O-060411

AN ORDINANCE TO APPROVE A FINANCIAL AGREEMENT FOR THE NEW BRUNSWICK - JERSEY URBAN RENEWAL, L.L.C. PROJECT

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

SECTION I

New Brunswick - Jersey Urban Renewal, L.L.C. (hereafter "Jersey Urban") has undertaken an Urban Renewal Project within the City of New Brunswick in furtherance of expanded economic activity in the Jersey - Handy Avenue Redevelopment Area. Said Urban Renewal Project is being undertaken in accordance with the Redevelopment Plan for the Jersey - Handy Redevelopment Area for the area bounded by Handy Street, Jersey Avenue, Delavan Street and Amtrak (Blocks 185, 202, 205 and 594 on the Tax Map of the City of New Brunswick.

SECTION II

The aforesaid Urban Renewal Project is being undertaken by Jersey Urban in accordance with the Redevelopment Plan for the Redevelopment Area for the for the purpose of developing a mixed commercial use project.

SECTION III

Jersey Urban is a New Jersey Limited Partnership 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.

SECTION IV

The City Council of the City of New Brunswick has determined that the development of the project will result in substantial economic development and growth and the resultant employment and economic activity 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 V

The Mayor and City Clerk are authorized to execute and attest a Financial Agreement for the project substantially in the form attached hereto, the final form of such Financial Agreement to be approved by the City Attorney and a copy thereof to be placed on file in the Office of the City Clerk as a replacement for the form of Agreement now on file.

SECTION VI

SEVERABILITY:

If any subsection, paragraph or provision of this Ordinance is declared to be invalid by a court of competent jurisdiction, such finding shall not affect the remaining provisions hereof which shall remain in full force and effect.

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All Ordinances inconsistent with the provisions of this Ordinance are repealed to the extent of such inconsistency.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 shall be published as required by law.

ADOPTED ON FIRST READING:
DATED: June 16, 2004

Jimmie L. Cook Jr.
COUNCIL PRESIDENT

O-060411

ADOPTED ON SECOND READING:
DATED: July 7, 2004

Rosemarie Dutka
CITY CLERK Deputy

Jim L Cook Jr.
COUNCIL PRESIDENT

APPROVAL OF THE MAYOR ON THIS 12th DAY OF July, 2004.

Jim M. Cahill
JAMES M. CAHILL, Mayor

APPROVALS:

Thomas A Loughlin 3rd
CITY ADMINISTRATOR

William J. Hamilton Jr.
CITY ATTORNEY

DIRECTOR OF DPCED

WJH/tm

BE IT RESOLVED, that Certified Copies of this Ordinance be forwarded by the City Clerk to the following:

- New Brunswick - Jersey Urban Renewal, L.L.C.
- Thomas F. Kelso, Esq.
- Chief Financial Officer
- Director of DPCED

I, Daniel A. Torrisi, City Clerk of the City of New Brunswick, N.J., do hereby certify that this is a true and correct copy of an ordinance adopted on second and final reading at a regular meeting of the New Brunswick City Council on July 7 2004

Rosemarie Dutka Deputy
Daniel A. Torrisi, City Clerk

Councilmember	Y	N	NV	AB	Councilmember	Y	N	NV	AB
Egan				X	Valenti S	X			
Garlatti	X				COOK	X			
Recine M	X								

First Reading Vote on June 16, 2004 M= Moved S= Second

Councilmember	Y	N	NV	AB	Councilmember	Y	N	NV	AB
[illegible]	X				Valenti M	X			
Garlatti S	X				COOK	X			
Recine	X								

NV= No Vote AB= Absent Second & Final Reading Vote

FINANCIAL AGREEMENT

BETWEEN THE CITY OF NEW BRUNSWICK

And

NEW BRUNSWICK-JERSEY URBAN RENEWAL, L.L.C.

Dated: ____3/4________, 2005

Long Term Tax Exemption
N.J.S.A. 40A:20-1 et seq.

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THIS FINANCIAL AGREEMENT, hereinafter "Agreement" made as of this ____ day of ____________, 2005, by and between **NEW BRUNSWICK-JERSEY URBAN RENEWAL, LLC.,** a New Jersey limited liability company (hereinafter "**New Brunswick-Jersey, LLC**" or the "**Entity**"), 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.) and having its principal office at 1260 Stelton Road, Piscataway, New Jersey 08854, 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**").

W I T N E S S E T H:

WHEREAS, the Entity applied to have a Long Term Tax Exemption granted for an urban renewal project generally located at Handy Street, Jersey Avenue, Comstock Street and Delavan Street, further known as Block 185, Lots 11-38; Block 202, Lots 17 – 33.01, Block 205, Lots 11-33 and Block 594, Lots 1.03, 1.04 and 1.05 (collectively to be known as new Block 185.01, Lot 11.01)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 tax exemption for the Project, 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 Net Profit** – The amount arrived at by applying the allowable profit rate to each total project cost pursuant to the provisions of N.J.S.A. 40A:20-3 (c).

ii. **Allowable Profit Rate** – The percentage per annum arrived at by adding 1 ¼% 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 arrived at by adding 1 ¼% per annum to the interest rate per annum which the municipality determines to be the prevailing rate on mortgage financing on comparable improvements in the county.

iii. **Annual Service Charge** – The amount the Entity has agreed to pay the City in lieu of full taxation on the improvements, as outlined in the Tentative Financial Plan and as more fully defined in Section 4.1 hereof.

iv. **Auditor's Report** – A complete financial statement outlining the financial status of the project for a period of 30 years 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.

v. **Certificate of Occupancy** – Document issued by the City authorizing occupancy of a building.

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

vii. **Redeveloper** – The parties agree that the Redeveloper of the Project shall be **NEW BRUNSWICK-JERSEY URBAN RENEWAL, L.L.C.,** 1260 Stelton Road, Piscataway, New Jersey 08854.

viii. **Default** – Shall be the failure of the Entity to perform any obligation imposed upon the Entity by the terms of the herein Financial Agreement.

ix. **Entity** – The parties agree that reference to the term Entity within this Financial Agreement shall be defined as **NEW BRUNSWICK-JERSEY URBAN RENEWAL, LLC** and all purchasers of any subsequent purchasers or successors in interest of **NEW BRUNSWICK-JERSEY URBAN RENEWAL, LLC.**

x. **Gross Revenue** – The annual gross revenue and other income of the Entity as defined in N.J.S.A. 40A:20-3(a), as set forth in the tentative Financial Plan submitted by the Entity in its application attached hereto.

xi. **Improvements** – Any building, structure or fixture permanently affixed to the land.

xii. **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.

xiii. **Land Taxes** – The amount of taxes assessed on the value of land which the project is located.

xiv. **Land Tax Payments** – Payments made on the quarterly due dates for land taxes on the real property, if any, as determined by the Tax Assessor and the Tax Collector.

xv. **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.

xvi. **Minimum Annual Service Charge** –See further provisions of Section 4.1(a) herein.

xvii. **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).

xviii. **Project** – The Project consists of two (2) phases. Phase I consists of all the land located in the Project site together with the construction of an approximately 31,790 square foot, four (4) building retail shopping center, together with a parking lot consisting of approximately 203 parking spaces. The improvements for the development contemplated for Phase II of the redevelopment site have not yet been determined, but shall be in accordance with the Redeveloper Designation approved by the New Brunswick Housing Authority. The final definition of the Project shall be as is finally approved by the Planning Board of the City of New Brunswick and the Redevelopment Authority of the City of New Brunswick.

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

xx. **Property** – The Project land and the improvements thereof as disclosed in the application.

xxi. **Statutes** – The term statute 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.

xxii. **Substantial Completion** – Shall be as defined in Section 6.2 of this Agreement.

xxiii. **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.

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 on the premises described in the Application commonly known as Block 185, Lots 11-38; Block 202, Lots 17 – 33.01, Block 205, Lots 11-33 and Block 594, Lots 1.03, 1.04 and 1.05, (collectively to be known as new Block 185.01, Lot 11.01) on the Official Tax Maps of the City of New Brunswick, New Jersey. The entire redevelopment Project being constructed by Redeveloper consists of the following:

1. The Project consists of two (2) phases. Phase I consists of all the land located in the Project site together with the construction of an approximately 31,790 square foot, four (4) building retail shopping center, together with a parking lot consisting of approximately 203 parking spaces, as more fully described on the site plan for the Project prepared by Menlo Engineering dated March 14, 2002 and revised through May 17, 2002, labeled S-1, which then was approved by the City of New Brunswick Planning Board on May 29, 2002 and which depicts the Phase I improvements of the redevelopment site for which the Entity has been designated as the Redeveloper. The improvements for the development contemplated for Phase II of the Project are not yet subject to the tax exemption hereby granted by the City of New Brunswick since there is currently no Phase II development plan approved by the City Planning Board or Redevelopment Authority. The Entity does acknowledge and agree that in order to receive the grant of a tax exemption for the Phase II improvements of theProject, the Entity shall be required to receive all approvals from the City Planning

Board and the City Redevelopment Authority in accordance with the provisions of the Redevelopment Agreement controlling the Project. Such approved Phase II plan shall thereafter constitute the Phase II improvements, and the costs thereof shall be additional project costs requiring additional in lieu tax payments, that shall be entitled to the tax exemption granted by this Financial Agreement and shall thereafter be subject to the terms and conditions hereof.

Section 2.2 Approval of Entity

Approval hereunder is granted to the Entity for the contemplated Project on the lands 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 the 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 the Project site 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 longer than 35 years from the date of execution of this Agreement 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

a) In consideration of the aforesaid exemption from taxation on the Project, the entity shall make payments in lieu of taxes to the City in a sum equal to two (2) % of the total Project cost, as defined in N.J.S.A. 40A:20-12 The duration of the tax exemption shall be thirty (30) years following Substantial Completion of the entire Project.. 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 terms contained in this Agreement. 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 each separate retail building of the Project, and shall be determined pro-rata based upon the square footage of the Project portion achieving Substantial Completion and the corresponding portion of the Project Cost. However, it is nevertheless provided that in no event shall such payment, be less than the total taxes levied against all real property in the Project, in the last full year in which such area was subject to taxation. Such payment shall hereinafter be referred to as the Minimum Annual Service Charge. The agreed Minimum Annual Service Charge of $70,000.00 shall not be reduced through any tax appeal on land and/or improvements during the period that this agreement shall be in force.

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

(i) For the first stage of the exemption period, commencing with the first (1^{st}) day of the month immediately following Substantial Completion of any portion of the Project or five (5) years following full execution of the Agreement, whichever shall first occur and continuing for a period of 15 years, the Annual Service Charge shall be as calculated in accordance with section 4.1(a) but, in any case no less than the Minimum Annual Service Charge.

(ii) For the second stage of the exemption period, commencing on the fifteenth (15^{th}) anniversary of the commencement of the Annual Service Charge pursuant to item b) (i) above and continuing for a period of five (5) years, the Annual Service Charge shall be the greater of: (1) the Annual Service Charge set forth in Section 4.1(b)(i) of this Agreement, plus five percent (5%) or (2) twenty percent (20%) of the amount of the taxes otherwise due on the value of the land and improvements for the Project.

(iii) For the third stage of the exemption period, commencing on the twentieth (20^{th}) anniversary of the date of the commencement of the Annual Service Charge pursuant to item b) (i) above and continuing for a period of five (5) years, the Annual Service Charge shall be the greater of: (1) the Annual Service Charge set forth in Section 4.1(b)(ii) of this Agreement, plus five percent (5%); or (2) forty percent (40%) of the amount of taxes otherwise due on the value of the land and improvements for the Project.

(iv) For the fourth stage of the exemption period, commencing on the twenty-fifth (25^{th}) anniversary of the date of commencement of the Annual Service Charge pursuant to item b) (i) above and continuing for a period of four (4) years, the Annual Service Charge shall be the greater of: (1) the Annual Service Charge set forth in Section 4.1 (b)(iii) of this Agreement, plus five percent (5%); or (2) sixty percent (60%) of the amount of taxes otherwise due on the value of the land and improvements for the Project; and

(v) For the final stage of the exemption period, commencing on the twenty-ninth (29^{th}) anniversary of the date of commencement of the Annual Service Charge pursuant to item b) (i) above and continuing for a period of one (1) year, the Annual Service Charge shall be the greater of: (1) the Annual Service Charge set forth in Section 4.1(b)(iv) of this Agreement, plus five percent (5%); or (2) eighty percent (80%) of the amount of taxes otherwise due on the value of the land and improvements for the Project.

Section 4.2 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 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 4.3 Land Tax Credit

The Entity shall be obligated to make land tax payments for any real property that is part of the Project. The Entity shall be entitled to a credit against the Annual Service Charge for the amount, without interest, of the real estate taxes on land, if any, paid by the Entity in the last four preceding quarterly installments. The Entity's failure to make the requisite Annual Service Charge payment and/or sewer and water charge payments in a timely manner shall constitute a violation and breach of this 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 this 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, provided that any default arising out of the Entity's failure to pay land taxes, Annual Service Charges, and/or water and sewer charges, shall not be subject to the default procedural remedies as provided in Section 5.1 of this Agreement.

Section 4.4 Material Conditions

It is expressly agreed and understood that all payment of land taxes, Annual Service Charges, including the methodology of computation, water and sewer charges, and any interest payments due, are material conditions of this Agreement. If any other terms, covenant or condition of this Financial Agreement or the Application shall be held 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 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 designated as material conditions herein, 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, 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 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 land and premises, 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 otherwise may have in any such action brought by the City.

Article VI- Substantial Completion.

Section 6.1 Substantial Completion

The Annual Service Charge shall be adjusted commencing on the first day of the month following the Substantial Completion of each building of the Project. The phrase Substantial

Completion denotes the issuance, by the City's Construction Official, of a valid Certificate of Occupancy for each separate retail building of the Project.

Section 6.2 Certificate of Occupancy

It is understood and agreed that it shall be the obligation of the Redeveloper to make application for and make all reasonable efforts to obtain all Certificates of Occupancy in a timely manner as identified in the accompanying Application. The failure to use reasonable efforts to secure and submit said Certificate of Occupancy shall subject the Property to full taxation provided that (1) the City has served the appropriate Notice of Termination pursuant to 4.3 hereof, providing the appropriate cure period and, further, that (2) the City has reasonably cooperated in processing the Redeveloper'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 Redeveloper 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 the Redeveloper to file such issued Certificate of Occupancy as required by the preceding paragraph shall not mitigate against any action or non-action taken by the City'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 accounting 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 Economic Development, the Chief Financial Officer, and the City Clerk of said City, who shall advise 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: rental schedule of the Project and the terms and interest rate on any Redeveloper 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, and this Agreement.

Section 7.3 Inspection

The Entity shall cause Redeveloper to 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 Entity shall have the right to establish a reserve against unpaid rentals, reasonable contingencies and/or vacancies in an amount not exceeding ten (10%) of the Gross Revenues 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 (10%) of the preceding year's Gross Revenues 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 Section 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 the Project site and the transfer of this Agreement to an Entity eligible to operate under the Law, provided that (i) the Entity is not in default regarding any performance required of it hereunder, (ii) full compliance with N.J.S.A. 40A:20-1, et seq. has occurred, and (iii) the Entity's obligations 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 Law, as currently amended and/or 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 the Law, as currently amended and/or supplemented. It is an express condition of the granting of this tax exemption that during its duration, the Entity shall not, without the prior consent of the Municipal Council, convey or transfer all or part of the Project site so as to sever, disconnect, or divide the fee ownership of the Property other than leases and ground leases in the ordinary course of business.

Article IX Waiver.

Section 9.1 Waiver

Nothing contained in this 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 this 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 under law, in equity, or under any provisions of this Agreement.

Article 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:

(a) When sent by the city the Entity it shall be addressed as follows:

NEW BRUNSWICK-JERSEY URBAN RENEWAL, L.L.C.
1260 Stelton Road
Piscataway, New Jersey 08854

(b) 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 as Block 185, Lots 11-38; Block 202, Lots 17 – 33.01, Block 205, Lots 11-33 and Block 594, Lots 1.03, 1.04 and 1.05, (collectively to be known as new Block 185.01, Lot 11.01) on the Official Tax Maps of the City of New Brunswick, New Jersey.

Article XI – Compliance.

Section 11.1 Statutes and Ordinances

The Entity hereby agrees at all times prior to the expiration or termination of this Agreement to remain bound by the provisions of 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 this Agreement.

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 a party defendant in any action brought against the Entity by reason of any breach, default or a violation of 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 said action 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.

Article XIV – Default

Section 14.1 Default

Default shall be defined as the failure of the Entity to conform with the terms of this Agreement and, further, by the 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 set forth with particularly the basis of said default. The Entity 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 against the Entity because of its failure to pay land taxes, the Annual Service Charge, and/or the water and sewer charges with interest payments. This right shall apply to arrearages that are due and owing at the time or which, under the terms hereof, would in the future become due 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 to any other remedy herein provided for the recovery of land taxes, Annual Service Charges, and water and sewer charges, or other charges be construed as a waiver of the right to terminate said tax exemption or to proceed with an 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 14.2, the City may cancel this Agreement upon sixty (60) days written 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, all affected parcels and all improvements made thereto shall be assessed and subject to taxation in the same manner 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 Substantial Completion of the Project, notify the Municipal Council of the City that, as of a certain date designated in the notice, the entity relinquishes the Project's 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 the 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 property of the Entity, as well as the land, shall be assessed and taxed according to general law like other property in the City. At the same date, all restrictions and limitations upon the Entity, shall terminate upon the Entity rendering its final accounting with the City, 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 this Agreement, the language in this Agreement shall govern and prevail.

Section 16.2 Oral Representations

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

Section 16.3 Entire Document

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

Section 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 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.

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

WITNESS:

NEW BRUNSWICK-JERSEY URBAN RENEWAL, L.L.C.,
a New Jersey limited liability company

BY: JSM At Handy, LLC
a New Jersey limited liability company
Managing Member

By: ______________________
Sheryl A. Weingarten
Managing Member

ATTEST:

____
DANIEL TORRISI, City Clerk

THE CITY OF NEW BRUNSWICK

BY: ______________________
JAMES M. CAHILL, Mayor

APPROVED AS TO FORM AND ENACTMENT

____
WILLIAM J. HAMILTON
City Attorney