ORDINANCE 2017-09

ORDINANCE OF THE BOROUGH OF BELMAR, COUNTY OF MONMOUTH, NEW JERSEY APPROVING THE APPLICATION FOR A LONG TERM TAX EXEMPTION AND AUTHORIZING THE EXECUTION OF A FINANCIAL AGREEMENT WITH TENTH AVENUE ASSOCIATES URBAN RENEWAL, LLC

WHEREAS, the Local Redevelopment and Housing Law, *N.J.S.A.* 40A:12A-1 *et seq.*, as amended from time to time (the "**Redevelopment Law**"), provides a process for municipalities, such as the Borough of Belmar ("**Borough**"), to participate in the redevelopment and improvement of areas in need of redevelopment; and

WHEREAS, the Borough Council of the Borough (the "**Borough Council**"), pursuant to *N.J.S.A.* 40A:12A-6(a), authorized the Planning Board of the Township (the "**Planning Board**") to determine if certain property, commonly known as Block 106, Lots 5 and 6 on the tax maps of the Township (the "**Study Area**") met the statutory criteria for designation as an "area in need of redevelopment" pursuant to the provisions of the Redevelopment Law; and

WHEREAS, on July 20, 2016, the Borough Council adopted a resolution designating the property commonly known as Block 106, Lots 5 and 6 (the "**Property**"), amongst other parcels, on the tax map of the Borough as an area in need of redevelopment without the power of condemnation, to be included with the Seaport Redevelopment Area (the "**Expanded Seaport Redevelopment Area**"); and

WHEREAS, on October 4, 2016, the Borough Council adopted Ordinance No. 2016-10, which amended the Seaport Redevelopment Plan to include the Expanded Seaport Redevelopment Area (the "**Amended and Restated Redevelopment Plan**"); and

WHEREAS, pursuant to the Redevelopment Law, specifically *N.J.S.A.* 40A:12A-4, the Borough designated the Borough Council as the **"Redevelopment Entity"**, as such term is defined at *N.J.S.A.* 40A:12A-3, for the Redevelopment Area, with full authority to exercise the powers contained in the Redevelopment Law to facilitate and implement the development of the Redevelopment Area; and

WHEREAS, TENTH AVENUE ASSOCIATES URBAN RENEWAL, LLC (the "**Entity**") is the owner and/or contract purchaser of the property comprising the Redevelopment Area commonly known as Block 106, Lots 5 and 6 on the tax map of the Borough (the "**Project Site**") and will redevelop on the Property a four (4) story residential development to include fifty four (54) market rate units with a distribution of twelve (12), two (2) bedrooms/two (2) bathroom units; thirty six (36), two (2) bedrooms/one (1) bathroom units; and six (6), one (1) bedroom/one (1) bathroom units; the remaining six (6) units will be one (1) bedroom, one (1) bathroom affordable units (medium income); (ii) eighty seven (87) onsite parking spaces; (iii) entry lobby with elevator(s) and 2 staircases; first floor parking lot will have three (3) points of ingress/egress; two (2) with access from Railroad Avenue and one (1) location with access from 10th Avenue. Twenty seven (27) parking spaces will be "shared" parking for downtown retailers, guest parking for the residents, and other, three (3) hour time restricted parking, with parking permits for the residents. Redeveloper will demolish an existing building located on the Borough's Public Works site at 13th Avenue and Railroad Avenue, more commonly known on the Township tax maps as Block 127.01, Lot 6 and construct a surface parking lot, creating forty seven (47) parking spaces); thirty six (36) on-site spaces and eleven (11) diagonal spaces along West Railroad (the "**Project**"); and

WHEREAS, the Project will conform to all applicable municipal zoning ordinances as amended by the Redevelopment Plan and will be in conformance with the master plan of the Township; and

WHEREAS, the Entity filed (1) the application attached hereto as Exhibit A (the "**Application**") seeking a tax exemption and approval of an urban renewal project and (2) a form

of Financial Agreement (the "**Financial Agreement**"), pursuant to the Long Term Tax Exemption Law, *N.J.S.A.* 40A:20-1 *et seq*. (the "**LTTE Law**"); and

WHEREAS, the Township has made the following findings:

1. The Project Site is currently not developed to its maximum potential. In enabling development of the Project and influencing the locational decisions of the probable occupants of the Project: The tax exemption permits the development of the Project in an area that cannot otherwise be developed by reducing the expenses associated with the operation of the Project. Reduced expenses allows for more competitive rents. As a result, the locational decisions of the probable tenants (residential) will be influenced positively by the tax exemption. Upon expiration of the exemption, the Project will be fully assessed and conventionally taxed;

2. In light of market conditions and other factors currently impacting investment risk, it is not financially feasible to undertake the development of the Project in the absence of the tax exemption provided by this Agreement;

3. The Project will result in the creation of 150 construction jobs and 15 permanent jobs, increased tax ratables and provide public improvements; and

4. The Project will revitalize the Redevelopment Area as the Project Site has been vacant and dormant for several years; and

4. Given the scale of the Project and the risks associated with new construction development, without the exemption, the Entity would likely not have developed the Project in New Jersey; and

5. The Project is consistent with the Redevelopment Plan, will further its objectives, and will contribute to the economic growth of the Borough.

WHEREAS, pursuant to authorization provided by a Borough resolution, the Borough and the Entity entered into a redevelopment agreement for the development of the Project (the "**Redevelopment Agreement**"); and

WHEREAS, in order to enhance the economic viability of and opportunity for a successful project, the Borough seeks to enter into the Financial Agreement in the form attached hereto as Exhibit B which shall govern the terms of the tax exemption for the Project and the Annual Service Charge to be paid to the Township in lieu of conventional taxation; and

WHEREAS, the Borough Council has determined that the Project represents an undertaking permitted by the LTTE Law, and has further determined that the Project is an improvement made for the purposes of clearance, replanning, development or redevelopment of an area in need of redevelopment within the Township, as authorized by the LTTE Law; and

WHEREAS, the Business Administrator has submitted the Application and Financial Agreement to the Municipal Council with her recommendation for approval (the "**Business Administrator's Recommendation**"), a copy of which recommendation is on file with the Borough Clerk.

NOW, THEREFORE, BE IT ORDAINED BY THE BOROUGH COUNCIL OF THE BOROUGH OF BELMAR, NEW JERSEY AS FOLLOWS:

1. An exemption from taxation as set forth in the Application is hereby granted to the Entity, with respect to the Project on the Project Site for the term set forth in the Financial Agreement; provided that in no event shall the tax exemption exceed the earlier of (i) thirty-five (35) years from the date of execution of the Financial Agreement or (ii) to the extent permitted by *N.J.S.A.* 40A:20-12, thirty (30) years from the Entity's receipt of a Certificate of Occupancy for the Project or phase thereof and only so long as the Entity remains subject to and complies with the Financial Agreement and the LTTE Law and any other agreement related to the Project or the Project Site; and provided further, that in no event shall the Annual Service Charge, for every year the property tax exemption is in effect, be less than the total taxes levied against the Project Site in the last full tax year it was subject to taxation.

2. The Business Administrator, in consultation with counsel to the Borough, are hereby authorized to execute and/or amend, modify or make such necessary changes to the Application, the Business Administrator's Recommendation, the Financial Agreement and any other agreements or documents necessary to effectuate this ordinance and the Financial Agreement.

3. The executed copy of the Financial Agreement and this ordinance shall be certified by the Borough Clerk and filed with the Tax Assessor for the Borough and the Director of the Division of Local Government Services.

4. The Project shall conform to all federal and state law and ordinances and regulations of the Township relating to its construction and use, including the Redevelopment Plan.

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

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

7. The following occurrences are express conditions to the grant of this tax exemption, to be performed by the Entity:

(a) The Entity shall not, without prior consent of the Borough as set forth in the Financial Agreement, convey, mortgage or transfer all or any part of the Project which would sever, disconnect or divide the improvements being tax exempted under the Financial Agreement from the land underlying the exempted improvements.

(b) The Entity shall complete the Project within the timeframes set forth in the Redevelopment Agreement.

8. This ordinance shall take effect in accordance with all applicable laws.

COUNCIL	YES	NO	ABS	N.V.	AB	COUNCIL	YES	NO	ABS	N.V.	AB

X – Indicate Vote ABS – Abstain N.V. – Not Voting AB - Absent

I HEREBY CERTIFY the foregoing to be a true copy of an Ordinance introduced on _____, 2017 and finally adopted on _____, 2017 by the Borough Council of the Borough of Belmar, in the County of Monmouth.

_____

Municipal Clerk
Borough of Belmar

EXHIBIT A

Application for Long Term Tax Exemption

EXHIBIT B

Financial Agreement

MS&B Comments 03/03/17

FINANCIAL AGREEMENT

BETWEEN

TENTH AVENUE ASSOCIATES URBAN RENEWAL, LLC

AND

THE BOROUGH OF BELMAR

THIS FINANCIAL AGREEMENT ("Agreement") made effective this __ day of ___ , 2017, by and between **TENTH AVENUE ASSOCIATES URBAN RENEWAL, 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. (the "**LTTE Law**"), having its principal offices at 800 Main Street, Suite #103, Belmar, New Jersey 07719 (as further defined in Section 1.2 herein, the "Entity"), and the **BOROUGH OF BELMAR**, a municipal corporation in the County of Monmouth and the State of New Jersey, having its principal office at the Municipal Building, 601 Main Street, Belmar, New Jersey 07719 (the "**Borough**" and, as with the Entity, a "**Party**").

W I T N E S S E T H:

WHEREAS, pursuant to the Local Redevelopment and Housing Law, *N.J.S.A.* 40A:12A-1 *et seq.*, Block 106, Lots 5 and 6, as identified on the tax maps of the Borough (as further defined in Section 1.2 herein, the "**Project Site**") had been designated by the Borough as an "area in need of redevelopment"; and

WHEREAS, the Borough adopted a redevelopment plan for the revitalization and redevelopment of the Project Site, a copy of which redevelopment plan is attached to the original Agreement as Exhibit 1 (the "**Redevelopment Plan**"); and

WHEREAS, the Entity owns and/or is contract purchaser for portions of the Project Site and will construct, or cause to be constructed thereon, the Project Improvements (as defined in Section 1.2 of this Agreement) (the construction and maintenance of the Project Improvements are defined herein as the "**Project**"); and

WHEREAS, the Entity filed an application (the "**Application**") seeking approval of a redevelopment project and this Agreement; and

WHEREAS, the Borough made the following findings in accordance with Section 10 of the LTTE Law with respect to the Project (as hereinafter defined):

1. Relative Benefits of the Project: The Project will accelerate the redevelopment of the Project Site by providing new residential housing units and public parking. Further, the Project will generate jobs, increase tax ratables and provide public improvements.

2. Assessment of the Importance of the Tax Exemption in enabling development of the Project and influencing the locational decisions of the probable occupants of the Project: The tax exemption permits the development of the Project in an area that cannot otherwise be developed by reducing the expenses associated with the operation of the Project. Reduced expenses allows for more competitive rents. As a result, the locational decisions of the probable tenants (residential) will be influenced positively by the tax exemption.

WHEREAS, by Ordinance #_____, adopted on _____, (the "Ordinance") the Borough Council approved the Application and authorized the execution of a financial agreement substantially as set forth in the Application (the "Agreement") which was subsequently executed by the Parties; and

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

ARTICLE I
GENERAL PROVISIONS

Section 1.1 Governing Law

This Agreement shall be governed by the laws of the State of New Jersey, including but not limited to the provisions of the LTTE Law and the Ordinance. It is expressly understood and agreed that in granting this tax exemption, the Borough has relied upon the facts, data, and presentations contained in the Application.

Section 1.2 General Definitions

Unless specifically provided otherwise or the context otherwise requires, when used in this Agreement defined terms shall have the meaning set forth in the preambles hereto and the following terms shall have the meanings set forth below:

i. **Administrative Fee** - An annual fee that is equal to two percent (2%) of the Annual Service Charge for the applicable year as set forth in Section 4.5, which shall include and reflect any annual increment or adjustment of the Annual Service Charge authorized herein.

ii. **Allowable Net Profit** - The amount arrived at by applying the Allowable Profit Rate to the Total Project Cost (as such terms are defined in this Section 1.2).

iii. **Allowable Profit Rate** - The greater of 12% or the percentage per annum arrived at by adding 1.25% to the annual interest percentage rate payable on the Entity's initial permanent mortgage financing. If there is no permanent mortgage financing, or if the Project is internally financed by the Entity or by another entity related to the Entity, the allowable profit rate shall be the greater of 12% or the percentage per annum arrived at by adding 1.25% per annum to the interest rate per annum which the Borough determines to be the prevailing rate on mortgage financing on comparable improvements in Monmouth County. For purposes of this Agreement, the Allowable Profit Rate shall not be less than 12%, all in accordance with N.J.S.A. 40A:20-3(b).

iv. **Annual Gross Revenue** – As to the Entity as defined in the LTTE Law; as to the purchaser of a Unit - the annual gross revenue means the amount equal to the annual aggregate constant payments to principal and interest, assuming a purchase money mortgage encumbering the condominium unit to have been in an original amount equal to the initial value of the unit with its appurtenant interest in the common elements as stated in the master deed, if unsold by the urban renewal entity, or, if the unit is held by a Unit purchaser, from time to time, the most recent true consideration paid for a deed to the condominium unit in a bona fide arm's length sale transaction, but not less than the initial assessed valuation of the condominium unit assessed at 100% of true value, plus the total amount of common expenses charged to the unit pursuant to the bylaws of the condominium association. The constant payments to principal and interest shall be calculated by assuming a loan amount as stated above at the prevailing lawful interest rate for mortgage financing or comparable properties within the municipality as of the date of the recording of the unit deed, for a term equal to the full term of the exemption from taxation stipulated in the financial agreement as defined by *N.J.S.A.* 40A:20-14(a).

v. **Annual Service Charge**: The amount the Entity has agreed to pay the Township pursuant to Article IV herein with respect to the Improvements (but not the Land upon which the Improvements are located), which: (a) Entity has agreed to pay in part for municipal services supplied to the Project, (b) is in lieu of any taxes on the Improvements pursuant to *N.J.S.A.* 40A:20-12, (c) shall be paid on the Annual Service Charge Payment Dates, and (d) shall be prorated in the year in which this Agreement begins and the year in which this Agreement terminates.

vi. **Annual Service Charge Payment Dates**: February 1, May 1, August 1 and November 1 of each year commencing after the date that a Certificate of Occupancy is issued for the Project and ending on the Termination Date.

vii. **Annual Service Charge Start Date**: shall mean, with respect to the Project or any portion thereof, including any Phase, the earlier of Substantial Completion or the date that the Project or any portion thereof, as applicable, including any Phase, receives a Certificate of Occupancy, and shall be the date upon which the Annual Service Charge begins to accrue.

viii. **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 Revenues, Net Profit and Total Project Cost (as such terms are defined in this Section 1.2) and fully detailing all items required under the LTTE Law, the contents of which have been prepared in a manner consistent with the current standards of the Financial Accounting Standards Board and which has been certified as to its conformance with such standards by a certified public accountant who is licensed to practice that profession in the State of New Jersey.

ix. **Certificate of Occupancy** - The document, whether temporary or permanent, issued by the Borough pursuant to *N.J.S.A.* 52:27D-133.

x. **Commencement Date** - The effective date of the tax exemption granted pursuant to this Agreement, which shall be the first day of the month following the Date of Completion (as such term is defined in this Section 1.2).

xi. **Cure Period** - As defined in Section 10.2(i) of this Agreement.

xii. **Date of Completion** - The date of the issuance of a Certificate of Occupancy for the Project Improvements.

xiii. **Default** - As defined in Section 10.1 of this Agreement.

xiv. **Default Notice** - As defined in Section 10.2(i) of this Agreement.

xv. **Entity** – means TENTH AVENUE ASSOCIATES URBAN RENEWAL, LLC, which is the owner of the Project Site and the owner and developer of the Project Improvements, and all subsequent purchasers of, or successors in interest in, the Project Improvements, provided they are organized pursuant to the LTTE Law and the transfer of the Project Improvements to said subsequent purchasers or successors has been approved by the Borough in accordance with the terms of this Agreement.

xvi. **In Rem Tax Foreclosure** - A summary proceeding by which the Borough acts to enforce the lien for taxes due and owing by a tax sale, pursuant to *N.J.SA.* 54:5-1 et seq.

xvii. **Land Taxes** - The amount of conventional real estate taxes assessed on land constituting the Project Site during the term of this Agreement.

xviii. **Land Tax Payments** - Payments made on the quarterly due dates for Land Taxes on the Project Site as determined by the Tax Assessor and the Tax Collector.

xix. **Material Conditions** - As defined in Section 4.7 of this Agreement.

xx. **Minimum Annual Service Charge** - The total taxes levied against all real property constituting the Project Site in the last full tax year in which the Project Site 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 in 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.

xxi. **Net Profit** - The Gross Revenues 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 improvements, which period the Parties agree is thirty (30) years.

xxii. **Project** - The Project Site and the Project Improvements situated thereon, as described in the Application and approved by the Planning Board of the Borough.

xxiii. **Project Improvements** - The structures and infrastructure improvements described in Exhibit 3 attached to the original Agreement, including the Units.

xxiv. **Project Site** - The land on which the Project is to be developed, described as Block 106, Lots 5 and 6 on the Tax Map of the Borough, consisting of approximately 35,863 square feet, as depicted on the concept plan attached to the original Agreement as Exhibit 4 and as described by metes and bounds in the Application.

xxv. **Secured Party** - As defined in Section 8.2 of this Agreement.

xxvi. **Security Agreement** - As defined in Section 8.2 of this Agreement.

xxvii. **Tax Assessor** - The tax assessor of the Borough of Belmar.

xxviii. **Tax Collector** - The tax collector of the Borough of Belmar.

xxix. **Total Project Cost** - The aggregate of the items set forth in Exhibit 5 to this Agreement, as more specifically defined in N.J.S.A. 40A:20-3h.

xxx. **Total Tax Levy** - The total amount of property tax levied for municipal, school and county purposes, as shown in the Table of Aggregates prepared pursuant to N.J.S.A. 54:4-52.

xxxi. **Transfer Fee** - As defined in Section 8.1(ii) of this Agreement.

xxxii. **Unit**- One of fifty four (54) market rate residential rental units and six (6) affordable housing rental units created in the Project.

ARTICLE II
APPROVAL

Section 2.1 Approval of Financial Agreement.

The Borough hereby grants approval of a tax exemption for the Project to be developed and maintained by the Entity in accordance with the provisions of the LTTE Law and the terms and conditions set forth in this Agreement.

Section 2.2 Approval of Entity

Approval is granted to the Entity whose certificate of formation is attached to the original Agreement as Exhibit 7. The Entity represents that its certificate of formation contains all the provisions required by the LTTE Law, has been reviewed and approved by the Commissioner of the Department of Community Affairs and has been filed in accordance with *N.J.SA.* 40A:20-5.

Section 2.3 Project Improvements to be Developed

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

Section 2.4 Construction Schedule and Force Majeure

i. The Entity agrees to diligently undertake to commence and complete redevelopment of the Project Site in accordance with the estimated Construction Schedule set forth in the Application and the Redevelopment Agreement.

ii. For the purposes of any of the provisions of this Agreement, neither the Borough nor the Entity shall be considered in breach of, or in default with respect to its obligations hereunder (other than with respect to the Entity's obligation to pay Land Taxes, the Administrative Fee and the Minimum Annual Service Charge or Annual Service Charge, as applicable, which obligation shall be paid as and when due without regard to this Section 2.4) because of any enforced delay in the performance of such obligations arising from causes beyond its reasonable control and without its fault or negligence, including, but not restricted to, those events set forth in the Redevelopment Agreement, litigation or other dispute resolution proceedings with respect to the Project or this Agreement, and actions or inactions by any federal, state or local governmental or quasi-governmental authority with respect to the governmental approvals or the development of the Project, if such actions or inactions are not caused by the Entity. It is the purpose and intent of this provision that in the event of the occurrence of any such enforced delay, the time or times for performance of the obligations of the Borough or the Entity shall be extended for the period of the enforced delay.

Section 2.5 Ownership, Management and Control

The Entity represents that (a) it is the owner/contract purchaser of the Project Site; (b) it will construct the Project Improvements or cause them to be constructed; and (c) on and after the Commencement Date, the Entity and its affiliates will operate the Project Improvements. The

Entity expressly covenants, warrants and represents that upon completion, the Project, including all land and improvements, shall be used, managed and operated for the purposes set forth in the Application, in accordance with the Redevelopment Plan and all applicable laws.

Section 2.6 Financial Plan

The preliminary Project pro forma is attached to the original Agreement as Exhibit 6. The Entity represents that the construction of the Project Improvements will be funded through internal sources and external financing in the principal amount of approximately $10,400,000.

Section 2.7 Projected Revenues, Lease Terms, and Other Representations and Covenants Regarding Use, Management, and Operation of the Project by the Entity

The Entity represents that its good faith projections of its revenues, the anticipated terms of its leases, and other representations and covenants required under *N.J.S.A.* 40A:20-9 are set forth in the Application and Exhibit 6 attached to the original Agreement. The Entity further represents that it is an urban renewal entity created and certified in accordance with the LTTE Law and that documentation evidencing its formation is attached to the original Agreement as Exhibit 7.

ARTICLE III
DURATION OF AGREEMENT

Section 3.1 Term

This Agreement shall become effective upon its execution and delivery by the Parties. So long as there is compliance with governing law and this Agreement, this Agreement shall remain in effect until the expiration of the tax exemption granted and referred to in Section 2.1 of this Agreement. The tax exemption shall remain in effect from the Commencement Date until the earlier of (i) the expiration of thirty-five (35) years from the execution of this Agreement or (ii) thirty (30) years from the Commencement Date, unless it is sooner terminated pursuant to Article 11 of this Agreement. This Agreement shall continue in force only while the Project is owned or leased, for a minimum period equal to the unexpired term of this Agreement, by an urban renewal entity formed and operating under the LTTE Law, except as otherwise allowed under the LTTE Law. A voluntary transfer of the Project by the Entity shall be subject to the provisions of Article 8 of this Agreement. Upon the termination or expiration of the term of this Agreement, the tax exemption on the Project Improvements shall terminate and the Project Site and the Project Improvements shall thereafter be assessed and taxed according to general law applicable to other non-exempt property.

ARTICLE IV
ANNUAL SERVICE CHARGE

Section 4.1 Annual Service Charge

Pursuant to *N.J.S.A.* 40A:20-12, the Annual Service Charge shall be the greater of: (a) the Minimum Annual Service Charge as defined herein; or (b) 11% of Annual Gross Revenue for the first 10 (ten) years after the Annual Service Charge Start Date, 13% for the next five (5) years and 15% for the balance of the term of this Agreement. The first year of the Annual Service Charge shall be billed based on the Entity's estimated Annual Gross Revenue for the first full year of operation producing an Annual Service Charge of $91,820.04, which amount shall be adjusted as appropriate when the Auditor's Report is completed

Notwithstanding the provisions of the Long Term Tax Exemption Law or any provision of the Agreement to the contrary, the Annual Service Charge shall never be reduced below the Minimum Annual Service Charge through any tax appeal on the Land and/or Improvements or any other legal proceeding regarding the Project during the period that this Agreement is in force and effect.

If any Unit is sold, the Annual Service Charge for that Unit will be determined by applying the applicable percentage of Annual Gross Revenue at that point in time (*i.e.* 11% in the first ten (10) years after Completion, 13% for the next five (5) years and 15% for every year thereafter) to the Annual Gross Revenue computed for that Unit.

The Borough shall remit to the County of Monmouth five percent (5%) of the Annual Service Charge received each year from the Entity, pursuant to *N.J.S.A.* 40A:20-12(b)(2)(e).

i. Notwithstanding the tax provisions of the LTTE Law or any provision of this Agreement to the contrary, the Annual Service Charge shall never be reduced below the Minimum Annual Service Charge through any tax appeal on the Project Site and/or Project Improvements or any other legal proceeding regarding the Project during the term of this Agreement.

ii. If the Entity fails to timely pay the Minimum Annual Service Charge or Annual Service Charge, the amount unpaid shall bear the highest rate of interest permitted in the case of unpaid taxes or tax liens in the Borough until paid.

iii. The Borough agrees that if the Annual Service Charge exceeds the total amount of real estate taxes otherwise due on the Project Site, the Annual Service Charge will be reduced to the equivalent of real estate taxes due on the Project Site.

Section 4.2 Schedule of Staged Adjustments

The Annual Service Charge shall be reviewed and, if and as necessary, adjusted in stages over the term of this Agreement in accordance with *N.J.S.A.* 40:20-12(b) as follows:

i. Stage One (years 1-10): For each of the first ten (10) years following the Commencement Date, the Annual Service Charge shall be the amount determined pursuant to Section 4.1(i) of this Agreement.

ii. Stage Two (years 11-16): The Annual Service Charge shall be an amount equal to the greater of the amount established pursuant to Section 4.1(i) of this Agreement or 20% of the amount of the taxes otherwise due on the value of the Project Site and Project Improvements;

iii. Stage Three (years 17-21): The Annual Service Charge shall be an amount equal to the greater of the amount established pursuant to Section 4.1(i) of this Agreement or 40% of the amount of the taxes otherwise due on the value of the Project Site and Project Improvements;

iv. Stage Four (years 22-27): The Annual Service Charge shall be an amount equal to the greater of the amount established pursuant to Section 4.1(i) of this Agreement or 60% of the amount of the taxes otherwise due on the value of the Project Site and Project Improvements;

v. Final Stage (year 28-30): The Annual Service Charge shall be an amount equal to the greater of the amount established pursuant to Section 4.1(i) of this Agreement or 80% of the amount of the taxes otherwise due on the value of the Project Site and Project Improvements.

Section 4.3 Initial Billing

The first year of the Annual Service Charge shall be billed based on the greater of the estimated initial Annual Service Charge of $91,820.04 or the Minimum Annual Service Charge.

Section 4.4 Quarterly Installments

The Annual Service Charge shall be billed in quarterly installments and payment shall be due 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 fiscal or calendar year, as the case may be. The Annual Service Charge shall be prorated in the year in which the Annual Service Charge commences and the year in which the exemption expires or terminates.

Section 4.5 Administrative Fee

The Entity shall pay annually the Administrative Fee to the Borough in addition to the Annual Service Charge. The Administrative Fee shall be computed and determined prior to the application of any credits for Land Tax Payments authorized by Section 4.6 of this Agreement. This Administrative Fee shall be payable and due on or before December 31st of each year, and collected in the same manner as the Annual Service Charge. In the event the Entity fails to pay this Administrative Fee when due and owing, the amount unpaid shall bear the highest rate of interest permitted in the case of unpaid taxes or tax liens in the Borough until paid.

Section 4.6 Land Tax Credit

The Entity shall be entitled to a credit against the Annual Service Charge for the amount, without interest, of the Land Tax Payments paid by it in the four preceding quarterly installments. The Entity is required to pay the full Land Tax Payments in any given year. Therefore, no credit

shall be applied against the Annual Service Charge for partial payment of the Land Tax Payments. The Entity's failure to make the requisite Land Tax Payments in a timely manner shall constitute a Default under this Agreement and the Borough shall, among its other remedies, have the right to proceed against the Project in such event pursuant to the In Rem Tax Foreclosure Act, *N.J.S.A.* 54:5-1 et seq. and/or may cancel this Agreement in a manner consistent with the Default procedures set forth in Article 11 hereof.

Section 4.7 Material Conditions

It is expressly agreed and understood that all payments of the Minimum Annual Charges, Annual Service Charges, Land Taxes, Administrative Fee and any interest payments, penalties or costs of collection due thereon are material conditions of this Agreement (the **"Material Conditions"**). If any other term, covenant or condition of this Agreement, as to any person, entity or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement or the application of such term, covenant or condition as it relates to any person, entity or circumstance other than those held invalid or unenforceable, shall not be affected thereby, and each remaining term, covenant or condition of this Agreement shall be valid and enforced to the fullest extent permitted by applicable law.

ARTICLE V
CERTIFICATE OF OCCUPANCY

Section 5.1 Certificate of Occupancy: Application and filing

It shall be the obligation of the Entity to notify the Borough of the Date of Completion and to apply for a Certificate of Occupancy within a reasonable period of time after the Date of Completion. It shall be the responsibility of the Entity to forthwith file with both the Tax Assessor and the Tax Collector a copy of each Certificate of Occupancy it obtains for any portion or aspect of the Project.

ARTICLE VI
ANNUAL REPORTS/ MUNICIPAL CERTIFICATION

Section 6.1 Accounting System

The Entity agrees to maintain a system of accounting and internal controls established and administered in accordance with Generally Accepted Accounting Principles.

Section 6.2 Periodic Reports

i. Total Project Cost Audit. Within ninety (90) days after the Date of Completion, the Entity shall submit to the Mayor and Council an audit of Total Project Cost, certified as to actual construction costs by an independent and qualified architect. All other costs shall be certified in conformance with Generally Accepted Accounting Principles by a certified public accountant who is licensed to practice that profession in the State of New Jersey.

ii. Annual 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 term of this Agreement, the Entity shall submit to the Mayor and Council and the Division of Local Government Services in the Department of Community Affairs, its Auditor's Report for the preceding fiscal or calendar year. The Auditor's Report shall include, but not be limited to, the terms and interest rate on any mortgage(s) associated with the purchase and development of the Project Improvements and such details as may related to the financial affairs of the Entity and to its operation and performance hereunder, pursuant to the LTTE Law and this Agreement. The Auditor's Report shall include, but not be limited to, Net Profit, Annual Gross Revenues, and itemizations of operating and non-operating expenses, mortgage interest and terms, amortization of improvements and such other computations of income, expenses and other details as may relate to the financial status of the Entity.

iii. Disclosure Statement. Within ten (10) days after each anniversary date of the execution of this Agreement, the Entity shall submit to the Mayor and Council a disclosure statement listing the persons having an ownership interest in the Project Improvements, and the extent of the ownership interest of each person.

Section 6.3 Audit and Verification by Borough

Any Auditor's Report or Total Project Cost audit submitted by the Entity pursuant to Section 6.2 of this Agreement, and any books, documents, records, reports or work papers used in preparation of same, shall be subject to audit, examination and verification by the Borough or its designee. Any dispute arising from such audit, examination and verification shall be resolved in accordance with Article 12 of this Agreement.

Section 6.4 Inspection

The Entity shall permit the inspection of its Project Site and the Project Improvements and also permit, upon request, examination and audit of its books, contracts, records, documents and papers by duly authorized representatives of the Borough or the State of New Jersey. Such examination or audit shall be made upon three (3) business 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 Project Improvements.

ARTICLE VII
LIMITATION OF PROFITS AND RESERVES

Section 7.1 Limitation of Profits and Reserves

i. During the period of this Agreement as provided herein, the Entity shall be subject to a limitation of its profits pursuant to the provisions of *N.J.S.A.* 40A:20-15.

ii. The Entity shall have the right to establish, at any time during the term of this Agreement, and to maintain at its discretion a reserve against unpaid rents and reasonable contingencies, in an amount equal to ten percent (10%) of the Gross Revenues of the Entity for the last full fiscal year, and may retain such part of the excess Net Profits as may be necessary to eliminate any deficiency in that reserve, as provided in *N.J.S.A.* 40A:20-15; provided, however, that in no event shall any portion of excess Net Profits be retained or contributed to such reserve if the amount of the reserve as of the end of such fiscal year equals or exceeds ten percent (10%) of the preceding fiscal year's Gross Revenues.

Section 7.2 Annual Payment of Excess Net Profit

If the Net Profit, in any fiscal year, shall exceed the Allowable Net Profit 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 Profit to the Borough as an additional Annual Service Charge; provided, however, that the Entity may maintain a reserve as determined pursuant to Section 7.1 of this Agreement.

Section 7.3 Payment of Reserve/Excess Net Profit Upon Termination, Expiration or Sale

The date of termination or expiration of this Agreement, or the date of sale or transfer of the Project Improvements 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 Borough the amount of the reserve, if any, maintained by it pursuant to this Section 7.3 and the excess Net Profit, if any.

Section 7.4 Prohibition Against Use of Master Leases or Related Techniques

The Entity agrees that the intent of this Financial Agreement is to account for all revenue arising from the Project as if it accrues to the benefit of the Entity. The Entity shall therefore have no right to enter into any lease, contract or other agreement the effect of which is to interpose another person, corporation, or other entity between the Entity and the end users of the Project for the purpose of reducing the amount of revenue accounted for as benefiting the Entity. To the extent that the Township, in its commercially reasonable discretion, determines that such an arrangement has been put in place and has reduced the amount of revenue which would otherwise be attributable to the Project and benefitting the Entity, the Township shall have the right to recast the financial statements of the Entity so as to account for the Annual Gross Revenue and Net Profit as would have accrued to the Entity had the arrangement not been in existence, and to require the Entity to make payments of the Annual Service Charge based on such recast financial statements.

ARTICLE VIII
ASSIGNMENT AND/OR ASSUMPTION

Section 8.1 Restrictions on Transfer

i. Except as set forth in the following subsections, the Entity may not voluntarily transfer more than ten percent (10%) of the ownership of the Project Improvements or any portion thereof until it has first removed both itself and the Project from all restrictions imposed by the LTTE Law, in the manner provided by the LTTE Law.

ii. The Borough, on written application by the Entity, will consent to a transfer of the Project Improvements or any interest therein greater than ten percent (10%) to an entity eligible to operate under the LTTE Law, provided the Entity is not in Default regarding any performance required of it hereunder, the Entity has fully complied with the LTTE Law, the transferee qualifies as an "urban renewal entity" within the meaning of the LTTE Law, the obligations under this Agreement are fully assumed by the transferee, and the Borough has determined, in its sole discretion, that the transferee possesses the same business reputation, financial qualifications and credit worthiness as the Entity and is otherwise reputable and the Entity has paid the Borough an amount equal to two percent (2%) of the consideration paid by the transferee for such interest in the Project Improvements (the "**Transfer Fee**") provided, however, that the Transfer Fee shall not apply to (a) transfers among the present owners of Developer; (b) transfers by the present owners to their family members for estate planning purposes; or (c) sale of a Unit to a purchaser in the normal course.

iii. Nothing contained herein shall prohibit any transfer of any ownership interest in the Entity of ten percent (10%) or less, provided that any such transfer shall be disclosed to the Borough Council in the next Auditor's Report or in correspondence sent to the Borough Clerk in advance of the next Auditor's Report and the Transfer Fee is paid.

Section 8.2 Collateral Assignment

The Borough and the Entity agree that an assignment, pledge, hypothecation, or other transfer of the Entity's interest in this Agreement as security for any financing of the Project Improvements shall not be regarded by the Borough as a Default under this Agreement. The Entity shall give the Borough written notice of any such security arrangement (each, a **"Security Agreement"**), together with the name and address of the secured Party or Parties, or any agent thereof (each, a **"Secured Party"**). In the absence of a Default, the Borough will not unreasonably withhold, delay or condition its consent to the assignment or transfer of this Agreement by a Secured Party to a qualified urban renewal entity, or other exercise of a Secured Party's rights under a Security Agreement, to the extent the Borough's consent is required under this Agreement or the LTTE Law. The Borough agrees to provide its consent to such assignment or transfer, together with any other certificates, opinions, and other documents as such Secured Party shall reasonably request and shall not unreasonably withhold, delay or condition its consent to any commercially reasonable amendment(s) of this Agreement that any Secured Party shall request.

8.3 Sale of Units

Individual Units in the Project may be sold and will incur an Annual Service Charge as set forth herein.

ARTICLE IX
COMPLIANCE

Section 9.1 Operation

During the term of this Agreement, the Project shall be maintained and operated in accordance with the provisions of the LTTE Law and as set forth in the Application This Agreement and the tax exemption granted hereunder shall be terminable not only as provided by N.J.S.A. 40A:20-1, et seq., as amended and supplemented, but also in the event of a Default under this Agreement. The Entity's failure to comply with the LTTE Law shall constitute a Default under this Agreement and the Borough shall, among its other remedies, have the right to terminate this Agreement, subject to the Default procedure provisions of Article 10 of this Agreement.

ARTICLE X
DEFAULT AND REMEDIES

Section 10.1 Default

"Default" shall be the failure of the Borough or the Entity to perform any obligation imposed upon the Borough or the Entity, respectively, by the terms of this Agreement, beyond any applicable notice, cure or grace period.

Section 10.2 Cure Upon Default

i. Should either Party to this Agreement be in Default, the nondefaulting Party shall send written notice to the defaulting Party of the Default (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 sixty (60) days, or in the case of a breach of a material condition, thirty (30) days from receipt of the Default Notice (the **"Cure Period"**), to cure any Default, which cure shall be the sole and exclusive remedy available to the defaulting Party. However, if, in the reasonable opinion of the nondefaulting Party, the Default cannot be cured within the Cure Period using reasonable diligence, the time to cure may be extended upon written notice for an additional ninety (90) day period of time.

ii. Upon the expiration of the Cure Period, or any approved extension thereof, and providing that the Default is not cured, the nondefaulting Party shall have the right to terminate this Agreement in accordance with Section 11.1 of this Agreement.

Section 10.3 Remedies Upon Default

i. In the event of any Default not cured within the Cure Period or any approved extension thereof, the nondefaulting Party shall, among its other remedies, have the right to declare a Default and terminate this Agreement subject to the Default procedures set forth in this Article 10 of this Agreement. In the case of a breach of a Material Condition by the Entity, the Borough may also proceed against the Project Site pursuant to the In Rem Tax Foreclosure Act, N.J.S.A. 54:5-1 et seq. All of the remedies provided in this Agreement, and all rights and remedies granted to the Parties by law and equity, shall be cumulative and concurrent.

ii. Either Party's election of any remedy shall not be construed as a waiver of any other remedies available to that Party. Specifically, the bringing of any action for Land Tax Payments, the Minimum Annual Service Charge, the Annual Service Charge, the Administrative Fee or for breach of covenant or the resort to any other remedy herein provided shall not be construed as a waiver of the Borough's right to terminate this Agreement or to proceed with a tax sale or In Rem Tax Foreclosure action or any other remedy.

ARTICLE XI
TERMINATION

Section 11.1 Termination Upon Default

If either Party fails to cure or remedy any Default within the applicable Cure Period, the non-defaulting Party may terminate this Agreement upon thirty (30) days written notice.

Section 11.2 Voluntary Termination by the Entity

The Entity may at any time after one (1) year from the Commencement Date, notify the Borough that, as of a date certain designated in the notice, it relinquishes its status as an urban renewal entity. The Entity has the obligation to notify any purchasers of the Agreement. As of the date provided in such notice, this Agreement shall terminate and the tax exemption, Minimum Annual Service Charge, Annual Service Charge, Administrative Fee and limitation on profits and dividends shall terminate. To avoid confusion, only the Entity and not a purchaser of individual Units may terminate this Agreement.

Section 11.3 Final Accounting

Within ninety (90) days after the date of termination of this Agreement, whether by the Entity's voluntary relinquishment or by virtue of the provisions of the LTTE Law or the terms of this Agreement, the Entity shall provide a final accounting and pay to the Borough 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 date of termination shall be deemed the close of the fiscal year of the Entity.

Section 11.4 Conventional Taxation

Upon the termination or expiration of this Agreement and thereafter, the Project Improvements shall be assessed and conventionally taxed according to the general law applicable to other taxable property in the Borough.

ARTICLE XII
DISPUTE RESOLUTION

Section 12.1 Arbitration

In the event of a disagreement between the Parties with respect to this Agreement, including but not limited to the interpretation of this Agreement or the obligations of the Parties hereunder, the Parties shall submit the dispute to the American Arbitration Association in Monmouth County, New Jersey to be determined in accordance with its rules and regulations in such a fashion to accomplish the purpose of the LTTE Law. Each Party to this Agreement shall designate an arbitrator, and the two (2) arbitrators shall choose a third arbitrator. The arbitrators designated and acting under this Agreement shall make a determination regarding the issue(s) in controversy in strict conformity with the terms of this Agreement and applicable law, and shall have no power to depart from, or change any of the provisions of this Agreement, except as authorized herein. The cost for the arbitration shall be borne equally by the Parties.

ARTICLE XIII
WAIVER

Section 13.1 Waiver

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

ARTICLE XIV
INDEMNIFICATION

Section 14.1 Indemnification

It is understood and agreed that in the event the Borough shall be named as a Party defendant in any action brought against the Borough or the Entity by allegation of any breach, Default or a violation of any of the provisions of this Agreement and/or the provisions of the LTTE Law or any other applicable law, the Entity shall indemnify and hold the Borough harmless from and against all liability, losses, damages, demands, costs, claims, actions or expenses (including reasonable attorneys' fees and expenses) of every kind, character and nature arising out of or resulting from the action or inaction of the Entity and/or by reason of any breach, Default or a violation of any of the provisions of this Agreement, the provisions of *N.J.S.A.* 40A:20-1 et seq., and/or any other Applicable Law except for any misconduct by the Borough or any of its officers, officials, employees or agents, and the Entity shall defend the suit at its own expense. However, the Borough maintains the right to intervene as a Party thereto, to which intervention the Entity hereby consents, the reasonable expense thereof to be borne by the Entity.

ARTICLE XV
NOTICE

Section 15.1 Certified Mail

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

Section 15.2 Sent by Borough

When sent by the Borough to the Entity, unless the Entity shall have notified the Borough in writing otherwise, notice shall be addressed to:

TENTH AVENUE ASSOCIATES URBAN RENEWAL, LLC
800 Main Street, Suite 103
Belmar, New Jersey 07719
Attention: Barry DePeppe

with a copy sent to:

Jennifer Burgess, Esq.
Kelso & Bradshaw
132 Hamilton Street
New Brunswick, New Jersey 08901

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

Section 15.3 Sent by Entity

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

Borough Clerk
Borough of Belmar
Municipal Building
601 Main Street
Belmar, New Jersey 07715

with a copy sent to:

William W. Northgrave, Esq.
McManimon, Scotland & Baumann, LLC
75 Livingston Avenue
Suite 200
Roseland, New Jersey 07068

Any notice to the Borough shall fully identify the Project to which it relates, (i.e., the full name of the Entity and the location of the Project Site, identified by Block and Lot numbers).

ARTCILE XVI
SEVERABILITY

Section 16.1 Severability

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

If a Material Condition shall be judicially declared to be invalid or unenforceable and provided the Entity is not in Default of this Agreement, the Parties shall cooperate with each other to take the actions reasonably required to restore this Agreement in a manner contemplated by the Parties. This shall include, but not be limited to the authorization and re-execution of this Agreement in a form reasonably drafted to effectuate the original intent of the Parties. However, the Borough shall not be required to agree to restore this Agreement if such restoration would result in any material reduction or loss of the economic benefits due to the Borough under this Agreement.

ARTICLE XVII
MISCELLANEOUS

Section 17.1 Construction

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

Section 17.2 Conflict

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

Section 17.3 Oral Representations

There have been no oral representations made by either of the Parties hereto which are not contained in this Agreement.

Section 17.4 Entire Document

This Agreement, with all attachments, schedules, and exhibits, the Application, and the Ordinance shall constitute the entire agreement between the Parties, shall be incorporated herein by reference thereto and there shall be no modifications thereto other than by a written instrument approved and executed by, and delivered to, each Party. All prior agreements and understandings, if any, are superseded.

Section 17.5 Good Faith

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

Section 17.6 Pronouns

"He" or "it" shall mean the masculine, feminine or neuter gender, the singular, as well as the plural, as the context requires. Unless otherwise indicated, defined terms in the singular form shall include the plural and vice versa.

Section 17.7 Headings

Article, Section and subsection headings in this Agreement are included for convenience of reference only and shall not constitute a part of this Agreement for any other purpose or be given any substantive effect.

Section 17.8 Counterparts

This Agreement may be executed in any number of counterparts, and by different Parties hereto in separate counterparts, each of which when so duly executed and delivered shall be

deemed an original, but all such counterparts taken together shall constitute but one and the same instrument.

Section 17.9 Recording

This Agreement shall be recorded and re-recorded, as necessary, by Entity after all subsequent sales of Units.

ARTICLE XVIII
SCHEDULE AND EXHIBITS

Section 18.1 Exhibits

The following Exhibits are attached to the Agreement approved by Ordinance adopted _____ and are incorporated as if set forth at length herein:

Exhibit:

1. Redevelopment Plan
2. Application
3. Project Improvements
4. Concept Plan
5. Estimated Total Project Cost
6. Preliminary Project Pro Forma
7. Entity's Certificate of Formation and related documents

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

ATTEST:

TENTH AVENUE ASSOCIATES URBAN RENEWAL, LLC

_____

By: _____
Barry DePeppe, Managing Member

ATTEST:

THE BOROUGH OF BELMAR

_____
April Claudio
Borough Clerk

By: _____
Colleen Connolly
Business Administrator

EXHIBIT 1

REDEVELOPMENT PLAN

EXHIBIT 2

APPLICATION

EXHIBIT 3

PROJECT IMPROVEMENTS

EXHIBIT 4

CONCEPT PLAN

EXHIBIT 5

ESTIMATED TOTAL PROJECT COST

EXHIBIT 6

PROJECT PRO FORMA

EXHIBIT 7

CERTIFICATE OF FORMATION