Borough of Middlesex

1200 Mountain Ave
Middlesex, NJ

Mayor and Council Special Meeting

~ Minutes ~

Kathleen Anello
732-356-7400 x236
www.middlesexboro-nj.gov

Tuesday, May 1, 2018	**7:00 PM**	**Municipal Building**

MAYOR'S STATEMENT

UNDER THE PROVISIONS OF N.J.S.A. 10:4-6 ET SEQ., NOTICE OF THE TIME AND PLACE OF THIS MEETING WAS GIVEN BY WAY OF AN ANNUAL MEETING NOTICE TO THE STAR LEDGER, COURIER NEWS AND HOME NEWS, AND POSTED AT BOROUGH HALL.

SALUTE TO FLAG

ROLL CALL

Members:
Council Member Kevin Dotey
Council Member Dan Parenti
Council Member Sean Kaplan
Council Member John Madden
Council President Robert Schueler
Council Member Jack Mikolajczyk

Staff:
Ron DiMura Mayor
Brandon Goldberg Administrator
Aravind Aithal Attorney

Redevelopment Attorney Michael Baker was in attendance.

PRIVILEGE OF THE FLOOR

John Erickson, 209 Second Street noted that he was glad to see that we tabled the award of the rehabilitation of the sanitary sewer bid tonight. Attorney Aithal stated that the bid was not accepted tonight subject to a non-disclosure specific to ongoing negotiations.

Bob Edwards, 243 Hazelwood Avenue asked for an update on OLMV Lease. Attorney Aithal stated that the subject is an ongoing matter due to potential litigation. Mr. Edwards continued to ask if we are still paying the rent. Mayor DiMura stated that we paid nine months rent.

NON- CONSENT AGENDA/RESOLUTIONS

The Borough Clerk read the following resolution:

BE IT RESOLVED by the Mayor and Council of the Borough of Middlesex that:

RESOLUTION 120-2018

AWARDING BID TO NATIONAL WATER MAIN CLEANING COMPANY FOR THE REHABILITATION OF SANITARY SEWER SYSTEM IN THE AMOUNT OF $966,632.50

WHEREAS, one bid was received on April 18, for the Rehabilitation of Sanitary Sewer System; and

WHEREAS, listed below the lowest bid received for this project:

National Water Main Cleaning Company $966,632.50
1806 Newark Turnpike
Kearny, NJ 07032

WHEREAS, Borough Engineer, Remington & Vernick Engineers recommend National Water Main Cleaning Company be awarded this contract for the amount listed above.

NOW THEREFORE BE IT RESOLVED, by the Mayor and Council of the Borough of Middlesex that:

1. At the recommendation of the Borough Engineer, Remington & Vernick Engineers, the Mayor and Council hereby award the bid for the proposal for the Rehabilitation of Sanitary Sewer System to National Water Main Cleaning Company, Kearny, NJ 07032.

NOW FURTHER BE IT RESOLVED, that the Treasurer hereby certifies funds are available in the amount of $966,632.50 in account number C0417907000050.

RESULT:	**TABLED [UNANIMOUS]**	**Next: 5/8/2018 7:00 PM**
MOVER:	Jack Mikolajczyk, Council Member	
SECONDER:	Robert Schueler, Council President	
AYES:	Dotey, Parenti, Kaplan, Madden, Schueler, Mikolajczyk	

The Borough Clerk read the following resolution:

BE IT RESOLVED by the Mayor and Council of the Borough of Middlesex that:

RESOLUTION 122-2018

RESOLUTION OF THE BOROUGH OF MIDDLESEX MAKING APPLICATION TO THE LOCAL FINANCE BOARD PURSUANT TO N.J.S.A. 40A:12A-29(A)(3) AND N.J.S.A. 40A:12A-67(G)

WHEREAS, the Borough of Middlesex (the “Borough”) desires to make application to the Local Finance Board for (i) approval, pursuant to N.J.S.A. 40A:12A-29(a)(3), of the sale by the Borough, acting in its capacity as a redevelopment entity, of bonds on a negotiated basis, pursuant to a bond resolution authorizing the issuance of such bonds; and (ii) approval pursuant to N.J.S.A. 40A:12A-67(g) of a financial instrument to be secured by payments in lieu of taxes;

WHEREAS, the Borough believes that:

(a) it is in the public interest to accomplish such purposes;

(b) said purposes are for the health, welfare, convenience or betterment of the inhabitants of the local unit or units;

(c) the amounts to be expended for said purpose or improvements are not unreasonable or exorbitant; and

(d) the proposal is an efficient and feasible means of providing services for the needs of the inhabitants of the local unit or units and will not create an undue financial burden to be placed upon the local unit or units;

NOW THEREFORE, BE IT RESOLVED BY THE BOROUGH COUNCIL as follows:

Section 1. The application to the Local Finance Board is hereby approved, and the Borough's Mayor, Chief Financial Officer, Bond Counsel and Financial Advisor, along with other representatives of the Borough, are hereby authorized to prepare such application and to represent the Borough in matters pertaining thereto.

Section 2. The Clerk of the Borough is hereby directed to prepare and file a copy of the proposed resolution with the Local Finance Board as part of such application.

Section 3. The Local Finance Board is hereby respectfully requested to consider such application and to record approval as provided by the applicable New Jersey Statutes.

RESULT:	**ADOPTED [5 TO 0]**
MOVER:	Kevin Dotey, Council Member
SECONDER:	Robert Schueler, Council President
AYES:	Dotey, Parenti, Kaplan, Schueler, Mikolajczyk
RECUSED:	Madden

EXECUTIVE SESSION

The Borough Clerk read the following resolution:

BE IT RESOLVED by the Mayor and Council of the Borough of Middlesex that:

RESOLUTION 121-2018

EXECUTIVE SESSION - DISCUSSION ON BLOCK 349, LOT 10, 10.02, & 10.03 PAYMENT IN LIEU OF TAXES - ACTION MAY BE TAKEN ON THIS MATTER AFTER EXECUTIVE SESSION

WHEREAS, N.J.S.A. 10:4-12 allows for a Public Body to go into closed session during a Public Meeting; and

WHEREAS, the Governing Body of the Borough of Middlesex has deemed it necessary to go into closed session to discuss certain matters which are exempted from the Public; and

WHEREAS, the regular meeting of this Governing Body will reconvene.

NOW, THEREFORE, BE IT RESOLVED that the Governing Body of the Borough of Middlesex will go into closed session for the following reason listed below as outlined in N.J.S.A. 10:4-12 and the minutes will be kept, and once the matter involving the confidentiality of the items no longer require confidentiality, the minutes can be made public.

1. Discussion on Block 349, Lot 10, 10.02 & 10.03 Payment in Lieu of Taxes

Attorney Aithal recused himself from the Executive Session Meeting.

RESULT:	**ADOPTED [UNANIMOUS]**
MOVER:	Jack Mikolajczyk, Council Member
SECONDER:	Dan Parenti, Council Member
AYES:	Dotey, Parenti, Kaplan, Madden, Schueler, Mikolajczyk

ORDINANCE(S) FOR INTRODUCTION

The Borough Clerk read ordinance 1941-18 by title:

ORDINANCE 1941-18

ORDINANCE OF THE BOROUGH OF MIDDLESEX, COUNTY OF MIDDLESEX, NEW JERSEY AUTHORIZING THE FINANCIAL AGREEMENT FOR THE PROPERTY COMMAS BLOCK 349, LOT 10 IN THE BOROUGH OF MIDDLESEX PURSUANT TO THE LOCAL REDEVELOPMENT AND HOUSING LAW, N.J.S.A. 40A:12A-1 ET SEQ.

ORDINANCE OF THE BOROUGH OF MIDDLESEX, COUNTY OF MIDDLESEX, NEW JERSEY AUTHORIZING THE FINANCIAL AGREEMENT FOR THE PROPERTY COMMONLY KNOWN AS BLOCK 349, LOT 10 IN THE BOROUGH OF MIDDLESEX PURSUANT TO THE LOCAL REDEVELOPMENT AND HOUSING LAW, *N.J.S.A*. 40A:12A-1 *et seq*.

WHEREAS, the Borough of Middlesex, in the County of Middlesex, New Jersey (the "**Borough**"), a public body corporate and politic of the State of New Jersey (the "**State**") is authorized pursuant to the Local Redevelopment and Housing Law, *N.J.S.A*. 40A:12A-1 *et seq*. (the "**Redevelopment Law**"), to determine whether certain parcels of land within the Borough constitute an area in need of rehabilitation and/or an area in need of redevelopment; and

WHEREAS, pursuant to the Redevelopment Law, improvements to property located within an area in need of rehabilitation or redevelopment may qualify for long term tax exemptions under the Long Term Tax Exemption Law, *N.J.S.A.* 40A:20-1 *et seq.* (the "**LTTE Law**"); and

WHEREAS, on July 25, 2006, pursuant to Resolution 179-06, the Borough Council of the Borough (the "**Borough Council**") designated certain property identified on **Exhibit A** attached hereto (the "**Property**"), as an Area in Need of Rehabilitation in accordance with the Redevelopment Law; and

WHEREAS, on September 18, 2007, in accordance with all applicable provisions of the Redevelopment Law, the Borough duly adopted the Lincoln Boulevard Redevelopment Plan, as subsequently amended through December 13, 2016, and as may be further amended, (the "**Redevelopment Plan**"); and

WHEREAS, on December 17, 2013, the Borough Council adopted Resolution 324-13, authorizing the Planning Board of the Borough (the "**Planning Board**") to undertake a Non-Condemnation preliminary investigation to determine whether the Property may be designated as an area in need of redevelopment in accordance with the Redevelopment Law (the "**Stud**y"); and

WHEREAS, the Planning Board authorized Paul N. Ricci, P.P., (the "**Planning Consultant**") to conduct the Study; ande

WHEREAS, the Planning Consultant prepared the Study, titled "Redevelopment Study and Preliminary Investigation Report Lincoln Boulevard - Phase 3", dated October 14, 2014; and

WHEREAS, on November 12, 2014, at the time and place of the noticed public hearing, the Planning Consultant, being duly sworn and qualified as an expert in professional planning, made a presentation of the Study to the Planning Board; and

WHEREAS, the Planning Consultant concluded that the Property satisfies the criteria as an area in need of redevelopment under the Redevelopment Law; and

WHEREAS, the Planning Board recommended that the Borough Council designate the Property as an area in need of non-condemnation redevelopment in accordance with the Redevelopment Law; and

WHEREAS, after review and consideration of the Planning Board's findings and recommendation, including all documents submitted therewith, the Borough Council agreed with the conclusion of the Planning Board and on January 13, 2015 adopted Resolution 44-15 designating the Property as an area in need of redevelopment under the Redevelopment Law (the "**Redevelopment Area**"); and

WHEREAS, Midmarket Urban Renewal, LLC, an affiliate of Middlesex Retail Fund, LLC, a New Jersey limited liability company, with offices located at 400 South Avenue, Suite 10, Middlesex, New Jersey and its successors and assigns (the "**Redeveloper**") is the owner of a portion of the Redevelopment Area identified as Lot 10 in Block 349 on the Official Tax Map of the Borough, commonly known as 242 Lincoln Boulevard, (the "**Project Area**"); and

WHEREAS, by Resolution adopted by the Borough on December 12, 2017 the Borough designated the Redeveloper, an urban renewal entity qualified to do business under the provisions of the LTTE Law, as the "Redeveloper" for the Project Area, as defined in and permitted by the LTTE Law and approved the execution of the Redevelopment Agreement between the Redeveloper and the Borough for the Project Area (the "**Redevelopment Agreement**"); and

WHEREAS, the Redeveloper will construct or cause to be constructed a retail food market with supporting parking and related improvements (the "**Project Improvements**") on the Project Area (collectively, the "**Project"**); and

WHEREAS, the Project will conform to the Redevelopment Plan and the Redevelopment Agreement and all applicable municipal zoning ordinances to the extent it contains provisions that are relevant to the Project and will be in conformance with the master plan of the Borough; and

WHEREAS, the provisions of the LTTE Law authorize the Borough to accept, in lieu of real property taxes, an Annual Service Charge (as defined in the LTTE Law), to be paid by the Redeveloper to the Borough in connection with the Project Improvements; and

WHEREAS, the Redeveloper filed an application with the Borough pursuant to *N.J.S.A.* 40A:20-8 for approval of a long term tax exemption for the Project, including a form of financial agreement (as attached hereto as **Exhibit B**, the "**Application**"); and

WHEREAS, the proposed form of financial agreement (the "**Financial Agreement**") sets forth the terms and conditions under which the Redeveloper and the Borough shall carry out their respective obligations with respect to payment of the Annual Service Charge by the Redeveloper for the Project; and

WHEREAS, despite the Redeveloper's investment of equity and borrowed funds, such amounts are insufficient to pay for all of the costs associated with the development and construction of the Project; and

WHEREAS, to defray some of the costs of the Project, thereby making the Project viable, the Borough agreed to issue a bond in an amount not to exceed $30,000, as a NON-RECOURSE bond (the "**Redevelopment Bond**") pursuant to the terms of the Financial Agreement in accordance with the Redevelopment Area Bond Financing Law, *N.J.S.A.* 40A:12-64, *et seq.*; and

WHEREAS, the Redevelopment Bond will fund certain sidewalk, curbing and other improvements in the public right of way; and

WHEREAS, the Mayor, together with counsel for the Borough, has reviewed the Application and found that it complies with the provisions of the LTTE Law; and

WHEREAS, the Mayor together with counsel for the Borough, has reviewed the terms of the proposed Financial Agreement and has recommended that the Application be approved and the Financial Agreement, a copy of which has been filed with the Borough Clerk, be executed; and

WHEREAS, upon review of the Application and the Mayor's recommendation, the Borough Council has made the following findings with respect to the Project pursuant to *N.J.S.A.* 40A:20-11:

1. The development and construction of the Project as set forth in the Redevelopment Agreement and Redevelopment Plan will be beneficial to the overall community; will achieve certain of the goals and objectives of the Redevelopment Plan; will help revitalize the Redevelopment Area; will improve the quality of life for the community; will serve as a catalyst for further private investment in the Redevelopment Area and will enhance the economic development of the Borough.

2. It is anticipated that the development of the Project will create approximately 25 construction jobs over the duration of the construction of the Project, as well as approximately 75 full-time permanent jobs in connection with the operation of the Project.

3. The Project will require nominal municipal services and have no impact on the school system. Pursuant to this Agreement, the Project is projected to generate revenue for the Borough in the aggregate amount of approximately $3,537,942.00 for the term of the Financial Agreement. The Borough's authorized officers and employees have determined that the benefits to the Borough accruing as a result of the Project, the revitalization of the Redevelopment Area, and the generation of jobs as described above, will substantially outweigh the nominal costs to the Borough resulting from the long term tax exemption granted herein.

4. The governing body's approval of the Long Term Tax Exemption set forth in the Financial Agreement is essential to the success of the Project because it provides the Borough with a competitive alternative to the other locations being considered by the operators/owners of the Project without which the Project would not be undertaken. The

Financial Agreement is critical to the decision of the owner/operator of the Project to construct and operate such facility in the Borough. As a result, in the current real estate marketplace, the rent likely to be achieved by this Project is not sufficient to pay for the costs of the construction and the payment of full taxes.

WHEREAS, in accordance with the provisions of the LTTE Law, the Borough Council desires to approve the Application and the Financial Agreement.

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

Section 1. The aforementioned recitals are incorporated herein as though fully set forth at length.

Section 2. The Application submitted by the Redeveloper is hereby approved in accordance with Section 8 of the LTTE Law.

Section 3. The Mayor, in consultation with counsel to the Borough, is hereby authorized to execute the Financial Agreement substantially in the form attached as **Exhibit B** and prepare, amend or execute any other agreements necessary to effectuate this ordinance, subject to modification or revisions, as deemed necessary and appropriate.

Section 4. The clerk of the Borough is hereby authorized and directed, upon execution of the Financial Agreement by the Mayor, to attest to the signature of the Mayor and to affix the corporate seal of the Borough upon such document.

Section 5. Any exemption from taxation as set forth in the Financial Agreement is hereby granted to the Redeveloper, with respect to the Project for the term set forth in the Financial Agreement; provided that in no event shall the term of the Financial Agreement exceed the earlier of (i) thirty-five (35) years from the date of execute of the Financial Agreement or (ii) to the extent permitted by the LTTE Law, thirty (30) years from the Redeveloper's receipt of a Certificate of Occupancy (as defined in the Financial Agreement) for the Project and only so long as the Redeveloper remains subject to and in compliance with the Financial Agreement and the LTTE Law and; provided further, that the Redeveloper does not file a tax appeal for the Project or any part thereof.

Section 6. The executed copy of the Financial Agreement shall be certified by and filed with the Office of the Borough Clerk. Further, the Clerk shall file certified copies of this ordinance and the Financial Agreement with the Tax Assessor of the Borough and the Director of the Division of Local Government Services with the Department of Community Affairs, in accordance with Section 12 of the LTTE Law.

Section 7. The Project shall conform with all federal, state and Borough laws, ordinances and regulations relating to construction and use.

Section 8. The Redeveloper shall, in the operation of the Project, comply with all laws so that no person of race, religious principles, color national origin or ancestry will be subject to discrimination.

Section 9. The Redeveloper shall, from the time the Annual Service Charge becomes effective under the Financial Agreement, pay to the Borough the estimated quarterly Annual Service Charge for the Project until the correct amount due from the Redeveloper is determined by the certified financial audit report, required to be submitted under the terms of the Financial Agreement. After the report has been accepted by the Borough and within ninety (90) days thereafter, the Borough and the Redeveloper shall adjust any over or underpayment so made or required to be made for the period covered by the certified audit report.

Section 10. This ordinance shall take effect in accordance with all applicable laws.

CERTIFICATION

I, Kathleen Anello, Municipal Clerk for the Borough of Middlesex, do herby certify that the foregoing is a true copy of an Ordinance duly adopted by the Borough Council of the Borough of Middlesex at their _________, 2018 meeting.

____

KATHLEEN ANELLO

EXHIBIT A

Block 125, Lots 1, 3, 5, 8, 9A, 11A
Block 126, Lots 4B, 6, 7
Block 127, Lot 22
Block 128, Lots 1, 2
Block 129, Lots 3A, 3B, 4, 5
Block 132, Lots 1, 1A
Block 136, Lots 29, 30, 31, 32, 33
Block 140, Lots 1, 2, 3, 5, 6
Block 153, Lots 22, 23, 24, 25
Block 287, Lots 57
Block 295, Lots 31, 34, 37, 41, 43, 44, 47, 51, 55, 57, 60, 61
Block 313, Lots 1, 4A, 8, 10
Block 315, Lot 1
Block 316, Lots 1, 2
Block 318, Lots 38A, 43, 44, 45A, 48, 50
Block 319, Lots 13, 14, 18, 19, 23, 24, 26, 28, 30, 34, 36, 37, 38, 39, 45, 47
Block 325, Lot 1
Block 327, Lots 15A, 16
Block 328, Lots 18, 22
Block 333, Lots 23, 29, 29A
Block 333A, Lots 1, 2, 3
Block 333B, Lots 7, 8
Block 339, Lots 1, 13, 701, 702
Block 340, Lots 1, 6, 8, 11, 17, 20A, 24A, 29A, 37A, 50
Block 342, Lot 1
Block 343, Lot 1, 12, 13, 14, 14A, 15

Gateway (Focus Area)

Block 122, Lots 2, 3, 4A
Block 129, Lots 1, 2, 3A
Block 348, Lots 1, 2, 3
Block 349, Lots 1, 2, 3, 3A

West Market (Focus Area)

Block 141, Lots 1, 5
Block 144, Lot 1
Block 144A, Lot 1
Block 147, Lot 3
Block 149, Lots 1, 5
Block 150, Lot 70
Block 153, Lot 21
Block 349, Lots 1, 2, 3, 3A, 5, 6B, 7, 8,10, 10A, 10B, 10C

Town Center (Focus Area)

Block 285, Lots 1, 5, 33, 34, 35, 37, 39
Block 286, Lot 1
Block 287, Lots 1A, 2A
Block 289, Lots 1, 60
Block 291, Lots 1, 2, 3, 5, 60
Block 313, Lots 23, 27, 27A
Block 314, Lots 1, 3, 5, 9, 11, 14A, 18, 20, 23, 25, 27, 29, 29A, 31, 63
Block 316, Lots 6, 9, 10
Block 317, Lots 3, 7, 9, 10, 14
Block 318, Lots 1, 1A, 4A, 7, 10, 11, 13, 16, 19
Block 319, Lots 1, 6
Block 371A, Lot 5A

Block 343 Lot 1, and Block 343 Lot 13.

EXHIBIT B

THIS AGREEMENT AND THE ORDINANCE ATTACHED HERETO AS EXHIBIT C SECURE BONDS OR OTHER OBLIGATIONS ISSUED IN ACCORDANCE WITH THE PROVISIONS OF THE "REDEVELOPMENT AREA BOND FINANCING LAW" AND THE LIEN HEREOF IN FAVOR OF THE OWNERS OF SUCH BONDS OR OTHER OBLIGATIONS IS A MUNICIPAL LIEN SUPERIOR TO ALL OTHER NON-MUNICIPAL LIENS HEREAFTER RECORDED

Record and Return to:

____
Sean P. Duane, Esq.
McCarter & English, LLP
100 Mulberry Street
Four Gateway Center
Newark, New Jersey 07102

FINANCIAL AGREEMENT

THIS FINANCIAL AGREEMENT is made this ____ day of _____________, 2018 (the "Agreement") between **MIDMARKET URBAN RENEWAL LLC** (the "Entity"), a New Jersey limited liability company, having its principal office at 400 South Avenue, Suite 10, Middlesex, New Jersey 08846 and its permitted assigns, and the **BOROUGH OF MIDDLESEX**, a municipal corporation of the State of New Jersey, with its offices at 1200 Mountain Avenue, Middlesex, New Jersey 08846 (the "Borough" and together with the Entity, the "Parties" or a "Party").

W I T N E S S E T H:

WHEREAS, on July 25, 2006, pursuant to Resolution 179-06, the Borough Council of the Borough (the "Governing Body") designated certain property (the "Rehabilitation Property"), as an Area in Need of Rehabilitation in accordance with the Local Redevelopment and Housing Law, **N.J.S.A**. 40A:12A-1 et seq., as amended and supplemented (the "Redevelopment Law"); and

WHEREAS, on September 18, 2007, in accordance with all applicable provisions of the Redevelopment Law, the Governing Body duly adopted the Lincoln Boulevard Redevelopment Plan, as subsequently amended through December 13, 2016, and as may be further amended, (the "Redevelopment Plan"); and

WHEREAS, on December 17, 2013, the Governing Body adopted Resolution 324-13, authorizing the Planning Board of the Borough (the "Planning Board") to undertake a non-condemnation preliminary investigation to determine whether certain property, including Block 349, Lot 10 (the "Property"), may be designated as an area in need of redevelopment in accordance with the Redevelopment Law (the "Study"); and

WHEREAS, on March 25, 2014, the Governing Body adopted Resolution 96-14 providing that the Study by undertaken in up to four phases, and

WHEREAS, the Planning Board adopted resolutions on February 12, 2014 and April 9, 2014 authorizing Paul N. Ricci, P.P., (the "Planning Consultant") to conduct the Study in phases; and

WHEREAS, the Planning Consultant prepared the third phase of the Study, titled "Redevelopment Study and Preliminary Investigation Report Lincoln Boulevard - Phase 3", dated October 14, 2014; and

WHEREAS, on November 12, 2014, at the time and place of the noticed public hearing, the Planning Consultant, being duly sworn and qualified as an expert in professional planning, made a presentation of the Study to the Planning Board; and

WHEREAS, the Planning Consultant concluded that the Property satisfies the criteria as an area in need of redevelopment under the Redevelopment Law; and

WHEREAS, on December 10, 2014 the Planning Board recommended that the Governing Body designate certain properties, including the Property, as an area in need of non-condemnation redevelopment in accordance with the Redevelopment Law; and

WHEREAS, after review and consideration of the Planning Board's findings and recommendation, including all documents submitted therewith, the Governing Body agreed with the conclusion of the Planning Board and on January 13, 2015 adopted Resolution 44-15 designating certain properties, including the Property as an area in need of redevelopment under the Redevelopment Law (the "Redevelopment Area") subject to the Redevelopment Plan; and

WHEREAS, the building currently located on the Property, a former grocery store, has remained vacant for over 2 years (other than a small liquor store); and

WHEREAS, the Entity has acquired such Property with the intention of developing a new grocery store thereon; and

WHEREAS, due to the unsafe and dilapidated condition of the existing building it is necessary to undertake a complete rehabilitation of such building including all required utilities, systems and tenant improvements (the "Project"); and

WHEREAS, in order to incentivize the Entity and the owner/operator for the Project, the Entity applied to the Governing Body for a long term tax exemption pursuant to the Long Term Tax Exemption Law, N.J.S.A. 40A:20-1 et seq. (the "Exemption Law") pursuant to the application annexed hereto as Exhibit A (the "Application"); and

WHEREAS, pursuant to and in accordance with the provisions of the Exemption Law and the New Jersey Redevelopment Area Bond Financing Law, constituting Chapter 310 of the Pamphlet Laws of 2001 of the State, and the acts amendatory thereof and supplemental thereto (the "RAB Law", as codified in N.J.S.A. 40A:12A-64 et seq., and together with the Redevelopment Law and the Exemption Law, the "Acts"), the Borough is authorized to provide for and accept, in lieu of real property taxes, an annual service charge paid by the Entity to the Borough; and

WHEREAS, the Mayor transmitted the Application to the Governing Body together with his recommendations dated April 27, 2018; and

WHEREAS, by Ordinance 1941-18 adopted by the Governing Body on May 22, 2018, a copy of which is annexed hereto as Exhibit C, (the "Ordinance") the Governing Body approved the long term tax exemption and execution of this Agreement; and

WHEREAS, pursuant to the RAB Law, specifically N.J.S.A. 40A:12A-68, the Annual Service Charge (as such term is defined herein) shall, upon the recordation of this Agreement and the Ordinance, constitute a municipal lien on the Land and the Project within the meaning of Applicable Law; and

WHEREAS, pursuant to and in accordance with the provisions of the RAB Law, specifically N.J.S.A. 40A:12A-65 and 67(a), the Borough may issue Bonds (as defined herein) in order to finance certain costs in the Redevelopment Area in accordance with the terms and provisions of a "Bond Resolution" (the "Bond Resolution"), to be dated the first day of the month in which the Bonds are issued, by and among the Borough, the Entity and the paying agent named therein (the "Paying Agent"); and

WHEREAS, pursuant to the terms of this Agreement, and the Bond Resolution, the Annual Service Charge, as such term is defined herein, shall be pledged to the payment of the principal of, redemption premium, if any, and interest on the Bonds; and

WHEREAS, prior to, and as conditions precedent to, the issuance of any and all of the Bonds and in accordance with all applicable law, including without limitation, N.J.S.A. 40A:12A-29(a)(3) and N.J.S.A. 40A:12A-67(g), (i) the Local Finance Board in the Division of Local Government Services in the Department of Community Affairs (the "Local Finance Board") will have issued all necessary statutory findings and approvals, pursuant to a resolution duly adopted at a meeting of the Local Finance Board, and (ii) the Governing Body will have adopted a resolution authorizing the issuance of the Bonds and the Bond Resolution (the "Bond Resolution"); and

WHEREAS, the Borough and the Entity have reached agreement with respect to, among other things, the terms and conditions relating to the Annual Service Charge and desire to execute this Agreement; and

WHEREAS, the Entity has represented, and the Borough has determined, that the assistance provided to the Project pursuant to this Agreement will be a significant inducement for the Entity to proceed with the Project and the tenant to locate its business in the Project; and

WHEREAS, pursuant to this Agreement, the Borough and the Entity desire to set forth in detail their mutual rights and obligations with respect to the Long Term Tax Exemption, payment of the Annual Service Charge by the Entity, and the issuance of the Bonds and provision for repayment thereof through the Annual Service Charge; and

WHEREAS, the Governing Body has reviewed the Application and has made the following findings:

A. **Benefits of the Project v. Costs.**

i. The development and construction of the Project as set forth in the Redevelopment Plan will be beneficial to the overall community; will achieve certain of the goals and objectives of the Redevelopment Plan; will help revitalize the Redevelopment Area; will improve the quality of life for the community; will serve as a catalyst for further private investment in the Redevelopment Area and will enhance the economic development of the Borough.

ii. It is anticipated that the development of the Project will create approximately 25 construction jobs over the duration of the construction of the Project, as well as approximately 75 full-time permanent jobs in connection with the operation of the Project.

iii. The Project will require nominal municipal services and have no impact on the school system. Pursuant to this Agreement, the Project is projected to generate revenue for the Borough in the aggregate amount of approximately $3,600,000.00 for the term of this Agreement. The Borough's authorized officers and employees have determined that the benefits to the Borough accruing as a result of the Project, including the revitalization of the Redevelopment Area, and the generation of jobs as described above, will substantially outweigh the nominal costs to the Borough resulting from the long term tax exemption granted herein.

B. **Importance of Long Term Tax Exemption.**

The Governing Body's approval of the Long Term Tax Exemption set forth herein is essential to the success of the Project because it provides the Borough with a competitive alternative to the other locations being considered by the operators/owners of the Project without which the Project would not be undertaken. This Agreement is critical to the decision of the owner/operator of the Project to construct and operate such facility in the Borough. As a result, in the current real estate marketplace, the rent likely to be achieved by this Project are not sufficient to pay for the costs of the construction and the payment of full taxes.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein, and for other good and valuable consideration, the Parties to this Agreement mutually covenant and agree as follows:

ARTICLE I- GENERAL PROVISIONS

Section 1.1 Governing Law

This Agreement shall be governed by the provisions of the Exemption Law, the Redevelopment Law, the Ordinance, the RAB Law, and all other Applicable Laws, as defined below. It is expressly understood and agreed that the Borough relied upon the facts, data, and representations contained in the Application in its granting of the Long Term Tax Exemption and the Application is hereby incorporated into this Agreement by reference.

Section 1.2 General Definitions and Construction

The recitals and Exhibits to this Agreement are hereby incorporated by reference herein as if set forth at length. Unless specifically provided otherwise or the context otherwise requires, when used in this Agreement, the following terms and phrases shall have the following respective meanings:

i. **Acts** - Shall have the meaning specified in the recitals.

ii. **Administrative Fee** - Shall have the meaning specified in Section 4.8 hereof.

iii. **Agreement** - Shall have the meaning specified in the preamble.

iv. **Allowable Net Profit (also referred to as "ANP")** - The amount arrived at by applying the Allowable Profit Rate pursuant to the Exemption Law.

v. **Allowable Profit Rate (also referred to as "APR")** - The allowable profit rate as defined in N.J.S.A. 40A:20-3(b).

vi. **Annual Audited Statement** - A complete financial statement outlining the financial status of the Project, which shall also include a computation of Net Profit, Allowable Net Profit, and Annual Gross Revenue, prepared annually by the Entity's certified public accountant. The contents of each Annual Audited Statement shall be prepared in conformity with Generally Accepted Accounting Principles, the Exemption Law, and this Agreement.

vii. **Annual Gross Revenue** - Annual gross revenue of the Entity equal to the total rent received by Entity from the Project (excluding rent related to real estate taxes, utilities, insurance and other common area charges).

viii. **Annual Service Charge** - The total annual amount that the Entity has agreed to pay for services supplied to the Project, which sum is in lieu of any taxes on the Improvements pursuant to the Exemption Law.

ix. **Applicable Law** - Any and all federal, state and local laws, rules, regulations, rulings, court orders, statutes and ordinances applicable to the Project, the Redevelopment Area, the Long Term Tax Exemption, the Annual Service Charge, or the Bonds.

x. **Application** - Shall have the meaning specified in the recitals.

xi. **ASC Commencement Date** - The Effective Date.

xii. **Bond Resolution** - Shall have the meaning specified in the recitals.

xiii. **Bonds** - Shall mean a $30,000.00 principal amount of 30 year, non-recourse redevelopment area bonds bearing interest at 0% per annum issued by the Borough pursuant to the RAB Law and Bond Resolution.

xiv. **Borough** - Shall have the meaning specified in the preamble.

xv. **Borough Share** **-** Shall mean the Annual Service Charge amount as calculated in accordance with this Financial Agreement less the amount paid for the County Share and the Debt Service Charges.

xvi. **Certificate of Occupancy** - A temporary or permanent certificate of occupancy issued by the appropriate Borough official, pursuant to N.J.S.A. 52:27D-133, authorizing the occupancy of a building or any portion thereof.

xvii. **County Share** - 5% of the Annual Service Charge collected by the Borough, which the Borough shall remit to the County of Middlesex in accordance with N.J.S.A. 40A:20-12(b)(2)(e).

xviii. **Days** - Whenever the word "Days" is used to denote time, it shall mean calendar days.

xix. **Debt Service Charges** - $1,000.00, plus any fees due under the Bond Resolution, per year payable semiannually as repayment of the Bonds as set forth in the Bond Resolution.

xx. **Default** - A breach or failure of the Borough or the Entity to perform any obligation imposed by the terms hereof, or under the Exemption Law, beyond any applicable grace or cure periods set forth in this Agreement.

xxi. **Effective Date** - The date of issuance for the Bonds.

xxii. **Entity** - The entity specified in the preamble, which shall be qualified as an urban renewal entity under the Exemption Law. Unless the context provides otherwise, it shall also include any permitted Transferee, which shall also be qualified as an urban renewal entity under the Exemption Law, as set forth in Section 9.1 hereof.

xxiii. **Excess Net Profits** - The amount of Net Profits that exceeds the Allowable Net Profits for the applicable accounting period as determined in accordance with the Exemption Law.

xxiv. **Exemption Law** - Shall have the meaning specified in the recitals.

xxv. **Exemption Term** - The period beginning on the ASC Commencement Date and ending on the Termination Date.

xxvi. **Governing Body** - Shall have the meaning specified in the recitals.

xxvii. **Improvements** - Any building, structure, improvement, addition, or fixture permanently affixed to the Land existing or to be constructed and exempt under this Agreement. The Improvements shall consist of the Project.

xxviii. **Land** - Shall mean Block 349, Lot 10 on the tax map of the Borough as further described in Exhibit B.

xxix. **Land Tax Credit** - Shall have the meaning specified in the Section 4.4 hereof.

xxx. **Land Taxes** - The amount of real estate taxes levied on the Land, exclusive of any Improvements related thereto.

xxxi. **Local Finance Board** - Shall have the meaning specified in the recitals.

xxxii. **Long Term Tax Exemption** - The long term tax exemption granted in accordance with the Exemption Law and the RAB Law pursuant to the Ordinance and this Agreement.

xxxiii. **Net Profit** - Annual Gross Revenue less all operating and non-operating expenses and costs of the Entity, all determined in accordance with Generally Accepted Accounting Principles and the provisions of the Exemption Law.

xxxiv. **Ordinance** - Shall have the meaning specified in the recitals.

xxxv. **Party or Parties** - Shall have the meaning specified in the preamble.

xxxvi. **Paying Agent** - Shall have the meaning specified in the recitals.

xxxvii. **Payment Default** - Shall have the meaning specified in the Section 6.3 hereof.

xxxviii. **Project** - Shall have the meaning specified in the recitals.

xxxix. **RAB Law** - Shall have the meaning specified in the recitals.

xl. **Redevelopment Area** - Shall have the meaning specified in the recitals.

xli. **Redevelopment Law** - Shall have the meaning defined in the recitals.

xlii. **Redevelopment Plan** - Shall have the meaning defined in the recitals.

xliii. **Secured Party or Secured Parties** - Shall have the meaning defined in Section 9.3(a) hereof.

xliv. **Security Arrangements** - Shall have the meaning defined in Section 9.3(a) hereof.

xlv. **Termination Date** - The earlier to occur of: (i) 35th anniversary of the execution hereof by both Parties; (ii) the 30th anniversary date of the ASC Commencement Date; or (iii) such other date as this Agreement may terminate pursuant to the terms of this Agreement or pursuant to Applicable Law.

xlvi. **Total Project Cost** - The total cost of developing the Project, as calculated in accordance with N.J.S.A. 40A:20-3(h).

xlvii. **Transfer** - Shall have the meaning specified in Article IX hereof.

xlviii. **Transferee** - Shall have the meaning specified in Article IX hereof.

ARTICLE II - PROJECT AND LAND

Section 2.1 Borough's Findings

Pursuant to the Exemption Law, the Borough finds that, in addition to the findings and determinations set forth in the recitals to this Agreement and incorporated by reference herein, the Long Term Tax Exemption granted pursuant to the Ordinance and this Agreement will benefit the Borough and the community by assuring the success of the redevelopment of the Land, which exhibits the statutorily recognized redevelopment criteria. The benefits of granting the Long Term Tax Exemption will substantially outweigh the costs, if any, associated with the Long Term Tax Exemption. The Long Term Tax Exemption is important to the Borough and the Entity because without the incentive of the Long Term Tax Exemption, it is unlikely that the Project would be undertaken due to the competitive alternatives available in other jurisdictions. The Long Term Tax Exemption is expected to attract an owner/occupant to the Project. The real estate taxes that would otherwise be levied upon the Project would operate as a disincentive to the owner/operator thereof, and would therefore frustrate the objectives and goals of the Redevelopment Plan.

Section 2.2 Approval of Agreement

The Borough hereby approves a Long Term Tax Exemption for Project to be constructed and maintained on the Land in accordance with the terms and conditions set forth herein, the provisions of the Exemption Law, the Redevelopment Law, and other Applicable Law. The Land shall not be exempt.

Section 2.3 Approval of the Entity

The Borough hereby approves of the Entity in reliance upon the Entity's representation that its Certificate of Formation attached to the Application contains all the requisite provisions of law, has been reviewed and approved by the Commissioner of the Department of Community Affairs, and has been filed with, as appropriate, the Department of Treasury, all in accordance with N.J.S.A. 40A:20-5.

Section 2.4 Redevelopment of the Land

The Entity represents and covenants that it will develop and construct the Project in accordance with the terms of the Redevelopment Plan.

ARTICLE III - OWNERSHIP, MANAGEMENT AND CONTROL

Section 3.1 Entity's Representations, Warranties and Covenants

(i) The Entity represents that, upon acquisition of the Land, it shall remain the fee title owner of the Land throughout the development and construction of the Project, subject to its rights of Transfer and other provisions set forth in Article IX hereof.

(ii) To the extent not otherwise set forth herein, those items required by N.J.S.A. 40A:20-9 to be included in this Agreement are set forth in the Application attached hereto as Exhibit A, which is incorporated herein as if set forth at length, and the Entity represents and warranties as to the accuracy of the contents thereof; however, to the extent that a conflict between the Application and this Agreement exists, the language in this Agreement shall govern and prevail.

(iii) After the Termination Date, all restrictions and limitations set forth in this Agreement imposed upon the Entity, the Land, and the Project, excluding (i) the requirement to make payment of any Annual Service Charge then due and owing hereunder, (ii) the requirement to make payment to the Borough of any then due and owing reserves or Excess Net Profit, if applicable, in accordance with Section 7.1 hereof, and (iii) any and all related and available remedies of the Borough or the Paying Agent, shall terminate upon the end of the fiscal year of the Entity in which the expiration of the Long Term Tax Exemption provided for herein occurs, in accordance with N.J.S.A. 40A:20-13, provided however, that the Entity has rendered the Entity's final accounting in accordance with N.J.S.A. 40A:20A-

12.

(iv) Notwithstanding the provision of Section 8.1 hereof, in accordance with the RAB Law, specifically N.J.S.A. 40A:12A-66(a), during any period in which any Bonds remain "outstanding" within the meaning of the Bond Resolution, the provisions of the Exemption Law permitting the Entity to relinquish its status as an Urban Renewal Entity, specifically N.J.S.A. 40A:20-9(g) and N.J.S.A. 40A:20-13, shall be inapplicable, and the Entity shall not relinquish its status as an Urban Renewal Entity during such time period. In addition, the Entity shall have no right to terminate, and shall not terminate, this Agreement while any Bonds remain "outstanding" within the meaning of the Bond Resolution.

ARTICLE IV- TAX EXEMPTION

Section 4.1 Duration of Tax Exemption

The Project shall be exempt from taxation during the Exemption Term.

Section 4.2 Annual Service Charge

In consideration of the Borough granting the Entity the exemption set forth in Section 4.1 hereof, during the Exemption Term, the Entity shall pay an Annual Service Charge equal to 10.5% of Annual Gross Revenue. Nothing contained herein withstanding in no event will the ASC be less than $90,000/yr.

Section 4.3 Payment of the Annual Service Charge

The Entity hereby agrees to pay to the Paying Agent, as described at Section 4.10 hereof, the Annual Service Charge.

Section 4.4 Land Taxes

From and after the Entity's acquisition of the Land, the Entity (and any Transferee, as applicable) shall be obligated to make timely payments of the Land Taxes at all times during the Term of this Agreement. From and after the ASC Commencement Date, the Entity shall be entitled to a credit for the amount, without interest, of the Land Tax payments made in the last four preceding quarterly installments (the "Land Tax Credit") against the next due Annual Service Charge. In any year that the Entity fails to make any Land Tax payments, if and when due and owing, such delinquency shall render the Entity ineligible for any Land Tax Credits against the Annual Service Charge for that year. In addition, the Borough shall have, among this remedy and other remedies, the right to proceed against the Land pursuant to the Tax Sale Law and/or to declare a Default.

Section 4.5 Quarterly Installments

The Annual Service Charge shall be paid in quarterly installments on those dates when ad valorem real estate tax payments on other properties within the Borough are due, subject to adjustment for over payment or underpayment within 30 days after the close of each calendar year.

Section 4.6 Rights and Obligations Related to Long Term Tax Exemption

(i) All Annual Service Charge payments, as the case may be, made pursuant to this Agreement shall be in lieu of taxes and the Borough shall have the rights and remedies of tax enforcement granted to a municipality by Applicable Law, including those of in rem tax foreclosure pursuant to N.J.S.A. 54:5-1, just as if said payments constituted regular real estate tax obligations on other real properties within the Borough.

(ii) If the ASC Commencement Date occurs on a date other than the first day of a quarter, the amount of the Annual Service Charge for such period shall be based on the per diem assessment for such quarter.

Section 4.7 Remittance to County

The Borough shall remit the County Share to the County of Middlesex in accordance with N.J.S.A. 40A:20-12(b)(2)(e).

Section 4.8 Administrative Fee

The Entity (and/or any Transferee or unit owner, as may be applicable from time to time) shall pay to the Borough no later than December 31 of each year an administrative fee (the "Administrative Fee") in an amount equal to 2% of the Annual Service Charge due for that year, which is permitted by N.J.S.A. 40A:20-9.

Section 4.9 Payments During Construction

The Parties agree that conventional property taxes are due from time to time in accordance with Applicable Law prior to the ASC Commencement Date.

Section 4.10 Payments to Paying Agent

At all times during the Term hereof, the Entity (and/or any Transferee or unit owner, as may be applicable from time to time) shall pay all Land Taxes and Annual Service Charges due to the Paying Agent for application in accordance with the Bond Resolution. The Paying Agent shall apply payments of the Annual Service Charge first to the County Share, second to the Borough Share and then to the payment of Debt Service Charges. The Entity (and/or any Transferee or unit owner, as may be applicable from time to time) shall pay the Administrative Fee directly to the Borough.

ARTICLE V - PLEDGE OF ANNUAL SERVICE CHARGE TO BONDS

ARTICLE ISection 5.1 Entity's Consent

The Entity hereby acknowledges, consents and agrees (i) to the amount of the Annual Service Charge and to the liens established in this Agreement, (ii) that it shall not contest the validity or amount of any such lien, and (iii) that its remedies shall be limited to those specifically set forth herein and otherwise provided by Applicable Law.

If any installment of the Annual Service Charge is not paid in accordance with this Agreement on the date and in the full amount scheduled to be paid, the Entity hereby expressly waives any objection or right to challenge the use by the Borough or the Paying Agent of the enforcement of remedies to collect such installment of the Annual Service Charge as are afforded the Borough by law, including the Tax Sale Law, provided however, that in no event shall there be any acceleration of any amounts due and owing to repay the Bonds, and such remedies shall be limited solely to the collection of delinquent and unpaid amounts past due for payment, including interest, penalties and costs of collection provided for by the Tax Sale Law.

ARTICLE II

ARTICLE III Section 5.2 Security for the Bonds

ARTICLE IV

(i) Pursuant to the RAB Law, specifically N.J.S.A. 40A:12A-67(c), and as security for the Bonds, the Annual Service Charge shall be pledged to the repayment of the Bonds.

(ii) Pursuant to the RAB Law, specifically N.J.S.A. 40A:12A-67(c), and other applicable law, the Annual Service Charge shall not be included within the general funds of the Borough. The Borough's pledge and assignment of the Annual Service Charge shall be a limited obligation of the Borough payable to the extent of payments received from the Entity and shall not constitute a general obligation of the Borough. The Borough has no obligation whatsoever to make any payments of the Annual Service Charge to the extent that the Annual Service Charge or any portion thereof is not paid by the Entity.

(iii) It is hereby expressly understood by the Parties that under no circumstances shall the Borough be required to (a) purchase, or otherwise fund, any tax lien, tax sale certificate, or other mechanism for the enforcement of the Annual Service Charge, the sole obligation of the Borough being to undertake the sale of the tax liens in the same manner, and at the same time, as generally applicable for unpaid taxes due and owing to the Borough, subject to all applicable laws (including bankruptcy laws) or (b) make payment of any unpaid Annual Service Charge.

ARTICLE VI- DISPUTE RESOLUTION

Section 6.1 Agreement to Arbitrate

If the Borough or the Entity breaches this Agreement, or a dispute arises between the Parties regarding the terms and provisions set forth herein, then the Parties shall submit the dispute to the American Arbitration Association in the State of New Jersey, to be resolved in accordance with its rules and regulations in such fashion as to accomplish the purposes of the Exemption Law and this Agreement. The costs of arbitration shall be borne equally by the Parties involved in the arbitration. The award rendered by the arbitrator(s) shall be final, and judgment may be entered upon it in accordance with Applicable Law in any court having jurisdiction. Notwithstanding anything to the contrary set forth in this Agreement, and in accordance with Section 4.6(i), above, the Borough shall be entitled to collect any overdue payments of Annual Service Charge in the same manner as it collects overdue payments of generally applicable real estate taxes, and shall not be required to submit such matters to arbitration.

Section 6.2 Covenant to Make Payments

The Entity agrees that the timely payment of the Land Taxes, the Administrative Fee, and the Annual Service Charge to the Borough, all as described herein, as well as continued compliance with the Applicable Laws, are material conditions of this Agreement. The failure to make any of the aforesaid payments in timely fashion shall constitute both a breach of this Agreement and a tax payment delinquency under Applicable Law.

Section 6.3 Notification of Breach Required

Other than with respect to the nonpayment or late payment of all or a portion of the Land Taxes, the Administrative Fee or Annual Service Charge (any of the foregoing a "Payment Default"), the Borough shall notify the Entity in writing of any breach relating to the terms of this Agreement. If the Entity fails to cure a Payment Default within 10 days of its occurrence, or any other breach identified within 30 Days after the actual delivery of such notice by the Borough, or within any additional periods to which the Parties may agree to, in writing, the Borough may move to invalidate the Long Term Tax Exemption upon 30 Days final written notice to the Entity, which shall inform the Entity that the Long Term Tax Exemption shall terminate due to the breach of the terms of this Agreement. With respect to defaults other than Payment Defaults, the Borough shall not unreasonably refuse to grant a reasonable extension of the cure period, not to exceed 90 days after the Notice unless the Borough in its sole discretion shall agree to a longer cure period.

Section 6.4 Borough's Remedies Upon Default

The Borough's remedies upon its declaration of default shall be cumulative and concurrent. No determination under this Agreement shall deprive the Borough of its right to proceed against the Entity for the nonpayment of all or a portion of the Land Taxes, Administrative Fee or Annual Service Charge, as the case may be, including any arrearage that would accrue in the absence of such determination.

Section 6.5 Force Majeure

Neither Party shall be liable to the other for failure to perform its obligations under this Agreement due to causes that are beyond the reasonable control and not substantially due to the fault or negligence of the party seeking to excuse delay or failure of performance of an obligation hereunder by reason thereof, including, but not limited to, declarations of public emergency; acts of nature (as to weather-related events, limited to severe and unusual events or natural occurrences such as hurricanes, tornadoes, earthquakes, and floods); acts of the public enemy; acts of terrorism; acts of war; fire; epidemics; quarantine restrictions; blackouts, power failures, or energy shortages; governmental embargoes; strikes or similar labor action by equipment or material suppliers or transporters, or unavailability of necessary building materials. Notwithstanding the foregoing, the payment of the Land Taxes, Administrative Fee or Annual Service Charge, as the case may be, are Material Conditions of this Agreement which shall not be excused by the occurrence of a Force Majeure event.

ARTICLE VII- LIMITATION ON PROFITS

Section 7.1 Entity's Covenant of Limitation on Profits

During the Exemption Term, the Entity's profits shall be limited, according to the provisions of the Exemption Law and the definitions set forth therein. In accordance with N.J.S.A. 40A:20-15, for any period, taken as one accounting period, commencing on the ASC Commencement Date, and terminating at the end of the last full fiscal year of the Exemption Term, in which the Entity's Net Profits exceed the Allowable Net Profit, the Excess Net Profits shall be paid to the Borough as an additional Annual Service Charge within 120 Days of the close of the Entity's fiscal year.

ARTICLE VIII- TERMINATION OF AGREEMENT AND INSPECTIONS

Section 8.1 Voluntary Termination of the Agreement by Entity

NEITHER THE ENTITY NOR ANY OTHER TRANSFEREE OR PURCHASER MAY TERMINATE THIS AGREEMENT AT ANY TIME WHILE BONDS ARE "OUTSTANDING" WITHIN THE MEANING OF THE BOND RESOLUTION. Once Bonds are no longer "outstanding" within the meaning of the Bond Resolution, the Entity or any Transferee may at any time after the expiration of one year from the ASC Commencement Date, notify the Borough that, as of a certain date designated in the notice, it relinquishes its status as an urban renewal entity under the Exemption Law and that the Entity, or Transferee, has obtained the consent of the Commissioner of the Department of Community Affairs, if required by Applicable Law. As of that date, all of the obligations and requirements contained in this Agreement shall terminate with respect to the Entity or Transferee. Notwithstanding the foregoing, such relinquishment shall not impact the obligation of the Entity or the Transferee, as applicable, to make payment Land Taxes, Administrative Fee or Annual Service Charge, as the case may be, that has accrued up to and including the date of Termination, or the obligation of the Entity or the Transferee, as applicable, to perform the final accounting required by the Exemption Law and Section 8.2 hereof.

Section 8.2 Termination and Final Accounting

Within 90 Days after the Termination Date, whether by affirmative action of the Entity or by virtue of the provisions of the Applicable Law or pursuant to the terms of this Agreement, the Entity shall provide a final accounting and pay to the Borough the reserve, if any, pursuant to N.J.S.A. 40A:20-15, as well as any Excess Net Profits, if any payable as of that date. For purposes of rendering a final accounting, the termination of the Agreement shall be deemed to be the end of the fiscal year for the Entity.

Section 8.3 Taxes After Termination Date

After the Termination Date, the Long Term Tax Exemption shall expire, and the Land and the Improvements constructed thereupon shall thereafter be assessed and conventionally taxed according to Applicable Law as other real property in the Borough.

Section 8.4 Rights of Inspection

Pursuant to a written request, the Entity shall authorize the Borough or its representatives to examine the Entity's contracts, records and documents, related to the

Project. Such examination shall be made during reasonable business hours, in the presence of a member or agent of the Entity. The Parties agree that 10 days written notice shall constitute a reasonable request for inspection. Notwithstanding the foregoing, the Entity may request an extension of time for such examination, up to 10 Days. Except to the extent required by Applicable Law, all information and documentation provided hereunder shall remain confidential and not subject to public disclosure.

ARTICLE IX- TRANSFERS

Section 9.1 Conveyance of Project

As permitted in N.J.S.A. 40A:20-10(a), it is understood and agreed that the Entity may, upon written notice to the Borough, sell the Land or Project in its entirety to another urban renewal entity, qualified and organized under the Exemption Law (hereinafter referred to as a "Transferee"), provided that: (i) the Transferee shall be the owner/operator of the Land and Project; (ii) such Transferee owns no other project subject to the Exemption Law at the time of the transfer, (iii) the Entity is not then in Default of this Agreement or Applicable Law, and (iv) the Transferee assumes the Entity's obligations under this Agreement. Upon a Transferee's assumption of the Entity's obligations under this Agreement, the Long Term Tax Exemption shall continue to the benefit of the Transferee and any of its Transferees.

Section 9.2 Obligations of Entity and Transferee After Conveyance

If the Entity Transfers the Project in its entirety to a Transferee pursuant to and in accordance with Section 9.1 hereof, then the Entity shall be absolutely discharged from any further obligations regarding the Project and shall be qualified to undertake another project pursuant to the Exemption Law. Within 90 Days after the date of a Transfer of the Project in its entirety, the Entity shall pay to the Borough any Excess Net Profits payable to the Borough pursuant to this Agreement and the Exemption Law.

Section 9.3 Collateral Assignment

It is expressly understood and agreed that the Entity has the right, to the extent permitted by the Exemption Law, to encumber and/or assign the fee title to the Land and/or Improvements for purposes of (i) financing the design, development and construction of the Project and (ii) permanent mortgage financing relating to the Project.

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

(b) If the Entity shall Default in any of its obligations hereunder, the Borough shall give written notice of such Default to the Secured Parties and the Borough agrees that, in the event such Default is not waived by the Borough or cured by the Entity, its assignee, designee or successor, within the period provided for herein, before exercising any remedy against the Entity hereunder, the Borough will provide the Secured Parties not less than 15 days from the date of such written notice to the Secured Parties with regard to a Payment Default by the Entity, and 90 days from the date the Entity was required to cure any other Default.

(c) To the extent permitted by the Exemption Law, in the absence of a Default by the Entity, the Borough agrees to consent to any collateral assignment by the Entity to any Secured Party or Secured Parties of its interests in this Agreement and to permit each Secured Party to enforce its rights hereunder and under the applicable Security Arrangement and shall, upon request of the Secured Party, execute such documents as are typically requested by secured parties to acknowledge such consent. This provision shall not be construed to limit the Borough’s right to payment from the Entity, nor shall the priority of such payments be affected by the Secured Party exercising its rights under any applicable Security Arrangement.

ARTICLE X- ENTITY'S COVENANTS AND REPRESENTATIONS

Section 10.1 Management and Operation

Subject to its rights to Transfer pursuant to Section 9.1 hereof, the Entity represents and covenants that it will own the Project.

Section 10.2 Computation of Gross Revenue

The Entity shall calculate the Annual Gross Revenue in accordance with the Exemption Law and this Agreement and the computation of Annual Gross Revenue shall be shown on the Entity's Annual Audit Statement.

Section 10.3 Annual Audit Report

For so long as the Entity owns the Project and within 90 Days after the close of each fiscal or calendar year (depending on the Entity’s accounting basis) that this Agreement shall continue in effect, the Entity shall submit to the Mayor of the Borough, the Governing Body and the Borough Clerk, its Annual Audited Statement for the preceding fiscal or calendar year in accordance with the Exemption Law. The report shall clearly identify and calculate the Net Profit for the Entity during the previous fiscal year. The Entity assumes all costs associated with preparation of the Annual Audited Statements.

Section 10.4 Total Project Cost Audit

Within 90 days after a final Certificate of Occupancy is issued for the Project, the Entity shall submit to the Mayor and Governing Body, an audit of Total Project Cost, certified as to actual construction costs by the Entity’s architect.

ARTICLE XI - MISCELLANEOUS PROVISIONS

Section 11.1 Governing Law

This Agreement shall be governed by the provisions of Applicable Law including but not limited to the Exemption Law.

Section 11.2 Oral Representation

Neither Party hereto has made any oral representation that is not contained in this Agreement. This Agreement and the Application, including all of the Exhibits attached and annexed thereto, constitute the entire Agreement by and between the Parties.

Section 11.3 Modification

This Agreement shall not be amended, changed, modified, altered or terminated, other than as may be set forth herein, without the written consent of both of the Parties hereto, provided however, that notwithstanding anything contained herein to the contrary, no modification or amendment to this Agreement shall be effective, or otherwise have any force and effect, unless permitted by, or otherwise provided for in, the Bond Resolution or with the express written consent of the Paying Agent.

Section 11.4 Notices

All notices required hereunder shall be sent by certified mail, return receipt requested, or by recognized overnight courier, with proof of delivery, addressed as follows:

i) When sent by the Borough to the Entity:

Midmarket Urban Renewal, LLC
c/o Middlesex Retail Fund, LLC
400 South Avenue
Suite 10
Middlesex, New Jersey 08846

With a copy to:

Joseph P. Baumann, Jr., Esq.
McManimon, Scotland & Baumann LLC
75 Livingston Avenue, Second Floor
Roseland, New Jersey 07068

ii) When sent by the Entity to the Borough:

Borough of Middlesex
1200 Mountain Avenue
Middlesex, New Jersey 08846
ATTN: Mayor Ronald J. DiMura

With a copy to:

Sean P. Duane, Esq.
McCarter & English, LLP
100 Mulberry Street, Four Gateway Center
Newark, New Jersey 07102

In addition, if the Entity delivers formal written notice to the Borough in accordance with this Agreement, of the name and address of Entity's mortgagee, then the Borough shall provide such mortgagee with a copy of any notice required to be sent to the Entity. Any notice given by an attorney for a Party shall be effective for all purposes.

So long as any Bonds are outstanding, the Paying Agent shall receive copies of all notices given hereunder.

Section 11.5 Severability

If any term, covenant or condition of this Agreement 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 Applicable Law.

If any portion of this Agreement shall be judicially declared to be invalid and unenforceable and provided that a default has not been declared pursuant to this Agreement, the Parties shall cooperate with each other to take the actions reasonably required to restore the Agreement in a manner contemplated by the Parties, including, but not limited to the authorization and amendment of this Agreement in a form reasonably drafted to effectuate the original intent of the Parties.

Section 11.6 Good Faith

The Entity and the Borough agree to act in good faith in all of their dealings with each other.

Section 11.7 Certification

The Borough Clerk shall certify to the Borough Tax Assessor, pursuant to the Exemption Law, that this Agreement entered into by the Borough and the Entity has been entered into and is in effect pursuant to the Exemption Law. The delivery by the Borough Clerk to the Borough Tax Assessor of a certified copy of the Ordinance shall constitute the required certification. Upon the delivery of the certification as required hereunder, the Borough Tax Assessor shall implement the Long Term Tax Exemption and continue to enforce the Long Term Tax Exemption without further certification by the Borough Clerk until the Termination Date. Further, within 10 days of the execution of this Agreement, the Borough Clerk shall provide a copy of the Agreement and the Ordinance authorizing the same to the Middlesex County Counsel and the Middlesex County Director of Finance for informational purposes in accordance with N.J.S.A. 40A:20-12.

Section 11.8 Exhibits

This Agreement in its proposed form appears as an attachment to the Application. This Agreement along with each Exhibit attached and annexed hereto is incorporated into the Application.

Section 11.9 Recording

Upon the Effective Date, this entire Agreement and the Ordinance shall be filed and recorded with the Middlesex County Clerk by the Borough, at the Entity's expense, such that this Agreement and the Ordinances shall be reflected upon the land records of the County of Middlesex as a municipal lien upon and a covenant running with the Land, including any Improvements related thereto, and same may be discharged by the Entity or the Borough upon the Termination Date.

Section 11.10 Counterparts

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

Section 11.11 Estoppel Certificate

Within 30 days following written request therefor by the Entity, or any mortgagee or other party having an interest in the Project, the Borough shall issue a signed estoppel certificate in reasonable form stating that (i) this Agreement is in full force and effect, (ii) to the best of the Borough's knowledge, no default has occurred under this Agreement (nor any event which, with the passage of time and/or the giving of notice would result in the occurrence of a default) or stating the nature of any default and (iii) stating any such other reasonable information as may be requested.

[Signature Page Follows]

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

MIDMARKET URBAN RENEWAL LLC,
a New Jersey limited liability company

By: ________________________________
Name: Massimo Pinelli
Title: Managing Member

ACKNOWLEDGEMENT

STATE OF)
) SS.:
COUNTY OF MIDDLESEX)

Be it remembered that on the ___ day of _______________, 2018, ____________ personally appeared before me, and this person acknowledged under oath, to my satisfaction that:

(a) he is the ______ of Midmarket Urban Renewal LLC, the limited liability company named as Entity in the attached Agreement;

(b) he is authorized to execute the attached Agreement on behalf of the Entity;

(c) he executed the attached Agreement on behalf of and as the act of the Entity; and

(d) the attached Agreement was signed and made by the Entity as its duly authorized and voluntary act.

____

BOROUGH OF MIDDLESEX

____

Ronald J. DiMura, Mayor

ACKNOWLEDGEMENT

STATE OF NEW JERSEY)
) SS.:
COUNTY OF MIDDLESEX)

Be it remembered that on the ____, day of _______________, 2018, Ronald J. DiMura personally appeared before me, and this person acknowledged under oath, to my satisfaction that:

(a) he is the Mayor of the Borough of Middlesex, New Jersey, the Borough in the attached Agreement;

(b) he is authorized to execute the attached Agreement on behalf of the Borough;

(c) he executed the attached Agreement on behalf of and as the act of the Borough; and

(d) the attached Agreement was signed and made by the Borough as its duly authorized and voluntary act.

____

EXHIBIT A - TO AGREEMENT
APPLICATION

EXHIBIT B - TO AGREEMENT
LAND DESCRIPTION

EXHIBIT C- TO AGREEMENT
ORDINANCE

RESULT:	**FIRST READING [5 TO 0]**	**Next: 5/22/2018 7:00 PM**
MOVER:	Dan Parenti, Council Member	
SECONDER:	Robert Schueler, Council President	
AYES:	Dotey, Parenti, Kaplan, Schueler, Mikolajczyk	
RECUSED:	Madden	

ADJOURNMENT

The next Regular Meeting is May 8, 2018

Respectfully yours,

Kathleen Anello, RMC
Borough Clerk