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successor to Plaza X Urban Renewal Associates, LLC

<p>American Financial Exchange LLC, successor to Plaza X Urban Renewal Associates, LLC,</p> <p>Plaintiff,</p> <p>v.</p> <p>City of Jersey City,</p> <p>Defendant.</p>	<p>SUPERIOR COURT OF NEW JERSEY, LAW DIVISION: HUDSON COUNTY</p> <p>Docket No.: HUD-L-</p> <p style="text-align: center;">COMPLAINT</p>
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American Financial Exchange LLC, successor to Plaza X Urban Renewal Associates, LLC (“Plaintiff” or “Plaza X”), by and through its undersigned counsel, Blank Rome LLP, and by way of Complaint, alleges the following against the City of Jersey City (“Defendant” or “City”):

THE PARTIES

1. American Financial Exchange LLC, successor to Plaza X Urban Renewal Associates, is a New Jersey limited liability company with a principal business address at 1200 17th Street, Suite 2900, Denver, Colorado 80202.

2. The City of Jersey City is a New Jersey municipality with a principal address at 280 Grove Street, Jersey City, New Jersey 07302.

SUMMARY OF THE CASE

3. This is an action to recover tax overpayments in excess of \$800,000, which Plaza X made to the City in connection with a long-term tax exemption agreement. The City agreed to provide the tax exemption as an incentive for Plaza X to spend nearly \$80 million on a 17-story waterfront redevelopment project, which provided a massive economic benefit to the City and its residents—not to mention a dramatic 4486% increase in the tax-assessed value of the Property.

4. Plaza X and the City entered into a series of written agreements to memorialize the long-term tax exemption. Under the agreement, for twenty years Plaza X was required to pay an “Annual Service Charge” in lieu of taxes on its improvements to the property. In addition, Plaza X was required to pay property taxes on the land. In return, the City agreed to credit Plaza X’s land tax payments against the Annual Service Charge.

5. For years, and consistent with the parties' agreement, the City credited Plaza X's land tax payments against the quarterly Annual Service Charge for the third quarter—so that the previous four quarters of land tax payments offset the Annual Service Charge for the third quarter in a given year.

6. Then, fifteen years into the twenty-year agreement, the City suddenly changed course. Rather than issue a credit from the previous four quarters against the third quarter Annual Service Charge, the City began issuing credits on a quarter-by-quarter basis—so that the first quarter 2017 land tax payment was credited against the first quarter 2018 Annual Service Charge, the second quarter 2017 land tax payment was credited against the second quarter 2018 Annual Service Charge and so on.

7. Plaza X's final Annual Service Charge was due and paid in August 2022. But because of the City's new methodology for applying the land tax credit, Plaza X made numerous land tax payments for which there was no Annual Service Charge to apply a credit. All told, Plaza X paid more than \$800,000 in land taxes for which it never received a credit.

8. As described herein, the City is liable to Plaza X for the amount of its uncredited and unreimbursed land tax payments.

9. In addition, in 2021, Plaza X successfully appealed tax-assessed value of the Property but inadvertently paid annual service charges based on the pre-appeal

assessed value. It has therefore overpaid on its annual service charges in excess of \$140,000, for which it has not received a refund.

BACKGROUND

Plaza X Plans to Develop the Property to Revitalize the Jersey City Waterfront.

10. At all relevant times, Plaintiff Plaza X Urban Renewal Associates, LLC (“Plaza X”) has owned a leasehold interest in real property located at Block 15, Lots 35 and 36, more commonly known as “3 Second Street,” in Jersey City, New Jersey (“Property”).

11. The Property is located within the boundaries of the Hudson Exchange Redevelopment Plan Area (“Redevelopment Area”).

12. In 2000, Plaza X sought to build a 17-story building on the Property, with over 500,000 square feet of office and retail space, as well as related parking (“Project”).

13. In August 2000, to facilitate its development of the Project, Plaza X filed an application with the City of Jersey City (“City”) for a long-term tax exemption for the Project pursuant to the New Jersey Long Term Tax Exemption Law, N.J.S.A. § 40A:20-1, *et seq.*

14. On October 25, 2000, the City adopted Ordinance 00-146, which approved Plaza X’s request for a long-term tax exemption for the Project. On

January 25, 2001, the City adopted Ordinance 01-008, which corrected a clerical error with certain dates in Ordinance 00-146.

Plaza X and the City Enter into a Long-Term Tax Exemption Agreement.

15. On November 15, 2000, Plaza X and the City entered into a Financial Agreement and Addendum to Financial Agreement (the “Financial Agreement” and “Addendum,” and collectively the “Agreement”), providing a long-term tax exemption on the Property pursuant to the New Jersey Long Term Tax Exemption Law and municipal ordinance 00-146 (as amended). A copy of the Financial Agreement is attached as Exhibit A and a copy of the Addendum is attached as Exhibit B.

16. The term of the Agreement was for twenty-five years from the adoption of Ordinance 00-146 or twenty years from the date of “Substantial Completion” of the Project, whichever was earlier. *See* Exhibit A, Financial Agreement at § 3.1.

17. Under the Agreement, when the Project attained Substantial Completion, Plaintiff for the next twenty years, was required to pay an “Annual Service Charge,” in lieu of conventional taxes on improvements to the Property.

18. The amount of the Annual Service Charge was subject to periodic adjustments as provided in the Agreement. *See id.* at §§ 4.1-4.2.

19. Also under the Agreement, Plaintiff was required to make quarterly “Land Tax Payments” in the amounts determined by the Tax Assessor and Tax Collector. *See* Exhibit B, Addendum at § 4.4.

20. The Project attained Substantial Completion in 2002, such that Plaza X’s final Annual Service Charge payment was due in August 2022.

21. Importantly, for the duration of the Agreement, the City agreed to provide Plaza X a credit for the amount of its Land Tax Payments against the Annual Service Charge.

22. The mechanics of that credit are even more important. The Agreement provides, in relevant part, that the credit for Plaza X’s Land Tax Payments was to be calculated and issued based on the total of the four previous quarters of Land Tax Payments, as follows:

The Entity is required to pay both the Annual Service Charge and the Land Tax Payments. The Entity is obligated to make timely Land Tax Payments, including any tax on the pre-existing improvements, in order to be entitled to a Land Tax credit against the Annual Service Charge for the subsequent year. **The Entity shall be entitled to credit for the amount, without interest, of the Land Tax Payments made in the last four preceding quarterly installments against the Annual Service Charge. . . .**

See id. (emphasis added).

23. Plaza X, moreover, was required to pay the Annual Service Charge in quarterly installments; and was entitled to receive a credit against the “earliest quarterly payments in each year.” The Agreement thus provides as follows:

The Annual Service Charges are to be paid quarterly under the Agreement. The credits hereunder are to be taken against the earliest quarterly payments in each year until the annual amount of the credit, or appropriate pro rata portion has been recouped in full by the Entity.

See id. at § 4.4(2)(B)(ii).

The City Suddenly Changes Its Credit Methodology in a Way That Deprives Plaza X of Over \$800,000 in Tax Credits.

24. For years, and consistent with the Agreement, the City applied the Land Tax Payment credit from the previous four quarters towards the third quarter Annual Service Charge payment.

25. This means that in Q3 of every year, for fifteen years, the City credited Plaza X for its Land Tax Payments from Q3 and Q4 of the previous year, as well as Q1 and Q2 of the current year (*i.e.*, “the last four preceding quarterly installments”) as illustrated in the following table:

Land Tax Payment	Annual Service Charge Payment	Land Tax Payment Credit Applied
Q3 2015	Q3 2015	Q2 2015 Q1 2015 Q4 2014 Q3 2014
Q4 2015	Q4 2015	N/A
Q1 2016	Q1 2016	N/A
Q2 2016	Q2 2016	N/A

Q3 2016	Q3 2016	Q2 2016 Q1 2016 Q4 2015 Q3 2015
Q4 2016	Q4 2016	N/A
Q1 2017	Q1 2017	N/A
Q2 2017	Q2 2017	N/A
Q3 2017	Q3 2017	Q2 2017 Q1 2017 Q4 2016 Q3 2016
Q4 2017	Q4 2017	N/A

26. However, in 2018 (and following a tax reassessment resulting in a 4486% increase in the tax-assessed value of the Property), the City suddenly changed the mechanics by which it applied the Land Tax credit against the Annual Service Charge.

27. Contrary to the Agreement and the parties’ prior practice, the City began applying the credit on a quarter-by-quarter basis (*i.e.*, not “the last four preceding quarterly installments”); and it also began applying each quarterly credit against the quarterly Annual Service Charge for the following year.

28. This meant that for Q1 2018, the City applied a credit from the Land Tax Payment in Q1 2017, for Q2 2018, the City applied a credit from the Land Tax Payment in Q2 2017, and so on, as illustrated in the following table:

Land Tax Payment	Annual Service Charge Payment	Land Tax Payment Credit Applied
Q1 2018	Q1 2018	Q1 2017
Q2 2018	Q2 2018	Q2 2017
Q3 2018	Q3 2018	Q3 2017

Q4 2018	Q4 2018	Q4 2017
Q1 2019	Q1 2019	Q1 2018
Q2 2019	Q2 2019	Q2 2018
Q3 2019	Q3 2019	Q3 2018
Q4 2019	Q4 2019	Q4 2018
Q1 2020	Q1 2020	Q1 2019
Q2 2020	Q2 2020	Q2 2019
Q3 2020	Q3 2020	Q3 2019
Q4 2020	Q4 2020	Q4 2019
Q1 2021	Q1 2021	Q1 2020
Q2 2021	Q2 2021	Q2 2020
Q3 2021	Q3 2021	Q3 2020
Q4 2021	Q4 2021	Q4 2020
Q1 2022	Q1 2022	Q1 2021
Q2 2022	Q2 2022	Q2 2021
Q3 2022	Q3 2022	Q3 2021

29. The issue finally came to a head when Plaza X’s Annual Service Charge payments ended. Plaza X paid Land Tax Payments for Q3 2021, Q4 2021, Q1 2022, and Q2 2022; and, under the Agreement, its final Annual Service Charge was due and paid in August 2022 (*i.e.*, Q3 2022).

30. But as a result of the City’s change in how the Land Tax Payment credit was applied, Plaza X never received a credit for its Land Tax Payments from Q4 2021, Q1 2022, and Q2 2022, because there were no more Annual Service Charges against which to apply those credits.

31. All told, Plaza X estimates that it is owed in excess of \$800,000 in Land Tax Payment credits, which must either be applied against Plaza X’s Land Tax Charge Payments or reimbursed directly to Plaza X.

32. On August 4, 2022, Plaza X wrote to the City about these issues. The City initially responded and claimed there were certain, unidentified “discrepancies” with Plaza X’s calculations. Eventually, however, the City referred the matter to its Law Department and stopped communicating with Plaza X altogether. On November 30, 2022, Plaza X again wrote to the City requesting a meeting to resolve the issues. The City did not respond to that letter, forcing Plaza X to initiate this lawsuit.

33. In addition, in 2021, Plaza X successfully appealed the tax-assessed value of the Property, resulting in a reduction in the amount of property taxes it owed.

34. However, even after its appeal, Plaza X inadvertently paid annual service charges based on the pre-appeal assessed value of the Property and therefore overpaid on its annual service charges.

35. In October and November of 2022, Plaza X wrote to the City about the overpayment, which totals more than \$140,000, and asked when the City would issue a refund for the overpayment.

36. To date, the City has not refunded Plaza X’s overpayment of the annual service charges.

COUNT ONE

Breach of Contract

37. Plaza X repeats and realleges every preceding Paragraph of the Complaint as if those allegations were set forth fully herein.

38. The Agreement is a valid, binding contract between Plaza X and the City, requiring the City to issue tax credits to Plaza X as set forth therein.

39. Plaza X performed its obligations under the Agreement because, as relevant here, it paid Land Tax Payments and the Annual Service Charge as required by the Agreement.

40. In breach of the parties' contract, the City has failed to apply tax credits for Land Tax Payments against Plaza X's Annual Service Charge payments, totaling in excess of \$800,000; and the City has failed to reimburse Plaza X for those tax credits.

41. As a direct and proximate result, Plaza X has been damaged in an amount to be determined at trial.

WHEREFORE, Plaza X respectfully requests judgment against the City of Jersey City for breach of contract as follows:

- a. Compensatory damages;
- b. Pre- and post-judgment interest;
- c. Attorneys' fees, expenses, and costs of suit; and

d. Other relief as the Court deems equitable and just.

COUNT TWO

Breach of Implied Covenant of Good Faith and Fair Dealing

42. Plaza X repeats and realleges every preceding Paragraph of the Complaint as if those allegations were set forth fully herein.

43. Under New Jersey law, every contract, including the Agreement, contains an implied covenant of good faith and fair dealing, such that parties cannot act in bad faith, dishonestly, with improper motive, or in a way that would otherwise destroy or injure the other party's right to receive the expected benefits of the contract.

44. The Agreement is a valid, binding contract between Plaza X and the City, requiring the City to issue tax credits to Plaza X as set forth therein.

45. Plaza X reasonably expected to receive the full benefit of those tax credits, either in the form of direct credits against the Annual Service Charge or reimbursement for Land Tax Payments.

46. In the final years of the Agreement, the City suddenly and unexpectedly changed the methodology by which it applied tax credits against the Annual Service Charge.

47. As a result, Plaza X was deprived of a principal benefit of the parties' Agreement, namely, tax credits to be applied against the Annual Service Charge.

48. As a direct and proximate result, Plaza X has been damaged in an amount to be determined at trial.

WHEREFORE, Plaza X respectfully requests judgment against the City of Jersey City for breach of the implied covenant of good faith and fair dealing as follows:

- a. Compensatory damages;
- b. Pre- and post-judgment interest;
- c. Attorneys' fees, expenses, and costs of suit; and
- d. Other relief as the Court deems equitable and just.

COUNT THREE

Unjust Enrichment

49. Plaza X repeats and realleges every preceding Paragraph of the Complaint as if those allegations were set forth fully herein.

50. The City received a benefit from Plaza X—namely, Plaza X's redevelopment of the Property and payment of substantial Annual Service Fees and Land Tax Payments.

51. The City also received a benefit from Plaza X in the form of Plaza X's overpayment on its annual service charges, due to Plaza X's successful property tax appeal.

52. Plaza X conferred the foregoing financial and economic benefits on the City under conditions that it reasonably expected to be repaid for its efforts.

53. The City is aware of the benefits Plaza X has conferred on it.

54. The City has retained those benefits under conditions that make its retention without compensation to Plaza X unjust.

WHEREFORE, Plaza X respectfully requests judgment against the City of Jersey City for unjust enrichment as follows:

- a. Compensatory damages, disgorgement, and/or restitution;
- b. Pre- and post-judgment interest;
- c. Attorneys' fees, expenses, and costs of suit; and
- d. Other relief as the Court deems equitable and just.

COUNT FOUR

Accounting

55. Plaza X repeats and realleges every preceding Paragraph of the Complaint as if those allegations were set forth fully herein.

56. In response to Plaza X's letter dated August 4, 2022, the City responded by claiming that it had identified certain "discrepancies" in Plaza X's calculation of the tax credits to which it was owed.

57. Plaza X disputes that the amount of the tax credit and/or reimbursement is in issue; but demands that the City provide an accounting of all payments made

and credits owed pursuant to the parties' Agreement so the parties can engage in an accounting of Plaza X's interests.

58. In addition, Plaza X overpaid on its annual service charges as a result of its successful property tax appeal. Therefore, Plaza X further demands an accounting of the overpayment and amount of the refund to which it is entitled.

WHEREFORE, Plaza X respectfully requests that the City provide a full and accurate accounting of payments and credits under the parties' Agreement so that Plaza X receives full, fair, and adequate compensation for the benefits it conferred on the City pursuant to the Agreement.

Dated: May 19, 2023

s/ Jonathan M. Korn _____

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LLC*

DESIGNATION OF TRIAL COUNSEL

PLEASE TAKE NOTICE that pursuant to R. 4:25-4, Jonathan M. Korn, Esq., is hereby designated as trial counsel on behalf of Plaintiff in this matter.

Dated: May 19, 2023

s/ Jonathan M. Korn

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CERTIFICATION PURSUANT TO RULE 4:5-1

Pursuant to R. 4:5-1(b)(2), the undersigned hereby certifies that, to the best of my knowledge and belief, the matter in controversy is not the subject of any other action pending in any court or of a pending arbitration proceeding, nor is any such action or arbitration proceeding contemplated at this time. At this time, I have no knowledge of any other party that should be joined.

Dated: May 19, 2023

s/ Jonathan M. Korn

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CERTIFICATION OF COMPLIANCE WITH RULE 1:38-7(c)

I hereby certify that confidential personal identifiers have been redacted from documents now submitted to the Court, and will be redacted from all documents submitted in the future, in accordance with R. 1:38-7(c).

Dated: May 19, 2023

s/ Jonathan M. Korn

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EXHIBIT A

ORD
00-146

Rev.11-14-00
Long Term Tax Exemption
N.J.S.A. 40A:20-1, et seq.
(Commercial)

Re: Hudson Street
Approximately 5.4 Acres
Block 15, Lots 35 and 36
Hudson Exchange Redevelopment Plan

PREAMBLE

THIS FINANCIAL AGREEMENT, [Agreement] is made as of this 15th day of November, 2000, by and between **PLAZA X URBAN RENEWAL ASSOCIATES, L.L.C.**, an urban renewal entity formed and qualified to do business under the provisions of the Long Term Tax Exemption Law of 1992, as amended and supplemented, N.J.S.A. 40A:20-1 et seq., having its principal office at 11 Commerce Drive, Cranford, New Jersey 07016 [Entity], and the **CITY OF JERSEY CITY**, a Municipal Corporation of the State of New Jersey, having its principal office at 280 Grove Street, Jersey City, New Jersey 07302 [City].

RECITALS

WITNESSETH:

WHEREAS, the Entity owns a leasehold interest under a lease dated as of November 15, 2000, in certain property designated as Block 15, Lots 35 and 36, more commonly known by the street address of Hudson Street, and more particularly described by the metes and bounds description set forth as Exhibit 1 to this Agreement [Land]; and

WHEREAS, this property is located within the boundaries of the Hudson Exchange Redevelopment Plan Area; and

WHEREAS, the Entity plans to construct a 17 story building, to contain approximately 532,932 gross square feet of office space and retail space and related parking [Project]; and

WHEREAS, in August, 2000, the Entity filed an Application with the

City for approval of a long term tax exemption for the Project; and

WHEREAS, the City made the following findings:

A. Relative Benefits of the Project when compared to the costs:

1. the current real estate tax generates revenue of only \$116,875.00, whereas, the annual service charge as estimated, will generate revenue to the City of approximately \$1,576,419.00;
2. it is expected that the Project will create approximately 400 jobs during construction and 50 new permanent jobs;
3. the Project should stabilize and contribute to the economic growth of businesses in the surrounding area;
4. the Project will further the redevelopment objectives of the Hudson Exchange Redevelopment Plan;
5. the City's impact analysis, on file with the Office of the City Clerk, indicates that the benefits of the Project outweigh the costs to the City; and

B. Assessment of the Importance of the Tax Exemption in obtaining development of the project and influencing the locational decisions of probable occupants:

1. the relative stability and predictability of the annual service charges will make the Project more attractive to investors and lenders needed to finance the Project; and
2. the relative stability and predictability of the service charges will allow the owner to stabilize its operating budget, allowing a high level of maintenance to the building over the life of the Project, which will insure the likelihood of the success of the Project; and

WHEREAS, by the adoption of Ordinance 00-146 on October 25, 2000, the Municipal Council approved the above findings and the tax exemption

application and authorized the execution of this Agreement.

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

ARTICLE I - GENERAL PROVISIONS

Section 1.1 Governing Law

This Agreement shall be governed by the provisions of the Long Term Tax Exemption Law, as amended and supplemented, N.J.S.A. 40A:20-1 et seq., Executive Order of the Mayor, S-039, and Ordinance 00-146, which authorized the execution of this Agreement. It being expressly understood and agreed that the City expressly relies upon the facts, data, and representations contained in the Application, attached hereto as Exhibit 3, in granting this tax exemption.

Section 1.2 General Definitions

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

- i. Allowable Net Profit- The amount arrived at by applying the Allowable Profit Rate to Total Project Cost pursuant to N.J.S.A. 40A:20-3(c).
- ii. Allowable Profit Rate - The percentage per annum arrived at by adding 1.25% to the annual interest percentage rate payable on the Entity's initial permanent mortgage financing. If the initial permanent mortgage is insured or guaranteed by a governmental agency, the mortgage insurance premium or similar charge shall be considered as interest for this purpose. If there is no permanent mortgage financing, or if the financing is internal or undertaken by a related party, the Allowable Profit Rate shall be arrived at by adding 1.25% per annum to the interest rate per annum which the municipality determines to be the prevailing rate on mortgage financing

on comparable improvements in Hudson County. The provisions of N.J.S.A. 40A:20-3(b) are incorporated herein by reference.

iii. Annual Service Charge - The amount the Entity has agreed to pay the City for municipal services supplied to the Project, which sum is in lieu of any taxes on the Improvements, pursuant to N.J.S.A. 40A:20-12.

iv. Auditor's Report - A complete financial statement outlining the financial status of the Project (for a period of time as indicated by context), which shall also include a certification of Total Project Cost and clear computation of Net Profit. The contents of the Auditor's Report shall have been prepared in conformity with generally accepted accounting principles and shall contain at a minimum the following: a balance sheet, a statement of income, a statement of retained earnings or changes in stockholders' equity, a statement of cash flows, descriptions of accounting policies, notes to financial statements and appropriate schedules and explanatory material results of operations, cash flows and any other items required by the Law. The Auditor's Report shall be certified as to its conformance with such principles by a certified public accountant who is licensed to practice that profession in the State of New Jersey.

v. Certificate of Occupancy - Document, whether temporary or permanent, issued by the City authorizing occupancy of a building, in whole or in part, pursuant to N.J.S.A. 52:27D-133.

vi. Default - Shall be a breach of or the failure of the Entity to perform any obligation imposed upon the Entity by the terms of this Agreement, or under the Law, beyond any applicable grace or cure periods.

vii. Entity - Shall mean Plaza X Urban Renewal Associates, L.L.C., which Entity is formed and qualified pursuant to N.J.S.A. 40A:20-5. It shall also include any subsequent purchasers or successors in interest of the Project, provided they are formed and operate under by the Law and the

transfer has been duly approved by the City in accordance with Article IX hereof.

viii. Gross Revenue - Any and all revenue derived from or generated by the Project of whatever kind or amount, whether received as rent from any tenants or income or fees from third parties.

ix. Improvements or Project - Any building, structure or fixture permanently affixed to the land and to be constructed and tax exempted under this Agreement.

x. In Rem Tax Foreclosure or Tax Foreclosure - A summary proceeding by which the City may enforce a lien for taxes due and owing by tax sale, under N.J.S.A. 54:5-1 to 54:5-129 et seq.

xi. Land Taxes - The amount of taxes assessed on the value of land, on which the project is located and, if applicable, taxes on any pre-existing improvements. Land Taxes are not exempt; however, Land Taxes are applied as a credit against the Annual Service Charge.

xii. Land Tax Payments - Payments made on the quarterly due dates, including approved grace periods if any, for Land Taxes as determined by the Tax Assessor and the Tax Collector.

xiii. Law - Shall refer to the Long Term Tax Exemption Law, as amended and supplemented, N.J.S.A. 40A:20-1, et seq.; Executive Order of the Mayor S-039, relating to long term tax exemption, as it may be amended and supplemented; Ordinance 00-146, which authorized the execution of this Agreement and all other relevant Federal, State or City statutes, ordinances, resolutions, rules and regulations.

xiv. Minimum Annual Service Charge - The Minimum Annual Service Charge shall be the greater of the following:

(a) the total taxes levied against all real property in the area covered by the Project in the last full tax year in which the area was subject to

taxation, which amount the parties agree is \$116,874.51, or

(b) on the first day of the month following the date of Substantial Completion, the sum of \$1,576,419.00 per year. This sum will be prorated during the first year of this Agreement at a rate of \$7,727.55 per floor, per month (the Minimum Annual Service Charge divided by the number of floors (17) divided by twelve) for each floor that has received a Certificate of Occupancy whether the floor is actually occupied or generates any revenue. In addition, it shall be prorated in the year that this Agreement terminates.

The Minimum Annual Service Charge shall be paid in each year in which the Annual Service Charge, calculated pursuant to N.J.S.A. 40A:20-12 or the Financial Agreement, would be less than the Minimum Annual Service Charge.

xv. Net Profit - The Gross Revenue of the Entity less all operating and non-operating expenses of the Entity, all determined in accordance with generally accepted accounting principles and the provisions of N.J.S.A. 40A:20-3(c). Included in expenses shall be an amount sufficient to amortize (utilizing the straight line method-equal annual amounts) the Total Project Cost over the life of the Improvements, based upon objective business criteria, which period shall not be less than the term of this Agreement.

xvi. Pronouns - He or it shall mean the masculine, feminine or neuter gender, the singular, as well as the plural, as context requires.

xvii. Substantial Completion - The determination by the City that the Project, in whole or in part, is ready for the use intended, which ordinarily shall mean the date on which the Project receives, or is eligible to receive any Certificate of Occupancy for any portion of the Project.

xviii. Termination - Any act or omission which by operation of the terms of this Financial Agreement shall cause the Entity to relinquish its tax

exemption.

xvix. Total Project Cost - The total cost of constructing the Project through the date a Certificate(s) of Occupancy is issued for the entire Project, which categories of cost are set forth in N.J.S.A. 40A:20-3(h). The cost of the lease shall be capitalized at the rate of 4.0%. There shall be included in Total Project Cost the actual costs incurred by the Entity and certified by an independent and qualified architect or engineer, which are associated with site remediation and cleanup of environmentally hazardous materials or contaminants in accordance with State or Federal law. The Entity agrees that final Total Project Costs shall not be less than its estimated Total Project Cost.

ARTICLE II - APPROVAL

Section 2.1 Approval of Tax Exemption

The City hereby grants its approval for a tax exemption for all the Improvements to be constructed and maintained in accordance with the terms and conditions of this Agreement and the provisions of the Law which Improvements shall be constructed on certain property known on the Official Tax Assessor's Map of the City as: Block 15, Lots 35 and 36, more commonly known by the street address of Hudson Street, Jersey City, New Jersey, and described by metes and bounds in Exhibit 1 attached hereto.

Section 2.2 Approval of Entity

Approval is granted to the Entity whose Certificate of Formation is attached hereto as Exhibit 4. Entity represents that its Certificate contains all the requisite provisions of the Law; has been reviewed and approved by the Commissioner of the Department of Community Affairs; and has been filed with, as appropriate, the Office of the State Treasurer or Office of the Hudson County Clerk, all in accordance with N.J.S.A. 40A:20-5.

Section 2.3 Improvements to be Constructed

Entity represents that it will construct a 17 story building, containing

approximately 532,932 gross square feet of office space and retail space and related parking facilities, all of which is more specifically described in the Application attached hereto as Exhibit 3.

Section 2.4 Construction Schedule

The Entity agrees to diligently undertake to commence construction and complete the Project in accordance with the Estimated Construction Schedule, attached hereto as Exhibit 5.

Section 2.5 Ownership, Management and Control

The Entity represents that it owns a leasehold interest in the Land and Improvements. The cost of the lease shall be capitalized at the rate of 4.0%. Upon Substantial Completion, the Entity represents that the Improvements will be managed and controlled as follows. The Entity will lease the Land and Improvements to Plaza X Leasing Associates, L.L.C., which will provide for the sublease of the project or portions thereof to third parties, and tenant build-out.

Section 2.6 Financial Plan

The Entity represents that the Improvements shall be financed in accordance with the Financial Plan attached hereto as Exhibit 6. The Plan sets forth estimated Total Project Cost, the amortization rate on the Total Project Cost, the source of funds, the interest rates to be paid on construction financing, the source and amount of paid-in capital, and the terms of any mortgage amortization.

Section 2.7 Statement of Rental Schedules and Lease Terms

The Entity represents that its good faith projections of the initial rental schedules and lease terms are set forth in Exhibit 7, attached hereto.

ARTICLE III - DURATION OF AGREEMENT

Section 3.1 Term

So long as there is compliance with the Law and this Agreement, it is

understood and agreed by the parties hereto that this Agreement shall remain in effect for the earlier of: twenty-five (25) years from the date of the adoption of Ordinance 00-146, which approved this exemption or twenty (20) years from the date of Substantial Completion of the Project. The tax exemption shall only be effective during the period of usefulness of the Project and shall continue in force only while the Project is owned [or leased for a minimum period equal to the term of the tax exemption] by an entity formed and operating under the Law.

ARTICLE IV - ANNUAL SERVICE CHARGE

Section 4.1 Annual Service Charge

In consideration of the tax exemption, the Entity shall make payment to the City of an amount equal to the greater of: the Minimum Annual Service Charge or an Annual Service Charge equal to 2% of the Total Project Cost. The Annual Service Charge shall be billed initially based upon the Entity's estimates of Total Project Cost which shall not be less than its estimate of Total Project Cost as set forth in its Financial Plan, attached hereto as Exhibit 6. Thereafter, the Annual Service Charge shall be adjusted in accordance with this Agreement.

A Minimum Annual Service Charge calculated under Section 1.2(xiv)(a) shall be due beginning on the effective date of this Agreement. Subject to the provisions of Section 1.2(xiv)(b). The Annual Service Charge shall be due on the first day of the month following the Substantial Completion of the Project. In the event the Entity fails to timely pay the Minimum Annual Service Charge or the Annual Service Charge, the unpaid amount shall bear the highest rate of interest permitted in the case of unpaid taxes or tax liens on land until paid.

Section 4.2 Staged Adjustments

The Annual Service Charge shall be adjusted, in Stages over the term

of the tax exemption in accordance with N.J.S.A. 40A:20-12(b) as follows:

i. Stage One: From the first day of the month following Substantial Completion until the last day of the sixth year, the Annual Service Charge shall be 2% of Total Project Cost;

ii. Stage Two: Beginning on the 1st day of the 7th year following Substantial Completion until the last day of the 9th year, an amount equal to the greater of the Annual Service Charge or 20% of the amount of the taxes otherwise due on the value of the land and Improvements;

iii. Stage Three: Beginning on the 1st day of the 10th year following the Substantial Completion until the last day of the 12th year, an amount equal to the greater of the Annual Service Charge or 40% of the amount of the taxes otherwise due on the value of the land and Improvements;

iv. Stage Four: Beginning on the 1st day of the 13th year following Substantial Completion until the last day of the 14th year, an amount equal to the greater of the Annual Service Charge or 60% of the amount of the taxes otherwise due on the value of the land and Improvements.

v. Final Stage: Beginning on the 1st day of the 15th year following Substantial Completion through the date the tax exemption expires, an amount equal to the greater of the Annual Service Charge or 80% of the amount of the taxes otherwise due on the value of the land and Improvements.

Section 4.3 Prepayments

In addition to any other payments due hereunder, the Entity agrees to make an advance payment of its service charge in the amount of \$1,576,419.00 on or before June 1, 2001 (Prepayment), which shall be credited against future Annual Service Charges in the manner described in Section 4.4 hereof.

Section 4.4 Credits

(1) Land Tax: The Entity is required to pay both the Annual Service Charge and the Land Tax Payments. The Entity is obligated to make

timely Land Tax Payments, including any tax on the pre-existing improvements, in order to be entitled to a Land Tax credit against the Annual Service Charge for the subsequent year. The Entity shall be entitled to credit for the amount, without interest, of the Land Tax Payments made in the last four preceding quarterly installments against the Annual Service Charge. In any year that the Entity fails to make any Land Tax Payments when due and owing, such delinquency shall render the Entity ineligible for any Land Tax Payment credits against the Annual Service Charge for that year. No credit will be applied against the Annual Service Charge for partial payments of Land Taxes. In addition, the City shall have, among this remedy and other remedies, the right to proceed against the property pursuant to the In Rem Tax Foreclosure Act, N.J.S.A. 54:5-1, et seq. and/or declare a Default and terminate this Agreement.

(2) A. **Prepayment.** The Entity agrees to make a payment in the amount of \$1,576,419, representing a Prepayment of one full years estimated Annual Service Charge. The Prepayment shall be made on or before June 1, 2001 and credited against future Annual Service Charges in the manner described below.

B. **Credit.** City agrees to give the Entity a credit without interest against the Annual Service Charges otherwise due under the Agreement in the following manner:

(i) For each of the first 4 years that the Entity is obligated under the Agreement to pay Annual Service Charges, the Entity shall be entitled to a credit against such charges in the amount of \$394,105.00 in 2002; \$394,105.00 in 2003; \$394,105.00 in 2004; and \$394,105.00 in 2005. However, under no circumstances shall the Entity be entitled to a credit in excess of the amount of the actual service charges paid (that is, excluding any credit for land taxes) in any year.

(ii) The Annual Service Charges are to be paid quarterly under the Agreement. The credits hereunder are to be taken against the earliest

quarterly payments in each year until the annual amount of the credit, or appropriate pro rata portion has been recouped in full by the Entity;

(iii) The aggregate amount of the credits hereunder shall be \$1,576,419.

C. **Additional Credit.** In the event the Entity is unable to fully recover its Prepayment against the Annual Service Charge for any reason, then the Entity shall be entitled to a credit against any conventional taxes assessed on the Improvements until the Prepayment is recovered all without interest in its entirety.

D. **Notice.** The City shall notify the appropriate taxing authorities of this credit arrangement so that bills for Annual Service Charges when issued will reflect the credit.

Section 4.5 Quarterly Installments

The Entity expressly agrees that the Annual Service Charge shall be made in quarterly installments on those dates when real estate tax payments are due; subject, nevertheless, to adjustment for over or underpayment within thirty (30) days after the close of each calendar year. In the event that the Entity fails to pay the Annual Service Charge, the unpaid amount shall bear the highest rate of interest permitted in the case of unpaid taxes or tax liens on the land until paid.

Section 4.6 Administrative Fee

The Entity shall also pay an annual Administrative Fee to the City in addition to the Annual Service Charge and Land Tax levy. The Administrative Fee shall be calculated as two (2%) percent of each prior year's Annual Service Charge. This fee shall be payable and due on or before December 31st of each year, and collected in the same manner as the Annual Service Charge. In the event that the Entity fails to timely pay the Administrative Fee, the amount unpaid shall bear the highest rate of interest permitted in the case of unpaid taxes or tax liens on the land until paid.

Section 4.7 Material Conditions

It is expressly agreed and understood that the timely payments of Land Taxes, Minimum Annual Service Charges, Annual Service Charges, including adjustments thereto, Administrative Fees, and any interest thereon, are Material Conditions of this Agreement.

ARTICLE V - PROJECT EMPLOYMENT AND CONTRACTING AGREEMENT

Section 5.1 Project Employment and Contracting Agreement

In order to provide City residents and businesses with certain employment and other economic related opportunities, the Entity is subject to the terms and conditions of the Project Employment and Contracting Agreement, attached hereto as Exhibit 8.

ARTICLE VI - CERTIFICATE OF OCCUPANCY

Section 6.1 Certificate of Occupancy

It is understood and agreed that it shall be the obligation of the Entity to obtain all Certificates of Occupancy in a timely manner so as to complete construction in accordance with the proposed construction schedule attached hereto as Exhibit 5. The failure to secure the Certificates of Occupancy shall subject the property to full taxation for the period between the date of Substantial Completion and the date the Certificate of Occupancy is obtained.

Section 6.2 Filing of Certificate of Occupancy

It shall be the primary responsibility of the Entity to forthwith file with both the Tax Assessor and the Tax Collector a copy of each Certificate of Occupancy.

Failure of the Entity to file such issued Certificate of Occupancy as required by the preceding paragraph, shall not militate against any action or non-action, taken by the City, including, if appropriate retroactive billing

with interest for any charges determined to be due, in the absence of such filing by the Entity.

Section 6.3 Construction Permits

The estimated cost basis disclosed by the Entity's application and proposed Financial Agreement may, at the option of the City, be used as the basis for the construction cost in the issuance of any construction permit(s) for the Project.

ARTICLE VII - ANNUAL REPORTS

Section 7.1 Accounting System

The Entity agrees to maintain a system of accounting and internal controls established and administered in accordance with generally accepted accounting principles.

Section 7.2 Periodic Reports

A. Auditor's Report: Within ninety (90) days after the close of each fiscal or calendar year, depending on the Entity's accounting basis that this Agreement shall continue in effect, the Entity shall submit to the Municipal Council, the Tax Collector and the City Clerk, who shall advise those municipal officials required to be advised, and the NJ Division of Local Government Services in the Department of Community Affairs, its Auditor's Report for the preceding fiscal or calendar year. The Auditor's Report shall include, but not be limited to: Rental schedule of the urban renewal Project, and the terms and interest rate on any mortgage(s) associated with the purchase or construction of the Project and such details as may relate to the financial affairs of the Entity and to its operation and performance hereunder, pursuant to the Law and this Agreement. The Report shall clearly identify and calculate the Net Profit for the Entity during the previous year.

B. Total Project Cost Audit: Within 90 days after the Substantial Completion of the Project, the Entity shall submit to the Municipal Council,

the Tax Collector and the City Clerk, who shall advise those municipal officials required to be advised, an audit of Total Project Cost, certified as to actual construction costs by an independent and qualified architect, utilizing the form attached hereto as Exhibit 9, and as to all other costs, certified its conformance with generally accepted accounting principles, by a certified public accountant who is licensed to practice that profession in the State of New Jersey.

C. Disclosure Statement: Each year on the anniversary date of the execution of this Agreement, if there has been a change in ownership or interest from the prior year's filing, the Entity shall submit to the Municipal Council, the Tax Collector and the City Clerk, who shall advise those municipal officials required to be advised, a Disclosure Statement listing the persons having an ownership interest in the Project, and the extent of the ownership interest of each and such additional information as the City may request from time to time.

D. City Certification: Each year in the absence of a termination, the City shall certify that the Agreement with the Entity has been entered into and is in effect as required by the Law.

Section 7.3 Inspection

The Entity shall permit the inspection of its property, equipment, buildings and other facilities of the Project and, if deemed appropriate or necessary, any other related Entity by representatives duly authorized by the City and the NJ Division of Local Government Services in the Department of Community Affairs. It shall also permit, upon request, examination and audit of its books, contracts, records, documents and papers. Such examination or audit shall be made during the reasonable hours of the business day, in the presence of an officer or agent designated by the Entity.

ARTICLE VIII- LIMITATION OF PROFITS AND RESERVES

Section 8.1 Limitation of Profits and Reserves

During the period of tax exemption as provided herein, the Entity shall be subject to a limitation of its profits [and, in the case of a corporation, the dividend payable by it] pursuant to the provisions of N.J.S.A. 40A:20-15.

The Entity shall have the right to establish a reserve against vacancies, unpaid rentals, and reasonable contingencies in an amount equal to five (5%) percent of the Gross Revenue of the Entity for the last full fiscal year preceding the year and may retain such part of the excess Net Profits as is necessary to eliminate a deficiency in that reserve, as provided in N.J.S.A. 40A:20-15. The reserve is to be non-cumulative, it being intended that no further credits thereto shall be permitted after the reserve shall have attained the allowable level of 5% percent of the preceding year's Gross Revenue.

Section 8.2 Annual Payment of Excess Net Profit

In the event the Net Profits of the Entity, in any fiscal year, shall exceed the Allowable Net Profits for such period, then the Entity, within 90 days after the end of such fiscal year, shall pay such excess Net Profits to the City as an additional service charge; provided, however, that the Entity may maintain a reserve as determined pursuant to aforementioned paragraph 8.1.

Section 8.3 Payment of Reserve/ Excess Net Profit Upon Termination, Expiration or Sale

The date of termination, expiration or sale shall be considered to be the close of the fiscal year of the Entity. Within 90 days after such date, the Entity shall pay to the City the amount of the reserve, if any, maintained by it pursuant to this section and the excess Net Profit, if any.

ARTICLE IX - ASSIGNMENT AND/OR ASSUMPTION

Section 9.1 Approval

Any sale or transfer of the Project, must be approved in advance by

Ordinance of the Municipal Council. The failure of the Entity to obtain the City's approval when required shall cause this Agreement to terminate in accordance with the terms hereof. It is understood and agreed that the City, on written application by the Entity, will not unreasonably withhold its consent to a sale of the Project and the transfer of this Agreement provided 1) the new Entity does not own any other Project subject to long term tax exemption at the time of transfer; 2) the new Entity is formed and eligible to operate under the Law; 3) the Entity is not then in default of this Agreement or the Law; 4) the Entity's obligations under this Agreement is fully assumed by the new Entity and 5) the Entity shall have paid over to the City 1% of the value of the Project (Land and Improvements) at the time of the sale or assignment which ordinarily shall mean the consideration stated in the deed conveying title to the new Entity.

Notwithstanding anything to the contrary, the 1% payment will not apply to a foreclosure judgment or deed in lieu of foreclosure obtained by a lender financing the Project.

Section 9.2 Fee

Where the consent or approval of the City is sought for approval of a change in ownership or sale or transfer of the Project, the Entity shall be required to pay to the City a new tax exemption application fee for the legal and administrative services of the City, as it relates to the review, preparation and/or submission of documents to the Municipal Council for appropriate action on the requested assignment. The fee shall be non-refundable.

ARTICLE X - COMPLIANCE

Section 10.1 Operation

During the term of this Agreement, the Project shall be maintained and operated in accordance with the Law. The operation of Project under

this Agreement shall not only be terminable as provided by N.J.S.A. 40A:20-1, et seq., as currently amended and supplemented, but also by a Default under this Agreement. The Entity's failure to comply with the Law shall constitute a Default under this Agreement and the City shall, among its other remedies, have the right to terminate the tax exemption in accordance with the provisions hereof.

ARTICLE XI - DEFAULT

Section 11.1 Default

Default shall be failure of the Entity to conform with the terms of this Agreement or failure of the Entity to perform any obligation imposed by the Law, beyond any applicable notice, cure or grace period.

Section 11.2 Cure Upon Default

Should the Entity be in Default, the City shall send written notice to the Entity of the Default [Default Notice]. The Default Notice shall set forth with particularity the basis of the alleged Default. The Entity shall have sixty (60) days, from receipt of the Default Notice, to cure any Default which shall be the sole and exclusive remedy available to the Entity. However, if, in the reasonable opinion of the City, the Default cannot be cured within sixty (60) days using reasonable diligence, the City will extend the time to cure.

Subsequent to such sixty (60) days, or any approved extension, the City shall have the right to terminate this Agreement in accordance with Section 12.1.

Should the Entity be in default failure to pay any charges defined as Material Conditions in Section, shall not be subject to the default procedural remedies as provided in Section 5.1 herein but shall allow the City to proceed immediately to terminate the Agreement as provided in Article XII herein.

Section 11.3 Remedies Upon Default

The City shall, among its other remedies, have the right to proceed against the property pursuant to the In Rem Tax Foreclosure Act, N.I.S.A. 54:5-1, et seq. and/or may declare a Default and terminate this Agreement. Any default arising out of the Entity's failure to pay Land Taxes, the Minimum Annual Service Charge, Administrative Fees, or the Annual Service Charges shall not be subject to the default procedural remedies as provided in Article XI herein, but shall allow the City to proceed immediately to terminate the Agreement as provided in Article XII. All of the remedies provided in this Agreement to the City, and all rights and remedies granted to it by law and equity shall be cumulative and concurrent. No termination of any provision of this Agreement shall deprive the City of any of its remedies or actions against the Entity because of its failure to pay Land Taxes, the Minimum Annual Service Charge, Annual Service Charge, or Administrative Fees. This right shall apply to arrearages that are due and owing at the time or which, under the terms hereof, would in the future become due as if there had been no termination. Further, the bringing of any action for Land Taxes, the Minimum Annual Service Charge, the Annual Service Charge, or Administrative Fees, or for breach of covenant or the resort to any other remedy herein provided for the recovery of Land Taxes shall not be construed as a waiver of the rights to terminate the tax exemption or proceed with a tax sale or Tax Foreclosure action or any other specified remedy.

In the event of a Default on the part of the Entity to pay any charges set forth in Article IV, the City among its other remedies, reserves the right to proceed against the Entity's land and property, in the manner provided by the In Rem Foreclosure Act, and any act supplementary or amendatory thereof. Whenever the word taxes appear, or is applied, directly or impliedly

to mean taxes or municipal liens on land, such statutory provisions shall be read, as far as is pertinent to this Agreement, as if the charges were taxes or municipal liens on land.

ARTICLE XII- TERMINATION

Section 12.1 Termination Upon Default of the Entity

In the event the Entity fails to cure or remedy the Default within the time period provided in Section 11.2, the City may terminate this Agreement upon thirty (30) days written notice to the Entity [Notice of Termination].

Section 12.2 Voluntary Termination by the Entity

The Entity may after the expiration of one year from the Substantial Completion of the Project notify the City that as of a certain date designated in the notice, it relinquishes its status as a tax exempt Project. As of the date so set, the tax exemption, the Annual Service Charges and the profit and dividend restrictions shall terminate.

Section 12.3 Final Accounting

Within ninety (90) days after the date of termination, whether by affirmative action of the Entity or by virtue of the provisions of the Law or pursuant to the terms of this Agreement, the Entity shall provide a final accounting and pay to the City the reserve, if any, pursuant to the provisions of N.J.S.A. 40A:20-13 and 15 as well as any excess Net Profits. 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 12.4 Conventional Taxes

Upon Termination or expiration of this Agreement, the tax exemption for the Project shall expire and the land and the Improvements thereon shall thereafter be assessed and conventionally taxed according to the general law applicable to other nonexempt taxable property in the City.

ARTICLE XIII - DISPUTE RESOLUTION

Section 13.1 Arbitration

In the event of a breach of the within Agreement by either of the parties hereto or a dispute arising between the parties in reference to the terms and provisions as set forth herein, either party may apply to the Superior Court of New Jersey by an appropriate proceeding, to settle and resolve the dispute in such fashion as will tend to accomplish the purposes of the Law. In the event the Superior Court shall not entertain jurisdiction, then the parties shall submit the dispute to the American Arbitration Association in New Jersey to be determined in accordance with its rules and regulations in such a fashion to accomplish the purpose of the Long Term Tax Exemption Law. The cost for the arbitration shall be borne equally by the parties. The parties agree that the Entity may not file an action in Superior Court or with the Arbitration Association unless the Entity has first paid in full all charges defined in Article III, Section 4.8 as Material Conditions.

ARTICLE XIV - WAIVER

Section 14.1 Waiver

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

ARTICLE XV - INDEMNIFICATION

Section 15.1 Defined

It is understood and agreed that in the event the City shall be named as party in any action brought by or arising from a third party alleging any breach, default or a violation of any of the provisions of this Agreement and/or the provisions of

N.J.S.A. 40A:20-1 et seq., the Entity shall indemnify and hold the City harmless against any and all liability, loss, or cost (including reasonable attorneys' fees and costs, through trial and all stages of any appeal, including the cost of enforcing this indemnity) of any nature whatsoever, arising out of, in connection with, or incident to this Agreement. In addition, the Entity expressly waives all statutory or common law defenses or legal principles which would defeat the purposes of this indemnification. The Entity also agrees to defend the suit at its own expense, counsel for the City to be selected by the City, subject to the reasonable consent of the Entity. However, the City maintains the right to intervene to defend itself to which intervention the Entity consents; the expense thereof to be borne by the City.

Nothing in this paragraph shall be construed to create a cause of action in favor of the City for the purpose of recovering from the Entity any economic loss the City sustains arising from the City's obligation to pay a share of the conventional taxes to the County in the event the property is returned to the conventional tax rolls.

ARTICLE XVI- NOTICE

Section 16.1 Certified Mail

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

Section 16.2 Sent by City

When sent by the City to the Entity the notice shall be addressed to:

Plaza X Urban Renewal Associates, L.L.C.
11 Commerce Drive
Cranford, NJ 07016
Att.: Kenneth Freeman, Esq.

unless prior to giving of notice the Entity shall have notified the City in writing otherwise.

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

notice required to be sent to the Entity.

Section 16.3 Sent by Entity

When sent by the Entity to the City, it shall be addressed to:

City of Jersey City, Office of the City Clerk
City Hall
280 Grove Street
Jersey City, New Jersey 07302,

with copies sent to the Corporation Counsel, the Business Administrator, and the Tax Collector unless prior to the giving of notice, the City shall have notified the Entity otherwise. The notice to the City shall identify the Project to which it relates, (i.e., the Urban Renewal Entity and the Property's Block and Lot number).

ARTICLE XVII-SEVERABILITY

Section 17.1 Severability

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

If a Material Condition shall be judicially declared to be invalid or unenforceable and provided the Entity is not in Default of this Agreement, the parties shall cooperate with each other to take the actions reasonably required to restore the Agreement in a manner contemplated by the parties and the Law. This shall include, but not be limited to the authorization and re-execution of this Agreement in a form reasonably drafted to effectuate the original intent of the parties and the Law. However, the City shall not be required to restore the Agreement if it would modify a Material Condition,

the amount of the periodic adjustments or any other term of this Agreement which would result in any economic reduction or loss to the City.

ARTICLE XVIII - MISCELLANEOUS

Section 18.1 Construction

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

Section 18.2 Conflicts

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

Section 18.3 Oral Representations

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

Section 18.4 Entire Document

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

Section 18.5 Good Faith

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

ARTICLE XIX - EXHIBITS

Section 19 Exhibits

The following Exhibits are attached hereto and incorporated herein as if set forth at length herein:

1. Metes and Bounds description of the Project;
2. Ordinance of the City authorizing the execution of this Agreement;
3. The Application with Exhibits;
4. Certificate of the Entity;
5. Estimated Construction Schedule;
6. The Financial Plan for the undertaking of the Project;
7. Initial Rental Schedules and Lease Terms;
8. Project Employment and Contracting Agreement;
9. Architect's Certification of Actual Construction Costs;

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

ATTEST:

**PLAZA X URBAN RENEWAL ASSOCIATES
L.L.C.**

BY: PLAZA X REALTY L.L.C., MEMBER

**BY: AMERICAN FINANCIAL
EXCHANGE L.L.C., MEMBER**

**BY: M-C HARSIMUS PARTNERS L.L.C.,
MEMBER**

**BY: MACK-CALI REALTY LP, SOLE
MEMBER**

**BY: MACK-CALI REALTY CORPORA-
TION, GENERAL PARTNER**

Daniel Wagner
Asst **SECRETARY**
Daniel Wagner

[Signature]
ROGER W. THOMAS, Executive Vice President
& General Counsel

ATTEST:

Robert Byrne
ROBERT BYRNE
CITY CLERK

CITY OF JERSEY CITY
[Signature]
LAURIE COTTER
BUSINESS ADMINISTRATOR *[Signature]*

- 7) S 06° 09' 58" W 23.06 feet to a point on curve; thence
- 8) Southerly along a curve to the right having a radius of 502.36 feet, an arc length of 291.53 feet (chord S 06° 09' 58" W 287.46) to a point on curve; thence
- 9) S 06° 09' 58" W 23.06 feet to a point; thence
- 10) N 83° 50' 02" W 50.00 feet to a point; thence

John Zanetakos Associates, Inc.

ENGINEERS - PLANNERS - SURVEYORS
 7 DOIG ROAD - SUITE #1
 WAYNE, NEW JERSEY 07470-7430

ARTHUR E. HANSON, JR. P.E., P.P. & L.S.
 BRUCE D. CALLAHAN, L.S. & P.P.

June 13, 2000

TEL. 973-696-2600
 FAX. 973-696-1362

LAWRENCE BOZIK, P.E.
 THOMAS NEUSCHAFER, L.S.
 HARRY BACHMANN, L.S. & P.P.

Job No. 7628

Deed description of a parcel of land situate at the southeasterly quadrant of the intersection of Hudson Street and Second Street Extension in the City of Jersey City, Hudson County, New Jersey.

Beginning at a point of curvature on the easterly side of Hudson Street (62' wide), said point being the following eight (8) courses from the point of intersection of the existing northerly side of Christopher Columbus Drive (80' wide) with the easterly side of Washington Street (80' wide) and running: thence

- a. Easterly along a curve to the left having a radius of 3960.00 feet, an arc length of 820.22 feet to a point on curve; thence
 - b. N 08° 09' 07" E 55.61 feet to a point; thence
 - c. N 81° 50' 53" E 40.01 feet to a point; thence
 - d. N 08° 09' 07" E 222.50 feet to a point; thence
 - e. S 81° 50' 53" E 40.01 feet to a point; thence
 - f. N 08° 09' 07" E 848.65 feet to a point; thence
 - g. N 81° 50' 53" W 30.21 feet to a point; thence
 - h. N 07° 59' 40" E 390.93 feet to a point of curvature and point of beginning and running; thence
- 1) Along a curve to the right having a radius of 17.00 feet, an arc length of 26.16 feet to a point of tangency; thence
 - 2) S 83° 50' 02" E 178.64 feet along the southerly side of Second Street Extension (52' wide) to a bend; thence
 - 3) S 84° 47' 48" E 138.27 feet still along the southerly side of Second Street Extension (52' wide) to a point of curvature; thence
 - 4) Along a curve to the right having a radius of 50.00 feet, an arc length of 60.93 feet to a point of reverse curvature; thence
 - 5) Along a curve to the left having a radius of 60.00 feet, an arc length of 160.03 feet along the easterly terminus of Second Street Extension to a point on curve; thence
 - 6) S 83° 50' 02" E 98.17 feet to a point; thence

EXHIBIT B

ADDENDUM TO FINANCIAL AGREEMENT**FILE**2/6/11
Schwab

THIS AGREEMENT made as of the 15th da of November, 2000, and entered into between
PLAZA X URBAN RENEWAL ASSOCIATES, L.L.C., an Entity formed under the provisions
of the Long Term Tax Exemption Law of (the "Law"), having its principal office at 11 Commerce
Drive, Cranford, New Jersey 07016, hereinafter referred to as "Entity" and the **CITY OF JERSEY**
CITY, a Municipal Corporation of the State of New Jersey, having its principal office at 280 Grove
Street, Jersey City, New Jersey 07302, hereinafter referred to as the "City."

WITNESSETH:

WHEREAS, Entity has been authorized by the City to provide for the credit schedule to
begin in 2003 and end in 2006; and

NOW, THEREFORE, in consideration of these premises and other good and valuable
consideration, Entity and City hereby agree as follows:

Section 4.3 Prepayments

In addition to any other payments due hereunder, the Entity agrees to make an advance
payment of its service charge in the amount of \$1,576,419.00 on or before June 20, 2002
(Prepayment), which shall be credited against future Annual Service Charges in the manner
described in Section 4.4 hereof.

Section 4.4 Credits

(1) Land Tax: The Entity is required to pay both the Annual Service Charge and
the Land Tax Payments. The Entity is obligated to make timely Land Tax Payments,
including any tax on the pre-existing improvements, in order to be entitled to a Land Tax
credit against the Annual Service Charge for the subsequent year. The Entity shall be

entitled to credit for the amount, without interest, of the Land Tax Payments made in the last four preceding quarterly installments against the Annual Service Charge. In any year that the Entity fails to make any Land Tax Payments when due and owing, such delinquency shall render the Entity ineligible for any Land Tax Payment credits against the Annual Service Charge for that year. No credit will be applied against the Annual Service Charge for partial payments of Land Taxes. In addition, the City shall have, among this remedy and other remedies, the right to proceed against the property pursuant to the In Rem Tax Foreclosure Act, N.J.S.A. 54:5-1, et seq. and/or declare a Default and terminate this Agreement.

(2) A. **Prepayment.** The Entity agrees to make a payment in the amount of \$1,576,419, representing a Prepayment of one full years estimated Annual Service Charge. The Prepayment shall be made on or before June 20, 2002 and credited against future Annual Service Charges in the manner described below.

B. **Credit.** City agrees to give the Entity a credit without interest against the Annual Service Charges otherwise due under the Agreement in the following manner:

(i) For each of the first 4 years that the Entity is obligated under the Agreement to pay Annual Service Charges, the Entity shall be entitled to a credit against such charges in the amount of \$394,105.00 in 2003; \$394,105.00 in 2004; \$394,105.00 in 2005; and \$394,105.00 in 2006. However, under no circumstances shall the Entity be entitled to a credit in excess of the amount of the actual service charges paid (that is, excluding any credit for land taxes) in any year.

(ii) The Annual Service Charges are to be paid quarterly under the Agreement. The credits hereunder are to be taken against the earliest quarterly payments in each

year until the annual amount of the credit, or appropriate pro rata portion has been recouped in full by the Entity;

(iii) The aggregate amount of the credits hereunder shall be \$1,576,419.

Sections 4.3 and 4.4 in the Financial Agreement dated November 15, 2000 are deleted in their entirety. In all other respects the Financial Agreement is reaffirmed and ratified as of November 15, 2000.

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

ATTEST:

PLAZA X URBAN RENEWAL ASSOCIATES, L.L.C.
BY: PLAZA X REALTY L.L.C., MEMBER
BY: AMERICAN FINANCIAL EXCHANGE L.L.C., MEMBER
BY: M-C HARSIMUS PARTNERS L.L.C., MEMBER
BY: MACK-CALI REALTY LP, SOLE MEMBER
BY: MACK-CALI REALTY CORPORATION, GENERAL PARTNER

Daniel W. Wolfe
Ass't. SECRETARY

[Signature]
ROGER W. THOMAS, Executive Vice President & General Counsel

ATTEST:

[Signature]
ROBERT BYRNE
CITY CLERK

CITY OF JERSEY CITY
[Signature]
LAURIE COTTER
BUSINESS ADMINISTRATOR



ORDINANCE OF JERSEY CITY, N.J.

COUNCIL AS A WHOLE
offered and moved adoption of the following ordinance:

CITY ORDINANCE 01-008

TITLE: ORDINANCE AMENDING ORDINANCE 00-146 THAT APPROVED A 20 YEAR TAX EXEMPTION FOR PLAZA X URBAN RENEWAL ASSOCIATES, L.L.C.

WHEREAS, Plaza X Urban Renewal Associates, L.L.C., is an urban renewal entity, formed and qualified to do business under the provisions of the Long Term Tax Exemption Law of 1992, as amended and supplemented, N.J.S.A. 40A:20-1 et seq. (Entity); and

WHEREAS, by Ordinance 00-146, adopted on October 25, 2000, the Financial Agreement under Section 4.3 (Prepayments) and Section 4.4 (Credits), required the Entity to make a prepayment in 2001 and scheduled the credits to begin in 2002; and

WHEREAS, under letter dated November 15, 2000, the Entity advised that the prepayment date should have been 2002 and the credit to commence in 2003.

NOW, THEREFORE, BE IT ORDAINED by the Municipal Council of the City of Jersey City that:

- A. The Mayor or Business Administrator is hereby authorized to execute an amendment to Section 4.3 and Section 4.4 of the Financial Agreement to require a prepayment date of June 20, 2002 and the credit to commence on 2003.
- B. The letter application dated November 15, 2000, is on file with the Office of the City Clerk. The Addendum to the Financial Agreement shall be in substantially the form on file in the Office of the City Clerk, subject to such modification as the Business Administrator or Corporation Counsel deems appropriate or necessary.
- C. All ordinances and parts of ordinances inconsistent herewith are hereby repealed.
- D. This ordinance shall be part of the Jersey City Code as though codified and fully set forth therein. The City Clerk shall have this ordinance codified and incorporated in the official copies of the Jersey City Code.
- E. This ordinance shall take effect at the time and in the manner provided by law.
- F. The City Clerk and Corporation Counsel be and they are hereby authorized and directed to change any chapter numbers, article numbers and section numbers in the event that the codification of this ordinance reveals that there is a conflict between those numbers and the existing code, in order to avoid confusion and possible accidental repealers of existing provisions.

NOTE: All material is new; therefore, underlining has been omitted. For purposes of advertising only, new matter is indicated by bold face and repealed matter by *italic*.

APPROVED AS TO LEGAL FORM

APPROVED: _____

Corporation Counsel

APPROVED: _____
Business Administrator

Certification Required

Not Required

ORDINANCE Ord 01-008

TITLE: 3.H. ...
4.H. ...

Ordinance amending Ordinance 00-146 that approved a 20 year tax exemption for Plaza X Urban Renewal Associates, L.L.C.



RECORD OF COUNCIL VOTE ON INTRODUCTION 9-0

COUNCILPERSON	AYE	NAY	N.V.	COUNCILPERSON	AYE	NAY	N.V.	COUNCILPERSON	AYE	NAY	N.V.
CAVANAUGH	✓			GAUGHAN	✓			COLON	✓		
DONNELLY	✓			VEGA	✓			SMITH	✓		
BETTINGER	✓			HOLLOWAY	✓			DeGISE, PRES	✓		

✓Indicates Vote

N.V.—Not Voting (Abstain)

RECORD OF COUNCIL VOTE TO CLOSE PUBLIC HEARING 8-0

Councilperson COLON moved, seconded by Councilperson DONNELLY to close P.H.:

COUNCILPERSON	AYE	NAY	N.V.	COUNCILPERSON	AYE	NAY	N.V.	COUNCILPERSON	AYE	NAY	N.V.
CAVANAUGH	✓			GAUGHAN	✓			COLON	✓		
DONNELLY	✓			VEGA	✓			SMITH	✓		
BETTINGER	✓			HOLLOWAY	ABSENT			DeGISE, PRES.	✓		

✓Indicates Vote

N.V.—Not Voting (Abstain)

YVONNE BALCER
MIA SCANGA

RECORD OF COUNCIL VOTE ON AMENOMENTS, IF ANY

Councilperson _____ moved to amend* Ordinance, seconded by Councilperson _____ & adopted

COUNCILPERSON	AYE	NAY	N.V.	COUNCILPERSON	AYE	NAY	N.V.	COUNCILPERSON	AYE	NAY	N.V.
CAVANAUGH				GAUGHAN				COLON			
DONNELLY				VEGA				SMITH			
BETTINGER				HOLLOWAY				DeGISE, PRES.			

✓Indicates Vote

N.V.—Not Voting (Abstain)

RECORD OF FINAL COUNCIL VOTE 8-1

COUNCILPERSON	AYE	NAY	N.V.	COUNCILPERSON	AYE	NAY	N.V.	COUNCILPERSON	AYE	NAY	N.V.
CAVANAUGH		✓		GAUGHAN	✓			COLON	✓		
DONNELLY	✓			VEGA	✓			SMITH	✓		
BETTINGER	✓			HOLLOWAY	✓			DeGISE, PRES.	✓		

✓Indicates Vote

N.V.—Not Voting (Abstain)

Adopted on first reading of the Council of Jersey City, N.J. on _____

Adopted on second and final reading after hearing on _____

This is to certify that the foregoing Ordinance was adopted by the Municipal Council at its meeting on _____

Robert Byrne, City Clerk

APPROVED: Thomas A. DeGise, Council President

*Amendment(s):

Date _____

APPROVED: Bret Schudler, Mayor

Date 1/26/01

Date To Mayor JAN 25 2001