



Township Council
1 Municipal Plaza
Bloomfield, NJ 07003

Louise M. Palagano
Municipal Clerk

<http://www.bloomfieldtwpnj.com>

Meeting: 06/17/13 07:00 PM

2013 ORDINANCE NEW ORDINANCE

13-24

ORDINANCE OF THE TOWNSHIP OF BLOOMFIELD, COUNTY OF ESSEX, NEW JERSEY APPROVING THE APPLICATION AND FINANCIAL AGREEMENT FOR TAX EXEMPTION OF MCP BLOOMFIELD URBAN RENEWAL, L.L.C., AN ENTITY TO BE FORMED

WHEREAS, pursuant to the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq. (the "Redevelopment Law"), the Township of Bloomfield (the "Township") designated the properties identified on the Township's tax maps as Block 243, Lots 13, 25, 27, 28, 30, 31, 32, 37 and 38 (the "Redevelopment Area") as an "area in need of redevelopment" and adopted a redevelopment plan, entitled the "Block 243 Redevelopment Plan" (as such plan may be amended from time to time, the "Redevelopment Plan") for the Redevelopment Area; and

WHEREAS, the Township designated M.C.P. Bloomfield Joint Venture, LLC ("Redeveloper") as the redeveloper for the Redevelopment Area; and

WHEREAS, the Township Council has approved the execution of a Redevelopment Agreement (the "Redevelopment Agreement") between the Township and an entity to be formed by the Redeveloper, MCP Bloomfield Urban Renewal, L.L.C. (the "Entity"), a wholly-owned subsidiary, in order to implement the development, design, financing and construction of the Project (defined below); and

WHEREAS, the Redevelopment Agreement provides for, among other things, a project consisting of up to 140 Residential Units and up to 40,000 sf of retail space on the property constituting the Redevelopment Area (the "Project"); and

APPROVED AS TO FORM AND PROCEDURE
ON BASIS OF FACTS SET FORTH

Director of Law - Township Attorney

WHEREAS, the Redeveloper submitted to the Mayor an application for a long-term tax exemption, which is on file with the Township Clerk (“Application”) and a form of financial agreement (“Financial Agreement”, a copy of which is attached hereto as Exhibit A), pursuant to the Long Term Tax Exemption Law, N.J.S.A. 40A:20-1 et seq., in the name of the Entity, establishing the rights, responsibilities and obligations of the Entity; and

WHEREAS, the Mayor submitted the Application and Financial Agreement to the Township Council with his recommendation for approval; and

WHEREAS, the Township Council has determined that the Project represents an undertaking permitted by the Long Term Tax Exemption Law, and has further determined that the Project constitutes improvements made for the purposes of clearance, re-planning, development, or redevelopment of an area in need of redevelopment within the Township, as authorized by the Redevelopment Law and the Long Term Tax Exemption Law.

NOW, THEREFORE, BE IT ORDAINED, by the Mayor and Council of the Township of Bloomfield, New Jersey as follows:

Section 1. The Financial Agreement and application of the Entity is hereby approved.

Section 2. The Mayor is hereby authorized to execute the Financial Agreement substantially in the form attached hereto as Exhibit A, subject to minor modification or revision, as deemed necessary and appropriate after consultation with counsel.

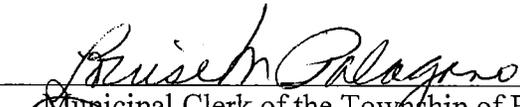
Section 3. The Clerk of the Township is hereby authorized and directed, upon execution of the Financial Agreement by the Mayor, to attest to the signature of the Mayor and to affix the corporate seal of the Township upon such document.

Section 4. The executed copy of the Financial Agreement shall be certified by and be filed with the Office of the Township Clerk. Further, the Clerk of the Township shall file certified copies of this ordinance and the Financial Agreement with the Tax Assessor of the Township and the Director of the Division of Local Government Services with the Department of Community Affairs, in accordance with Section 12 of the Long Term Tax Exemption Law.

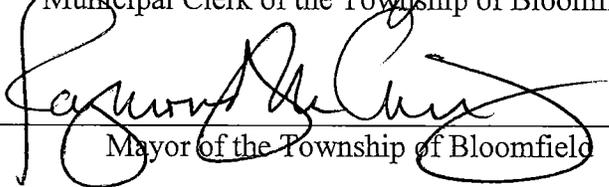
Section 6. This ordinance shall take effect in accordance with applicable law.

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I hereby certify that the above ordinance was duly adopted by the Mayor and Council of the Township of Bloomfield at a meeting of said Township Council held on



 Municipal Clerk of the Township of Bloomfield



 Mayor of the Township of Bloomfield

✓ Vote Record - Ordinance 2789						
		Yes/Aye	No/Nay	Abstain	Absent	
<input type="checkbox"/> Adopt	Elias Chalet	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
<input type="checkbox"/> Deny	Nicholas Joanow	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
<input type="checkbox"/> Withdrawn	Carlos Bernard	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
<input type="checkbox"/> Table	Michael Venezia	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
<input type="checkbox"/> Not Discussed	Peggy O'Boyle Dunigan	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
<input checked="" type="checkbox"/> First Reading	Bernard Hamilton	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
<input type="checkbox"/> Table with no Vote	Raymond McCarthy	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
<input type="checkbox"/> Approve						
<input type="checkbox"/> Veto by Mayor						
<input type="checkbox"/> Discussion						
<input type="checkbox"/> Defeated						

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<input type="checkbox"/> Not Discussed	Peggy O'Boyle Dunigan	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
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<input type="checkbox"/> Approve						
<input type="checkbox"/> Veto by Mayor						
<input type="checkbox"/> Discussion						
<input type="checkbox"/> Defeated						

FINANCIAL AGREEMENT

BETWEEN

MCP BLOOMFIELD URBAN RENEWAL, L.L.C.

AND

THE TOWNSHIP OF BLOOMFIELD

PREAMBLE

THIS FINANCIAL AGREEMENT, ("Agreement") made effective this 12th day of August 2013, by and between **MCP BLOOMFIELD URBAN RENEWAL, L.L.C.**, a New Jersey limited liability company, an urban renewal entity qualified to do business under the provisions of the Long Term Tax Exemption Law of 1992, as amended and supplemented, *N.J.S.A. 40A:20-1 et seq.* (the "Long Term Tax Exemption Law"), having its principal office at 4 Brighton Road, Clifton, New Jersey 07012 (together with its permitted successors and assigns, "Entity"), and the **TOWNSHIP OF BLOOMFIELD**, Municipal Corporation in the County of Essex and the State of New Jersey, having its principal office at Municipal Building, 1 Municipal Plaza, Bloomfield, New Jersey 07003 (the "Township").

RECITALS

WITNESSETH:

WHEREAS, the Township is a political subdivision of the State of New Jersey (the "State"), located in the County of Essex; and

WHEREAS, Entity is formed as an urban renewal entity under the laws of the State; and

WHEREAS, by resolution adopted on January 19, 2010, the Township Council of the Township of Bloomfield (the "Township Council") designated the properties located at known as Block 243, Lots 13, 25, 27, 28, 30, 31, 32, 37 and 38 on the Township's Tax Map (the "Redevelopment Area") as an area in need of redevelopment to be known as the "Block 243 Redevelopment Area", in accordance with the Local Redevelopment and Housing Law, *N.J.S.A. 40A:12A-1 et seq.* (the "Redevelopment Law"); and

WHEREAS, the Township caused the preparation of a redevelopment plan for the redevelopment of the Redevelopment Area; and

WHEREAS, the redevelopment plan, known as the "Block 243 Redevelopment Plan" (as such plan may be amended from time to time, the "Redevelopment Plan") was originally prepared on behalf of the Bloomfield Planning Board (the "Board") and recommended by the Board by resolution on June 26, 2012; and

WHEREAS, on August 13, 2012, the Township Council adopted Ordinance No. 1947 approving and adopting the Redevelopment Plan; and

WHEREAS, the qualifications and conceptual proposal submitted by the Entity have been reviewed by the Township Council; and

WHEREAS, the Entity was designated by the Township, by Resolution adopted on September 17, 2012, as the redeveloper for the Redevelopment Area; and

WHEREAS, on August 12, 2013, the Township and the Redeveloper entered into a Redevelopment Agreement (the "**Redevelopment Agreement**") in order to implement the development, design, financing and construction of the Project (defined below); and

WHEREAS, the Township and Entity desire to fully and thoroughly address the terms and conditions of the development of the Redevelopment Area and the other services to be provided by Entity; and

WHEREAS, subject to the terms and conditions as set forth in this Agreement and to the further approvals contemplated by the Redevelopment Agreement, found to substantially further the Township's goals for redevelopment; and

WHEREAS, the Township and Entity acknowledge that the mutual promises contained in this Agreement are good and valuable consideration for the binding execution and delivery of this Agreement by the Parties;

WHEREAS, the Entity filed an application with the Township (the "Application") seeking approval of an redevelopment project pursuant to the Long Term Tax Exemption Law and a Financial Agreement between the Entity and Township consistent with the Application and the Long Term Tax Exemption Law, providing for the exemption from local taxation of the Project Improvements for a period not to exceed the earlier to expire of thirty (30) years from the date of Substantial Completion or thirty-five (35) years from the execution of the said Financial Agreement and for the payment in lieu of taxes on Project Improvements of an Annual Service Charge; and

WHEREAS, the Township has made the following findings:

A. Relative Benefits of the Project:

1. The Project will accelerate the development of deteriorated and underutilized structures while providing new residential housing units and retail/commercial use. Further, the Project will renew and revitalize the Redevelopment Area because it allows for the redevelopment of a site currently characterized by partially occupied and underutilized buildings into a productive use that will temporarily generate jobs and permanently increase tax ratables within the Redevelopment Area. The real estate taxes currently generated by the

Property are approximately \$210,000.00 per year, whereas, the annual service charge as estimated, will generate more in revenue to the Township per year;

2. It is expected that the Project will create a substantial number of jobs during construction and additional permanent jobs thereafter; and

3. The Project furthers the goals of the Township's designation as a Transit Village. As a Transit Village the Township receives State aid to revitalize the area around its train station with dense mixed-use development that encourages the use of public transit and decreases the dependence on motor vehicles. The integration of retail and higher-density residential uses into the downtown area, in close proximity to the Bloomfield Train Station, will advance these initiatives.

4. That the Project will also further the objectives of the Redevelopment Plan and will contribute to the economic growth of the Township in general and, specifically, the Redevelopment Area. The local objectives of the Redevelopment Plan have been expressed in the Master Plan for the Township of Bloomfield adopted in 2002 and reiterated in the Redevelopment Plan. These objectives include, but are not limited to, the establishment of a mixed-use and transit-oriented destination that is an attractive commercial center, viable and profitable business location and a downtown setting worthy of the Township's residential neighborhoods. Further, the 2008 Reexamination Report included recommendations for the promotion of growth of a diversified economic base that generates employment growth, increases tax ratables, improves income levels; and focuses economic development efforts on growth sectors of the economy and existing commercial and industrial districts. As the Redevelopment Plan, itself, recognizes,

the successful implementation of [the Redevelopment] Plan will advance these objectives by creating tax ratables on properties that are currently vacant and/or underutilized by providing new retail job opportunities within the Redevelopment Area. Moreover, the successful redevelopment of the area is expected to serve as a catalyst for redevelopment efforts within surrounding blocks. The infusion of residents into the area should revitalize retail, commercial and public uses throughout the Township. Finally, improved economic conditions that will flow from a revitalized downtown should spur the redevelopment of individual properties that currently suffer from varying degrees of deterioration and environmental contamination.

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

1. An exemption permits: (a) the development of underutilized property; and (b) provides a stream of revenue in the form of Annual Service Charges.

WHEREAS, on June 17, 2013 the Municipal Council of the Township approved the Application of the Entity and thereby authorized the execution of a Financial Agreement by the adoption of Ordinance 2789 (the "Ordinance"), *Exhibit 2*.

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.*) and the Ordinance which authorized the execution of this Agreement. It is expressly understood and agreed that the Township expressly relies upon the facts, data, and presentations contained in the Application incorporated herein by reference hereto 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 meanings set forth below:

- i. Allowable Net Profit - The amount arrived at by applying the Allowable Profit Rate to the Total Project Cost, as those terms are hereinafter defined.
- ii. Allowable Profit Rate - The greater of (a) twelve percent (12%) or (b) the percentage per annum arrived at by adding one and one-quarter percent (1¼%) 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 the greater of (x) twelve percent (12%) or (y) the percentage per annum arrived at by adding one and one-quarter percent (1¼%) to the interest rate per annum that the Township determines to be the prevailing rate of mortgage financing on comparable improvements in the county. The provisions of N.J.S.A. 40A:20-3b are incorporated herein by reference.
- iii. Auditor's Report - A complete, certified, audited financial statement outlining the financial status of the Entity as it relates to the Project and reporting the Annual Gross Revenue, Net Revenue and Total Project Cost as defined herein, the contents of which have been prepared in a manner consistent with the current standards of the Financial Accounting Standards Board and which fully details all items stated in the Law and which has been certified as to its conformance with such standards by a certified public accountant who is licensed to practice that profession in the State of New Jersey.

- iv. Authority - The New Jersey State Department of Community Affairs.
- v. Certificate of Occupancy - The document, whether temporary or permanent, issued by the Township pursuant to *N.J.S.A. 52:27D-133* authorizing occupancy of a building, in whole or in part.
- vi. Debt Service - the amount required to make annual payments of principal and interest or the equivalent thereof on any construction mortgage, permanent mortgage or other financing including returns on institutional equity financing and market rate related party debt for a project for a period equal to the term of the tax exemption granted by this Agreement.
- vii. Default - The failure of the Entity or Township to perform any obligation imposed upon the Entity or the Township by the terms of this Agreement or by the Law, beyond any applicable grace or cure periods.
- viii. Entity - MCP Bloomfield Urban Renewal, L.L.C., the owners and developers of the Project and all subsequent purchasers or successors in interest of the Project, provided they are organized pursuant to Law and the transfer of the Project to said subsequent purchasers or successors has been approved by the Township in accordance with the terms of this Agreement.
- ix. Gross Revenue - Pursuant to *N.J.S.A. 40A:20-3a*, the gross revenue shall be the sum of the rental charges generated from residential units of the Project and all application fees, pet fees, parking fees, floor or view premiums, health club fees and any other charges that qualify as "income" under the Internal Revenue Code of 1986 that may be collected from tenants of the Project. In no event shall Gross Revenues include any business income of any affiliate of the Entity.
- x. In Rem Tax Foreclosure - A summary proceeding by which the Township may enforce the lien for taxes due and owing by a tax sale, under *N.J.S.A. 54:5-1 et seq.*
- xi. Land Taxes - The amount of conventional real estate taxes assessed on land constituting the Property during the term of this Agreement.
- xii. Land Tax Payments - Payments made on the quarterly due dates for Land Taxes on the Property as determined by the Tax Assessor and the Tax Collector.
- xiii. Law or Statute - "The Long Term Tax Exemption Law", *N.J.S.A. 40A:20-1 et seq.* as amended and supplemented; and the Ordinances, which authorized the execution of the within Agreement.
- xiv. Material Conditions - the payment of Land Taxes, the Annual Service Charge or Minimum Annual Service Charge, water and sewer charges, and any interest due thereon.

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). Expenses shall include but not be limited to, the Debt Service and an annual amount sufficient to amortize (utilizing the straight line method-equal annual amounts) the Total Project Cost over the term of the abatement granted pursuant to this Agreement as well as all other expenses permitted under the provisions of *N.J.S.A.* 40A:20-3(c).

xvi. Project - The Project shall mean the Project as described in the Project Description attached hereto as Exhibit 9.

xvii. Project Improvements - Any building, structure or fixture permanently affixed to, and/or to be redeveloped on the Property which is the subject of this Agreement.

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

xix. Property - The real property, but not the Project Improvements, known as Block 243, Lots 13, 25, 27, 28, 30, 31, 32, 37 and 38 on the tax maps of the Township, and more particularly described by the metes and bounds description set forth in *Exhibit 3* of this Agreement.

xx. Substantial Completion - The completion of the Project, to such degree that it is considered to be ready for its intended use, which presumptively shall mean the date on which the Project Improvements receive or are eligible to receive any Certificate of Occupancy.

xxi. Total Project Cost - The total cost of constructing the Project through the date of the issuance of a Certificate of Occupancy for the entire completed Project, as more specifically defined in *N.J.S.A.* 40A:20-3h.

ARTICLE II APPROVAL

Section 2.1 Approval of PILOT Agreement

The Township hereby grants its approval of this Agreement for the Project to be designed constructed, operated and maintained in accordance with the terms and conditions set forth herein and the provisions of the Law. The Project shall be constructed on the Property. The Township hereby grants to the Entity, but only to the extent expressly set forth herein, a single continuing exemption from real property taxation on the Improvements for the Property for the duration of this Financial Agreement.

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 Law; has

been reviewed and approved by the Commissioner of the Department of Community Affairs; and has been filed with the State Treasurer in accordance with *N.J.S.A.* 40A:20-5.

Section 2.3 Improvements to be Constructed

Entity represents that it will develop the Project on the Property, which is more specifically described in the Application attached hereto as *Exhibit 5* and the Project Description attached hereto as *Exhibit 9*.

Section 2.4 Construction Schedule

The construction schedule for the Project shall be in accordance with the terms of the Redevelopment Agreement.

Section 2.5 Ownership, Management and Control

The Entity represents that it is or will at the time of redevelopment be the fee owner of the Property upon which the Project is to be redeveloped. The Entity expressly covenants, warrants and represents that upon Substantial Completion, the Project, including all Property and Project Improvements, shall be used, managed and operated for the purposes set forth in the Application and the Redevelopment Agreement.

Section 2.6 Financial Plan

The Entity represents that the Project shall be financed as described in the Application attached as *Exhibit 5*.

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 the expiration of thirty-five (35) years from the date of the execution of this Agreement or thirty (30) years from the date of Substantial Completion of the Project, unless it is sooner terminated pursuant to Article XI. The Agreement shall continue in force only while the Project is owned, or leased for a minimum period equal to the unexpired term of the Agreement, by an urban renewal entity formed and operating under the Law.

ARTICLE IV
ANNUAL SERVICE CHARGE

Section 4.1 Annual Service Charge

The Annual Service Charge (the "ASC") will be equal to the greater of: (i) ten and one half percent (10.50%) of the Project's annual gross revenue (the "AGR"), (ii) the Minimum ASC (as defined below), or (iii) the statutory minimum percent of conventional taxes listed below. The ASC will be paid to the Township quarterly as set forth in on Exhibit 8 in accordance with *N.J.S.A. 40A:20-12(b)(1)*, which amount shall not be reduced through any tax appeal on land and/or improvements during the period that this Agreement is in force. The Minimum ASC shall be equal to the cost of providing municipal services to the residents of the Township on a per completed unit basis (the "Base Cost Per Unit") multiplied by the number of units completed in the relevant year. At the commencement of the Project, the Base Cost Per Unit shall be equal to One Thousand Seven Hundred Twenty Five Dollars (\$1,725.00). The Base Cost Per Unit is subject to an annual increase equal to the lesser of: (i) two percent (2%) or (ii) the actual percentage increase to the Municipal Tax Rate (the "Annual Escalation Factor"). The Entity shall withdraw all pending tax appeals on the Redevelopment Area when the Entity closes on property, if applicable.

Section 4.2 Schedule of Staged Adjustments

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

- i. Stage One (years 1-10): From the first day of the month following Substantial Completion (Commencement Date) and for each of the ten (10) years thereafter, the Annual Service Charge shall be the amount of the total taxes levied against the Property in the last full tax year in which the Property was subject to taxation or the amount due pursuant to Section 4.1;
- ii. Stage Two (years 11-15): Beginning with the eleventh (11th) year following the Commencement Date and for each of the five (5) succeeding years thereafter, an amount equal to the greater of the amount due pursuant to Section 4.1 or twenty (20%) percent of the amount of the taxes otherwise due on the value of the land and Project Improvements;
- iii. Stage Three (years 16-20): Beginning with the Sixteenth (16th) year following the Commencement Date and for each of the five (5) succeeding years thereafter, an amount equal to the greater of the amount due pursuant to Section 4.1 or forty percent (40%) of the amount of the taxes otherwise due on the value of the land and Project Improvements;
- iv. Stage Four (years 21-25): Beginning with the Twenty-First (21st) year following the Commencement Date and for each of the five (5) succeeding years thereafter, an amount equal to the greater of the amount due pursuant to Section 4.1 or sixty percent (60%) of the amount of the taxes otherwise due on the value of the land and Project Improvements;

v. Final Stage (year 26-30): Beginning with the Twenty-Sixth (26th) year following the Commencement Date and for each of the five (5) succeeding years thereafter, an amount equal to the greater of the amount due pursuant to Section 4.1 or eighty percent (80%) of the amount of the taxes otherwise due on the value of the land and Project Improvements;

Section 4.3 Adjustments

In all cases, the Annual Service Charge shall be billed initially as set forth in the Annual Service Charge Schedule, *Exhibit 8*. The Annual Service Charge shall be adjusted on the close of each fiscal or calendar year based upon the submission of the Entity's audited financial statement pursuant to Article VI.

Section 4.4 Quarterly Installments

The Entity expressly agrees that the Annual Service Charge shall be billed 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 fiscal or calendar year, as the case may be. In the event that the Entity, or any successor in interest of the Entity, fails to so pay, the amount unpaid shall bear the rate of interest permitted in the case of unpaid taxes or tax liens on land until paid.

Section 4.5 Land Tax Credit and Annual Administrative Fee

Land tax payments must be made in order for any entitlement to land tax credit against the ASC for the subsequent year. The Entity shall receive a credit against the ASC for the amount, without interest, of real estate taxes on land within the Project Site paid in the last four preceding quarterly installments. For each quarterly payment of ASC in a given tax year, the land tax credit shall be equal to one-fourth of the total taxes on land paid in the previous tax year. The Entity's failure to make the requisite Land Tax Payment in a timely manner shall constitute a Default under the Agreement and the Township shall, among its other remedies, have the right to proceed against the Property in such event pursuant to the In Rem Tax Foreclosure Act, *N.J.S.A. 54:5-1 et seq.* and/or may cancel the Agreement in a manner consistent with the Default procedures set forth in Article XI hereof.

The Township shall be entitled to collect an annual administrative fee equal to two percent (2%) of the ASC for the relevant year (the "Annual Administrative Fee"). This fee shall be payable and due on or before December 31st of each year.

ARTICLE V **CERTIFICATE OF OCCUPANCY**

Section 5.1 Certificate of Occupancy

It is understood and agreed that it shall be the obligation of the Entity to apply for all Certificates of Occupancy in a timely manner. The failure to secure the Certificates of

Occupancy within a reasonable period of time after Substantial Completion, shall subject the Property to full taxation until such time as the Certificate of Occupancy is obtained.

Section 5.2 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 it obtains.

ARTICLE VI **ANNUAL REPORTS/ MUNICIPAL CERTIFICATION**

Section 6.1 Accounting System

The Entity agrees to maintain a system of accounting and internal controls established and administered in accordance with Generally Accepted Accounting Principles ("GAAP") and as otherwise prescribed by Law.

Section 6.2 Periodic Reports

i. Total Project Cost Audit: Within ninety (90) days after the Substantial Completion of the Project, the Entity shall submit to the Township Mayor and Council, 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*. All other costs shall be certified in conformance with GAAP, by a certified public accountant who is licensed to practice that profession in the State of New Jersey.

ii. Auditor's Report: Within ninety (90) days after the close of each fiscal or calendar year, depending on the Entity's accounting basis during the period that this Agreement shall continue in effect, the Entity shall submit to the Township Mayor and Council, 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, the terms and interest rate on any mortgage(s) associated with the purchase or rehabilitation of the Project and such details as may related to the financial affairs of the Entity and to its operation and performance hereunder, pursuant to the Law and this Agreement. The Auditor's Report shall include, but not be limited to, Net Profit, Annual Gross Revenue, and shall also include itemizations of operating and non-operating expenses, mortgage interest and terms, amortization of improvements and a computation and such other details as may relate to the computation of the Net Profit of the Entity.

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

Section 6.3 Audit and Verification by Township

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

Section 6.4 Inspection

The Entity shall permit the inspection of its property, equipment, buildings and other facilities of the Project and also permit, upon request, examination and audit of its books, contracts, records, documents and papers by duly authorized representatives of the Township or Authority. Such examination or audit shall be made upon three (3) days notice during regular business hours, in the presence of an officer or agent designated by the Entity. To the extent reasonably possible, the examination, inspection or audit will not materially interfere with the development or operation of the Project.

Section 6.5 Municipal Certification

Unless this Agreement has been fully and finally terminated in accordance with the provisions hereof, each year prior to October 1st, the Township shall file a written certification in the Office of the Tax Assessor and Tax Collector in a form that complies with *N.J.S.A. 40A:20-12* certifying in writing that this Agreement remains in full force and effect.

ARTICLE VII **LIMITATION OF PROFITS AND RESERVES**

Section 7.1 Limitation of Profits and Reserves

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

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

Section 7.2 Annual Payment of Excess Net Profit

In the event the Net Profits of the Entity, in any fiscal year, shall exceed the allowable Net Profits for such period, then in accordance with *N.J.S.A. 40A:20-15*, the Entity, within one

hundred and twenty (120) days after the end of such fiscal year, shall pay such excess Net Profits to the Township as an additional Annual Service Charge; provided, however, that the Entity may maintain a reserve as determined pursuant to aforementioned Section 7.1.

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

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

ARTICLE XIII **ASSIGNMENT AND/OR ASSUMPTION**

Section 8.1 Approval

The Entity shall not transfer more than ten percent (10%) of the Project, except that the Entity shall be permitted to transfer all or any portion of the Project to another urban renewal entity approved by the Township under the conditions set forth herein. As permitted by N.J.S.A. 40A:20-10a, it is understood and agreed that the Township, on written application by the Entity after completion of the Project, will consent to a sale of the Project and the transfer of this Agreement provided: (i) the transferee entity does not own or lease any other Project subject to long term tax exemption at the time of transfer; (ii) the transferee entity is formed and eligible to operate under the Long Term Tax Exemption Law; (iii) the Entity is not then in Default of this Agreement or the Long Term Tax Exemption Law; (iv) the Entity's obligations under this Agreement are fully assumed by the transferee entity; (v) the transferee entity agrees to abide by all terms and conditions of this Agreement including, without limitation, the filing of an application pursuant to N.J.S.A. 40A:20-8, and any other terms and conditions of the Township in regard to the Project; and (vi) the principal owners of the transferee entity possess the same business reputation, financial qualifications and credit worthiness as the Entity and are otherwise reputable. Nothing contained herein shall prohibit any transfer of the ownership interest in the urban renewal entity itself provided that the transfer, if greater than ten percent (10%), is disclosed to the municipal governing body in the annual disclosure statement, or in correspondence sent to the municipality in advance of this annual disclosure statement.

ARTICLE IX **COMPLIANCE**

Section 9.1 Operation

During the term of this Agreement, the Project shall be maintained and operated in accordance with the provisions of the Law. 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 Township shall, among its other

remedies, have the right to terminate the Agreement, subject to the Default procedure provisions of Article X.

ARTICLE X DEFAULT

Section 10.1 Default

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

Section 10.2 Cure Upon Default

Should the Entity be in Default, the Township shall send written notice to the Entity of the Default (the "Default Notice"). The Default Notice shall set forth with particularity the basis of the Default. The Entity or a party acting on its behalf shall have sixty (60) days from receipt of the Default Notice (the "Cure Period"), to cure any Default. However, if, in the reasonable opinion of the Township, the Default cannot be cured within the Cure Period using reasonable diligence, the Township will extend the time to cure accordingly. Further, notwithstanding anything herein to the contrary, the Entity shall be entitled to an extension to cure the default if the Entity is in the process of curing the default but cannot cure within the Cure Period.

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

Section 10.3 Remedies Upon Default

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

Further, the bringing of any action for Land Taxes, the Minimum Annual Service Charge, the Annual Service Charge, or for breach of covenant or the resort to any other remedy herein provided shall not be construed as a waiver of the rights to terminate the Agreement or proceed with a tax sale or tax foreclosure action or any other specified remedy.

ARTICLE XI
TERMINATION

Section 11.1 Termination Upon Default of the Entity

In the event the Entity or a party acting on its behalf fails to cure or remedy the Default within the time period as provided in Section 10.2, the Township may terminate this Agreement upon thirty (30) days written notice to the Entity (the "Notice of Termination").

Section 11.2 Voluntary Termination by the Entity

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

Section 11.3 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 Township 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 11.4 Conventional Taxes

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

ARTICLE XII
DISPUTE RESOLUTION

Section 12.1 Arbitration

In the event of a breach of the within Agreement concerning a Material Condition by either of the parties hereto either party may apply to the Superior Court of New Jersey by an appropriate proceeding, to settle and resolve the financial issue or dispute in such fashion as will tend to accomplish the purposes of the Law. All non-Material Condition issues shall be submitted to the American Arbitration Association in New Jersey consistent with the similar provision in the Redevelopment Agreement between the Parties 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.

Notwithstanding, the Entity may not file an action in Superior Court unless the Entity has first paid in full all those charges defined as Material Conditions.

ARTICLE XIII
WAIVER

Section 13.1 Waiver

Nothing contained in this Financial Agreement or otherwise shall constitute a waiver or relinquishment by the Township or the Entity of any rights and remedies, including, without limitation, the right to terminate the Agreement 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 Township or the Entity has under law, in equity, or under any provision of this Agreement.

ARTICLE XIV
NOTICE

Section 14.1 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 14.2 Sent by Township

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

MCP BLOOMFIELD URBAN RENEWAL, LLC
Laurence H. Mandelbaum
c/o 252 Liberty Street Bloomfield LLC
4 Brighton Road, Suite 204
Clifton, NJ 07012

With a copies to:

Len Kanarek, CEO, General Counsel
MCP Real Estate & Investment Management LLC
4 Brighton Road
Clifton, New Jersey 07012

Francis J. Giantomasi, Esq.
Genova Burns Giantomasi Webster LLC
494 Broad Street
Newark, New Jersey 07102

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

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

Section 14.3 Sent by Entity

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

Mayor and Township Council of Bloomfield
Township of Bloomfield
Municipal Building
1 Municipal Plaza
Bloomfield, New Jersey 07003

with copies to:

Paul T. Fader, Esq.
Florio Perrucci, Steinhardt & Fader
218 Route 17 North, Suite 300
Rochelle Park, NJ 07662
(201) 843-5858
Facsimile Number (201) 843-5877

The notice to the Township shall fully identify the Project to which it relates, (*i.e.*, the full name of the Urban Renewal Entity and the Property's Block and Lot number).

ARTICLE XV **SEVERABILITY**

Section 15.1 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, or if a judicial declaration results in a material change or reduction to the benefits anticipated by the Entity, the parties shall cooperate with each other to take the actions reasonably required to restore the Agreement in a manner contemplated by the parties. This shall include, but not be limited to the authorization and re-execution of this Agreement in a form reasonably drafted to effectuate the original intent of the parties. However, the Township shall not be required to agree to restore the Agreement if such

restoration would result in any material reduction or loss of the economic benefits due to the Township under this Agreement.

ARTICLE XVI
MISCELLANEOUS

Section 16.1 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 Township have combined in their review and approval of same.

Section 16.2 Conflict

The parties agree that in the event of a conflict between the Application and the language contained in this 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 16.3 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 Resolution 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 and delivered to each. All prior Agreements are superseded.

Section 16.4 Entire Document

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

Section 16.5 Good Faith

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

ARTICLE XVII
EXHIBITS

Section 17.1 Exhibits

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

1. Redevelopment Plan;
2. Ordinance 2789 of the Township authorizing the execution of this Agreement;
3. Metes and Bounds description of the Project;
4. Certificate of the Formation for the Entity;
5. The Application with Exhibits;
6. Estimated Construction Schedule;
7. Initial Rental Schedules and Lease Terms
8. Annual Service Charge Schedule;
9. Architect's Certification of Actual Construction Costs
10. Project Description

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

MCP BLOOMFIELD URBAN RENEWAL, L.L.C.
by its sole member, MCP Bloomfield Joint Venture LLC

By: Leonard Kanarek
Leonard H. Kanarek
Treasurer General Counsel
its Sole Member

THE TOWNSHIP OF BLOOMFIELD

By: Ragunath S. Srinivasan

Exhibit 1
Redevelopment Plan

Exhibit 2

**Ordinance of the Township
authorizing the execution of this Agreement**

Exhibit 3

Metes and Bounds description of the Project

Exhibit 4

Certificate of the Formation for the Entity

Exhibit 5

Application with Exhibits

Exhibit 6

Estimated Construction Schedule

Exhibit 7

Initial Rental Schedule and Lease Terms

Exhibit 8

Annual Service Charge Schedule

Year	Annual Service Charge
1	\$ 328,472
2	335,041
3	341,742
4	348,577
5	355,548
6	362,659
7	369,912
8	377,311
9	384,857
10	392,554
11	400,405
12	408,413
13	416,581
14	424,913
15	433,411
16	442,079
17	450,921
18	459,939
19	469,138
20	478,521
21	678,663
22	692,237
23	706,081
24	720,203
25	734,607
26	999,066
27	1,019,047
28	1,039,428
29	1,060,216
30	1,081,421

Exhibit 9

Architect's Certification of Construction Costs

Exhibit 9

PROJECT DESCRIPTION

The project is a mixed use development consisting of up to 140 residential units, approximately 11,000 square feet of retail/commercial space, and up to 140 on-site parking spaces. The residential units will consist of one-bedroom and two-bedroom apartments ranging from approximately 800 square feet to approximately 950 square feet. The unit mix shall contain no more than 30% two-bedroom units. Initial rents will range from approximately \$23.14 per square foot to approximately \$24.53 per square foot.