1, August 1 and November 1 of each year, the Developers shall have paid to the City sufficient money to pay the City's interest obligations coming due on the next succeeding February 1, May 1, August 1 and November 1 under the HUD Guaranteed Note(s). Notwithstanding anything contained herein to the contrary, after the Public Offering, the Developers will pay to the City interest payments hereunder such that by the first Business Day of each July and January of each year the Developers shall have paid to the City sufficient money to pay the City's interest obligations coming due on the next succeeding August 1 and February 1 under the HUD Guaranteed Note.

The Developers shall also pay all interest payment obligations of the City in connection with any prepayment, any conversion of the HUD Guaranteed Note to a fixed rate at the time of the Public Offering, any redemption of HUD Guaranteed Note, or defeasance.

The rate of interest payable under this Note shall be the same rate of interest payable under the HUD Guaranteed Note. Interest shall be calculated on the basis of a 360-day year consisting of twelve thirty-day months.

The principal amount of this Note shall be payable in annual installments on the first Business Day of July of each year, commencing on the first Business Day of July, 2014, in the amount of principal to come due on the next succeeding August 1 under the HUD Guaranteed Note(s), with a final installment due on the first Business Day of July, 2029 (the "Maturity Date"), at which time all principal, interest, penalties and fees, if any, shall be due and payable.

If any payment of principal or interest thereunder provided shall not be paid within ten (10) days from its due date, the Developers shall pay a late charge of two percent (2%) of the total principal, interest, charges and expenses overdue. In addition, if any payment of principal hereunder shall not be paid such that the interest accrues on any installment of principal and/or interest under the HUD Guaranteed Note, the Developers shall pay as such additional interest under the terms of this Note.

A default under this Note shall occur upon the occurrence and continuation of any Event of Default under the Loan Agreement. Upon the occurrence and continuation of the Event of Default the City may exercise any and all rights and remedies provided to it under the Loan Agreement, the terms and conditions of which are incorporated here by reference.

In the event and to the extent that the HUD Guaranteed Note may be prepaid, redeemed or defeased whether by the terms of the Loan Agreement, the HUD Contract or otherwise, the Developers shall be permitted to prepay, redeem and/or defease this Note.

IN WITNESS WHEREOF, the Developers have executed and delivered this Note on the date first noted above.

**STATUE OF LIBERTY  
HARBOR NORTH REDEVELOPMENT  
URBAN RENEWAL, LLC**

---

By: [Name], [Title]

Pay to the order of \_\_\_\_\_, without recourse to the undersigned.

ATTEST:

CITY OF JERSEY CITY

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

\_\_\_\_\_

## PLEDGE, ASSIGNMENT AND SECURITY AGREEMENT

THIS PLEDGE, ASSIGNMENT AND SECURITY AGREEMENT is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2009 by the **CITY OF JERSEY CITY** (the "City") in favor of the Secretary of Housing and Urban Development of the United States of America ("HUD" or "Secretary").

### RECITALS

A. The City and HUD, entered into a "CONTRACT FOR LOAN GUARANTEE ASSISTANCE UNDER SECTION 108 OF THE HOUSING AND COMMUNITY DEVELOPMENT ACT OF 1974, AS AMENDED, 42 U.S.C., SECTION 5308" ("HUD Contract"), for purposes of obtaining Guaranteed Loan Funds (as defined in the HUD Contract) to finance certain activities in connection with the Tramz Hilton Hotel Project. The Guaranteed Loan Funds are all funds received by the City under Note **B-08-MC-34-0108** in an aggregate principal amount not to exceed **\$8,000,000.00 (the "Note")**, all notes substituted as provided in the original note, and any additional notes issued for the same Project pursuant to the loan guarantee commitment dated \_\_\_\_\_.

B. The Section 108 loan guarantee funds shall be used for the following activity(ies):

Site Acquisition and a portion of the construction costs in connection with the construction of a 248,000 square foot Hilton brand luxury hotel to contain approximately 300 hotel rooms, meeting space, restaurants, retail shops and a fitness facility, as well as a 51,000 square foot attached parking garage

C. The City has pledged future Community Development Block Grant (CDBG) grants as security for the Guaranteed Loan Funds in Resolution No.07-939 adopted by the Municipal Council of the City of Jersey City on December 19, 2007 ("108 Resolution"). As "additional security" for the Guaranteed Loan Funds, the City, by this Agreement is pledging to HUD a security interest in and to amounts deposited into a designated reserve fund (the 'Reserve Fund'), in which there shall be established and maintained a balance of not less than \$1,000,000 or such lower amount as may be agreed to in writing by the Secretary.

NOW, THEREFORE, in consideration of the foregoing, the City hereby makes the following pledge to HUD:

## TERMS

### 1. Pledge, Assignment and Security Agreement.

As security for the Obligations (as further defined below) set forth in the documents evidencing the Guaranteed Loan Funds, the City hereby confirms its pledge to HUD and grants a collateral assignment to HUD of all rights, titles, and interests (but none of the obligations) of the City in and to the Reserve Fund, such pledge to be effective without the recording of the Note Resolution, the HUD Contract or any other instrument, including this Agreement, unless otherwise required by State law.

The Reserve Fund shall be hereinafter referred to as the "Collateral."

### 2. Obligations Secured.

The security interest granted hereby is to secure the payment and performance of the Note and the Note Resolution, including any and all payment and reimbursement obligations of City to HUD of every kind, nature and description now existing and hereafter arising, secured or unsecured, direct or indirect, absolute or contingent, with or without recourse, pursuant to or arising in connection with the HUD Contract executed by the City on \_\_\_\_\_ and to be executed by the Secretary, as amended or otherwise modified from time to time (the "Obligations").

### 3. Representations and Warranties.

[INTENTIONALLY OMITTED]

### 4. Other Covenants.

Until all the obligations are paid in full: The City shall furnish to HUD such information as HUD may from time to time reasonably request regarding the Collateral.

### 5. Rights and Remedies Upon Default.

Upon the occurrence of any Default (as defined in the HUD Contract), and at any time thereafter, HUD may, in addition to all other rights or remedies available to HUD, at any time and from time to time execute any instrument and do all the things necessary and proper to protect, preserve and realize upon the Collateral, and the lien established hereunder.

### 6. Exercise of Rights.

HUD shall have the right, in its sole discretion, to determine which rights, security, liens, guarantees, security interest or remedies HUD shall retain, pursue, release, subordinate, or modify or take any other action with respect thereof, without in any way modifying or affecting any of the other of them or any of its rights hereunder.

7. Waivers, Amendments, Required Notices.

No failure on the part of HUD to exercise, and no delay in exercising, any right, power or remedy hereunder, shall operate as a waiver thereof or of any default by the City hereunder, nor shall any single or partial exercise by HUD of any right, power or remedy hereunder preclude any other or future exercise thereof or the exercise of any other right, power or remedy. No amendment or modification of this Agreement nor any waiver of the City of any provision of this Agreement or consent to any departure by the City therefrom shall in any event be effective unless the same shall be in writing and signed by HUD, and then such waiver or consent shall be effective only in the specific instance and for the purpose of which given. No notice to or demand on the City in any case shall, of itself, entitle the City to any other or further notice or demand in similar or other circumstances. If notice, whether before or after any default by the City hereunder has occurred, is required by law to be given by HUD to the City the City agrees that ten (10) business days' notice given in the manner provided below shall be reasonable notice.

8. Cumulative Rights and Remedies.

This Agreement and the lien and security interest hereunder are in addition to and not in substitution for any other liens and security interest new or hereafter held by HUD and shall not operate as a merger of any contract debt or suspend the fulfillment of or affect its rights, remedies or powers in respect of any obligation or other security interest held by HUD for the fulfillment thereof. The remedies herein provided are cumulative and are not exclusive of any remedy provided by law.

9. Notices.

Any notice given hereunder shall be given in writing (including telegraphic communication) and mailed, telecommunicated or delivered by the party giving such notice to the other party at the address listed below, or as to each party, at such other address as shall be designated by such party by a notice to the other party given in accordance with the terms of this Section. All notices hereunder shall be deemed given when received or telecommunicated, addressed as aforesaid.

As to the City:           The City of Jersey City, New Jersey  
                                  Attention: Ms. Darice Toon,  
                                  Director Division of Community Development  
                                  City Hall  
                                  280 Grove Street  
                                  Jersey City, NJ 07302

As to HUD:

U.S. Department of Housing and Urban Development  
Attention: Paul Webster, Director  
Financial Management Division  
451 7<sup>th</sup> Street, SW, Room 7180  
Washington, D.C. 20410

10. Expenses.

The City agrees to pay, on demand, all of the reasonable costs and expenses of HUD, including, without limitation, all reasonable fees and disbursements of its legal counsel, reasonably incurred after a default in connection with the enforcement of this Agreement or the security interest given hereunder and the collection of the Obligations. Any such expenses shall be secured hereby and be a part of the Obligations.

11. Successors and Assigns, Governing Law, Term and Survival.

This Agreement shall inure to the benefit of and shall be binding upon each of the parties hereto and their respective successors and assigns, shall be governed by and construed in accordance with the laws of the State of New Jersey, unless inconsistent with any applicable Federal law, and shall continue in force and effect until all of the Obligations shall have been paid in full. All covenants, agreements, representations and warranties made herein by the City shall survive the execution and delivery of this Agreement and shall continue in full force and effect so long as any of the Obligations are outstanding and unpaid. If any part of this Agreement is contrary to, prohibited by or deemed invalid under applicable law or regulations, such provision shall be inapplicable and deemed omitted to the extent so contrary, prohibited or invalid, but the remainder hereof shall not be invalidated thereby and shall be given full force and effect so far as possible unless such deletion goes to the essence of this Agreement.

12. Conflict with HUD Contract.

In the event of any inconsistencies between this Agreement and the HUD Contract, the provisions of the HUD Contract shall govern.

**THE UNDERSIGNED**, as authorized official(s) of the City of Jersey City, has (have) duly executed this Pledge, Assignment and Security Agreement, which shall be effective as of the date entered on the first page hereof.

**CITY OF JERSEY CITY**

By: \_\_\_\_\_  
(Signature)

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

## PROJECT EMPLOYMENT AGREEMENT

This Project Employment Agreement is made on the \_\_ day of \_\_\_\_\_, 2009 between the **CITY OF JERSEY CITY** (the "City") and **STATUE OF LIBERTY HARBOR NORTH REDEVELOPMENT URBAN RENEWAL, LLC** collectively, (the "Recipient"). City and Recipient agree as follows:

### I. Definitions:

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

1. "City" means the Business Administrator of the City of Jersey City, or his designee, including any person or entity which enters into a contract with the City to implement, in whole or in part, this agreement.

2. "Central Applicant Registry" means a list maintained by the City or its designee of Jersey City residents seeking employment and Local Businesses, including Minority or Woman Owned Local Businesses, seeking contracts.

3. "Construction Contract" means any agreement for the erection, repair, alteration or demolition of any building, structure, bridge, roadway, or other improvement on a Project Site.

4. "Contractor" means any party performing or offering to perform a prime contract on behalf of the Recipient.

5. "Economic Incentive" means a grant or loan in excess of \$25,000 or more in the aggregate;

6. "Employment" means any job or position during the construction and operational phase of the project. It includes positions created as a result of internal promotions, terminations, or expansions within the Recipient's work force which are to be filled by new employees. However, positions filled through promotion from within the Recipient's existing work force are not covered positions under this agreement.

7. "Local Business" means a bona fide business located in Jersey City.

8. "Minority" means a person who is African, Hispanic, Asian, or American Indian defined as follows:

(a) "African-American" means a person having origins in any of the black racial groups of Africa.

(b) "Hispanic" means a person of Mexican, Puerto Rican, Cuban, Central or South American or other latino culture or origin, regardless of race, excluding, however, persons of European origin.

(c) "Asian" means a person having origins in any of the original people of the Far East, Southeast Asia, and subcontinent India, Hawaii or the Pacific Islands.

(d) "American Indian" means a person having origins in any of the original people of North America who maintains cultural identification through tribal affiliation or community recognition.

9. "Minority or Woman Owned Local Business" means a bona fide business located in Jersey City which is fifty-one (51%) percent or more owned and controlled by either a Minority or woman.

10. "Non-Traditional Jobs" means jobs which are held by less than twenty (20%) percent women, as reported by the New Jersey Department of Labor, Division of Labor Market, and Demographic Research for Jersey City, which report shall be on file with the City Clerk.

11. "Permanent Jobs" mean newly created long term salaried positions, whether permanent, temporary, part time or seasonal.

12. "Project or Project Site" means the construction of a 350,995 square foot Hilton brand luxury hotel to contain approximately 300 hotel rooms, meeting space, restaurants, retail shops and a fitness facility, as well as a 21,604 square foot attached parking garage on a parcel of real property located in the City of Jersey City, County of Hudson, State of New Jersey as more particularly described in a loan agreement of even date herewith between the City and the Recipient.

13. "Recipient" means any individual, partnership, association, organization, corporation or other entity, whether public or private, or for profit or non-profit, or agent thereof, which receives an Economic Incentive and shall include any Contractor, Subcontractor or agent of the Recipient.

14. "Subcontract" means a binding legal relationship involving performance of a contract that is part of a prime contract.

15. "Subcontractor" means a third party that is engaged by the prime Contractor to perform under a subcontract all or part of the work included in an original contract.

## **II. Purpose:**

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

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

In the event the Recipient is able to demonstrate that its work force already meets the goals set forth below or is able to meet such goals during the term of this Project Employment agreement, the Recipient will not be required to comply with the interviewing or reporting obligations set forth in Section VI 1., A-C (Permanent Jobs) and Section VI, 2., D-E (Construction Jobs).

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

2. Business Contracting: The Recipient shall make a Good Faith effort to achieve the goal of awarding twenty (20%) percent of the dollar amount of its contracts to Local Businesses, fifty-one (51%) percent of which shall be Minorities or Women Owned Local Businesses, it being understood that one contract may satisfy more than one category.

#### IV. Recipient Designee:

Recipient shall designate a principal officer of its firm to be responsible for administering the agreement detailed herein and to report to and confer with the City in order to discharge its Good Faith obligations as defined in this agreement.

#### V. Term:

This agreement shall be in effect for a period co-terminus with the effective period of the term of the Economic Incentive. Thus, it will commence on the later date the City Council adopted the ordinance approving the tax exemption or the date of the ordinance of the Council approving the Section 108 loan and terminate the earlier of 25 years thereafter or 20 years from the date of the substantial completion of the project.

#### VI. Good Faith Defined:

1. Permanent Jobs: Section 108 loan funds are provided to this project based upon the representation that 300 Permanent Jobs for the hotel operation phase of the Project (i.e. the ongoing operations of the hotel following completion of construction) will be created that will be targeted to low and moderate income residents. Determination of low and moderate income residents must be made based upon their actual preemployment income or their location living within a low income Census Tract. Good Faith shall mean compliance with all of the following conditions by the Recipient.

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

B. Advertisement: At the request of the City, or because the City does not have

qualified applicants to refer to the Recipient, the Recipient will place an advertisement for the jobs in a newspaper of general circulation in Jersey City.

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

D. Job Training: The Recipient will work with the City's Department of Economic Opportunity, or its designee to sponsor training programs for eligible Jersey City residents. This training can be provided in conjunction with the New Jersey Department of Labor or other federal, state and local training programs. Training programs should be established in sufficient time to provide residents opportunity for initial hiring qualifications.

E. Semi-Annual Reports: The Recipient will submit written semiannual employment reports to the City in the form to be provided by the City for a period of three years of initial hiring. The report will describe the job and whether the job is held by a City resident, minority resident or woman resident and pre-employment

determination as to low or moderate income household.. The report will explain in writing the reasons why any qualified applicant referred by the City (or in the event advertisement is required, any qualified person responding to the advertisement) was not hired.

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

Documentation must include complete employment application, affidavit from applicant stating address, number of members in household and pre-employment income (Form can include range of incomes).

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

H. Other Reports, Documents: In addition to the above reports, the Recipient shall furnish such reports or other documents that the City may reasonably request from time to time in order to insure compliance with this agreement.

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

2. Construction Jobs: Good Faith shall mean compliance with all of the following

conditions:

A. Preliminary Manning Report.

(a) Prior to the Commencement of Construction, the Recipient shall prepare a Preliminary Manning Report for the Project.

(b) The Preliminary Manning Report shall set forth the Recipient's best estimate of the Construction jobs to be created. The Preliminary Manning Report shall provide a breakdown of the jobs by trade and/or craft, which estimate shall not be less than 250 jobs.

(c) The Preliminary Manning Report shall be filed with the Division of Economic Development, HEDC

B. Initial Manning Report.

(a) Prior to the commencement of their work on each phase of the Project, each contractor/subcontractor shall prepare an Initial Manning Report for its work.

(b) The Initial Manning Report shall set forth the contractor/subcontractor's best estimate of its total construction work force to be used. The Initial Manning Report shall breakdown the projected construction jobs by trade and/or craft, if the contractor/sub-contractor will have employees from more than one trade or craft.

(c) The Initial Manning Report shall be filed with the Division of Economic Development, HEDC.

(d) Prior to the commencement of construction of each phase, each contractor/subcontractor shall send a written notice of the Project to each of the Trade Unions that it will be requesting workers. This notice shall set forth the anticipated date they will commence work on the project and will contain a copy of their Initial Manning Report.

C. Preparation of Bidders Lists.

(a) In the preparation of its qualified Bidders Lists for the various components of the Project, Recipient shall contact the City Division of Equal Opportunity, Central Registry, for a listing of Jersey City Contractors qualified in the various trades/crafts to be used on the Project.

(b) Recipient will investigate the contractors provided by the City and shall include on its Bidders Lists, and shall submit bid packages to, all such qualified entities.

D. Bid Package.

In addition to a clear statement of the requirements for a successful bid, all bid

packages shall contain a copy of this Project Employment Agreement and a clear statement that each successful contractor and/or subcontractor shall be obligated to make a good faith effort to achieve the Purpose and Goals as set forth in this Project Employment Agreement.

E. Successful Bidder.

(a) Upon award of a contract, the successful bidder shall submit a notice to the appropriate Union that will be providing the required manpower. The notice shall set forth that the entity has been awarded a contract on the Project, set forth the commencement date of the work and provide an estimate of its manpower needs for the Project.

(b) The successful bidder shall endeavor to provide the Union with as much pre-notice as is practicable of its specific manpower needs as the Project progresses.

(c) Jersey City shall monitor the activities of its contractors/subcontractors to insure that a good faith effort is being made to achieve the Purpose and Goals of the Agreement.

(d) If the successful bidder is not a Local Business, as defined in this Project Employment Agreement, Recipient shall encourage said bidder to subcontract portions of its work and/or to purchase its supplies and materials from Local Businesses.

F. Monthly Manning Report.

Each successful bidder shall be required to prepare and submit a Monthly Manning Report for its work on the Project. The Report shall set forth the total work hours of each trade or craft and the number of hours worked by Jersey City residents. It shall include a list of minority resident and women resident workers. The successful bidder shall be required to maintain records supporting its Monthly Manning Reports.

G. Monthly Certified Payroll Report.

Each contractor/sub-contractor shall be required to prepare and submit a Monthly Payroll Report for its work force on the Project. The Report shall set forth the residency, gender and ethnic/racial origin of each employee.

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

I. Records Access: The Recipient will provide the City with reasonable access to all records and files reasonably necessary to confirm the accuracy of the information provided in the reports.

J. Work Sites Place Access:

(a) The City will physically monitor the work sites subject to this Project Employment agreement to verify the accuracy of the monthly reports. Each work site will be physically monitored approximately once a week, and more frequently if deemed reasonably necessary by the City. The City's findings shall be recorded in a "Site Visit Report", in a form prescribed by the City.

(b) The Recipient shall require the Contractor and Subcontractor to cooperate with the City's site monitoring activities and inform the City as to the dates they are working at the Project site. In the case of projects with multiple locations, the Recipient shall inform the City of the dates they are working at each site location(s) where they are working, in order to facilitate the monitoring.

3. Business Contracting: Good Faith shall mean compliance with all of the following conditions by the Recipient:

(a) Pre-Contracting Notification: At least fourteen (14) days prior to the award of any contract related to the operation of the Hotel, the Recipient will provide the City with written notice requesting a list of businesses providing the type of services, goods or materials required.

(b) Solicitation of Businesses: The Recipient will contact the Business Cooperative and accepts bids from the qualified businesses.

(c) Semi-Annual Reports: The Recipient will submit written semi-annual reports in a form to be provided by the City which will include a list of all contracts awarded over the six month, the dollar amounts of the contracts and which will specify the number and dollar amount of contracts awarded to Local Businesses and Minority or Women Owned Local Businesses.

#### VII. Notices of Violation:

1. Alert Notice: The City will issue a written Alert Notice to the Recipient if there is non-compliance with a Good Faith requirement as defined in this Project Employment agreement. The Alert Notice shall explain in sufficient detail the basis of the alleged violation. The Recipient shall have thirty (30) working days to correct the violation.

2. Violation Notice: If the alleged violation set forth in the Alert Notice has not been corrected to the satisfaction of the City within thirty (30) working days, the City shall then issue a Violation Notice to the Recipient. The Violation Notice shall explain in sufficient detail the basis of the alleged, continuing violation. The Recipient will have twenty (20) working days to correct the violation.

3. Correcting the Violation: Either or both the Alert Notice or the Violation Notice may be considered corrected if the Recipient satisfies the requirements of this Project Employment agreement and so advises the City in writing, subject to confirmation by the City.

4. Extension of Time to Correction: Either the Alert Notice or the Violation Notice may be held in abeyance and the time for correction extended if the Recipient enters into satisfactory written agreement with the City for corrective action which is designed to achieve compliance. If Recipient fails to abide by the terms of such agreement the violation will be considered not corrected.

5. Meetings Concerning Violations: The City may provide an opportunity for a meeting with the Recipient, his Contractors or Subcontractors in an effort to achieve compliance; or may respond to Recipient's request for a meeting after the Recipient has made timely submission of a written explanation pursuant to the above. The meeting shall be requested no later than two days after the alleged violator has submitted the written explanation.

6. Interviews Relating to Violations: The City may conduct interviews and may request additional information from appropriate parties as is considered necessary to determine whether the alleged violation has occurred.

7. Determination of Violation: The City shall issue a determination of whether the Recipient is in violation of this agreement as soon as possible but not later than thirty days after the delivery of the Violation Notice to the Recipient. If the City determines that the Recipient is in violation, the City shall be entitled to the liquidated damages provided below.

#### **VIII. Damages:**

While reserving any other remedies the City may have at law or equity for a material breach of the above terms and conditions, the parties agree that damages for violations of this agreement by the Recipient cannot be calculated within any reasonable degree of mathematical certainty. Therefore, the parties agree that upon the occurrence of a material breach of any of the above terms and conditions and after notice and expiration of any period to correct the violation, the City will be entitled to liquidated damages from the Recipient in the amount of \$1,000 for each month the violation continues.

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

The Recipient shall require all tenants or sub-tenants of commercial space if any, within the Project Site to comply with hiring requirements for permanent jobs during the first three years of occupancy.

#### **XI. Exhibits:**

The following Exhibits shall be incorporated into this Agreement as if set forth at length herein:

1. Initial Project Manning Report - Construction; Instructions for completing Initial Project Manning Report - Construction;
2. Monthly Project Manning Report - Construction; Instructions for completing Monthly Project Manning Report - Construction;
3. Form of Contractor's Certified Payroll;
4. Form of Permanent Employee's Income Affidavit
5. Form of Section 108 report form

**XII. Notices:**

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

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

[INSERT]

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

Business Administrator  
City of Jersey City, City Hall  
280 Grove Street  
Jersey City, New Jersey 07302

with a separate copy to the Mayor;

unless prior to giving of such notice, the City or the Recipient shall have notified the other in writing.

**XIII. Adoption, Approval, Modification:**

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

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

**CITY OF JERSEY CITY**

BY: \_\_\_\_\_

**STATUE OF LIBERTY HARBOR  
NORTH REDEVELOPMENT URBAN  
RENEWAL, LLC**

BY: \_\_\_\_\_

## TRI-PARTY AGREEMENT

TRI-PARTY AGREEMENT, dated as of June \_\_, 2009 (this "**Agreement**"), between STATUE OF LIBERTY HARBOR NORTH REDEVELOPMENT URBAN RENEWAL, LLC, a New Jersey limited liability company ("**Borrower**"), having an address at 776 Mountain Boulevard, Watchung, New Jersey 07069, THE CITY OF JERSEY CITY, a municipal corporation of the State of New Jersey (together with its successors and assigns, hereinafter referred to as "**Subordinate Lender**"), having an address at City Hall, 280 Grove Street, Jersey City, New Jersey 07032 and ENVIROFINANCE GROUP, LLC, a Delaware limited liability company (together with its affiliates, successors and assigns, hereinafter referred to as "**Senior Lender**"), with offices at 520 Capitol Mall, Suite 200, Sacramento, California 95814.

### WITNESSETH:

WHEREAS, Borrower and Senior Lender are each a party to that certain Senior Secured Loan and Security Agreement, dated as of June 26, 2008 (as amended, the "Senior Loan Agreement"), pursuant to which Lender made a loan (the "Senior Loan") to Borrower in the principal amount of up to Twenty Seven Million Five Hundred Thousand Dollars (\$27,500,000);

WHEREAS, Borrower and Subordinate Lender are each a party to that certain Loan Agreement, dated as of June [ ], 2009 (the "Subordinate Loan Agreement"), pursuant to which Lender made a loan (the "Subordinate Loan") to Borrower in the principal amount of up to Eight Million Dollars (\$8,000,000) which is secured by a Mortgage and Security Agreement dated June [ ], 2009 (the "Mortgage");

NOW, THEREFORE, in consideration of the mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Senior Lender, Subordinate Lender and Borrower hereby agree as follows:

1. Amendment of the Subordinate Loan. Borrower and Subordinate Lender hereby agree that the Subordinate Loan Agreement and the Mortgage shall not be modified or amended without the consent of the Senior Lender.
2. Amendment of the Senior Loan. Borrower and Senior Lender hereby agree that written notice shall be provided to the Subordinate Lender prior to any amendment or modification to the Loan Agreement and the Mortgage by and between the Borrower and the Senior Lender.
3. Governing Law. THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW JERSEY.
4. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall constitute an original, but all of which shall constitute one original.

5. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties and their respective heirs, legal representatives, successors and assigns.

IN WITNESS WHEREOF, the undersigned have caused this Agreement to be duly executed by their duly authorized representatives, all as of the day and year first above written.

**BORROWER:**

STATUE OF LIBERTY HARBOR NORTH  
REDEVELOPMENT URBAN RENEWAL, L.L.C.,  
a New Jersey limited liability company

By: \_\_\_\_\_  
Tarranumn Murad  
its Manager

**SENIOR LENDER:**

ENVIROFINANCE GROUP, LLC,  
a Delaware limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**SUBORDINATE LENDER**

CITY OF JERSEY CITY

BY: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

## BEDI SUBGRANT AGREEMENT

This BEDI Subgrant Agreement (this "Agreement") is made and entered into on this \_\_\_\_ day of \_\_\_\_\_, 2009 by and between the **CITY OF JERSEY CITY** (the "City"), and **STATUE OF LIBERTY HARBOR NORTH REDEVELOPMENT URBAN RENEWAL, LLC**, a limited liability company organized and existing under the laws of the State of New Jersey (the "Recipient").

1. **Background Purpose.** Simultaneously herewith the Secretary of Housing and Urban Development, acting by and through the Assistant Secretary for Community Planning and Development ("HUD") entered into a certain BEDI Grant Agreement as authorized by section 108(q) of the Housing and Community Development Act of 1974, as amended by section 232(a) of the Multifamily Housing Property Disposition Reform Act of 1994, codified at 42 U.S.C. 5308(q) (collectively, "the Act"). Pursuant to the Act, on January 18, 2007 at 72 FR 2396 and on September 24, 2007 at 72 FR 54324 and on November 2, 2007 at 72 FR 62252, HUD published a Notice of Funding Availability and Program Guidelines for the Brownfields Economic Development Initiative (the "NOFA"), which set forth the terms and conditions under which units of general local government could apply for and receive grants under section 108(q) of the Act ("BEDI Grants") and related section 108 loan guarantees from HUD for Brownfields Economic Development Projects ("BEDI Projects"), as defined in the NOFA.. Pursuant to the NOFA, the City has applied for, and HUD has approved, a BEDI Grant for the City. The City has agreed to regrant the BEDI Grant from the City to the Recipient (said BEDI Grant from HUD to the City and regranting of the same to the Recipient shall herein be referred to as the "BEDI Grant") in addition to the City's \$8 million loan to the Recipient (the "Section 108 Loan"), for which the City has received a Loan Guarantee from HUD pursuant to Section 108 of the Act (the "Section 108 Loan Guarantee"), which Section 108 Loan is being extended by the City to the Recipient pursuant to the terms and conditions of a certain Loan Agreement of even date herewith between the City and the Recipient (the "Loan Agreement"). The purpose of this Agreement is to set forth the terms and conditions under which the City will provide BEDI Grant funds to the Recipient in connection with the Approved BEDI Project described in the City's Approved Application, as further defined herein. The terms and conditions of the related Section 108 Loan, are, or will be, set forth in the Loan Agreement and other Loan Documents (as defined in the Loan Agreement).

2. Approved Grant Amount, Projects, and Uses of Funds.

a. By execution of this Agreement, the City agrees, subject to the terms of this Agreement, to provide the BEDI Grant funds in the amount of \$1,900,000.

b. The BEDI Grant is approved for the following Approved BEDI Project described in the Approved Application ("Approved Project"):

Development of a 350,995 square foot Hilton Brand Luxury Hotel containing approximately 300 rooms, meeting space, restaurants, retails shops, and a fitness facility, along with an attached 21,604 square foot parking garage.

c. The BEDI Grant funds shall be used in connection with the Approved Project for the following specifically Approved Uses ("Approved Uses"):

One Million Four Hundred Thousand Dollars (\$1,400,000.00) shall be used for remediation and site preparation and the remaining Five Hundred Thousand Dollars (\$500,000.00) shall be used towards infrastructure improvements

3. Relationship to Section 108 Loan Guarantee Application.

The BEDI Grant is based upon and contingent on the City receiving the Section 108 Loan Guarantee, which is also for the Approved Project, in an amount not less than \$8,000,000. The BEDI Grant fund may be disbursed by the City in a ratio not to exceed \$1.00 of BEDI Grant funds to \$4.00 of Section 108 loan proceeds disbursed for approved activities.

4. Regulations: Approved Application. This Agreement will be governed and controlled by the following, in effect as of the date of notification to the City of the award of the BEDI Grant pursuant to the HUD Grant Agreement: the Act, the NOFA, and HUD regulations codified at 24 CFR Part 570 or incorporated therein (provisions for use of CDBG funds, to the extent applicable) (hereafter collectively referred to as the "Regulations"). The City's application submissions, including the certifications and assurances and any documentation required to meet any grant award conditions, and including any amendments made in accordance with the HUD Grant Agreement, are hereby incorporated in this Agreement (herein referred to as the "Approved Application"). Unless the context otherwise requires, a reference to "this Agreement" herein shall be deemed to include the Act, the Regulations, and the Approved Application.

5. Performance Agreement of Recipient. By execution of this Agreement, Recipient agrees to carry out the Approved Project on a timely basis and otherwise in compliance with this Agreement (including the Act, the NOFA, the Regulations, and the Approved Application, except as otherwise specifically provided in this Agreement), the Loan Agreement and the Loan Documents.

6. Release, Deposit, and Timing of Expenditure of Grant Funds and Program Income.

a. The Recipient agrees to comply with environmental review procedures under 24 CFR § 570.200 (a) (4) and 24 CFR Part 58 in order to obtain releases of grant funds under this Agreement.

b. Notwithstanding any other provision of the Regulations or this Agreement, the Recipient will not be entitled to advances under the BEDI Grant under this Agreement until after execution on behalf of HUD of the Section 108 Loan Guarantee and the Contract for Loan Guarantee Assistance for the applicable Approved Project described in paragraph 2 of this Agreement. All proceeds of the BEDI Grant shall be disbursed by the City pursuant to Section IX of the Loan Agreement.

c. The BEDI Grant must be entirely withdrawn and expended for Approved Uses for the applicable Approved Project on or before January 31, 2011.

d. All program income from the BEDI Grant is deemed to be program income of the Approved Project, which is jointly financed by the Section 108 Loan. The Recipient agrees that all such program income constitutes security for the repayment of the Section 108 Guarantee, and shall be initially deposited in, the Loan Repayment Account established by the City, under paragraph 6 of the Contract for Loan Guarantee Assistance for the

Section 108 Guarantee, and shall be disbursed for the purposes and within the time period specified in said paragraph 6 of such Contract. Upon full and complete repayment of the Section 108 Guarantee, all such program income shall be used in accordance with 24 § CFR 570.504.

7. Pre-Award Costs. Notwithstanding any other provision of the Regulations, the BEDI Grant funds provided hereunder may be used to pay for costs incurred on or after the date of HUD execution of the Funding Approval committing funds for the applicable Approved Project under the Section 108 Guarantee, provided such costs otherwise comply with this Agreement. However, use of the BEDI Grant funds to actually pay for such costs is subject to paragraph 6 of this Agreement.

8. Amendment; Record-Keeping. a. This Agreement may be amended only with the prior written approval of the City.

b. The Recipient shall at all times maintain an up-to-date copy of all documentation with respect to the BEDI Grant, and all drawdowns, deposits, and expenditures of grant funds and, program income under this Agreement, in its files and available for audit or inspection by duly authorized representatives of the City, HUD or the Comptroller General of the United States.

9. Default; Remedies. a. A default under this Agreement shall consist of any use of grant funds other than as authorized by this Agreement, any other noncompliance with this Agreement, the Loan Agreement, the Loan Documents or any other document delivered in connection herewith deemed material by the City or HUD, or any misrepresentation or omission in the application submissions which, if known to the City or HUD, would have resulted in this grant not being provided. If the City or HUD determines that the Recipient is in default, the City or HUD will give the Recipient written notice of this determination and the corrective or remedial actions proposed by the City or HUD to cure the default or mitigate its effects, to the extent possible, and to prevent a continuation or recurrence of the default (the "initial notice of default"). No delay or omission by the City or HUD in exercising any right or remedy under this Agreement shall impair the City's or HUD's ability to exercise such right or remedy or constitute a waiver of, or acquiescence in, any default hereunder.

b. Upon the occurrence of a default under this Agreement, the City may, at its option, do any of the following in any order at any time and in any combination:

(1) Elect to have all monies advanced with respect to the BEDI Grant from the City to the Recipient be converted into a loan, (the "Loan") which loan shall bear interest at the Default Rate, as defined in the Loan Agreement, and which Loan shall be due and payable in full upon demand by the City, without present, protest or other notice of any kind, all of which is hereby expressly waived; and

(2) Exercise any and all rights available to the City under that certain Guaranty of even date herewith by TRAMZ HOTEL GROUP, LLC in favor of the City; and

(3) Exercise any and all rights and remedies available to a secured party under the New Jersey Uniform Commercial Code and in effect from time to time; and

(4) Institute a collection action directly against any Recipient either without acceleration for the balance of the Loan then past due or, following acceleration, for the Loan; and

(5) Hold, apply, freeze or set-off on account of the Loan, funds of any Recipient on deposit in an account maintained by, with or on behalf of the City in any account, fund or certificate for the benefit of any Recipient or with respect to the Project, any indebtedness that the City may owe to any Recipient or any other tangible or intangible property owned by any Recipient that may be in the possession or under the control of the City; and

(6) Exercise any other rights and remedies available under this Agreement, or any other agreement, document or instrument delivered in connection herewith or therewith or that are available at law or in equity; and

(7) Stop making advances under the BEDI Grant; and

(8) In addition to the above remedies, each Recipient acknowledges that in the event the Recipient commits a breach or threatens to commit a breach of this Agreement or refuses to perform any condition provided for herein or in any other loan document delivered in connection herewith, such breach, threatened breach or refusal to perform will cause irreparable injury to the City and that money damages will not provide an adequate remedy therefor and for this reason, and to accomplish the purposes and objectives of this Agreement, the Recipient agrees that the City shall have the right and remedy, without posting bond or other security, to have the provisions of this Agreement specifically enforced by any court having competent jurisdiction; and

(9) No remedy herein conferred or reserved to the City is intended to be exclusive of any other available remedy, but each and every remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or any other agreement, document or instrument delivered in connection herewith or existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default hereunder shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient.

10. Close-out. Except as may be otherwise specifically provided, closeout of the BEDI Grant shall be subject to 24 CFR 570.509, or such close-out instructions as may hereafter be issued by HUD specifically for BEDI Grants.

11. Notices. All notifications to the Recipient and the City under this Agreement shall be sent and deemed received in accordance with the Loan Agreement.

12. Successors and Assigns. All of the terms and provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective legal representatives, heirs, successors and assigns.

13. Special Condition(s).

In addition to the obligations hereinbefore set forth, the Recipient agrees to comply with, and that the disbursement of the BEDI Grant shall be subject to, the same conditions and requirements described in that certain Loan Agreement of even date herewith between the City and the Recipient executed and delivered in connection with the Section 108 Loan.

14. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall constitute one and the same instrument.

This Agreement is hereby executed on behalf of the parties as follows:

**CITY OF JERSEY CITY**

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

**STATUE OF LIBERTY HARBOR  
NORTH REDEVELOPMENT URBAN  
RENEWAL, LLC**

BY: \_\_\_\_\_

City Clerk File No. Ord. 10-023

Agenda No. 3.J 1st Reading

Agenda No. \_\_\_\_\_ 2nd Reading & Final Passage



# ORDINANCE OF JERSEY CITY, N.J.

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

CITY ORDINANCE 10-023

**TITLE:**

**ORDINANCE APPROVING A 30 YEAR TAX EXEMPTION FOR A LOW INCOME AFFORDABLE AND MARKET RATE HOUSING PROJECT TO BE CONSTRUCTED BY THE SUMMIT AVENUE CENTER FOR OPPORTUNITY, LLC, A QUALIFIED HOUSING SPONSOR UNDER THE NEW JERSEY MORTGAGE HOUSING FINANCE AGENCY LAW N.J.S.A. 55:14K-1 ET SEQ.**

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

**WHEREAS**, Summit Avenue Center for Opportunity, LLC, is a qualified housing sponsor under the New Jersey Mortgage Housing Finance Agency Law N.J.S.A. 55:14K-1 et seq.; and

**WHEREAS**, Summit Avenue Center for Opportunity, LLC, is the contract purchaser and will become the owner no later than July, 2010, of certain property known as: Block 1917, Lots 8E, 8C, 9A, 10A & 11A (to be known as Lot 19), on City's Tax map and more commonly known by the street address of 136 and 140-142 Summit Avenue and 55 Clifton Place (to be known as 145 Fairmount Avenue), Jersey City, New Jersey [Property]; and

**WHEREAS**, Summit Avenue Center for Opportunity, LLC, proposes to construct a housing project to be regulated and financed pursuant to the provisions of the New Jersey Housing and Mortgage Finance Agency Law, N.J.S.A. 55:14K-1 et seq. on the Property; and

**WHEREAS**, on January 26, 2010, Summit Avenue Center for Opportunity, LLC, applied for a 30 year tax exemption to construct certain improvements on the Property to create a total of 60 units of rental housing, [2 units of rental market rate housing, and 58 units of moderate income rental housing units]; and 2,140 square feet of retail space with a 42 car parking garage; and

**WHEREAS**, Summit Avenue Center for Opportunity, LLC, has agreed to pay a service charge of 6.28%, estimated to be \$33,537 or approximately \$550 per unit for years 1-15, and 15%, estimated to be \$124,800 for years 16-30; and to provide employment and other economic opportunities for City residents and businesses in accordance with a Project Employment Agreement; and

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

1. The City will apply to receive credit for creating 58 units of low or moderate income family rental housing against the units needed within the City of Jersey City as determined by the New Jersey Council on Affordable Housing;
2. There is an especially compelling need for decent safe and affordable housing for low or moderate income families, especially for senior citizens who are currently paying over 30% of their income for housing; and
3. The construction of the improvements will generate 3 permanent jobs and 100 construction jobs, stabilize the neighborhood and should generate additional tax revenue; and

**WHEREAS**, the City hereby determines that the tax exemption is necessary to insure the success of the project for the following reasons:

**ORDINANCE APPROVING A 30 YEAR TAX EXEMPTION FOR A LOW INCOME AFFORDABLE AND MARKET RATE HOUSING PROJECT TO BE CONSTRUCTED BY THE SUMMIT AVENUE CENTER FOR OPPORTUNITY, LLC, A QUALIFIED HOUSING SPONSOR UNDER THE NEW JERSEY MORTGAGE HOUSING FINANCE AGENCY LAW N.J.S.A. 55:14K-1 ET SEQ.**

1. The reduced tax payments allow the owner to stable its operating budget, allowing a high level of maintenance to the building over the life of the project;
2. The reduction in taxes makes the Project attractive to investors of low income housing tax credits and makes the project eligible for financing from the New Jersey Housing and Mortgage Finance Agency, needed to fund the Project; and
3. The reduced tax payments will allow the owner to maintain the low and moderate income units at the lowest rents possible within the income guidelines; and

**WHEREAS**, the Mayor recommends this application, based upon the approval of the Tax Abatement Committee, which met on February 3, 2010.

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

1. The application of Summit Avenue Center for Opportunity, LLC, a qualified housing sponsor under the New Jersey Mortgage Housing Finance Agency Law N.J.S.A. 55:14K-1 et seq.; for a tax exemption is hereby approved subject to the following terms and conditions:

- (a) Term: 30 years;
- (b) Service Charge: 6.28% of Annual Gross Revenue, estimated to be \$33,537 for years 1-15; and 15% of Annual Gross Revenue, estimated to be \$124,800 for years 16-30;
- (c) Project: 60 units of rental housing, [2 units of market rate housing, and 58 units of low or moderate income rental housing units]; and 2,140 square feet of retail space with a 42 car parking garage; and
- (d) Property: Block 1917, Lots 8E, 8C, 9A, 10A & 11A (to be known as Lot 19), more commonly known by the street address of 136 and 140-142 Summit Avenue and 55 Clifton Place (to be known as 145 Fairmount Avenue), Jersey City, New Jersey.

2. The Mayor or Business Administrator is authorized to execute a tax exemption Financial Agreement, which includes a Project Employment Agreement in substantially the form on file in the Office of the City Clerk, subject to such modification as the Business Administrator and Corporation Counsel deems appropriate or necessary.

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

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

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

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

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

*JM/he*  
2/4/10

APPROVED AS TO LEGAL FORM

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

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

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

Certification Required

Not Required

Rev. 1-28-10  
HMFA  
N.J.S.A. 55:14K-1 et seq.

Re: Block 1917, Lots 8E, 8C, 9A, 10A & 11A  
Summit and Fairmount Redevelopment Plan Area

**PREAMBLE**

**THIS FINANCIAL AGREEMENT**, [Agreement] made this \_\_\_\_ day of \_\_\_\_\_, 2010, by and between **SUMMIT AVENUE CENTER FOR OPPORTUNITY, LLC**, is a qualified housing sponsor under the New Jersey Mortgage Housing Finance Agency N.J.S.A. 55:14K-1 et seq., having its principal office c/o The Doe Fund, Inc., 345 East 102<sup>nd</sup> Street – 3<sup>rd</sup> Floor, New York, NY 10029, and the **CITY OF JERSEY CITY**, a Municipal Corporation in the County of Hudson and the State of New Jersey, [City], having its principal office at 280 Grove Street, Jersey City, New Jersey 07302.

**RECITALS**

**WITNESSETH:**

**WHEREAS**, by deed dated July, 2010, the Entity is the Owner of certain property designated as Block 1917, Lots 8E, 8C, 9A, 10A & 11A (to be known as Lot 19), more commonly known by the street address of 136 and 140-142 Summit Avenue and 55 Clifton Place (to be known as 145 Fairmount Avenue), Jersey City, NJ, and more particularly described by the metes and bounds description set forth as Exhibit 1 to this Agreement; and

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

**WHEREAS**, the Entity plans to construct certain improvements on the Property to create a total of 60 units of rental housing, [2 units of rental market rate housing, and 58 units of moderate income rental housing units]2,140 sq. ft. of retail space and a 42 car parking garage [Project]; and

**WHEREAS**, on \_\_\_\_\_, 2010, the Entity's Application for a tax exemption for the Project was approved by the City by the adoption of Ordinance \_\_\_\_\_; and

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

follows:

## ARTICLE I - GENERAL PROVISIONS

### **Section 1.1 Governing Law**

This Agreement shall be governed by the provisions of the New Jersey Housing and Mortgage Finance Agency Law, N.J.S.A. 55:14K-1 et seq., Executive Order of E.O. 02-003, and Ordinance \_\_\_\_\_, which authorized the execution of this Agreement. It being expressly understood and agreed that the City expressly relies upon the facts, data, and representations contained in the Application, attached hereto as Exhibit 3, in granting this tax exemption.

### **Section 1.2 General Definitions**

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

- i. Agency- The New Jersey Housing and Mortgage Finance Agency.
- ii. Annual Gross Revenue- The total gross income, including any and all revenue derived from or generated by the Project of whatever kind or amount, whether received as rent from any tenants or income or fees from third parties, including but not limited to fees or income paid or received for parking, laundry, or other services, including any Section 8 certificate revenue derived from the Project, including all rent and other income, with an allowable vacancy rate of up to 5%. It also includes the cost of insurance, gas, electricity, water and sewer charges, other utilities, garbage removal and insurance charges even if paid for directly by the Tenant, if such expense is ordinarily paid for by the Landlord.
- iii. Annual Service Charge -Estimated Service Charge: \$1,006,110 over the 30 year term of the tax exemption, calculated as follows:
  - (1) Years 1 through 15, a total of \$33,537 each year, based upon:
    - A) 6.28% of annual gross revenue;
  - (2) Years 16-30, a total of \$124,800 each year, based upon: A) 15% of annual gross revenue.
- iv. Auditor's Report - A complete financial statement outlining the

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

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

vi. Default - Shall be a breach of or the failure of the Entity to perform any obligation imposed upon the Entity by the terms of this Agreement, or under the Law, beyond any applicable grace or cure periods.

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

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

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

x. Land Taxes - The amount of taxes assessed on the value of land, on which the project is located and, if applicable, taxes on any pre-existing improvements.

Land Taxes are not exempt; however, Land Taxes are applied as a credit against the Annual Service Charge.

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

xii. Law - Law shall refer to the New Jersey Housing and Mortgage Finance Agency Law, N.J.S.A. 55:14K-1 et seq.; Executive Order 02-003, relating to long term tax exemption, as it may be amended and supplemented; Ordinance \_\_\_\_\_ which authorized the execution of this Agreement; and Ordinance 07-123, as may be amended or supplemented from time to time, which requires the execution of a Project Labor Agreement, and all other relevant Federal, State or City statutes, ordinances, resolutions, rules and/or regulations.

xiii. Minimum Annual Service Charge - The Minimum Annual Service Charge shall be the amount of the total taxes that would have been levied against all real property in the area covered by the Project in the last full tax year preceding the recording of the HMFA mortgage which amount the parties agree is approximately \$23,589. The Minimum Annual Service Charge shall be paid in each year in which the Annual Service Charge, calculated pursuant to the Financial Agreement would be less than the Minimum Annual Service Charge.

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

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

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

## **ARTICLE II - APPROVAL**

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

The City hereby grants its approval for a tax exemption for all the Improvements to be constructed and maintained in accordance with the terms and conditions of this Agreement and the provisions of the Law which Improvements shall be constructed on certain property known on the Official Tax Assessor's Map of the City as: Block 1917, Lots 8E, 8C, 9A, 10A & 11A (to be known as Lot 19), more commonly known by the street address of 136 and 140-142 Summit Avenue and 55 Clifton Place (to be known as 145 Fairmount Avenue), Jersey City, NJ, and described by metes and bounds in Exhibit 1 attached hereto.

**Section 2.2 Approval of Entity**

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

**Section 2.3 Improvements to be Constructed**

Entity represents that it will construct certain improvements on the Property to create a total of 60 units of rental housing, [2 units of rental market rate housing, and 58 units of moderate income rental housing units] 2,140 sq. ft. of retail space and 42 car parking garage, all of which is more specifically described in the Application attached hereto as Exhibit 3.

**Section 2.4 Construction Schedule**

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

**Section 2.5 Ownership, Management and Control**

The Entity represents that it is the owner of the property upon which the Project is to be constructed. Upon construction, the Entity represents that the Improvements will be managed and controlled as follows:

The Entity's affiliate, the Doe Fund, Inc., shall manage the improvements.

**Section 2.6 Financial Plan**

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

**Section 2.7 Statement of Rental Schedules and Lease Terms**

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

**ARTICLE III - DURATION OF AGREEMENT**

**Section 3.1 Term**

So long as there is compliance with the Law and this Agreement, it is understood and agreed by the parties hereto that this Agreement shall remain in effect for the earlier of: thirty three (35) years from the date of the adoption of Ordinance \_\_\_\_\_ which approved this exemption or thirty (30) years from the date of the recording of the HMFA mortgage as funded and approved by the Agency. The tax exemption shall only be effective only while the Project is owned by an entity formed and operating as a housing sponsor under the Law and subject to an HMFA mortgage. Thereafter, the tax exemption shall expire and the land and improvements thereon shall be assessed and taxed according to the general law applicable to other non-exempt property in the City.

**ARTICLE IV - ANNUAL SERVICE CHARGE**

**Section 4.1 Annual Service Charge**

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

A Minimum Annual Service Charge shall be due beginning on the date this

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

#### **Section 4.2 Administrative Fee**

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

#### **Section 4.3 Land Tax Credit**

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

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

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

the amount unpaid shall bear the highest rate of interest permitted in the case of unpaid taxes or tax liens on the land until paid.

**Section 4.5 Material Conditions**

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

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

**Section 5.1 Project Employment Agreement**

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

**ARTICLE VI - CERTIFICATE OF OCCUPANCY**

**Section 6.1 Certificate of Occupancy**

It is understood and agreed that it shall be the obligation of the Entity to obtain all Certificates of Occupancy in a timely manner. The failure to secure the Certificates of Occupancy shall subject the property to full taxation.

**Section 6.2 Filing of Certificate of Occupancy**

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

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

**Section 6.3 Construction Permits**

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

**ARTICLE VII - ANNUAL REPORTS**

**Section 7.1 Accounting System**

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

### **Section 7.2 Periodic Reports**

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

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

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

### **Section 7.3 Mortgage**

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

**Section 7.4 Inspection/Audit**

The Entity shall permit the inspection of its property, equipment, buildings and other facilities of the Project and, if deemed appropriate or necessary, any other related Entity by representatives duly authorized by the City and the NJ Division of Local Government Services in the Department of Community Affairs. It shall also permit, upon request, examination and audit of its books, contracts, records, documents and papers. Such examination or audit shall be made during the reasonable hours of the business day, in the presence of an officer or agent designated by the Entity.

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

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

**Section 8.1 Limitation of Profits and Reserves**

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

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

**Section 9.1 Prior Approval of Sale**

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

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

In the event that the Entity transfers, sells, demises, conveys, or in any manner relinquishes ownership or title, including a lease to the land or improvements, covered by this tax exemption agreement, to a tax exempt non-profit organization or institution, including any public body, during the term of the tax exemption agreement, that would adversely impact the City's anticipated economic interests by reducing in any way taxes or the service charge due the City under this agreement or by law, it is understood and agreed by the Entity that it first obtain the consent of the City to the transfer or lease. It is further understood that it may be grounds for the City to withhold its approval if the City's economic interests are adversely effected thereby.

**Section 9.3 Severability.**

It is an express condition of the granting of this tax exemption that during its duration, the Entity shall not, without the prior consent of the Municipal Council by Ordinance, convey, mortgage or transfer, all or part of the Project so as to sever, disconnect, or divide the improvements from the lands which are basic to, embraced in, or underlying the exempted improvements.

**ARTICLE X - COMPLIANCE**

**Section 10.1 Operation**

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

**ARTICLE XI - DEFAULT**

**Section 11.1 Default**

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

## **Section 11.2 Cure Upon Default**

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

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

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

## **Section 11.3 Remedies Upon Default**

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

covenant or the resort to any other remedy herein provided for the recovery of Land Taxes shall not be construed as a waiver of the rights to terminate the tax exemption or proceed with a tax sale or Tax Foreclosure action or any other specified remedy.

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

## **ARTICLE XII- TERMINATION**

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

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

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

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

### **Section 12.3 Final Accounting**

Within ninety (90) days after the date of termination, whether by affirmative action of the Entity or by virtue of the provisions of the Law or pursuant to the terms of this Agreement, the Entity shall provide a final accounting to the City. For purposes of rendering a final accounting the termination of the Agreement shall be deemed to be the end of the fiscal year for the Entity.

### **Section 12.4 Conventional Taxes**

Upon Termination or expiration of this Agreement, the tax exemption for the Project shall expire and the land and the Improvements thereon shall thereafter be assessed

and conventionally taxed according to the general law applicable to other nonexempt taxable property in the City.

### **ARTICLE XIII - DISPUTE RESOLUTION**

#### **Section 13.1 Arbitration**

In the event of a breach of the within Agreement by either of the parties hereto or a dispute arising between the parties in reference to the terms and provisions as set forth herein, either party may apply to the Superior Court of New Jersey by an appropriate proceeding, to settle and resolve the dispute in such fashion as will tend to accomplish the purposes of the Law. In the event the Superior Court shall not entertain jurisdiction, then the parties shall submit the dispute to the American Arbitration Association in New Jersey to be determined in accordance with its rules and regulations in such a fashion to accomplish the purpose of the Law. The cost for the arbitration shall be borne equally by the parties. The parties agree that the Entity may not file an action in Superior Court or with the Arbitration Association unless the Entity has first paid in full all charges defined in Article IV, Section 4.5 as Material Conditions.

### **ARTICLE XIV - WAIVER**

#### **Section 14.1 Waiver**

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

### **ARTICLE XV - INDEMNIFICATION**

#### **Section 15.1 Defined**

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

thereto, to which intervention the Entity consents; the expense thereof to be borne by the Entity City.

## ARTICLE XVI- NOTICE

### **Section 16.1 Certified Mail**

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

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

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

Summit Avenue Center for Opportunity, LLC  
c/o The Doe Fund, Inc.  
345 East 102<sup>nd</sup> Street – 3<sup>rd</sup> Floor  
New York, NY 10029  
Attn: Richard Roberts

with a copy to:

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

and

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

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

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

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

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

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

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

#### **ARTICLE XVII-SEVERABILITY**

##### **Section 17.1 Severability**

If any term, covenant or condition of this Agreement or the Application, except a Material Condition, shall be judicially declared to be invalid or unenforceable, the remainder of this Agreement or the application of such term, covenant or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term, covenant or condition of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

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

#### **ARTICLE XVIII - MISCELLANEOUS**

##### **Section 18.1 Construction**

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

### **Section 18.2 Conflicts**

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

### **Section 18.3 Oral Representations**

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

### **Section 18.4 Entire Document**

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

### **Section 18.5 Good Faith**

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

## **ARTICLE XIX - EXHIBITS**

### **Section 19 Exhibits**

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

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

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

**ATTEST:** **SUMMIT AVENUE CENTER FOR OPPORTUNITY, LLC**

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

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

**ATTEST:** **CITY OF JERSEY CITY**

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

\_\_\_\_\_  
**BRIAN O'REILLY  
BUSINESS ADMINISTRATOR**

## PROJECT EMPLOYMENT & CONTRACTING AGREEMENT

This Project Employment & Contracting Agreement is made on the \_\_\_ day of \_\_\_\_\_, 2010, between the **CITY OF JERSEY CITY** [City] and **SUMMIT AVENUE CENTER FOR OPPORTUNITY, LLC**, having its principal office at c/o The Doe Fund, Inc., 345 East 102<sup>nd</sup> Street – 3<sup>rd</sup> Floor, New York, NY 10029. Recipient agrees as follows:

### **I. Definitions:**

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

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

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

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

## **II. Purpose:**

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

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

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

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

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

**IV. Recipient Designee:**

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

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

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

**V. Term:**

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

**VI. Good Faith Defined:**

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

A. Initial Manning Report:

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

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

B. Developer's Contracting Obligations

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

C. Contractor's/Subcontractor's Compliance Statement

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

D. Union Statement of Using Its Best Efforts

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

E. Sub-Contractors

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

F. Union Apprentices

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

G. Monthly Manning Report

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

H. Monthly Certified Payroll Report

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

I. Equal Employment Opportunity Reports

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

J. Other Reports

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

K. Records Access

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

L. Work Site Access For Monitor

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### 3. Business Contracting

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

1) Solicitation of Businesses:

- a) One month before accepting bids for goods and services, the Recipient must forward a letter with requests for quotation or bid to Mayor Jerramiah T. Healy's Business Cooperative Program for local and local minority vendors for any construction or building operating goods, services and subcontracting opportunities. An example of this letter can be found in Appendix D.
- b) After submission of bids, the Recipient will document whether the bid was accepted or rejected, and state the reason why. An example of this documentation can be found in Appendix D2.
  - i) Semi-Annual Purchasing Reports: The Recipient will submit written semi-annual purchasing reports which will include a list of all contracts awarded over a six month period and the dollar amounts of these contracts. The reports will specify the number and dollar amount of contracts awarded to Local Businesses and Minority or Women Owned Local Businesses. An example of these reports can be found in Appendix L.
  - ii) No Utilization of Local and Local Minority Vendors As Conduits For Vendors That Are Not Local Or Minority Owned:

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

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

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

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

**VII. Notices of Violation:**

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

will be considered not corrected.

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

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

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

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

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

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

**X. Notices**

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

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

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

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

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

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

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

**XII. Controlling Regulations and Laws:**

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

**ATTEST:**

**CITY OF JERSEY CITY**

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

\_\_\_\_\_  
**Brian O'Reilly**  
**Business Administrator**

**WITNESS:**

**SUMMIT AVENUE CENTER FOR  
OPPORTUNITY, LLC**

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

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

**APPLICATION FOR TAX EXEMPTION  
OF  
SUMMIT AVENUE CENTER FOR OPPORTUNITY LLC**

In compliance with Executive Order #S-02-003 of the Mayor of the City of Jersey City, the Applicant herewith submits the following information in support of its application for a Tax Exemption under and pursuant to the New Jersey Housing and Mortgage Finance Agency Law (N.J.S.A. 55:14K-1, et seq.)

Applicant: Summit Avenue Center for Opportunity LLC  
c/o the Doe Fund, Inc.  
345 East 102<sup>nd</sup> Street, 3<sup>rd</sup> Floor  
New York, New York 10029

Property: Block 1917, Lots 8E, 8C, 9A, and 10A  
136 and 140-142 Summit Avenue and 55 Clifton  
Place  
Jersey City, New Jersey

Project: Summit Avenue Center for Opportunity , a residential  
project  
commonly known as 136 and 140-142 Summit  
Avenue and 55 Clifton Place  
Jersey City, New Jersey

Applicant's Architect: LWDMMR & Assoc.  
140 Bay Street, Suite 4  
Jersey City, New Jersey 07302

Applicant's Attorney: Nancy A. Skidmore, Esq.  
Connell Foley LLP  
Harborside Financial Center  
2510 Plaza Five  
Jersey City, NJ 07311  
(201) 521-1000

**LIST OF EXHIBITS:**

**Exhibit**

- A. Description of Property
- B. Description of Leases
- C. Annual Gross Revenue Computation
- D. Total Project Cost
- E. Projected Statement of Property Operations
- F. Proposed Financial Agreement
- G. Certificate of Formation and Disclosure Statement for Summit Avenue Center for Opportunity LLC

## APPLICATION

1. **Identification of the Property:**

The land upon which the Project is located is Block 1917, Lots 8E, 8C, 9A, and 10A on the Tax Map of the City of Jersey City, more commonly known as 136 and 140-142 Summit Avenue and 55 Clifton Place in Jersey City, New Jersey (the "Property"). The metes and bounds description of the land where the Project is located is attached hereto as Exhibit A.

2. **Type of Project:**

This Project will consist of a residential rental project, which will contain 60 residential rental apartments, parking for 42 cars, and approximately 2,140 square feet of ancillary retail space. Ninety seven (97 %) percent of these apartments, or 58 units, will be affordable housing units. The number, size, and rent for the affordable apartments will be as follows:

Number of Apts.	Number of Bedrooms/Baths	Square Footage	Monthly Rent
8	1/1	650	\$298/\$655
31	2/1	800	\$780/340
19	3/1.5	1100	\$387/895
Total 58			

The affordable housing units will be available only to those who qualify under the relevant federal and state guidelines which are as follows: Persons/families must have a combined income of less than 60% of the area's median income which is a maximum of \$73,950 annually (4.5 person household). The ratio of annual rent to annual income for these persons/families must not exceed 30%. Thus, all of the affordable units are expected to be available to persons/families with annual incomes from a range of approximately \$22,185 to \$44,370 annually.

The Doe Fund, Inc., a not-for-profit corporation and an affiliate of the Applicant, will serve as the property manager and will qualify potential residents of the affordable housing units in accordance with federal and state guidelines. The Doe Fund formerly operated a transitional housing facility at 654 Bergen Avenue in Jersey City. The building housed 59 Ready, Willing & Able program participants in a building that was owned and operated by another non-profit organization. The Doe Fund also manages a 40-unit Low Income Housing Tax Credit property located at 450 Martin Luther King Drive in Jersey City. In its capacity as property manager for that project, the Doe Fund is responsible for screening potential tenants, as well as performing all activities required for continued compliance with low income housing tax credit properties.

This Project will also contain approximately 42 parking spaces. All 42 parking spaces will be located on one level of parking at ground floor level. Each of the parking spaces will be made available to the residential units. At this time, it is not anticipated that there will be any charge to

the affordable apartment residents for use of the parking spaces. Laundry facilities will also be made available to the residential units.

The following amenities will be available at no additional charge to tenants:

1. Community room;
2. Security alarms; and
3. High-speed internet access.

In addition to the affordable housing units, there will be 2 apartments which will be rented at market rates. The size, square footage, and monthly rent for these apartments will be as follows:

Number of Apts.	Number of Bedrooms/Baths	Square Footage	Monthly Rent
2	2/1	800	\$1,500
Total 2			

3. **Type of Abatement Requested:**

Major financing for the Project will be provided by the following:

New Jersey Housing and Mortgage Finance Agency - Construction/Permanent Financing

Federal Low Income Housing Tax Credit Program, including subsidy through the Tax Credit Exchange Program

In light of the above, the Applicant seeks a tax exemption under and pursuant to N.J.S.A. 55:14K-1, et seq. (New Jersey Housing and Mortgage Finance Agency Law) (the "NJHMFA Law") based upon the 6.28% of Annual Gross Revenue (as set forth in the draft Financial Agreement attached hereto). Based upon the Annual Gross Revenue computations set forth in Exhibit C, the Proposed Statement of Stabilized Property Operations set forth in Exhibit E and the Total Project Cost set forth in Exhibit D, the Project will generate an estimated Annual Service Charge of approximately \$33,537.

4. **Term of Abatement:**

The term of the tax exemption being requested by the Applicant is 35 years from the date of the adoption of the ordinance granting the tax abatement or 30 years from the date of substantial completion of the Project or for period not to exceed the period of time by which the Project is encumbered by an eligible loan made to the Applicant by the New Jersey Housing and Mortgage Agency pursuant to the NJMHFA Law commencing from the date of substantial completion of the Project.

5. **Description of the Project:**

The Property consists of approximately 26,275 square feet (0.6032 acres) of land located at 136 and 140-142 Summit Avenue and 55 Clifton Place in Jersey City, New Jersey.

The Property consists of a dilapidated former hospital structure and vacant land. All buildings/structures will be demolished.

The improvements to be constructed will consist of the following:

This Project includes the construction of five (5) story building, consisting of four (4) residential floors over one (1) level of parking and retail.

The residential floors shall contain approximately sixty (60) residential rental units, fifty-eight (58) of which will be affordable housing units, with the remaining two (2) units being offered at market rate. The building's residential rental units will be distributed as follows; approximately eight (8) one-bedrooms, which will average approximately six hundred fifty (650) square feet, approximately thirty-three (33) two-bedrooms, which will average approximately eight hundred (800) square feet, and approximately nineteen (19) three bedrooms, which will average approximately one thousand one hundred (1,100) square feet. Each residential unit will have living, dining, and kitchen areas. The ground floor will contain three retail units totaling approximately two thousand one hundred forty (2,140) square feet of space. The ground floor will also contain parking spaces for a total of approximately forty two (42) cars.

The property consists of 4 separate tax lots. The Applicant's affiliate, the Doe Fund, Inc. is the contract purchaser of the property. Upon transfer of title to the Doe Fund, the Doe Fund will assign the property to the Applicant. The Applicant will construct and maintain ownership interest in the project.

6. **Estimated Total Cost of Project:**

The Total Project Cost, as set forth in Exhibit D is estimated to be \$22,257,972. The construction costs have been estimated based upon information compiled by the Applicant and its consultants. The Total Project Cost is subject to approval by the NJHMFA.

7. **Financing Structure:**

Major financing for the Project will be provided by the following:

New Jersey Housing and Mortgage Finance Agency - Construction/Permanent Financing

Federal Low Income Housing Tax Credit Program, including subsidy through the Tax Credit Exchange Program

8. **Annual Gross Revenue and Expenses:**

A Schedule of Annual Gross Revenue for the Project is attached hereto as Exhibit C. A Projected Statement of Operations is attached hereto as Exhibit E. The Annual Gross Revenue and Projected Statement of Operations are subject to approval by the NJHMFA.

9. **Construction Schedule:**

The construction of the Project is scheduled to commence in August 2010 and will be completed within approximately 15-18 months. This construction schedule is subject to modification based upon the time required to obtain the necessary governmental approvals and permits from those local, state and federal governmental agencies involved in the Project.

10. **Real Estate Tax Assessments:**

The tax assessment information for the Property is as of 2009 is as follows:

Lot 8E:		Lots 9A/10A:	
Land	\$ 70,000	Land	\$ 16,900
Improvements	\$280,000	Improvements	\$ 0
Total	\$350,000	Total	\$ 16,900
Lot 8C:			
Land	\$ 26,200		
Improvements	\$ 0		
Total	\$ 26,200		

11. **Real Estate Tax Information:**

The Real Estate taxes assessed against the Property are as follows:

The total municipal real estate taxes for 2009 for the Property were approximately \$23,589.

12. **Certification as to Commencement of the Project.**

The Applicant will not commence construction of the Project prior to the receipt of final approval of the tax abatement and the execution of a Financial Agreement between the City and Summit Avenue Center for Opportunity LLC.

13. **Estimated Jobs to be Created:**

It is projected that the Project will generate approximately 100-150 full time equivalent construction jobs during the term of construction. In addition, it is projected that the Project will generate approximately 3 direct full time permanent employment opportunities upon the commencement of operations of the Project. This Project will not cause any loss or displacement of current employment opportunities. All of the aforementioned employment opportunities will be immediately created. The Applicant agrees to execute a Project Employment Agreement simultaneously with the execution of a financial agreement.

The Project is exempt from the requirements of City Ordinance #07-123, which would otherwise require the execution of a Project Labor Agreement. This Application is for tax exemption pursuant to the NJHMFA Law and, therefore, not a "Tax Abated Project" as defined under Ordinance #07-123.

14. **Compliance with State and Local Redevelopment Laws.**

The Applicant certifies that the Project is located in the Summit and Fairmount Avenue Redevelopment Plan Area.

The Project will be constructed in accordance with the terms and conditions of any preliminary site plan approval granted by the Jersey City Planning Board and in compliance with any state permits or approvals required for the renovation or new construction. It is anticipated that an application for preliminary site plan approval will be heard by the Jersey City Planning Board on February 9, 2010.

15. **Compliance with State and Local Law:**

The Project meets the requirements of the laws of the State of New Jersey and the City of Jersey City to qualify for a tax abatement.

16. **Form of Financial Agreement:**

Attached hereto as Exhibit G is a proposed form of Financial Agreement between the City of Jersey City and Summit Avenue Center for Opportunity LLC.

17. **Certificate of Formation:**

Summit Avenue Center for Opportunity LLC is a limited liability company formed pursuant to the laws of the State of New Jersey and is qualified to do business in New Jersey.

Attached hereto as part of Exhibit G is a copy of the Certificate of Formation of Summit Avenue Center for Opportunity LLC.

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

18. **Affordable Housing Contribution:**

No affordable housing contribution is required pursuant to Section 304-28 of the Code of the City of Jersey City. This Application is for tax exemption pursuant to the NJHMFA Law, and this Project contains affordable housing units that are in excess of 15% of the overall number of units. Therefore, the Project is entitled to exemption on two separate bases under Section 304-28.

19. **Fee:**

Since this Application concerns a Project which provides housing for families of low or moderate income, no application fee is required.

## **EXHIBIT A**

### **SUMMIT AVENUE CENTER FOR OPPORTUNITY LLC**

#### **Description of the Property**

Address: 136 and 140-142 Summit Avenue and 55 Clifton Place in Jersey  
City, New Jersey

Block 1917, Lots 8E, 8C, 9A, and 10A.

A metes and bounds description is attached hereto.

Description of Property

Lots 8C, 8E, 9A, 10A & 11A; BLOCK 1917

City of Jersey City, Hudson County, New Jersey

Beginning at a point, said point being the intersection of the southerly side line of Fairmont Avenue (60' r.o.w.) and the westerly side line of Clifton Place (39' r.o.w.) and running:

1. South 26°38'06" West along the westerly side line of Clifton Place, a distance of 84.02' to a point, thence
2. North 67°26'54" West along the northerly line of Lot 18D, Block 1917, a distance of 125.00' to a point, thence
3. South 26°38'06" West along the westerly line of Lot 18D, Block 1917, a distance of 6.82' to a point, thence
4. North 63°51'04" West along the northerly line of Lot 6A, Block 1917, a distance of 121.80' to a point on the easterly side line of Summit Avenue (50' r.o.w.), thence
5. North 26°38'06" East along the easterly side line of Summit Avenue, a distance of 59.59' to a point of non-tangent curvature, thence
6. Still along the easterly side line of Summit Avenue on a curve to the right having a radius of 393.00', an arc length of 27.57', an interior angle of 4°01'10", a chord bearing of North 36°14'56" East and a chord length of 27.56' to a point of non-tangency, thence
7. North 48°00'15" East still along the easterly side line of Summit Avenue, a distance of 36.18' to a point, thence
8. South 79°11'00" East along the southerly line of Lot 10B, Block 1917, a distance of 13.47' to a point, thence
9. South 58°40'18" East still along the southerly line of Lot 10B, Block 1917, a distance of 114.34' to a point on the southerly side line of Fairmont Avenue, thence
10. South 55°31'54" East along the southerly side line of Fairmont Avenue, a distance of 102.73' to the point and place of beginning.

Containing: 26,277 S.F. = 0.6032 Acres

## EXHIBIT B

### SUMMIT AVENUE CENTER FOR OPPORTUNITY LLC

#### DESCRIPTION OF RESIDENTIAL LEASES GOOD FAITH ESTIMATE OF INITIAL RENTS

1. Name of Tenant: Various
2. Term of Lease: Initial term of lease not less than 1 year.
3. Number of Apartments:

Affordable Apartments:

Number of Apts.	Number of Bedrooms/Baths	Square* Footage	Monthly Rent
8	1/1	650	\$298/\$655
31	2/1	800	\$780/340
19	3/1.5	1100	\$387/895
Total 58			

Market Rate Apartments:

Number of Apts.	Number of Bedrooms/Baths	Square* Footage	Monthly Rent
2	2/1	800	\$1,500
Total 2			

\* The exact square footage and rent could vary. The numbers above represent the average square footage and rent for each type of apartment.

5. Premium paid directly by Tenant Annually
  - a. Fire & other insurance NONE
  - b. Real Estate Taxes of Assessments on in project NONE
  - c. Operating and maintenance expenses paid by tenant NONE
6. Special Features: Parking  
Residential Amenities

## EXHIBIT C

### SUMMIT AVENUE CENTER FOR OPPORTUNITY LLC Total Annual Gross Revenue Computation

<u>Affordable Apartments:</u> (includes super unit)	<u>Units</u>		<u>Per*</u> <u>Month</u>	<u>Total per</u> <u>Month</u>	<u>Total</u> <u>Annually</u>
One Bedroom	1	@	\$298.00	\$298.00	\$3,576.00
One Bedroom	7	@	\$665.00	\$4,655.00	\$55,860.00
Two Bedrooms	4	@	\$340.00	\$1,360.00	\$16,320.00
Two Bedrooms	26	@	\$780.00	\$20,280.00	\$243,360.00
Two Bedrooms	1(supr)	@	\$0	\$0	\$0
Three Bedrooms	1	@	\$387.00	\$387.00	\$4,644.00
Three Bedrooms	<u>18</u>	@	<u>\$895.00</u>	<u>\$16,110.00</u>	<u>\$193,320.00</u>
Subtotal	<u>58</u>		<u>\$3,365.00</u>	<u>\$43,090.00</u>	<u>\$517,080.00</u>
<u>Market Rate</u> <u>Apartments:</u>	<u>Units</u>		<u>Per*</u> <u>Month</u>	<u>Total per</u> <u>Month</u>	<u>Total</u> <u>Annually</u>
Two Bedrooms	2	@	<u>\$1,500.00</u>	<u>\$3,000.00</u>	<u>\$36,000.00</u>
Subtotal	<u>2</u>		<u>\$1,500.00</u>	<u>\$3,000.00</u>	<u>\$36,000.00</u>
Total Residential Rental Income:			\$553,080.00		
Less					
Vacancy	@	5%	\$ 27,654.00		
Total residential rental income after vacancy adjustment:					<b>\$525,426.00</b>
<u>Other Rental Income:</u>			<u>Annual</u>		
Commercial Units			\$12,296.00		
Less					
Vacancy	@	30% \$3,689	<u>\$8,607.00</u>		
Total Other Income			\$8,607.00		
<b>Total Annual Gross Revenue</b>					<b>\$534,033.00</b>

\* The exact square footage and rent could vary. The numbers above represent the average square footage and rent for each type of apartment.

## EXHIBIT D

### SUMMIT AVENUE CENTER FOR OPPORTUNITY LLC ESTIMATED TOTAL PROJECT COST

1.	Cost of land acquisition and any buildings thereon	\$2,400,000
2.	Cost of site preparation, demolition and development	\$500,000
3.	Architects, engineers, surveyors, consultants, experts and attorneys fees (paid or payable) in connection with the planning, execution and financing of the Project.	\$685,000
4.	Cost of necessary studies, surveys, plans, and permits	\$77,500
5.	Insurance, interest, financing, tax, assessment, and other operating and carrying costs during construction	\$1,247,415
6.	Cost of construction, reconstruction, fixtures, and equipment related to the real property	\$14,309,000
7.	Cost of land improvements	\$500,000
8.	Necessary expenses in connection with initial occupancy of project	\$109,600
9.	A reasonable profit or fee to the builder and developer	\$1,400,000
10.	An allowance established by the NJHMFA for working capital and contingency reserves, and reserves for any operating deficits	\$1,029,457
11.	Costs of guarantees, insurance or other additional financial security for the project	\$0
12.	Cost of such other items, including tenant relocation, as the NJHMFA shall determine to be reasonable and necessary for the development of the project, less any and all net rents and other revenues received from the operation of the real and personal property on the project site during construction, improvement or rehabilitation	\$0
	<b>TOTAL</b>	<b><u>\$22,257,972</u></b>

## EXHIBIT E

### SUMMIT AVENUE CENTER FOR OPPORTUNITY LLC

#### PROJECTED STATEMENT OF STABILIZED PROPERTY OPERATION

##### RENTAL INCOME:

		<u>Annual Income</u>
Apartments		\$553,080.00 (for detail see Exh. C)
Less Vacancy Loss	@ 5%	<u>\$ 27,654.00</u>
<b>Net Apartment Rents</b>		<b>\$525,426.00</b>
Commercial Units		\$ 12,296.00
Vacancy Loss	@30%	\$ 3,689.00
<b>Net Commercial Rental Income</b>		<b><u>\$ 8,607.00</u></b>
<b>Total Rental Income</b>		<b>\$534,033.00</b>

##### OPERATING EXPENSES:

I.	Admin.	\$15,568
II.	Salaries	\$67,800
III.	Maint. & Repairs	\$8,300
IV.	Maint. Contracts	\$59,500
V.	Utilities (electric & gas)	\$52,000
<b>VI.</b>	<b>Annual Service Charge</b>	
	<b>(6.28% of Annual Gross Revenue)</b>	<b>\$33,537</b>
VII.	Management Fee	
	(% of Total Income)	\$36,000
VIII.	Insurance	\$42,000
IX.	Reserve for Repair & Replacement	\$21,000
<b>Total Operating Expenses:</b>		<b>\$335,705.00</b>

=====  
**Total Income**                    **\$534,033.00**  
**Less Operating Expenses: \$335,705.00**

=====  
**NET OPERATING INCOME BEFORE DEBT SERVICE:**                    **\$198,328.00**  
=====

**DEBT SERVICE:**

1. Principal and Interest                    \$191,950  
2. Debt Service on Other Mortgage Loans                    \$0

**Total Agency Debt Service**                    **\$191,950**

**Total Debt Service**                    **\$191,950.00**

=====  
**NET OPERATING INCOME BEFORE DEBT SERVICE**                    **\$198,328.00**  
**LESS TOTAL DEBT SERVICE**                    **\$191,950.00**  
=====

**NET INCOME:**                    **\$6,378.00**

**EXHIBIT F**  
**SUMMIT AVENUE CENTER FOR OPPORTUNITY LLC**  
**PROPOSED FINANCIAL AGREEMENT**

(SEE ATTACHED)

Rev. 2-27-09  
HMFA  
N.J.S.A. 55:14K-1 et seq.

Re: Block 1917, Lots 8E, 8C, 9A & 10A  
Summit and Fairmount Redevelopment  
Plan Area

**PREAMBLE**

**THIS FINANCIAL AGREEMENT**, [Agreement] made this \_\_\_\_ day of  
, 200\_, by and between Summit Avenue Center for Opportunity, LLC, **Limited Liability Company** is a  
qualified housing sponsor under the New Jersey Mortgage Housing Finance Agency  
N.J.S.A. 55:14K-1 et seq., having its principal office \_\_\_\_\_, New  
Jersey -----, and the **CITY OF JERSEY CITY**, a Municipal Corporation in the  
County of Hudson and the State of New Jersey, [City], having its principal office at 280  
Grove Street, Jersey City, New Jersey 07302.

**RECITALS**

**WITNESSETH:**

**WHEREAS**, the Entity is the Owner under a dated Deeds \_\_\_\_\_ and  
\_\_\_\_\_ of certain property designated as Block 1917, Lots 8E, 8C, 9A & 10A and  
Block \_\_\_\_\_, Lots \_\_\_\_\_, more commonly known by the street address of 136 and 140-142  
Summit Avenue and 55 Clifton Place, Jersey City, NJ, and more particularly described by the metes and bounds description  
set forth as Exhibit 1 to this Agreement; and

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

**WHEREAS**, the Entity plans to construct certain improvements on the Property  
to create a total of 60 units of rental housing, [2 units of rental market rate housing,  
and 58 units of moderate income rental housing units] 2,140 sq. ft. of retail space and a 12 car parking garag

**WHEREAS**, on \_\_\_\_\_ 2010, the Entity's Application for a tax exemption  
for the Project was approved by the City by the adoption of Ordinance \_\_\_\_\_; and

**NOW, THEREFORE**, in consideration of the mutual covenants herein

contained, and for other good and valuable consideration, it is mutually covenanted and agreed as follows:

**ARTICLE I - GENERAL PROVISIONS**

**Section 1.1 Governing Law**

This Agreement shall be governed by the provisions of the New Jersey Housing and Mortgage Finance Agency Law, N.J.S.A. 55:14K-1 et seq., Executive Order of E.O. 02-003, and Ordinance \_\_\_\_\_, which authorized the execution of this Agreement. It being expressly understood and agreed that the City expressly relies upon the facts, data, and representations contained in the Application, attached hereto as Exhibit 3, in granting this tax exemption.

**Section 1.2 General Definitions**

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

i. Agency- The New Jersey Housing and Mortgage Finance Agency.

ii. Annual Gross Revenue- The total gross income, including any and all revenue derived from or generated by the Project of whatever kind or amount, whether received as rent from any tenants or income or fees from third parties, including but not limited to fees or income paid or received for parking, laundry, or other services, including any Section 8 certificate revenue derived from the Project, including all rent and other income, with an allowable vacancy rate of up to 5%. It also includes the cost of insurance, gas, electricity, water and sewer charges, other utilities, garbage removal and insurance charges even if paid for directly by the Tenant, if such expense is ordinarily paid for by the Landlord.

iii. Annual Service Charge -Estimated Service Charge: \$1,006,110 over the 30 year term of the tax exemption, calculated as follows:

(1) Years 1 through 10, a total of \$ 33,537 each year, based upon:  
A) 6.28% of annual gross revenue of the residential units: \$ 32,997 or approximately \$ 550 per unit; B) 6.28% of annual gross revenue of the retail space: \$ 540 or \$ .25 per sq. ft.; and C) 6.28% of annual gross revenue of the parking garage:

\$ 0 or \$ 0 per parking space;

(2) Years 11-20, a total of \$ 33,537 each year, based upon: A) 6.28% of annual gross revenue of the residential units: \$ 32,997 or approximately \$ 550 per unit; B) 6.28% of annual gross revenue of the retail space: \$ 540 or \$ .25 per sq. ft.; and C) 6.28% of annual gross revenue of the parking garage: \$ 0 or \$ 0 per parking space;

(3) Years 21-30, a total of \$ 33,537 each year, based upon: A) 6.28% of annual gross revenue of the residential units: \$ 32,997 or approximately \$ 550 per unit; B) 6.28% of annual gross revenue of the retail space: \$ 540 or \$ .25 per sq. ft.; and C) 6.28% of annual gross revenue of the parking garage: \$ 0 or \$ 0 per parking space; in accordance with the financial plan attached hereto as Exhibit 2, which sum is in lieu of any taxes on the Improvements.

iv. Auditor's Report - A complete financial statement outlining the financial status of the Project (for a period of time as indicated by context), which shall also include a certification of Total Project Cost and clear computation of Net Profit. The contents of the Auditor's Report shall have been prepared in conformity with generally accepted accounting principles and shall contain at a minimum the following: a balance sheet, a statement of income, a statement of retained earnings or changes in stockholder's equity, statement of cash flows, descriptions of accounting policies, notes to financial statements and appropriate schedules and explanatory material results of operations, cash flows and any other items reasonably required by the City or its auditors. The Auditor's Report shall be certified as to its conformance with such principles by a certified public accountant who is licensed to practice that profession in the State of New Jersey.

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

vi. Default - Shall be a breach of or the failure of the Entity to perform any obligation imposed upon the Entity by the terms of this Agreement, or under the Law, beyond any applicable grace or cure periods.

*Center for Opportunity*  
V LLC, <sup>vii.</sup> Entity - The term Entity within this Agreement shall mean *Summit Avenue* LLC, which Entity is formed and qualified pursuant to Law. It shall also include any subsequent purchasers or successors in interest of the Project, provided they are formed and operate under by Law and the transfer has been duly approved by the City.

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

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

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

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

xii. Law - Law shall refer to the New Jersey Housing and Mortgage Finance Agency Law, N.J.S.A. 55:14K-1 et seq.; Executive Order 02-003, relating to long term tax exemption, as it may be amended and supplemented; Ordinance which authorized the execution of this Agreement; and Ordinance 07-123, as may be amended or supplemented from time to time, which requires the execution of a Project Labor Agreement, and all other relevant Federal, State or City statutes, ordinances, resolutions, rules and/or regulations.

xiii. Minimum Annual Service Charge - The Minimum Annual Service Charge shall be the amount of the total taxes that would have been levied against all real property in the area covered by the Project in the last full tax year preceding the recording of the HMFA mortgage which amount the parties agree is approximately \$23,589. The Minimum Annual Service Charge shall be paid in each year in which the Annual Service Charge, calculated pursuant to the Financial

Agreement would be less than the Minimum Annual Service Charge.

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

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

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

## ARTICLE II - APPROVAL

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

The City hereby grants its approval for a tax exemption for all the Improvements to be constructed and maintained in accordance with the terms and conditions of this Agreement and the provisions of the Law which Improvements shall be constructed on certain property known on the Official Tax Assessor's Map of the City as: Block 1917, Lots 8E, 8C, 9A and 10A, more commonly known by the street address of 36 and 40-142 Summit Avenue and 55 Clifton Place, Jersey City, NJ, and described by metes and bounds in Exhibit 1 attached hereto.

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

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

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

Entity represents that it will construct certain improvements on the Property to create a total of 60 units of rental housing, [2 units of rental market rate housing, and 58 units of moderate income rental housing units] 2,140 sq. ft. of retail space and 42-car parking garage, all of which is more specifically described in the Application attached hereto as Exhibit 3.

## Section 2.4 Construction Schedule

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

## Section 2.5 Ownership, Management and Control

The Entity represents that it is the owner of the property upon which the Project is to be constructed. Upon construction, the Entity represents that the Improvements will be managed and controlled as follows:

1. The Entity <sup>is affiliate, the Doe Fund, Inc.</sup> shall manage the improvements with regard to the residential dwelling units and retail space.
- ~~2. The parking facility will be operated by a third party Lessee pursuant to and in accordance with the terms of a certain lease between the Entity and third party Lessee.~~

## Section 2.6 Financial Plan

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

## Section 2.7 Statement of Rental Schedules and Lease Terms

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

## ARTICLE III - DURATION OF AGREEMENT

### Section 3.1 Term

So long as there is compliance with the Law and this Agreement, it is understood and agreed by the parties hereto that this Agreement shall remain in effect for the earlier of: <sup>five (35)</sup> ~~thirty three (33)~~ years from the date of the adoption of Ordinance \_\_\_\_\_ which approved this exemption or thirty (30) years from the date of the recording of the HMFA mortgage as funded and approved by the Agency. The tax exemption shall only be effective only while the Project is owned by an entity formed and operating as a housing

sponsor under the Law and subject to an HMFA mortgage. Thereafter, the tax exemption shall expire and the land and improvements thereon shall be assessed and taxed according to the general law applicable to other non-exempt property in the City.

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

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

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

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

##### **Section 4.2 Administrative Fee**

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

##### **Section 4.3 Land Tax Credit**

If the Law requires the Entity to pay Land Taxes in addition to the service charges, then the Entity will be entitled to a land tax credit against the service charges. In order to be entitled to the credit, however, the Entity is obligated to make timely Land Tax Payments, in order to be entitled to a Land Tax credit against the Annual Service Charge for the subsequent year. The Entity shall be entitled to credit for the amount,

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

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

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

#### **Section 4.5 Material Conditions**

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

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

#### **Section 5.1 ~~Project Labor Agreement and~~ Project Employment Agreement**

In order to provide City residents and businesses with certain employment and other economic related opportunities, the Entity is subject to the terms and conditions of the Project Employment & Contracting Agreement, attached hereto as Exhibit 8. ~~In addition, the Entity shall execute a Project Labor Agreement as required by Ordinance 07-123 as it exists or as it may be amended from time to time.~~

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

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

It is understood and agreed that it shall be the obligation of the Entity to obtain

all Certificates of Occupancy in a timely manner. The failure to secure the Certificates of Occupancy shall subject the property to full taxation.

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

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

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

### **Section 6.3 Construction Permits**

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

## **ARTICLE VII - ANNUAL REPORTS**

### **Section 7.1 Accounting System**

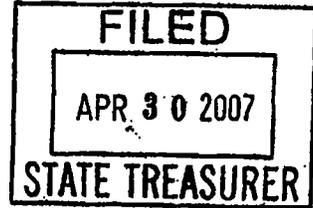
The Entity agrees to maintain a system of accounting and internal controls established and administered in accordance with generally accepted accounting principles.

### **Section 7.2 Periodic Reports**

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

· CERTIFICATE OF FORMATION  
OF

Summit Avenue Center for Opportunity, LLC



The undersigned, desiring to form a limited liability company under the New Jersey Limited Liability Company Act (hereinafter, the "Act"), N.J.S.A. 42:2B-1, et seq., hereby certify that: throughout this Certificate, any word or words that are defined in the Act, as amended from time to time, shall have the same meaning as provided in the Act, and the word or words listed below within quotation marks shall be deemed to include the words which follow them:

- A. "Certificate" - This Certificate of Formation.
- B. "Company" - This Limited Liability Company.

1. **Company Name.** The name of the Company shall be Summit Avenue Center for Opportunity, LLC.

2. **Purpose.** The sole purpose of the Company is to acquire and develop property located at 136 & 140-142 Summit Avenue and 55 Clifton Place, Jersey City, New Jersey for use in furtherance of the following charitable purpose:

- (a) Planning and implementing programs to expand communities for employment, training and placement and making housing available to homeless New Jerseyans; and
- (b) Conducting any and all lawful activities which may be useful in accomplishing the foregoing purposes.

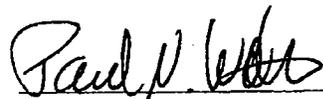
3. **Date of Formation.** The Company shall be deemed to have been formed immediately upon the filing of this Certificate.

4. **Registered Agent and Registered Office.** The registered agent and office for service of process is Paul N. Watter, Esq., Hill Wallack LLP, 202 Carnegie Center, Princeton, NJ 08543-5226.

5. **Duration.** The duration of the Company is perpetual.

6. **Authorization to Execute.** For purposes of the formation of the Company, the Members have authorized Paul N. Watter, Esq. to execute this Certificate on their behalf. The authority to execute documents on behalf of the Company shall terminate upon the execution and filing with the New Jersey Department of Treasury of this Certificate.

IN WITNESS WHEREOF, this Certificate of Formation has been signed this 27<sup>th</sup> day of April, 2007.

  
\_\_\_\_\_  
Paul N. Watter, Esq.  
Pursuant to the authorization  
of the Members

0600298264

10 10-023

2/8/10 - CITY COUNCIL CAUCUS

SUMMIT AVENUE CENTER FOR OPPORTUNITY, LLC

COMPARATIVE TAX ANALYSIS

**Conventional Taxes:**

Year 1 -

Building Taxes:	\$16,803
Cell Tower Taxes:	\$15,002
Land Taxes:	<u>\$ 6,787</u>
Total Taxes:	\$38,592
City's Share of Total Taxes (47.63%):	<b><u>\$18,382</u></b>

vs.

**Proposed Tax Abatement:**

Year 1 -

Estimated Annual Service Charge:	\$33,537
<u>minus</u> Land Tax Credit:	<u>- \$6,787</u>
Net Annual Service Charge:	\$26,750
<u>plus</u> City's Share of Land Tax (47.63%):	<u>+\$3,233</u>
City's Share of ASC (w/ land tax credit):	<b><u>\$29,983</u></b>

City Clerk File No. Ord. 10-024

Agenda No. 3.K 1st Reading

Agenda No. \_\_\_\_\_ 2nd Reading & Final Passage



## ORDINANCE OF JERSEY CITY, N.J.

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

CITY ORDINANCE 10-024

**TITLE: ORDINANCE APPROVING 1) THE NUNC PRO TUNC ASSIGNMENT OF A TAX EXEMPTION FROM SUMMIT APARTMENTS, INC., TO SUMMIT PLAZA ASSOCIATES AND APPROVAL OF A PORTION OF THE PROPERTY FOR COMMERCIAL USE; AND 2) AN AMENDMENT TO THE TAX EXEMPTION TO REMOVE A PORTION OF THE PROJECT FROM THE TAX EXEMPTION, PURSUANT TO THE LIMITED DIVIDEND NON PROFIT HOUSING CORPORATION LAW, N.J.S.A. 55:16-18**

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

**WHEREAS**, by the adoption of a Resolution on February 16, 1971, the City of Jersey City approved a 48 year, 15% of annual gross shelter rent tax exemption for property located at the intersection of Kennedy Blvd and Newark Avenue, and known as Block 593.1, Lot F on the City's Tax Map [Property] owned by Summit Apartments, Inc, pursuant to the Limited Dividend Non Profit Housing Corporation Law, N.J.S.A. 55:16-18.; and

**WHEREAS**, Summit Apartments, Inc., constructed 531 units of moderate income housing and 28,472.75 square feet of commercial space, with a loan from the New Jersey Housing and Mortgage Finance Agency [HMFA] construction mortgage; and

**WHEREAS**, by a deed dated May 21, 1973, Summit Apartments, Inc., conveyed the Property to Summit Plaza Associates, a qualified housing sponsor under HMFA, but without the approval of the governing body; and

**WHEREAS**, Summit Plaza Associates constructed 28,473 square feet of commercial space and 385 parking spaces on the Property although commercial use and parking were never applied for or approved for tax exemption; and

**WHEREAS**, on May of 2009, Summit Plaza Associates, applied to subdivide Lot F into 2 separate lots: one for the residential portion and the commercial space (Block 593.1, Lot 1); and the second, for the vacant School Building (Block 593.1, Lot 2); and

**WHEREAS**, by an application dated September 25, 2009, as amended on October 28, 2009 and November 4, 2009, Summit Plaza Associates applied to the City of Jersey City for approvals 1) the nunc pro tunc of the 1973 sale of the Property to Summit Plaza Associates and its use of a portion of the Property for commercial purposes; 2) an amendment to the existing tax exemption to remove the vacant School Building, Block 593.1, Lot 2 from the tax exemption; and 3) the proposed sale of the School Building, Block 593.1, Lot 2 (formerly a portion of Lot F), for \$1.8 million to a third party; and

**WHEREAS**, the conveyance of the Property from Summit Apartments, Inc., to Summit Plaza Associates and approval of a portion of the Property for both residential and commercial uses should be approved and memorialized; and

**WHEREAS**, the sale of the vacant School Building Block 593.1, Lot 2 and termination of its tax exemption, will result in the return of a portion of the Property to the conventional real estate tax rolls; and

**WHEREAS**, there is an especially compelling need to maintain and preserve the use of the Property for decent, safe, and affordable housing; and

**WHEREAS**, the Tax Abatement Committee voted to recommend approval of the tax abatement application to the Mayor and Council at its meeting of January 28, 2010.

**ORDINANCE APPROVING 1) THE NUNC PRO TUNC ASSIGNMENT OF A TAX EXEMPTION FROM SUMMIT APARTMENTS, INC., TO SUMMIT PLAZA ASSOCIATES AND APPROVAL OF A PORTION OF THE PROPERTY FOR COMMERCIAL USE; AND 2) AN AMENDMENT TO THE TAX EXEMPTION TO REMOVE A PORTION OF THE PROJECT FROM THE TAX EXEMPTION, PURSUANT TO THE LIMITED DIVIDEND NON PROFIT HOUSING CORPORATION LAW, N.J.S.A. 55:16-18**

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

1. The amended application of Summit Plaza Associates, a qualified housing sponsor under the New Jersey Housing Mortgage Finance Agency Law N.J.S.A. 55:14K-1 et seq.; for approval of the nunc pro tunc approval of the conveyance of the Property and Project from Summit Apartments, Inc., to Summit Plaza Associates and its use of a portion of the Property for commercial use and an amendment to the tax exemption attached hereto as Exhibit A, is hereby approved subject to the following terms and conditions:

- (a) Term: 50 years or earlier, upon expiration or termination of term of the 1973 HMFA mortgage and will expire in 2023;
- (b) Service Charge: 15% of Annual Gross Shelter Rents;
- (c) Project: 531 units for families of moderate income, which includes 28,473 square feet of commercial space and 385 parking spaces; and
- (d) Property: Block 593.1, Lot 1 (formerly known as a portion of Block 593.1, Lot F) on the City's Tax map, located at the intersection of Kennedy Blvd. and Newark Avenue, Jersey City, New Jersey;
- (e) Termination of the tax exemption for the vacant School Building located on Block 593.1, Lot 2 (formerly a portion of Lot F).

2. The Mayor or Business Administrator is authorized to execute an amended tax exemption Financial Agreement, which includes a Project Employment Agreement in substantially the form on file in the Office of the City Clerk, subject to such modification as the Business Administrator and Corporation Counsel deems appropriate or necessary.

3. Closing of title and execution of an Amended Financial Agreement must occur no later than December 31, 2010.

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

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

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

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

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

*JM/he*  
*2/4/10*

APPROVED AS TO LEGAL FORM

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

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

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

Certification Required

Not Required

Rev. 1-06-10  
HMFA  
N.J.S.A. 55:14K-1 et seq.

Re: Kennedy Blvd and Newark Avenue  
Block 593.1, Lot F  
\_\_\_\_\_Redevelopment Plan Area

### **PREAMBLE**

**THIS AMENDED FINANCIAL AGREEMENT**, [ Agreement] made this \_\_ day of \_\_\_\_\_, 2010, by and between **SUMMIT PLAZA ASSOCIATES**, is a qualified housing sponsor under the New Jersey Mortgage Housing Finance Agency N.J.S.A. 55:14K-1 et seq., having its principal office at \_\_\_\_\_ New Jersey, and the **CITY OF JERSEY CITY**, a Municipal Corporation in the County of Hudson and the State of New Jersey, [City], having its principal office at 280 Grove Street, Jersey City, New Jersey 07302.

### **RECITALS**

#### **WITNESSETH:**

**WHEREAS**, Summit Apartments, Inc., was the owner of certain property designated as Block 593.1, Lot F and, more commonly known by the street address of 700 Newark Avenue, at the intersection of Kennedy Blvd and Newark Avenue, Jersey City, NJ, and more particularly described by the metes and bounds description set forth as Exhibit 1 to this Amended Agreement; and

**WHEREAS**, by the adoption of a Resolution on February 16, 1971, the City of Jersey City approved a 48 year, 15% of annual gross shelter rent tax exemption for property located at the intersection of Kennedy Blvd and Newark Avenue, and known as Block 593.1, Lot F on the City's Tax Map [Property] owned by Summit Apartments, Inc, pursuant to the Limited Dividend Non Profit Housing Corporation Law, N.J.S.A. 55:16-18.; and

**WHEREAS**, Summit Apartments, Inc., constructed 531 units of moderate income housing and 28,472.75 square feet of commercial space and 385 parking spaces, with a loan from the New Jersey Housing and Mortgage Finance Agency [HMFA] construction

mortgage [Project]; and

**WHEREAS**, by a deed dated May 21, 1973, Summit Apartments, Inc., conveyed the Property to Summit Plaza Associates, a qualified housing sponsor under HMFA, but without the approval of the governing body; and

**WHEREAS**, Summit Plaza Associates constructed 28,472.75 square feet of commercial space and 385 parking spaces on the Property although commercial use and parking were never applied for or approved for tax exemption; and

**WHEREAS**, on May, 2009, Summit Plaza Associates, applied to subdivide Block 593.1, Lot F, into 2 separate lots: one for the residential and commercial space (Block 593.1, Lot 1); and the second, for the vacant School Building (Block 593.1, Lot 2); and

**WHEREAS**, by an application dated September 25, 2009, as amended on October 28, 2009, and November 4, 2009, Summit Plaza Associates applied to the City of Jersey City to approve 1) the nunc pro tunc of the 1973 sale of the Property to Summit Plaza Associates and its use of a portion of the Property for commercial purposes; 2) an amendment to the existing tax exemption to terminate the tax exemption as to the School Building, Block 593.1, Lot 2; and 3) the proposed sale of the School Building, Block 593.1, Lot 2, for \$1.8 million to a third party; and

**WHEREAS**, the conveyance of the Property from Summit Apartments, Inc. to Summit Plaza Associates and approval of a portion of the Property for commercial uses should be approved and memorialized; and

**WHEREAS**, the sale of the School Building Block 593.1, Lot 2 and termination of its tax exemption, will result in the return of that portion of the Property to the conventional real estate tax rolls; and

**WHEREAS**, there is an especially compelling need to maintain and preserve decent, safe, and affordable housing; and

**WHEREAS**, on \_\_\_\_\_ 2010, the Entity's Application for an amendment of the long term tax exemption for the Project was approved by the City by the adoption of Ordinance \_\_\_\_; and

**NOW, THEREFORE**, in consideration of the mutual covenants herein contained,

and for other good and valuable consideration, it is mutually covenanted and agreed as follows:

**ARTICLE I - GENERAL PROVISIONS**

**Section 1.1 Governing Law**

This Amended Agreement shall be governed by the provisions of the New Jersey Housing and Mortgage Finance Agency Law, N.J.S.A. 55:14K-1 et seq., Executive Order of E.O. 02-003, and Ordinance \_\_\_\_\_, which authorized the execution of this Amended Agreement. It being expressly understood and agreed that the City expressly relies upon the facts, data, and representations contained in the Application, attached hereto as Exhibit 3, in granting this tax exemption.

**Section 1.2 General Definitions**

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

- i. Agency- The New Jersey Housing and Mortgage Finance Agency.
- ii. Annual Gross Shelter Rent- The total gross income, including any and all revenue derived from or generated by the Project of whatever kind or amount, whether received as rent from any tenants or income or fees from third parties, including but not limited to fees or income paid or received for parking, laundry, or other services, including any Section 8 certificate revenue derived from the Project, including all rent and other income, with an allowable vacancy rate of up to 5%. It also includes the cost of insurance, gas, electricity, water and sewer charges, other utilities, garbage removal and insurance charges even if paid for directly by the Tenant, if such expense is ordinarily paid for by the Landlord.
- iii. Auditor's Report - A complete financial statement outlining the financial status of the Project (for a period of time as indicated by context), which shall also include a certification of Total Project Cost and clear computation of Net Profit. The contents of the Auditor's Report shall have been prepared in conformity with generally accepted accounting principles and shall contain at a minimum the following: a balance sheet, a statement of income, a statement of retained earnings or changes in stockholder's

equity, statement of cash flows, descriptions of accounting policies, notes to financial statements and appropriate schedules and explanatory material results of operations, cash flows and any other items reasonably required by the City or its auditors. The Auditor's Report shall be certified as to its conformance with such principles by a certified public accountant who is licensed to practice that profession in the State of New Jersey.

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

v. Default - Shall be a breach of or the failure of the Entity to perform any obligation imposed upon the Entity by the terms of this Amended Agreement, or under the Law, beyond any applicable grace or cure periods.

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

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

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

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

x. Land Tax Payments - If the law requires, 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.

xi. Law - Law shall refer to the New Jersey Housing and Mortgage Finance Agency Law, N.J.S.A. 55:14K-1 et seq.; Executive Order 02-003, relating to long term tax exemption, as it may be amended and supplemented; Ordinance \_\_\_\_\_ which authorized the execution of this Amended Agreement; and Ordinance 07-123, as may be amended or supplemented from time to time, which requires the execution of a Project Labor Agreement, and all other relevant Federal, State or City statutes, ordinances, resolutions, rules and/or regulations.

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

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

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

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

## ARTICLE II - APPROVAL

### **Section 2.1(a) Approval of Tax Exemption**

The City hereby grants its approval for a tax exemption for all the Improvements to be constructed and maintained in accordance with the terms and conditions of this Amended Agreement and the provisions of the Law which Improvements shall be constructed on certain property known on the Official Tax Assessor's Map of the City as: Block 593.1, Lot 1 (formerly known as a portion of Lot F), more commonly known by the street address of

Kennedy Blvd and Newark Avenue, Jersey City, NJ, and described by metes and bounds in Exhibit 1 attached hereto.

**Section 2.1(b) Termination of Tax Exemption**

The tax exemption for the vacant School Building, Block 593.1, Lot 2 (formerly known as a portion of Lot F), is terminated and the Property returned to the conventional real estate tax rolls.

**Section 2.2 Approval of Entity**

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

**Section 2.3 Improvements to be Constructed**

Entity represents that it has constructed 531 units of moderate income housing and 28,472.75 square feet of commercial space and 385 parking spaces on the Property to create a total of 531 units of rental housing, all of which is more specifically described in the Application attached hereto as Exhibit 3.

**Section 2.4 Construction Schedule**

Construction of the Project was completed in or about 1973.

**Section 2.5 Ownership, Management and Control**

The Entity represents that it is the owner of the property upon which the Project is to be constructed. Upon construction, the Entity represents that the Improvements will be managed and controlled as follows:

1. The Entity shall manage the improvements.

**Section 2.6 Financial Plan**

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

of any mortgage amortization.

**Section 2.7 Statement of Rental Schedules and Lease Terms**

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

**ARTICLE III - DURATION OF AMENDED AGREEMENT**

**Section 3.1 Term**

So long as there is compliance with the Law and this Amended Agreement, it is understood and agreed by the parties hereto that this Amended Agreement shall remain in effect for the earlier of: forty eight (48) years from the date of the adoption of a Resolution on February 16, 1971, and by the adoption of Ordinance \_\_\_\_\_ which approved this amendment to this exemption or \_\_\_\_ ( ) years from the date of the recording of the HMFA mortgage as funded and approved by the Agency, which the parties agree was \_\_\_\_\_, Page 1 of which is attached hereto. The tax exemption shall only be effective only while the Project is owned by an entity formed and operating as a housing sponsor under the Law and subject to an HMFA mortgage. Thereafter, the tax exemption shall expire and the land and improvements thereon shall be assessed and taxed according to the general law applicable to other non-exempt property in the City.

**ARTICLE IV - ANNUAL SERVICE CHARGE**

**Section 4.1 Annual Service Charge**

In consideration of the tax exemption, the Entity shall make payment to the City of an amount equal to the greater of: the Minimum Annual Service Charge or an Annual Service Charge equal to 15% of Annual Gross Shelter Rent. The Annual Service Charge shall be billed initially based upon the Entity's estimates of Annual Gross Shelter Rent as set forth in its Financial Plan, attached hereto as Exhibit 6. Thereafter, the Annual Service Charge shall be adjusted in accordance with this Amended Agreement.

A Minimum Annual Service Charge shall be due beginning on the date this Amended Agreement is executed. The Annual Service Charge or Minimum Annual Service Charge, as the case may be, shall be due on the first day of the month following the Substantial Completion of the Project. In the event the Entity fails to timely pay the

Minimum Annual Service Charge or the Annual Service Charge, the amount unpaid shall bear the highest rate of interest permitted in the case of unpaid taxes or tax liens on land until paid.

**Section 4.2 Administrative Fee**

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

**Section 4.3 Land Tax Credit**

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

**Section 4.4 Quarterly Installments**

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

**Section 4.5 Material Conditions**

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

**ARTICLE VI - CERTIFICATE OF OCCUPANCY**

**Section 6.1 Certificate of Occupancy**

It is understood and agreed that it shall be the obligation of the Entity to obtain all Certificates of Occupancy in a timely manner. The failure to secure the Certificates of Occupancy shall subject the property to full taxation.

**Section 6.2 Filing of Certificate of Occupancy**

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

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

**Section 6.3 Construction Permits**

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

**ARTICLE VII - ANNUAL REPORTS**

**Section 7.1 Accounting System**

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

**Section 7.2 Periodic Reports**

A. Auditor's Report: Within ninety (90) days after the close of each fiscal or calendar year, depending on the Entity's accounting basis that this Amended Agreement shall continue in effect, the Entity shall submit to the Municipal Council, the Tax Collector

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

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

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

**Section 7.3 Mortgage**

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

**Section 7.4 Inspection/Audit**

The Entity shall permit the inspection of its property, equipment, buildings and other

facilities of the Project and, if deemed appropriate or necessary, any other related Entity by representatives duly authorized by the City and the NJ Division of Local Government Services in the Department of Community Affairs. It shall also permit, upon request, examination and audit of its books, contracts, records, documents and papers. Such examination or audit shall be made during the reasonable hours of the business day, in the presence of an officer or agent designated by the Entity.

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

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

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

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

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

#### **Section 9.1 Prior Approval of Sale**

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

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

In the event that the Entity transfers, sells, demises, conveys, or in any manner relinquishes ownership or title, including a lease to the land or improvements, covered by this Amended Agreement, to a tax exempt non-profit organization or institution, including any public body, during the term of the tax exemption Amended Agreement, that would

adversely impact the City's anticipated economic interests by reducing in any way taxes or the service charge due the City under this Amended Agreement or by law, it is understood and agreed by the Entity that it first obtain the consent of the City to the transfer or lease. It is further understood that it may be grounds for the City to withhold its approval if the City's economic interests are adversely effected thereby.

**Section 9.3 Severability.**

It is an express condition of the granting of this tax exemption that during its duration, the Entity shall not, without the prior consent of the Municipal Council by Ordinance, convey, mortgage or transfer, all or part of the Project so as to sever, disconnect, or divide the improvements from the lands which are basic to, embraced in, or underlying the exempted improvements.

**ARTICLE X - COMPLIANCE**

**Section 10.1 Operation**

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

**ARTICLE XI - DEFAULT**

**Section 11.1 Default**

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

**Section 11.2 Cure Upon Default**

Should the Entity be in Default, the City shall send written notice to the Entity of the Default [Default Notice]. The Default Notice shall set forth with particularity the basis of the alleged Default. The Entity shall have sixty (60) days, from receipt of the Default

Notice, to cure any Default which shall be the sole and exclusive remedy available to the Entity. However, if, in the reasonable opinion of the City, the Default cannot be cured within sixty (60) days using reasonable diligence, the City will extend the time to cure.

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

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

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

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

of the rights to terminate the tax exemption or proceed with a tax sale or Tax Foreclosure action or any other specified remedy.

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

## **ARTICLE XII- TERMINATION**

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

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

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

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

### **Section 12.3 Final Accounting**

Within ninety (90) days after the date of termination, whether by affirmative action of the Entity or by virtue of the provisions of the Law or pursuant to the terms of this Amended Agreement, the Entity shall provide a final accounting to the City. For purposes of rendering a final accounting the termination of the Amended Agreement shall be deemed to be the end of the fiscal year for the Entity.

### **Section 12.4 Conventional Taxes**

Upon Termination or expiration of this Amended Agreement, the tax exemption for the Project shall expire and the land and the Improvements thereon shall thereafter be assessed and conventionally taxed according to the general law applicable to other

nonexempt taxable property in the City.

### **ARTICLE XIII - DISPUTE RESOLUTION**

#### **Section 13.1 Arbitration**

In the event of a breach of the within Amended Agreement by either of the parties hereto or a dispute arising between the parties in reference to the terms and provisions as set forth herein, either party may apply to the Superior Court of New Jersey by an appropriate proceeding, to settle and resolve the dispute in such fashion as will tend to accomplish the purposes of the Law. In the event the Superior Court shall not entertain jurisdiction, then the parties shall submit the dispute to the American Arbitration Association in New Jersey to be determined in accordance with its rules and regulations in such a fashion to accomplish the purpose of the Long Term Tax Exemption Law. The cost for the arbitration shall be borne equally by the parties. The parties agree that the Entity may not file an action in Superior Court or with the Arbitration Association unless the Entity has first paid in full all charges defined in Article IV, Section 4.5 as Material Conditions.

### **ARTICLE XIV - WAIVER**

#### **Section 14.1 Waiver**

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

### **ARTICLE XV - INDEMNIFICATION**

#### **Section 15.1 Defined**

It is understood and agreed that in the event the City shall be named as party defendant in any action (other than an action commenced by the Entity) alleging any breach, default or a violation of any of the provisions of this Amended Agreement and/or the provisions of the Law, the Entity shall indemnify and hold the City harmless, and the Entity

agrees to defend the suit at its own expense. However, the City maintains the right to intervene as a party thereto, to which intervention the Entity consents; the expense thereof to be borne by the Entity.

**ARTICLE XVI- NOTICE**

**Section 16.1 Certified Mail**

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

**Section 16.2 Sent by City**

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

Windels Marx Lane & Mittendorf, LLP  
120 Albany Street Plaza  
New Brunswick, New Jersey 08901  
Att: Charles B. Liebling  
and  
New Jersey Housing and Mortgage Finance Agency  
637 South Clinton Avenue  
P.O. Box 18550  
Trenton, NJ 08650-2085

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

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

**Section 16.3 Sent by Entity**

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

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

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

## ARTICLE XVII-SEVERABILITY

### **Section 17.1 Severability**

If any term, covenant or condition of this Amended Agreement or the Application, except a Material Condition, shall be judicially declared to be invalid or unenforceable, the remainder of this Amended Agreement or the application of such term, covenant or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term, covenant or condition of this Amended Agreement shall be valid and be enforced to the fullest extent permitted by law.

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

## ARTICLE XVIII - MISCELLANEOUS

### **Section 18.1 Construction**

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

### **Section 18.2 Conflicts**

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

**Section 18.3 Oral Representations**

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

**Section 18.4 Entire Document**

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

**Section 18.5 Good Faith**

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

**ARTICLE XIX - EXHIBITS**

**Section 19 Exhibits**

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

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

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

**ATTEST:**

**SUMMIT PLAZA ASSOCIATES, INC.**

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

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

**ATTEST:**

**CITY OF JERSEY CITY**

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

\_\_\_\_\_  
**BRIAN O'REILLY  
BUSINESS ADMINISTRATOR**

WINDELS MARX LANE & MITTENDORF, LLP  
120 ALBANY STREET PLAZA  
NEW BRUNSWICK, NEW JERSEY 08901  
TELEPHONE: 732.846.7600  
FACSIMILE: 732.846.8877

PRINCETON, NJ  
—  
STAMFORD, CT  
—  
NEW YORK, NY

September 25, 2009

**BY FEDEX**

The Honorable Jerramiah T. Healy  
Mayor, City of Jersey City  
280 Grove Street  
Jersey City, New Jersey 07302

**Re: Application for Amendment to Tax Exemption  
Summit Plaza Apartments  
Newark Avenue and JFK Boulevard (Block 593.1, Lot F)**

Dear Mayor Healy:

**This application replaces and supersedes the application submitted to you dated August 13, 2009. That submission should be discarded.**

On behalf of Summit Plaza Associates, a New Jersey limited partnership (the "Applicant") and in accordance with Executive Order 02-003 of the Mayor of the City of Jersey City (the "Executive Order"), I am writing to formally apply for an amendment to the existing long term tax exemption for the Summit Plaza Apartments project (the "Project"), which is owned by the Applicant. Presently, the Project is subject to a long term tax exemption pursuant to a financial agreement for payment in lieu of taxes dated September 15, 1971 (the "PILOT Agreement") between the then-owner of the Project, Summit Apartments, Inc., and the City of

CITY OF JERSEY CITY  
EXAMINER  
RECEIVED  
219 SEP 31 AM 7:57

The Honorable Jerramiah T. Healy  
Mayor, City of Jersey City  
September 25, 2009  
Page 2

Jersey City (the "City"). For your convenience, I have attached a copy of the PILOT Agreement and its approval resolution as **Exhibit A** hereto.

The request for this amendment is necessitated by the pending sale of the vacant school building located on the Project site (the "School Building") to an unrelated party.

The purpose of the amendment is to remove the School Building from the ambit of the PILOT Agreement, leaving the balance of the Project subject to the PILOT Agreement. As a result of the approval of the requested amendment, the School Building will no longer be subject to a long term tax exemption and will go back on the tax rolls while, as stated, the balance of the Project will continue to be subject to the PILOT Agreement. We further request that the requested amendment to the PILOT Agreement become effective only upon closing of the conveyance of the School Building.

Attached as **Exhibit B** is the legal description for the School Building, which will no longer be subject to the PILOT Agreement after its sale.

Given that our request relates to an amendment to a financial agreement for an existing project rather than a new financial agreement for new construction, we have not included each of the enumerated items contained in the Executive Order which are typically required for new tax abatements and exemptions. However, should the City require any additional information relating to this matter, we will be happy to provide it.

Finally, the City ordinance provision regarding application fees for tax exemptions states that that there is no fee for projects that provide housing for families of low or moderate income. The requested amendment is being pursued in connection with maintaining the financial viability

The Honorable Jerramiah T. Healy  
Mayor, City of Jersey City  
September 25, 2009  
Page 3

of the balance of the Project, which does provide housing for families of low or moderate income. Please confirm that no application fee is required.

We appreciate the City's consideration of this request and look forward to receiving direction on moving the application forward.

Very truly yours,



Charles B. Liebling

CBL:lji  
Enclosures

cc: Mr. Carl Czaplicki, Director of Department of Housing,  
Economic Development and Commerce (8 copies) (via FedEx)  
Joanne Monahan, Esq. (w/encls.)  
Stephen Salup, Esq. (w/encls.)  
Leonard A. LaBarbiera, Esq.

RESOLUTION OF THE MUNICIPAL COUNCIL OF THE  
CITY OF JERSEY CITY APPROVING LIMITED -  
DIVIDEND AGREEMENT FOR OPERATION BREAKTHROUGH  
AS AUTHORIZED BY THE HOUSING CORPORATION LAW  
OF THE STATE OF NEW JERSEY

WHEREAS, Summit Apartments Inc. (hereinafter referred to as the "applicant") proposes to construct a housing project (hereinafter referred to as the "development" or the "housing") pursuant to the provisions of the New Jersey Housing Finance Agency Law of 1967, as amended and supplemented, within the City of Jersey City, (hereinafter sometimes referred to as the "municipality") on a site more particularly described as follows:

ALL of that land situated, lying and being in the City of Jersey City, New Jersey, comprised of approximately 6.35 acres located within that land area known as the St. John's Urban Renewal Area, being bounded by Newark and Summit Avenues, J.F. Kennedy Boulevard, Van Winkle Avenue, and being more particularly described on the surveys attached hereto and made a part hereof (as Exhibit B);

and

WHEREAS, an application has been made to and approved by the Public Housing and Development Authority (hereinafter referred to as the "Authority") in the Department of Community Affairs of the State of New Jersey, pursuant to the provisions of the Limited-Dividend Nonprofit Housing Corporations or Associations Law, Chapter 184, Laws of 1949, as amended and supplemented (hereinafter referred to as the "Limited-Dividend Law"), for the approval of a certificate of incorporation of a nonprofit housing corporation, and an application will be made for the approval of the development to be constructed, maintained, or operated by the proposed corporation or association on the aforesaid described area, and

WHEREAS, the proposed development will be subject to

the Rules and Regulations of both the New Jersey Housing Finance Agency (hereinafter referred to as "NJHFA") and the Authority; and

WHEREAS, pursuant to the provisions of the Limited-Dividend Law it is necessary for the governing body of the municipality to certify that it approves of the development or acquisition of the proposed housing and that the proposed housing meets or will meet an existing housing need; and

WHEREAS, the proposed development will be within an area where, under the conditions existing at this time, dwellings conforming to reasonable standards of adequacy and renting at or below the average rent to be charged in the proposed development, are not being provided in sufficient quantity through the ordinary operation of private enterprise; and

WHEREAS, the municipality, by a Resolution of Cooperation adopted by its Municipal Council at its meeting of December 9, 1969, did agree to take such action authorized by the Housing Cooperation Law of the State of New Jersey (55:14B - 1 et seq.), which statute provides, among other things, for the granting of tax abatements; and

WHEREAS, Summit Apartments, Inc. has presented to this body a financial estimate dated January 25, 1971, (hereinafter referred to as Exhibit A), covering the cost of the land and improvements and the operation of the project as estimated by the applicant and the NJHFA, which estimate is attached hereto and incorporated herein by reference, and which reasonably assures the successful completion and operation of the project.

NOW, THEREFORE, BE IT RESOLVED by the Municipal Council of the City of Jersey City, New Jersey, that they find and certify

that

(a) The proposed development will meet or meets an existing housing need,

(b) The development of the housing is hereby approved;  
and

BE IT FURTHER RESOLVED that the Municipal Council finds that the proposed development is and will be an improvement made for the purposes of assisting the clearance, replanning, development, or redevelopment of blighted areas in this municipality, and

BE IT FURTHER RESOLVED that the Municipal Council does hereby adopt the within Resolution and made the determinations and findings therein contained by virtue of, pursuant to, and in conformity with the provisions of the Limited-Dividend Law, with the intent and specific purpose that the Authority shall rely thereon in approving the development proposed to be constructed, owned, maintained, and operated and disposed in the aforesaid described area, and with the further intent and purpose that the proposed development and improvements shall be exempt from all property taxation as provided in Paragraph 18 of the Limited-Dividend Law (paragraph 18 of Chapter 184 of the Laws of 1949, as amended and supplemented), and that, in lieu of taxes said housing corporation shall make to the municipality payment of an annual service charge for municipal services supplied to the housing development in such amount, not exceeding the tax on the property on which the development is located for the year in which the undertaking of said development is commenced, or fifteen per centum (15%) of the annual gross shelter rents obtained from payments by tenants of development, (or paid directly to the Sponsor under the Federal rent supplement program) determined in the manner set forth in Exhibit "A" hereinabove referred to and relied upon by the NJHFA as the basis for its financing the development, whichever is greater,

and the Mayor is authorized and directed to execute, on behalf of the municipality such agreement(s) reflecting the aforesaid annual service charge, in lieu of taxes, as may be deemed necessary or desirable by the NJHFA; and

BE IT FURTHER RESOLVED that such Agreement Authorized hereby provide that the Sponsor, or its successors and assigns be required to furnish the Municipality, annually, with a certified statement of operations of the development detailing the annual gross shelter rents obtained from payments by the tenants of the development and, if applicable, payments made directly to the Sponsor under the Federal rent supplement program.

APPROVED BY \_\_\_\_\_  
Director, Department of  
Community Affairs

APPROVED BY \_\_\_\_\_  
Mayor

APPROVED BY \_\_\_\_\_  
Business Administrator

The City Clerk published the following resolution:  
On roll call, it was adopted by the following vote:

RES. NO. \_\_\_\_\_  
ORD. NO. \_\_\_\_\_  
ROLL CALL

	AYE	NOY
FLAHERTY	/	
JARVIS	/	
KELAND	/	
MCGOVERA	/	
MARSA	/	
FEDORNO	/	
PERKINS	/	
QUILTY	/	
THURNTON	/	

CERTIFIED to be a true copy of  
RESOLUTION adopted by the  
Municipal Council of the city of  
Jersey City at its meeting of

Feb. 16, 1971  
*Helen J. Rozma*  
City Clerk

EXHIBIT "A"  
FINANCIAL ESTIMATE ##

OF

SUMMIT APARTMENTS INC.  
(Name of Sponsor or Owner)

Re: Housing Development to be built on property known as  
~~XXXXXXXXXXXX~~

Operation Breakthrough - St. John's Urban Renewal Area

January 25, 1971  
(Date)

- |                            |                 |
|----------------------------|-----------------|
| 1. Total Development Cost  | \$ 20,000,000 + |
| 2. Mortgage Amount         | \$ 16,800,000   |
| 3. Term                    | 48 years        |
| 4. Estimated Interest Rate | 7 %             |

5. Estimated Rent Role:

<u>Unit Size</u>	<u># of Units</u>	<u>Minimum Monthly Rent Per Unit</u>	<u>Minimum Annual Rent Per Unit</u>	<u>Minimum Yearly Gross Rental</u>
------------------	-------------------	--------------------------------------	-------------------------------------	------------------------------------

Efficiency

1 Bedroom

2 Bedroom

3 Bedroom

4 Bedroom

5 Bedroom

SEE SCHEDULE ATTACHED HERETO

- |   |              |
|---|--------------|
| 6a. Gross rents paid by tenants (non-residential) | 197,549      |
| 6b. Gross Rents Paid by Tenants                   | \$ 1,453,984 |
| 6c. Total Gross Rents                             | 1,651,533    |
| 7. Less Utilities                                 | 147,300      |
| 8. Gross Shelter Rents Paid by Tenants            | \$ 1,504,233 |
| 9. Municipal Service Charge -- 15% of line 8      | 225,635      |

\* Exclusive of public school and day care center tenants, for which no payment in lieu of taxes is to be assessed.

## This Exhibit is intended as an estimate only. The mortgage amounts may be increased.

Note: Tenants paying rents higher than the minimum ("basic") rents shown above will cause the total rent roll to increase, thus resulting in higher service charge to the municipality. Tenants paying rents lower than the rents shown above will cause the total rent roll to decrease, thus resulting in lower service charge to the municipality.

SUMMIT APARTMENTS INC.  
Attachment to Exhibit "A"

ESTIMATED RENT ROLL \*

RENT LEVEL	UNIT TYPE	MONTHLY RENTAL	NO. OF UNITS	TOTAL INCOME	
				MONTHLY	YEAR
I	E-	125	10		
	1	190	25	\$ 1,250	\$ 15,000
	2	225	22	4,750	57,000
		0 (Superintendent)	1	4,950	59,400
	3	315	17		
	4	375	14	5,355	64,260
			89	5,250	63,000
				\$ 21,535	\$ 253,630
II	E	150	24		
	1	205	45	\$ 3,600	\$ 43,200
	2	260	49	9,225	110,700
	3	333	30	12,740	152,880
	4	415	25	9,990	119,880
			173	10,375	124,500
				\$ 45,930	\$ 551,160
III	1	240	58	\$ 13,920	\$ 167,040
	2	300	64	19,200	230,400
	3	350	26	9,100	109,200
			148		
				\$ 42,220	\$ 506,640
IV	1	300	65	\$ 19,500	\$ 234,000
	2	350	56	19,600	235,200
			121		
				\$ 39,100	\$ 469,200

\* At Market

a. Total est. rent at market	
b. Total est. rent roll at Sec. 236 prices	\$1,783,806
c. Approx. 60% of line (a)	959,251
d. Approx. 40% of line (b)	1,070,284
	383,700

EXHIBIT "B"

PARCEL 4 IN JERSEY CITY BLOCK 593A

BEGINNING at a point in the westerly line of Summit Avenue distant  $N23^{\circ}-37'-03''E$ , 155.56 feet from the intersection of the said westerly line of Summit Avenue and the northerly line of Newark Avenue and running thence (1)  $N71^{\circ}-14'-57''W$ , 506.45 feet to a point; thence (2)  $N16^{\circ}-45'-03''E$ , 203.00 feet to a point; thence (3)  $S71^{\circ}-14'-57''E$ , 315.50 feet to a point; thence (4)  $N18^{\circ}-45'-03''E$ , 130.00 feet to a point; thence (5)  $S71^{\circ}-14'-57''E$ , 197.80 feet to a point in the aforesaid westerly line of Summit Avenue; thence (6)  $S12^{\circ}W$ , along the said line of Summit Avenue, 105.43 feet to an angle point in said avenue; thence (7)  $S23^{\circ}-37'-03''E$ , continuing along the said westerly line of Summit Avenue, 228.13 feet to the said point or place of Beginning. The above described parcel of land containing 131,216.3 square feet or 3.01 acres, being known as Parcel 4 and also as Part of Plot E in Jersey City Block 593A. All as shown upon a survey made for the Jersey City Redevelopment Agency, St. Johns Urban Renewal Project UR NJ 2-2 by Clarke, Hartman & Dunn, Inc., Consulting Engineers on February 19, 1970.

PARCEL 5 IN JERSEY CITY BLOCK 593A

BEGINNING at the intersection of the easterly line of Kennedy Boulevard (formerly Hudson Boulevard) with the northerly line of Newark Avenue and running thence (1)  $N19^{\circ}-00'-18''E$ , along the said easterly line of Kennedy Boulevard, 222.05 feet to a point in the southerly line of Van Winkle Avenue, as widened; thence (2)  $S80^{\circ}-25'-42''E$ , along the said southerly line of Van Winkle Avenue, as widened, 54.23 feet to an angle point in said avenue; thence (3)  $S77^{\circ}-25'-42''E$ , continuing along the said southerly line of Van Winkle Avenue, 65.95 feet to a point; thence (4)  $S18^{\circ}-45'-03''E$ , 61.99 feet to a point; thence (5)  $S71^{\circ}-14'-57''E$ , 138.19 feet to a point; thence (6)  $S18^{\circ}-45'-03''E$ , 156.00 feet to a point in the aforesaid northerly line of Newark Avenue; thence (7)  $N71^{\circ}-14'-57''W$ , along the said northerly line of Newark Avenue, 859.26 feet to the point or place of Beginning. The above described parcel of land containing 142,975.8 square feet or 3.29 acres, being known as Parcel 5 and also as Lots A1 and A3 in Jersey City Block 593A. All as shown upon a survey made for the Jersey City Redevelopment Agency, St. Johns Urban Renewal Project UR NJ 2-2 by Clarke, Hartman & Dunn, Inc., Consulting Engineers on February 19, 1970.

5  
THIS AGREEMENT, made this 15 day of September, 1971, between Summit Apartments Inc., a Corporation of the State of New Jersey, organized pursuant to the Limited Dividend Nonprofit Housing Corporations or Associations Law as amended, or hereinafter amended (N. J. S. A. 55:16-1 et. seq.) (hereinafter referred to as the "Limited-Dividend Law"), having an office at 640 West 40th Street, New York, N. Y., c/o Volt Information Sciences, Inc. (hereinafter designates as the "Sponsor") and The City of Jersey City, a municipal corporation in the County of Hudson and State of New Jersey (hereinafter designated as the "Municipality").

WITNESSETH

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

1. This Agreement is made pursuant to the authority contained in Section 18 of the Limited-Dividend Law (N. J. S. A. 55:16-18 and a Resolution of the Municipal Council of the Municipality dated February 16, 1971, and with the approval of the New Jersey Housing Finance Agency (hereinafter referred to as "NJHFA"), as provided for under Section 30 (b) of the NJHFA Law (N. J. S. A. 55:14J-30(b)).

2. The Municipality recognizes and approves the Sponsor as the owner and operator of the development known as Summit Apartments and previously approved by the governing body in the aforesaid Resolution dated February 16, 1971.

3. It is expressly understood and agreed that the Municipality enters into this Agreement in reliance upon the supervision over the Sponsor vested by statute in the Public Housing and Development Authority in the Department of Community Affairs of the State of New Jersey (hereinafter referred to as the "Authority") and in the NJHFA. The Municipality also enters into this Agreement in reliance upon the supervision of the Sponsor by the United States Government acting through the Department of Housing and Urban Development (hereinafter referred to as "HUD"), during the developmental phase by virtue of a written agreement between the Sponsor and HUD for the redevelopment of the site as part of Operation Breakthrough, in which program the Municipality has agreed to participate and cooperate. The Municipality recognizes, however, the right of both the NJHFA and HUD to direct the Sponsor to make reasonable changes in the construction, maintenance, and operation of the development which are required by the NJHFA and HUD in its or their view, to ensure compliance with the financial and statutory requirements of the New Jersey Housing Finance Agency Law of 1967, as amended or hereinafter amended (N. J. S. A. 55:14J-1 et. seq.) and the financial and

statutory requirements of applicable Federal law and, further, to comply with covenants made to the bond holders of the NJHFA.

4. The lands upon which the development is to be undertaken is described as follows:

A. All that certain tract or parcel of land and premises, hereinafter particularly described, situate, lying and being in the City of Jersey City, County of Hudson and State of New Jersey.

BEGINNING at the intersection of the easterly line of Kennedy Boulevard (formerly Hudson Boulevard) with the northerly line of Newark Avenue and running thence (1)  $N19^{\circ} - 00' - 18''E$ , along the said easterly line of Kennedy Boulevard, 222.06 feet to a point in the southerly line of Van Winkle Avenue, as widened; thence (2)  $S80^{\circ} - 25' - 42''E$ , along the said southerly line of Van Winkle Avenue, as widened, 54.23 feet to an angle point in said avenue; thence (3)  $S77^{\circ} - 28' - 42''E$ , continuing along the said southerly line of Van Winkle Avenue, 66.95 feet to a point; thence (4)  $S18^{\circ} - 45' - 03''W$ , 81.99 feet to a point; thence (5)  $S71^{\circ} - 14' - 57''E$ , 738.19 feet to a point; thence (6)  $S18^{\circ} - 45' - 03''W$ , 156.00 feet to point in the aforesaid northerly line of Newark Avenue; thence (7)  $N71^{\circ} - 14' - 57''W$ , along the said northerly line of Newark Avenue, 859.26 feet to the point or place of Beginning. The above described parcel of land containing 142,975.8 square feet or 3.28 acres, being known as Parcel 5 and also as Lots A1 and A3 in Jersey City Block 593A. All as shown upon a survey made for the Jersey City Redevelopment Agency, St. Johns Urban Renewal Project UR NJ 2-2 by Clarke, Hartman & Dunn, Inc. Consulting Engineers on February 19, 1970.

B. BEGINNING at a point in the westerly line of Summit Avenue distant  $N23^{\circ} - 37' - 08''E$ , 156.56 feet from the intersection of the said westerly line of Summit Avenue and the northerly line of Newark Avenue and running thence (1)  $N71^{\circ} - 14' - 57''W$ , 506.45 feet to a point; thence (2)  $N18^{\circ} - 45' - 03''E$ , 203.00 feet to a point; thence (3)  $S71^{\circ} - 14' - 57''E$ , 315.50 feet to a point; thence (4)  $N18^{\circ} - 45' - 03''E$ , 130.00 feet to a point; thence (5)  $S71^{\circ} - 14' - 57''E$ , 197.80 feet to a point in the aforesaid westerly line of Summit Avenue; thence (6)  $S12^{\circ}W$ , along the said line of Summit Avenue 106.43 feet to an angle point in said avenue; thence (7)  $S23^{\circ} - 37' - 08''W$ , continuing along the said westerly line of Summit Avenue 228.13 feet to the said point or place of Beginning. The above described parcel of land containing 131,218.3 square feet or 3.01 acres, being known as Parcel 4 and also as Part of Plot E in Jersey City Block 593A. All as shown upon survey made for the Jersey City Redevelopment Agency, St. John's Urban Renewal Project UR NJ 2-2 by Clarke, Hartmann & Dunn, Inc., Consulting Engineers on February 19, 1970.

5. The tax exemption established by N. J. S. A. 55:16-18 shall be effective upon the date the sponsor executes a first mortgage upon the development in favor of the NJHFA and shall continue for a period of not more than fifty (50) years therefrom nor less than the term of the NJHFA mortgage.

6. (a) In consideration of the aforesaid exemption from taxation, the Sponsor shall make payment to the Municipality of an annual service charge for municipal services supplied to said development, in such amount, not exceeding the tax on the property on which the development is located for the full year in which the undertaking of such development is commenced or fifteen percent (15%) of the annual gross shelter rents obtained from payments by ~~residents~~<sup>tenants</sup> of the development, whichever is greater. For purposes of this Agreement the year in which the development is commenced shall be deemed to be the year during which a mortgage on the development is executed in favor of the NJHFA.

(b) The aforesaid payment by the Sponsor shall be made on a quarterly basis in accordance with bills issued by the Director of Finance of the Municipality and in the same manner and on the same dates as real estate taxes are paid in the Municipality, commencing from the date of first rental of the development. Said payments shall be in the amount of one fourth (1/4) of the minimum service charge set forth above except that no later than February 28th of any year after the issuance of a State or local Certificate of Occupancy for the entire development, the Sponsor shall submit to the Director of Finance and the Director of the Division of Planning an auditor's report, certified to by a certified public accountant, of the operations of the development setting forth the actual figures for the prior year of operation comprising the annual gross shelter rents paid by the ~~residents~~<sup>tenants</sup> of the development and the total service charge due the Municipality at fifteen percent (15%) thereof. The Sponsor shall simultaneously pay the difference, if any, between 15% of the gross shelter rents shown by the audit and the sum of the four quarterly payments paid by the Sponsor to the Municipality. The Municipality may accept payment without prejudice to its right to challenge the accuracy of the audit and the amount due.

(c) In the event the development is enlarged or modified upon the present site, it is understood and agreed that the annual municipal service charge shall become due from the added or enlarged units, in accordance with the formula more specifically set forth above.

(d) All quarterly payments made under paragraph (b) above shall be in lieu of taxes and the Municipality shall have all the rights and remedies of tax enforcement granted to Municipalities by law just as if said payments constituted regular tax obligations on real property within the Municipality. If, however, the Municipality disputes the total amount of the annual service charge due it, based upon the Sponsor's annual audit, it may apply to the Superior Court, Chancery Division for an accounting of the service charge due the Municipality, in accordance with this Agreement and the Limited-Dividend Law. Any such action must be commenced within one year of the receipt of the Sponsor's audit by the Municipality.

7. The tax exemption provided herein shall apply only so long as the Sponsor or its successors and assigns and the development remain subject to the provisions of the aforesaid Limited-Dividend Law (N. J. S. A. 55:16-1 et. seq.) and the supervision of the Authority but in no event longer than fifty (50) years from the effective date of the exemption as set forth in paragraph 5 above.

8. Upon any termination of such tax exemption, whether by affirmative action of the Sponsor, its successors and assigns, or by virtue of the provisions of the Limited-Dividend Law, the development shall be taxed as omitted property in accordance with law.

9. The Sponsor, its successors and assigns shall, upon request, permit inspection of property, equipment, buildings and other facilities of the development and also permit examination and audit of its books, contracts, records, documents and papers by representatives duly authorized by the Municipality. Any such inspection, examination, or audit shall be made during the reasonable hours of the business day, in the presence of an office or agent of the Corporation or its successors and assigns.

10. A notice or communication sent by either party to the other hereunder shall be sent by certified mail, return receipt requested, addressed as follows:

(a) When sent by the Municipality to the Sponsor, it shall be addressed to 640 West 40th Street, New York, New York 10018 or to such other address as the Corporation may hereafter designate in writing.

(b) When sent by the Sponsor to the Municipality, it shall be addressed to Jersey City Hall, Jersey City, New Jersey, Attention: City Clerk or to such other addresses in respect to either party as that party may designate in writing.

11. In the event of a breach of the within Agreement by either of the parties hereto or a dispute arising between the parties in reference to the terms and provisions as set forth herein, either party may apply to the Superior Court, Chancery Division, to settle and resolve said dispute in such fashion as will tend to accomplish the purposes of the act known as the "Limited Dividend Nonprofit Housing Corporations or Associations Law" and the "New Jersey Housing Finance Agency Law".

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

ATTEST:

[Signature]  
Secretary

SUMMIT APARTMENTS INC.  
BY: [Signature]  
Vice President

ATTEST:

[Signature]  
City Clerk

[Signature]  
BY: [Signature]

APPROVED AS TO LEGAL FORM  
[Signature]  
Corporation Counsel

School site:

### SCHOOL SITE

PROPOSED DESCRIPTION, LOT F.02

BEGINNING AT A POINT IN THE NORTHERLY LINE OF NEWARK AVENUE, A DISTANCE OF 208.93 FEET NORTHWESTERLY FROM ITS INTERSECTION WITH THE WESTERLY LINE OF SUMMIT AVENUE, RUNNING THENCE

1. N - 71° - 14' - 57" - W, ALONG THE NORTHERLY LINE OF NEWARK AVENUE, A DISTANCE OF 204.46 FEET TO A POINT, THENCE
2. N - 18° - 45' - 03" - E, A DISTANCE OF 13.05 FEET TO A POINT, THENCE
3. S - 71° - 14' - 58" - E, A DISTANCE OF 5.07 FEET TO A POINT, THENCE
4. N - 63° - 40' - 05" - E, A DISTANCE OF 34.29 FEET TO A POINT, THENCE
5. S - 71° - 14' - 58" - E, A DISTANCE OF 21.18 FEET TO A POINT, THENCE
6. N - 18° - 45' - 03" - E, A DISTANCE OF 24.75 FEET TO A POINT, THENCE
7. S - 71° - 14' - 57" - E, A DISTANCE OF 154.00 FEET TO A POINT, THENCE
8. S - 18° - 45' - 03" - W, A DISTANCE OF 62.08 FEET TO A POINT IN THE NORTHERLY LINE OF NEWARK AVENUE, SAID POINT SAID POINT BEING THE POINT OR PLACE OF BEGINNING

City Clerk File No. Ord. 10-025

Agenda No. 3.L 1st Reading

Agenda No. \_\_\_\_\_ 2nd Reading & Final Passage



# ORDINANCE OF JERSEY CITY, N.J.

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

CITY ORDINANCE 10-025

TITLE:

**ORDINANCE AUTHORIZING THE RENEWAL OF A LEASE AGREEMENT BETWEEN THE CITY OF JERSEY CITY AS LESSEE AND 18 ASH STREET REALTY, LLC., AS LESSOR, FOR FIRE AND EMERGENCY STORAGE SPACE IN THE PREMISES AT LOCATED AT 46 STATE STREET, JERSEY CITY, NEW JERSEY**

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

**WHEREAS**, the City of Jersey City ("City") has and continues to have need of storage space for equipment used by the City's Fire and Emergency Services; and

**WHEREAS**, 18 Ash Street Realty, LLC, as lessor, entered into a one-year lease (the "Lease") with the City, as lessee, for 6,000 square feet of storage space at 46 State Street, Jersey City, New Jersey (the "Premises") under the authority of Ordinance 06-033, another one-year renewal lease (the "First Renewal Lease") under the authority of Ordinance 07-051, a second one-year renewal lease (the "Second Renewal Lease"), under the authority of Ordinance 07-181 and a third one-year renewal lease (the "Third Renewal Lease") under the authority of Ordinance 08-149; and

**WHEREAS**, the Third Renewal Lease ended on December 31, 2009, but, at paragraph 2, permits the City to enter into a fourth renewal of the Lease for the time period between January 1, 2010 and December 31, 2010 under the same terms, provisions, covenants and conditions as set forth in the Third Renewal Lease, except for the amount of rent which shall be increased by five percent (5%) over the \$4,190 per month payable under the Third Renewal Lease; and

**WHEREAS**, the City will, therefore, pay to the lessor the monthly base rent of \$4,400.00, which is \$52,800.00, annually; and

**WHEREAS**, N.J.S.A. 40A:12-5 provides that a municipality may by ordinance, acquire property by lease; and

**WHEREAS**, funds in the amount of \$52,800.00 are available in Account No. 10-17-289-56-000-002.

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

1. Subject to such modifications as may be deemed necessary or appropriate by Corporation Counsel, the Mayor or Business Administrator is authorized to execute the attached Lease Agreement with 18 Ash St, LLC for storage space for equipment used by the City's Fire and Emergency Services located at 46 State Street, Jersey City, New Jersey.
2. The term of the Lease shall be one (1) year commencing on January 1, 2010 and ending on December 31, 2010.
3. The total rental fee shall not exceed \$52,800 and shall be payable in 12 equal installments of \$4,400.00 per month, payable on the first day of each month.

**ORDINANCE AUTHORIZING THE RENEWAL OF A LEASE AGREEMENT BETWEEN THE CITY OF JERSEY CITY AS LESSEE AND 18 ASH STREET REALTY, LLC., AS LESSOR, FOR FIRE AND EMERGENCY STORAGE SPACE IN THE PREMISES LOCATED AT LOCATED AT 46 STATE STREET, JERSEY CITY, NEW JERSEY**

- 4. Funds in the amount of \$ 52,800.00 are available in Account No.10-17-289-56-000-002.
- A. All ordinances and parts of ordinances inconsistent herewith are hereby repealed.
- B. This Ordinance shall be a part of the Jersey City Code as though codified and fully set forth therein. The City Clerk shall have this ordinance codified and incorporated in the official copies of the Jersey City Code.
- C. This ordinance shall take effect at the time and in the manner as provided by law.
- D. The City Clerk and the Corporation Counsel be and they are hereby authorized and directed to change any chapter numbers, article numbers and section numbers in the event that the codification of this ordinance reveals that there is a conflict between those numbers and the existing code, in order to avoid confusion and possible accidental repealers of existing provisions.

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

I, \_\_\_\_\_ Donna Mauer, Chief Financial Officer, certify that funds in the amount of \$52,800.00 are available in Account No.10-17-289-56-000-002.

JD/cw  
1/25/10  
No. 2010016

APPROVED AS TO LEGAL FORM

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

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

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

Certification Required   
Not Required

## **FOURTH RENEWAL LEASE**

**WHEREAS**, on January 1, 2006, *the City of Jersey City*, 280 Grove St., Jersey City, New Jersey 07302, as Lessee (the "City"), and *18 Ash Street Realty, LLC*, having an office at 44 State Street, Jersey City, New Jersey 07304, as Lessor, entered into an Agreement of Lease (the "Lease Agreement") wherein the City rented 1,000 sq. ft. of space located at 46 State Street, Jersey City, New Jersey (the "Premises"), for the term of one-year at the base rent of \$45,600.00 (the "Base Rent"), the Lease Agreement being a "net lease" with taxes and other costs paid directly by the City; and

**WHEREAS**, the Premises have been used for storage space for the City's Fire and Emergency Services;

**WHEREAS**, the Lease Agreement was authorized by City Council Ordinance 06-033; and

**WHEREAS**, the Lease Agreement was thereafter renewed three times and approved by the City Council as Ordinance 07-051, Ordinance 07-181 and Ordinance 08-149, respectively; and

**WHEREAS**, the Third Renewal Lease provided for an increase in the Fourth Renewal Lease of five percent (5%) in the rent payable to the Lessor

**WHEREAS**, the City has determined that it is in its best interests to again renew the Lease Agreement on the terms and provisions heretofore approved, with the five percent (5%) increase in rent provided for in the Third Renewal Lease as approved by Ordinance 08-149.

**NOW, THEREFORE**, in consideration of the Premises, the rent payable hereunder, and other good and valuable consideration, the parties hereto agree as follows:

1. Commencing on January 1, 2010, the base rent payable to the landlord shall be \$52,800.00 per annum (the "Rent"), payable in twelve (12) equal monthly installments of \$4,400.00, with all other costs, including utilities and taxes paid by the Lessee to the Lessor.

2. The Lessor agrees to give the lessor a "Fourth Renewal Lease" for the next ensuing year, January 1, 2010 through December 31, 2010, again with a five percent (5%) increase in the Rent for the calendar year 2011, which shall be \$55,4400.00, payable in twelve (12) equal monthly installments of \$4,620.00.

3. All other terms, provisions, covenants, and conditions contained in the original Lease Agreement dated January 1, 2006 will remain in full force and effect.

LESSEE  
CITY OF JERSEY CITY

By: \_\_\_\_\_  
Mayor or Business Administrator

LESSOR:  
18 ASH STREET REALTY, LLC

By: \_\_\_\_\_  
Peter Gargiulo, Managing Member

ATTEST:

\_\_\_\_\_  
Robert Byrne, City Clerk

ATTEST:

\_\_\_\_\_  
, Member

City Clerk File No. Ord. 10-026

Agenda No. 3.M 1st Reading

Agenda No. \_\_\_\_\_ 2nd Reading & Final Passage



# ORDINANCE OF JERSEY CITY, N.J.

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

CITY ORDINANCE 10-026

**TITLE: ORDINANCE OF THE MUNICIPAL COUNCIL OF THE CITY OF JERSEY CITY ADOPTING AMENDMENTS TO THE MARTIN LUTHER KING DRIVE REDEVELOPMENT PLAN**

**WHEREAS**, the Municipal Council of the City of Jersey City, adopted the Martin Luther King Drive Redevelopment Plan (hereinafter "the MLK Plan") at its meeting of December 8, 1993; and

**WHEREAS**, the MLK Plan has been amended several times since its original adoption; and

**WHEREAS**, the Municipal Council seeks to make the maps included in the plan more legible and to expand the Neighborhood Shopping District; and

**WHEREAS**, a copy of the amended maps are attached hereto and made a part hereof, and is available for public inspection at the Offices of the City Clerk, City Hall, 280 Grove Street, Jersey City, NJ.

**WHEREAS**, the following amendments to the Martin Luther King Drive Redevelopment Plan have been reviewed by the Jersey City Planning Board at its meeting of February 23, 2010; and

**WHEREAS**, the Planning Board voted unanimously to recommend adoption of these amendments by the Municipal Council;

**NOW, THEREFORE, BE IT ORDAINED** by the Municipal Council of the City of Jersey City that the recommended amendments to the Martin Luther King Drive Redevelopment Plan be, and hereby are, adopted.

**BE IT FURTHER ORDAINED THAT:**

- A. All ordinances and parts of ordinances inconsistent herewith are hereby repealed.
- B. This ordinance shall be a part of the Jersey City Code as though codified and set forth fully herein. The City Clerk shall have this ordinance codified and incorporated in the official copies of the Jersey City Code.
- C. This ordinance shall take effect at the time and in the manner as provided by law.
- D. The City Clerk and the Corporation Council be and they are hereby authorized and directed to change any chapter numbers, article numbers and section numbers in the event that the codification of this ordinance reveals that there is a conflict between those numbers and the existing code, in order to avoid confusion and possible repealers of existing provisions.
- E. The City Clerk is hereby directed to give notice at least ten days prior to hearing on the adoption of this Ordinance to the County Planning board and to all other persons entitled thereto pursuant to N.J.S. 40:55D-15 and N.J.S. 40:55D-63 (if required). Upon the adoption of this Ordinance after public hearing thereon, the City Clerk is further directed to publish notice of the passage thereof and to file a copy of the Ordinance as finally adopted with the Hudson County Planning Board as required by N.J.S. 40:55D-16. The clerk shall also forthwith transmit a copy of this Ordinance after final passage to the Municipal Tax Assessor as required by N.J.S. 40:49-2.

  
Robert D. Cotter, PP, AICP  
Director of Planning

APPROVED AS TO LEGAL FORM

  
\_\_\_\_\_  
Corporation Council

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

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

Certification Required

Not Required

**ORDINANCE FACT SHEET**

**1. Full Title of Ordinance/Resolution/Cooperation Agreement:**

**ORDINANCE OF THE MUNICIPAL COUNCIL OF THE CITY OF JERSEY CITY ADOPTING AMENDMENTS TO THE MARTIN LUTHER KING DRIVE REDEVELOPMENT PLAN**

**2. Name and Title of Person Initiating the Ordinance, Resolution, etc.:**

Carl S. Czaplicki, Director, Department of Housing, Economic Development, and Commerce

**3. Concise Description of the Program, Project or Plan Proposed in the Ordinance/Resolution:**

The amendment will expand the Neighborhood Shopping District to include lots fronting on MLK Drive from Woodlawn Avenue to Wegman Parkway, allowing existing storefronts to be in better conformity with the plan. Additionally, the amendment will replace all the maps included in the redevelopment plan with more clearly drawn and legible versions. The acquisition maps are also amended to simplify the number of categories for better legibility. No new properties are being added to the acquisition list, nor are any properties removed from the acquisition list.

**4. Reasons (Need) for the Proposed Program, Project, etc.:**

Currently, along MLK Drive between Woodlawn Avenue and Wegman Parkway retail is not a permitted use, however many buildings along this stretch of MLK Drive have nonconforming retail uses, while there is demand for expanded retail at this location.

**5. Anticipated Benefits to the Community:**

To allow for new retail construction along MLK Drive between Woodlawn Avenue and Wegman Parkway.

**6. Cost of Proposed Program, Project, etc.:**

No expense to the city. All work done by in house staff.

**7. Date Proposed Program or Project will commence:**

Upon approval of the redevelopment plan amendment.

**8. Anticipated Completion Date: N/A**

**9. Person Responsible for Coordinating Proposed Program, Project, etc.:**

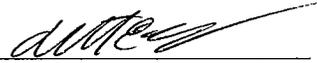
Robert D. Cotter, Director, City Planning                      547-5050  
Jeff Wenger, City Planning

**10. Additional Comments: None**

I Certify that all the Facts Presented Herein are Accurate.

  
Division Director

FEB 17, 2010  
Date

*DEPUTY*  
  
Department Director Signature

FEB 17, 2010  
Date

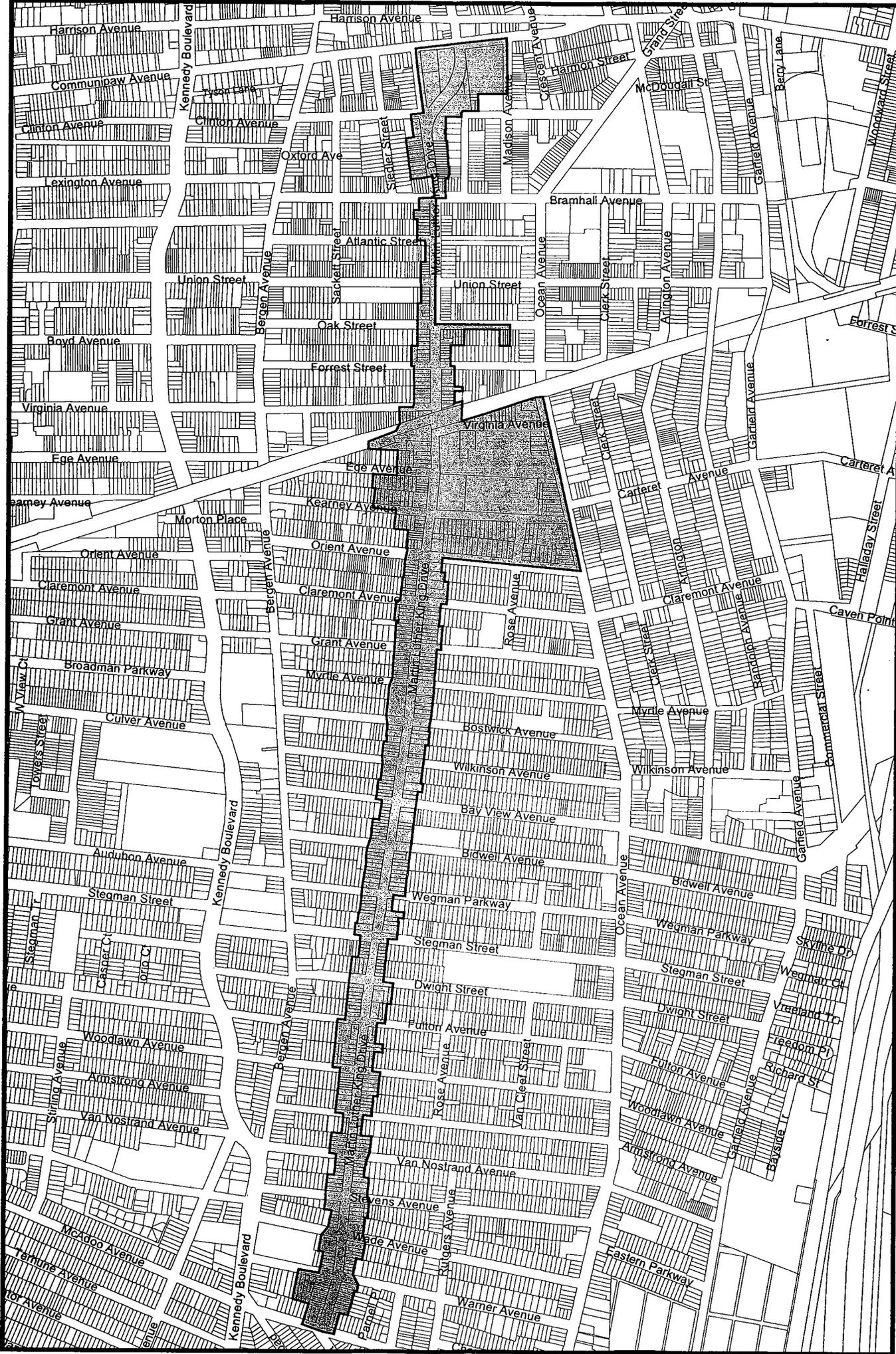
## **SUMMARY STATEMENT**

The amendment will expand the Neighborhood Shopping District to include lots fronting on MLK Drive from Woodlawn Avenue to Wegman Parkway, allowing existing storefronts to be in better conformity with the plan.

Additionally, the amendment will replace all the maps included in the redevelopment plan with more clearly drawn and legible versions. The acquisition maps are also amended to simplify the number of categories for better legibility. No new properties are being added to the acquisition list, nor are any properties removed from the acquisition list.

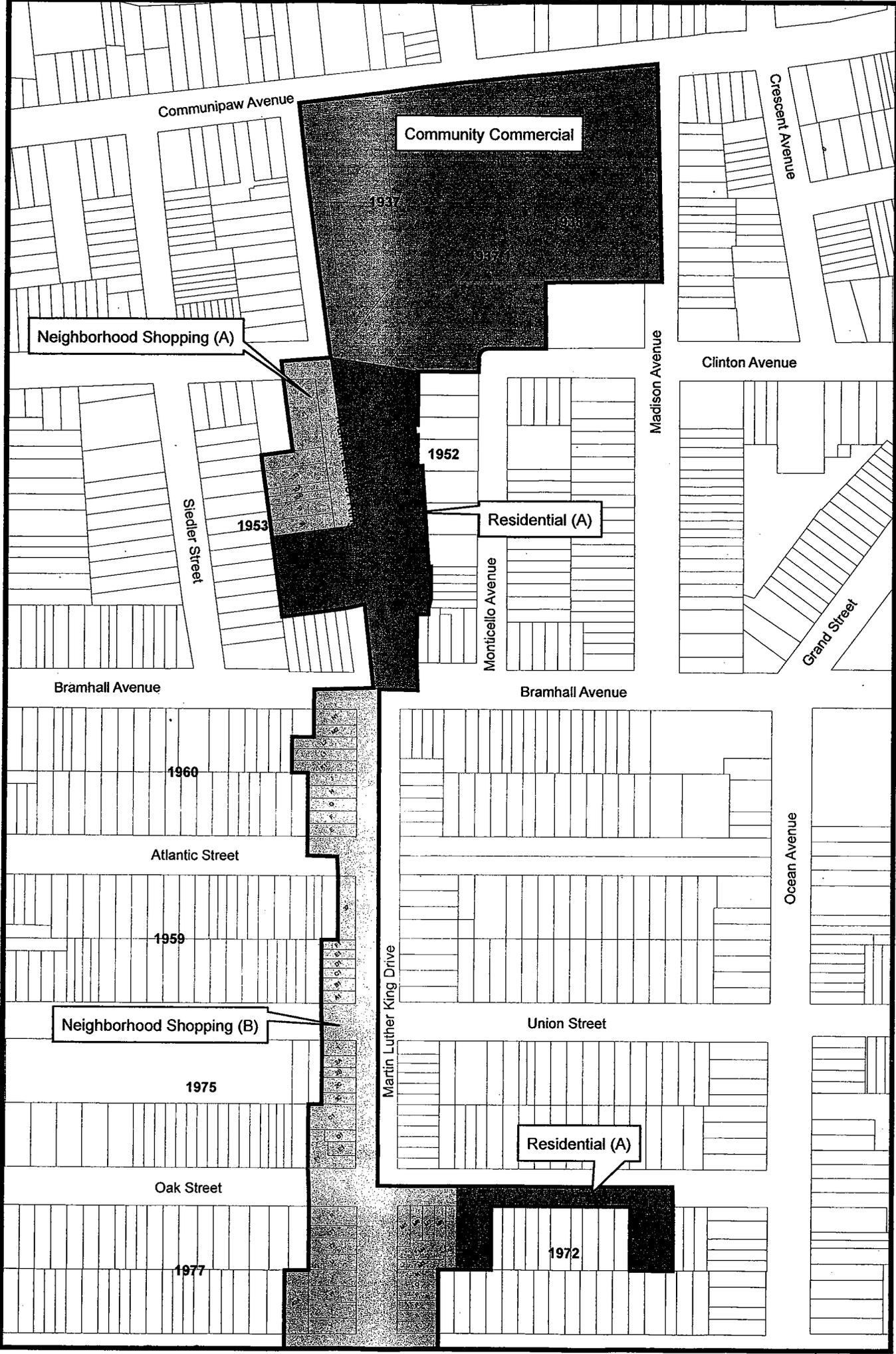
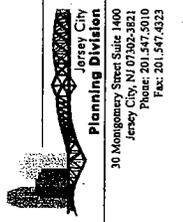



 Jersey City  
 Planning Division  
 30 Montague Street Suite 1400  
 Jersey City, NJ 07302-3821  
 Phone: 201.547.5010  
 Fax: 201.547.4823



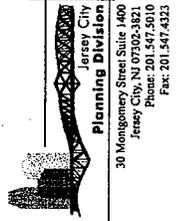
**MARTIN LUTHER KING JR. DRIVE REDEVELOPMENT PLAN AREA**  
**BOUNDARY MAP**

0 1/4 1/2 Miles May 19, 2009

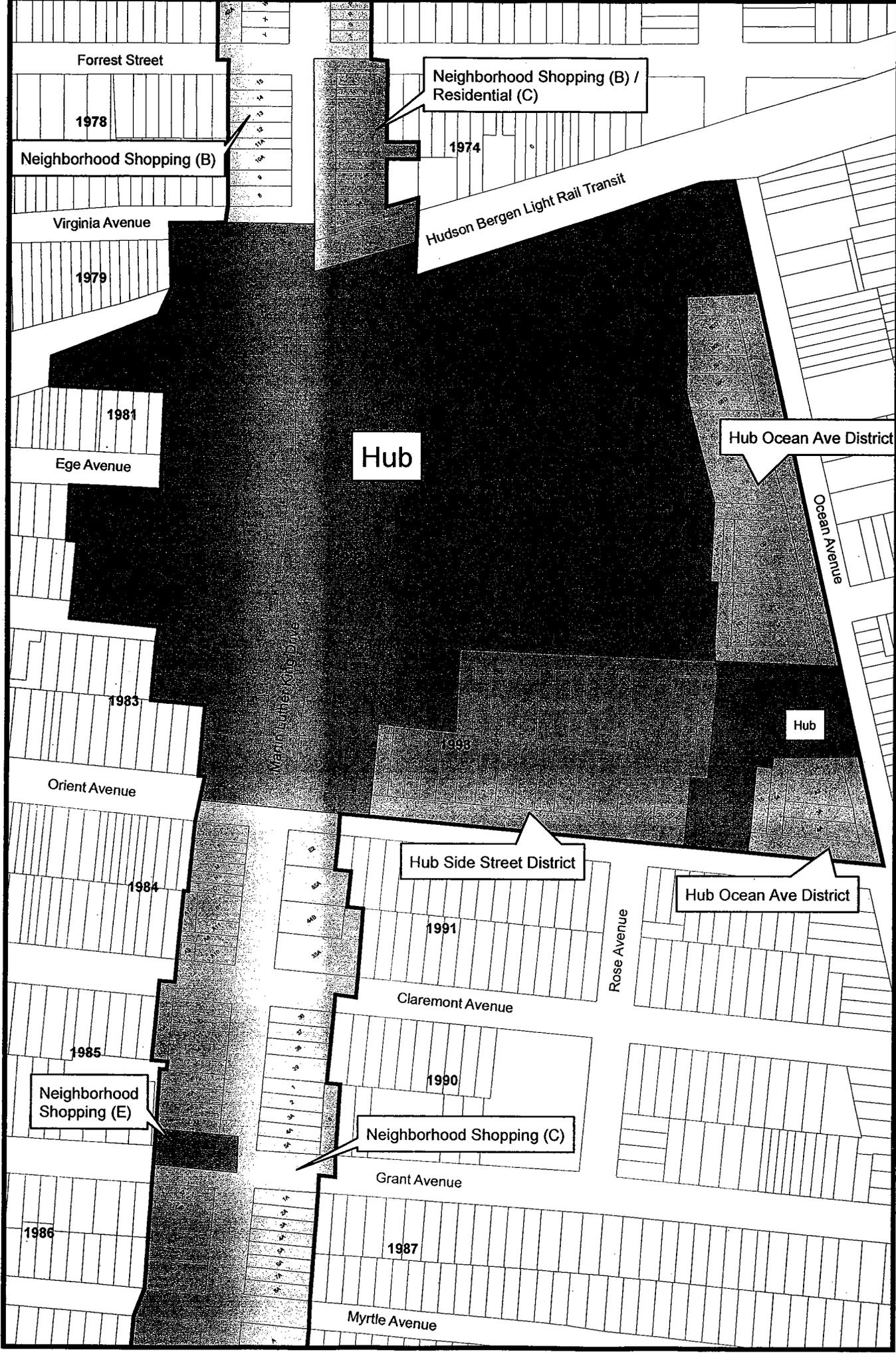


**MARTIN LUTHER KING JR. DRIVE REDEVELOPMENT PLAN AREA  
LAND USE DISTRICTS**

February 23, 2010  
1 inch equals 200 feet  
0 50 100 200 Feet



30 Montgomery Street Suite 1400  
Jersey City, NJ 07302-3821  
Phone: 201.547.5010  
Fax: 201.547.4323

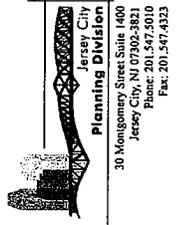


**MARTIN LUTHER KING JR. DRIVE REDEVELOPMENT PLAN AREA  
LAND USE DISTRICTS**

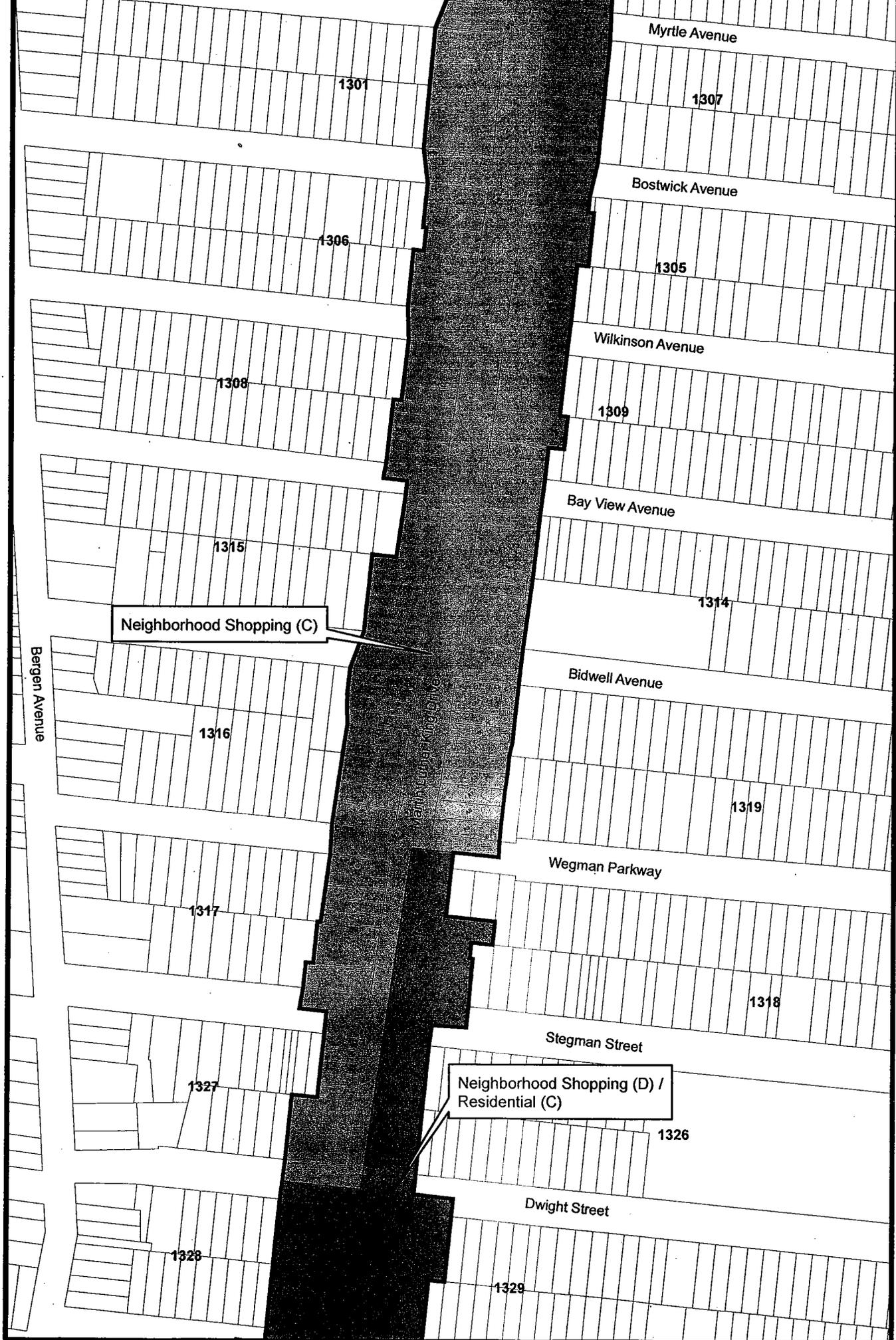
February 23, 2010

1 inch equals 200 feet



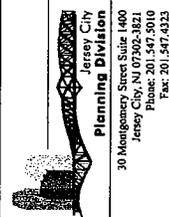


Jersey City  
Planning Division  
30 Montgomery Street Suite 1400  
Jersey City, NJ 07302-3821  
Phone: 201.547.5010  
Fax: 201.547.4323



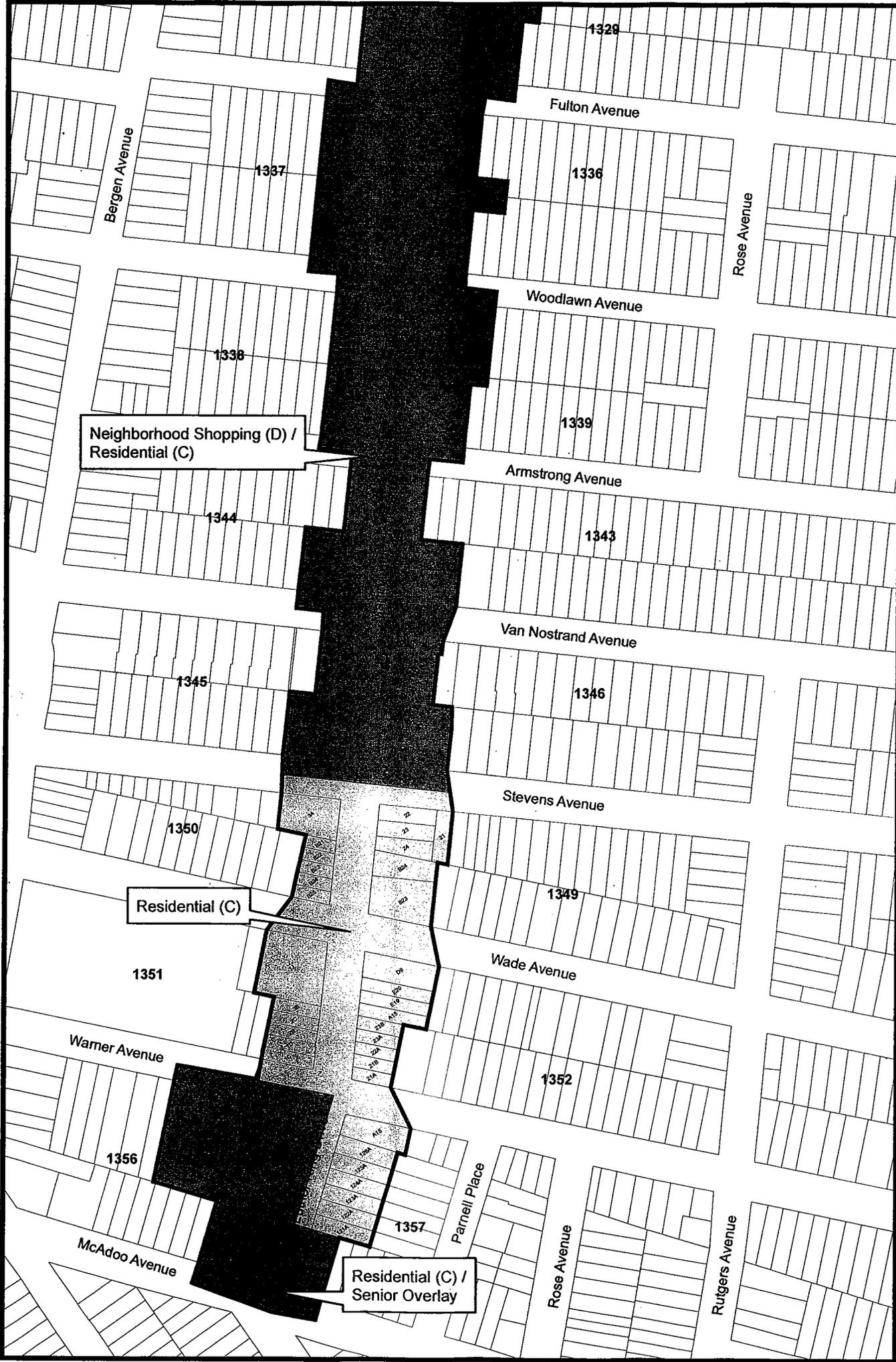
**MARTIN LUTHER KING JR. DRIVE REDEVELOPMENT PLAN AREA  
LAND USE DISTRICTS**

February 23, 2010  
1 inch equals 200 feet  
0 50 100 200 Feet



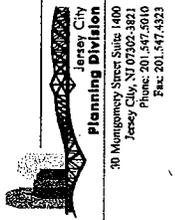
Jersey City  
Planning Division  
30 Montgomery Street, Suite 1400  
Jersey City, NJ 07302-3821  
Phone: 201.547.5010  
Fax: 201.547.4323

# MARTIN LUTHER KING JR. DRIVE REDEVELOPMENT PLAN AREA LAND USE DISTRICTS



February 23, 2010  
1 inch equals 200 feet



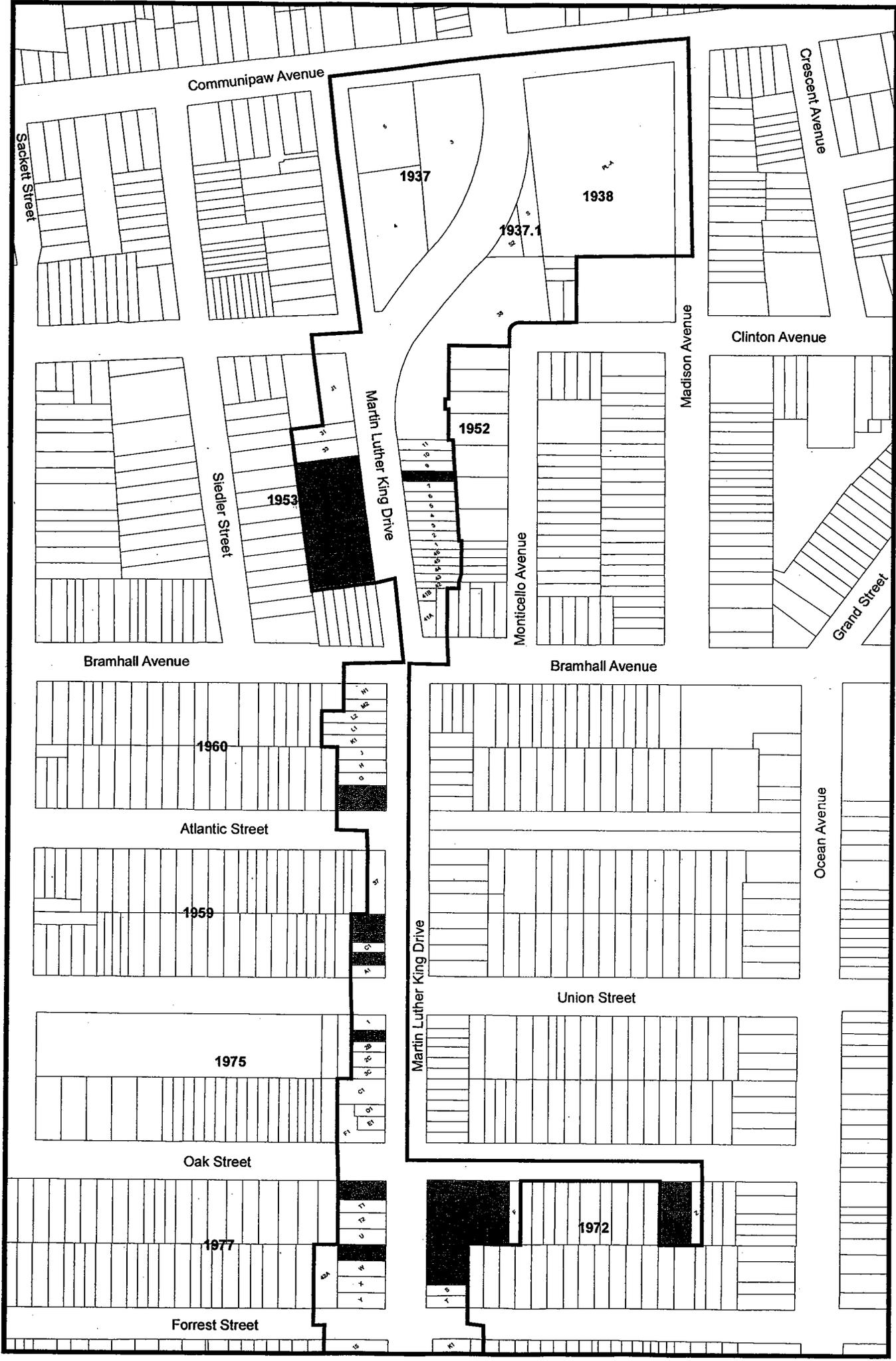


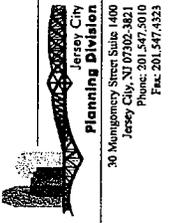
Jersey City  
Planning Division  
30 Montross Street Suite 1409  
Jersey City, NJ 07302-3871  
Phone: 201.547.5010  
Fax: 201.547.4323

To be Acquired  
 To be Acquired for Rehabilitation

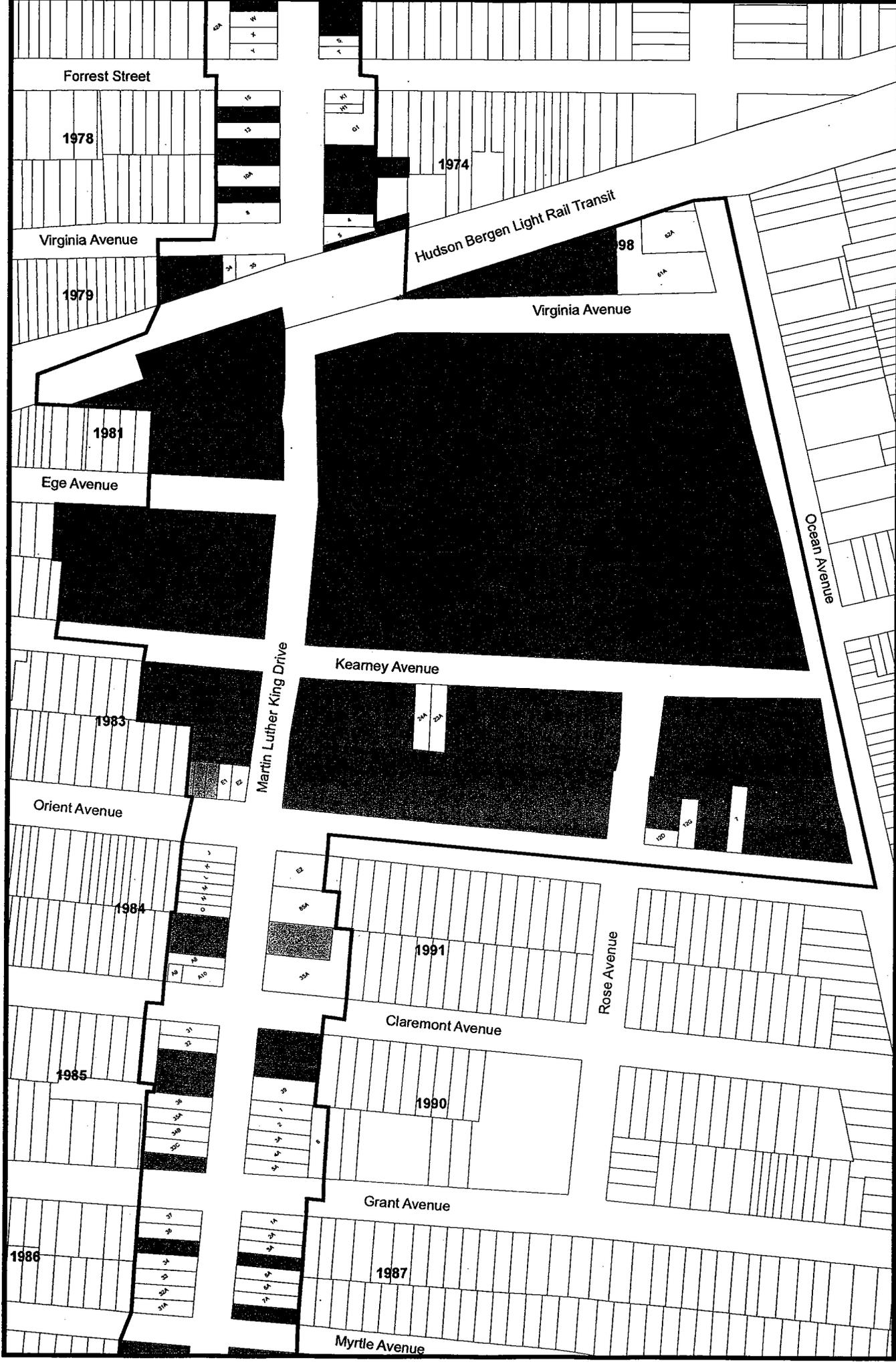
# MARTIN LUTHER KING JR. DRIVE REDEVELOPMENT PLAN AREA ACQUISITION MAP

1 inch equals 200 feet  
0 50 100 200 Feet  
May 19, 2009





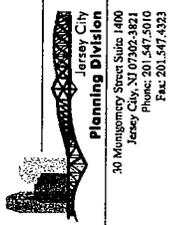
30 Montgomery Street Suite 1400  
Jersey City, NJ 07302-3821  
Phone: 201.547.5010  
Fax: 201.547.4333



**To be Acquired** [Solid Black Box]  
**To be Acquired for Rehabilitation** [Stippled Box]

**MARTIN LUTHER KING JR. DRIVE REDEVELOPMENT PLAN AREA ACQUISITION MAP**

1 inch equals 200 feet  
0 50 100 200 Feet  
May 19, 2009

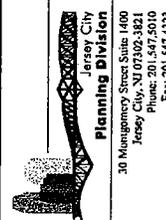


**To be Acquired** **To Be Acquired for Rehabilitation**

**MARTIN LUTHER KING JR. DRIVE REDEVELOPMENT PLAN AREA ACQUISITION MAP**

1 inch equals 200 feet  
0 50 100 200 Feet

May 19, 2009



**To be Acquired**  
**To Be Acquired for Rehabilitation**

# MARTIN LUTHER KING JR. DRIVE REDEVELOPMENT PLAN AREA ACQUISITION MAP

1 inch equals 200 feet  
0 50 100 200 Feet  
May 19, 2009



City Clerk File No. Ord. 10-027

Agenda No. 3.N 1st Reading

Agenda No. \_\_\_\_\_ 2nd Reading & Final Passage



## ORDINANCE OF JERSEY CITY, N.J.

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

CITY ORDINANCE 10-027

**TITLE:**

**ORDINANCE OF THE MUNICIPAL COUNCIL OF THE CITY OF JERSEY CITY  
ADOPTING AMENDMENTS TO ARTICLE I DEFINITIONS AND ARTICLE V USE,  
BULK AND PARKING STANDARDS IN THE R-3 ZONE OF THE LAND  
DEVELOPMENT ORDINANCE**

**WHEREAS**, the Municipal Council, pursuant to NJSA 40:55D-62, may adopt or amend a zoning ordinance relating to the nature and extent of the uses of land and of buildings and structures thereon; and

**WHEREAS**, the R-3 Multi-Family district of the Land Development Ordinance has as its Master Plan purpose "to provide for a broad range of multi-family housing..."; and

**WHEREAS**, when the Land Development Ordinance was adopted in April 2001 it did not clearly permit a broad range of multi-family uses and limited permitted development in that zone to a minimum lot area of 10,000 square feet; and

**WHEREAS**, it has been determined that numerous lots containing less than 10,000 square feet in area exist in the R-3 zone requiring that any development on those lots must seek one or more variances; and

**WHEREAS**, the bulk standards currently applicable to multi-family development in the R-3 zone are not conducive to permitted development on these numerous smaller lots; and

**WHEREAS**, due to approvals of numerous bulk and parking variances in the R-3 zone, the recommendation that use, bulk and parking standards in the R-3 zone be reexamined has been noted in the Annual Zoning Reports of the Zoning Board of Adjustment for several years; and

**WHEREAS**, the Planning Board of Jersey City, at its meeting of February 9, 2010, did discuss and approve a motion recommending that the Municipal Council adopt the amendments contained herein; and

**WHEREAS**, the amendments to the Land Development Ordinance are attached hereto and made a part hereof, and are available for public inspection at the Office of the City Clerk, City Hall, 280 Grove Street, Jersey City, NJ;

**NOW, THEREFORE, BE IT ORDAINED** by the Municipal Council of the City of Jersey city that the Land Development Ordinance, be and hereby is amended as per the attached document;

**BE IT FURTHER ORDAINED THAT:**

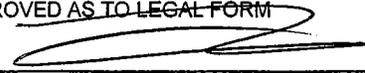
- A. All ordinances and parts of ordinances inconsistent herewith are hereby repealed.
- B. This ordinance shall be a part of the Jersey City Code as though codified and set forth fully herein. The City Clerk shall have this ordinance codified and incorporated in the official copies of the Jersey City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

E. The City Clerk is hereby directed to give notice at least ten days prior to hearing on the adoption of this Ordinance to the County Planning board and to all other persons entitled thereto pursuant to N.J.S. 40:55D-15 and N.J.S. 40:55D-63 (if required). Upon the adoption of this Ordinance after public hearing thereon, the City Clerk is further directed to publish notice of the passage thereof and to file a copy of the Ordinance as finally adopted with the Hudson County Planning Board as required by N.J.S. 40:55D-16. The clerk shall also forthwith transmit a copy of this Ordinance after final passage to the Municipal Tax Assessor as required by N.J.S. 40:49-2.



Robert D. Cotter, AICP, PP, Director  
Division of City Planning

APPROVED AS TO LEGAL FORM

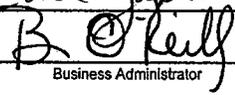


Corporation Counsel

APPROVED:



APPROVED:



Business Administrator

Certification Required   
Not Required

**ORDINANCE FACT SHEET**

**1. Full Title of Ordinance:**

**ORDINANCE OF THE MUNICIPAL COUNCIL OF THE CITY OF JERSEY CITY  
ADOPTING AMENDMENTS TO ARTICLE I DEFINITIONS AND ARTICLE V USE, BULK  
AND PARKING STANDARDS IN THE R-3 ZONE OF THE LAND DEVELOPMENT  
ORDINANCE**

**2. Name and Title of Person Initiating the Ordinance, etc.:**

Carl S. Czaplicki, Director, Department of Housing, Economic Development, and Commerce

**3. Concise Description of the Plan Proposed in the Ordinance:**

This Ordinance will amend Article I Definitions to add a definition for Mid-Rise and High-Rise Apartment Buildings and will also amend Article V: R-3 Multi-Family Mid-Rise District of the Land Development Ordinance (Zoning Ordinance) to allow a broader range of multi-family uses with bulk and parking standards for each use.

**4. Reasons (Need) for the Proposed Program, Project, etc.:**

The amendments will bring the R-3 use standards into conformity with the Municipal Master Plan purpose of the district "to provide for a broad range of multi-family housing..." and provide appropriate bulk and parking standards for multi-family uses compatible with numerous smaller lots in the R-3 zone.

**5. Anticipated Benefits to the Community:**

Facilitation of appropriate multi-family development compatible with smaller size lots

**6. Cost of Proposed Plan, etc.:**

None

**7. Date Proposed Plan will commence:**

Upon approval

**8. Anticipated Completion Date: N/A**

**9. Persons Responsible for Coordinating Proposed Program, Project, etc.:**

Carl S. Czaplicki, Director, Dept of HEDC  
Robert D. Cotter, City Planning Director  
Anthony J. Lambiase, Director, Division of Zoning

**10. Additional Comments: None**

**I Certify that all the Facts Presented Herein are Accurate.**

  
Division Director

FEB 16, 2010  
Date

  
Department Director Signature

2/16/10  
Date

## **SUMMARY STATEMENT**

### **ORDINANCE OF THE MUNICIPAL COUNCIL OF THE CITY OF JERSEY CITY ADOPTING AMENDMENTS TO ARTICLE I DEFINITIONS AND ARTICLE V USE, BULK AND PARKING STANDARDS IN THE R-3 ZONE OF THE LAND DEVELOPMENT ORDINANCE**

This Ordinance will amend Article I Definitions to add a definition for Mid-Rise and High-Rise Apartment Buildings and will also amend Article V: R-3 Multi-Family Mid-Rise District of the Land Development Ordinance (Zoning Ordinance) to allow a broader range of multi-family uses with bulk and parking standards for each use.

Material indicated by strikethrough ~~like this~~ is existing material that is intended to be deleted.  
Material indicated by bold italic *like this* is new material that is intended to be enacted.

The following definitions shall be added to the Land Development Ordinance:

***MID-RISE APARTMENT BUILDING – a multi-family residential building with three (3) to eight (8) stories and more than four dwelling units.***

***HIGH-RISE APARTMENT BUILDING - a multi-family residential building with nine (9) stories or more.***

-----

Existing definition adopted by ordinance #08-179, 5/19/08 (included for reference only)

**TOWNHOUSE** - A residential building in which each building has its own front and rear access to the outside and is separated from adjacent buildings only by vertical fire-resistant building walls. A townhouse building may contain one to four dwelling units in accordance with the density standard of the particular zoning district in which such property is situated.

Material indicated by strikethrough ~~like this~~ is existing material that is intended to be deleted.  
Material indicated by bold italic **like this** is new material that is intended to be enacted.

### *345-42. R-3- MULTI-FAMILY MID-RISE DISTRICT*

#### A. Purpose.

The purpose of the multi-family mid-rise district is to provide for a broad range of multi-family housing in areas served by arterial streets, mass transit, neighborhood commercial uses and community facilities.

The purpose of this zone is to relate the building to the street and not create the type of development that centers the tower in a sea of parking, disconnecting the building from the street.

The multi-family mid-rise district contains mid-rise buildings of 3 to ~~7~~ **8** stories.

#### B. Permitted principal uses are as follows:

1. ~~Multi-Family mid-rise apartments~~ **buildings**. (*see 345-6 for definition*)

2. **Townhouses with no less than three dwelling units.**

3. **Three and four family detached dwellings**

2.4. Houses of worship.

3.5. Parks and playgrounds.

4.6. Essential services.

5.7. Schools.

6.8. Governmental uses.

7.9. Office uses, including medical offices for no more than two practitioners, as part of the ground floor of mid-rise apartments- **buildings** along John F. Kennedy Boulevard.

8.10. Assisted living residences.

9.11. Nursing homes.

10.12. Senior housing.

(C. & D. - Accessory Use & Conditional Use - No change

E. Bulk Standards for Townhouses, 3- & 4-Family Detached Dwellings, and Mid-Rise Apartments:

1. **Minimum Required Lot Size:**

- a.) Any lot existing at the time of adoption of this Ordinance with an area of at least 2,000 square feet shall be considered conforming, provided that such lot is isolated (i.e., no adjacent, vacant lot(s) exist) and provided that it is not held in common ownership with any adjacent lot/parcel fronting on the same street.
- b.) Lots with an area of 6,000 square feet or more and a width of at least 60 feet shall not be subdivided without application to a land use board for variance approval.
- c.) Townhouses with three (3) or four (4) dwelling units are permitted on isolated lots, or lots approved by subdivision, with an area of at least 2,000 square feet, but not more than 3,000 square feet, and where the existing houses on both adjacent lots are built to the side lot line(s). (use location of single adjacent house for corner lots)
- d.) Detached 3- and 4-family dwellings are permitted on isolated lots, or lots approved by subdivision, with an area from 2,500 square feet to 6,000 square feet where existing houses on either or both adjacent lots are not built to the side lot line(s).
- e.) Mid-rise apartment buildings are permitted on any lot 6,000 square feet or greater provided all bulk and parking standards are met.

2. **Maximum Density shall apply to mid-rise apartment buildings in accordance with the following table:**

**GRADUATED DENSITY TABLE APPLICABLE TO MID-RISE APARTMENT BUILDINGS**

LOT DIMENSIONS	LOT SIZE	Max. dwelling units/acre	# of D.U.'S *
60x100	6,000	60	8
	7,000	65	10
75x100	7,500	70	12
	8,000	75	14
	9,000	80	17
100x100	10,000	85	20
	11,000	90	23
	12,000	95	26
	13,000	100	30
	14,000	105	34
	15,000	110	38
	16,000	115	42
	17,000	120	47
100x200	18,000	125	52
	19,000	130	57
	20,000	135	62
	21,000	140	67
	22,000	145	73

\*Applicable density for any interim lot size shall apply and may be calculated as needed, rounding down for fractions less than 0.5 and up for fractions of 0.5 or greater.

**\*applicable density for any interim lot size shall apply and may be calculated as needed, rounding down for fractions less than 0.5 and up for fractions of 0.5 or greater.**

3. Minimum Lot Width: ~~100~~ feet

*a.) Townhouses: 20 feet*

*b.) Three and Four Family Detached Dwellings: 25 feet*

*c.) Mid-Rise Apartment Buildings: 60 feet*

4. Minimum Lot Depth: 100 feet

5. ~~Minimum~~ **Required** Front Yard:

*a.) Townhouses: Predominant setback shall apply*

*b.) Three and Four Family Detached Dwellings:  
Front yard setback shall match the setback of the Primary Building Façade of the closest permitted use on either side of the subject parcel, provided that the building setback to be matched shall be closest to the predominant (most frequently occurring) setback on the blockfront. A current signed and sealed survey of the subject property showing adjacent building setbacks on both sides along with photos showing the entire blockfront to the left and right of the subject property must be provided to the Zoning Officer as part of the application for a building permit. (see Article I for definition of Primary Building Façade)*

*c.) Mid-Rise Apartment Buildings: shall match the front yard setback of the primary building façade of adjacent building(s), if any, or a minimum of 5 feet and a maximum of 10 feet shall apply if no adjacent building.*

6. ~~Maximum~~ Front Yard: 15 feet

7. 6. Minimum Rear Yard:

*a.) Townhouses: 30 feet*

*b.) Three and Four Family Detached Dwellings: R-1 standards for One & Two Family Dwellings shall apply*

*c.) Mid-Rise Apartment Buildings: ~~25~~ Ground floor or single floor partially above grade parking garages may be built to the rear lot line in accordance with height restrictions (see 8.c below), and all floors above the garage shall provide a minimum of 30 feet.*

~~8.~~ 7. **Minimum Required Side Yard:**

*a.) Townhouses: 0 required (i.e., must be built to the side lot line) except 3 feet required if there is an adjacent house with windows along the side wall, starting from one (1) foot before the frontmost existing window;*

*b.) Three and Four Family Detached Dwellings: minimum 2 feet one side, 3 feet other side, 5 feet total both sides on lots less than 37 feet in width; minimum 5 feet on each side on lots 37 feet in width or greater.*

*c.) Mid-Rise Apartment Buildings: ~~10~~ feet parking garage level(s) may be built to the side lot line, and residential floors shall provide a minimum of five (5) feet on each side.*

~~9.~~ 8. **Minimum and Maximum Building Height:**

*a.) Townhouses & Three and Four Family Detached Dwellings: 3 stories minimum and 4 stories & 42 feet maximum including above-grade parking level, and a minimum floor to ceiling height of 9 feet for above-grade entirely residential floors, and a maximum floor to ceiling height of 8 feet for a parking level and any residential unit located on the same level as parking.*

*b.) Mid-Rise Apartment Buildings: ~~7~~ 3 stories minimum and 8 stories and ~~70~~ 85 feet maximum including above-grade parking levels, and a minimum floor to ceiling height of 9 feet for all residential floors, and a maximum floor to ceiling height of 8 feet for a parking level and any residential unit located on the same level as parking.*

*c.) No wall/elevation of any parking structure connected to a mid-rise apartment building shall rise more than 10 feet above the existing grade.*

~~10.~~ 9. **Maximum Building Coverage:**

*a.) Townhouses & Three and Four Family Detached Dwellings: 60%;*

*b.) Mid-Rise Apartment Buildings – up to 100% building coverage shall be permitted only for a parking garage level at grade or partially below grade and where the front yard standard requires between 0 and 4.99 feet (see front yard standard); 65% for all residential floors above the garage on lots of 10,000 square feet or less; and 75% for all residential floors on lots over 10, 000 square feet*

~~11.~~ 10. **Maximum Lot Coverage: 75%**

*a.) Townhouses & Three and Four Family Detached Dwellings: 80%*

*b.) Mid-Rise Apartment Buildings: up to 100% lot coverage shall be permitted only for a parking area or parking garage at grade or partially below grade and where the front*

*yard setback standard requires between 0 and 4.99 feet (see front yard standard) and where buffer requirements allow; 75% if parking is entirely below grade*

~~12.~~ 11. Maximum Accessory Building Height: 15 feet

~~13.~~ 12. Minimum Accessory Building Setbacks:

Rear yard: ~~7.5~~ 3 feet

Side yard: 2 feet

F. Parking Standards for Townhouses & Three and Four Family Detached Dwellings Mid-Rise Apartments:

*1. On lots less than 37 feet in width the following shall apply:*

*a.) Parking is not required; a maximum of two (2) spaces are permitted*

*b.) Maximum width of curb cut: 10 feet; Maximum width of driveway: 10 feet; Maximum garage door width: 10 feet; only a single curb cut is permitted along the front property line.*

*c.) All parking shall be contained within the building envelope and spaces may be located one behind the other*

*d.) On corner lots, a parking garage located at the rear of the building may be accessed through the rear yard via a single 10 feet wide curb cut, or two garage doors may be located along the rear portion the long side of the building and two 10 feet wide driveways shall be separated by a 2 feet wide pier and a curbed landscape bed.*

*2. On lots 37 feet in width or greater the following shall apply:*

*a.) One (1) space per dwelling unit is required*

*b.) Garage doors shall not face the front of the lot.*

*c.) Except on corner lots, parking spaces shall be accessed by a single driveway, running from the front of the property along the side of the house, and the spaces shall be located either in the rear yard or in a garage, but not both.*

*d.) On corner lots, parking shall be accessed through the rear yard via a single curb cut.*

**3. Where there is construction of two or more homes with permitted driveways on adjacent lots, new driveways shall be located so as to maximize on-street parking space; no existing street tree shall be removed to create a driveway without prior approval by the Jersey City Division of Parks & Forestry. Prior to approving any plan to remove a tree to create a driveway it shall be demonstrated that no other way to construct the driveway is feasible under the construction code.**

**G. Parking Standards for Mid-Rise Apartment Buildings:**

1. None for efficiency units
2. 0.5 space for 1 bedroom units
3. 1.0 space for units with 2 or more bedrooms
4. Office uses where permitted: none
5. A minimum 10 feet ***wide vegetative landscape*** buffer is required between on-site ***surface*** parking areas ***for mid-rise apartment buildings*** and adjacent ~~R-1 and R-2~~ zones ***any adjacent residential zones of lower density than R-3 (includes R-2, R-1, R-1A, R-1F, and any other zones of similar low density yet to be adopted).***

City Clerk File No. Ord. 10-028

Agenda No. 3.0 1st Reading

Agenda No. \_\_\_\_\_ 2nd Reading & Final Passage



# ORDINANCE OF JERSEY CITY, N.J.

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

CITY ORDINANCE 10-028

TITLE:

### ORDINANCE OF THE MUNICIPAL COUNCIL OF THE CITY OF JERSEY CITY ADOPTING AMENDMENTS TO THE VILLAGE STUDY AREA REDEVELOPMENT PLAN

WHEREAS, the Municipal Council of the City of Jersey City adopted the Village Study Area Redevelopment Plan in January 1980, amended the Plan in June 1980, November 1983, January 1999, November 2005, and again amended the Plan in August 2008; and

WHEREAS, the Planning Board, at its meeting of February 9, 2010, determined that the Village Study Area Redevelopment Plan would benefit from an amendment to permit Medical Office uses on the first and second floors of apartment buildings along Newark Avenue in the Plan area; and

WHEREAS, the Planning Board, at its meeting of February 9, 2010, determined that the Village Study Area Redevelopment Plan would benefit from additional design standards to ensure development which is compatible with the existing neighborhood in architecture and aesthetics; and

WHEREAS, the Planning Board, at its meeting of February 9, 2010, also recommended that the Municipal Council amend the Village Study Area Redevelopment Plan to provide the new use and design standards; and

WHEREAS, a copy of the Planning Board's recommended amendments to the Village Study Area Redevelopment Plan is attached hereto, and made a part hereof, and is available for public inspection at the office of the City Clerk, City Hall, 280 Grove Street, Jersey City, NJ;

**NOW, THEREFORE, BE IT ORDAINED** by the Municipal Council of the City of Jersey City that the aforementioned amendments to the Village Study Area Redevelopment Plan be, and hereby are, adopted.

#### BE IT FURTHER ORDAINED THAT:

- A. All ordinances and parts of ordinances inconsistent herewith are hereby repealed.
- B. This ordinance shall be a part of the Jersey City Code as though codified and set forth fully herein. The City Clerk shall have this ordinance codified and incorporated in the official copies of the Jersey City Code.
- C. This ordinance shall take effect at the time and in the manner as provided by law.
- D. The City Clerk and the Corporation Council be and they are hereby authorized and directed to change any chapter numbers, article numbers and section numbers in the event that the codification of this ordinance reveals that there is a conflict between those numbers and the existing code, in order to avoid confusion and possible repealers of existing provisions.
- E. The City Clerk is hereby directed to give notice at least ten days prior to hearing on the adoption of this Ordinance to the County Planning board and to all other persons entitled thereto pursuant to N.J.S. 40:55D-15 and N.J.S. 40:55D-63 (if required). Upon the adoption of this Ordinance after public hearing thereon, the City Clerk is further directed to publish notice of the passage thereof and to file a copy of the Ordinance as finally adopted with the Hudson County Planning Board as required by N.J.S. 40:55D-16. The clerk shall also forthwith transmit a copy of this Ordinance after final passage to the Municipal Tax Assessor as required by N.J.S. 40:49-2.1.

Robert D. Cotter, PP, AICP  
Director, Division of City Planning

APPROVED AS TO LEGAL FORM

Corporation Counsel

APPROVED:

APPROVED:

Business Administrator

Certification Required

Not Required

**ORDINANCE FACT SHEET**

**1. Full Title of Ordinance:**

**ORDINANCE OF THE MUNICIPAL COUNCIL OF THE CITY OF JERSEY CITY  
ADOPTING AMENDMENTS TO THE VILLAGE STUDY AREA REDEVELOPMENT**

**2. Name and Title of Person Initiating the Ordinance, etc.:**

Carl Czaplicki, Director of Housing, Economic Development, and Commerce

**3. Concise Description of the Program, Project or Plan Proposed in the Ordinance:**

This ordinance adjusts the use and bulk standards of the Village Study Area Redevelopment Plan in order to allow Medical Office uses on the first and second floor of apartment buildings along Newark Avenue, as well as adds additional design standards to the Area.

**4. Reasons (Need) for the Proposed Program, Project, etc.:**

The Plan currently allows retail and professional office uses, however makes no accommodation for medical office uses. The inclusion of this use will benefit the area and will not conflict with the existing permitted uses. The inclusion of additional design standards will ensure development which is compatible with the existing neighborhood in architecture and aesthetics.

**5. Anticipated Benefits to the Community:**

The community will benefit from local medical offices, and the character of the neighborhood will be preserved by guiding consistent building design.

**6. Cost of Proposed Plan, etc.:**

\$0.00. Plan was prepared by Division of City Planning staff.

**7. Date Proposed Plan will commence:**

Upon Adoption.

**8. Anticipated Completion Date: N/A**

**9. Person Responsible for Coordinating Proposed Program, Project, etc.:**

Robert D. Cotter, Director, City Planning 547-5050

**10. Additional Comments:**

**I Certify that all the Facts Presented Herein are Accurate.**

Robert D. Cotter  
Division Director

2/10/2010  
Date

Carl Czaplicki  
Department Director Signature

2/10/10  
Date

Summary Sheet:

**ORDINANCE OF THE MUNICIPAL COUNCIL OF THE CITY OF JERSEY  
CITY ADOPTING AMENDMENTS TO THE VILLAGE STUDY AREA  
REDEVELOPMENT PLAN**

This ordinance adjusts the use and bulk standards of the Village Study Area Redevelopment Plan in order to allow Medical Office uses on the first and second floor of apartment buildings along Newark Avenue, as well as adds additional design standards.

# VILLAGE STUDY AREA REDEVELOPMENT PLAN

JANUARY, 1980  
AMENDED: JUNE, 1980  
AMENDED: NOVEMBER, 1983  
AMENDED: JANUARY 13, 1999 : Ord 98-167  
AMENDED: NOVEMBER 22, 2005 : Ord 05-160  
AMENDED: AUGUST 20, 2008: Ord 08-121  
**AMENDED: FEBRUARY 9, 2010**

CITY OF JERSEY CITY  
DIVISION OF CITY PLANNING

A. TABLE OF CONTENTS

I.	Description of Project .....	1
II.	Redevelopment Plan Goals and Objectives.....	2
III.	Types of Proposed Redevelopment Actions.....	4
IV.	Building Design Objectives for New Construction.....	4
V.	Specific Objectives.....	4
VI.	General Provisions.....	8
VII.	General Land Use Plan.....	11
VIII.	Other Provisions Necessary to Meet State and Local Requirements.....	18
IX.	Procedure for Amending the Approved Plan.....	20

B. TABLE OF MAPS

1.	Redevelopment Boundaries Map .....	21
2.	Acquisition Map .....	22

## DESCRIPTION OF PROJECT

### VILLAGE STUDY AREA BOUNDARY DESCRIPTION

BEGINNING at the point of intersection of the centerlines of Columbus Drive and Varick Street, thence in, a Westerly direction along the centerline of Columbus Drive to the point of its intersection with the centerline of Brunswick Street, thence in a northerly direction along the centerline of Brunswick Street to the point of its intersection with the centerline of First Street, thence in an easterly direction along the centerline of First Street to the point of its intersection with the extended western lot line of Lot 33, Block 384, thence in a northerly direction along the extended western lot line of Lot 33, Block 384 to the point of its intersection with the center block line of Block 384, thence in an easterly direction along the center block line of Block 384 to the point of its intersection with the eastern lot line of Lot 45 Block 384, thence in a southerly direction along the extended eastern lot line of Lot 45 to the point of its intersection with the centerline of First Street, thence in an easterly direction along the centerline of First Street to the point of its intersection with the centerline of Monmouth Street, thence in a northerly direction along the centerline of Monmouth Street to the point of its intersection with the centerline of Second Street, thence in an easterly direction along the centerline of Second Street to the point of its intersection with the centerline of Newark Avenue, thence in a easterly direction along the centerline of Newark Avenue to the point of its intersection with the centerline of Coles Street, thence in a southerly direction along the centerline of Coles Street to the place and point of BEGINNING.

## II. REDEVELOPMENT PLAN GOALS AND OBJECTIVES

Renewal activities of the Village Study Area will be undertaken in conformity with, and will be designed to meet the following goals and objectives.

- 1) To comprehensively redevelop The Village Study Area by the elimination of negative and blighting influences and by providing new construction and site improvements where appropriate.
- 2) To provide for a variety of residential uses and housing types for both existing residents and prospective new occupants.
- 3) To provide for the improvement of the functional and physical layout of the project area for complete redevelopment and the removal of impediments for land disposition.
- 4) To provide construction related jobs and permanent jobs through the construction of new housing and public improvements.
- 5) To construct new housing for home ownership thorough a combination of private development financing and the selective use of public assistance.
- 6) To provide for the overall improvement of traffic circulation through the elimination of unnecessary streets wherever possible, and the development of new vehicular and pedestrian circulation systems which provide for the separation of vehicular and pedestrian traffic as well as to provide for the maximum use of public transportation.
- 7) To provide for the maximization of private investment through the attraction of qualified developers capable of securing private financing commitments.

- 8) To provide for the stabilization and the increase of the tax base of the project area and the entire city by redeveloping non-revenue producing areas and by re-establishing investment confidence on the part of existing and future residents both within the area and in contiguous neighborhoods.
- 9) To provide for the coordination of redevelopment activities to promote a uniform attack on blight which reinforces already existing renewal and improvement programs in adjacent areas in accordance with a plan that integrates the Village Study Area with the existing physical and social fabric of the City of Jersey City.
- 10) To provide where necessary site improvements for both proposed and existing residential uses including new streets and sidewalks, street realignment, off-street parking, open space, pedestrian malls, recreational areas, and new trees, where appropriate.
- 11) To maximize developer participation and contribution to the Village Redevelopment Plan.

### III. TYPES OF PROPOSED REDEVELOPMENT ACTIONS

It is proposed to substantially improve and upgrade the Village Study Area through a combination of redevelopment actions. These will include but not be limited to: 1) clearance of dilapidated structures; 2) retention and construction of sound compatible uses; 3) assembly into developable parcels the vacant and underutilized land now in scattered and varied ownership; and 4) provisions for a full range of public infrastructure necessary to service and support the new community.

### IV. BUILDING DESIGN OBJECTIVES FOR NEW CONSTRUCTION

- A) All structures within the project area shall be situated with proper consideration of their relationship to other buildings, both existing and proposed, in terms of light, air and usable open space, access to public right-of-ways and off-street parking, height and bulk.
- B) Groups-of related buildings shall be designed to present a harmonious appearance in terms of architectural style and exterior materials.
- C) Buildings should be designed so as to be attractive from all vantage points.

### V. SPECIFIC OBJECTIVES

#### A) Submission of Redevelopment Proposals

Prior to commencement of construction, architectural drawings, specifications and site plans for the construction of improvements to the redevelopment area shall be

submitted by the developers for review and approval by the Planning Board of the City of Jersey City.

Site plan review shall be conducted by the Jersey City Planning Board pursuant to NJS 40:SSD-1 et seq. Site plan review shall consist of a preliminary site plan application and a final site plan application. Site plan review shall be conducted by the Planning Board, pursuant to NJS 40:55D-1 et. seq., pursuant to the requirements of the Jersey City Land Development Ordinance and this Plan. Final site plan approval for any phase may be conditioned upon submission of performance guarantees for unfinished site improvements in accordance with NJS 40:55D-53. Such performance guarantees shall be in favor of the City of Jersey City and in the form approved by either the Corporation Counsel of the City of Jersey City or the Attorney for the Jersey City Planning Board, as determined by the Planning Board.

The amount of such performance guarantees shall be determined by the City Engineer and shall be sufficient to assure completion of improvements within one (1) year of final site plan approval.

Any subdivision of lots and parcels of land within the Redevelopment Area shall be in accordance with the requirements of this Plan and the Land Development Ordinance of the City of Jersey City.

B) Adverse Influences

No use or re-use shall be permitted, which when conducted under proper and adequate conditions and safeguards, will produce corrosive, toxic or noxious fumes, glare, electromagnetic disturbance, radiation, smoke, cinders, odors, obnoxious dust or waste, undue noise or vibration, or other objectionable features so as to be detrimental to the public health, safety or general welfare.

C) Restriction of Occupancy or Use

There shall be no restriction of occupancy or use of any part of the project area on the basis of race, creed, color or national origin.

D) Circulation and Open Space Design Objectives

Unless paved, all open space areas shall be landscaped and maintained in an attractive condition.

Open spaces for both residential rehabilitation and new construction shall be provided where feasible and be so located as to provide for maximum usability by occupants and to create a harmonious relationship of buildings and open space throughout the project area.

Sidewalk areas shall be adequately provided for the movements of pedestrians through and around the site.

Sidewalk areas shall be attractively landscaped and durably paved and shall be provided with adequate lighting.

Trees shall be planted along the curblines at not less than 30 foot centers in a regularly spaced pattern to further increase the aesthetic quality of redevelopment activities.

Areas designated as improved open space shall be in addition to all parking, yard and setback requirements.

E) Off-Street Parking and Loading Objectives

Off-street parking and loading areas shall be coordinated with the public street system serving the project area in order to avoid conflicts with through traffic or obstruction to pedestrian walks and thoroughfares.

Any surface parking facilities shall be landscaped; large concentration of parking shall be avoided; poured-in-place concrete curbing shall be used in parking areas to prevent vehicles from encroaching upon planted area.

All parking and loading areas abutting streets or residential zones shall be landscaped about their periphery with berms, shrubs, trees and/or ground cover.

All required parking and loading areas shall be provided off-street. All such parking and loading areas shall be graded, paved with a durable dust-free surface, adequately drained, well landscaped, and all access points shall be defined and limited in accordance with the zoning ordinance of the City of Jersey City.

All driveways shall be paved in accordance with the Zoning Ordinance of the City of Jersey City.

Maximum Driveway width:

One way	- 10 feet
Two way	- 20 feet
Private Parking	- 10 feet for 1 & 2 family units.

F) Landscape Design Objectives

All open space, including yards, shall be landscaped with lawns, trees, shrubbery and other appropriate plant material unless said open space is specifically designated for other activities which require paving or other treatment. All screen planting shall be evergreen and only species with proven resistance to the urban environment in this area will be acceptable. Screen planting shall be a minimum of four (4) feet high at time of planting. Material shall be planted balled and burlaped and be heavy and of specimen quality as established by the American Association of Nurserymen. At initial planting the material shall provide an opaque screen from the top of the shrub to within six (6) inches of grade. Other plant materials shall be heavy, and of specimen quality determined as above. All trees shall be a minimum of three and one-half (3 ½) inches in caliper. All plants, trees and shrubs shall be installed in accordance with the Land Development Ordinance planting schedules.

VI. GENERAL PROVISIONS

A) The regulations and controls in this section (Section VI General Provisions) will be implemented, where applicable, by appropriate covenants, or other provisions or agreements for land disposition and conveyance executed pursuant thereto.

- B) No building shall be constructed over an easement in the project area without prior written approval of the Jersey City Municipal Engineer.
- C) The provisions of this Plan specifying the redevelopment of the project area and the requirements and restrictions with respect thereto shall be in effect for a period of forty (40) years from the date of approval of this plan by the City Council of the City of Jersey City.
- D) All residential redevelopment proposals and construction plans shall meet applicable F.H.A. and/or H.F.A. minimum room size requirements prior to approval by the Planning Board.
- E) Existing non-conforming buildings of record with lot frontage on Newark Avenue are exempt from parking requirements.
- F) Deviation Requests. The Planning Board may grant deviations from the regulations contained within this Plan, where, by reason of exceptional narrowness, shallowness or shape of a specific piece of property, or by reason of exceptional topographic conditions, pre-existing structures or physical features uniquely affecting a specific piece of property, the strict application of any area, yard, bulk or design objective or regulation pursuant to this Plan, would result in peculiar and exceptional practical difficulties to, or exceptional and undue

hardship upon, the developer or redeveloper of such property. The Planning Board may also grant a deviation from the regulations contained within this Plan related to a specific piece of property where the purposes of this Plan would be advanced by such deviation from the strict application of the requirements of this Plan, and the benefits of granting the deviation would outweigh any detriments. The Planning Board may grant deviations from the requirements for site plan or subdivision approval as may be reasonable and within the general purpose and intent of the provisions for site plan review and/or subdivision approval within this Plan, if the literal enforcement of one or more provisions of the Plan is impracticable or would exact undue hardship because of peculiar conditions pertaining to the site. No deviations may be granted under the terms of this section unless such deviations can be granted without resulting in substantial detriment to the public good and will not substantially impair the intent and purpose of this Plan. No deviations may be granted which will result in permitting a use that is a prohibited use within this Plan. An application requesting a deviation from the requirements of this Plan shall provide public notice of such application in accordance with the public notice requirements set forth in NJSA 40:55D-12.a & b.

## VII. GENERAL LAND USE PLAN

### A) Land Use Provisions and Building Requirements

#### a. Permitted Principal Uses

- 1 and 2 family townhouses and rowhouses except on Newark Avenue
- Apartment buildings, limited to lots with Newark Avenue frontage
- Public and quasi-public uses
- Retail sales, *Medical Offices*, restaurants (categories one and two), and/or Professional Offices and related services required on and limited to the ground and 2<sup>nd</sup> floors of Apartment Buildings on Newark Avenue.

#### b. Permitted Accessory Uses

- Private garages
- Off-street parking
- Recreation areas as part of a residential development
- Fences and walls
- Designed open space

### B) Regulations, ~~and~~ Controls, and Design Guidelines

- a. *Buildings shall be designed so that their appearances reflect the historic development patterns of the older mixed-use buildings on Newark Avenue. All new construction and/or exterior improvements to mixed use buildings shall be designed so as to be harmonious with the neighboring buildings in terms of material, height, scale, façade proportions, window patterns, decorative features, floor-to-ceiling heights where appropriate, and architectural styles.*
- b. *At the top of the base, a visual cue or indicator such as belt coursing, a change in glass-to-solid ratio, or any other indicator consistent with the design, proportions, and materials of the base shall be provided.*
- c. *The roofline of the structure shall be designed with architectural features in harmony with that of the adjacent buildings.*

- d. ***Buildings*** ~~Parcels designated residential~~ shall be designed utilizing primarily brick and masonry materials *on all sides* to form a compatible overall architectural scheme. No EFIS is permitted.
- e. All streetfront facades shall be treated as primary facades, with high-quality materials, architectural detail, windows quantity and proportion, and with respect to the character and aesthetic of the neighborhood.
- f. Designed open space shall be developed as an integral part in the overall design scheme. ***Common rooftop open space is encouraged. Balconies fronting on Newark Avenue are prohibited.***
- g. Apartment buildings shall limit retail sales activities to the ground floor, and mezzanine, ***and second floor***, and provide separate ingress and egress for the residential uses.
- h. One and two family townhouses and rowhouses shall be defined as attached structures in a row of similar structures containing one or two dwelling units.
- i. Offices as a home occupation shall be defined as places for the transaction of business where reports are prepared, records kept, and services rendered, but where no retail sales are offered, and shall be limited to licensed doctors, lawyers, architects, engineers and planners.
- j. ***Display windows: All retail uses shall have display windows constituting a minimum of seventy percent (70%) glass, open to the street, and the bottom edge of the display window(s) shall be no more than four (4) feet in height above grade. The glass is to be clear and not tinted; film to block ultra-violet sunlight is permitted provided that it is not tinted and does not obscure the view of the interior of the store from the sidewalk immediately adjacent. The name and/or logotype of the establishment are permitted to be applied to the window. All window frames shall be of a complementary color. Product displays and/or store signage should be appropriate for the product or service being sold, and should occupy no more than a reasonable area of the display window(s). The display window area shall allow for a clear view into the interior of the store.***
- k. ***All roofs shall be flat. All roofs shall be internally drained and have parapets.***
- l. Where any questions arise in terms of definitions or terminology the Zoning Ordinance of the City of Jersey City shall govern.

C) Maximum Height

- The height of any existing residential building shall not be increased or altered in any way such as by the addition of any additional stories or added ceiling or roof height. Vertical expansion beyond the height of original construction of any home in the Area is prohibited.
- All new 1- and 2-family townhouses and rowhouses, four (4) stories.
- Apartment buildings and mixed use buildings shall not exceed 4 stories from grade where on-site parking is not required; 5 stories where on-site parking is required and provided regardless of whether parking level is below, at, or above grade.
- Public or quasi-public, 4 stories from grade where on-site parking is not required; 5 stories where on-site parking is required and provided regardless of whether parking level is below, at, or above grade.
- Minimum floor-to-ceiling height for ground floor retail – 12 feet, and to match adjacent where appropriate  
 Minimum floor-to-ceiling height for residential uses (excluding garages) – 9 feet  
 Maximum floor-to-ceiling height for residential uses (excluding garages) – 12 feet

D) Area, Yard and Bulk

1. One and two family townhouses and rowhouses

Minimum lot width	20 feet
Maximum building Coverage	75%
Minimum Lot Area	1,600 sq. ft.
Minimum Yards Front	prevailing
Side	0 feet
Rear	20 feet

2. Apartment Buildings (limited to lots with Newark Avenue frontage)

Minimum Lot Width		25 feet
Minimum Lot Depth		100 feet
Minimum Lot Area		2,500 sq. ft.
Minimum Yards	Front	0 feet
	Side	0 feet
	Rear	15 feet

3. Public and Quasi Public Uses

Maximum Building Coverage		30%
Minimum Lot Width		100 feet
Minimum Lot Depth		100 feet
Minimum Lot Area		10,000 sq. ft.
Minimum Yards	Front	5 feet
	Side	10 feet
	Rear	10 feet

E) Minimum Off-Street Parking

No on-site parking is required for existing uses, or for adaptive reuse of existing buildings.

No parking is required for lots 0 – 4,999 square feet in lot area.

Curb cuts are prohibited on Newark Avenue.

Where feasible, parking is to be set partially or wholly below grade.

Any at- or above-grade parking garage in an Apartment or Mixed-use building shall be screened so as not to give the apparent perception of garage space from all street Rights-of-Ways. All ground floor parking and mechanical related areas shall be wrapped along the exterior by occupied active building uses, such as commercial storefronts and residential units, excepting the location of the vehicular entry and exit and stairways or elevator shafts that serve the parking structure. Utility rooms may occupy no more than fifteen (15%) percent of any single façade.

Parking is required for new construction on lots over 10,000 square feet, subject to the following requirements:

- 1) All residential uses shall provide off-street parking at a ratio of not less than one (1) space per each dwelling unit for townhouses and 0.5 spaces per dwelling unit for apartment buildings.
- 2) Professional Offices as part of ground and 2<sup>nd</sup> floors of Apartment buildings: shall provide off-street parking at a ratio of not less than one (1) space per each one thousand (1,000) square feet of gross floor area devoted to the professional occupation.
- 3) Retail sales *and Medical Offices* as part of the ground and 2<sup>nd</sup> floors of Apartment buildings shall provide off-street parking at a ratio of one (1) space per six hundred (600) square feet gross floor area devoted to commercial use, excluding the first 5,000 square feet.

For lots 5,000 through 9,999 square feet, parking standards shall be 50% (fifty percent) of that required for lots 10,000 square feet and more.

Example:      townhouse – 0.5 parking spaces/unit  
                  Apartment building unit – 0.25 parking spaces/unit  
                  Professional offices – 1 space/ 2,000 square feet (as described)  
                  Retail sales *and Medical Offices* – 1 space per 1,200 square feet

(as described) excluding the first 5,000 square feet.

F) Minimum Off-Street Loading

Off-street loading shall conform to Article IV of the Zoning Ordinance of the City of Jersey City.

G) Signage

1) Retail sales, *medical office*, professional office, and restaurant uses as part of the ground floor within Apartment Buildings:

- a. Band signs in the sign band area above the display window(s) are permitted. Band signs shall display the name and/or logotype of the store only. One sign is permitted per building. Maximum sign area shall be twenty (20) square feet or fifteen percent (15%) of the ground floor façade area, whichever is less. The content of the band sign shall occupy no more than two-thirds (2/3) of the total width of the sign band. Band signs shall be illuminated at night. Attached wall signs shall be limited to the building's sign band. The sign band shall be limited to an area not less than ten (10) feet and not greater than fifteen (15) feet above grade level. In addition, all signs shall set back a minimum of two (2) feet from each side of the building. Sign lettering within the sign band may also be applied directly onto the building surface, rather than onto a sign board.
- b. Window signage is permitted but may not exceed twenty five percent (25%) of the total glazed area of a storefront or of any

individual window. Signage shall be calculated into the maximum building signage area.

- c. Buildings with a secondary façade or corner lots are permitted additional signage on such frontages, consistent with the above guidelines but dimensions not to exceed one-half ( $\frac{1}{2}$ ) the width of the primary façade signage.

- 2) Signage for apartment buildings is limited to a Nameplate or awning identification, not to exceed two (2) square feet.
- 3) Public and quasi-public uses shall be permitted one (1) attached sign not to exceed twelve square feet.

H) Lighting

- 1) *Internal display window lighting: All shop windows are to be internally lit with spotlights of an incandescent type, and shall remain lit during the night to provide added security on the street for the shops.*
- 2) *Exterior façade lighting: Overhead lights that project from above the signboard are strongly recommended to provide for additional street lighting. The use of fluorescent, flashing or blinking lights is prohibited, as is the use of multicolored lights, except for temporary seasonal displays.*
- 3) *Security lighting: All exterior spaces, both public and private, must be furnished with an adequate level of lighting relative to police and community surveillance. All exterior lights shall be designed to be automatically controlled. All interior security lights inside the entrances to the residential units shall also be photocell controlled.*

I) Canopies/Awning

Retail, *medical office, and professional office* storefronts may have canopies/awnings of the owner's preference, provided that all canopies/awnings

on that building are of the same fabric, and no vinyl is used. Canopies/awnings must allow for a minimum of seven (7) feet clearance from the lowest point of the canopy/awning to the ground *but no higher than the top of the ground floor entry*, and must extend horizontally from the vertical surface of the building no more than three (3) feet six (6) inches. The vertical distance from the top to the bottom of any canopy or awning shall not exceed four (4) feet, including valance. The canopy/awning must be permanently attached to the building. Signage on the canopy/awning is limited to the street number (example: "100", not "100 Newark Avenue"), and/or the name and/or logotype of the store only. Canopy/Awning signage may be used in place of, but not in addition to, sign band signage, and area of canopy/awning signage must be calculated into the maximum building signage area.

J) Security Gates

Security gates shall be power operated, open linkage and placed on the interior of the window glass and/or entry door(s) of ground floor spaces. Solid, full metal security gates are expressly prohibited.

VIII. OTHER PROVISIONS NECESSARY TO MEET STATE AND LOCAL REQUIREMENTS

A) The various elements of this Redevelopment Plan set forth above are in compliance with the requirements of State and Local Law and there are no additional requirements with respect to a Redevelopment Plan which have not been complied with.

B) The Redevelopment Plan contains all provisions necessary to fulfill statutory requirement of the City of Jersey City.

C) The Redevelopment Plan proposes to attain identifiable local objectives as to appropriate land use, density of population, improved public utilities traffic circulation recreational and community improvements, other public renovations.

D) The following text referencing provisions for the temporary relocation and permanent housing of persons residing within the Village Study Area Redevelopment Project is presented to comply with statutory requirements of the State of New Jersey. The City of Jersey City through the services of the Jersey City Redevelopment Agency staff will provide displaced families and individuals with the opportunity of being relocated into decent, safe, and sanitary housing which is within their financial means.

This office will be staffed by qualified personnel who will actively assist the families and individuals being displaced in finding adequate accommodations. All families and individuals being displaced will be interviewed to determine their re-housing requirements.

In addition, a list of privately owned houses and apartments which have been inspected and certified as being safe, decent, and sanitary will be maintained by the relocation staff from which individuals will be referred to such dwelling units which are within their financial means.

IX. PROCEDURE FOR AMENDING THE APPROVED PLAN

This Redevelopment Plan may be amended from time to time upon compliance with the requirements of law; provided that in respect to any land in the project area previously disposed of for use in accordance with the Redevelopment Plan, written consent is received from the owner of such lands whose interests therein are materially affected by such amendment, or amendments.

City Clerk File No. Ord. 10-029

Agenda No. 3.P 1st Reading

Agenda No. \_\_\_\_\_ 2nd Reading & Final Passage



# ORDINANCE OF JERSEY CITY, N.J.

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

CITY ORDINANCE 10-029

TITLE: **ORDINANCE AMENDING AND SUPPLEMENTING CHAPTER 12 (MUNICIPAL  
AUTHORITIES) ARTICLE IV (MUNICIPAL UTILITIES AUTHORITY)**

**THE MUNICIPAL COUNCIL OF THE CITY OF JERSEY CITY HEREBY ORDAINS:**

A. The following amendments to Chapter 12 (Municipal Authorities) Article IV (Municipal Utilities Authority) are hereby adopted:

### MUNICIPAL AUTHORITIES

#### ARTICLE IV

#### Municipal Utilities Authority

#### §12-6. Members.

The Jersey City Municipal Utilities Authority shall consist of members of the Sewerage Authority holding office at the time of this reorganization, together with any successors in such membership appointed as if said Sewerage Authority had originally been created pursuant to the Municipal and County Utilities Authorities Law (N.J.S.A. 40:14B-4).

The Board may provide its members with compensation for their services in the form of individual not dependent, medical health care, prescription, optical or dental insurance coverage. Effective June 1, 2010, all board members, including existing board members, shall be required to pay 20% of the premium paid by the Board for such insurance coverage. No board members shall receive any other compensation of any kind whatsoever, except as provided herein.

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

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

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

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

**NOTE:** New matter is underlined; deleted matter in {brackets} For purposes of advertising only, new matter is indicated by **bold face** and repealed matter by *italic*.

1/27/10

APPROVED AS TO LEGAL FORM

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

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

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

Certification Required

Not Required



**CITY OF JERSEY CITY**  
**Office of the Corporation Counsel**

280 Grove Street  
Jersey City, New Jersey 07302  
Telephone: (201) 547-4667  
Fax: (201) 547-5230

Jerramiah Healy, Mayor  
Brian O'Reilly, Business Administrator

Bill Matsikoudis, Corporation Counsel

February 18, 2010

Council President and Members of the Municipal Council  
City Hall-280 Grove Street  
Jersey City, NJ 07302

**Re: Legal Opinion-Benefits for Jersey City Incinerator Authority and  
Municipal Utilities Authority Commissioners**

Dear Council President and Members of the Municipal Council:

In the course of researching proposed amendments to the Municipal Code to eliminate benefits for members of the boards of the Jersey City Municipal Utilities Authority [MUA] and the Jersey City Incinerator Authority, [JCIA] the Law Department questions the authority of the MUA and JCIA to provide medical health coverage benefits to board members.

According to N.J.S.A. 40:14B-17 of the Municipal and County Utilities Authority Law, the ordinance creating the authority "may provide that members of the municipal authority may receive compensation for their services...to be stated in such...ordinance...No member of any municipal authority shall receive any compensation for his services except as provided in this section". Similarly, in regard to the JCIA, N.J.S.A. 40:66A-5(d) states that "The ordinance...for the creation of an incinerator authority may provide that the members of the incinerator authority may receive compensation for their services...No member of any authority shall receive any compensation for his services except as provided in this subsection".

Section 12-5 of the Municipal Code which established and created the MUA and Section 12-2 of the Municipal Code which established and created the JCIA, do not provide for any compensation for board members.

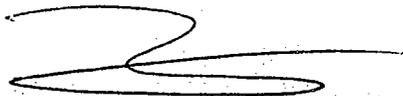
Letters have been sent to the MUA and JCIA requesting the legal basis for their decision to provide such compensation to board members. Although research may reveal that there are uncodified ordinances conferring the benefits, to date no historic City Council action has been discovered that would authorize the benefits. While counsel to the JCIA has opined that health benefits should not be deemed "compensation" under the statute, we believe that health benefits do equal compensation. Accordingly, it is my opinion that board members should not receive the benefits unless the City Code is amended to explicitly allow them.

There are two ordinances that will be considered for introduction at the next council meeting that will resolve this legal problem, if either is adopted, albeit in different ways. An ordinance sponsored by Councilman Fulop will allow benefits to be provided to JCIA and MUA board members for three months, at which time they will be terminated in their entirety. Additionally, the Mayor has proposed an amendment to the ordinance that will affirmatively allow the benefits for board members of the JCIA and MUA but only if they pay 20% of the cost of the premiums now paid in full by the MUA and JCIA.

From a legal perspective, it is clear that the Council will have to act to allow any benefits for the board members of the JCIA and MUA. I also advise that if the Council decides to deprive the board members of health benefits, that it do so affirmatively so as to avoid having their will thwarted by the possible future discovery of an uncodified ordinance that previously gave the agencies the authority to provide benefits. If the City Council takes no action by not passing either ordinance, it is my opinion that we will have to ask the JCIA and MUA to discontinue granting health benefits and, if they fail to produce persuasive evidence authorizing the benefits or refuse our request, we will be required to take action in court.

Finally, the issue of whether or not it is appropriate for board members of the JCIA and MUA to receive benefits or other compensation in exchange for their public service is strictly a policy decision for the City Council and Mayor. It will require weighing the cost savings of terminating benefits versus the rationales that health benefits attract qualified applicants whose work both in participating in meetings and in doing due diligence for these meetings justifies the benefits, as well as the humanitarian concerns of terminating health care benefits.

Very truly yours,



**WILLIAM MATSIKOUDIS  
CORPORATION COUNSEL**

WM/igp

c: Jerramiah T. Healy, Mayor  
Brian O'Reilly, Business Administrator  
Robert Byrne, City Clerk

# CITY OF JERSEY CITY

JERRAMIAH T. HEALY  
MAYOR



CITY HALL  
JERSEY CITY, NJ 07302  
TEL:(201) 547-5200  
FAX:(201) 547-4288

February 18, 2010

Council President and Members of the Municipal Council  
City Hall-280 Grove Street  
Jersey City, NJ 07302

**Re: Benefits for Jersey City Incinerator Authority and  
Municipal Utilities Authority Commissioners**

Dear Council President and Members of the Municipal Council:

The Council is considering an ordinance that would immediately eliminate health benefits for board members of the Jersey City Incinerator Authority and the Municipal Utility Authority as cost saving measures. While I am sensitive to the need to cut costs where reasonable and conscionable, I do not believe it is wise to eliminate the health benefits for JCIA and MUA board members, as this has been provided for decades, and as these are the only boards permitted to provide compensation to board members pursuant to State law.

However, in light of the difficult economic times confronting the City, I propose that effective June 1, 2010 commissioners may receive certain health coverage provided that they pay 20% of the costs. I have asked the Law Department to draft an ordinance embodying this proposal.

Very truly yours,

A handwritten signature in black ink, appearing to read 'JH Healy', is written over the typed name and title.

JERRAMIAH T. HEALY  
MAYOR

c: Brian O'Reilly, Business Administrator  
Robert Byrne, City Clerk  
Bill Matsikoudis, Corporation Counsel

City Clerk File No. Ord. 10-030  
Agenda No. 3.0 1st Reading  
Agenda No. \_\_\_\_\_ 2nd Reading & Final Passage



# ORDINANCE OF JERSEY CITY, N.J.

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

CITY ORDINANCE 10-030

TITLE: **ORDINANCE AMENDING AND SUPPLEMENTING CHAPTER 12 (MUNICIPAL  
AUTHORITIES) ARTICLE II (INCINERATOR AUTHORITY)**

**THE MUNICIPAL COUNCIL OF THE CITY OF JERSEY CITY HEREBY ORDAINS:**

- A. The following amendments to Chapter 12 (Municipal Authorities) Article II (Incinerator Authority) are hereby adopted:

## MUNICIPAL AUTHORITIES

### ARTICLE II

#### Incinerator Authority

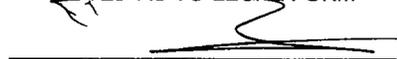
#### §12-2. Authority Established; membership.

- A. The Incinerator Authority is hereby established pursuant to Law [~~N.J.S.A. 40:14B-1, et seq.~~]  
N.J.S.A. 40:66A-1, et seq.
- B. No Change.
- C. The Board may provide its members with compensation for their services in the form of individual not dependent, medical health care, prescription, optical or dental insurance coverage. Effective June 1, 2010, all board members, including existing board members, shall be required to pay 20% of the premium paid by the Board for such insurance coverage. No board members shall receive any other compensation of any kind whatsoever, except as provided herein.
- B. All ordinances and parts of ordinances inconsistent herewith are hereby repealed.
- C. This ordinance shall be a part of the Jersey City Code as though codified and fully set forth therein. The City Clerk shall have this ordinance codified and incorporated in the official copies of the Jersey City Code.
- D. This ordinance shall take effect at the time and in the manner as provided by law.
- E. The City Clerk and the Corporation Counsel be and they are hereby authorized and directed to change any chapter numbers, article numbers and section numbers in the event that the codification of this ordinance reveals that there is a conflict between those numbers and the existing code, in order to avoid confusion and possible accidental repealers of existing provisions.

**NOTE:** New matter is underlined; deleted matter in {brackets} For purposes of advertising only, new matter is indicated by **bold face** and repealed matter by *italic*.

1/27/10

APPROVED AS TO LEGAL FORM

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

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

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

Business Administrator

Certification Required

Not Required



# CITY OF JERSEY CITY

## Office of the Corporation Counsel

280 Grove Street  
Jersey City, New Jersey 07302  
Telephone: (201) 547-4667  
Fax: (201) 547-5230

Jerramiah Healy, Mayor  
Brian O'Reilly, Business Administrator

Bill Matsikoudis, Corporation Counsel

February 18, 2010

Council President and Members of the Municipal Council  
City Hall-280 Grove Street  
Jersey City, NJ 07302

**Re: Legal Opinion-Benefits for Jersey City Incinerator Authority and  
Municipal Utilities Authority Commissioners**

Dear Council President and Members of the Municipal Council:

In the course of researching proposed amendments to the Municipal Code to eliminate benefits for members of the boards of the Jersey City Municipal Utilities Authority [MUA] and the Jersey City Incinerator Authority, [JCIA] the Law Department questions the authority of the MUA and JCIA to provide medical health coverage benefits to board members.

According to N.J.S.A. 40:14B-17 of the Municipal and County Utilities Authority Law, the ordinance creating the authority "may provide that members of the municipal authority may receive compensation for their services...to be stated in such...ordinance...No member of any municipal authority shall receive any compensation for his services except as provided in this section". Similarly, in regard to the JCIA, N.J.S.A. 40:66A-5(d) states that "The ordinance...for the creation of an incinerator authority may provide that the members of the incinerator authority may receive compensation for their services...No member of any authority shall receive any compensation for his services except as provided in this subsection".

Section 12-5 of the Municipal Code which established and created the MUA and Section 12-2 of the Municipal Code which established and created the JCIA, do not provide for any compensation for board members.

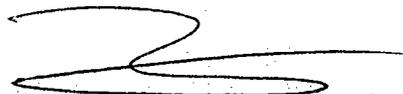
Letters have been sent to the MUA and JCIA requesting the legal basis for their decision to provide such compensation to board members. Although research may reveal that there are uncodified ordinances conferring the benefits, to date no historic City Council action has been discovered that would authorize the benefits. While counsel to the JCIA has opined that health benefits should not be deemed "compensation" under the statute, we believe that health benefits do equal compensation. Accordingly, it is my opinion that board members should not receive the benefits unless the City Code is amended to explicitly allow them.

There are two ordinances that will be considered for introduction at the next council meeting that will resolve this legal problem, if either is adopted, albeit in different ways. An ordinance sponsored by Councilman Fulop will allow benefits to be provided to JCIA and MUA board members for three months, at which time they will be terminated in their entirety. Additionally, the Mayor has proposed an amendment to the ordinance that will affirmatively allow the benefits for board members of the JCIA and MUA but only if they pay 20% of the cost of the premiums now paid in full by the MUA and JCIA.

From a legal perspective, it is clear that the Council will have to act to allow any benefits for the board members of the JCIA and MUA. I also advise that if the Council decides to deprive the board members of health benefits, that it do so affirmatively so as to avoid having their will thwarted by the possible future discovery of an uncodified ordinance that previously gave the agencies the authority to provide benefits. If the City Council takes no action by not passing either ordinance, it is my opinion that we will have to ask the JCIA and MUA to discontinue granting health benefits and, if they fail to produce persuasive evidence authorizing the benefits or refuse our request, we will be required to take action in court.

Finally, the issue of whether or not it is appropriate for board members of the JCIA and MUA to receive benefits or other compensation in exchange for their public service is strictly a policy decision for the City Council and Mayor. It will require weighing the cost savings of terminating benefits versus the rationales that health benefits attract qualified applicants whose work both in participating in meetings and in doing due diligence for these meetings justifies the benefits, as well as the humanitarian concerns of terminating health care benefits.

Very truly yours,



**WILLIAM MATSIKOU DIS  
CORPORATION COUNSEL**

WM/igp

c: Jerramiah T. Healy, Mayor  
Brian O'Reilly, Business Administrator  
Robert Byrne, City Clerk

# CITY OF JERSEY CITY

JERRAMIAH T. HEALY  
MAYOR



CITY HALL  
JERSEY CITY, NJ 07302  
TEL:(201) 547-5200  
FAX:(201) 547-4288

February 18, 2010

Council President and Members of the Municipal Council  
City Hall-280 Grove Street  
Jersey City, NJ 07302

**Re: Benefits for Jersey City Incinerator Authority and  
Municipal Utilities Authority Commissioners**

Dear Council President and Members of the Municipal Council:

The Council is considering an ordinance that would immediately eliminate health benefits for board members of the Jersey City Incinerator Authority and the Municipal Utility Authority as cost saving measures. While I am sensitive to the need to cut costs where reasonable and conscionable, I do not believe it is wise to eliminate the health benefits for JCIA and MUA board members, as this has been provided for decades, and as these are the only boards permitted to provide compensation to board members pursuant to State law.

However, in light of the difficult economic times confronting the City, I propose that effective June 1, 2010 commissioners may receive certain health coverage provided that they pay 20% of the costs. I have asked the Law Department to draft an ordinance embodying this proposal.

Very truly yours,

JERRAMIAH T. HEALY  
MAYOR

c: Brian O'Reilly, Business Administrator  
Robert Byrne, City Clerk  
Bill Matsikoudis, Corporation Counsel

City Clerk File No. Ord. 10-031

Agenda No. 3.R 1st Reading

Agenda No. \_\_\_\_\_ 2nd Reading & Final Passage



## ORDINANCE OF JERSEY CITY, N.J.

COUNCIL AS A WHOLE

offered and moved adoption of the following ordinance:

CITY ORDINANCE 10-031

TITLE:

**REFUNDING BOND ORDINANCE PROVIDING FOR THE FUNDING OF TEMPORARY EMERGENCY APPROPRIATIONS IN CONNECTION WITH THE PAYMENT OF AMOUNTS OWING TO OTHERS FOR TAXES LEVIED IN AND BY THE CITY OF JERSEY CITY, IN THE COUNTY OF HUDSON, NEW JERSEY, APPROPRIATING \$7,893,797 THEREFOR AND AUTHORIZING THE ISSUANCE OF \$7,893,797 BONDS OR NOTES OF THE CITY OF JERSEY CITY FOR FINANCING THE COST THEREOF.**

**BE IT ORDAINED BY THE MUNICIPAL COUNCIL OF THE CITY OF JERSEY CITY, IN THE COUNTY OF HUDSON, NEW JERSEY (not less than two-thirds of all members thereof affirmatively concurring) AS FOLLOWS:**

Section 1. The City of Jersey City, in the County of Hudson, New Jersey (the "City") is hereby authorized to pay an aggregate amount not exceeding \$7,893,797 to fund temporary emergency appropriations of the City in the amount of \$7,643,797 in connection with the payment of amounts owed by the City to the owners of various properties for taxes levied in the City, as more particularly described on the List of Owners and Properties involved in Tax Appeals available for inspection in the office of the City Clerk, which list is hereby incorporated by reference as if set forth at length herein, and for which no adequate provision was made in the City's 2010 budget.

Section 2. An aggregate amount not exceeding \$250,000 for items of expense listed in and permitted under N.J.S.A. 40A:2-51(b) has been included in the aggregate principal amount of refunding bonds authorized herein.

Section 3. In order to finance the cost of the project described in Section 1 hereof, negotiable refunding bonds are hereby authorized to be issued in the principal amount of \$7,893,797 pursuant to the Local Bond Law.

Section 4. In anticipation of the issuance of the refunding bonds, negotiable bond anticipation notes are hereby authorized to be issued pursuant to and within the limitations prescribed by the Local Bond Law. All refunding bond anticipation notes issued hereunder shall mature at such times as may be determined by the Chief Financial Officer, provided that no note shall mature later than one year from its date. The notes shall bear interest at such rate or rates and be in such form as may be determined by the Chief Financial Officer. The Chief Financial Officer shall determine all matters in connection with notes issued pursuant to this ordinance, and the Chief Financial Officer's signature upon the notes shall be conclusive evidence as to all such determinations.

All notes issued hereunder may be renewed from time to time, but all such notes including renewals shall mature and be paid no later than the tenth anniversary of the date of the original notes; provided, however, that no notes shall be renewed beyond the first or any succeeding anniversary date of the original notes unless an amount of such notes, at least equal to the first legally payable installment of the bonds in anticipation of which the notes are issued, determined in accordance with the maturity schedule for the bonds approved by the Local Finance Board, is paid and retired on or before such anniversary date; and provided, further, that the period during which the bond anticipation notes and any renewals thereof and any permanent bonds are outstanding, shall not exceed the period set for the maturity of the bonds by the Local Finance Board.

The Chief Financial Officer is hereby authorized to sell part or all of the notes from time to time at public or private sale and to deliver them to the purchasers thereof upon receipt of payment of the purchase price plus accrued interest from their dates to the date of delivery thereof. The Chief Financial Officer is directed to report in writing to the governing body at the meeting next succeeding the date when any sale or delivery of the notes pursuant to this ordinance is made. Such report must include the amount, the description, the interest rate and the maturity schedule of the notes sold, the price obtained and the name of the purchaser.

Section 5. A certified copy of this refunding bond ordinance as adopted on first reading has been filed with the Director of the Division of Local Government Services in the Department of Community Affairs of the State of New Jersey prior to

final adoption, together with a complete statement in the form prescribed by the Director and signed by the Chief Financial Officer of the City as to the indebtedness to be financed by the issuance of the refunding bonds authorized herein. Such statement shows that the gross debt of the City as defined in the Local Bond Law is increased by the authorization of the bonds and notes provided in this refunding bond ordinance by \$7,893,797, but that the net debt of the City determined as provided in the Local Bond Law is not increased by virtue of a deduction pursuant to N.J.S.A. 40A:2-52.

Section 6. To the extent the refunding bonds or notes authorized hereunder are issued as tax-exempt obligations, the City hereby covenants to take any action necessary or refrain from taking such action in order to preserve the tax-exempt status of the refunding bonds and notes authorized hereunder as is or may be required under the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder (the "Code"), including compliance with the Code with regard to the use, expenditure, investment, timely reporting and rebate of investment earnings as may be required thereunder. The City reasonably expects to expend general funds or other available moneys for the purpose described in Section 1 hereof prior to the issuance of refunding bonds or notes hereunder. To the extent such funds are spent, the City further reasonably expects to reimburse such expenditures from the proceeds of the refunding bonds or notes authorized by this refunding bond ordinance, in an aggregate not to exceed the amount of refunding bonds or notes authorized in Section 3 hereof.

Section 7. The City hereby covenants to comply with Rule 15c2-12 promulgated under the Securities Exchange Act of 1934 to the extent applicable to the issuance of refunding bonds or notes issued pursuant to this refunding bond ordinance.

Section 8. The full faith and credit of the City is hereby pledged to the punctual payment of the principal of and the interest on the obligations authorized by this refunding bond ordinance. The obligations shall be direct, unlimited obligations of the City, and the City shall be obligated to levy ad valorem taxes upon all the taxable real property within the City for the payment of the obligations and the interest thereon without limitation of rate or amount.

Section 9. This refunding bond ordinance shall take effect 20 days after the

first publication thereof after final adoption, as provided by the Local Bond Law, provided that the consent of the Local Finance Board has been endorsed upon a certified copy of this ordinance as finally adopted.

APPROVED AS TO LEGAL FORM

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

APPROVED: Donna Mauer, CFO

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

Certification Required

Not Required

City Clerk File No. Ord. 10-032 **REPLACEMENT**

Agenda No. 3.S 1st Reading

Agenda No. \_\_\_\_\_ 2nd Reading & Final Passage



# ORDINANCE OF JERSEY CITY, N.J.

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

CITY ORDINANCE 10-032

TITLE: **ORDINANCE AMENDING AND SUPPLEMENTING CHAPTER 53 (PERSONNEL)  
ARTICLE III (EMPLOYEE REGULATIONS)**

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

A. The following amendments and supplements to Chapter 53 (Personnel) and of the Jersey City Code are adopted.

### ARTICLE III Employee Regulations

#### § 53-26. Use of city-owned vehicles.

- A. Vehicles assigned to city employees for use in connection with their duties may be used for city business only. No city employee may use a city vehicle for any personal or unauthorized purpose. Any employee who uses a city vehicle for any personal or unauthorized purpose may be subject to discipline and shall be required to reimburse the city for the equivalent rental value of the vehicle.
- B. Every employee who is assigned a city vehicle for use in connection with his or her duties must return the vehicle to the Department of Public Works compound or a facility designated by his or her Department Director at the end of his or her work day. Employees who are on call on a twenty-four-hour basis shall be exempt from this requirement. Vehicles which are not returned to city facilities during nonbusiness hours may not be used for personal or nonbusiness purposes.
- C. Each Department Director shall file with the City Clerk the names of employees within his or her department who are assigned city vehicles, the make, model and license plate number of the vehicle and the purpose for which the vehicle is assigned. As to each employee the Department Director shall indicate whether the assigned vehicle bears the Jersey City identification required by Subsection D and whether the employee is subject to duty twenty-four (24) hours per day.
- D. Each city vehicle assigned to an employee, unless ~~exempted~~ a designated police vehicle, ~~by the Mayor and Business Administrator~~ shall bear the City Seal and the following identification on each side in letters at least three (3) inches high:

CITY OF JERSEY CITY  
FOR OFFICIAL USE ONLY

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

WM/igp  
2/24/10

APPROVED AS TO LEGAL FORM

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

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

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

Business Administrator

Certification Required

Not Required

City Clerk File No. Ord. 10-033

Agenda No. 3.T 1st Reading

Agenda No. \_\_\_\_\_ 2nd Reading & Final Passage



# ORDINANCE OF JERSEY CITY, N.J.

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

CITY ORDINANCE 10-033

TITLE: **ORDINANCE AMENDING AND SUPPLEMENTING CHAPTER 84 (ALCOHOLIC BEVERAGES)  
ARTICLE I (PLENARY RETAIL CONSUMPTION AND DISTRIBUTION LICENSES) OF THE  
JERSEY CITY CODE**

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

A. The following amendments and supplements to Chapter 84 (Alcoholic Beverages) Article I (Plenary Retail Consumption and Distribution) of the Jersey City Code are adopted:

## **ARTICLE I**

### **Plenary Retail Consumption and Distribution**

#### **§84-6.1 Redevelopment Areas.**

- A. No Change.
- B. No Change.
- C. No Change.
- D. Anything herein contained to the contrary notwithstanding, any existing plenary retail distribution license may be transferred from a premises within a redevelopment area or from a premises outside of a redevelopment area to a premises within the redevelopment area subject to the following conditions:
  - (1) No plenary retail distribution license, excepting renewals or transfers from person to person, shall be granted for or transferred to the premises the entrance of which is within the area of a circle having a radius of 520 feet and having as its central point the entrance of an existing licensed premises covered by a plenary retail distribution license.
  - (2) Transfer must be to a new building or renovated building within a redevelopment area; or
  - (3) Building or renovated building must be located in a new retail shopping area within a redevelopment area; or
  - (4) Premises must be located in a new mixed-use apartment building or renovated mixed use apartment building within a redevelopment area.
- E. All ordinances and parts of ordinances inconsistent herewith are hereby repealed.
- F. The City Clerk shall have this ordinance codified and incorporated in the official copies of the Jersey City Code.
- G. This ordinance shall take effect at the time and in the manner as provided by law.

H. The City Clerk and the Corporation Counsel may change any chapter numbers, article numbers and section numbers if codification of this ordinance reveals a conflict between those numbers and the existing code, in order to avoid confusion and possible accidental repealers of existing provisions.

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

RR  
2-23-10

APPROVED AS TO LEGAL FORM

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

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

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

Certification Required

Not Required