× 4936
0-081701

Kelso & Bradshaw

Attorneys at Law

Thomas F. Kelso
tkelso@kelsobradshaw.com
Patrick J. Bradshaw
Member of NJ&PA Bars
pbradshaw@kelsobradshaw.com
Jennifer A. Burgess
jenburgess@aol.com

132 HAMILTON STREET
P.O. BOX 1208
NEW BRUNSWICK, NJ 08903

PHONE (732) 246-4501
FAX (732) 246-4347

December 22, 2017

RECEIVED
DEC 22 2017
CITY ATTORNEY'S OFFICE

Hand Delivered
T.K. Shamy, City Attorney
City of New Brunswick
78 Bayard Street
New Brunswick, NJ 08901

RE: Collegiate Development Group, LLC
78 Easton Ave Urban Renewal, LLC
78, 92 and 94 Easton Avenue - Block 56, Lot 1.01, 1.03 & 14
Application for Long Term Tax Exemption

Dear Mr. Shamy:

Enclosed are four (4) duplicate originals of the Financial Agreement executed by my client. Kindly execute and return two (2) fully executed originals to my office at your first opportunity. It is critical to my client that they receive the executed Agreement before the end of the year. Thank you for your attention to this matter.

Very truly yours,

Thomas F. Kelso KB

THOMAS F. KELSO

TFK/kb
Enclosures

* 4934
O-081701
revised

FINANCIAL AGREEMENT

BETWEEN

THE CITY OF NEW BRUNSWICK

And

78 EASTON AVE URBAN RENEWAL, LLC

Dated: As of January 9, 2018

Long Term Tax Exemption
N.J.S.A. 40A:20-1 et seq. and N.J.S.A. 55:14K-37

Table of Contents

THIS FINANCIAL AGREEMENT, (hereafter Agreement) made as of the 9th day of January, 2018, by and between **78 EASTON AVE URBAN RENEWAL, LLC,** a New Jersey Urban Renewal Limited Liability Company, qualified to do business under the provisions of the Long Term Tax Exemption law, as amended and supplemented, (N.J.S.A. 40A:20-1 et seq.) having its principal office at 7711 Bonhomme Avenue, Suite 625, St. Louis, Missouri 63105, hereinafter also designated as the "Entity," and the City of New Brunswick, a Municipal Corporation in the County of Middlesex and the State of New Jersey, hereinafter designated as the "City."

WITNESSETH:

WHEREAS, the Entity wishes to have a Long Term Tax Exemption granted for the development of a mixed-use building, located at 78, 92 and 94 Easton Avenue, and further known as Block 56 Lots 1.01, 1.03 and 14 (as described on Exhibit "A" attached hereto and incorporated herein) on the Official Tax Maps of the City of New Brunswick, New Jersey (hereinafter called the "Project"); and

WHEREAS, the City, does hereby grant its approval for a mixed-use building to be developed and maintained upon the terms and conditions hereinafter set forth.

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 Long Term Tax Exemption Law, as amended and supplemented, (N.J.S.A. 40A:20-1 et seq.) being referred to herein as the

"Law." It being expressly understood and agreed that the City expressly relies upon the facts, data and presentations contained in the application attached hereto in granting this tax exemption.

Section 1.2 General Definitions

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

i. Allowable Profit Rate – The Allowable Profit Rate for the purpose of this Agreement shall be calculated in accordance with N.J.S.A 40A:20-3(b).

ii. Annual Service Charge – The amount the Entity on behalf of itself and Successor Unit Purchasers has agreed to pay the City in lieu of full taxation on the improvements, as outlined in the application submitted by 78 EASTON AVE URBAN RENEWAL, LLC attached hereto and in accordance with N.J.S.A. 40A:20-12.

iii. Auditor's Report – A complete financial statement outlining the financial status of the Project 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 items as required by all state statutes which has been certified as to its conformance with such standards by a certified public accountant who is, or whose firm is licensed to practice that profession in the State of New Jersey.

iv. Certificate of Occupancy – Document issued by the City authorizing occupancy of a building, including a temporary certificate of occupancy with minor or weather related punch list items.

v. City – The parties agree that reference of the term City within the Financial Agreement shall be defined as the City of New Brunswick.

vi. Default - Shall be the failure of the Entity to perform any obligation imposed upon the Entity by the terms of the herein Financial Agreement.

vii. Entity – The parties agree that reference to the term Entity within this Financial Agreement shall be defined as 78 EASTON AVE URBAN RENEWAL, LLC, c/o a Collegiate Development Group, 7711 Bonhomme Avenue, Suite 625, St. Louis, Missouri 63105 or any subsequent purchasers or successors in interest of 78 EASTON AVE URBAN RENEWAL, LLC.

viii. Gross Revenue - The annual gross revenue and other income of 78 EASTON AVE URBAN RENEWAL, LLC, as defined in N.J.S.A. 40A:20-3(a), as set forth in the tentative fiscal plan submitted by 78 EASTON AVE URBAN RENEWAL, LLC in its application attached hereto.

ix. Improvements - Any building, structure or fixture permanently affixed to the land upon which the Project is located.

x. In Rem Tax Foreclosure – A summary proceeding by which the City may enforce the lien for taxes due and owing by a tax sale. Said foreclosure is governed by N.J.S.A 54:5-1 et seq.

xi. Land Taxes – The amount of taxes assessed on the value of land on which the Project is located. Land Taxes are not abated.

xii. Land Tax Payment – Payments made on the quarterly due dates for Land Taxes on the real property upon which the Project is located as determined by the Tax Assessor and the Tax Collector.

xiii. Law – The term Law shall refer to the Long Term Tax Exemption Law, as amended and supplemented N.J.S.A 40A:20-1, et seq., and all other relevant federal, state and municipal statutes, ordinances, resolutions, rules and regulations.

xiv. Minimum Annual Service Charge – The minimum annual service charge shall be at least the amount of the total taxes levied against all real property in the area covered by the Project in the last full tax year in which the area was subject to taxation. The Minimum Annual Service Charge shall be further defined in Section 4.2.

xv. 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).

xvi. Project – The land and improvements located upon the site, as identified in the application, which shall contain a nine-story mixed-use building containing 9000+/- square feet of commercial/retail space on the ground floor; 181 residential units comprised of 52 one-bedroom units, 6 two-bedroom units, 35 three-bedroom units, 31 four-bedroom units, and 57 five-bedroom units; and two levels of underground parking, a lobby area, amenity spaces and a parking garage containing 134+/- parking spaces, all of which are the subject of this Agreement and as defined in N.J.S.A 40A:20-3(e) & (i).

xvii. Pronouns – He or it shall mean the masculine, feminine or neuter gender, the singular, as well as the plural, as proper meaning requires.

xviii. Property – The Project land and the improvements thereon as disclosed in the application as described on Exhibit "A" attached hereto and incorporated herein.

xix. Statutes – The term statutes used in this Financial Agreement shall refer to statutes of the State of New Jersey as contained in N.J.S.A 40A:20-1 et seq.

xx. Substantial Completion – The determination by the City by the issuance of a Certificate of Occupancy for the Project that it is ready for the use intended, as further defined in Section 6.2 of this Agreement.

xxi. Termination – Any act or omission which by operation of the terms of the herein Financial Agreement shall cause the Entity to relinquish its long term tax exemption.

Section 1.3 Exhibits Incorporated

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

ARTICLE II – APPROVAL

Section 2.1 Approval of Tax Exemption

The City has granted and does hereby grant its approval for a tax exemption for the Project to be developed and to be maintained under the provisions of the Law for the premises described in said Application commonly known as 78, 92 and 94 Easton Avenue, Lots 1.01, 1.03 and 14 in Block 56 on the Official Tax Maps of the City of New Brunswick, New Jersey as described on Exhibit "A" attached hereto and incorporated herein.

Section 2.2 Approval of Entity

Approval hereunder is granted to the Entity for the contemplated Project on the land referred to above, which shall in all respects comply and conform to all applicable statutes of the State of New Jersey and the lawful regulations made pursuant thereto, governing land, building(s) and the use thereof, and which Project is more particularly described in this accompanying Application.

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 thirty (30) years from the date of Substantial Completion of the Project, and shall only be effective during the period of the Project's operation as described in the application and shall continue in force only while said Project is owned by an Urban Renewal Entity formed pursuant to N.J.S.A 40A:20-5 or Title 15A of the New Jersey Statutes. However, in no case shall this Agreement remain in effect for more than 35 years unless otherwise extended by law, after which time (i) the tax exemption for the Project shall expire and the land and the improvements thereon shall thereafter be assessed and taxed according to the general law, applicable to other non-exempt property in the City and (ii) restrictions and limitations upon the Entity shall terminate upon the Entity's rendering and the City's acceptance of its final accounting.

ARTICLE IV – ANNUAL SERVICE CHARGE

Section 4.1 Annual Service Charge

In consideration of the aforesaid exemption from taxation on the Project, the Entity shall make Payment in Lieu of Taxes to the City in a sum equal to fifteen percent (15%) of Gross

Revenue annually as defined in N.J.S.A. 40A:2D-3. Gross revenue shall include all rents and commercial revenue generated by the Project.

The Annual Service Charge is initially estimated as follows:

Gross Revenue	Annual Service Charge	Initial Annual Service Charge
$7,318,410	15.00%	$1,097,762

The estimated Gross Revenue and Annual Service Charge are further estimated in the Application for approval of this Financial Agreement which is incorporated by reference herein. The Annual Service Charge shall be finalized based upon the submission of an annual certified financial audit of the Project's revenues prepared by a certified public accountant.

The duration of the tax exemption shall be thirty (30) years following Substantial Completion of the Project as described in the Entity's application. However, in no case shall this Agreement remain in effect longer than thirty-five (35) years from the date of execution of this Agreement. This amount (hereinafter referred to as the "Annual Service Charge") may be adjusted from time to time based upon the submission of an annual certified financial audit. The Annual Service Charge for the Project shall be calculated from the first day of the month following the determination by the City of Substantial Completion of the Project in the manner governed by application of Article IV herein.

Section 4.2 Minimum Annual Service Charge

a) The total taxes levied against all real property in the area covered by the Project in the last full year in which the area was subject to taxation was $85,284.09 for the entirety of Block 56, Lots 1.01, 1.03 and 14 and the Minimum Annual Service Charge shall not be established at an amount less than this figure for Block 56, Lots 1.01, 1.03 and 14, as may be consolidated into one lot.

The Agreed Minimum Annual Service Charge for this Project is established as $1, 097,762. The Agreed Minimum Annual Service Charge shall not be reduced through any tax appeal on land and/or improvements during the period that this Agreement shall be in force. However, during the Lease Up Period for the project, which is defined as the initial eight quarters following the issuance of any certificate of occupancy or temporary certificate of occupancy, when the Annual Service Charge payments are due to the City pursuant to Section 4.3 of this agreement, the Agreed Minimum Annual Service Charge shall be as follows:

1st Quarter	$ 62,500.00		
2nd Quarter	$ 125,000.00		
3rd Quarter	$ 187,500.00		
4th Quarter	$ 187,500.00	Yr 1 MASC	$ 562,500.00
5th Quarter	$ 187,500.00		
6th Quarter	$ 187,500.00		
7th Quarter	$ 250,000.00		
8th Quarter	$ 250,000.00	Yr 2 MASC	$ 875,000.00

b) The Annual Service Charge for each Component may be adjusted from time to time in the following manner:

Stage	**Term**	**Annual Service Charge**
First Stage	From date of project completion through Tax Year 6	As calculated in accordance with Section 4.1 or the Minimum Annual Service Charge and 4.2a "Lease Up Period".
Second Stage	Year 7 through Year 12	The Annual Service Charge set forth in Section 4.1 or the greater of the Minimum Annual Service Charge or 20% of the amount of taxes otherwise due on the value of the land and improvements

Third Stage	Year 13 through Year18	The Annual Service Charge set forth in Section 4.1 or the greater of the Minimum Annual Service Charge or 40% of the amount of taxes otherwise due on the value of the land and improvements
Fourth Stage	Year 19 through Year 24	The Annual Service Charge set forth in Section 4.1 or the greater of the Minimum Annual Service Charge or 60% of the amount of taxes otherwise due on the value of the land and improvements
Fifth Stage	Year 25 through Year 30	The Annual Service Charge set forth in Section 4.1 or the greater of the Minimum Annual Service Charge or 80% of the amount of taxes otherwise due on the value of the land and improvements

Section 4.3 Quarterly Installments

The Entity expressly agrees that the aforesaid Annual Service Charge(s) 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 City fiscal year. In the event that the Entity or any Successor Unit Purchaser fails to so pay, the amount unpaid shall bear the highest rate of interest permitted in the case of the unpaid taxes or tax liens on the land until paid.

Section 4.4 Land Tax Credit

The Entity is obligated to make Land Tax Payments for any entitlement to a Land Tax Credit for the subsequent year. The Entity shall be entitled to credit against the Annual Service

Charge for the amount, without interest, of the real estate taxes on land paid by it in the last four preceding quarterly installments against the Annual Service Charge. The Entity's failure to make the requisite Annual Service Charge payment hereunder and/or sewer and water charge payments attributable to the Project site in a timely manner shall constitute a violation and breach of the Financial Agreement and 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 54:55-1, et seq. In addition, the City may terminate the Financial Agreement by duly authorized action of the governing body after having provided the Entity with a written Notice of Default which Notice shall provide a sixty (60) day right to cure to the Entity. Any default arising out of the Entity's failure to pay Land Taxes, Annual Service Charges hereunder, and/or water and sewer charges attributable to the Project site, shall not be subject to the default procedural remedies as provided in Section 14.3 of the Financial Agreement herein.

Section 4.5 Material Conditions

It is expressly agreed and understood that all Land Tax Payments, Annual Service Charges, including the methodology of computation, water and sewer charges, and any interest payment due, are material conditions of this Agreement. If any other terms, covenant or condition of this Financial Agreement or the Application, to any person or circumstance shall, to the extent, be invalid or unenforceable, the remainder of this Agreement or the application of such term, covenant or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term, covenant or condition or this Financial Agreement shall be valid and be enforced to the fullest extent permitted by law.

ARTICLE V – DISPUTE RESOLUTION

Section 5.1 Remedies

In the event of a breach of this 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, other than those items specifically included as material conditions herein, either party may apply to the Superior Court of New Jersey by appropriate proceeding, to settle and resolve said dispute in such fashion as will tend to accomplish the purposes of the act known as the Long Term Tax Exemption Law as amended and supplemented. 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 as to accomplish the purpose of said Law. Costs for said arbitration shall be borne equally by the parties. In the event of a default on the part of the Entity, to pay the Annual Service Charge as defined in Article IV, above, the City among its other remedies, reserves the right to proceed against the Entity's interest in the land and premises and/or a Successor Unit Purchaser, in the manner provided by N.J.S.A. 54:5-1 to 54:5-129, and any Act supplementary or amendatory thereof. Whenever the word "Taxes" appear, or is applied, directly or 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 charge were taxes or municipal liens on land. In such event, however, the Entity does not waive any defense it may have to contest the right of the City to proceed in the above mentioned manner by conventional or In Rem Tax Foreclosure.

ARTICLE VI – CERTIFICATE OF OCCUPANCY

Section 6.1 Substantial Completion

The Annual Service Charge is to commence from the first day of the month following the Substantial Completion of the Project or any phase(s) thereof, if the Project is undertaken in phases. The phrase Substantial Completion denotes the issuance, by the City's Construction Official, of a valid Certificate of Occupancy for each residential unit in the Project.

Section 6.2 Certificate of Occupancy

It is understood and agreed that it shall be the obligation of the Entity to make application for and make all reasonable efforts to obtain all Certificates of Occupancy for the Project in a timely manner as identified in the accompanying Application and failure to use reasonable efforts to secure and submit said Certificate of Occupancy shall subject the property to full taxation provided the City has served the appropriate Notice of Termination pursuant to 15.1 hereof, provided the appropriate cure period has elapsed and, further, City has reasonably cooperated in processing Entity's request for the issuance of such Certificate of Occupancy.

Section 6.3 Filing of Certificate of Occupancy

It shall be the primary responsibility of the Entity to forthwith file with the Tax Assessor, the Tax Collector, and the Chief Financial Officer of the City a copy of such Certificate of Occupancy. Failure of the Entity to cause Entity to file such issued Certificate of Occupancy for the Project as required by the preceding paragraph, shall not militate against any action or non-action, taken by the City's Tax Assessor in the absence of such filing by the Entity.

ARTICLE VII – ANNUAL AUDITS

Section 7.1 Accounting System

The Entity agrees to maintain a system of accounting and internal controls established and administered in accordance generally accepted accounting principles and as otherwise prescribed in N.J.S.A. 40A:20-1 et seq. during the term of the tax exemption.

Section 7.2 Periodic Reports

Within ninety (90) days after the close of each fiscal or calendar year, depending on the Entity's account basis, that this Agreement shall continue in effect, the Entity which administers and manages the Project shall submit its auditor's report certified by a certified public accountant for the preceding fiscal or calendar year to the Director of Department of Planning and Economic and Community Development, the Chief Financial Officer, and the City Clerk of said City, and the Director of the Division of Local Government Services in the Department of Community Affairs N.J.S.A. 40A:20-9(d). Said auditor's report shall include, but not be limited to the following: rent schedule of the Project and the terms and interest rate on any Entity mortgage(s) associated with 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, as amended and supplemented by the Agreement.

Section 7.3 Inspection

The Entity shall permit the inspection of the Property, equipment, buildings and other facilities of the Project. It also shall permit, upon request, examination and audit of its books, contracts, records, documents, and papers by representatives duly authorized by the city. Such examination or audit shall be made during the reasonable hours of the business day, in the presence of any officer or Agent of the Entity.

Section 7.4 Limitation of Profits and Reserves

During the period of tax exemption as provided herein, the Entity shall be subject to limitation of its profits payable by it pursuant to the provisions of N.J.S.A. 40A:20-15. The Allowable Profit rates shall be calculated in accordance with the provisions of N.J.S.A. 40A:2-3(b). The Entity shall have the right to establish a reserve against unpaid rentals, reasonable contingencies and/or vacancies in an amount not exceeding ten percent (10%) of the gross revenues of the Entity for the fiscal year preceding the year in which a determination is being made with respect to permitted net profits as provided in N.J.S.A. 40A:20-15, said reserve to be noncumulative, it being intended that no further credits thereto shall be permitted after the reserve shall have attained the allowable level of ten percent (10%) of the preceding year's gross revenue as aforesaid.

Section 7.5 Payment of Dividend and Excess Profit Charge

In the event the Net Profits of the Entity, as provided in N.J.S.A. 40A:20-15 shall exceed the Allowable Net Profits for such period then the Entity shall, within ninety (90) days after the end of such fiscal year, pay such excess profit to the City as an Additional Service Charge, provided, however that the Entity may maintain a reserve as determined pursuant to aforementioned paragraph 7.4.

ARTICLE VIII - ASSIGNMENT AND/OR ASSUMPTION

Section 8.1 Approval

It is understood and agreed that the City, on written application by the Entity, will not unreasonably withhold its consent to a sale of its interest in the Project site and the transfer of the Financial Agreement to an Entity eligible to operate under the Law provided the Entity is not in default regarding any performance required of it hereunder and full compliance with N.J.S.A

40A:20-1, et seq has occurred to date and the Entity's obligation under this Agreement with the City is fully assumed by the transferee.

Section 8.2 Operation of Project

The Project shall be operated in accordance with the provisions of the Long Term Tax Exception Law, N.J.S.A. 40A:20-1 et seq., as currently amended and supplemented.

Section 8.3 Termination

The Entity hereby agrees at all times prior to the expiration or termination of this Agreement to remain bound by the provisions of N.J.S.A. 40A:20-1 et seq. and N.J.S.A. 55:14K-37 as currently amended and supplemented. It is an express condition of the granting of this tax exemption that during its duration, the Redeveloper shall not, without the prior consent of the Municipal Council, convey or transfer all or part of the Project site so as to sever, disconnect, or divide the improvements except as provided in Article 4.4.

ARTICLE IX - WAIVER

Section 9.1 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 Financial Agreement and tax exemption for violation of any of the conditions provided herein in accordance with the provisions of this Agreement. Nothing herein shall be deemed to limit any right of recovery of any amount which the City has a right under law, in equity, or under any provisions of this Financial Agreement.

SECTION X - NOTICE

Section 10.1 Notice

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

78 EASTON AVE URBAN RENEWAL, LLC
c/o Collegiate Development Group
7711 Bonhomme Avenue, Suite 625
St. Louis, Missouri 63105
Attn: Brandt Stiles

When sent by the Entity to the City, it shall be addressed to the City Clerk, City Hall, 78 Bayard Street, New Brunswick, New Jersey 08901, with copies sent to the City Attorney, Tax Collector, Tax Assessor, the Director of the Department of Planning, Community and Economic Development and the Chief Financial Officer unless prior to the giving of notice to the City shall have notified the Entity otherwise. The notice to the City shall identify the subject by the address and block/lot numbers assigned to the Property by the City's Tax Assessor.

ARTICLE XI – COMPLIANCE

Section 11.1 Statutes and Ordinances

The Entity hereby agrees at all times prior to the expiration or termination of this Financial Agreement to remain bound by the provisions of Federal and State Statutes and Municipal Ordinances and Regulations including, but not limited to N.J.S.A. 40A:20-1 et seq. The Entity's failure to comply with such statutes or Ordinances which may materially adversely affect the City's ability to enforce this Agreement and receive the benefits hereof shall constitute a violation and breach of the Financial Agreement and the City shall, among its other remedies, have the right to terminate said tax exemption, provided, that City shall first have served a written Notice of Default upon the Entity which Notice shall provide a sixty (60) day right to cure to the Entity or its Investor Member.

ARTICLE XII – CONSTRUCTION

Section 12.1 Construction

This Financial 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.

ARTICLE XIII – INDEMNIFICATION

Section 13.1 Defined

It is understood and agreed that in the event the City shall be named as party defendant in any action brought against the Entity by reason of any breach, default or a violation or any of the provisions of this Agreement and/or the provisions of N.J.S.A. 40A:20-1 et seq. by the Entity, 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 City.

XIV – DEFAULT

Section 14.1 Default

Default shall be defined as the failure of the Entity to comply with the terms of the Financial Agreement herein and, further, by failure of the Entity to comply with any statute, ordinance or lawful regulation which may materially adversely affect the City's ability to enforce this Agreement and receive the benefits hereof.

Section 14.2 Cure Upon Default

Should the Entity be in default as defined and set forth in this agreement, the City shall notify the Entity in writing of said default. Said notice shall notify the Entity in writing of said default. Said notice shall set forth with particularly the basis of said default. Except as provided by Section 4.4, the Entity or its Investor Member shall have sixty (60) days to cure any default which shall be the sole and exclusive remedy available to the Entity to cure said default.

Section 14.3 Remedies Upon Default

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 termination of any provision within this Financial Agreement shall deprive the City of any of its remedies in accordance with law or actions permitted against the Entity because of its failure to pay Land Tax Payments, the Annual Service Charge, and/or the water and sewer charges with interest. This right shall apply to arrearages that are due and owing at the time of which, under the terms hereof, would in the future become due nor shall the bringing of any action for any Land Taxes and Annual Service Charges, or other charges, or in the breach of covenant or the resort of any other remedy herein provided for the recovery of Land Taxes, Annual Services Charges, and water and sewer charges, or other charges be construed as a waiver of the right to terminate said tax exemption or proceed with In Rem Foreclosure action or any other remedy as provided for in this Agreement.

ARTICLE XV – TERMINATION

Section 15.1 Termination Upon Default of the Entity

In the event the Entity fails to cure or remedy such default or breach within the time period provided in Section 15.2, the City may cancel this Agreement upon thirty (30) days notice to the Entity. For purposes of rendering a final financial accounting the termination of the Agreement shall be deemed to be the end of the fiscal year for the Entity.

The Entity shall within ninety (90) days after the date of such termination pay to the City a sum equal to the amount of the reserves, if any, maintained pursuant to N.J.S.A. 40A:20-13 & 15. Upon such termination of the Project, all affected parcels and all improvements made thereto shall be assessed and subject to taxation as are all other taxable properties within the City.

Section 15.2 Voluntary Termination by the Entity

The Entity may after the expiration of one (1) year from the date of Substantial Completion of the Project notify the Municipal Council of the City that as of a certain date designated in the notice it relinquishes its status as a tax exempted project. As of the date so set, the tax exemption, the service charges and the profit and dividend restriction shall terminate. Upon termination, the Entity shall provide a final accounting and pay any reserve, if any, to the City pursuant to the provisions of N.J.S.A. 40A:20-12 and 15.

Section 15.3 Final Accounting

Upon any termination of such exemption, whether by affirmative action of the Entity or by virtue of the provisions of the Long Term Tax Exemption Law, as amended and supplemented, or pursuant to the terms of this Agreement, the date of such termination shall be deemed to be the end of the fiscal year of the Entity.

It is further provided that at the end of the period of tax exemption granted hereunder, the Project of the Entity, as well as the land shall be assessed and taxed according to general law like other property in the Municipality. At the same date, all restrictions and limitations upon the

Entity, shall terminate upon the Entity rendering its final accounting with the Municipality, and the City's acceptance thereof, pursuant to N.J.S.A. 40A:20-13.

ARTICLE XVI – MISCELLANEOUS

Section 16.1 Conflict

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

Section 16.2 Oral Representation

There have been no oral representations made by either of the parties hereto which are not contained in this Financial Agreement. This Financial Agreement, the Municipal Resolution 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 executed by both parties and delivered to each.

Section 16.3 Entire Document

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

Section 16.4 Good Faith

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

Section 16.5 Grammatical Agreement

The bracketing of the letter(s) at the end of a word such as unit(s) shall mean the singular or plural as proper meaning requires and all related verbs and pronouns shall be made to correspond.

Section 16.6 Recording

Either this entire Agreement or a memorandum of recording will be filed and recorded with the Middlesex County Clerk by the Entity.

[remainder of page intentionally left blank]

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

78 EASTON AVE URBAN RENEWAL, LLC

By: CDG New Brunswick, LLC, Managing Member

WITNESS: ____________________ By: ____________________
Brandt Stiles, Member

ATTEST: **THE CITY OF NEW BRUNSWICK**

____________________ BY: ____________________
Daniel Torrisi, City Clerk James M. Cahill, Mayor

APPROVED AS TO FORM AND LEGALITY

____
T.K. Shamy, City Attorney

Exhibit "A"

METES AND BOUNDS DESCRIPTION
OF BLOCK 56, LOTS 1.01, 1.03 and 14
CITY OF NEW BRUNSWICK, NEW JERSEY

LANGAN

Technical Excellence
Practical Experience
Client Responsiveness

5 January 2018
130101601

WRITTEN DESCRIPTION
BLOCK 56, LOT 1.04
IN THE CITY OF NEW BRUNSWICK
MIDDLESEX COUNTY, NEW JERSEY

BEGINNING at an iron pin and cap set at intersection of the southerly line of Easton Avenue (66 feet wide) with the westerly line of Hamilton Street (66 feet wide), running thence:

1. South 68 degrees 06 minutes 17 seconds West, along said westerly line of Hamilton Street, a distance of 264.84 feet to the intersection of said westerly line of Hamilton Street with the northerly line of Guilden Street (60 feet wide), thence;

2. North 62 degrees 51 minutes 19 seconds West, along said northerly line of Guilden Street, a distance of 105.27 feet to the intersection of said northerly line of Guilden Street with the common lot line between Block 56, Lot 1.01, lands now or formerly of Easton Avenue Associates, LLC set forth in Deed Book 4441 page 843, and Block 56 Lot 6 lands now or formerly of 1 Guilden , LLC., set forth in Deed Book 5194, page 416, thence;

3. North 27 degrees 08 minutes 41 seconds East, along said common lot line between Block 56, Lots 1.01 and 6, a distance of 100.00 feet to a point in the southerly lot line of Block 56, Lot 14, lands now or formerly of Michael and Jill Holzer, set forth in Deed Book 5332, page 258, thence;

4. North 62 degrees 51 minutes 19 seconds West, along the common line between Block 56 Lots 6 and 14, a distance of 4.50 feet to a point, thence;

5. North 27 degrees 08 minutes 41 seconds East, along the common lot line between Block 56 Lot 14 and Block 56 Lot 14.02, lands now or formerly of Manima Investments, LLC, set forth in Deed Book 6172, Page 202, a distance of 100.00 feet to a point in the southerly line of Easton Avenue, thence;

6. South 62 degrees 51 minute 19 seconds East, along the southerly line of Easton Avenue a distance of 283.38 feet to the Point and Place of Beginning,

Encompassing an area of 38,865 square feet or 0.892 acre of land more or less.

This description is prepared in accordance with a plan entitled "Lot Consolidation Plan, 78, 92 & 94 Easton Avenue, Block No. 56, Lot Nos. 1.01, 1.03 & 14 (Proposed Lot 1.04), City of New Brunswick, Middlesex County, New Jersey" prepared by Langan Engineering and Environmental Services, Inc., Lawrenceville, New Jersey, Project No.

130101601, dated November 28, 2017, last revised January 3, 2018, Drawing No. CB101.

1/5/18

David R. Avery
Professional Land Surveyor
New Jersey License No. 24GS03964600

NJ Certificate of Authorization No. 24GA27996400
\\langan.com\data\LAW\data6\130101601\Survey Data - 130101601\Office Data\Descriptions\Consolidated Lots.docx

AN ORDINANCE TO APPROVE A LONG-TERM TAX EXEMPTION AND FINANCIAL AGREEMENT BETWEEN THE CITY OF NEW BRUNSWICK AND 78 EASTON AVE. URBAN RENEWAL, L.L.C.

BE IT ORDAINED by the New Brunswick City Council as follows:

SECTION I

City Council finds and determines as follows:

(A) 78 Easton Ave. Urban Renewal, L.L.C. (the "Entity") is the owner of a Project within the City of New Brunswick Urban Enterprise Zone.

(B) The aforesaid Urban Renewal Project is being undertaken by the Entity for the parcel at the site generally bordered by Easton Avenue, Hamilton and Guilden Streets and shown as

BLOCK 56 LOTS 1.01, 1.03 and 14

on the Official Tax Maps of the City for purposes of development a mixed use project consisting of approximately 9,000 square feet of retail space and approximately 181 residential apartments.

(C) The Entity shall be authorized to do business as an urban renewal entity under the laws of New Jersey pursuant to the provisions of the long-term tax exemption law, *N.J.S.A. 40A:20-1, et seq.* for the development of the project.

(D) The City Council of the City of New Brunswick has determined that the development of the project will result in the provision of retail as well as residential housing space that will benefit the City and its residents when compared to the cost of the tax abatement and that the abatement approved herein is essential to the project which would not be feasible without the tax abatement approved by this Ordinance.

SECTION II

APPROVAL OF EXEMPTION FROM TAXATION

An exemption from taxation as set forth in the Application is hereby approved and granted to the Entity with respect to the Project in accordance with the terms set forth in the Financial Agreement; provided that in no event shall the term of the Financial Agreement exceed the earlier of thirty-five (35) years from the date of execution thereof or (ii) to the extent permitted by the LTTE Law, thirty (30) years from the Entity's receipt of a Certificate of Occupancy (as defined in the Financial Agreement) for the Project and only so long as the Entity remains subject to and in compliance with the Financial Agreement and the LTTE Law and any other agreement related to the Project or the Property; and provided, further, that in no event shall the resulting property tax obligation in each year the property tax exemption is in effect, when combined with the Annual Service Charge as defined in the Financial Agreement, be less than the amount of the Land Taxes (as defined in the Financial Agreement) prior to redevelopment.

SECTION III

EXECUTION OF FINANCIAL AGREEMENT AUTHORIZED

(a) The Mayor, in consultation with legal counsel to the City, is hereby authorized and directed to execute the Financial Agreement, substantially in the form as it has been presented to the City Council, and attached hereto as **Exhibit A**, subject to additions, deletions, modifications, or revisions deemed necessary and appropriate in consultation with counsel, and any other agreements necessary to effectuate the Financial Agreement.

(b) The Clerk of the City is hereby authorized and directed, upon the execution of the Financial Agreement in accordance with the terms of Section III (a) hereof, to attest to the signature of the Mayor upon such document and is hereby further authorized and directed to affix the corporate seal of the City upon such document.

(c) Within thirty (30) days of its execution, the City Clerk shall file certified copies of this ordinance and the executed Financial Agreement with the Tax Assessor of the City and shall forward a certified copy of this Ordinance and the executed Financial Agreement to the Director of the Division of Local Government Services within the New Jersey Department of Community Affairs in accordance with Section 12 of the LTTE Law.

(d) The executed copy of the Financial Agreement shall be filed with the Office of the City Clerk.

I, Daniel A. Torrisi, City Clerk the City of New Brunswick, NJ, do hereby Certify the foregoing Ordinance is a true copy of the Original Ordinance adopted on second and final reading at a regular meeting of the New Brunswick City Council at its meeting on:

SEPTEMBER 20, 2017

Daniel A. Torrisi, City Clerk

Any reproduction of the Original Ordinance must contain the raised seal of the City of New Brunswick to be legally certified

COUNCILMEMBER	Y	N	NV	AB	COUNCILMEMBER	Y	N	NV	AB
ANDERSON S	X				SICORA LUDWIG	X			
EGAN M	X				FLEMING, Pres	X			
ESCOBAR				X					

COUNCILMEMBER	Y	N	NV	AB	COUNCILMEMBER	Y	N	NV	AB
ANDERSON, VP, M	X				SICORA LUDWIG S	X			
EGAN			X		FLEMING, Pres.	X			
ESCOBAR	X								

FIRST READING VOTE ON AUGUST 2, 2017 M- MOVED S- SECOND NV- NO VOTE AB- ABSENT

SECTION IV

ENTITY OBLIGATIONS

(a) The Project shall conform with all Federal and State laws and ordinances and regulations of the City relating to its construction and use.

(b) The Entity shall, in the operation of the Project, require compliance with all laws so that no person because of race, religious principles, color, national origin or ancestry, will be subject to discrimination.

(c) The Entity shall, from the time that the Annual Service Charge becomes effective, pay the Annual Service Charge as set forth in the Financial Agreement.

SECTION V

SEVERABILITY:

If any section, part of any section, or clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional, such decision shall not affect the remaining provisions of this Ordinance, and each section and subsection thereof, irrespective of the fact that anyone or more of the subsections, sentences, clauses or phrases may be declared unconstitutional or invalid.

SECTION VI

ACTION REGARDING FINANCIAL AGREEMENT

The Mayor is hereby authorized and directed to determine all matters and terms in connection with the Financial Agreement, all in consultation with the counsel to the City, and the manual or facsimile signature of the Mayor upon any documents shall be conclusive as to all such determinations. The Mayor, the Chief Financial Officer, the City Clerk and any other City official, officer or professional, including but not limited to, redevelopment counsel, bond counsel, the financial advisor and the auditor to the City, are each hereby authorized and directed to execute and deliver such documents as are necessary to facilitate the transactions contemplated hereby, and to take such actions or refrain from such actions as are necessary to facilitate the transactions contemplated hereby, in consultation with, as applicable, redevelopment counsel, bond counsel, the financial advisor and the auditor to the City, and any and all actions taken heretofore with respect to the transactions contemplated hereby are hereby ratified and confirmed.

SECTION VII

REPEALER:

All ordinances inconsistent with the provisions of this Ordinance are repealed to the extent of such inconsistency.

SECTION VIII

EFFECTIVE DATE:

This Ordinance shall become effective twenty (20) days following final adoption and publication as required by law.

ADOPTED ON FIRST READING
DATED: August 2, 2017

COUNCIL PRESIDENT

ADOPTED ON SECOND READING
DATED: September 20, 2017

COUNCIL PRESIDENT

ATTEST:

CITY CLERK

APPROVAL OF THE MAYOR ON THIS 22nd DAY OF September, 2017.

MAYOR

APPROVALS:

CITY ADMINISTRATOR 3P

CITY ATTORNEY

DIRECTOR OF PLANNING, COMMUNITY
AND ECONOMIC DEVELOPMENT

TKS/kc