Borough of Middlesex

Mayor and Council Special Meeting

~ Minutes ~

1200 Mountain Ave
Middlesex, NJ

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

Tuesday, May 29, 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 A SPECIAL MEETING NOTICE TO THE STAR LEDGER, COURIER NEWS AND HOME NEWS AND POSTED AT BOROUGH HALL AND ON THE BOROUGH WEBSITE ON MAY 24, 2018.

SALUTE TO FLAG

ROLL CALL

Mayor Ron DiMura
Council Member Kevin Dotey
Council Member Dan Parenti
Council Member Sean Kaplan
Council Member John Madden
Council President Robert Schueler
Council Member Jack Mikolajczyk

Also Present:
Brandon Goldberg Administrator
Aravind Aithal Attorney

Redevelopment Attorney Michael Baker was also present at the meeting.

ORDINANCE(S) FOR PUBLIC HEARING AND FINAL ADOPTION

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 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 Agre**e**ment 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 - See Attached to the Financial Agreement

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 A

REDEVELOPMENT AGREEMENT

BY AND BETWEEN

BOROUGH OF MIDDLESEX, NEW JERSEY,

as the Redevelopment Entity

and

MIDMARKET URBAN RENEWAL LLC,

as the Redeveloper

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THIS AGREEMENT (the "**Agreement**"), dated as of May __, 2018 by and between the **BOROUGH OF MIDDLESEX**, a municipal corporation of the State of New Jersey, with offices at 1200 Mountain Avenue, Middlesex, New Jersey 08846, acting in the capacity of a redevelopment entity pursuant to the provisions of the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq., as amended and supplemented (the "**Redevelopment**

Law") and its respective successors and assigns (the "**Borough**"), and **MIDMARKET URBAN RENWAL, LLC**, a New Jersey limited liability company, with offices located at 400 South Avenue, Suite 7-10, Middlesex, New Jersey 08846 and its successors and assigns (the "**Redeveloper**" and, together with the Borough, the "**Parties**").

RECITALS:

WHEREAS, the Redevelopment Law provides a process for municipalities to participate in the redevelopment and improvement of areas in need of rehabilitation; and

WHEREAS, in full compliance with all applicable provisions of the Redevelopment Law, the Borough designated certain properties, including the Property (defined below) as an "area in need of redevelopment"; and

WHEREAS, on September 18, 2007, in full accordance with all applicable provisions of the Redevelopment Law, the Borough duly adopted the Lincoln Boulevard Redevelopment Plan, as amended (collectively, the "**Redevelopment Plan**"); and

WHEREAS, the Redeveloper is the contract purchaser of property identified as Lot 10 in Block 349 on the Official Tax Map of the Borough, commonly known as 242 Lincoln Boulevard (the "**Property**"); and

WHEREAS, in furtherance of the redevelopment of the Property, it is the desire of the parties to enter into this Agreement; and

WHEREAS, the parties also intend to enter into a financial agreement (the "**Financial Agreement**") pursuant to which the Redeveloper will make payments to the Borough (the "**Annual Service Charge**"), in the amounts and at the times set forth in the Financial Agreement; and

WHEREAS, pursuant to the Redevelopment Area Bond Financing Law, *N.J.S.A*. 40A:12A-64 *et seq*. (the "**RAB Law**"), a municipality may issue bonds to finance redevelopment projects pursuant to a redevelopment plan within an area in need of redevelopment, which bonds may be secured by an annual service charge; and

WHEREAS, as an inducement to the Redeveloper to construct the Project (as defined herein), and in furtherance of the purposes of the Redevelopment Law and the RAB Law, the Borough intends to issue a Non-Recourse Redevelopment Area Bond (Lincoln Boulevard Project), in the principal amount of $30,000, in one series (the "**RAB Bond**"), which RAB Bond shall be secured by a pledge of the Annual Service Charge in the amount of $1,000 per year for each year in which the Annual Service Charge is paid in full; and

WHEREAS, on May 22, 2018, the Borough Council duly adopted i) a resolution authorizing the execution and delivery of this Agreement and designating the Redeveloper as the redeveloper of the Property, subject to the execution and delivery of this Agreement by the Redeveloper and ii) an Ordinance authorizing execution of the Financial Agreement; and

NOW, THEREFORE, for and in consideration of the mutual promises, representations, covenants and agreements contained herein and the undertakings of each Party to the other

and such other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound hereby and to bind their successors and assigns, do mutually promise, covenant and agree as follows:

ARTICLE 1

DEFINITIONS AND INTERPRETATIONS

SECTION 1.1 - Definitions. Except as expressly provided herein to the contrary, all capitalized terms used in this Agreement shall have the following meanings:

"Affiliate" means with respect to any Person, including without limitation, the Redeveloper, any other Person directly or indirectly controlling or controlled by, or under direct or indirect common Control with such Person.

"Agreement" means this Agreement, as the same may be amended or supplemented from time to time in accordance with its terms.

"Applicable Law" means any statute, law, constitution, charter, ordinance, resolution, judgment, order, decree, rule, regulation, directive, interpretation, standard or similarly binding authority which, in any case, shall be enacted, adopted, promulgated, issued or enforced by any Governmental Authority, and/or court of competent jurisdiction that relates to or affects the Parties or either of them, the Project Area, the Project Improvements, or any portion thereof, the performance by the Parties of their respective obligations or the exercise by the Parties of their respective rights under this Agreement, including without limitation, the Municipal Land Use Law and the Redevelopment Law.

"Borough" has the meaning given in the Recitals.

"Borough Authorized Representative" means the Mayor, Clerk, Chief Financial Officer, Construction Code Official or any such other officer, agent, representative or employee of the Borough as the Borough Council may reasonably determine.

"Borough Code" shall mean the Code of the Borough, setting forth and including the rules, regulations, resolutions and ordinances of the Borough, as required to be maintained by the Borough in accordance with Applicable Law.

"Borough Council" means the governing body of the Borough.

"Borough Covenants" shall have the meaning given in Section 3.2 hereof.

"Borough Enforcement Action" shall have the meaning given in Section 9.3(a) hereof.

"Borough Event of Default" means, with respect to the Borough, an Event of Default, as such term is defined in Section 9.1 hereof.

"Borough Indemnified Parties" means the Borough and its officers, elected officials, employees, agents and consultants.

"Certificate of Completion" means a certificate or certificates certifying that: (a) the Project Improvements or any phase thereof as may be applicable have been Completed in accordance with the Governmental Approvals; (b) other facilities as required by any Governmental Approvals to achieve Substantial Completion and commence occupancy of a

particular phase or portion of the Project Improvements has been acquired, constructed or improved in accordance with the Governmental Approvals and all costs and expenses incurred in connection therewith have been paid or adequate security otherwise posted; and (c) a Certificate of Occupancy, if required, and any other permissions required, if any, of governmental authorities or agencies for the occupancy and use of all portions of the Project Improvements or Completed phase for the purposes contemplated by this Agreement have been obtained or Redeveloper has performed its duties and obligations under this Agreement with respect to all or a portion of the Project Improvements and certified that the Project Improvements, or any portion thereof, have been Completed. The Borough recognizes and consents to the fact that the Project and the Project Improvements may be developed and constructed in phases and that the Redeveloper shall be entitled to a Certificate of Completion for any phase of the Project or Project Improvements that has been Completed in accordance with the Government Approvals.

"Certificate of Occupancy" means a temporary or permanent Certificate of Occupancy, as such term is defined in the New Jersey Administrative Code, issued with respect to all or a portion of the Project Improvements upon completion of all or a portion of the respective Project Improvements.

"Claim(s)" means any pending or threatened claim, demand, notice, allegation, order, directive, suit, action, cause of action, judgment, lien, demand for arbitration, proceeding, or investigation by any Person.

"Commencement of Construction" means the undertaking by Redeveloper to demolish certain portions of the interior of the building and/or any actual physical construction of any Project Improvements. "Commencement of Construction" shall not mean, however, (i) standard and routine maintenance of the Project Area and any existing structures thereon or (ii) any improvements to any existing structures required by any Governmental Authority or court of competent jurisdiction in order to comply with any existing Applicable Laws.

"Completion" means with respect to the Project Improvements, or any portion thereof, that (a) all work related to the Project Improvements, or a portion thereof, or any other work or actions to which such term is applied has been Substantially Completed, acquired and/or installed in accordance with this Agreement and in compliance with Applicable Laws so that (i) the Project Improvements, or any portion thereof that have been Substantially Completed, as the case may be, may, in all respects, be used and operated under the applicable provisions of this Agreement, or (ii) with respect to any other work or action to which such term is applied, that the intended purpose of such work or action has been Substantially Completed, all as evidenced by the issuance of a Certificate of Occupancy, if required; (b) all permits, licenses and approvals that are required in order that a Certificate of Completion can be issued for the Project Improvements, or any portion thereof that have been Substantially Completed, or such other work or action to which such term is applied are in full force and effect; and (c) such "Substantial Completion" has been evidenced by a written notice provided by the Redeveloper (with respect to the Project Improvements, or any portion thereof), which determination is reasonably acceptable to the Borough.

"Control" (including the correlative meanings of the terms "controlled by" and "under common control with"), as used with respect to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management policies of such Person, whether through the ownership of voting securities or by contract or otherwise.

"County" means the County of Middlesex, a political subdivision of the State, and its permitted successors and assigns.

"Effective Date" means the date entered on the first page hereof.

"Environmental Law or Environmental Laws" means any and all federal, State, regional, and local laws, statutes, ordinances, regulations, rules, codes, consent decrees, judicial or administrative orders or decrees, directives or judgments relating to pollution, damage to or protection of the environment, environmental conditions, or the use, handling, processing, distribution, generation, treatment, storage, disposal, manufacture or transport of hazardous substances, presently in effect or hereafter amended, modified, or adopted including, but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA") (42 U.S.C. sect. 9601-9675); the Resource Conservation and Recovery Act of 1976 ("RCRA") (42 U.S.C. sect. 6901, et. seq.), the Clean Water Act (33 U.S.C. sect. 1251, et. seq.); the New Jersey Spill Compensation and Control Act (the "Spill Act") (N.J.S.A. 58:10-23.11, et. seq.); the Industrial Site Recovery Act, as amended ("ISRA") (N.J.S.A. 13:IK-6, et. seq.); the New Jersey Underground Storage of Hazardous Substances Act (N.J.S.A. 58:10A-21, et. seq.), the New Jersey Water Pollution Control Act (N.J.S.A. 58:I0A-1 et. seq.); the New Jersey Environmental Rights Act (N.J.S.A. 2A:35A-1, et. seq.); and the rules and regulations promulgated thereunder.

"Event of Default" means the occurrence of any Redeveloper Event of Default or Borough Event of Default, as the case may be.

"Force Majeure" is defined in Section 9.2 hereof.

"Foreclosure" is defined in Section 10.4 hereof.

"Governmental Approvals" means all necessary reviews, consents, permits, licenses, leases, easements, grants or other approvals of any kind legally required by any local, county, state or federal governmental or quasi-governmental entity, including without limitation the Borough and the planning and/or zoning board, if applicable, and including approvals for all utility relocations, if any, and services required by the Project.

"Governmental Authority" means any federal, state, county or local agency, department, commission, authority, court or tribunal, and any successor thereto, exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government, and any public utility, with authority over the Project Improvements or the Project Area.

"Hazardous Substance or Hazardous Materials" means any substance, chemical or waste that is listed as hazardous, toxic, a pollutant or contaminant, or dangerous under any Environmental Law.

"Holder" is defined in Section 10.2 hereof.

"Municipal Land Use Law" means N.J.S.A. 40:55D-1 et seq., as amended and supplemented.

"Party(ies)" has the meaning given in the Recitals.

"Permitted Lease" means one or more leases of Completed retail space in the Project Area.

"Permitted Transfers" is defined in Section 6.2 hereof.

"Person" means any individual, sole proprietorship, corporation, partnership, joint venture, limited liability company, corporation, trust, unincorporated association, urban renewal entity, institution, public or Governmental Authority, or any other entity.

"Progress Meeting(s)" is defined in Section 5.1 hereof.

"Project" means the Governmental Approvals and the Project Improvements.

"Project Area" means the Property.

"Project Costs" means all costs of the Project Improvements.

"Project Improvements" means the rehabilitation and renovation of the building for a grocery store and ancillary and related uses including but not limited to a pharmacy, coffee shop and produce packaging, provided however, that "Project Improvements" shall not be deemed to include any improvements to be undertaken by third-party utility providers (i.e. electric, water, cable, telephone, etc.), if the cost of such improvements is not to be paid by the Redeveloper.

"Project Schedule" means the schedule for the design, permitting, financing, construction and completion of the Project by the Redeveloper, as set forth in Section 4.7 hereof.

"Property" has the meaning given in the Recitals.

"Real Estate Investment Trust or REIT" has the meaning Real Estate Investment Trust as referred to in Section 6.2(b).

"Redeveloper" has the meaning given in the Recitals.

"Redevelopment Area" has the meaning given in the Recitals.

"Redeveloper Covenants" is defined in Section 3.1 hereof.

"Redeveloper Enforcement Action" is defined in Section 9.4(a) hereof.

"Redeveloper Event of Default" means, with respect to the Redeveloper, an Event of Default as defined in Section 9.1 hereof.

"Redevelopment Law" has the meaning given in the Recitals.

"Redevelopment Plan" has the meaning given in the Recitals.

"Remaining Portions" is defined in Section 6.2(d) hereof.

"Section" means a section or subsection of this Agreement.

"Section 8.1(a) Indemnified Claim (8.1)(a)" is defined in Section 8.1(a) hereof.

"State" means the State of New Jersey.

"Substantial Completion" means that the requirements set forth in clauses (a) through (c), inclusive, of the definition of "Completion" have been satisfied, with the exception of certain portions of the work relating to the subject Project Improvements as long as the Redeveloper has prepared and delivered to the Borough a "punch list" of items requiring completion or correction in order for the Redeveloper to fully comply with the terms of this Agreement with respect to the subject Project Improvements, (b) "punch list" items have been reasonably agreed to by the Borough, and (c) such "punch list" items are capable of being Completed within six (6) months of the date that Completion is certified, as set forth in the written notice provided under (c) of the definition of Completion, or such later date as is mutually acceptable to the Parties, as long as the public health, welfare or safety is not impaired by such additional time for Completion. Substantial Completion shall be evidenced by issuance of a Temporary Certificate of Occupancy for the Project Improvements, or any portion thereof that has been Substantially Completed.

"Temporary Certificate of Occupancy" means a temporary Certificate of Occupancy issued with respect to the Project Improvements, or a portion thereof upon Substantial Completion of the Project Improvements or such portion thereof.

"Term" means that period of time from the Effective Date of this Agreement until the Borough issues the final Certificate of Completion for the Project Improvements or until the earlier termination of the Agreement in accordance with the terms hereof.

"Third Party Financing" has the meaning given in Section 3.1(b) of this Agreement.

"Transfer" is defined in Section 6.2 hereof.

"Uniform Construction Code or UCC" is defined in Section 4.3(d) hereof.

"Utilities" means water, sanitary sewer and storm water provisions, natural gas, electricity, and voice and data transmission facilities.

"Written Notice and Opportunity to Cure" is defined in Section 9.1(a) hereof.

SECTION 1.2 - Interpretation and Construction. In this Agreement, unless the context otherwise requires:

(a) The terms "hereby", "hereof", "hereto", "herein", "hereunder" and any similar terms, as used in this Agreement, refer to this Agreement, and the term "hereafter" means after, and the term "heretofore" means before the date of delivery of this Agreement.

(b) Words importing a particular gender mean and include correlative words of every other gender and words importing the singular number mean and include the plural number and vice versa.

(c) Words importing Persons mean and include firms, associations, partnerships (including limited partnerships), trusts, corporations, limited liability companies and other legal entities, including public or governmental bodies, as well as natural Persons.

(d) Any headings preceding the texts of the several Articles and Sections of this Agreement, and any table of contents or marginal notes appended to copies hereof, shall be solely for convenience of reference and shall not constitute a part of this Agreement, nor shall they affect its meaning, construction or effect.

(e) Unless otherwise indicated, all approvals, consents and acceptances required to be given or made by any Person or Party hereunder shall not be unreasonably withheld, conditioned, or delayed.

(f) Each right of the Borough to review or approve any actions, plans, specifications, or other obligations of the Redeveloper hereunder shall be made by the Borough official(s) with legal authority to conduct such review or grant such approvals. Any review contemplated by this Agreement shall be made in a timely manner. Upon request of the Redeveloper, the Borough shall inform the Redeveloper of all officials with the required authority.

(g) Unless otherwise indicated, any “fees and expenses” shall be required to be customary and reasonable.

ARTICLE 2

GENERAL REPRESENTATIONS AND WARRANTIES

SECTION 2.1 - Representations and Warranties by Redeveloper. In addition to, but not limited by, any and all other representations and warranties of the Redeveloper contained in this Agreement, the Redeveloper hereby represents and warrants as of the date of this Agreement the following to the Borough for the purpose of inducing Borough to enter into this Agreement and to consummate the transactions contemplated hereby:

(a) The Redeveloper is a limited liability company of the State of New Jersey, is qualified to do business and in good standing under the laws of the State of New Jersey, and has all requisite power and authority to carry on its business as now and whenever conducted, and to enter into and perform its obligations under this Agreement.

(b) The Redeveloper has the legal power, right and authority to enter into this Agreement and the instruments and documents referenced herein to which the Redeveloper is a Party, to consummate the transactions contemplated hereby, to take any steps or actions contemplated hereby, and to perform its obligations hereunder.

(c) This Agreement is duly executed by the Redeveloper, and is valid and legally binding upon the Redeveloper and enforceable in accordance with its terms. The execution and delivery hereof shall not constitute a default under or violate the terms of any indenture, agreement or other instrument to which Redeveloper is a Party.

(d) There is no pending litigation that would prevent the Redeveloper from performing its duties and obligations hereunder or have a material adverse effect on the Redeveloper's financial condition.

(e) There are no suits or legal proceedings of any nature pending against the Redeveloper that would have a material adverse effect on the financial condition of the Redeveloper or its members.

(f) To Redeveloper's knowledge, all materials and documentation submitted by the Redeveloper and its agents to the Borough and its agents were, at the time of such submission, and as of the Effective Date, except to the extent such materials were updated or superseded by subsequent submission to the Borough, materially accurate, and the Redeveloper shall continue to inform the Borough of any material changes in the documentation submitted.

(g) The Redeveloper is the contract purchaser of the Project Area.

(h) The Redeveloper acknowledges that the cost and financing of the Project is the sole responsibility of the Redeveloper.

(i) Redeveloper acknowledges that neither the Borough nor any of its agents, representatives, employees, officers or officials have made any representations or warranties, expressed or implied, except as expressly set forth in this Agreement. Without

limiting the generality of the foregoing, Redeveloper has not relied on any representations or warranties, except those representations, if any, expressly set forth in this Agreement, as to (i) the potential qualification of any of its property, including without limitation, the Project Area or the Project Improvements for any and all benefits conferred by federal, state or municipal laws; (ii) the compliance of any of its property, including without limitation, the Project Area or the Project Improvements in its current or future state, with applicable zoning ordinances and the ability to obtain a variance in respect of any such property's non-compliance, if any, with said zoning ordinances; (iii) the current or future use of any of its property, including without limitation, the Project Area or the Project Improvements, including but not limited to the use of any such property for any retail purpose; (iv) the physical condition, including, but not limited to, the environmental condition, of any of its property, including without limitation, the Project Area or the Project Improvements; and (v) the ability to obtain federal, state, county or municipal approvals for construction or alteration of any improvement on any of its property, including without limitation, the Project Area or the Project Improvements.

(j) The Redeveloper is entering into this Agreement and shall perform all of its obligations hereunder and consummate the transaction(s) contemplated by this Agreement in reliance on and as a result of Redeveloper's own investigations and efforts and at Redeveloper's sole risk. Redeveloper acknowledges that this paragraph was a negotiated part of this Agreement and serves as an essential component of consideration for the same. The Redeveloper has additionally relied upon the Borough’s representations as set forth in this Agreement.

SECTION 2.2 - Representations and Warranties by Borough. In addition to, but not limited by, any and all other representations and warranties of the Borough contained in this Agreement, the Borough hereby represents and warrants the following to the Redeveloper for the purpose of inducing the Redeveloper to enter into this Agreement and to consummate the transactions contemplated hereby:

(a) The Borough has the legal power, right and authority to enter into this Agreement and the Settlement Agreement and the instruments and documents referenced herein to which the Borough is a Party, to consummate the transactions contemplated hereby, and to perform its obligations hereunder.

(b) This Agreement is duly executed by the Borough and is valid and legally binding upon the Borough and enforceable in accordance with its terms. The execution and delivery hereof shall not constitute a default under or violate the terms of any indenture, agreement or other instrument to which the Borough is a Party.

(c) The Borough has acted pursuant to the Redevelopment Law and all other applicable statutes in designating the Redevelopment Area and adopting the Redevelopment Plan.

(d) There is no pending, or to the best of the Borough's knowledge, threatened litigation that would prevent the Borough from performing its duties and obligations hereunder.

(e) The Borough shall not require any off-site infrastructure improvements.

SECTION 2.3 - Mutual Representation. The Borough and the Redeveloper agree that the Project Area and the Project Improvements shall be governed by this Agreement and the Redevelopment Plan.

ARTICLE 3

GENERAL COVENANTS

SECTION 3.1 - Redeveloper Covenants. In addition to, but not limited by, any and all other covenants and agreements of the Redeveloper contained in this Agreement, the Redeveloper hereby covenants and agrees to the following (collectively, "**Redeveloper Covenants**"):

(a) The Redeveloper shall proceed with continuity of purpose and shall use diligent efforts to obtain all Government Approvals necessary for the construction and development of the Project Improvements. The Redeveloper shall construct, improve, operate and maintain the Project Improvements in compliance with all Governmental Approvals, and other laws, ordinances, approvals, rules, regulations and requirements applicable thereto including, but not limited to, such zoning, sanitary, pollution and other environmental safety ordinances, laws and such rules and regulations thereunder as shall be binding upon the Redeveloper under Applicable Laws.

(b) The Redeveloper shall (i) use diligent efforts to obtain Third Party Financing, if necessary, for the Project Improvements, and (ii) subject to the receipt of such Third Party Financing, shall begin and complete construction of the Project and the Project Improvements in accordance with the Project Schedule. All activities performed under this Agreement shall be performed in a good and workmanlike manner. For purposes of this Agreement, Third Party Financing ("**Third Party Financing**") shall mean financing available from a third party on commercially reasonable terms and providing the Redeveloper a commercially acceptable return on the Project.

(c) The Redeveloper shall construct the Project Improvements substantially in accordance with this Agreement, the Redevelopment Law, the Redevelopment Plan, the Governmental Approvals and all other Applicable Law.

(d) The Redeveloper shall complete the Project Improvements, or cause same to be Completed, in accordance with the Project Schedule at its sole cost and expense.

(e) The Redeveloper shall not discriminate against or segregate any Person, or group of Persons, on account of race, color, religion, creed, national origin, ancestry, physical handicap, age, marital status, sex or affectional preference in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Project Improvements, nor shall the Redeveloper establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use of occupancy of tenants, lessees, subtenants, sublessees, or vendees of the Project Improvements.

(f) The Redeveloper shall immediately notify the Borough of any material change in its financial condition from the information provided to the Borough by the Redeveloper that affects the Redeveloper's financial capability to develop, finance and construct the Project Improvements.

(g) The Redeveloper shall not use the Project Area, Project Improvements, or any part thereof, for which a Certificate of Completion has not been issued, in a manner that is inconsistent with the Redevelopment Plan, this Agreement and the Governmental Approvals.

(h) The Redeveloper shall not use the Project Area, Project Improvements, or any part thereof, for which a Certificate of Completion has not been issued, as collateral for an unrelated transaction.

(i) The Redeveloper shall promptly pay and discharge all taxes, payments in lieu of taxes, assessments and other levies imposed upon it, the Project Area and/or the Project Improvements before the same shall become in default.

(j) The Redeveloper shall not enter into any lease of the Project Area, Project Improvements, or any part thereof, other than a Permitted Lease.

SECTION 3.2 - Borough Covenants. In addition to, but not limited by, any and all other covenants and agreements of the Borough contained in this Agreement, the Borough hereby covenants and agrees to the following for the purpose of inducing the Redeveloper to enter into this Agreement and to consummate the transactions contemplated hereby (collectively, the "**Borough Covenants**"):

(a) The Redeveloper is hereby designated as the sole redeveloper of the Project Area and shall have the exclusive right to construct the Project Improvements in accordance with the provisions of the Agreement.

(b) Upon the Completion of the Project Improvements, or any approved phase thereof, and upon issuance of a Certificate of Completion therefor in accordance with the terms hereof, the conditions that were found and determined to exist at the time the Project Area was determined to be in need of rehabilitation shall be deemed to no longer exist with respect to the Project Area and the conditions and requirements of the Redevelopment Law, including without limitation, N.J.S.A. 40A:12A-9, shall be deemed to have been satisfied with respect to the Project Improvements.

(c) Borough agrees to reasonably cooperate with the Redeveloper to further amend the standards contained in the Redevelopment Plan upon request by Redeveloper to accommodate reasonable variations of the Project consistent with the intent of the Redevelopment Plan. Borough will not amend the Redevelopment Plan or adopt other ordinances or regulations that would be inconsistent with the development of the Project in accordance with this Agreement and the Redevelopment Plan and/or the rights or Redeveloper under this Agreement.

(d) Borough agrees not to withhold building permits and/or certificates of occupancy for Project Improvements provided Redeveloper is in substantial compliance with the applicable building codes and development approvals, including all conditions identified therein.

(e) Borough agrees to cooperate with Redeveloper in connection with any and all Governmental Approvals and permits required to construct the Project, including but not limited to execution of such consents as may be required and/or the review of documents in a timely manner. In particular, the Borough agrees to execute the application for permit(s)

from NJ Transit provided Redeveloper pays for, and/or indemnifies the Borough for, all costs related thereto.

SECTION 3.3 - Effect and Duration of Redeveloper Covenants. Except as otherwise set forth herein, it is intended and agreed that the agreements and covenants set forth in Section 3.1 and those elsewhere in this Agreement shall be covenants running with the Project Area until completion of the Project Improvements have been Substantially Completed, and such covenants shall, in any event, and without regard to technical classification or designation, legal or otherwise, and except only as otherwise specifically provided in this Agreement, be binding, to the fullest extent permitted by Applicable Law and equity, for the benefit and in favor of, and enforceable by, the Borough and the Redeveloper against each other, their successors and assigns and every successor in interest therein, and any Party in possession or occupancy of the Project Improvements or any part thereof provided, however, that such covenants shall expire and no longer be enforceable, other than those that shall expressly survive the termination of this Agreement as set forth herein, upon the issuance of the final Certificate(s) of Completion for the Project Improvements.

ARTICLE 4

THE PROJECT

SECTION 4.1 - Designation of Redeveloper.

(a) Exclusive Redeveloper. The Redeveloper, subject to the provisions hereof, is the designated Redeveloper and shall have the exclusive right to carry out the Project. For the Term (as hereinafter defined) of this Agreement, the Borough shall not have the right to designate any Person or entity other than the Redeveloper as a redeveloper within the Project Area nor enter into an Agreement pursuant to Section 7(f) of the Redevelopment Law with such Person or entity. This Agreement shall become effective upon the Effective Date and shall remain in full force and effect from such date until the Project Improvements have been Completed, as evidenced by the issuance of the applicable final Certificate of Completion for the final component of the Project, or until its earlier termination/voidance in accordance with the terms hereof (the "**Term**").

(b) Scope of Undertaking. The services and responsibilities undertaken by the Redeveloper hereunder include all aspects of the design, development, and construction of the Project Improvements, including without limitation, all design, engineering, permitting and administrative aspects, the performance of or contracting for and administration and supervision of all physical work required in connection with the Project Improvements, arrangement for interim and final inspections and any other actions required to satisfy the requirements of any applicable Governmental Approvals, the administration, operation and management, or contracting for the administration, operation and management of the Project Improvements and all aspects of the funding of the Project Improvements, including equity funding and construction, interim and permanent financing, all at the sole cost and liability of the Redeveloper.

SECTION 4.2 - Project Area. The Project Area consists of the surface, subsurface and airspace above the real property described in the definition thereof and upon which the Project Improvements shall be constructed and any rights of way immediately adjacent thereto.

SECTION 4.3 - Project Improvements.

(a) The Project Improvements shall be constructed consistent with the Redevelopment Plan, this Agreement, the Governmental Approvals and all Applicable Laws.

(b) The Project Improvements shall be utilized solely for the purposes more fully set forth in the Redevelopment Plan and this Agreement.

(c) The Redeveloper shall provide for the timely development of the Project Improvements in conformance with the Project Schedule, and will cooperate with the Borough to avoid unreasonable interference with the operation of any existing Utilities. Redeveloper agrees to provide all performance and maintenance bonds and inspection fees as may be required by the Governmental Approvals.

(d) Without limitation, all work on the Project Improvements shall be performed in a good and workmanlike manner, using, where specified, the materials called for under the Governmental Approvals being of such quality as may be specifically required by such Governmental Approvals. All construction shall be in accordance with the Uniform Construction Code, codified at N.J.A.C. 52:3-1 et seq. (the "**UCC**").

SECTION 4.4 - Relocation of Utilities. The Redeveloper acknowledges that local public utility providers may have certain rights with respect to the Project Area and may own certain facilities located therein. The Redeveloper agrees that it is its sole responsibility, at no cost to the Borough (except to extent provided for with issuance of redevelopment area bonds), to undertake the appropriate measures to negotiate with, acquire, relocate or otherwise address the existence of these Utilities and improvements and easements therefor, in order to complete construction of the Project Improvements, as provided by this Agreement, provided that the Borough shall, at no cost to the Borough, provide any appropriate order to accomplish such relocation and assist the Redeveloper in dealing with utilities providers, to the extent permitted by Applicable Law and shall, further, provide access to and connection to all such Utilities under Borough Control.

SECTION 4.5 - Restoration of Project Improvements. The Borough agrees that the Redeveloper shall have the right to restore to its original condition any Project Improvement that may be damaged or destroyed either prior to or after the issuance of a Certificate of Completion, regardless of any change in the Borough's rules, regulations or ordinances. Any such restoration must be consistent with this Agreement, the Governmental Approvals and the Redevelopment Plan.

SECTION 4.6 - Liens. The Redeveloper shall indemnify and hold the Borough harmless from all liens, or claims or rights to enforce liens, against the Project Area, or the improvements arising out of any activities or work performed by (or on behalf of) the Redeveloper or labor or materials furnished to the Redeveloper under this Agreement. Without limitation, in all events, not less than ten (10) days prior to the date on which the Redeveloper will be divested of any interest in the Project Area as a result of any such lien, the Redeveloper shall cause any such lien to be lifted and removed, by bonding or other action and shall provide the Borough proof of same.

SECTION 4.7 - Project Schedule.

(a) The "Project Schedule" shall be as follows:
- (i) Redeveloper shall Commence Construction within thirty (30) days of receipt of a demolition permit and closing on construction financing.
- (ii) Redeveloper shall Complete Construction within fourteen (14) months of Commencement of Construction.

(b) If Redeveloper fails to meet a completion date set forth in the Project Schedule or determines that it will fail to meet a completion date, Redeveloper shall promptly provide notice to the Borough stating: (i) the reason for the failure to complete the applicable task; (ii) Redeveloper's schedule for completing such task; and (iii) the method or methods by which Redeveloper proposes to achieve subsequent tasks by the relevant completion dates. This Section shall in no way limit the right of the Borough under Article 9 or other applicable provisions of this Agreement, or the rights of the Redeveloper under Section 9.2, or other applicable provisions of this Agreement.

SECTION 4.8 - Environmental Compliance and Indemnification.

(a) As between the Redeveloper and the Borough, the Redeveloper agrees and specifically assumes any and all responsibility for the investigation and remediation of all environmental conditions, whether known or unknown, on, under or migrating from the Project Area or anything affected off-site (but not migrating to the Project Area), as may be required by applicable Environmental Laws, and the Redeveloper shall bear all costs for such investigation and remediation of the site. The Redeveloper shall use reasonable efforts to obtain all environmental approvals that may be required for the remediation of the Project Area. Any and all environmental costs shall be the sole responsibility of the Redeveloper.

(b) Without limitation on any obligation to defend and indemnify pursuant to this Agreement, and without limitation to such obligation which the Redeveloper may have as a matter of law, and unless otherwise caused by the Borough, the Redeveloper shall indemnify, defend, release and hold the Borough and its officials and agents harmless against (i) all Claims or alleged Claims and response costs and fines and penalties against the Borough and its officials and agents or the Redeveloper by any Governmental Authority or third party due to the presence of Hazardous Materials on or within the Project Area, or the discharge of Hazardous Materials in excess of any limitations provided by Applicable Law, whenever such Hazardous Materials become present on or within the Project Area, whether prior to or after the Effective Date, (ii) all Claims or alleged Claims against the Borough and its officials and agents by any Governmental Authority or third party for injunctive relief for the abatement of a nuisance or related to the presence of Hazardous Materials on or within the Project Area or the discharge of Hazardous Materials in excess of any limitations provided by Applicable Law, whether prior to or after the Effective Date, and (iii) all Claims or alleged Claims of bodily injury or property damage asserted against the Borough and its officials and agents by third Parties due to the presence of Hazardous Materials which become present on or within the Project Area, or the discharge of Hazardous Materials in excess of any limitations provided by Applicable Law, whenever such Hazardous Materials become present on or within the Project Area whether prior to or after the Effective Date. This indemnity shall survive termination of this Agreement. Nothing herein shall require indemnification of the Borough, its officials and agents with respect to any matter resulting from the intentional or willful acts or omissions of any of the indemnified parties.

SECTION 4.9 - Traffic During Construction. The Redeveloper and the Borough agree that the direction and flow of construction traffic in and around the Project Area is an issue to be addressed during the construction of the Project Improvements. The Redeveloper will use reasonable efforts to minimize the traffic effects of the construction of the Project Improvements upon the surrounding neighborhoods, in consultation with the County of Middlesex Engineering Department.

SECTION 4.10 - Neighborhood Impacts. The Redeveloper acknowledges that the construction of the Project Improvements may have certain impacts on the neighborhoods in the vicinity of the Project Area. Although it is anticipated that the Project Improvements will provide many positive effects on the community, it is also recognized that it may result in some temporary inconveniences during the time that construction takes place and for a short time thereafter. Therefore, the Redeveloper shall take all reasonable steps in order to

minimize any negative effects that construction of the Project may produce. Such steps shall include, but shall not be construed to be limited to:

(a) Provisions to ensure minimal interruptions of utility service;

(b) To the extent reasonably practicable, identification of the least intrusive (to the surrounding neighborhoods) access routes for delivery of construction materials, equipment and personnel;

(c) To the extent reasonably practicable, identification of the least intrusive (to the surrounding neighborhoods) staging area for stockpiling of construction materials, storage of equipment and parking of employee vehicles.

SECTION 4.11 - Cooperation. The Parties shall fully cooperate with each other as necessary to carry out the intent of this Agreement, including entering into additional agreements that may be required, provided however, that such actions and/or agreements shall not result in a material increase or decrease in the Borough's or the Redeveloper's respective obligations hereunder.

SECTION 4.12 - Certificate of Occupancy. Upon completion of the construction of any building(s) or unit(s) that are included as part of the Project Improvements, the Redeveloper shall apply to the appropriate governmental officer or body for a Certificate of Occupancy for that building or unit. The Redeveloper shall take all actions legally required for issuance of a Certificate of Occupancy and the Borough shall process any applications for same in accordance with the UCC. Upon satisfaction of the requirements set forth in the definition of Substantial Completion, the Redeveloper may apply to the appropriate governmental officer or body for issuance of a Temporary Certificate of Occupancy which shall be effective until such time as a permanent Certificate of Occupancy is received. Notwithstanding the issuance of the Temporary Certificate of Occupancy, the Redeveloper shall not be deemed to have Completed the Project Improvements, or any phase or portion thereof, as applicable, until a Certificate(s) of Completion has been issued. As such, until such Certificate(s) of Completion is issued, the provisions of this Agreement remain in full force and effect.

SECTION 4.13 - Certificate of Completion. The completion of the Project Improvements or any Completed phase thereof shall be evidenced by a Certificate of Completion. The Borough shall not unreasonably withhold condition or delay the delivery of a Certificate(s) of Completion. If the Borough determines that the Redeveloper is not entitled to a Certificate(s) of Completion, the Borough shall, at the written request of the Redeveloper, within thirty (30) days of receipt of the written request, provide the Redeveloper with a written statement of the reasons the Borough refused or failed to furnish a Certificate(s) of Completion. If the reason for the refusal is confined to the immediate availability of specific minor finish items, the Borough will issue its Certificate of Completion upon the posting of a bond, to the extent not already covered under any bond(s) already posted and in effect in accordance with the Municipal Land Use Law, or other reasonably satisfactory security, by the Redeveloper with the Borough in an amount representing one hundred twenty five percent (125%) of the value of the work not yet Completed, to the extent of the value of such work.

ARTICLE 5

PROJECT OVERSIGHT

SECTION 5.1 - Progress Meetings. The Parties shall attend and participate in Progress Meetings to report on the status of the Project Improvements and to review the progress under the Project Schedule. Progress Meetings shall commence upon execution of this Agreement and shall occur periodically, but not more often than every three months, upon reasonable request of Borough or the Redeveloper. Progress Meetings shall be held at the Project Area or other convenient location in the Borough or be held by conference call. The agenda for the Progress Meetings shall include, but not be limited to, a status report with regard to Governmental Approval submissions and approvals, construction of Project Improvements, compliance with the Governmental Approvals and the Redevelopment Plan and activities concerning marketing, sales and leasing.

SECTION 5.2 - Access to Project Area. Upon reasonable prior notice and accompaniment by a representative of the Redeveloper (except in the event of an emergency), the Borough Authorized Representatives shall have the right to enter the Project Area to inspect the Project Improvements and any and all work in progress, provided, however, that Borough acknowledges hereby that the Project Area will be an active construction site and the Redeveloper shall not be liable or responsible to the Borough or the Borough Authorized Representatives for injury to Person or Property sustained in connection with such inspections except to the extent that the Redeveloper violates the standard of due care owed to invitees. Such entrance shall be for informational purposes and shall not relieve the Redeveloper from its obligation to implement the Project in accordance with this Agreement. In no event shall the Borough's inspection of the Project Improvements be deemed acceptance of the work or be deemed to waive any right the Borough has under this Agreement.

SECTION 5.3 - Submissions and Presentations to the Borough. Except as may otherwise be set forth in this Agreement, the Redeveloper shall be required to provide the Borough with a copy of each and every application for Governmental Approvals submitted to Governmental Authorities at the same time the Redeveloper submits those applications to such Governmental Authorities.

ARTICLE 6

TRANSFERS

SECTION 6.1 - Prohibition Against Transfers. The Redeveloper recognizes that, in view of (a) the importance of the redevelopment of the Project Area to the general welfare of the community; (b) the assistance to be made available by law and by the Borough on the conditions stated herein, for the purpose of making such redevelopment possible; and (c) the fact that a change in Control of the Redeveloper, or any other act or transaction involving or resulting in a change in Control of the Redeveloper represents a possible Transfer or disposition of the property interest then owned by the Redeveloper, including the Redeveloper's right to redevelop the Project Area; the qualifications and identity of the Redeveloper and its principals are of particular concern to the Borough, no voluntary successor in interest of the Redeveloper shall acquire any interest in or rights or powers under this Agreement except as expressly permitted herein.

SECTION 6.2 - Redeveloper Covenants. As to Transfers, the Redeveloper covenants and agrees that:

(a) Except for Permitted Transfers, prior to the issuance of a Certificate of Completion(s) the Redeveloper shall not, without the prior written consent of the Borough, which consent shall not be unreasonably withheld, conditioned or delayed: (i) effect or permit any change, directly or indirectly, in the Control of the Redeveloper, (ii) assign or attempt to assign this Agreement or any rights herein or in the Project Area or its interest in the Project Improvements, or (iii) make any total or partial sale, lease, transfer or conveyance of the whole or any part of its interest in the Project Area or its interest in the Project Improvements (collectively a "**Transfer**"), provided, however, that these restrictions shall not apply as to any portion of the Project Area pursuant to which a Certificate(s) of Completion has been issued.

(b) The following Transfers are exceptions to the prohibition set forth in the previous subparagraph and, such Transfers shall not require prior approval by the Borough ("**Permitted Transfer"),** the written consent of the Borough to such transactions being deemed given hereby provided written notice of same is given to the Borough: (i) a mortgage or mortgages on the Project Area and Redeveloper's interest in the Project Improvements for the purposes of financing the costs associated with, or incurred in connection with, the acquisition of the Project Area and the development and construction of the Project Improvements; (ii) utility and other development easements; (iii) an assignment and/or Transfer of all or part of the Redeveloper's interest in this Agreement and/or the Project Area, or any portion thereof, to an Affiliate or other entity which is Controlled by Massimo Pinelli; (iv) any contract, agreement or assignment with respect to any of the foregoing transactions; (v) any lease, option agreement or contract of sale for all or any portion of the Project Area and/or Project Improvements with occupancy or closing to occur following issuance of a Certificate of Occupancy or a Certificate of Completion therefore; (vi) the filing of a master deed for the purpose of subjecting the Project Area to the condominium form of ownership, and/or (vii) an assignment and/or Transfer of any portion of the Redeveloper's interest in this Agreement and/or the Project Area to an entity which is, or whose Affiliate is, either (1) a publicly traded company in the business of construction of

retail projects either directly or through its Affiliates, or (2) an entity in the business of construction of retail projects which either directly or through its Affiliates has constructed more than five (5) retail projects in New Jersey. The Redeveloper, Project Area and Project shall remain subject to this Agreement after a Permitted Transfer.

(c) Except as described in the last two sentences of this Section 6.2(c), nothing contained in (i) through (vii) above shall waive, relinquish, release or otherwise relieve Redeveloper of its obligations under this Agreement to Complete the Project Improvements in accordance with the terms of this Agreement, and provided further that (except as expressly provided herein) any violation, breach or contravention of this Agreement caused by or on behalf of, or attributable to, such lessee, or any of its agents, servants, employees, officials, contractors or subcontractors, that would cause or result in an Event of Default hereunder shall be deemed a Redeveloper Event of Default. To the extent additional consent of the Borough is required by law as to any of the aforementioned Permitted Transfers, such consent shall not be unreasonably withheld, delayed or conditioned. Upon the completion of a Permitted Transfer, Redeveloper shall be released from all obligations under the terms and conditions of this Agreement with respect to the subject transferred component, and the subject transferee (i.e., successor in interest) shall be solely responsible for the performance of the Redeveloper's obligation hereunder with respect to the subject transferred component.

(d) Without limiting the foregoing, the Borough expressly agrees that for purposes of Article 9 below, if there has been a Permitted Transfer to a new Redeveloper, and that new Redeveloper is the subject of a Borough Enforcement Action (as hereinafter defined), only the components of the Project Area Controlled by the defaulting Redeveloper pursuant to the Permitted Transfer will be subject to the Borough Enforcement Action. Thus, the Remaining Portions (as hereinafter defined) which are the subject of any exercise of a termination right by the Borough under Article 9, will be limited only to those Remaining Portions for which the defaulting Redeveloper is in fact the Redeveloper (and will in no way impact Remaining Portions Controlled by non-defaulting Redeveloper(s), if any).

SECTION 6.3 - Transfers Void. Any transfer of the Redeveloper's interest in violation of this Agreement shall be null and void *ab initio* and the Borough shall be entitled to seek all remedies available under the terms of this Agreement, including termination of this Agreement. In the event of an alleged violation of this provision by Redeveloper, Borough shall provide a notice of violation to Redeveloper which shall include a thirty (30) day right to cure any alleged violation by Redeveloper prior to the Borough taking any action seeking remedies against Redeveloper. In the absence of specific written consent by the Borough, no such sale, transfer, conveyance or assignment of the Project Area, Project Improvements, or any portion thereof, shall be deemed to relieve the Redeveloper from any obligations under this Agreement.

ARTICLE 7

REDEVELOPER AND BOROUGH FINANCIAL OBLIGATIONS

SECTION 7.1 - Redeveloper's Financial Commitment. The Redeveloper shall use reasonable efforts to obtain the requisite equity and debt financing in an amount necessary to implement and complete the Project Improvements.

SECTION 7.2 - Project Costs. The Redeveloper expressly represents, covenants, warrants and agrees that all costs associated with the development and financing of the Project Improvements are the sole responsibility of the Redeveloper and all Project Costs shall be borne by the Redeveloper.

SECTION 7.3 - Governmental Fees.

(a) Other than as may be set forth in subsection (b) below, the Redeveloper shall pay all fees required under the Borough Code and any other fees required by any other Governmental Authority in connection with the construction and development of the Project Improvements.

(b) The Borough makes no representations or warranties, express or implied, as to the fees, charges or costs of any Governmental Authority or as to any and all such fees required or mandated to be imposed by the Borough upon the Redeveloper by another Governmental Authority other than the Borough.

ARTICLE 8

INDEMNIFICATION; INSURANCE

SECTION 8.1 - Redeveloper Indemnification.

(a) The term "**Section 8.1(a) Indemnified Claim**" shall mean (i) the death of any Person or any accident, injury, loss, and damage whatsoever to any Person or to the Property of any Person which shall occur on the Project Area, Project Improvements, or any part thereof, and which results from any negligence or willful misconduct of Redeveloper, its agents, servants, employees, or contractors in connection with the condition, use, possession, conduct, management, planning, design, construction, installation, financing, leasing or sale of the Project Area and Project Improvements, but excluding damage, liability, costs and expenses to the extent that same may result from the negligence or willful misconduct of the Borough Indemnified Parties, and (ii) any lawsuit or other proceeding commenced by any Person or entity and arising from a Redeveloper Event of Default hereunder, or that arises out of, or is alleged to arise out of, the transactions contemplated by the Financial Agreement and/or the RAB Bond, other than a lawsuit between Redeveloper and the Borough Indemnified Parties. The Redeveloper covenants and agrees to indemnify, protect, defend and hold the Borough Indemnified Parties harmless from and against all liability, losses, damages, demands, costs, claims, lawsuits, administrative proceedings, fines, penalties, and expenses (including reasonable attorneys' fees and court costs) of every kind, character and nature arising from a Section 8.1(a) Indemnified Claim.

(b) The Redeveloper shall defend, indemnify and hold harmless the Borough Indemnified Parties from any claims by any Person or entity (other than Redeveloper) against the Borough Indemnified Parties and any related liability, loss, injury, damage, remediation costs, lawsuits, civil proceedings, fines, penalties, and expenses including reasonable attorney's fees and disbursements which result, wholly or partially, from any bodily injury or property damage that may occur in the Project Area during the term of the Agreement, provided however, that such indemnity shall not include the negligence or willful misconduct of the Borough Indemnified Parties or the actions or inactions of third-parties over whom the Redeveloper does not exercise direct supervisory Control, as long as the Redeveloper maintains and enforces commercially reasonable security measures and commercial liability insurance to protect and ensure against such actions or inactions.

(c) In any situation in which a Borough Indemnified Party is entitled to receive and desires indemnification by the Redeveloper, the Borough Indemnified Party shall give prompt notice of such situation to the Redeveloper. Failure to give prompt notice to the Redeveloper shall not relieve the Redeveloper of any liability to indemnify the Borough Indemnified Party, unless such failure to give prompt notice impairs the Redeveloper's ability to defend such party or results in the loss of insurance coverage for the Claim. Upon receipt of such notice, the Redeveloper shall resist and defend any action or proceeding on behalf of the Borough Indemnified Party, including the employment of counsel reasonably acceptable to the Borough Indemnified Party, and payment of all expenses, and Redeveloper shall have the right to negotiate and consent to settlement. All of the Borough Indemnified Parties shall have the right to employ separate counsel at their own costs in any such action and to participate in the defense thereof. The Redeveloper shall not be liable for

any settlement of any such action effected without its consent, but if settled with the consent of the Redeveloper or if there is a final unappealable judgment against the Redeveloper or the Borough Indemnified Party in any such action, the Redeveloper agrees to indemnify and hold harmless the Borough Indemnified Party from and against any loss or liability by reason of such settlement or judgment. The Redeveloper shall have the right to settle any such action on terms it deems appropriate provided that (i) a full release of the Borough Indemnified Party is obtained, if appropriate, and (ii) no admission of liability by the Borough Indemnified Party is required.

SECTION 8.2 - Survival of Indemnity. The Redeveloper's indemnity provided under Section 8.1 shall survive the termination of this Agreement and the Financial Agreement and the repayment of the RAB Bond.

SECTION 8.3 - Insurance Required. The Redeveloper shall obtain and maintain insurance for the Project as required by its lenders. In addition, the Redeveloper shall provide the following:

(a) Prior to the Commencement of Construction of the Project Improvements, the Redeveloper shall furnish or shall cause to be furnished, to the Borough, certificates of insurance evidencing the issuance of commercial general liability insurance, insuring the Redeveloper against losses, costs, liabilities, claims, causes of action and damages for bodily injury, property damage and personal injury on all property in the Project Area or related to the construction thereon, in the amount of at least Five Million Dollars ($5,000,000.00), with the understanding that the required limits of coverage may be satisfied by any combination of primary, umbrella or excess liability insurances. Such insurance shall include blanket contractual liability coverage. All such policies shall be written to apply to all bodily injury, property damage, personal injury and other covered loss, including, but not limited to, claims of subcontractors, however occasioned, occurring during the policy term, shall be endorsed to add the Borough as an additional insured, and to provide that such coverage shall be primary and that any insurance maintained by the Borough shall be excess insurance only. Such coverage shall be endorsed to waive the insurer's rights of subrogation against the Borough.

(b) Builder's Risk Insurance for the benefit of the Redeveloper, during the term of construction, sufficient to protect against loss or damage resulting from fire, flood, wind, and lightning, the standard extended coverage perils, vandalism, and malicious mischief. The limits of liability will be equal to one hundred percent (100%) of the replacement cost (to current building code) of the insurable elements of the project, including items of labor and materials connected therewith, whether in or adjacent to the structure(s) insured, and materials in place or to be used as part of the permanent construction.

(c) The Redeveloper shall also furnish or cause to be furnished to the Borough evidence satisfactory to the Borough that the Redeveloper carries workers' compensation insurance as required by law, and an employer's liability insurance endorsement with customary limits, and shall be endorsed with a waiver of subrogation clause for the Borough.

(d) Comprehensive Automobile Liability Insurance covering all owned, hired and non-owned vehicles insuring the Redeveloper and the Borough against losses, costs,

liabilities, claims, causes of action and damages for bodily injury and property damage in the amount of at least One Million Dollars ($1,000,000.00) combined single limit coverage.

(e) In the event that the Redeveloper obtains, or is required by any Governmental Authority or Holder to obtain any environmental insurance policy, the Borough shall be named as an additional insured on such policy.

ARTICLE 9

EVENTS OF DEFAULT AND REMEDIES

SECTION 9.1 - Events of Default. Any one or more of the following shall constitute an Event of Default hereunder (with none of the following to be construed as a limitation on any other):

(a) Failure of the Redeveloper or the Borough to observe and perform any covenant, condition or agreement under this Agreement, and continuance of such failure for a period of thirty (30) days, after receipt by the defaulting party of written notice from the non-defaulting party specifying the nature of such failure and requesting that such failure be remedied ("**Written Notice and Opportunity to Cure**"), provided however, if the failure is one which cannot be remedied within the thirty (30) days after such written notice has been given, it shall not be an Event of Default as long as the defaulting party is proceeding with due diligence to remedy the same as soon as practicable but in no event later than one hundred twenty (120) days after such written notice subject to Redeveloper's rights in accordance with Force Majeure provisions of this Agreement. The parties expressly agree that notwithstanding anything to the contrary contained in this Agreement, no condition, failure, breach or event shall be a deemed an Event of Default ("**Event of Default**") under this Agreement until and unless the defaulting/breaching party shall have been given the required Written Notice and Opportunity to Cure which shall be at least thirty (30) days as provided above. The preceding sentence shall control in the event of any conflict with any other provision of this Agreement.

(b) (i) The Redeveloper shall have applied for or consented to the appointment of a custodian, receiver, trustee or liquidator of all or a substantial part of its assets; (ii) a custodian shall have been legally appointed with or without consent of the Redeveloper; (iii) the Redeveloper (A) has made a general assignment for the benefit of creditors, or (B) has filed a voluntary petition in bankruptcy or a petition or an answer seeking an arrangement with creditors or has taken advantage of any insolvency law; (iv) the Redeveloper has filed an answer admitting the material allegations of a petition in any bankruptcy or insolvency proceeding; or (v) the Redeveloper shall take any action for the purpose of effecting any of the foregoing; (vi) a petition in bankruptcy shall have been filed against the Redeveloper and shall not have been dismissed for a period of ninety (90) consecutive days; (vii) an order for relief shall have been entered with respect to or for the benefit of the Redeveloper under the Bankruptcy Code; or (viii) an order, judgment or decree shall have been entered, without the application, approval or consent of the Redeveloper by any court of competent jurisdiction appointing a receiver, trustee, custodian or liquidator of the Redeveloper or a substantial part of its assets and such order, judgment or decree shall have continued unstayed and in effect for any period of ninety (90) consecutive days.

(c) After the Commencement of Construction, the Redeveloper shall abandon or substantially suspend construction work (unless such suspension arises out of an Force Majeure or unless Redeveloper shall still be in compliance with the Project Schedule), and any such abandonment or suspension shall not be cured, ended, or remedied within sixty (60) days after written demand by the Borough to do so.

(d) The filing of a complaint in Foreclosure against the Redeveloper for any financing in connection with the Project Area, Project Improvements or any part thereof, for which the Redeveloper has not properly contested in good faith, or the issuance of a deed in lieu of Foreclosure for the Project Area, Project Improvements or any part thereof.

(e) There is a Transfer in violation of this Agreement.

SECTION 9.2 - Force Majeure. Failure of either Party to perform any of the provisions of this Agreement by reason of any of the following shall not constitute a Default or breach of this Agreement: labor disputes, strikes, picket lines, unavailability of materials, freight and delivery delays, energy shortages, boycott efforts, fires, floods, freezes, extreme weather conditions, accidents, war (whether or not declared), terrorism, riots, acts of God, acts (including, but not limited to, a delay in acting or a failure to act) of government (including without limitation any agency, subdivision or department of the United States of America or the State of New Jersey) or Utilities providers (gas, electric, water, sewer etc.); acts or omissions of other third parties, including litigation by third parties (other than third parties for whom the Party asserting an excusable delay is responsible, such as contractors performing work for that Party); the inability of Redeveloper to secure the required Third Party Financing after utilizing good faith efforts to secure same; the inability of the Redeveloper to perform any obligation under this Agreement as a result of any Borough default; or other causes which are beyond the reasonable control of the Party asserting an excusable delay (the "**Force Majeure**"). Any extension for Force Majeure shall be contingent upon the Party whose performance has been delayed by a Force Majeure event actually requesting, in writing, an extension for Force Majeure and shall be applicable only to the extent that the time lost as a result of the Force Majeure event cannot be avoided.

SECTION 9.3 - Remedies Upon Events of Default by the Redeveloper.

(a) General. If an Event of Default by the Redeveloper occurs, then the Borough may take whatever action (a "**Borough Enforcement Action**") at law or in equity (including the right to seek specific performance and the right to terminate this Agreement, other than as specifically set forth in Section 9.3(b) below), is necessary or desirable to enforce the performance or observance of any rights, remedies, obligations, agreements or covenants of the Redeveloper, as applicable, under this Agreement, subject to any cure provisions afforded the Redeveloper by the terms of this Agreement.

(b) Termination of Agreement. The Borough will have the right to terminate this Agreement (subject to any cure provisions afforded to the Holder in Section 10.2 below) following the occurrence of an Event of Default by Redeveloper with respect to the terms of Section 3.1(d), 9.1(b), 9.1(c), 9.1(d) and/or 9.1(e) of this Agreement. The Borough's election to exercise this termination right shall be made in the Borough's sole and absolute discretion. This termination right shall be exercisable upon notice of sixty (60) days to the Redeveloper and any Holder. In the event such termination right is properly exercised, the

Agreement shall be deemed terminated, and the Redeveloper's designation as the Redeveloper shall automatically (and without further documentation) be deemed terminated, with respect to all portions of the Project Area excepting only (1) portions of the Project Area for which a Certificate of Completion has been issued, and (2) portions of the Project Area which have been conveyed to a third party purchaser after issuance of a certificate of occupancy.

SECTION 9.4 - Remedies Upon Events of Default by the Borough.

(a) General. If an Event of Default by the Borough occurs, then the Redeveloper may take whatever action (a "**Redeveloper Enforcement Action**") at law or in equity (including the right to seek specific performance and the right to terminate this Agreement), is necessary or desirable to enforce the performance or observance of any rights, remedies, obligations, agreements or covenants of the Borough, as applicable, under this Agreement, subject to any cure provisions afforded the Borough by the terms of this Agreement.

(b) Termination of Agreement. The Redeveloper's election to exercise the termination right shall be made in the Redeveloper's sole and absolute discretion. This termination right shall be exercisable upon notice of sixty (60) days to the Borough. The Borough agrees that Redeveloper's termination of the Agreement shall be effective, at the Redeveloper's election, upon the sixtieth (60th) day following proper notice of such termination by the Redeveloper.

SECTION 9.5 - Failure or Delay. Except as otherwise expressly provided in this Agreement, any failure or delay by either Party in asserting any of its rights or remedies as to any default, shall not operate as a waiver of any default, or of any such rights or remedies, or deprive either such Party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

SECTION 9.6 - Remedies Cumulative. Except as otherwise specifically provided in this Agreement, no remedy conferred by any of the provisions of this Agreement is intended to be exclusive of any other remedy and each and every remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. The election of any one or more remedies shall not constitute a waiver of the right to pursue other available remedies. In no event, however, shall a Party be entitled to recover more than its actual damages.

SECTION 9.7 - Return of Escrows. Upon any termination or voidance of this Agreement for any reason whatsoever, all unexpended or unencumbered escrows and other amounts deposited with the Borough under this Agreement shall be promptly returned to Redeveloper.

ARTICLE 10

MORTGAGE FINANCING; RIGHTS OF MORTGAGEE

SECTION 10.1 - Mortgage Financing. Neither the Redeveloper nor any successor in interest to the Project Area, Project Improvements, or any part thereof, shall engage in any financing or any other transaction creating any mortgage or other encumbrance or lien upon the Project Area, Project Improvements, or any part thereof, (other than mortgages or liens for governmental impositions, the loan agreement, any security agreement, the Third Party Financing, and for the purpose of obtaining funds in connection with the acquisition and/or restoration of the Project Area and the construction of the Project Improvements, and such encumbrances required for the development and construction of the Project Improvements), whether by express agreement or operation of law, or suffer any encumbrance or lien to be made or attach to the Project Area, Project Improvements, or any part thereof, except such encumbrances required for the development and construction of the Project Improvements, provided, however, that upon the issuance of a Certificate of Completion, such prohibition shall no longer apply with respect to the corresponding parcel of land and improvements. Redeveloper shall promptly notify the Borough of any encumbrance or lien (other than mortgage liens and liens for governmental impositions) that has been created on or attached to any portion of the Project Area, Project Improvements, or any part thereof, whether by voluntary act of the Redeveloper or otherwise, upon obtaining knowledge or notice of same. The provisions of this Agreement shall not be deemed to grant to Borough the right to approve or review the terms of any such proposed financing.

SECTION 10.2 - Notice of Default to Redeveloper and Right to Cure. Whenever the Borough shall deliver any notice or demand to the Redeveloper with respect to any alleged breach or default by the Redeveloper under this Agreement, the Borough shall at the same time deliver to each Holder a copy of such notice or demand; provided that the Redeveloper has delivered to the Borough a written notice of the name and address of such Holder. Each such Holder shall (insofar as the rights of the Borough are concerned) have the right at its option during (but not prior to) the ninety (90) day period following the expiration of Redeveloper's cure period under this Agreement, to cure or remedy, or to commence to cure or remedy, any such alleged default which is subject to being cured and to add the cost thereof to the debt and the lien which it holds. If such default can only be remedied or cured by such Holder upon obtaining possession, such Holder shall seek to obtain possession of the Project Area (or portion to which its mortgage relates) with diligence and continuity through a receiver or otherwise, and shall remedy or cure such default within ninety (90) calendar days after obtaining possession. If the default cannot with diligence be remedied or cured, or the remedy or cure of which cannot be commenced, within such ninety (90) days period, such Holder shall have such additional time as reasonably necessary to remedy or cure such default with diligence and continuity. Holder ("**Holder**") shall be defined as the lender (or Affiliate thereof) in any financing transaction described in Section 10.1, which lender may hold a mortgage or other such lien as described therein. Holders may be third parties. Holders may also be parties related to the Redeveloper, including parties holding ownership interests in the Redeveloper, or Affiliates of such parties. The parties expressly agree that a Holder may be any Affiliate of the Redeveloper, or any other entity Controlled by, or in Control of, the Redeveloper, or a lessee under a Permitted Lease.

SECTION 10.3 - No Guarantee of Construction or Completion. A Holder shall in no manner be obligated by the provisions of this Agreement to construct or complete the Project Improvements (or portion to which its mortgage relates), or to guarantee such construction or completion; nor shall any covenant or any other provisions be construed so to obligate a Holder. Notwithstanding the foregoing, nothing contained in this Agreement shall be deemed to permit or authorize such Holder to undertake or continue the construction or completion of the Project Improvements, or portion to which its mortgage relates (beyond the extent necessary to conserve or protect the Holder's security, including the improvements or construction already made), without the Holder first having expressly assumed Redeveloper's obligations to the Borough with respect to the Project Improvements (or portion to which its mortgage relates) by written agreement reasonably satisfactory to the Borough and Holder.

SECTION 10.4 - Foreclosure. If a Holder forecloses its mortgage secured by the Project Area, Project Improvements, or any part thereof, (or portion to which its mortgage relates), or takes title to the Project Area, Project Improvements, or any part thereof (or portion to which its mortgage relates) by deed-in-lieu of foreclosure or similar transaction (collectively a "**Foreclosure**"), the Holder shall have the option to either (a) sell the Project Area, Project Improvements, or any part thereof (or portion to which its mortgage relates), as applicable, to a responsible Person reasonably acceptable to Borough, which Person shall expressly assume the obligations of the Redeveloper under this Agreement, as applicable, in accordance with law; and/or (b) otherwise retain such a Person to act as Redeveloper; and/or (c) itself, either directly or through an Affiliate, assume the obligations of Redeveloper under this Agreement, as applicable, in accordance with law. In the event of a Foreclosure and provided the Holder or the purchaser is in compliance with this Agreement, the Borough shall not seek to enforce against the Holder or purchaser of such parcel any of the remedies available to the Borough pursuant to the terms of this Agreement available in connection with the events preceding the Foreclosure. The Holder, or entity assuming the obligations of the Redeveloper as to the parcel affected by such Foreclosure or sale, in that event must agree to complete the Project Improvements in the manner provided in this Agreement, but subject to reasonable extensions of the completion dates set forth in the Project Schedule, and shall submit evidence reasonably satisfactory to the Borough that it has the qualifications and financial responsibility necessary to perform such obligations. Any such Holder, or Person assuming such obligations of Redeveloper, properly completing the Project Improvements shall be entitled to Certificates of Completion in accordance herewith. Nothing in this Agreement shall be construed or deemed to permit or to authorize any Holder, or such other entity assuming such obligations of the Redeveloper, to devote the Project Improvements, or any part thereof, to any uses, or to construct any improvements thereon, other than those uses or improvements provided for or authorized by this Agreement.

ARTICLE 11

MISCELLANEOUS

SECTION 11.1 - Notices. Formal notices, demands and communications between the Borough and the Redeveloper and from the Redeveloper to the Borough (as required herein) shall be deemed sufficiently given if dispatched to the address set forth below by registered or certified mail, postage prepaid, return receipt requested, and shall be deemed delivered upon receipt. Notices may also be sent by a commercial overnight delivery service with packaging tracking capability and for which proof of delivery is available. Notice may also be sent by facsimile. In this case such notice is deemed effective upon delivery. Such written notices, demands and communications may be sent in the same manner to such other addresses as either Party may from time to time designated by written notice.

Copies of all notices, demands and communications shall be sent as follows:

If to the Redeveloper: Midmarket Urban Renewal, LLC
400 South Avenue
Suite 7-10
Middlesex, New Jersey 08846
Attn: Mr. Massimo Pinelli

If to the Borough: Borough of Middlesex
Municipal Building
1200 Mountain Avenue
Middlesex, New Jersey 08846
Attn: Borough Clerk and Redevelopment Attorney

SECTION 11.2 - Non-Liability of Officials and Employees of Borough. No member, official, employee, or consultants of Borough shall be personally liable to the Redeveloper, or any successor in interest, in the event of any default or breach by the Borough, or for any amount which may become due to the Redeveloper or its successor, or on any obligation under the terms of this Agreement, except for any negligence or intentional misconduct by any said official and/or employee.

SECTION 11.3 - Non-Liability of Officials and Employees of Redeveloper. No member, officer, shareholder, director, partner, employee or consultant of Redeveloper shall be personally liable to the Borough, or any successor in interest, in the event of any default or breach by the Redeveloper or for any amount which may become due to the Borough, or its successor, or on any obligation under the terms of this Agreement.

SECTION 11.4 - Estoppel Certificate. Within thirty (30) days following written request therefor by a Party hereto or of any Holder, the other Party shall issue a signed estoppel certificate either stating that this Agreement is in full force and effect and that there is no default or breach under this Agreement (nor any event which, with the passage of time and the giving of notice would result in a default or breach under this Agreement), or stating the nature of the default or breach or event, if any. In the event the estoppel certificate discloses such a default, breach or event, it shall also state the manner in which such default, breach

and/or event may be cured. No more than a reasonable number of estoppel certificates may be requested per year.

SECTION 11.5 - Holder Changes. If a Holder, or prospective Holder, requires a non-substantial or non-material (as determined by the Borough in its reasonable discretion) change in the terms of this Agreement, the Borough shall reasonably cooperate with the Redeveloper and Holder in approving such change, so long as such change, if any, does not modify or change the substantial rights or obligations of the Borough as set forth in this Agreement. In addition, the Borough shall enter into such agreements as a Holder may reasonably require provided that such agreement shall not be inconsistent with the terms of this Agreement (i.e., shall not in any material way increase Borough's responsibilities or decrease its benefits hereunder).

SECTION 11.6 - No Brokerage Commissions. The Borough and the Redeveloper each represent one to the other that no real estate broker initiated, assisted, negotiated or consummated this Agreement as broker, agent, or otherwise acting on behalf of either the Borough or the Redeveloper, and the Borough and the Redeveloper shall indemnify each other with respect to any claims made by any Person, firm or organization claiming to have been so employed by the indemnifying Party, including reasonable and actual attorney's fees.

SECTION 11.7 - Provisions Merged With Deeds. To the extent that the provisions of this Agreement are intended to bind the Redeveloper's assigns and successors, its provisions shall not be merged by reason of any deeds transferring title to any portion of the Project Area from the Redeveloper or any successor in interest, and any such deeds shall not be deemed to affect or impair the provisions and covenants of this Agreement.

SECTION 11.8 - No Consideration For Agreement. The Redeveloper warrants it has not paid or given, and will not pay or give, any third person any money or other consideration in connection with obtaining this Agreement, other than normal costs of conducting business and costs of professional services such as architects, engineers, financial consultants and attorneys. The Redeveloper further warrants it has not paid or incurred any obligation to pay any officer or official of the Borough, any money or other consideration for or in connection with this Agreement.

SECTION 11.9 - Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the permitted successors and assigns of the Parties hereto, and their heirs, executors, and administrators.

SECTION 11.10 - Titles of Articles and Sections. The titles of the several Articles and Sections of this Agreement are inserted for the convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

SECTION 11.12 - Severability of Provisions. If any term or provision of this Agreement or the application thereof shall to any extent be held to be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to circumstances other than those to which it is invalid or unenforceable, shall not be affected thereby, and each other term and provision of this Agreement shall be valid and shall be enforced to the extent permitted by law.

SECTION 11.13 - Modification of Agreement. No modification, waiver, amendment, discharge, or change of this Agreement shall be valid unless the same is in writing, duly authorized, and signed by the Party against which the enforcement of such modification, waiver, amendment, discharge, or change is or may be sought.

SECTION 11.13 - Execution of Counterpart. This Agreement may be executed in one or more identical counterparts and when each Party has executed and delivered at least one counterpart, this Agreement shall become binding on the Parties for the Term and such counterparts shall constitute one and the same instrument. Any Party is authorized to attach multiple originally signed signature pages to a single counterpart without affecting the validity and enforceability of such signature.

SECTION 11.14 - Drafting Ambiguities; Interpretation. In interpreting any provision of this Agreement, no weight shall be given to, nor shall any construction or interpretation be influenced by, the fact that counsel for one of the Parties drafted this Agreement, each Party acknowledging that it and its counsel have had an opportunity to review this Agreement and have contributed to the final form of same.

SECTION 11.15 - Time Period for Notices. All notices to be given hereunder shall be given in writing in conformance with Section 11.1 hereof, and, unless a certain number of days is specified, within a reasonable time.

SECTION 11.16 - Waivers and Amendments in Writing. All waivers of the provisions of this Agreement must be in writing and signed by the appropriate authorities of the Borough and the Redeveloper and all amendments hereto must be in writing and signed by the appropriate authorities of the Borough and the Redeveloper.

SECTION 11.17 - Conflict of Interest. No member, official or employee of Borough shall have any direct or indirect interest in this Agreement, nor participate in any decision relating to the Agreement which is prohibited by law.

SECTION 11.18 - Governing Law. This Agreement shall be governed by and construed and interpreted in accordance with the laws of the State of New Jersey without regard to conflict of laws principles thereunder and no defense given or allowed by the laws of any other state shall be interposed in any action or proceeding hereon unless such defense is also given or allowed by the laws of the State of New Jersey. Either Party may bring any action or proceeding to enforce or arising out of this Agreement in any court of competent jurisdiction. If either Party commences such an action in a court located in the County of Middlesex, State of New Jersey, or any United States District Court in New Jersey, the other Party hereby agrees that it will submit to the personal jurisdiction of such courts and will not attempt to have such action dismissed, abated or transferred on the ground of forum non conveniens, and in furtherance of such agreement, both parties hereby agree and consent that without limiting other method of obtaining jurisdiction, personal jurisdiction over it in any such action or proceeding may be obtained within or without the jurisdiction of any court located in New Jersey and that any process or notice of motion or other application to any such court in connection with any such action or proceeding may be served upon both parties by registered mail to or by personal service at the last known address of the subject Party pursuant to the notice section set forth in this Agreement. Any action or proceeding brought by the either Party arising out of this Agreement shall be brought solely in a court of

competent jurisdiction located in the County of Union, State of New Jersey, or in a United States District Court in New Jersey.

SECTION 11.19 - Withholding of Approvals. All approvals, consents and acceptances required to be given or made by any Person or Party hereunder shall not be unreasonably withheld or delayed unless specifically stated otherwise.

SECTION 11.20 - Hiring of Contractors and Subcontractors. The Redeveloper, its contractors and subcontractors shall comply with all Federal, State, County and Borough statutes, ordinances, rules and regulations relating to affirmative action programs.

SECTION 11.21 - Redeveloper as "Good Neighbor". The Redeveloper will be affirmatively encouraged to become a "Good Neighbor" by participating in neighborhood, Borough civic organizations, community activities, job training programs, educational programs and youth and community service organizations. In addition, the Redeveloper will use best efforts to encourage the employment of qualified Borough residents for available positions to be created by the Project.

SECTION 11.22 - Third Party Beneficiaries. The terms and conditions of the Agreement, express or implied, exist only for the benefit of the parties to this Agreement and their respective successors and assigns, and its successors and assigns. No other Person or entity will be deemed to be a third party beneficiary of this Agreement.

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed, all as of the date first above written.

ATTEST:

BY:_____
Kathleen Anello, RMC
Borough Clerk

BOROUGH OF MIDDLESEX

BY:_____
Ronald J. DiMura
Mayor

WITNESS:

BY:_____
Katherine Wojcik

MIDMARKET URBAN RENEWAL, LLC.

BY:_____
Massimo Pinelli
Managing Member

EXHIBIT B - TO AGREEMENT
LAND DESCRIPTION

Lot 10.0, in Block 349, commonly known as 242 Lincoln Blvd., Middlesex Borough, New Jersey

EXHIBIT C- TO AGREEMENT

ORDINANCE NO. 1941-18

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 PURUSANT 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; and

WHEREAS, the Planning Consultant prepared the Study, titled "Redevelopment Study and Preliminary Investigation Report Lincoln Boulevard - Phase I", dated May 19, 2014; and

WHEREAS, on June 11, 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 June 12, 2014 adopted Resolution 158-14 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 contract purchaser 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 NON-RECOURSE bond (the "**Redevelopment Bond**") pursuant to the terms of the Financial Agre**e**ment 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 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 environmental remediation of the Project Area, 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.

5. 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.

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 RESOLVED 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.

Mayor DiMura opened the Public Hearing on Ordinance No. 1941-18.

Attorney Baker spoke briefly about the Financial Agreement aka Redevelopment Agreement stating that a 30 year Agreement on a property is common in a distressed area. The Agreement is 10 1/2% of the revenue and never less than $90,000/year. The anticipated redevelopment bond for $30,000 will be acted on some time in July after the Local Finance Board approves it. 95% of the $90,000 stay with the Borough and 5% goes to the county. We will be keeping more money in the Borough than through regular taxation. The RAB (Redevelopment Area Bond) law allows the Borough to issue the $30,000 non-recourse bonds. There is no payments made by the Borough nor is the Borough on the hook for the $30,000.

Rich Thomasey, 109 Greene Avenue asked the following questions (1) Why did we switch attorney's tonight?, (2) Can we explain the difference between Rehabilitation and Redevelopment?, (3) Has the Board of Education been involved at all with this project?, Has there been a cost analysis to the community on this project? Mr. Thomasey also noted that under the law it states that use of PILOTS should be done sparingly.

Kevin Walter, 837 Second Street questioned if the supermarket is looking to open in November, when would their first payment begin. He feels it is good to generate some type of revenue but would hate for the town to get into a hole and hopes we'll always get the $90,000 but did note its good to have the supermarket back. Attorney Baker stated that they will make payment after completion and certificate of occupancy is done. First payment in this case would be Feb. 1st.

Bob Edwards, 243 Hazelwood Avenue mentioned that the taxes right now on Block 349 Lot 10 is $144,475.00 and the $55,000 difference from what's now being paid and the $90,000 projected to be paid in taxes would equal about $1.65 million over 30 years.

Mayor DiMura stated once again that if the project doesn't go through the $145,000 in taxes would be appealed. The previous company started an appeal and held back because of the project. Our tax assessor has previously indicated that we would see at minimum a $85,000 hit due to the vacancy and condition of the building and that the tax court will go back three years and we would have to pay this out and then be locked into the tax court decision for the next few years. So those numbers Mr. Edwards is projecting would be different. Mr. Edwards stated that if the building wasn't there, we would have an apartment complex. Mayor DiMura stated he doesn't know who or what would come before the board and/or council or what any developer would ask for. Mayor DiMura does feel we should have a supermarket there and from what he hears from residents they do too.

Mr. Edwards than stated that of the $1.65 million he projected over 30 years with the average taxpayer paying an estimate between $6,000-$8,000 a year it would equate to about 200 residents not paying taxes in that period of time. He also feels that this is a renovation not a rehabilitation or redevelopment.

Mayor DiMura stated again that he feels this is good for the town and that the supermarket will bring more non-residential use into the area. Mayor also stated that the $90,000 minimum the developer agreed to in the agreement means that he is confident that the supermarket owner thinks this will be successful.

Rich Rutkowski, 211 Maple Street had the following questions for the Mayor. (1) Who is "they" when referring to starting the tax appeal on property, the current owner or previous owner?, (2) Who's idea was it to give a $30,000 bond?, (3) Questioned the Mayor's previous statement of real estate booming in town, but in financial agreement it talks to a bad market?, (4) Are they going to issue more bonds or just this one bond?, and (5) Is Council aware of campaign contributions from this developer?

Mayor responded stating that the previous owner started the process for a tax appeal and that the developer requested the $30,000 bond. Mayor DiMura also stated that the real estate market is good in the rest of the borough but not in the redevelopment area. Attorney Baker clarified that this is the only bond being issued.

Councilman Mikolajczyk spoke to the public stating that this is a better deal than an empty building. The developer has four or five of these in this area and the $90,000 figure is the minimum we will receive. Councilman Mikolajczyk agreed with the Mayor that we would lose the tax appeal. He is not a fan of PILOTS and agrees we should use sparingly, but this is a win for us.

Councilman Kaplan stated that this is an incentive for people who live here and will create 180 jobs.

Seeing that there was no further public participation, Mayor DiMura closed the public hearing on Ordinance No. 1941-18.

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

PRIVILEGE OF THE FLOOR

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 137-2018

RESOLUTION OF THE BOROUGH OF MIDDLESEX DESIGNATING MIDMARKET URBAN RENEWAL LLC AS REDEVELOPER AND AUTHORIZING EXECUTION OF REDEVELOPMENT AGREEMENT WITH MIDMARKET URBAN RENEWAL, LLC IN CONNECTION WITH REAL PROPERTY LOCATED IN BLOCK 394, LOT 10.0, COMMONLY KNOWN AS 242 LINCOLN BLVD.

WHEREAS, Midmarket Urban Renewal, LLC ("Redeveloper") is an urban renewal entity qualified to do business under the provisions of the LTTE law and wishes to be designated redeveloper of property identified as Lots 10.0 in Block 349 on the Official Tax Map of the Borough and commonly known as 242 Lincoln Blvd (the "Property"); and

WHEREAS, the Redeveloper has proposed to redevelop the Property by means of the rehabilitation and renovation of the building located on the Property for a grocery store and ancillary and related uses including but not limited to a pharmacy, coffee shop and produce packaging ("Project"); and

WHEREAS, said Project has been reviewed and found to be consistent with the goals of the Borough for redevelopment of the Property; and

NOW, THEREFORE, BE IT RESOLVED, by the Mayor and Council of the Borough of Middlesex, that Midmarket Urban Renewal, LLC is hereby designated as the Redeveloper of the Property; and

IT IS FURTHER RESOLVED that the Borough is hereby authorized to executed the attached Redevelopment Agreement, between the Borough and the Redeveloper in substantially similar form to that document attached hereto as Exhibit A, within 90 days upon execution of a financial agreement between the Borough and Redeveloper.

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

ADJOURNMENT

Respectfully yours,

Kathleen Anello, RMC
Borough Clerk