City Clerk File No. Ord. 11-044

Agenda No. 3.A 1st Reading

Agenda No. _____ 2nd Reading & Final Passage

ORDINANCE OF JERSEY CITY, N.J.

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

CITY ORDINANCE 11-044

TITLE: **AN ORDINANCE APPROVING A FIVE (5) YEAR TAX EXEMPTION PURSUANT TO THE PROVISIONS OF N.J.S.A. 40A:21-1, ET SEQ., AND SECTION 304-9 OF THE MUNICIPAL CODE FOR PROPERTY DESIGNATED AS BLOCK 1920, LOT 90, ON THE CITY'S TAX MAP AND MORE COMMONLY KNOWN BY THE STREET ADDRESS OF 167-169 MONTICELLO AVENUE**

THE MUNICIPAL COUNCIL OF THE CITY OF JERSEY CITY DOES ORDAIN:

WHEREAS, the City of Jersey City as an area in need of rehabilitation, is authorized to adopt an ordinance to utilize tax exemptions pursuant to N.J.S.A. 40A:21-1, et seq., the Five (5) Year Exemption and Abatement Law; and

WHEREAS, pursuant to N.J.S.A. 40A:21-1 et seq., the City of Jersey City adopted Ordinance 05-060 (Section 304-6 et seq. of the Municipal Code) and as amended by Ordinance 07-146, to allow Five (5) Year Tax Exemptions which allows the Tax Assessor to regard the full and true value or a portion thereof of certain improvements as not increasing the full and true value of certain property for a period of five (5) years, provided the owner's application is approved by the Tax Assessor and by Ordinance of the Municipal Council; and

WHEREAS, pursuant to N.J.S.A. 40A:21-9 and Section 304-12 of the Municipal Code, a tax exemption for a commercial condominium unit in a newly constructed building is permitted for a period of five (5) years; and

WHEREAS, Jersey City Episcopal Community Development Corporation is the owner of a three (3) story building which contains 1,376 square feet of street level retail space, and seven (7) residential affordable condominium units, located in Block 1920, Lot 111, Unit C-000C (formerly known as a portion of Lot 90) on the City's Tax Map and more commonly known by the street address of 167-169 Monticello Avenue, Jersey City, N.J., construction of which was completed on December 16, 2010; and

WHEREAS, on November 10th, 2010, the owner filed an application to tax exempt the newly constructed commercial space, a copy of which application is attached hereto; and

WHEREAS, the cost of constructing the Unit was approximately $370,000 (that is, less than $10 million); and

WHEREAS, Jersey City Episcopal Community Development Corporation proposes to pay the City (in addition to the full taxes on the land, which shall continue to be conventionally assessed and taxed) a tax payment for the new improvements on the property, pursuant to Section 304-12-C.1 of the Jersey City Municipal Code, as follows:

(a) 2011: the tax year in which the structure will be completed: $0 taxes;

(b) 2012: the second tax year, 20% of actual full taxes, estimated to be $1,201;

(c) 2013: the third tax year: 40% of actual full taxes, estimated to be $2,395;

(d) 2014: the fourth tax year: 60% of actual full taxes, estimated to be $3,596; and

(e) 2015: the fifth tax year: 80% of actual full taxes, estimated to be $4,790;

WHEREAS, the Tax Assessor has determined that the full and true value of the new construction is $370,000 Dollars, that generates an additional tax payment of $5,991 a year; and

WHEREAS, in the event a City-wide revaluation results in an increase in the amount of actual taxes, the applicant will pay the higher of the full taxes estimated above or the actual taxes upon revaluation; and

WHEREAS, the application for tax exemption was complete and timely filed; the application was approved by the Tax Assessor and the newly constructed multiple dwelling and commercial space are eligible for tax exemption pursuant to N.J.S.A. 40A:21-9 and Section 304-12 of the Municipal Code; and

WHEREAS, upon the expiration of the tax exemption, the total assessment will be $370,000 Dollars, that will generate a total tax payment of $5,991; and

WHEREAS, the tax abatement application went to the Tax Abatement Committee and the following recommendation was given its approval at its meeting of February 24, 2011.

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

1. The application, attached hereto, for a five (5) year tax exemption for the full and true value of the commercial unit in the newly constructed three (3) story building, located in Block 1920, Lot 111, Unit C-000C (formerly known as a portion of Lot 90), and more commonly known by the street address of 167-169 Monticello Avenue, Jersey City, N.J., is hereby approved, pursuant to N.J.S.A. 40A:21-9 and Section 304-12-C.1 of the Jersey City Municipal Code.

2. The Mayor or Business Administrator is hereby authorized to execute a tax exemption agreement which shall contain at a minimum, the following terms and conditions:

(a) tax payment on the new improvements shall be:

(i) Year 1: the tax year in which the structure will be completed. $0 taxes;

(ii) Year 2: the second tax year, 20% of actual full taxes, estimated to be $1,201;

(iii) Year 3: the third tax year, 40% of actual full taxes, estimated to be $2,395;

(iv) Year 4: the fourth tax year, 60% of actual full taxes, estimated to be $3,596; and

(v) Year 5: the fifth tax year, 80% of actual full taxes, estimated to be $4,790.

(b) The project shall be subject to all federal, state and local laws, and regulations on pollution control, worker safety, discrimination in employment, zoning, planning, and building code requirements pursuant to N.J.S.A.40A:21-11(b).

(c) If, during any tax year prior to the termination of the tax agreement, the property owner ceases to operate or disposes of the property, or fails to meet the conditions for qualifying, then the tax which would have otherwise been payable for each tax year shall become due and payable from the property owner as if no exemption and abatement had been granted. The tax collector shall, within 15 days thereof, notify the owner of the property of the amount of taxes due.

(d) With respect to the disposal of the property, where it is determined that the new owner of the property will continue to use the property pursuant to the conditions which qualified the property, no tax shall be due, the exemption shall continue, and the agreement shall remain in effect.

(e) At the termination of a tax exemption agreement, the new improvements shall be subject to all applicable real property taxes as provided by State law and regulation and local ordinance; but nothing herein shall prohibit a project, at the termination of an agreement, from qualifying for, an receiving the full benefits of, any other tax preferences provided by law.

3. The form of tax exemption agreement is attached hereto as Exhibit B, subject to such modification as the Corporation counsel or Business Administrator deems necessary.

4. The Tax Assessor shall send a copy of the fully executed Financial Agreement will be sent to the Director of the Division of Local Government Services in the Department of Community Affairs within thirty (30) days of execution pursuant to N.J.S.A. 40a:21-11(d).

A. All ordinances and parts of ordinances inconsistent herewith are hereby repealed.

B. 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.

C. This ordinance shall take effect at the time and in the manner provided by law.

D. 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*.

JM/he
4/06/11

APPROVED AS TO LEGAL FORM

Corporation Counsel

APPROVED:

APPROVED:

Business Administrator

Certification Required ☐

Not Required ☐

2-08-11

TAX AGREEMENT
FIVE YEAR/NEW CONSTRUCTION

THIS AGREEMENT made on this _____day of_____,2011, by and between the **CITY OF JERSEY CITY** [City], a municipal corporation organized under the Laws of the State of New Jersey and having its principal place of business at 280 Grove Street, Jersey City, New Jersey, and, Jersey City Episcopal Community Development Corporation [Applicant], whose principal place of business is 514 Newark Avenue, Jersey City, NJ 07306.

WITNESSETH:

WHEREAS, the Municipal Council has indicated by its intention to utilize the five year tax exemption provisions authorized by Article VIII, Section I, paragraph VI of the NJ State Constitution and the Five Year Exemption Law, N.J.S.A. 40A:21-1 et seq. for improvements and projects by the adoption of Ordinance 05-060, as amended by Ordinance 07-146; and

WHEREAS, the Applicant is owner of certain property located at 167-169 Monticello Avenue, in the City of Jersey City, County of Hudson and State of New Jersey, designated as Block 1920, Lot 111, Unit C-000C (formerly known as a portion of Lot 90), on the Tax Assessor's Map, more commonly known by the street address of 167-169 Monticello Avenue, and more particularly described in the metes and bounds description attached hereto as Exhibit A [Property];

WHEREAS, on November 10th, 2010, the Applicant filed an application to tax exempt the newly constructed three (3) story commercial space building, which contains 1,376 square feet of street level retail space, and seven (7) residential affordable condominium units [Improvements] pursuant to N.J.S.A. 40A:21-1 et seq and Section 304-12 of the Municipal Code [Law]; and

WHEREAS, the City has reviewed the application, approved the construction of the Improvements and authorized the execution of a Tax Exemption Agreement by the adoption of Ordinance_____on _____.

NOW, THEREFORE, IN CONSIDERATION of the mutual promises and covenants hereinafter contained, the parties hereto agree as follows:

ARTICLE I: APPROVAL OF TAX EXEMPTION

The City hereby agrees to a tax exemption for the newly constructed three (3) story commercial space building, which contains 1,376 square feet of street level retail space, and seven (7) residential affordable condominium units [Improvements] on the Property, as further described in the Application, attached hereto as Exhibit B, pursuant to the provisions of N.J.S.A. 40A:21-1 et seq. and Ordinance_____which authorized the execution of this Tax Agreement [Law], subject to the terms and conditions hereof.

ARTICLE II: IN LIEU OF TAX PAYMENTS

The Applicant agrees to make payments on the new Improvements, (separate and apart from taxes on the land and existing improvements which shall continue to be subject to conventional assessment and taxation and for which the Applicant shall receive no credit against the in lieu of tax payment) in lieu of full property tax payments according to the following schedule:

1. For the full calendar year of 2011, no payment in lieu of taxes;

2. For the full calendar year of 2012, twenty (40%) percent of the actual taxes otherwise due, currently estimated to be the sum of $1,201;

3. For the full calendar year of 2013, forty (40%) percent of the actual taxes otherwise due, currently estimated to be the sum of $2,395;

4. For the full calendar year of 2014, seventy-nine (60%) percent of the actual taxes otherwise due, currently estimated to be the sum of $3,596; and

5. For the full calendar year of 2015 eighty (80%) percent of the actual taxes otherwise due, currently estimated to be the sum of $4,790.

In the event a City-wide revaluation results in an increase in the amount of taxes otherwise due, payment shall be the higher of either the taxes estimated above or the amount of actual taxes as increased after the City-wide revaluation.

ARTICLE III: APPLICATION FEE

The Applicant has paid the sum of **$1,500** to the City on or before the date this Agreement is executed. Failure to make such payment shall cause the tax exemption to terminate.

ARTICLES IV: FEDERAL, STATE AND LOCAL LAW

The construction of the Improvements is subject to all applicable federal, State and local laws and regulations on pollution control, worker safety, discrimination in employment, housing provision, zoning, planning and building code requirements.

ARTICLE V: TERM OF EXEMPTION

The Tax Exemption granted shall be valid and effective for a period of five (5) full calendar years from the date of Substantial Completion of the Project, which shall ordinarily mean the date on which the City issues, or the Project is eligible to receive, a Certificate of Occupancy, whether temporary or final, for part or the whole of the Project. During the term of the tax exemption, the Applicant shall make an in lieu of tax payment to the City in accordance with the schedule set forth above. Prior to the commencement of the tax exemption, and upon expiration thereof, the Applicant shall pay full conventional taxes on the

Improvements.

ARTICLE VI: COUNTY EQUALIZATION AND SCHOOL AID

Pursuant to N.J.S.A. 40A:21-11(c), the percentage, which the payment in lieu of taxes for the tax exempt property bears to the property tax which would have been paid had an exemption not been granted for the property under this Agreement, shall be applied to the valuation of the property to determine the reduced valuation of the property to be included in the valuation of the City for determining equalization for county tax apportionment and school aid, during the term of the tax exemption agreement covering this property. At the expiration or termination of this Agreement, the reduced valuation procedure required under the Law shall no longer apply.

ARTICLE VII: OPERATION OR DISPOSITION OF PROPERTY

If during any year prior to the termination of this Agreement, the Applicant ceases to operate or disposes of the Property, or fails to meet the conditions for qualifying for tax exemption under this Agreement or pursuant to Law, then the tax which would have otherwise been payable for each and every year, shall become due and payable from the Applicant as if no exemption had been granted. The Tax Collector shall, within 15 days thereof, notify the owner of the Property of the amount of taxes due.

However, with respect to the disposal of the property, if it is determined that the new owner will continue to use the property pursuant to the conditions which qualify the property for exemption, the tax exemption shall continue and this Agreement shall remain in full force and effect.

ARTICLE VIII: TERMINATION/ELIGIBILITY FOR ADDITIONAL TAX EXEMPTION

Upon the termination of this Agreement for tax exemption, the Project shall be subject to all applicable real property taxes as provided by State Laws and Regulations and City Ordinances. However, nothing herein shall be deemed to prohibit the Project, at the termination of this Agreement, from qualifying for and receiving the full benefits of any other tax preferences allowed by law. Furthermore, nothing herein shall prohibit the Applicant from exercising any rights under any other tax provisions of State law or City Ordinances.

ARTICLE IX: PROJECT EMPLOYMENT AGREEMENT

In order to provide City residents and businesses with employment and other economic opportunities, the Applicant agrees to comply with the terms and conditions of the Project Employment Agreement which is attached hereto as Exhibit C.

ARTICLE X: NOTICES

All notices to be given with respect to this Agreement shall be in writing. Each notice shall be sent by registered or certified mail, postage prepaid, return receipt requested, to the party

to be notified at the addresses set forth below or at such other address as either party may from time to time designate in writing:

Notice to City: Business Administrator
City Hall, 280 Grove Street
Jersey City, New Jersey 07302

Notice to Applicant: **Jersey City Episcopal Community Development Corporation**
514 Newark Avenue
Jersey City, NJ 07306

ARTICLE XI: GENERAL PROVISIONS

This Agreement contains the entire Agreement between the parties and cannot be amended, changed or modified except by written instrument executed by the parties hereto.

In the event that any provisions or term of this Agreement shall be held invalid or unenforceable by an Court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof; provided, however, that the City continues to receive the full benefit of any economic term hereunder.

This Agreement shall be governed by and construed in accordance with the Laws of the State of New Jersey.

This agreement may be executed in several counterparts, each of which shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the City and the Applicant have caused this Agreement to be executed on the date and year first above written.

WITNESS:

JERSEY CITY EPISCOPAL COMMUNITY DEVELOPMENT CORPORATION

_____

BY:_____

ATTEST:

CITY OF JERSEY CITY

_____

Robert Byrne
City Clerk

BY:_____

John Kelly
Business Administrator

City Clerk File No. Ord. 11-045

Agenda No. 3.B 1st Reading

Agenda No. _____ 2nd Reading & Final Passage

ORDINANCE OF JERSEY CITY, N.J.

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

CITY ORDINANCE 11-045

TITLE: **ORDINANCE AMENDING CHAPTER 345 (ZONING) ARTICLE I (GENERAL PROVISIONS) AND ARTICLE III (APPLICATION REQUIREMENTS, DEVELOPMENT PROCEDURES AND CHECKLISTS) OF THE JERSEY CITY MUNICIPAL CODE**

THE MUNICIPAL COUNCIL OF THE CITY OF JERSEY CITY HEREBY ORDAINS:

WHEREAS, the Land Development Ordinance contains provisions to preserve and protect the Historic Districts and Designated Landmarks of Jersey City; and

WHEREAS, municipalities are authorized to zone for and regulate historic landmarks and historic districts pursuant to Municipal Land Use Law (N.J.S.A. 40:55D-1 et seq.), specifically at 40:55D-107 thru 112; and

WHEREAS, the Municipal Land Use Law has no provisions for the grant of relief from zoning regulations for economic reasons; and

WHEREAS, the procedures of the Land Development Ordinance with regard to "Certificates of Economic Hardship" in the "Historic Preservation Review Procedures" (Section 345-30.D) must be struck from the City Code as there is no foundation for these procedures in New Jersey's enabling legislation; and

WHEREAS, the proposed amendments to the Land Development Ordinance have been reviewed and recommended for Municipal Council adoption by both the Historic Preservation Commission and the Planning Board.

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

A. The following amendments to Chapter 345 (Zoning) Article I (General Provisions) Section 6 (Definitions) are hereby adopted:

ZONING

ARTICLE I
General Provisions

§ 345-6. Definitions.

Definitions And Usages. Unless otherwise expressly stated, the following terms shall, for the purpose of this Chapter, have the meanings herein defined. Whenever a term is used in this Chapter which is defined in the MLUL, such term shall have the same meaning as the MLUL. Any word or term not defined below or in the MLUL, shall be used with a meaning as defined in Webster's Third New International Dictionary of the English Language, unabridged (or the latest edition).

ABUTTING COUNTY ROAD — Through
CANOPY — No Change.

~~[CAPABLE OF EARNING A REASONABLE RETURN — Having the capacity, under reasonable, efficient and prudent management, of earning a reasonable return.]~~

CAPITAL IMPROVEMENT — Through
QUORUM — No Change.

ORDINANCE AMENDING CHAPTER 345 (ZONING) ARTICLE I (GENERAL PROVISIONS) AND ARTICLE III (APPLICATION REQUIREMENTS, DEVELOPMENT PROCEDURES AND CHECKLISTS) OF THE JERSEY CITY MUNICIPAL CODE

~~[REASONABLE RETURN — Such return on investment as required by the New Jersey and United States Constitutions.]~~

RECONSTRUCTION — Through
ZONING PERMIT — No Change.

B. The following amendments to Chapter 345 (Zoning) Article III (Application Requirements, Development Procedures and Checklists) Section 30 (Historic Preservation Review Procedure) are hereby adopted:

ARTICLE III
Application Requirements, Development Procedures and Checklists

§ 345-30. Historic preservation review procedures.

A. Through C. No Change.

~~[D. Certificate of Economic Hardship.~~

~~1. Application for a Certificate of Economic Hardship shall be made on a form prepared by the Division of City Planning. Such an application may be made in connection with or following the filing of any application for a Certificate of Appropriateness. The Commission shall schedule a public hearing concerning the application and provide notice in the same manner as stated in this Article. A Certificate of Economic Hardship shall be signed by the Chairperson or acting chairperson and one other Commissioner present at the hearing.~~

~~2. Criteria. The Preservation Commission may solicit expert testimony or require that the applicant for a Certificate of Economic Hardship make submissions concerning any or all of the following information before it makes a determination on the application.~~

~~i. Estimate of the cost of the proposed construction, alteration demolition or removal or an estimate of any additional cost that would be incurred to comply with the recommendations of the Preservation Commission for changes necessary for the issuance of a Certificate of Appropriateness.~~

~~ii. A report from a licensed engineer or architect with experience in rehabilitation as to the structural soundness of any structures on the rehabilitation.~~

~~iii. Estimated market value of the property in its current condition; after completion of the proposed construction, alternation, demolition or removal; after any changes recommended by the Preservation Commission; and in the case of a proposed demolition, after renovation of the existing property for continued use.~~

~~iv. In the case of proposed demolition, an estimate from an architect, developer, real estate consultant, appraiser or other real estate professional experienced in rehabilitation as to the economic feasibility of rehabilitation or reuse of the existing structure on the property.~~

~~v. Amount paid for the property, the date of purchase and the party from whom purchased, including a description of the relationship, if any, between the owner of record or applicant and the person from whom the property was purchased any terms of financing between the seller and buyer. Remaining balance on any mortgage or other financing secured by the property and annual dept service, if any for the previous two years.~~

ORDINANCE AMENDING CHAPTER 345 (ZONING) ARTICLE I (GENERAL PROVISIONS) AND ARTICLE III (APPLICATION REQUIREMENTS, DEVELOPMENT PROCEDURES AND CHECKLISTS) OF THE JERSEY CITY MUNICIPAL CODE

~~vi. All appraisals obtained within the previous two years by the owner or applicant in connection with the purchase, financing or ownership of the property. Any listing of the property for sale or rent, price asked and offers received, if any, within the previous two years.~~

~~vii. Assessed value of the property according to the two most recent assessments and real estate taxes for the previous two years.~~

~~viii. Form of ownership or operation of the property, whether sole proprietorship, for-profit or not-for-profit corporation, limited partnership, joint venture or other.~~

~~ix. Any other information, including the income tax bracket of the owner, applicant or principal investors in the property considered necessary by the Commission for a determination as to whether a commercial property does yield or may yield a reasonable return to the owners or whether, in the case of new commercial property, an economic hardship exists.~~

~~The Preservation Commission shall review all of the evidence and information required of an applicant for a Certificate of Economic Hardship and make a determination within forty-five (45) days of receipt of a completed application whether the denial of a Certificate of Appropriateness has deprived or, or will deprive, the owner of the property of reasonable use and enjoyment of the property.]~~

C. All ordinances and parts of ordinances inconsistent herewith are hereby repealed.

D. 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 as provided by law.

F. The City Clerk and the Corporation Counsel may change any chapter numbers, article numbers and section numbers if codification of this ordinance reveals a conflict between those numbers and the existing code, in order to avoid confusion and possible accidental repealers of existing provisions.

Note: All new material is underlined; words in [~~brackets~~] are omitted. For purposes of advertising only, new matter is **boldface** and repealed matter by *italics*.

JOD/he
4/04/11

APPROVED AS TO LEGAL FORM

Corporation Counsel

APPROVED:

APPROVED:

Business Administrator

Certification Required ☐

Not Required ☐

Date Submitted to B.A._____

ORDINANCE FACT SHEET

1. **Full Title of Ordinance:**

   ORDINANCE OF THE CITY OF JERSEY CITY REPEALING ALL PROVISIONS OF THE LAND DEVELOPMENT ORDINANCE REGARDING THE CERTIFICATE OF ECONOMIC HARDSHIP WITH REGARD TO ZONING REVIEWS

2. **Name and Title of Person Initiating the Ordinance, etc.:**

   Carl Czaplicki, Director of Housing, Economic Development, and Commerce

3. **Concise Description of the Program, Project or Plan Proposed in the Ordinance:**

   This ordinance repeals all provisions and procedures for a review process for a Certificate of Economic Hardship.

4. **Reasons (Need) for the Proposed Program, Project, etc.:**

   We have received a Legal Opinion letter from the New Jersey Attorney General regarding Economic Hardship provisions of the Historic Preservation Ordinance of the City of Newark which informed Newark that any such provisions are not permitted by New Jersey's Municipal Land Use and are therefore *ultra vires*.

5. **Anticipated Benefits to the Community:**

   Eliminating this section of our Land Development Ordinance will bring our Code into conformance with New Jersey's Municipal Land Use Law.

6. **Cost of Proposed Plan, etc.:**

   $0.00. Amendments were produced in house.

7. **Date Proposed Plan will commence:**

   Upon Adoption.

8. **Anticipated Completion Date:** N/A

9. **Person Responsible for Coordinating Proposed Program, Project, etc.:**

Robert D. Cotter, Director, City Planning	547-5050
Dan Wrieden, Historic Preservation Officer	547-5050

10. **Additional Comments:**

I Certify that all the Facts Presented Herein are Accurate.

Robert D Cotter — 4 APRIL 2011

Division Director — **Date**

_____ — _____

Department Director Signature — **Date**

City Clerk File No. Ord. 11-046

Agenda No. 3.C 1st Reading

Agenda No. _____ 2nd Reading & Final Passage

ORDINANCE OF JERSEY CITY, N.J.

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

CITY ORDINANCE 11-046

TITLE: **ORDINANCE CONSENTING TO THE SALE AND ASSIGNMENT OF THE TAX EXEMPTION AND FINANCIAL AGREEMENT FROM PHM URBAN RENEWAL ASSOCIATES, LLC, TO GAIA JOURNAL SQUARE URBAN RENEWAL ASSOCIATES, LLC, PURSUANT TO SECTION 16 OF THE FINANCIAL AGREEMENT, SECTION 13 OF THE AMENDED AND RESTATED FINANCIAL AGREEMENT AND N.J.S.A. 40A:20-22 OF THE LONG TERM TAX EXEMPTION LAW**

THE MUNICIPAL COUNCIL OF THE CITY OF JERSEY CITY DOES ORDAIN:

WHEREAS, PHM Urban Renewal Associates, LLC, is an urban renewal company, formed and qualified to do business under the provisions of the Urban Renewal Corporation and Association Law of 161, N.J.S.A. 40:55C-40 et seq [Fox Lance], saved from repeal by the Long Term Tax Exemption Law of 1992, as amended and supplemented, N.J.S.A. 40A:20-1 et seq. [Entity]; and

WHEREAS, the Entity owns certain property known as Block 586.5, Lot A on the City's Official Tax map, and more commonly known by the street address of 2 Journal Square Plaza, Jersey City, New Jersey [Property], all of which is located within the boundaries of the Journal Square Redevelopment Plan; and

WHEREAS, by the adoption of a Resolution on January 24, 1985, the Municipal Council of the City of Jersey City approved an 18 year tax exemption and authorized the execution of a financial agreement for a project to consist of a building to contain approximately 276,000 gross square feet of office space and a 413,350 square foot parking structure; and

WHEREAS, the Entity proposed to pay a service charge calculated as 2 % of total project cost; and

WHEREAS, the Entity and the City executed a Financial Agreement on March 18, 1985 [Financial Agreement]; and

WHEREAS, by the adoption of Ordinance 04-047 on April 28, 2004, pursuant to Fox Lance, as saved from repeal by N.J.S.A. 40A:20-22 of the Long Term Tax Exemption Law, the tax exemption was amended; and

WHEREAS, the Entity and the City executed an Amended and Restated Financial Agreement on August 10, 2004, which among other things, converted the service charge to 15% of annual gross revenue and, for the final 5 years, 17% of annual gross revenue, in addition to a multiplier based upon the total tax levy; extended the term for 10 years, for an expiration date of March 17, 2013; and mandated the annual payment of a 2% administrative fee; and

WHEREAS, the Entity has now applied to the City for its consent to the sale of the project and assignment of the tax exemption to Gaia Journal Square Urban Renewal Associates, LLC, an urban renewal company 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.[New Entity]; and

WHEREAS, the New Entity has agreed to assume all obligations of the Entity under the Financial Agreement; and

ORDINANCE CONSENTING TO THE SALE AND ASSIGNMENT OF THE TAX EXEMPTION AND FINANCIAL AGREEMENT FROM PHM URBAN RENEWAL ASSOCIATES, LLC, TO GAIA JOURNAL SQUARE URBAN RENEWAL ASSOCIATES, LLC, PURSUANT TO SECTION 16 OF THE FINANCIAL AGREEMENT, SECTION 13 OF THE AMENDED AND RESTATED FINANCIAL AGREEMENT AND N.J.S.A. 40A:20-22 OF THE LONG TERM TAX EXEMPTION LAW

WHEREAS, pursuant to Section 16 of the Original Financial Agreement, as preserved in Section 13 of the Amended and Restated Financial Agreement, upon written application by the Entity, the City is required to consent to the sale or transfer of a tax exemption if: 1) the existing Entity is not in default of its financial agreement or the Law; 2) the New Entity does not own any other tax exempt project; 3) the New Entity is formed and eligible to operate under the Law; and 4) the New Entity agrees to assume all obligations of the existing Entity; and

WHEREAS, the City will receive a transfer fee of 2% of the Annual Service Charge or $17,000, the maximum transfer fee permitted under N.J.S.A. 40A:20-10(d); and

WHEREAS, the New Entity will continue to pay a service charge of 17% of annual gross revenue, since it is within the final 5 years of the tax exemption, plus a multiplier based upon the total tax levy, which in 2010 resulted in a total annual service charge of approximately $850,000.

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

A. The Application of PHM Urban Renewal Associates, LLC, an urban renewal company 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. attached hereto, for Block 586.5, Lot A, and more commonly known by the street address of 2 Journal Square Plaza, to sell the project and transfer the tax exemption, is hereby approved.

B. The Mayor or Business Administrator is hereby authorized to execute a consent to assignment and assumption agreement with PHM Urban Renewal Associates, LLC, and Gaia Journal Square Urban Renewal Associates, LLC, as well as any other documents appropriate or necessary to effectuate the sale and transfer of the Project and the tax exemption financial agreement, and the purposes of this ordinance.

C. The Assignment and Consent Agreement shall be in substantially the form attached hereto as Exhibit A, subject to such modification as the Business Administrator or Corporation Counsel deems appropriate or necessary.

D. All ordinances and parts of ordinances inconsistent herewith are hereby repealed.

E. 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.

F. This ordinance shall take effect at the time and in the manner provided by law.

G. 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*.

JM/he
4-05-11

APPROVED AS TO LEGAL FORM

Corporation Counsel

APPROVED:

APPROVED:

Business Administrator

Certification Required ☐
Not Required ☐

CONSENT TO ASSIGNMENT OF FINANCIAL AGREEMENT AND ASSUMPTION OF FINANCIAL AGREEMENT, AMONG PHM URBAN RENEWAL ASSOCIATES, LLC, GAIA JOURNAL SQUARE URBAN RENEWAL ASSOCIATES, LLC AND THE CITY OF JERSEY CITY

THIS AGREEMENT is dated the ___ day of _____, 2011, between the **CITY OF JERSEY CITY [City]**, located at 280 Grove Street, Jersey City, New Jersey 07302, **PHM URBAN RENEWAL ASSOCIATES, LLC,** a New Jersey limited liability company having an office at 400 Plaza Drive, Secaucus, New Jersey 07094 [Original Entity] ; and **GAIA JOURNAL SQUARE URBAN RENEWAL ASSOCIATES, LLC**, a New Jersey limited liability company having an office at c/o Phillips Nizer LLP, Court Plaza South, Suite 601-A, 25 Main Street, Hackensack, New Jersey 07642 [New Entity].

WHEREAS, pursuant to N.J.S.A. 40:55C-40 et seq., and a Resolution adopted on January 24, 1985, the City approved a Long Term Tax Exemption and the execution of a Financial Agreement with the Original Entity for the construction of a building to contain 276,000 gross square feet of office space and a 413,350 square foot parking structure, and more particularly described as Block 586.5, Lot A, on the official Tax Map of the City of Jersey City and more commonly known by the street address of 2 Journal Square Plaza; and

WHEREAS, the City and the Original Entity, entered into a financial agreement dated March 18, 1985 ("original Financial Agreement"), as amended and restated by the adoption of Ordinance 04-047 on April 28, 2004, and the execution of an amended and restated financial agreement ("Amended and Restated Financial Agreement") on August 10, 2004 [collectively, the Financial Agreement]; and

WHEREAS, pursuant to an Agreement of Sale the Original Entity, as seller agreed to sell the Project and assign the Financial Agreement to the New Entity; and

WHEREAS, the Financial Agreement provides that any sale of the Project or Assignment of the Financial Agreement is null and void unless approved by the City in advance; and

WHEREAS, by application dated February 18, 2011, the Original Entity formally requested that the City give its consent and approval to sell the Project and assign the Financial Agreement to the New Entity, an urban renewal entity formed and qualified to do business under the Long Term

Tax Exemption Law, N.J.S.A. 40A:20-1 et seq.; and

WHEREAS, by adoption of Ordinance _____, the Municipal Council of the City of Jersey City consented to 1) the assignment of the Financial Agreement by the Original Entity; 2) the sale of the Project from the Original Entity to the New Entity; 3) the assumption of the Financial Agreement by the New Entity; and 4) authorized the City Business Administrator to execute any documents necessary and appropriate to effectuate the foregoing; and

WHEREAS, the parties hereto now seek to memorialize the consent of the City to the sale of the project and the assignment of the Financial Agreement by the Original Entity and the assumption of the Financial Agreement by the New Entity;

NOW, THEREFORE, it is hereby agreed by and between the parties as follows:

1. The City hereby authorizes, approves and consents to the Assignment by the Original Entity of the Financial Agreement to the New Entity and the Assumption of the Financial Agreement by the New Entity.

2. The City acknowledges that following the sale of the Project, the names and the addresses of the New Entity entitled to receive notice under and pursuant to paragraph 14(a) of the original Financial Agreement shall be amended as follows:

GAIA Journal Square Urban Renewal Associates, LLC
c/o Phillips Nizer LLP
Court Plaza South — Suite 601-A
25 Main Street
Hackensack, New Jersey 07642

3. Pursuant to Section 16 of the original Financial Agreement, upon written application by the original Entity, the City is required to consent to the sale or transfer of the tax exemption Financial Agreement if: 1) the New Entity does not own any other tax exempt projects; 2) the New Entity is formed and eligible to operate under the Law; 3) the existing Entity is not in default of the Financial Agreement; and 4) the New Entity agrees to assume all obligations of the existing Entity under the Financial Agreement.

4. In addition, as permitted under N.J.S.A. 40A:20-10(d), the original Entity has agreed to pay the City an amount equal to $17,000, that is, 2% of the gross annual service charge as a transfer fee.

5. The Financial Agreement dated March 18, 1985, as amended and restated on August 10, 2004, hereby remains in full force and effect.

6. The Original Entity hereby consents to the assignment of the Financial Agreement to the New Entity, upon that date that the New Entity acquires its real property interest in the property and the Project.

7. The New Entity hereby agrees to assume all obligations previously belonging to the Original Entity under the Financial Agreement, upon that date that the New Entity acquires its real property interest in the property and the Project.

8. Any and all capitalized terms in this Agreement shall be defined in accordance with and by reference to the Financial Agreement and/or N.J.S.A. 40A:20-1 et seq.

IN WITNESS WHEREOF, the parties hereto have entered into this Agreement as of the date first set forth above.

ATTESTED:

_____

ROBERT BYRNE
CITY CLERK

WITNESS:

_____

WITNESS:

_____

CITY OF JERSEY CITY

_____

JOHN KELLY
BUSINESS ADMINISTRATOR

PHM URBAN RENEWAL ASSOCIATES, LLC [Original Entity]

_____

By:

GAIA JOURNAL SQUARE URBAN RENEWAL ASSOCIATES, LLC [New Entity]

_____

By: