#247-15

TOWNSHIP OF NORTH BERGEN
HUDSON COUNTY, NEW JERSEY

AN ORDINANCE APPROVING APPLICATION AND FINANCIAL AGREEMENT AND FURTHER AUTHORIZING THE TOWNSHIP ADMINISTRATOR TO EXECUTE A FINANCIAL AGREEMENT WITH MTC URBAN RENEWAL COMPANY, LLC FOR A TERM OF THIRTY YEARS FROM THE DATE OF SUBSTANTIAL COMPLETION.

WHEREAS, pursuant to N.J.S.A. 40A:20-1 et seq., MTC Urban Renewal Company, LLC, an urban renewal entity, qualified to do business under the provisions of the Long Term Tax Exemption Law of 1992, as amended and supplemented, N.J.S.A. 40A:20-1 et seq., has submitted to the Township Administrator an application for approval under the provisions of the Long Term Tax Exemption Law for a redevelopment of approximately 214 residential units with off-street parking and other appurtenant facilities and public area amenities in the Township of North Bergen, County of Hudson, State of New Jersey, identified on the North Bergen Tax Assessment Map as a portion of Block 127, Lots 1.02, 2.01 and 3.05 and Block 155, Lots 1 and 9.02; and

WHEREAS, this project area is contained within and is part of a Redevelopment Area; and

WHEREAS, the Township Administrator has recommended approval of said application to the Board of Commissioners; and

WHEREAS, the Board of Commissioners has authority to approve or disapprove said application and the Financial Agreement that accompanies same as a separate part thereof.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COMMISSIONERS OF THE TOWNSHIP OF NORTH BERGEN that:

Section 1.

1. The application of MTC Urban Renewal Company, LLC, be and it is hereby approved.

2. The Financial Agreement submitted as a separate part of said application be, and it is hereby approved.

3. The Township Administrator, on behalf of the Township of North Bergen, be and is hereby authorized to execute the Financial Agreement with MTC Urban Renewal Company, LLC running for the term of thirty (30) years pursuant to the provisions of said agreement and the provisions of N.J.S.A. 40A:20-1 et seq., said agreement to be sealed and attested to by the Township Clerk and as approved by the Township Attorney.

Section 2. All ordinances or parts of ordinances inconsistent with this ordinance are hereby repealed.

Section 3. If any article, section, sub-section, sentence, clause, or phrase of this ordinance is for any reason deemed to be unconstitutional or invalid by any court of competent jurisdiction, such decision shall not affect the remaining portion of this ordinance.

Section 4. This Ordinance shall take effect at the time and in the manner provided by law.

Introduced: **May 13, 2015**

Published: May 16 & June 2, 2015

Adopted: May 27, 2015

Attest: Erin Barillas
Township Clerk

Comm. Cabrera	YES
Comm. Marenco	YES
Comm. Gargiulo	YES
Comm. Pascual	YES
President Sacco	YES

FINANCIAL AGREEMENT

BETWEEN

MTC URBAN RENEWAL COMPANY, LLC

AND

THE TOWNSHIP OF NORTH BERGEN

PREAMBLE

THIS FINANCIAL AGREEMENT, (the “Agreement” or “Financial Agreement”) made this ______ day of ____________, 2015, by and between MTC Urban Renewal, LLC (“Entity”), an urban renewal entity qualified to do business under the provisions of the Long Term Tax Exemption Law of 1992, as amended and supplemented, N.J.S.A. 40A:20-1 et seq. (The “Law”), having its principal office at c/o Paul Kaufman, Administrator, 2 Executive Drive, Suite 530, Fort Lee, New Jersey 07024 and the Township of North Bergen, a Municipal Corporation in the County of Hudson and State of New Jersey, having its principal office at 4233 Kennedy Boulevard, North Bergen, New Jersey 07047 (“Township”).

RECITALS

WITNESSETH:

WHEREAS, the Entity is the owner of a parcel of land, located in the Township, currently shown and designated as Block 127, Lots 1.02, 2.01 and 3.05 and Block 155, Lots 1 and 9.02 on the Tax Assessment Map of the Township, commonly known as 4828 Tonnelle Avenue (the “Property”), as generally shown on Exhibit A, attached hereto and made a part hereof, which Exhibit also sets forth the portion of the property covered by this Financial Agreement; and

WHEREAS, the Property is located within the boundaries of a designated redevelopment area within the Township (“Redevelopment Area”), duly designated by a Resolution adopted February 12, 2014 for which the Township adopted the Tonnelle Avenue/48th Street Redevelopment Plan dated February, 2014 pursuant to Ordinance #216-14 adopted on June 11, 2014 (“Redevelopment Plan”); and

WHEREAS, Entity is in the process of obtaining approvals for a residential project to be established on the Property, which residential project shall consist of a total of approximately 214 studio, one and two bedroom residential units with off-street parking and other appurtenant facilities and public area amenities (“Project”).

WHEREAS, on December 9, 2014, the Entity filed an Application for a Financial Agreement with the Township, a copy of which, as supplemented, is attached hereto as Exhibit B (the "Application"), in accordance with N.J.S.A. 40A:20-8, pursuant to the Law and this Financial Agreement between the Entity and the Township, seeking approval of this Financial Agreement providing for exemption from municipal taxation for the Property as aforesaid, for a period of thirty (30) years from "Substantial Completion", as that term is hereinafter defined, and for payment in lieu of taxes of an Annual Service Charge; and

WHEREAS, Application for this Financial Agreement was approved by Ordinance authorizing the execution of this Financial Agreement, a copy of which is attached hereto as Exhibit C ("Ordinance"); and

WHEREAS, the Township has made the following findings:

1. That the aggregate Annual Service Charge projected for the Property in the stabilized year of operation is estimated at approximately $480,000.00 for 214 residential units, or $2,336.00 per unit;

2. That the Project will result in the creation of approximately 226 to 250 construction jobs;

3. That the Project, upon completion, will result in the creation of approximately 7 to 10 full-time and part-time jobs;

4. That the Project will facilitate the remediation of any environmental contamination and the revitalization and productive reuse of land currently in a blighted, stagnant, unproductive and fallow condition;

5. That the Project will result in substantial benefit to the community by alleviating existing blight conditions of the Redevelopment Area and providing instead a range of housing opportunities within the Township;

6. That consistent with the Redevelopment Plan, the Project will further Redevelopment Plan objectives and contribute to the economic growth of the Township in general and specifically the Redevelopment Area;

7. That the aforesaid benefits of the Project exceed the cost, if any, associated with granting the tax exemption provided by this Agreement; and

8. That the assistance provided by this Financial Agreement is a significant and critical inducement to the Entity to proceed with the Project, but for which the Entity maintains that the Project cannot be built.

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 1

GENERAL PROVISIONS

1.1 Governing Law

The provisions of the laws of the State of New Jersey, the Law, the Redevelopment Agreement, and the Ordinance approving this Agreement shall govern this Agreement. It is expressly understood and agreed that the Township expressly relies upon the facts, data and representations contained in the Application, including Exhibits, all of which are incorporated herein by reference, in granting this tax exemption.

1.2 General Definitions

Unless specifically provided otherwise, when used in this Agreement, the following terms, when capitalized, shall have the meanings set forth below:

(a) Allowable Net Profit - The amount arrived at by applying the Allowable Profit Rate and the Net Profit, as those terms are hereinafter defined.

(b) Allowable Profit Rate - The greater of twelve percent (12%) or the percentage per annum arrived at by adding 1 1/4% to the annual interest percentage rate payable on the Entity's initial permanent mortgage financing. If the initial permanent mortgage is insured or guaranteed by a governmental agency, the mortgage insurance premium or similar charge, if payable on a per annum basis, shall be considered as interest for this purpose. If there is no permanent mortgage financing, the allowable profit rate shall be the greater of 12% or the percentage per annum arrived at by adding 1 1/4% per annum to the interest rate per annum which the Township determines to be the prevailing rate on mortgage financing on comparable improvements in Hudson County, all in accordance with N.J.S.A. 40A:20-3(b).

(c) Annual Service Charge - The amount the Entity has agreed to pay pursuant to Section 4.2 of this Agreement.

(d) ASC Commence Date - Defined in Section 4.2(b).

(e) Application - The application that the Entity filed with the Township in accordance with N.J.S.A. 40A:20-8 of the Law, seeking approval of an urban renewal project pursuant to the Law, the Redevelopment Agreement and this Financial Agreement, a copy of which Application is attached hereto as Exhibit B.

(f) Auditor's Report - A complete, certified, audited financial statement outlining the financial status of the Entity as it relates to the Project and reporting the Annual Gross Revenue, Net Revenue and Total Project Cost as defined herein, the contents of which have been prepared in a manner consistent with the current standards of the Financial Accounting Standards Board and which fully details all financial items required to determine that the Entity is complying with the Law and this Agreement and which has been certified as to its conformance with the current standards of the Financial Accounting Standards Board by a certified public accountant, who is licensed to practice that profession in the State of New Jersey. The auditor's report shall comply with all requirements of the Long Term Tax Exemption Law, N.J.S.A. 40A:20-1 et seq.

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

(h) Cure Period - Defined in Section 9.3.

(i) Default - The failure of the Entity or Township to perform any obligation imposed by the terms of this Agreement or by the Law, beyond any applicable grace or cure periods.

(j) Default Notice – Defined in Section 9.3.

(k) DCA - The New Jersey State Department of Community Affairs, to which the Entity shall report in accordance with the Law.

(l) Entity - The owner and redeveloper of the PILOT Project and all subsequent purchasers or successors in interest of the PILOT Project provided they are organized pursuant to the Law and transfer of the PILOT Project to said subsequent purchasers or successors has been approved, in writing, by the Township, in accordance with the terms of this Financial Agreement, the Redevelopment Agreement and the Law.

(m) Improvements - The structural components of the PILOT Project described in the recitals hereof and as further described in and permitted by the Redevelopment Agreement, as amended.

(n) Interest Holders - Defined in Section 5.2.3.

(o) Gross Revenue - Annual gross revenue or gross shelter rents, as appropriate, and other income, for the Entity, in accordance with N.J.S.A. 40A:20-3(a).

(p) In Rem Tax Foreclosure - A summary proceeding by which the Township may enforce the lien for taxes due and owing by a tax sale, under N.J.S.A. 54:5-1 et seq.

(q) Land - The land on which the Improvements are to be located as more fully described herein, at Exhibit A and in the Redevelopment Agreement.

(r) Land Taxes - The amount of conventional real estate taxes assessed on Land during the term of this Agreement.

(s) Land Tax Payments - Payments made on the quarterly due dates for land taxes on the Property as determined by the Tax Assessor and the Tax Collector.

(t) Law - "The Long Term Tax Exemption Law", N.J.S.A. 40A:20-1 et seq.

(u) Minimum Annual Service Charge - The amount of the total taxes levied against the Property in the last full tax year in which the Property was subject to taxation. The Minimum Annual Service Charge, which shall not be reduced through any tax appeal on Land and/or Improvements during the period that this Agreement is in force, shall be paid each year in which the Annual Service Charge, calculated pursuant to this Agreement and N.J.S.A. 40A:20-12 would be less than the Minimum Annual Service charge.

(v) Net Profit - The Gross Revenue of the Entity less all operating and non-operating expenses of the Entity, all determined in accordance with generally accepted accounting principles and the provisions of N.J.S.A. 40A:20-3(c). Included in expenses shall be an amount sufficient to amortize the Total Project Cost over the life of the Project, which period the parties agree is thirty (30) years, pursuant to the Law.

(w) Ordinance - Ordinance #________ adopted by the Board of Commissioners of the Township on ______________, 2014 and attached hereto as Exhibit C and made a part hereof, approving the application of the Entity and this Financial Agreement.

(x) PILOT Project - The "Project" as described hereinabove, for which the Entity seeks a tax abatement and payment in lieu of taxes, as set forth herein.

(y) Property - Defined in the recitals.

(z) Redevelopment Agreement - Shall mean the Redevelopment Agreement entered into between the Township and the Entity regarding the Project.

(aa) Secured Party or Parties - Defined in Section 12.6(a).

(bb) Security Arrangements - Defined in Section 12.6(a).

(cc) Substantial Completion - The completion of the PILOT Project, to such degree that it is considered to be ready for its intended use, which presumptively shall mean the date on which the PILOT Project receives a temporary or final Certificate of Occupancy for a residential unit or units within the project.

(dd) Termination - Any act or omission which by operation of the terms of this Agreement shall cause the Entity to relinquish its Long Term Tax Exemption in accordance with N.J.S.A. 40A:20-9g. Upon termination or expiration, all affected property shall be assessed and subject to taxation as are other taxable properties in the Township. After termination or expiration, restrictions and limits on the Entity shall terminate upon the Entity's rendering a final accounting to and with the Entity pursuant to N.J.S.A. 40A:20-12.

(ee) Total PILOT Project Cost or Total PILOT Project Unit Cost - The Entity's good faith estimate of the total cost of constructing the PILOT Project through the date of issuance of a Certificate of Occupancy for the entire completed PILOT Project, as more specifically defined in N.J.S.A. 40A:20-3h, consisting of, and limited to, the categories of costs set forth in Exhibit D annexed, subject to those exclusions from Total Project Cost set forth in Exhibit D, which calculations and exclusions have been approved by the Township and the Entity.

1.3 **Incorporation of Recitals**

The Recitals set forth at the beginning of this Agreement are hereby incorporated into this Agreement by reference and made a part of this Agreement as if set forth at length herein.

1.4 Exhibits and Schedules Incorporated

All Exhibits referred to in this Agreement and are attached hereto are incorporated herein and made a part hereof.

ARTICLE 2

APPROVAL OF AGREEMENT, USE, OPERATION, MANAGEMENT AND FINANCIAL PLAN OF PILOT PROJECT

2.1 Approval of Agreement

The Township hereby grants its approval of this Agreement for the PILOT Project that is to be constructed and maintained in accordance with the terms and conditions set forth herein and the provisions of the Law. The PILOT Project shall be constructed on the Property.

2.2 Approval of the Entity

Approval hereunder is granted to the Entity for the PILOT Project, which Entity shall in all respects comply and conform to all applicable statutes of the State of New Jersey and lawful regulations made pursuant thereto, governing land, buildings and the use thereof.

2.3 Use, Operation and Management of PILOT Project

The Entity covenants and represents pursuant to N.J.S.A. 40A:20-9 that it shall cause the PILOT Project to be constructed, and shall manage and operate the Property by leasing the individual residential units of the PILOT Project and the Entity shall be bound by the provisions of N.J.S.A. 40A:20-1 et seq. The Improvements shall be those authorized by the Redevelopment Agreement, implemented in accordance with all permits and approvals and pursuant to the schedule agreed upon by the Township and the Entity.

2.4 Financial Plan

(a) The method for computing gross revenue for the Entity, the method of determining insurance, operating and maintenance expenses paid by a tenant which are ordinarily paid by a landlord, the plans for financing the PILOT Project, the amortization rate on the Total Project Cost, the course of funds, the interest rates to be paid on the construction financing, the source and amount of paid-in capital, the terms of mortgage amortization or payment of principal on any mortgage, a good faith projection of initial sales prices of any condominium units and expenses to be incurred in promoting and consummating such sales, and the rental schedules and lease terms to be used in the Project are set forth in Exhibit D to the Application.

(b) The Entity's good-faith estimate of the Total Project Cost is set forth in Exhibit B attached hereto.

ARTICLE 3

DURATION OF AGREEMENT

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 thirty (30) years after the ASC Commencement Date. This Agreement shall continue in force only while the PILOT Project is owned, or, upon Township written approval while the PILOT Project is leased for a minimum period equal to the unexpired term of the Agreement, by an urban renewal entity formed and operating pursuant to the Law. This Agreement shall be fully performed by the parties hereto within thirty (30) years from the date after the ASC Commencement Date, and in no event more than thirty-five (35) years from the date of execution of the Financial Agreement, pursuant to N.J.S.A. 40A:20-13.

ARTICLE 4

EXEMPTION AND ANNUAL SERVICE CHARGE

4.1 **Exemption**

The Township agrees that the Project (but not the Land) shall be exempt from real property taxation, as provided in the Law, from the date of this Agreement to and through the date that is thirty (30) years from the date of Substantial Completion, consistent with Section 3.1 above.

4.2 **Annual Service Charge**

(a) In consideration of the Township granting the Entity the exemption set forth in Section 4.1 of this Agreement, the Entity shall make payment to the Township for municipal services, as provided in the Law, by payment to the Township of the Annual Service Charge in the amounts provided for in Section 4.3. Notwithstanding the above, N.J.S.A. 40A:20-12 requires that the minimum Annual Service Charge shall be the amount of total taxes levied against all real property in the area covered by the PILOT Project in the last full tax year in which that area was subject to taxation, and the minimum Annual Service Charge shall be paid in each year in which the other provisions of this Financial Agreement would result in less than the minimum Annual Service Charge being paid.

(b) The Annual Service Charge shall first begin to accrue on the first day of the twelfth month following Substantial Completion (the "ASC Commencement Date"). In the event the Entity fails to timely 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, the Township shall have the same rights and remedies to collect such charges as provided by law for collection of general municipal taxes.

(c) The Annual Service Charge shall not be in lieu of sewer charges or other special assessments imposed in accordance with applicable law.

4.3 **Staging Schedule for Annual Service Charges**

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

4.3.1 Stage One: In years one (1) through ten (10), after the ASC Commence Date, the Annual Service Charge shall be eleven (11%) percent of gross revenue, provided, however, that if Gross Revenue is less than Four Million Five Hundred Forty-five Thousand Four Hundred Fifty-five Dollars ($4,545,455.00) in years one (1) through ten (10) after the but no less than Five Hundred Thousand Dollars ($500,000.00).

4.3.2 Stage Two: In years ten (10) through fifteen (15), the ASC Commencement Date, the Annual Service Charge shall be the greater of (i) eleven (11%) percent of the gross revenue, provided, however, that if gross revenue is less than Five Million Four Hundred Fifty-four Thousand Five Hundred Forty-five Dollars ($5,454,545.00), then the aforementioned percentage (%) of gross revenue shall be such percentage as is necessary to apply to the gross revenue in order to result in an Annual Service Charge in the amount of Six Hundred Thousand Dollars ($600,000.00), or (ii) twenty percent (20%) of the amount of taxes otherwise due on the value of the Land and Improvements, whichever is greater.

4.3.3 Stage Three: In years fifteen (15) through twenty (20), after the ASC Commencement Date, the Annual Service Charge shall be the greater of (i) eleven (11%) percent of gross revenue, provided, however, that if gross revenue is less than Six Million Dollars ($6,000,000.00), then the aforementioned percentage (%) of gross revenue shall be such percentage as is necessary to apply to the gross revenue in order to result in an Annual Service Charge in the amount of Six Hundred Sixty Thousand Dollars ($660,000.00) or (ii) Forty percent (40%) of the amount of taxes otherwise due on the value of the Land and Improvements, whichever is greater.

4.3.4 Stage Four: In years twenty (20) through twenty-five (25), after ASC Commencement Date, the Annual Service Charge shall be the greater of (i) eleven (11%) percent of gross revenue provided, however, that if gross revenue is less than Six Million Six Hundred Thousand Dollars ($6,600,000.00), then the aforementioned percentage (%) of gross revenue shall be such percentage as is necessary to apply to the gross revenue in order to result in an Annual Service Charge in the amount of Seven Hundred Twenty-six Thousand Dollars ($726,000.00), or (ii) sixty percent (60%) of the amount of taxes otherwise due on the value of the Land and Improvements, whichever is greater.

4.3.5 Stage Five: In years twenty-five (25) through thirty (30), after the ASC Commencement Date, the Annual Service Charge shall be the greater of (i) eleven (11%) percent of the gross revenue provided, however, that if the gross revenue is less than Seven Million Two Hundred Sixty Thousand Dollars ($7,260,000.00), then the aforementioned percentage (%) of gross revenue shall be such percentage as if necessary to apply to the gross revenue in order to result in an Annual Service Charge in the amount of Seven Hundred Ninety-eight Thousand Six Hundred Dollars ($798,600.00) or eighty percent (80%) of the amount of taxes otherwise due on the value fo the Land and Improvements, whichever is greater.

The Annual Service Charge shall be subject to any adjustments provided for in this Article 4.

4.4 **Real Property Taxes - Preliminary Construction Stage - Block 127 Lots 2.01 and 3.05 AND Block 155, Lots 1 and 9.02**

The parties agree that real property tax for Block 127, Lots 2.01 and 3.05 and Block 155, Lots 1 and 9.02 from the date of this Agreement through the ASC Commencement Date shall be paid to the Township as follows:

Effective Date to issuance of temporary certificate of occupancy, but no later than December 1, 2017	$150,000 per annum
Upon issuance of temporary certificate of occupancy or commencing December 1, 2017 through the ASC Commencement Date	$300,000 per annum

or 11% of gross revenue, whichever is greater

4.5 **Payments to the County of Hudson**

The township shall be required to remit to the County of Hudson five (5%) percent of the annual service charge received pursuant to N.J.S.A. 40A:20-12.

4.6 **Cost for Education**

In addition to the payments required in subparagraphs 4.3, 4.4 and 4.5, if more than twenty (20) school-age children inhabit the development, the Entity agrees to pay the average per pupil cost based upon the educational cost in the North Bergen School system over the past 3 years. This payment shall be adjusted every five (5) years as payment adjustments are made pursuant to Subparagraph 4.3 herein.

4.7 **Quarterly Installments**

The Entity expressly agrees that the Annual Service Charge shall be billed in quarterly installments on those dates when real estate tax payments are due, i.e., February 1, May 1, August 1 and November 1; subject nevertheless to adjustment for over or underpayment within thirty (30) days after close of each fiscal or calendar year, as the case may be. In the event that the Entity fails to pay the Annual Service Charge, the unpaid amount shall bear the highest rate of interest permitted in the case of unpaid taxes or tax liens on the land until paid.

4.8 **Land Tax Credit**

The Entity shall be entitled to a credit against the Annual Service Charge for the amount, without interest, of the real estate taxes on the land paid by the Entity in the last four (4) preceding quarterly installments which Land Tax Credit for the first year of this Agreement shall be deemed to be fixed at One Hundred Thousand Dollars ($100,000.00). the effective date of this Financial Agreement.

4.9 **Administrative Fee**

The Entity shall also pay an annual administrative fee to the Township in addition to the Annual Service Charge. The administrative fee shall be calculated as two (2%) per cent for each year's prior Annual Service Charge and shall be due and payable as of February 1st of each applicable year. In the event that the Entity fails to pay the administrative fee, the unpaid amount shall bear the highest interest permitted in the case of unpaid taxes or tax liens on the land until paid.

4.10 **Material Condition**

It is expressly agreed that the timely payment of land taxes, Annual Service Charges, including adjustments thereto, and the administrative fee and any interest thereon are material conditions of this Agreement.

ARTICLE 5

ANNUAL REPORTS

5.1 **Accounting System**

The Entity agrees to maintain a system of accounting and internal controls established and administered in accordance with Generally Accepted Accounting Principles ("GAAP") and pursuant to the Law.

5.2 **Periodic Reports**

5.2.1 Total Project Cost Audit: Within ninety (90) days after the Substantial Completion of the Project, the Entity shall submit to the Township Mayor and Board of Commissioners an audit of Total Project Costs, certified as to actual construction costs and site remediation and clean-up of hazardous substances, if any, by an independent and qualified architect, utilizing the form attached hereto as Exhibit E. Other extraordinary costs, as contemplated by Exhibit B, shall be certified in conformance with GAAP, by a certified public accountant licensed to practice that profession in the State of New Jersey.

5.2.2 Auditor's Report: Within ninety (90) days after the close of each fiscal or calendar year, depending on the Entity's accounting basis during the period that this Agreement shall continue in effect, the Entity shall submit to the Township Mayor and Board of Commissioners and the New Jersey Division of Local Government Services within the DCA, its Auditor's Report for the preceding fiscal or calendar year in accordance with N.J.S.A. 40A:20-9(d). The Auditor's Report shall include, but not be limited to, 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.

5.2.3 Disclosure Statement: Within thirty (30) days after each anniversary date of the parties' execution of this Agreement, the Entity shall submit to the

Mayor and Board of Commissioners a Disclosure Statement listing all persons and other entities having an ownership interest in the Project ("Interest Holders"), and the extent of the ownership interest held by each.

5.2.4 Termination of Obligations: The Entity's obligations under this Section 5.2 shall terminate at the end of the thirty (30) year tax exemption period, or upon earlier termination, if any, of this Agreement. Upon termination or expiration, all affected property shall be assessed and subject to taxation as are other taxable properties in the Township. After termination or expiration, restrictions and limits on the Entity shall terminate, upon the Entity's rendering a final accounting to and with the Township pursuant to N.J.S.A. 40A:20-12.

5.3 **Inspection**

The Entity shall permit the inspection of its property, equipment, buildings and other facilities of the Entity and shall also permit, upon request, examination and audit of its books, contracts, records, documents and papers by duly authorized representatives of the Township and the State of New Jersey. Such examination or audit shall be made upon seven (7) days notice during regular business hours, in the presence of an officer or agent designated by the Entity. To the extent reasonably possible, the examination, inspection or audit will not materially interfere with the construction or operation of the PILOT Project.

ARTICLE 6

LIMITATION OF PROFITS AND RESERVES

6.1 **Limitation of Profits and Reserves**

During the period of the Agreement as provided herein, the Entity shall be subject to a limitation of its profits and, in the case of the corporation, the dividends payable by it, pursuant to the provisions of N.J.S.A. 40A:20-15. The calculation of the Entity's Excess Net Profits shall include those project costs directly attributable to site remediation and cleanup expenses and any other costs excluded in this Financial Agreement, as provided for in the Law, even though those costs may have been deducted from the Total Project Cost for the purpose of calculating the Annual Service Charge.

6.2 **Annual Payment of Excess Net Profit**

In the event the Net Profits of the Entity, in any fiscal year, shall exceed the allowable Net Profits for such period, then in accordance with N.J.S.A. 40A:20-15, the Entity, within ninety (90) days after the end of such fiscal year, shall pay such excess Net Profits to the

Township as an additional Annual Service Charge. Gross Revenue and Net Profit for the purposes hereof shall be determined pursuant to N.J.S.A. 40A:20-3(a) and (c) in the following manner. For each year during the term of this Agreement, the Entity's (I) Gross Revenue shall be the total amount of annual gross rents the Entity actually collects from the Property during each such year and (II) Net Profits shall be (i) the Gross Revenue of the Entity less (ii) all operating and non-operating expenses of the Entity determined in accordance with generally accepted accounting principles, including without limitation those items required by 40A:20-3c(1) and (2).

6.3 **Payment of Reserve/Excess Net Profit Upon Termination, Expiration or Sale**

The date of the termination of this Agreement, expiration of this Agreement or the sale of the Project shall be considered to be the close of the fiscal year of the Entity. Within ninety (90) days after such date, the Entity shall pay to the Township the amount of the reserves, if any, maintained by it pursuant to this Section and the excess Net Profit, if any. Upon termination or expiration, all affected property shall be assessed and subject to taxation as are other taxable properties in the Township. After termination or expiration, restrictions and limits on the Entity shall terminate upon the Entity's rendering a final accounting to and with the Entity pursuant to N.J.S.A. 40A:20-012.

ARTICLE 7

ASSIGNMENT AND/OR ASSUMPTION

7.1 **Approval**

7.1.1 Except with the Township's written consent, as set forth in Section 7.1.2 of this Agreement, the Entity may not sell, convey, grant, bargain, assign or otherwise transfer its fee title interest in the PILOT Project, or any part thereof, or any direct or indirect interest in the Entity, or permit the PILOT Project, or any part thereof, to be sold, conveyed, granted, bargained, assigned, or otherwise transferred. Notwithstanding anything to the contrary in this Section, a transfer of ownership interests that occurs by inheritances, devise or bequest or by operation of law upon an immediate family member of Interest Holders, or a trust established for the benefit of such immediate family member shall not be a violation of this restriction. For purposes of the foregoing sentence, (i) an "immediate family member" shall mean a spouse, child or grandchild of any Interest Holder and (ii) "Interest Holders" shall mean holders of interests in the Entity (or holders of interests in any entity directly or indirectly holding an interest in the Entity) as of the date of this Agreement. The Township hereby consents to the transfer of the Entity's membership interest to an entity in which James D. Demetrakis is a principal (the "Permitted Transfer"), provided that the

Entity is a qualified urban renewal entity in accordance with N.J.S.A. 40A:20-5.

7.1.2 Subject to Section 7.1.1, it is understood and agreed that the Township, on written application by the Entity, shall not unreasonably withhold its written consent to a transfer to the PILOT Project authorized by the Law, or any interest therein, and the assignment of all of the Entity's right, title and interest in and to this Agreement, to an entity eligible to operate under the Law, owning no other "project," as this term is defined in the Law, provided the Entity is not in Default regarding any performance required of it hereunder, full compliance with the Law has occurred and the Entity's obligations under its Agreement with the Township are fully assumed by the transferee and the entity pays a transfer fee to the Township equal to two (2%) percent of the then current annual service charge.

ARTICLE 8

COMPLIANCE

During the term of this Agreement, the Project shall be maintained and operated in accordance with the provisions of the Law.

ARTICLE 9

DISPUTE/DEFAULT

9.1 Dispute

In the event of a dispute between the parties, matters in controversy shall, at the first instance, be submitted for resolution by arbitration pursuant to N.J.S.A. 40A:20-9f. Costs for arbitration shall be borne equally by the parties. Arbitration shall be conducted by a retired Judge of the Superior Court mutually selected by the Township and the Entity. Any decision issued by the arbitrator shall provide findings of fact and conclusions of law.

9.2 Default

Default shall be failure of the Entity or Township to conform to the terms of this Agreement beyond the notice, cure and grace periods set forth in Section 9.3 below.

9.3 **Cure Upon Default**

Should a party fail to comply with the terms of this Agreement, the non-defaulting party shall send written notice to the defaulting party of such failure (the "Default Notice"). The Default Notice shall set forth with particularity the basis of the Default. The defaulting party or a party acting on its behalf shall have fifteen (15) days from receipt of the Default Notice (the "Cure Period"), to cure any monetary Default and a sixty (60) day Cure Period to cure any non-monetary default. However, if the Default is a non-monetary Default of a nature that cannot be cured within the Cure Period, using reasonable diligence, the time to cure the Default shall be extended beyond the Cure Period for the time period required in order to allow the defaulting party to cure the Default. Upon the expiration of the Cure Period, or any extension thereof, and providing that the Default is not cured, the non-defaulting party shall be permitted to invoke the remedies set forth in Section 9.4 below.

9.4 **Remedies Upon Default**

(a) General: In the event of any Default not cured within the Cure Period or any extension thereof, a breach of this Agreement by either of the parties hereto, or a dispute arising between the parties with respect to the terms and provisions of this Agreement, and such Default, breach or dispute is not resolved in accordance with Section 9.1, then either party may apply to the Superior Court of New Jersey by an appropriate proceeding to settle and resolve said dispute in such fashion as will tend to accomplish the purposes of the Law.

(b) Monetary Default: The Entity's failure to make the requisite Annual Service Charge payment, reserve payment, additional Annual Service Charge payment, any administrative fee levied, and/or sewer and water charge payments within the Cure Period or any extensions thereof shall constitute a breach of this Agreement by the Entity, and the Township 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. 54:55-1 et seq. and the highest rate of interest as permitted in the case of unpaid taxes and tax liens shall also be due on the unpaid amount. Whenever the word "Taxes" appears or is implied 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 Annual Service Charges were taxes or municipal liens on land. In addition, the Township may terminate this Agreement as to the Entity pursuant to Section 10.1.

(c) Notwithstanding the foregoing, the Entity shall not be entitled to proceed with arbitration or any other dispute resolution proceedings, whether judicial or otherwise, unless the Entity shall have paid, as a minimum amount, the Annual Service Charge due and payable to the most recent Annual Reporting Period.

(d) All of the remedies provided in this Agreement, and all rights and remedies granted by Law and equity shall be cumulative and concurrent. No termination of any provision within this Agreement shall deprive either party of any of its remedies in accordance with Law or any action by the Township against the Entity because of its failure to pay Taxes, Annual Service Charges, additional Annual Service Charges, administrative fees, reserve payments, and/or water and sewer charges with interest payments. The bringing of any action for any Taxes, Annual Service Charges, or other charges due hereunder, or in connection with another Default hereunder, or the resort to any other remedy herein provided for the recovery of such Taxes, any Annual Service Charges, administrative fees, reserve payments and water and sewer charges, or other charges, shall not be construed as a waiver of the right to terminate the Long Term Tax Exemption granted hereby or proceed with an In Rem Foreclosure Action or any other remedy as provided for in this Agreement or by Law.

ARTICLE 10

TERMINATION

10.1 Termination Upon Default of the Entity

In the event the Entity or a party acting on its behalf fails to cure or remedy the Default within the Cure Period as provided in Section 9.2, the Township may terminate this Agreement upon thirty (30) days written notice to the Entity.

10.2 Voluntary Termination by the Entity

The Entity may, after the expiration of one year from the Substantial Completion of the PILOT Project, notify the Township in writing that, as of a date certain designated in such Notice, it relinquishes its status as an Urban Renewal Entity. As of such date, continuation of the tax exemption the Annual Service Charges hereunder, and the profit and dividend restriction shall terminate, and Section 10.3 below shall control. A final accounting pursuant to N.J.S.A. 40A:20-12 shall be a requirement of termination.

10.3 Conventional Taxes

Upon the termination or expiration of this Agreement and thereafter, the PILOT Properties shall be assessed and conventionally taxes according to the general Law applicable to other taxable property within the Township, and the Entity is bound by this Agreement and by the Law until expiration or Termination shall occur.

10.4 **Final Accounting**

Within ninety (90) days after the termination, wither by affirmative action of the Entity by virtue of the provisions of the law or pursuant to the terms of this Agreement, the Entity shall provide a final accounting and pay to the Township the reserve, if any, pursuant to the provisions of N.J.S.A. 40A:20-13 and 15, as well as any excess Net Profit. For purposes of rendering a final accounting, the termination of this Agreement shall be deemed to be the end of the fiscal year for the entity.

ARTICLE 11

NOTICE

11.1 **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 or by recognized overnight courier with proof of delivery. Such written notices may be sent in the same manner to such other addresses as either party may from time to time designate by written notice. Notice given by counsel to a party in accordance with this Section 11.1 shall be effective for all purposes hereunder.

11.2 **Sent by Township**

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

MTC Urban Renewal Company, LLC
c/o Paul Kaufman, Administrator
Two Executive Drive, Suite 530
Fort Lee, NJ 07024

Copies to: J. Sheldon Cohen, Esq.
DeCotiis Fitzpatrick & Cole
500 Frank W. Burr Boulevard
Teaneck, NJ 07666

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

11.3 **Sent by Entity**

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

Erin Barillas, Clerk
Township of North Bergen
4233 Kennedy Boulevard
North Bergen, NJ 07047

Copies to: Christopher Pianese, Administrator
Township of North Bergen
4233 Kennedy Boulevard
North Bergen, NJ 07047

And: Brian M. Chewcaskie, Esq.
Gittleman Muhlstock & Chewcaskie
2200 Fletcher Avenue
Fort Lee, NJ 07024

The notice to the Township shall fully identify the PILOT Project to which it relates, including the full name of the urban Renewal Entity and the Property's Block and Lot numbers.

ARTICLE 12

MISCELLANEOUS

12.1 **Severability**

If any term, covenant or condition of this Agreement or the Application 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.

12.2 **Construction**

This Agreement shall be construed and enforced in accordance with the laws of the State of New Jersey, except for those provisions governing choice of law, and without regard to or aid of the 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 Township have combined in their review and approval of same.

12.3 **Captions**

The marginal captions after the Article, Section and Paragraph numbers of this Agreement are for convenience of reference purposes only and do not in any way define, limit or amplify the terms of this Agreement and are to be given no weight in its interpretation.

12.4 **Oral Representations**

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

12.5 **Recording**

Either this entire Agreement, or a memorandum of this Agreement in form and substance approved in writing by the Township, will be recorded with the Hudson County Clerk by the Entity, at no cost to the Township. Upon termination of this Agreement, the parties shall execute and record an instrument discharging this Agreement of record in form reasonably satisfactory to the parties.

12.6 **Collateral Assignment**

Notwithstanding the foregoing, it is expressly understood and agreed that the Entity has the right to encumber and/or assign the fee title to the Land and/or Improvements for purposes of (i) financing the design, development and construction of the Project and (ii) permanent mortgage financing.

(a) The Township acknowledges that the Entity and/or its affiliates intend to obtain secured financing in connection with the acquisition, development and construction of the Project. The Township agrees that the Entity and/or its affiliates may assign, pledge, hypothecate or otherwise transfer its rights under this Agreement and/or its interest in the Project to one or more secured parties or any agents therefore (each, a “Secured Party” and collectively, the “Secured Parties”) as security for obligations of the Entity, and/or its affiliates, incurred in connection with such secured financing (collectively, the “Security Arrangements”). The Entity shall give the Township written notice of any such Security Arrangements, together with the name and address of the Secured Party or Secured Parties. Failure to provide such notice waives any requirements of the Township hereunder to provide any notice of Default or notice of intent to enforce its remedies under this Agreement.

(b) Without limiting the generality of this Section, if the Entity shall Default in any of its obligations hereunder, the Township shall give notice of such Default to the Secured Parties and the Township agrees that, in the event such Default is not waived by the Township or cured by the Entity, its assignee, designee or successor, within the period provided for herein, before exercising any remedy against the Entity hereunder, the Township will provide the Secured Parties a reasonable period of time to cure such Default, but in any event not less than fifteen (15) days from the date of such notice to the Secured Parties with regard to a failure of the Entity to pay the Annual Service Charge or any other sum due and owing hereunder and forty-five (45) days from the date the Entity was required to cure any other Default.

(c) In the absence of a Default by the Entity, the Township agrees to consent to any collateral assignment by the Entity to any Secured Party or Secured Parties of its interest in this Agreement and to permit each Secured Party to enforce its rights hereunder and under the applicable Security Arrangement and shall, upon request of the Secured Party exercising its rights under any applicable Security Arrangements.

(d) Notwithstanding anything to the contrary contained herein, and in addition to all other rights and remedies of Secured Parties set forth in this Agreement, the provisions of N.J.S.A. 55:17-1 through N.J.S.A. 55:17-11 shall apply to this Agreement to protect the interests of any Secured Party.

12.7. **Force Majeure**. If there is a Force Majeure Event, any time frame specified herein shall be extended for the period of the delay and the time for completion of any specified obligation hereunder shall be tolled for a period of time up to but not exceeding the period of delay resulting from the occurrence of the Force Majeure Event. For purposes hereof, "Force Majeure Event" means causes that are beyond the reasonable control and not substantially due to the fault or negligence of the party seeking to excuse delay or failure of performance of an obligation hereunder by reason thereof, including, but not limited to, any environmental condition with respect to the Property, delays in obtaining permits and approvals for the Project or third-party litigation that enjoins implementation of the Project; declarations of public emergency; acts of nature (as to weather-related events, limited to severe and unusual events or natural occurrences such as hurricanes, tornadoes, earthquakes and floods); acts of the public enemy; acts of terrorism; acts of war; fire; epidemics; quarantine restrictions; blackouts, power failures or energy shortages; governmental embargoes; strikes or similar labor action by equipment or material suppliers or transporters, or unavailability of necessary building materials; and severe economic, financial or market conditions affecting the region (and not unique to the Project) that inhibits the procurement of financing for the Project or that renders the development and marketing of the Project on the terms set forth in the Redevelopment Agreement economically infeasible (provided that Redeveloper has not commercially reasonable alternatives to avoid the impact thereof on the progress of the Project.)

12.8 **Counterparts**

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

12.9 **Certification**

The Township Clerk shall certify to the Tax Assessor, pursuant to N.J.S.A. 40A:20-12, that a Financial Agreement with an urban renewal entity, i.e., the Entity, for the development of the Project, has been entered into and is in effect as required by the Law. Delivery by the Township Clerk to the Tax Assessor of a certified copy of the Ordinance and this Financial Agreement shall constitute the required certification. Upon certification as required hereunder, the Tax Assessor shall implement the exemption and continue to enforce that exemption without further certification by the Clerk until the expiration of the entitlement to exemption by the terms of this Financial Agreement or until the Tax Assessor has been duly notified by the Township Clerk that the exemption has been terminated.

Further, upon the adoption of this Financial Agreement, a certified copy of the Ordinance and this Financial Agreement shall forthwith be transmitted to the Director of the Division of Local Government Services by the Township Clerk.

ARTICLE 13

EXHIBITS AND SCHEDULED

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

Exhibit A	-	Property Description
Exhibit B	-	Executed Financial Agreement Application with all Exhibits
Exhibit C	-	Ordinance of the Township Authorizing Execution of this Financial Agreement
Exhibit D	-	Entity's Estimate of Fiscal Plan and Total Project Cost
Exhibit E	-	Form of Certification of Final Construction Cost
Exhibit F	-	Certificate of Formation of MTC Urban Renewal Company, LLC

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

MTC URBAN RENEWAL COMPANY, LLC

By:_______________________________

TOWNSHIP OF NORTH BERGEN

By:_______________________________