City Clerk File No. Ord. 12-014

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 12-014

TITLE: **An Ordinance Dedicating the Southwest Corner of Wayne Street and Baldwin Avenue as Reverend Fernando L. Colon Jr. Way**

Whereas, Reverend Fernando L. Colon Jr. was born on August 20, 1932 in San Juan, Puerto Rico. He was the eldest of five children born to Fernando L. Colon Sr. and Gala Urbina Colon; and

Whereas, Rev. Colon relocated to Jersey City in 1948, at the age of sixteen and has remained a resident ever since. He attended James J. Ferris High School where he was an avid baseball player and fencer; and

Whereas, Rev. Colon studied through the Seminario Latino Americano in San Jose, Costa Rica. Upon completion of his studies in 1965, he was ordained as reverend in the Pentecostal Church in 1965. He currently serves as Pastor of the "Primera Iglesia Cristiana Circulo De Oracion"; and

Whereas, Rev. Colon worked as a street cleaner before his employment with the United States Postal Service. He diligently worked as a mail carrier for eleven years while being very active in the community. Rev. Colon started his outreach in the community through the Anti-Poverty Program (Can-Do) and was appointed to the Board. Through his dedication he has filled many roles to serve this city and county; and

Whereas, Rev. Colon entered the political arena in 1974 when he was elected Freeholder-at-Large for Hudson County. He was the first Puerto Rican/Hispanic to hold that position in Hudson County and the State of New Jersey. This led the way for other Hispanics to seek and win elected offices throughout the region. **Rev. Colon** was elected Councilman-at-Large for Jersey City in 1993 and served two consecutive terms for a total of eight years of service; and

Whereas, Rev. Colon entered into holy matrimony with Gloria M. Calderon on May 1, 1954. Their union gracefully produced seven children named Samuel, Elias, Ruth Maria, Noemi, Migdalia, Sara Luz and Obed Fernando. The Colon family has expanded beautifully with 17 grandchildren and 24 great-grandchildren.

Whereas, Rev. Colon has served on the many boards and agencies and accomplished the following:

1) Chairman Jersey City Board of Education Committee
2) Co-founder of PACO
3) Mayoral Aide to Mayor Dr. Paul Jordan.
4) Commissioner, Vice Chairman and Chairman of the Jersey City Incinerator Authority
5) Director of Hispanic Affairs of Hudson County
6) One of the first Board Members of Hudson County Area Vocational-Technical School
7) Founder and President of the Hispanic Clergyman of Hudson County
8) Prison Chaplain for the Hudson County Jail
9) Co-founder of the Downtown Little League
10) Board Member of Roberto Clemente Little League
11) Board of Trustee Member for Jersey City Medical Center
12) National Coalition of Latino Clergy & Christian Leader of New Jersey
13) Pastor of "Iglesia Circulo De Oracion"
14) Director of Sinai Bible Institute
15) His entry was chosen in renaming Jersey City State College to New Jersey City University

An Ordinance Dedicating the Southwest Corner of Wayne Street And Baldwin Avenue as Reverend Fernando L. Colon Jr. Way

Now, Therefore, Be It Ordained, that the Municipal Council of the City of Jersey City deems it fitting and most appropriate to honor Reverend Fernando L. Colon, Jr. by dedicating that the southwest corner of Wayne Street and Baldwin Avenue be also known as **Reverend Fernando L. Colon Jr. Way.**

A. All ordinances and parts of ordinances inconsistent herewith are hereby repealed.
B. This ordinance shall be a part of the Jersey City Code as though codified and fully set forth therein. The City 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 as provided by law.
D. The City Clerk and the 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.

APPROVED AS TO LEGAL FORM

_____
Corporation Counsel

APPROVED: _____

APPROVED: _____
Business Administrator

Certification Required ☐
Not Required ☐

City Clerk File No. Ord. 12-015

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 12-015

TITLE: **ORDINANCE AMENDING CHAPTER 263 (RETAIL AND COMMERCIAL PREMISES) ARTICLE II (HOURS OF RETAIL BUSINESSES) OF THE JERSEY CITY MUNICIPAL CODE TO ADD BERGEN AVENUE AND MONTGOMERY STREET**

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

A. The following amendments to Chapter 263 (Retail and Commercial Premises) Article II (Hours of Retail Businesses) are hereby adopted:

RETAIL AND COMMERCIAL PREMISES

ARTICLE II
Hours of Retail Businesses

§ 263-2. No Change.

§ 263-3. No Change.

§ 263-4. Businesses to be closed during certain hours; exceptions.

A. Subject to Subsection B, no restaurant or retail sales establishment shall conduct any business between the hours of 11:00 p.m. and 5:00 a.m. of the next day in any of the following districts of Jersey City:

Name of Street	From	To
Communipaw Avenue	Martin Luther King Drive	Grand Street
Communipaw Avenue	Monticello Avenue	Westside Avenue
Communipaw Avenue	Pine Street	Manning Avenue
Franklin Street	Central Avenue	Palisade Avenue
Kennedy Boulevard	North Street	Secaucus Road
Martin Luther King Drive	McAdoo Avenue	Communipaw Avenue
Monticello Avenue	Communipaw Avenue	Orchard Street
Ocean Avenue	Bayonne Line	Bramhall Avenue
Pacific Avenue	Communipaw Avenue	Grand Street
Palisade Avenue	Beacon Avenue	North Street
Sip Avenue	Summit Avenue	Bergen Avenue
Summit Avenue	North Street	Secaucus Road
Paterson Plank Road and Secaucus Road	Central Avenue	Summit Avenue

ORDINANCE AMENDING CHAPTER 263 (RETAIL AND COMMERCIAL PREMISES) ARTICLE II (HOURS OF RETAIL BUSINESSES) OF THE JERSEY CITY MUNICIPAL CODE TO ADD CENTRAL AVENUE AND BOWERS STREET

B. The restriction upon business hours imposed by Subsection A shall not apply to pharmacies or other holders of plenary retail distribution licenses under the Alcoholic Beverage Law, N.J.S.A. 33:1-1 et seq.; except that the holders of such licenses may not conduct any business between the hours of 11:00 p.m. and 5:00 a.m. other than that permitted by N.J.S.A. 33:1-40.3 and Chapter 84, Alcoholic Beverages.

C. Subject to Subsection B, no restaurant or retail sales establishment shall conduct any business between the hours of 12:00 a.m. and 5:00 a.m. of the next day in any of the following districts of Jersey City:

Name of Street	From	To
Central Avenue	Manhattan Avenue	North Street
Bowers Street	Cambridge Avenue	Central Avenue
Bergen Avenue	Jewett Avenue	Highland Avenue
Montgomery Street	Jordan Avenue	Boland Street

§ 263-5. No Change.

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

C. The City Clerk shall have this ordinance codified and incorporated in the official copies of the Jersey City Code.

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

E. 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*.

AV

1/31/12

APPROVED ~~AS TO LEGAL FORM~~

Corporation Counsel

APPROVED:

APPROVED:

Business Administrator

Certification Required ☐

Not Required ☐

City Clerk File No. Ord. 12-016

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 12-016

TITLE: ORDINANCE OF THE MUNICIPAL COUNCIL OF THE CITY OF JERESEY CITY ADOPTING AMENDMENTS TO THE LAND DEVELOPMENT ORDINANCE MARION WORKS OFFICE/RESIDENTIAL SUB-DISTRICT "A" RESIDENTIAL DENSITY BONUSES FOR THE CREATION OF IMPROVED PUBLIC PARK AREA

WHEREAS, the Municipal Council, pursuant to NJSA 40:55D-62, may adopt or amend a zoning ordinance relating to the nature and extent of the uses of land and of buildings and structures thereon; and

WHEREAS, the Municipal Council adopted the Land Development Ordinance, Chapter 345 of the Code of the City of Jersey City, on April 11, 2001, (Ordinance No. 01-042), and several amendments since then; and

WHEREAS, the Land Development Ordinance currently contains the Marion Works Residential/Office Overlay Zone District and the CANCO Park has been created and construction completed with residents and families enjoying the new public area, and

WHEREAS, the creation and improvement of the new CANCO Park qualifies the remaining land in that sub-district for a residential bonus. This amendment increases the permitted density bonus from 115 DU per acre to 150 DU per acre; and

WHEREAS, the owner and developer asserts that the residential market favors Studio and one Bedroom Units and fewer 2-Bedroom units and because of this, more units can be constructed in the currently permitted building size and they would like to have the density adjusted to accommodate the current market trend; and

WHEREAS, the Municipal Council, pursuant to NJSA 40:55D-64, has sought and received the recommendations of the Jersey City Planning Board relative to these issues and other zone details; and

WHEREAS, the Planning Board at its meeting of February 7, 2012 did vote to recommend that the Municipal Council increase the Sub-District A residential density bonuses for the creation of new public park from 115 DU/ac. to 150 DU/ac. and to adjust the parking as recommended; and

WHEREAS, the amendments to the Land Development Ordinance are attached hereto and made a part hereof, and are available for public inspection at the Office of the City Clerk, City Hall, 280 Grove Street, Jersey City, NJ;

NOW, THEREFORE, BE IT ORDAINED by the Municipal Council of the City of Jersey City that the Land Development Ordinance, be and hereby is amended as per the attached document;
BE IT FURTHER ORDAINED THAT:

A. All ordinances and parts of ordinances inconsistent herewith are hereby repealed.
B. This ordinance shall be a part of the Jersey City Code as though codified and set forth fully herein. 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 as provided by law.
D. The City Clerk and the Corporation Council 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 repealers of existing provisions.
E. The City Planning Division is hereby directed to give notice at least ten days prior to the hearing on the adoption of this Ordinance to the Hudson County Planning board and to all other persons entitled thereto pursuant to N.J.S. 40:55D-15 and N.J.S. 40:55D-63 (if required). Upon the adoption of this Ordinance after public hearing thereon, the City Clerk is directed to publish notice of the passage thereof and to file a copy of the Ordinance as finally adopted with the Hudson County Planning Board as required by N.J.S. 40:55D-16. The clerk shall also forthwith transmit a copy of this Ordinance after final passage to the Municipal Tax Assessor as required by N.J.S. 40:49-2.1.

Robert D. Cotter, PP, AICP

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 MUNICIPAL COUNCIL OF THE CITY OF JERESEY CITY ADOPTING AMENDMENTS TO THE LAND DEVELOPMENT ORDINANCE MARION WORKS OFFICE/RESIDENTIAL SUB-DISTRICT "A" RESIDENTIAL DENSITY BONUSES FOR THE CREATION OF IMPROVED PUBLIC PARK AREA

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

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

3. **Concise Description of the Plan Proposed in the Ordinance:**

Amend the bonus provisions of Sub-District "A" of the Marion Works Office/Residential District.

The current Sub-District "A" Zone allows for new construction and contains the new CANCO Park. The creation and improvement of the new CANCO Park qualifies the remaining area, currently an adjacent parking lot owned by CANCO for a residential density bonus. This amendment increases the permitted density bonus from 115 DU per acre to 150 DU per acre.

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

The owner and developer asserts that the residential market favors Studio and one Bedroom Units and fewer 2-Bedroom units. Because of this, more units can be constructed in the currently permitted building size and they would like to have the density adjusted to accommodate the current market trend.

This amendment does not allow for a larger building so the impact on the surrounding neighborhood will be minimal.

Also changed is the parking requirement to make it consistent with the current parking patterns of the City and other redevelopment plan area standards.

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

1. The creation of the new CANCO Park providing more public open space through private investment.
2. The realistic ability to sell and or develop the adjacent parking lot.

6. **Cost of Proposed Plan, etc.:**
None

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

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

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

Robert D. Cotter, City Planning Director
Maryann Bucci-Carter, Supervising Planner

10. **Additional Comments:** None

I Certify that all the Facts Presented Herein are Accurate.

Robert D Cotter
Division Director

JAN 25, 2012
Date

Deputy **Department Director Signature**

JANUARY 26, 2012
Date

Proposed Amendments to the Land Development Ordinance
345-50a- Marion Works Office/Residential District for discussion at the February 7, 2012 Planning Board meeting

1. Change the Bonus Density of Sub-District A as follows:
   14. Specific Bonus Requirements:

   a. Sub-district A:

      i. A density bonus of an additional ~~thirty-five (35)~~ ***seventy (70) units*** per acre shall be permitted (for a total of ~~115~~ **150** units per acre) when a new construction project provides an additional 5% improved open space park (to total at least 15%) of the net land area of new construction. Net Land area shall be the lot area, less any area provided for public streets or rights-of-way.
      ii. Number of Stories shall be permitted to increase to 6 levels of residential over one level of parking, but only for the portion of the building having frontage along Senate Place. This higher portion of the building shall not be greater than 75 feet in depth as measured from the Senate Place frontage building facade.
      iii. Direct pedestrian ingress and egress to individual ground floor units shall be provided along Senate Place.
      iv. Required Conditions to Qualify for Sub-District A Bonus

         - The land shall be deed restricted as public open space and dedicated to the City as a public Municipal Park.
         - This open space shall be located at the corner of Dey Street and Senate Place so as to provide a centrally located recreational focal point within the district.
         - Site Plan approval by the Planning Board for the park design, configuration, amenities and materials shall be pursued and received in order to receive the bonus.
         - The open space improvement s shall be constructed prior to the issuance of any Certificate of Occupancy for the project.

2. Change Parking Requirements as follows:
   F. Minimum Parking Standards:

   1. Residential and Work/Live Units:
      a. In Rehab Buildings - 0.5 space per unit.
      b. New Construction ***in Sub District "A" – Minimum of 120 new off-street parking spaces constructed for the new building in Sub-District A.***
         - ~~1 Bedroom - 0.5 space per unit~~
         - ~~2 Bedroom & above - 1.0 space per unit~~
      c. New Construction in Sub District "B" – 1 Bedroom - 0.5 space per unit; 2 Bedrooms & above - 1.0 space per unit.
   2. Offices: 1 space per ~~600~~***1,000*** square feet
   3. Retail Sales of Goods and Services: 1 space per ~~600~~***1,000*** square feet
   4. Restaurants and Theaters: 1 space per ~~600~~***1,000*** square feet
   ~~5. Financial Institutions and Brokerage Houses: 1 space per 600 square feet.~~
   ~~6.~~***5*** Hotels: ~~1 space per 600 square feet of gross floor area, including banquet, meeting and conference rooms.~~ ***0.5 space per hotel room***
   ~~7.~~***6.*** Colleges and Universities: 2 spaces per classroom, ~~plus 1 space per 20 seats for each auditorium, gymnasium and/or lecture hall~~

Text to be deleted is depicted with a strikethrough, ~~thusly~~
Text to be added is depicted in bolded italic, ***thusly***

Draft 4 Date: January 25, 2012

SUMMARY STATEMENT

ORDINANCE OF THE MUNICIPAL COUNCIL OF THE CITY OF JERESEY CITY ADOPTING AMENDMENTS TO THE LAND DEVELOPMENT ORDINANCE MARION WORKS OFFICE/RESIDENTIAL SUB-DISTRICT "A" RESIDENTIAL DENSITY BONUSES FOR THE CREATION OF IMPROVED PUBLIC PARK AREA

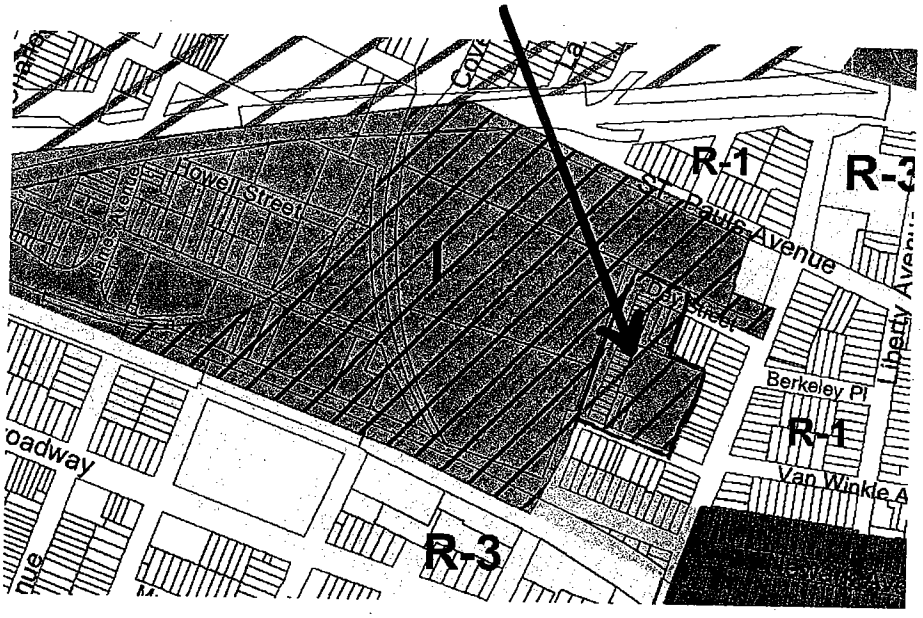
The current Sub-District "A" Zone (Mapped below) allows for new construction and contains the new CANCO Park. The creation and improvement of the new CANCO Park qualifies the remaining land in that sub-district for a residential bonus. This amendment increases the permitted Density Bonus from 115 DU per acre to 150 DU per acre.

The owner and developer asserts that the residential market favors Studio and one Bedroom Units and fewer 2-Bedroom units. Because of this, more units can be constructed in the currently permitted building size and they would like to have the density adjusted to accommodate the current market trend.

This amendment does not allow for a larger building so the impact on the surrounding neighborhood will be minimal.

Also changed is the parking requirement to make it consistent with the current parking patterns of the City and other redevelopment plan area standards.

Sub-District "A" Zone



City Clerk File No. Ord. 12-017

Agenda No. 3.D 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 12-017

TITLE: **ORDINANCE AMENDING AND SUPPLEMENTING CHAPTER 319 (TOWERS AND TOWING) OF THE JERSEY CITY MUNICIPAL CODE TO PERMIT PRIVATE TOWERS TO PROVIDE TOW POUND SERVICES TO THE CITY OF JERSEY CITY**

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

WHEREAS, the City of Jersey City (the City) desires to permit private towers to provide tow pound services to the City pursuant to N.J.S.A. 40:48-2.49 and N.J.S.A. 40:48-2.54; and

WHEREAS, the City will enjoy cost savings by eliminating the tow pound currently operated by the Jersey City Incinerator Authority.

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

A. The following supplement to Chapter 319 (Towers and Towing) of the Jersey City Municipal Code is adopted:

§319-1. Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

AUTHORIZED AGENT OF THE OWNER - The driver of a vehicle if such driver is not the owner or the agent of the owner or the next-of-kin of the owner.

CLASS A TOWER'S LICENSE (HEAVY DUTY) - Required to be on police rotation list for ~~[heavy-duty]~~ Class III Vehicles and/or to pick up vehicles abandoned on private property within the City of Jersey City and/or to operate a vehicle towing business within the City of Jersey City.

CLASS A TOWER'S LICENSE (LIGHT DUTY) - Required to be on police rotation list for ~~[light-duty]~~ Class I and Class II Vehicles and/or to pick up vehicles abandoned on private property within the City of Jersey City and/or to operate a vehicle towing business within the City of Jersey City.

CLASS B TOWER'S LICENSE (INCIDENTAL) - Required to operate a vehicle towing business within the City of Jersey City ~~[and]~~ for towing operations that are incidental to another business which is located within the City of Jersey City. e.g., junkyard, car dealership and auto repair shop. This license does not permit a tower to be on the rotation list.

CLASS I VEHICLE - Any motor vehicle not exceeding 6,000 pounds gross weight. Examples in this weight class include passenger cars, pickup trucks, vans, motorcycles and some sport utility vehicles.

CLASS II VEHICLE - Any motor vehicle having a gross weight exceeding 6,000 pounds up to a maximum of 14,000 pounds.

CLASS III VEHICLE - Any motor vehicle having a gross weight over 14,000 pounds.

CRUISING - Operating a tower to and from ~~[on]~~ a public highway at a slow rate of speed or in any other fashion calculated for the obvious purpose of soliciting business along the highway.

DIRECTOR - The Director of the Department of Housing, Economic Development and Commerce.

DISABLED VEHICLE - Any vehicle disabled as a result of an accident or mechanical failure which must be towed away for safety or traffic reason; or a vehicle parked illegally or abandoned; or a vehicle parked or left unattended on private property without the consent of the owner or other person in control or possession of the property or parked or left unattended for a period in excess of that for which consent was given, except in the case of emergency or disablement of the vehicle where the owner or operator has arranged for the expeditious removal of the vehicle.

DIVISION DIRECTOR - The Director of the Division of Commerce.

LICENSEE - A person who has been issued a tower license by this City and its employees or agents.

IMPOUND OPERATOR LICENSE - Required to operate a pound or storage area to receive any Disabled Vehicles towed to it by any Class A Licensees.

OPERATING A VEHICLE TOWING BUSINESS WITHIN THE CITY OF JERSEY CITY - Towing, transporting, conveying or moving a motor vehicle from one location within the City of Jersey City to another location within the City of Jersey City.

OWNER - The owner of a motor vehicle.

PRINCIPAL LICENSE - The initial tower license issued to any person.

SEIZED VEHICLES - Any vehicle impounded by the Police Department or Hudson County Prosecutor's office as contraband or evidence in a criminal proceeding.

SHORTWAVE RECEIVER - A radio receiver which is capable of operating on a frequency assigned by the Federal Communications Commission for fire, police, municipal or other governmental uses.

SOLICITING - Requesting or attempting to persuade an owner or someone on his or her behalf to give permission to a tower to remove, repair or store a motor vehicle, for a consideration, without a previous request from the owner or someone on his or her behalf.

SUPPLEMENTAL LICENSE - All additional licenses for additional towers issued to a person to whom a principal license was issued.

TOWER - A mechanically propelled light- and heavy-duty vehicle used to tow, transport, convey or move a motor vehicle from one place to another place.

§319-2. Licenses Required; Issuance; Application.

A. Towing Licensees

No person shall operate a vehicle towing business within ~~[this]~~ the City unless such person has obtained a ~~[towing]~~ Class A or Class B Tower's license issued by the Division of

Commerce, except with permission of the Office of Emergency Management in the event of an emergency.

B. Impound Operator License

No person shall operate a pound or storage area for use by any Class A Licensee unless such person has obtained an Impound Operator License issued by the Division of Commerce.

[B] C. No such license shall be issued except on the approval of the Division Director or designee.

[C] D. Each license issued shall be assigned a license number, and the same number shall be assigned to every subsequent renewal of that particular license.

[D] E. Application for a [tower] all licenses shall be made to the Division Director on a form to be supplied by the Division Director for that purpose.

§319-3. [License Qualifications] Storage Requirements for Class A Licensees

A. Off-street storage spaces. No Class A towing license or renewal thereof shall be issued unless the licensee or prospective licensee shall have the following indoor or outdoor off-street vehicle storage spaces within the City of Jersey City:

(1) If Class I Vehicles are to be stored therein, there shall be a minimum of 10 storage spaces for such Class I Vehicles.

(2) If Class II or Class III Vehicles are to be stored therein, there shall be a minimum of 15 spaces, 10 for Class I Vehicles and five for Class II and III vehicles.

B. The storage area, if outdoors, shall consist of a lot with an eight-foot fence securing the storage area.

C. Upon the fence or building, as the case may be, there shall be displayed a sign containing the name, address and telephone number or numbers of the licensee. The telephone number or numbers of the licensee shall be a telephone number which the licensee can be contacted at all times.

D. Storage facilities shall conform to any and all provisions of this Code and all zoning and municipal land use regulations.

E. The licensee shall provide a person in attendance at such storage facility Monday through [Friday] Saturday between the hours of 9:00 8:00 a.m. and 5:00 6:00 p.m. Such person must be authorized by the licensee to complete whatever transactions are necessary to release a vehicle to the owner or owner's representative in accordance with this chapter.

F. The provisions of this section shall apply to existing licensees as well as new licensees.

G. No licensee who stores vehicles on or in his or her own storage facilities shall store or park a vehicle on any street or location other than the storage facility set forth in the application of the licensee. The provisions of this subsection shall not apply to a licensee who does not store vehicles on or in his or her own storage facilities. However, in the case of a licensee who does not store vehicles on or in his or her own storage facility, it shall be a violation of this chapter for such a licensee to store a vehicle on any street or location other than the intended destination of the vehicle unless it is demonstrably impossible for the licensee to do otherwise. In such a situation, however, the licensee shall bring the vehicle to its intended destination as soon as possible thereafter.

H. No impounded vehicle shall be released unless authorized by the Police Director.

§319-4. Contents of All License Application.

The application for [a vehicle tower's license] any License hereunder shall be made out in triplicate and shall be verified under oath and shall be filed with the Division of Commerce and shall contain the following:

A. Name and address of the applicant and, if a natural person, the date of birth.

B. If a corporation, the state under which incorporated and date of incorporation; the address of the principal office; the names and addresses of its officers and registered agent.

C. If any other type of organization, the name of same and, if the organization or its name is recorded, in what office and when; the names and addresses of the principal officers and directors.

D. The place from which the tower will operate and the address and telephone number of such place. There shall also be set forth the telephone number by which the licensee can be contacted at all times.

E. A description of the tower's equipment, giving the serial and motor number of all such equipment.

F. Prior convictions of crime, if any, by the owner or by an officer or director of the applicant, giving the date and place of such conviction and the nature of the crime.

G. Any other information which the Division Director, with the approval of the Department Director, shall deem necessary and proper for the full protection of the public's interest.

H. [The address of storage spaces, including lot and block numbers, and a survey of land for all classes of vehicles of the off-street storage facilities which the licensee shall use for the storage of vehicles.] Acknowledgment by Class A Towers that they will only tow a Disabled Vehicle to a licensed facility and seized vehicles to a City lot.

I. All information and data pertaining to the particular towing vehicles to be licensed as a commercial vehicle as is required by the New Jersey Division of Motor Vehicles in an application for the registration of that particular towing vehicle.

J. Names of all persons who will be driving the tow vehicles and copies of their driver's licenses, including commercial driver's license (CDL), if applicable.

§319-5. Investigation of All Applicants; Prohibition Against Owners Who Are Members of the Police Department

A. The Division Director shall cause an investigation to be made to ascertain if the applicant is a person of good moral character. [and] As to Class A applicants, the Division will determine whether the applicants' vehicles are in such condition that they can be operated in a safe manner. As to Class B or Impound Operator applicants, the Division will determine whether the off-street storage complies with this Ordinance.

B. No sworn member of the Jersey City Police Department shall be permitted to own or be a principal in any Jersey City [licensed towing] business or operation licensed under this Ordinance.

§319-6. Class A Principal Licenses; Supplemental Licenses.

A. Principal Class A license.

(1) Only one principal license shall be issued to a person as defined herein.

(2) The principal license shall pertain to the initial towing vehicle of the licensee.

(3) The principal license shall bear a serial number which will be assigned to that licensee. Said serial number shall be issued on all subsequent renewals of that principal license by that particular licensee and shall not be assigned to any other licensee.

(4) The principal license shall contain on the face thereof all the information and data required by the New Jersey Division of Motor Vehicles on an application for a registration certificate issued by said state agency.

B. Supplemental Class A license.

(1) If the holder of a principal license intends to operate more than one tower, said licensee shall apply for a supplemental license for each additional tower which the licensee intends to operate.

(2) The fee for a supplemental license shall be the same as the fee for the principal license.

(3) The supplemental license shall bear on the face thereof the same serial number as the principal license followed by a dash and the number 1 for the first additional tower and the number 2 for the second additional tower, etc.

(4) The information to be placed on the supplemental license shall be the same information required on the principal license, except that the information shall pertain to the particular additional towing vehicle for which the supplemental license is issued.

C. The business of a Class A licensee shall have no connection, directly or indirectly, in any way, with the business of any other Class A licensee.

D. No Class A licensee shall share storage facilities, office space, telephone or any other business facility or equipment with any other Class A licensee.

E. No Class A licensee shall rent or lease any of the above facilities or equipment to any Class A licensee.

F. No Class A licensee shall utilize the storage, office space or telephone or other business facilities and equipment of any other licensee, nor shall a licensee permit or allow any other Class A licensee to utilize such facilities and equipment of the licensee.

G. For the purposes of the rotation system hereinafter provided, a licensee shall be entitled to only one place on the rotation list, no matter how many licensed towing vehicles the licensee shall operate.

~~H.~~ ~~[As a condition of receiving a tower's license under this chapter, a licensee shall at minimum arrange to accept payment by Visa, MasterCard, American Express, cash and money order from the owner or driver of a vehicle for any towing, impoundment and storage fees. Personal check or other methods of payment will be at the option of the licensee. If payment is made by personal check, the licensee may require identification in the form of a valid major credit card in the name of the owner or driver of the vehicle. In appropriate cases and for good cause shown, the Division Director may waive the requirement of payment acceptance by credit card as to any tower who provides evidence of an unsuccessful but good faith attempt to make such arrangement. The licensee must provide an itemized receipt, including the licensee's name, address and telephone number, listing all fees charged. The payment options available shall be posted in a conspicuous place near the place of payment and shall be on the rate schedule required to be given to the owner or driver of vehicles. The wording and placement of the payment options shall be approved by the Director.]~~

~~[F]~~ H. Any violation of the requirements of this section shall be grounds for the suspension or revocation of the principal license and all supplemental licenses issued to the license.

§319-7. Payment Accepted

As a condition of receiving a tower's license under this chapter, a licensee shall at minimum arrange to accept payment by Visa, MasterCard, American Express, cash and money order from the owner or driver of a vehicle for any towing, impoundment and storage fees. Personal check or other methods of payment will be at the option of the licensee. If payment is made by personal check, the licensee may require identification in the form of a valid major credit card in the name of the owner or driver of the vehicle. In appropriate cases and for good cause shown, the Division Director may waive the requirement of payment acceptance by credit card as to any tower who provides evidence of an unsuccessful but good faith attempt to make such arrangement. The licensee must provide an itemized receipt, including the licensee's name, address and telephone number, listing all fees charged. The payment options available shall be posted in a conspicuous place near the place of payment and shall be on the rate schedule required to be given to the owner or driver of vehicles. The wording and placement of the payment options shall be approved by the Director.

§319-7.1. License Fees; Renewals.

A. The fee for a Class A, Class B and ~~[principal license and the fee for a supplemental license]~~ Impound Operator Licenses shall be as provided in Chapter 160, Fees and Charges, for each license and all renewals of such license. This fee shall apply regardless of when during the year the license is applied for and/or approved.

B. All ~~[principal and supplemental]~~ licenses shall expire on February 28 of each year and may be renewed upon submission of applications therefor and payment of the fees for each license.

§319-8. License Transferability.

No ~~[tower]~~ license shall be transferred from one licensee to another licensee, except that in the case of a death of any individual licensee the Division Director, upon proper application therefor, shall transfer ~~[said]~~ the license to the authorized beneficiary of the deceased licensee; provided, further, that a licensee may transfer the license of one towing vehicle to another towing vehicle owned by the licensee upon written request to the Division Director on forms provided for such purpose.

§319-9. Suspension or Revocation of License.

A. In addition to any penalties set forth in this chapter and this Code for the violation of any of the provisions of this chapter, the Division Director, with the approval of the Department Director, may, after conducting a hearing on 10 days' notice to the licensee, suspend a license for a period of not more than one year or revoke same for the violation of any of the provisions of this chapter or of a violation of any other provisions of this Code.

B. It shall be sufficient reason to suspend or revoke a license pursuant to Subsection A above for the following reasons (Note: These reasons are offered as examples only and are not to be considered as all-inclusive):

(1) Refusal to render towing and storage services when summoned by the police pursuant to this chapter.

(2) Charging more than the prices established in this chapter.

(3) Arriving at the scene of a disabled vehicle or a vehicle to be impounded without first having been summoned by the police in accordance with the authorized procedure of the Police Director.

(4) Using a shortwave radio receiver adjusted to receive police calls. It shall be prima facie proof of the use of such equipment if the licensee arrives at the scene of a disabled vehicle or a vehicle to be impounded without having been summoned by the police.

(5) For the violation of any other provision of this chapter or of any other provision of this Code.

(6) For any violation of rotation list guidelines as promulgated by the Police Director.

§319-10. Information To Be Shown On Equipment.

On each side of the tower, the following shall be legibly printed in letters not less than three inches in height:

A. Name, address and telephone number of the licensee.

B. The phrase "licensed tower of Jersey City."

C. The phrase "request schedule of maximum prices which can be charged for towing and storage."

§319-11. Schedule of Maximum Prices; Disclosure.

A. Maximum fees to tow, transport, convey or move vehicles (Class A Licensee).

(1) No ~~[tower]~~ licensee shall charge more than the following maximum fees to tow, transport, convey or otherwise move a vehicle from one location within the City of Jersey City to another location within the City of Jersey City:

(a) Class I vehicle: ~~[$120. In the event the vehicle is towed to the city's impound yard, the one hundred twenty-dollar ($120) fee shall include]~~ $150 (one hundred fifty dollars), inclusive of a forty-dollar ($40) administrative fee.

(b) Class II vehicles: ~~[$160. In the event the vehicle is towed to the city's impound yard, the one hundred sixty-dollar ($160) fee shall include]~~ $200 (two hundred dollars), inclusive of a forty-dollar ($40) administrative fee.

(c) Class III vehicles: $225 per hour (minimum two hours).

(2) In addition to the above charges, recovery of an overturned vehicle, up righting it or removing it from a hill, ditch or other similar precarious position will be charged no more than the rate of $50, $125, and $225 per hour for vehicle Classes I, II and III, respectively. If an issue arises as to these charges, it shall be the burden of the tower to provide documentation in the form of photographs as to the particular circumstances requiring the additional charges, i.e., position of the vehicle.

(3) No charge shall be imposed on a rotation list tow for waiting time, clean-up, yard fee or any other service not specifically authorized under this chapter.

(4) The above fees are chargeable once a vehicle is hooked-up by the tower.

B. Maximum fees for vehicle storage (Impound Storage Licensee).

(1) No ~~[tower owner]~~ licensee shall charge more than the following maximum fees per day, or portion thereof, for storage of a disabled vehicle towed away pursuant to this chapter:

(a) Class I vehicles: $30 per day.

(b) Class II vehicles: $60 per day.

(c) Class III vehicles: $100 per day.

(2) No vehicle shall be released from storage by a [~~tower~~] licensee unless proper owner and vehicle identification are shown.

C. As a condition of receiving a [~~tower's~~] any license under this [~~chapter~~] Ordinance, a licensee shall at minimum arrange to accept payment by Visa, MasterCard, American Express, cash and money order from the owner or driver of a vehicle for any towing, impoundment and storage fees. Personal check or other methods of payment will be at the option of the licensee. If payment is made by personal check, the licensee may require identification in the form of a valid major credit card in the name of the owner or driver of the vehicle. In appropriate cases and for good cause shown, the Division Director may waive the requirement of payment acceptance by credit card as to any tower who provides evidence of an unsuccessful but good faith attempt to make such arrangement. The licensee must provide an itemized receipt, including the licensee's name, address and telephone number, listing all fees charged. The payment options available shall be posted in a conspicuous place near the place of payment and shall be on the rate schedule required to be given to the owner or driver of vehicles. The wording and placement of the payment options shall be approved by the Director.

D. Each driver of a [~~tower~~] Class A licensee shall have a schedule of the maximum prices when responding to the scene of a disabled, abandoned or other vehicle.

E. Before performing any service pursuant to this chapter, the licensee shall furnish the owner or driver of the vehicle with a copy of the schedule of prices. In the event that the owner or driver is incapacitated, the licensee shall furnish such schedule to the owner's authorized agent as defined herein before such person pays for the services rendered.

§319-12. Pad of Bills; Receipts; Required Information.

A. All [~~persons operating a tower, or their agents~~] licensees when operating a tower, shall keep in their possession a pad of bills containing the owner's name and the address of his or her place of business and, before towing a vehicle, shall prepare a bill on their billhead form, in duplicate, the original of which shall be furnished to the owner of the disabled vehicle or such owner's authorized representative.

B. The bill shall contain the following information:

(1) The full name, address and business telephone number of the licensee.

(2) Full name and address of the person engaging the towing car.

(3) State registration number of the vehicle.

(4) The maximum rates which may be charged for towing and storage.

(5) Full name and address of the operator of tower.

(6) State registration number of tower.

(7) Tower's license number.

(8) Address of the place to where the vehicle will be towed and stored.

C. In the event the licensee is requested by the owner to furnish an estimate of the cost of repairs of damages sustained by the vehicle, said estimate shall be in writing, a copy of which is to be given to the owner of the vehicle, and such written estimate shall contain the following:

(1) An itemization of all the repairs in detail, with the cost of each item set forth therein.

(2) A statement that the items of repair are necessary and that the prices for said items are reasonable.

(3) The estimate shall be signed by the licensee and by the owner of the vehicle.

(4) No oral estimate shall be given.

(5) A statement as to who will make the repairs.

D. No licensee shall make any repairs or cause any other repairer to make such repairs to the vehicle without a written contract for same executed by the licensee and the owner of the vehicle or such owner's authorized agent, who shall be given a copy thereof. The contract shall contain the same certificate signed by the licensee as is required for estimates furnished pursuant to Subsection C above. The date and time when the contract is executed shall be set forth on the contract.

E. Rescinding contract for repairs.

(1) The owner of a vehicle or such owner's authorized agent may rescind the contract for repairs within 48 hours after signing it by giving written notice of the rescission to the person authorized to make the repairs. The notice may be made by telegram or other written communication. Each contract shall clearly state on the face of the contract the right and procedure to rescind the contract in accordance with this subsection. However, this option to rescind shall apply only in the case of a vehicle towed from the rotation list.

(2) The option to rescind may be waived by the owner of the vehicle. However, the waiver shall be in writing on a separate form provided therefor and shall be executed by the owner. The waiver, when executed, shall thereafter be attached to the aforesaid contract for repairs.

F. All bills for services, estimates and contracts shall be in writing and shall conform to the provisions of this chapter. No bills, estimates or contracts shall be oral.

G. The licensee shall keep an accurate record of all rotation and private property towing. The record shall contain, at minimum, an itemized list of charges, as well as pickup and drop-off locations. The record shall be kept and maintained for at least 12 months and available for review by the Division of Commerce and the Police Department.

§319-13. Liability Insurance Requirements.

A. ~~[No tower license shall be issued until and unless the applicant shall]~~ All applicants for a Class A Tower's license must first obtain a policy of insurance from a B plus rated company approved by the Department of Banking and Insurance and authorized to do business in the State of New Jersey, or a bond of indemnity, acceptable to the Division Director, with limits for bodily injury and property damage liability of at least $1,000,000 for each person and for each accident.

B. In addition to the liability insurance set forth in Subsection A above, ~~[each tower who stores disabled vehicles on or in his or her own storage facilities]~~ the Impound Operator Licensee shall provide garagekeepers' liability insurance to insure against the loss or damage to any stored vehicle in the sum of at least $50,000.

C. All the insurance required in Subsections A and B above shall contain the following ~~[positions]~~ provisions in these exact words: "The City of Jersey City and its officers, agents and employees are additional insureds and are fully covered by the provisions of this policy

of insurance." The provisions of this subsection shall not apply to any licensee who is not in the rotation system.

D. All insurance policies shall be approved by the Risk Manager for the City of Jersey City before any license shall be issued. Any change in the wording of the additional insureds' clause in Subsection C above may be approved by the Risk Manager, provided that any such changes shall not result in any less protection of the City than is afforded to the licensee.

§319-14. Inspections; Unlawful Acts.

A. Vehicles shall be kept in a safe condition and conform to requirements which may be promulgated by the Division Director with the approval of the Department Director.

B. The Division Director shall have the power to cause an examination and inspection to be made of the vehicle for which the license is sought, and no license shall be issued unless the vehicle is in a thoroughly safe condition.

C. No ~~[operator of a tower]~~ licensee shall turn or reverse the vehicle, except at intersections where such turns are permissible.

D. No ~~[operator of a tower]~~ licensee shall engage in cruising.

E. No ~~[operator of a tower]~~ licensee shall invite or permit loitering within or near his or her tower.

F. No ~~[operator of a tower]~~ licensee shall seek employment by repeatedly and persistently driving the tower to and fro in a short space on any highway or otherwise interfering with the proper and orderly progress of traffic along the highways.

G. No ~~[operator of a tower]~~ licensee shall solicit or attempt to divert prospective patrons of another tower.

H. No ~~[operator of a tower]~~ licensee shall solicit or divert prospective patrons of a given garage in the city to any other garage.

I. No licensee shall tow away a disabled vehicle to a place other than ~~[that which is]~~ one designated by the owner or driver of the vehicle or to a licensed Impound Operator facility. ~~[to the off-street storage place designated by the licensee on the license application]~~. In the event that such owner or driver of the vehicle is incapacitated by reason of injuries or otherwise, and the owner's authorized agent is not immediately available, the licensee shall tow the vehicle to a licensed facility. ~~[the storage place]~~ designated on the licensee's application for a tower's license.

J. No operator of a tower shall solicit, demand or receive from any person any pay, commission or emolument whatever, except the proper fee for towing and storage of the vehicle in accordance with the schedule of maximum charges provided herein.

K. ~~[Operators of towers]~~ Licensees shall promptly report all changes of address to the Division Director.

L. No licensee shall respond to the scene of a disabled vehicle unless duly summoned by the police in accordance with the procedure established by the Police Director.

M. ~~[An operator of a tower]~~ No licensee shall not remove a motor vehicle involved in an accident in which a person has been killed or seriously injured unless such vehicle has been released by a duly authorized member of the Police Department.

N. No licensee shall refuse to render towing and storage services to a vehicle when duly summoned by the police, pursuant to the procedure established by the Police Director, and

no licensee shall refuse to remove residual debris from the scene of an accident pursuant to a police directive made in the interest of public safety.

O. ~~[An operator of a tower]~~ No licensee on the rotation system shall not refuse to render towing services if the owner of a disabled motor vehicle is able to pay the fee prescribed in the schedule of prices filed by the tower.

~~[Q]~~ P. No person holding a license issued pursuant to this chapter shall use a shortwave radio receiver capable of operating on a frequency assigned by the Federal Communications Commission for fire, police, municipal or other government use.

~~[R]~~ Q. Upon payment to the licensee of the towing charges and the storage charges, if any, the licensee shall forthwith release the vehicle to the owner or the owner's authorized agent or next of kin as the case may be.

~~[S]~~ R. No licensee may open, remove, damage or tamper with any locking device placed on any unlawfully parked motor vehicle.

~~[P]~~ S. Any violation of this section shall be grounds for suspension or revocation after conducting hearing pursuant to the procedures set forth in this chapter.

§319-15. Rotating System of Summoning Towers.

A. The Director of the Jersey City Police Department is hereby authorized and directed to establish a just and equitable rotating system of licensees to be summoned to tow away and store a disabled vehicle. The rotating system shall be established so as to give as nearly as is practicable an equal share of the towing business to each licensee and to furnish protection to the owners of disabled vehicles. There shall be a separate list for ~~[light-duty and heavy-duty towers]~~ Class I & II Vehicles and Class III Vehicles, with specific equipment requirements for each list to be promulgated by the Police Director. At minimum, a tower of the Class I & II Vehicles list shall have two tow trucks and a flatbed. A tower of the Class III Vehicles list shall have two heavy-duty tow trucks. The Director of the Police Department shall be guided by the following minimum requirements for the rotating system:

(1) Only a Class A licensee may be in the rotation system and shall not have more than one position on the rotating list regardless of how many supplemental licenses the licensee shall hold.

(2) A licensee tower on the rotating list shall not be removed therefrom before he or she is accorded an opportunity to be heard after receiving written charges preferred against the licensee. No licensee shall lose his or her turn in the rotating system until the licensee is accorded this opportunity to be heard; provided, however, that the Police Director may immediately suspend any licensee if it is determined to be in the best interests of the citizens or the rotation system. A licensee may request in writing to be removed from the rotating list. When so removed, the licensee shall not be eligible to be placed on the rotating list for a period of one year from the date removed.

(3) Each licensee in the rotating system shall be given equal time and opportunity as all other licensees in the rotating system, and there shall be no discrimination for any reason whatsoever.

(4) No police officer or other official of the city shall have any authority to remove or skip over any licensee in the rotating system. If any licensee commits any violation of the motor vehicle laws of the State of New Jersey, the proper action taken against such licensee shall be by way of summons for the motor vehicle violation. If the infraction involves a violation of this chapter or any provision of the Jersey City Code, charges specifying the offense shall be presented to the Director of the Jersey

City Police Department, who shall thereupon cause a hearing to be held in accordance with the provisions of this chapter.

[(5) ~~No licensee shall be allowed to take a turn at the top of the rotating list unless the licensee first submits proof to the Division of Commerce that the licensee has a sufficient number of empty and available storage spaces upon the storage area designated in the application of the licensee for said license.~~]

(5) Licensees shall respond to the scene within twenty (20) minutes of a request for service by the Jersey City Police Department. If a tower does not respond within the allowed time and another tower is called to respond, the first tower may be suspended for up to three (3) days or for repeat offenders removed from the list for up to a year at the discretion of the Police Director, upon notice and an opportunity to be heard.

B. Whenever it is necessary to have a disabled vehicle towed away, the police who arrive at the scene shall forthwith notify police headquarters to summon a licensed tower from the rotating list in accordance with the procedure established by the Director of the Police Department, except when an emergency has been declared by the Office of Emergency Management.

C. The owner or driver of a disabled vehicle shall use the services of the licensed tower summoned by the police unless the owner is a member of an organization which supplies towing services for its members and the owner or driver requests the use of such organization's tower. If the request is made to the police at the scene, the police shall forthwith notify police headquarters to call the organization and relay the request and all necessary information supplied by the owner's membership card to the organization.

D. In the event that the tower summoned by the police is delayed and it is necessary to remove the disabled vehicle out of the line of traffic or for other safety reasons, then the police emergency tower may remove the vehicle to the nearest point out of the way of the free flow of traffic allowing the vehicle to remain there until towed away by the tower summoned by the police.

E. In the event that a disabled vehicle is towed away and stored by a licensee pursuant to this chapter and the owner of the vehicle or such owner's agent or next of kin does not authorize a further disposition of the vehicle within three days after it is towed to the storage place, the licensee may, upon giving written notice by certified mail to the owner or the owner's authorized agent, pursue any and all remedies he or she may have in law for the disposition of the vehicle and the collection of the fees.

F. In the event that the owner or driver of the disabled vehicle is incapacitated by reason of injuries or otherwise and is unable to authorize the further disposition of the vehicle after it is towed away by the licensee, then the licensee shall forthwith ascertain from the police the name and address of the owner's agent or next of kin and contact him or her to ascertain the further disposition of the vehicle. The licensee shall also send to said agent or next of kin the bill for services and a copy of the schedule of prices as is required by this chapter.

§319-16. Violations and Penalties.

In addition to any license suspensions or terminations, any person violating any provision of this chapter shall, upon conviction, also be punishable as provided in Chapter 1, General Provisions, ' 1-25, of this Code.

§319-17. Removal of Vehicles Parked or Abandoned on Private Property; Fees.

A. Pursuant to N.J.S.A. 39:4-56.6, the owner or other person in control or possession of the private property on which a vehicle is parked or left unattended as described in the definition of "Disabled Vehicle" [~~above~~] may remove and store or hire another person to remove and store the vehicle. It shall be the obligation of the owner of the vehicle to pay the costs for the

removal and storage before he shall be entitled to recover the possession of the vehicle. If the owner of the vehicle refuses to pay such costs or fails to make a claim for the return of the vehicle within 90 days after such removal, the vehicle may be sold at public auction in accordance with the provisions of N.J.S.A. 2A:44-20 et seq.

B. Whenever a licensee, pursuant to N.J.S.A. 39:4-56.6, removes a vehicle parked or left unattended on private property as described within the definition of "Disabled Vehicle"[~~above~~], he shall, within one hour, report to the police district from within which the vehicle was removed the following information:

(1) License plate number and description of vehicle removed.

(2) Location where the vehicle is stored.

(3) Location from which the vehicle was removed.

(4) Identity of the person claiming to own, control or be in possession of the private property from which the vehicle was removed.

C. The maximum charges for towing and storage of vehicles so removed from private property shall be the same as set forth in [~~MBOL 39 \f "WP TypographicSymbols" \s 11 319-11 above.~~] herein for vehicles towed or stored from within the City under §319-11.

~~[§319-18. Impound Yard Surrender Fee; Penalty]~~

~~[Vehicle owners who wish not to claim and or remove their vehicle from the City's impound yard must sign a certificate of ownership which transfers ownership to the Jersey City Incinerator Authority and pay a surrender fee of $150 to cover costs relating to the disposal of the vehicle. Failure to do so may result in the owner being cited with a summons for abandonment of motor vehicle pursuant to N.J.S.A. 39:4-56.5 which will subject the owner, for the first offense, to a fine of not less than $100 nor more than $500, and his license or driving privilege may be suspended or revoked for not more than two years. For any subsequent violation, the owner will be subject to a fine of not less than $500 nor more than $1,000, and his license or driving privilege may be suspended or revoked for not more than five years.]~~

§319-18. Seized Vehicles; Impound Operator Requirements; Disposition of Unclaimed Vehicles; Fees for Storage; Release of Vehicles.

A. Licensed Impound Operators must maintain within the City limits a minimum of three hundred storage spaces for Class I vehicles, ten (10) spaces for Class II vehicles, and ten (10) spaces for Class III vehicles. Impound operators shall use the auto impound tracking computer software program prescribed by the City and be governed by the City's usage policies and procedures for such software.

B. Should there be no licensed Impound Operators with a storage facility that complies with the requirements of this Chapter, the Director is authorized to issue an Impound Operator License for a facility operator outside the City limits.

C. Pursuant to N.J.S.A. 39:10A-1, vehicles left unclaimed may be sold at public auction after 20 business days but shall be sold by the City no later than 90 business days provided that the Police Director may withhold from public auction up to three (3) vehicles a month for police purposes. Impound Operator Licensee will have the right to recover its fees from the vehicle owner when the vehicle is auctioned, with the difference between the moneys owed the impound operator and the auction price to be returned to the City.

D. All licensees shall maintain (and provide access or copies to the City) adequate records relating to the processing of tows, impounds, releases (including storage fees and other receipts). Operators shall also provide quarterly financial statements prepared in accordance with generally accepted accounting principles summarizing fees and income collected.

When possible, all viable personal property from the impounded vehicles must be removed from the vehicle by the owner prior to being towed to the tow pound. Operators will provide access for release of vehicles to the public between the hours of 8:00 A.M. to 6:00 P.M., Monday through Saturday.

E. Upon receipt of an impounded vehicle, the Impound Operator Licensee shall pay the tower $90 (ninety dollars) no later than thirty days (30 days) of receipt of the vehicle. The tower shall not receive any additional payment. Upon payment of the $150 (one hundred fifty dollars) fee by the owner or person entitled to claim the vehicle, the City shall receive an administrative fee of $40 (forty dollars) and the licensed storage facility a fee of $20 (twenty dollars).

F. Seized Vehicles shall be towed to a City-owned facility or as determined by the Police Director. Upon release of such vehicles by the appropriate authority, the City shall sell any unclaimed vehicles at public auction pursuant to N.J.S.A 39:10A-1.

§319-19. Surrender of Unclaimed Vehicles; Violation for Failure to Remove Vehicle.

Vehicle owners who wish not to claim and or remove their vehicle from an impound storage area must sign a certificate of ownership which transfers ownership to the City of Jersey City and pay a surrender fee of $150 to cover costs relating to the disposal of the vehicle. Failure to do so may result in the owner being cited with a summons for abandonment of motor vehicle pursuant to N.J.S.A. 39:4-56.5 which will subject the owner, for the first offense, to a fine of not less than $100 nor more than $500, and his license or driving privilege may be suspended or revoked for not more than two years. For any subsequent violation, the owner will be subject to a fine of not less than $500 nor more than $1,000, and his license or driving privilege may be suspended or revoked for not more than five years.

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

C. The City Clerk shall have this ordinance codified and incorporated in official copies of the Jersey City Code.

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

E. 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*.

JM/TF/he
1/31/12

APPROVED AS TO LEGAL FORM

Corporation Counsel

APPROVED: _____

APPROVED: _____
Business Administrator

Certification Required ☐
Not Required ☐

MEMORANDUM

DEPARTMENT OF ADMINISTRATION

To: Council President Brennan and Council Members
From: Gregory J. Corrado, Assistant Business Administrator
Re: Jersey City Car Pound – Revised Amendments
Date: February 1, 2012

After careful consideration, input and revision, the Administration will introduce for Council approval new amendments to Chapter 319 (Towers and Towing) of the City's code at the next Council Meeting.

The annual savings from this initiative was highlighted in a January 4, 2012 letter from the JCIA to the City's Budget Office stating that the **JCIA "overall budget will be reduced by approximately $706,604 once the car pound is removed"** from their operations (JCIA letter is attached).

This annual operating savings is in addition to the **$1.4 million to be saved in construction costs** at the new Jersey City Incinerator Authority (JCIA)/Department of Public Works (DPW) compound at East Linden Avenue.

Summary of the Revised Amendments

The salient elements of the revised ordinance amendments are:

1) *Newly Created License entitled "Impound Operator License."* The Administration, upon advice of the Law Department, has created a new and separate license for Impound Operators, distinct and apart from Towing Licenses. This allows the ordinance to effectively delineate the specific requirements of Impound Operators.
2) *Location.* Impound Operators must be located within the City limits and possess a minimum of three hundred storage place for Class I vehicles (cars, etc.); while the City retains the opportunity to go outside the City limits if necessary.
3) *Software Requirement.* Impound Operators must acquire and use the car impound tracking computer software as designated by the City, so as to ensure the new operations will integrate smoothly and efficiently into the City's current processes.
4) *Towers Payments.* Impound Operators will pay Towers $90 for each vehicle brought to their impound lots; these payments are to be paid within 30 days of receipt of the vehicle.
5) *JCIA Auction.* The JCIA will continue to manage, coordinate, and perform impound vehicle auctions on behalf of the City.

6) *Towers Must Provide Prompt Service to the City.* Towers on the Police Rotating Impound Towing List must respond to requests for service and arrive at the location within twenty minutes, or face suspension/ removal from the rotating list for up to a year.

Addressing Concerns Raised at First Reading

At the request of the Council and the Mayor's Office, the Administration has investigated ways to address concerns raised at Council Meetings this past fall regarding the proposed changes.

Specifically, Council Members voiced the opinion that the new car pound operator should be located within the City limits if possible. Towers, present at the meeting, expressed the concern that the new license requirements would preclude them from towing vehicles involved in traffic accidents (as an inadvertent result of the ordinance amendment).

Consequently, on Thursday, October 27, 2011, I coordinated a meeting between the Business Administrator, myself, and all Jersey City licensed towers in the Business Administrator's conference room. The conversation was lively and incisive; and we believe that the revised ordinance amendments will satisfy most of the tower's concerns, most specifically with regard to the towing of vehicles involved in traffic accidents.

In addition, we have met with the Mayor's Office and the leadership of the Jersey City Incinerator Authority (JCIA) to fine tune the ordinance amendments that directly affect the location of the new pound and the process of vehicle auctions. As a result, the amendments will endeavour to identify an operator within the City limits, and the JCIA will continue to process vehicle titles and conduct the City's abandoned vehicle auction.

Overview

I would like to take this opportunity to reiterate the reasons behind the Administration's actions regarding the Tow Pound.

As part of the Business Administrator's efforts to make City operations more efficient, we are identifying City functions that replicate private sector businesses with the intention to determine whether it would be beneficial for the City to discontinue providing the duplicated function.

One example of private sector duplication is the City Car Pound operated by the Jersey City Incinerator Authority (JCIA). The Car Pound runs at a deficit and is readily replaced by the private sector. In 2010, the Car Pound deficit was over $325,000. This is especially disturbing considering that no other nearby municipality or county runs a car pound. It is the Administration's intention to close the pound and permit private towers to store towed cars.

Not only will the closing of the car pound save City operating expenses, but it will also save approximately $1.4 million in construction costs at the new Jersey City Incinerator Authority (JCIA)/Department of Public Works (DPW) compound at East Linden Avenue.

In addition, the closing will make the current Car Pound land available for sale immediately (as opposed to when the East Linden Avenue compound is complete). The Car Pound land sale would provide needed revenue for CY2012, and result in the land being returned to City tax role for revenue in future years.

Description of Current Operations

Currently, private towers respond on a rotating basis to requests for service by the Jersey City Police Department (JCPD). Cars are then towed to the Jersey City Car Pound on Burma Road at the edge of Liberty State Park.

Towing Rates are strictly controlled by City Ordinance (Chapter 319); towing policy and procedures are promulgated by the Jersey City Police Director. The owners of the vehicles pay the towing and storage fees when they claim their vehicles.

Unfortunately, many vehicle owners do not pick up their vehicles promptly or do not pick up their vehicles at all and thereby abandon them. After a period of ninety days abandoned vehicles are sold at auction, often at prices less than the total towing and storage fees owed. This leaves the City with substantial financial losses.

According to the JCIA official 2010 financial audit, the Car Pound ran a deficit of $242, 376. This loss does not include associated costs of benefits, payroll, maintenance, utilities, purchasing, accounting, legal, and liability issues related to the running of the Pound. These associated costs would increase the loss above $242, 376.

In addition, the JCPD maintains two full-time civilians at the car pound (to receive payments and process vehicle release paperwork) for a total of approximately $80,000 per year.

Currently, the design of the JCIA/DPW compound contains the provision for a new car pound which will cost approximately $1.9 million to construct. This includes paving, foundations, car racks, lighting, fencing, and security. If the area is instead only paved for industrial parking, the cost will be approximately $500,000. The net savings will be $1.4 million.

Proposed Towing Operations

The Administration investigated towing practices of several nearby municipalities (Bayonne, Hoboken, Newark, Orange) and counties (Hudson, Essex). Not one of them operates a large municipal vehicle pound like Jersey City; all of them rely on private entities to tow and store most vehicles.

Therefore, the Administration proposes to create a private vehicle pound licensee, who will tow impounded vehicles and also accept impounded cars from third party towers. This private pound licensee will store cars on their property and dispose of them according to applicable law. When abandoned vehicles are sold at auction, the difference between the sale prices and the towing/storage fees will go to the City. To the vehicle owners, the towing process would not change at all. Only the location of their towed vehicle would change.

The Administration toured several tow pound facilities as part of analyzing the merits of this proposal. GXR Auto, located at 10 East Linden Avenue in Jersey City, is interested in becoming the City's tow pound. GXR is immediately across the street from the new JCIA/DPW compound, and only a short walk to the Light Rail Station at Danforth Avenue. GXR Auto has also performed services at the City tow pound in recent years.

Once the ordinance amendment is effective, the pound will need to be emptied. The JCIA holds public auctions to dispose of abandoned vehicles. At the most recent auction on August 31, 2011, over 120 vehicles were sold. The current stock of vehicles will be similarly auctioned off as per state statute. Vehicles retained by the Prosecutor's Office would be temporarily relocated to the DPW compound on Route 440.

It has wrongly been suggested the City's license agreement with the JCIA will need to be amended to reflect this change. The New Jersey Department of Community Affairs has determined that all elements in the license agreement outside the NJ statute authorizing the establishment of the JCIA are ultra vires and not permissible. The closing of the tow pound complies with the DCA's determination.

In order to achieve this end, the City's towing ordinance needs to be amended to increase minimal storage capacity to address the City's needs. At the same time, the Administration recommends taking this opportunity to increase base towing rates. The following is an analysis of comparative towing and storage rates.

Towing Rates Comparison

Government Entity	Towing Class I Vehicles (cars and SUVs)	Towing Class II Vehicles (larger vehicles)	Towing Class III Vehicles (very large <14,000 lbs.)
Jersey City ***Current***	$120	$160	$225 per hour
Jersey City ***Proposed***	$150	$200	$225 per hour
Bayonne	$70 plus $1.75/mile	$100 plus $1.75/mile	200 per hour (2 hour minimum)
Newark	$175 plus $4/mile	$350 plus $7/mile	$350 plus $7/mile
City of Orange	$125	$250 per hour	$350 per hour
Essex County	$60 plus $2.50/mile	150% of Class I rate ($90 plus $3.75 mile)	250% of Class I rate ($150 plus $6.25/mile)
NJ State Police (Turnpike Towing)	$175	$375	$375

The Administration intends to present the revised amendments for consideration at the next Council Meeting. Your anticipated support and approval is greatly appreciated.

C: Mayor Healy
Rosemary McFadden, Chief of Staff
Jack Kelly, Business Administrator
William Matsikoudis, Corporation Counsel
Oren Dabney, Executive Director, JCIA

THE JERSEY CITY INCINERATOR AUTHORITY

OREN K. DABNEY, SR.
CHIEF EXECUTIVE OFFICER

TIMOTHY J. HAWKES
GENERAL COUNSEL

HON. JERRAMIAH T. HEALY
MAYOR

January 4, 2012

Robert J. Kakoleski, Asst. Business Administrator
Office of Management and Budget
City Hall
280 Grove Street
Jersey City, NJ 07302

RE: THE JERSEY CITY INCINERATOR AUTHORITY BUDGET FOR CALENDAR YEAR 2012

Dear Mr. Kakoleski,

Enclosed is the Calendar ~~Year 2012~~ Preliminary Budget for your review. The budget is subject to change upon removing the car pound from the JCIA's operations. The overall budget will be reduced by approximately $706,640 once the car pound is removed.

Should you have any questions or concerns, feel free to contact my office.

Very truly yours,

Shirley Marcano

Shirley Marcano
Fiscal Officer

Cc: Oren K. Dabney, Sr. Chief Executive Officer
John Kelly, Business Administrator
Rosemary McFadden, Chief of Staff

COMMISSIONERS
P. TERRELL FLOOD, CHAIRMAN • MAUREEN HULINGS, VICE CHAIR
FRANK J. CHECCHIA • ROGER HEJAZI • MICHAEL J. MALLOY • MICHAEL A. ROONEY • LIAM M. TANELLI
501 ROUTE 440, JERSEY CITY, NEW JERSEY 07305-4888 TEL: (201) 432-4645 FAX: (201) 432-9530 jciaonline.org

City Clerk File No. Ord. 12-018

Agenda No. 3.E 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 **12-018**

TITLE: **ORDINANCE AMENDING AND SUPPLEMENTING CHAPTER 345 (ZONING), ARTICLE V (OFF-STREET PARKING AND LOADING) TO REQUIRE LANDLORDS AND SELLERS TO NOTIFY PROSPECTIVE TENANTS AND PURCHASERS THAT FRONT-YARD DRIVEWAYS ARE FORBIDDEN**

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

WHEREAS, in 2001, the City ordained that there would be no more parking in residential front yards; and

WHEREAS, there are existing properties with front-yard driveways that pre-exist the ban on front-yard parking; and

WHEREAS, landlords and real estate brokers of residential properties have, at times, failed to notify prospective tenants and purchasers that front-yard driveways have been forbidden, resulting in creation of illegal front-yard driveways and resultant expenses to remove them.

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

A. The following amendments to Chapter 345 (Zoning) are hereby adopted:

ARTICLE V
Off-Street Parking and Loading

§345-70. Off-Street Parking and Loading.

A. Zoning Standards.

1. Off-street parking shall not be located between the building and the street. <u>Landlords and sellers shall have the affirmative obligation to inform prospective tenants and purchasers that they may not construct, create or install front-yard driveways (otherwise known as "carports"). This requirement shall not affect landlords and sellers of properties which have front-yard driveways legally pre-dating the year 2001. In the case of any doubt, the Division of Zoning in the Department of Housing, Economic Development and Commerce, shall be consulted and appropriate documentation obtained from the Division to demonstrate that the front-yard driveway is a pre-existing, non-conforming use.</u>

2 Through 11. No Change

B. Design Standards. No change.

B. All ordinances and parts of ordinances inconsistent herewith are hereby repealed, including Ordinance 09-074.

C. 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.

0 2 0 1 2 0 2 0

ORDINANCE AMENDING AND SUPPLEMENTING CHAPTER 345 (ZONING), ARTICLE V ("OFF-STREET PARKING AND LOADING") TO REQUIRE LANDLORDS AND SELLERS TO NOTIFY PROSPECTIVE TENANTS AND PURCHASERS THAT FRONT-YARD DRIVEWAYS ARE FORBIDDEN

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

E. 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*.

JOD/he
2/01/12

APPROVED AS TO LEGAL FORM

Corporation Counsel

APPROVED:

APPROVED:

Business Administrator

Certification Required ☐

Not Required ☐

City Clerk File No. Ord. 12-019

Agenda No. 3.F 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 12-019

TITLE: **AN ORDINANCE SUPPLEMENTING CHAPTER 332(VEHICLES AND TRAFFIC) ARTICLE III(PARKING, STANDING AND STOPPING) OF THE JERSEY CITY CODE AMENDING SECTION 332-24(PARKING PROHIBITED CERTAIN HOURS) DESIGNATING 25 FEET AT THE ENTRANCE TO 123 BRUNSWICK STREET AS NO PARKING 7:00 A.M. TO 9:00 A.M. AND 4:00 P.M. TO 6:00 P.M., MONDAY THROUGH FRIDAY, EXCEPT PUBLIC HOLIDAYS**

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

1. Chapter 332 (Vehicles and Traffic) Article III (Parking, Standing and Stopping) of the Jersey City Code is hereby supplemented as follows:

Section 332-24 PARKING PROHIBITED CERTAIN HOURS

No person shall park a vehicle between the hours specified upon any of the streets or parts thereof listed below.

Name of Street	Side	Days of Week	Hours	Limits
Brunswick St	South	M - F Except Public Holidays	7:00 a.m. to 9:00 a.m. and 4:00 p.m. 6:00 p.m.	139 feet south of Third St 25 feet south

2. All ordinances and parts of ordinances inconsistent herewith are hereby repealed.
3. This ordinance shall be a part of the Jersey City Code as though codified and incorporated in the official copies of the Jersey City Code.
4. 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 material to be inserted is new and underscored.

JDS:pcl
(01.20.12)

APPROVED: _____
Director of Traffic & Transportation

APPROVED: _____ 1/23/12
Municipal Engineer

APPROVED AS TO LEGAL FORM

_____
Corporation Counsel

APPROVED: Rodney Hobbs 1/24/12
Director, Dept. of Public Works

APPROVED: _____
Business Administrator

Certification Required ☐

Not Required ☐

This summary sheet is to be attached to the front of any ordinance, resolution, cooperation agreement or contract that is submitted for Council consideration. Incomplete or sketchy summary sheets will be returned with the resolution or ordinance. The Department, Division or Agency responsible for the overall implementation of the proposed project or program should provide a concise and accurate statement of facts.

1.Full title of ordinance/resolution/cooperation agreement:

An ordinance supplementing Chapter 332(Vehicles and Traffic) Article III(Parking, Standing and Stopping) of the Jersey City Code amending Section 332-24(Parking prohibited certain hours) designating 25 feet at the entrance to 123 Brunswick Street as no parking 7:00 a.m. to 9:00 a.m. and 4:00 p.m. to 6:00 p.m., Monday through Friday, except public holidays

2. Name and title of person initiating the ordinance/resolution, etc.:

Joao D'Souza, Director of Traffic & Transportation, Division of Engineering, Traffic and Transportation, Department of Public Works at the request of Future Stars Daycare Preschool

3.Concise description of program, project or plan proposed in the ordinance/resolution:

Prohibit 25' of parking at the entrance of Future Stars Daycare Preschool located at 123 Brunswick Street, 7:00 a.m. to 9:00 a.m. and 4:00 p.m. to 6:00 p.m., Monday through Friday, except public holidays

4. Reasons (need) for the proposed program, project, etc.:

The parking prohibition is necessary to facilitate dropping off and picking up the preschoolers who go to Future Stars Daycare

5. Anticipated benefits to the community:

Improve traffic safety and circulation and reduce the risk of accidents.

6. Cost of proposed program, project, etc. (Indicate the dollar amount of City, state, and Federal Funds to be used, as well as match and in-kind contribution:

Approximately $200.00 per sign/post installation. (2 channels & 2 signs required)
Total Estimate: $400.00

7. Date proposed program, or project will commence:

Pending adoption by the Jersey City Municipal Council

8.Anticipated completion date:

Twenty days after adoption by the Jersey City Municipal Council

9.Person responsible for coordinating proposed program, project, etc.:

Patricia Logan, Supervising Traffic Investigator, Division of Engineering, Traffic and Transportation, Department of Public Works

10.Additional comments:

Based on the information provided to me, I certify that all the facts presented herein are accurate, to the best of my knowledge.

Municipal Engineer	**Date** 1/23/12
Signature of Department Director	**Date** 1/26/12

Google maps Address **123 Brunswick St**
Jersey City, NJ 07302

Get Google Maps on your phone
Text the word "GMAPS" to 466453

City Clerk File No. Ord. 12-020

Agenda No. 3.G 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 12-020

TITLE: **ORDINANCE APPROVING AN AMENDMENT TO THE 20 YEAR TAX ABATEMENT OF HUDSON PALISADES URBAN RENEWAL, LLC, TO 1) CONVERT THE PROJECT FROM RESIDENTIAL RENTAL UNITS TO RESIDENTIAL CONDOMINIUM, AND 2) REDUCE THE SERVICE CHARGE TO 10% OF THE ANNUAL GROSS REVENUE FOR THE FULL TERM, PURSUANT TO THE LONG TERM TAX EXEMPTION LAW N.J.S.A. 40A:20-1 ET SEQ.**

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

WHEREAS, Hudson Palisades Urban Renewal, LLC, 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, the Entity owns certain property known as Block 733, Lot A.2, on the City's Official Tax map, consisting of approximately .20 acres, and more commonly known by the street address of 325 Palisade Avenue, and more specifically described by metes and bounds, in the application (Property); and

WHEREAS, the Property is located within the 325 Palisade Avenue Redevelopment Plan Area as required by N.J.S.A. 40A:20-4 and N.J.S.A. 40A:12A-5(g).; and

WHEREAS, by the adoption of Ordinance 09-074 on June 17, 2009, the.City approved a 20 year long term tax exemption to rehabilitate and remodel an existing three-story building, to create approximately twenty-one (21) residential rental units and 2,315 square feet of rented parking for the use of the residents only for approximately fourteen (14) cars, with a service charge equal to 10% of the Annual Gross Revenue for the first ten (10) years, and 12% of the Annual Gross Revenue for the remaining ten (10) years; and

WHEREAS, by application dated November 3, 2011, Hudson Palisades Urban Renewal, LLC applied for an amendment to the tax exemption to (1) to convert the residential project from rental to condominiums; and (2) reduce the percentage of service charge to 10% of the Annual Gross Revenue for the full term, which term will not be extended hereby; and

WHEREAS, 10% of initial Annual Gross Revenue for condominiums will actually generate $15,280 more than the 10%, and 12% of the Annual Gross Revenue based on rent; and provide further stability to the neighborhood by generating home ownership; and

WHEREAS, Hudson Palisades Urban Renewal, LLC, has agreed to:

1. pay the greater of (i) the Minimum Annual Service Charge or (ii) 10% of the Annual Gross Revenue for the twenty (20) years, which initial sum is estimated to be $52,000; and

2. pay an annual sum equal to 2% of each prior year's Annual Service Charge as an Administrative Fee; and

ORDINANCE APPROVING AN AMENDMENT TO THE 20 YEAR TAX ABATEMENT OF HUDSON PALISADES URBAN RENEWAL, LLC, TO 1) CONVERT THE PROJECT FROM RESIDENTIAL RENTAL UNITS TO RESIDENTIAL CONDOMINIUM, AND 2) REDUCE THE SERVICE CHARGE TO 10% OF THE ANNUAL GROSS REVENUE FOR THE FULL TERM, PURSUANT TO THE LONG TERM TAX EXEMPTION LAW N.J.S.A. 40A:20-1 ET SEQ.

3. provide employment and other economic opportunities for City residents and businesses; and

4. pay to the City, for remittance to Hudson County, an amount equal to 5% of the Annual Service Charge upon receipt of that charge; and

5. pay the sum of $34,973 to the City's Affordable Housing Trust Fund; and

WHEREAS, the City hereby determines that the relative benefits of the project outweigh the cost of the tax exemption, for the following reasons:

1. the current real estate taxes generate revenue of only $42,048, whereas, the Annual Service Charge as estimated, will initially generate revenue of more than $52,000 to the City and an additional sum of approximately $2,600 to Hudson County;

2. it is expected that the Project will create approximately 10 jobs during construction and 3 new permanent jobs;

3. the Project will stabilize and contribute to the economic growth of businesses in the surrounding area;

4. the Project will further the overall redevelopment objectives of the 325 Palisade Avenue 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

WHEREAS, the City hereby determines that the tax exemption is important in obtaining development of the project and influencing the locational decisions of probable occupants for the following reasons:

1. the relative stability and predictability of the Annual Service Charges will make the Project more attractive to investors needed to finance the Project;

2. the relative stability and predictability of the Annual 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 attract tenants to the Project and insure the likelihood of the success of the Project; and

WHEREAS, the amendment will further support these objectives and provide even more revenue to the City; and

WHEREAS, Hudson Palisades Urban Renewal, LLC, has initially complied with Executive Order 2002-005 concerning "Disclosure of Lobbyist Representative Status" by filing an appropriate letter in the Office of the City Clerk; and

WHEREAS, the Tax Abatement Committee voted on January 12, 2012, to recommend approval of the Project.

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

ORDINANCE APPROVING AN AMENDMENT TO THE 20 YEAR TAX ABATEMENT OF HUDSON PALISADES URBAN RENEWAL, LLC, TO 1) CONVERT THE PROJECT FROM RESIDENTIAL RENTAL UNITS TO RESIDENTIAL CONDOMINIUM, AND 2) REDUCE THE SERVICE CHARGE TO 10% OF THE ANNUAL GROSS REVENUE FOR THE FULL TERM, PURSUANT TO THE LONG TERM TAX EXEMPTION LAW N.J.S.A. 40A:20-1 ET SEQ.

A. The application of Hudson Palisades Urban Renewal, 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. a copy of which is on file in the office of the City Clerk, for Block 733, Lot A.2, more commonly known by the street address of 325 Palisade Avenue, more specifically described by metes and bounds in the application, is hereby approved.

B. The Mayor or Business Administrator is hereby authorized to execute a tax exemption Financial Agreement and a Project Employment and Contracting Agreement, provided that the prepayment and contribution agreement relating to this Property authorized by separate Resolution has been fully executed. The Financial Agreement shall include at a minimum the following terms and conditions:

1. Term: the earlier of 25 years from the adoption of Ordinance 09-074, or 20 years from the date the project is Substantially Complete;

2. Annual Service Charge: each year the greater of:

   (a) the Minimum Annual Service Charge equal to $52,000 upon Project Completion, whether or not the Project is occupied; or

   (b) 10% of the Annual Gross Revenue for the term, which initial sum is estimated to be $52,000; and which shall be subject to statutory staged increases over the term of the tax exemption.

3. Administrative Fee: 2% of the prior year's Annual Service Charge;

4. County Payment: 5% of the Annual Service Charge to the City for remittance by the City to Hudson County;

5. Project: A rehabilitated and remodeled a three-story building with approximately twenty-one (21) market rate condominium units and a 2,315 square feet parking unit with 14 spaces to be rented to the residents;

6. Affordable Housing Trust Fund: $1,500 per unit or $31,500 and $1.50 per square foot x 2,315 square feet or $3,473, for a total of $34,973;

7. An obligation to execute a Project Employment and Contracting Agreement to insure employment and other economic benefits to City residents and businesses.

C. The City Clerk shall deliver a certified copy of the Ordinance and Financial Agreement to the Tax Assessor and Director of the Division of Local Government Services.

D. The application is on file with the office of the City Clerk. The Financial Agreement and Project Employment and Contracting 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.

ORDINANCE APPROVING AN AMENDMENT TO THE 20 YEAR TAX ABATEMENT OF HUDSON PALISADES URBAN RENEWAL, LLC, TO 1) CONVERT THE PROJECT FROM RESIDENTIAL RENTAL UNITS TO RESIDENTIAL CONDOMINIUM, AND 2) REDUCE THE SERVICE CHARGE TO 10% OF THE ANNUAL GROSS REVENUE FOR THE FULL TERM, PURSUANT TO THE LONG TERM TAX EXEMPTION LAW N.J.S.A. 40A:20-1 ET SEQ.

E. All ordinances and parts of ordinances inconsistent herewith are hereby repealed, including Ordinance 09-074.

F. 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.

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

H. 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
1/26/12

APPROVED AS TO LEGAL FORM

Corporation Counsel

APPROVED:

APPROVED:

Business Administrator

Certification Required ☐

Not Required ☐

Department of Housing, Economic Development & Commerce

Director's Office

Inter-Office Memorandum

DATE: February 1, 2012

TO: City Council Members

FROM: Al Cameron, Deputy Director, HEDC

SUBJECT:

TAX ABATEMENT COMMITTEE RECOMMENDATIONS

Hudson Palisades Urban Renewal Company, LLC 325 Palisade Avenue Block 733 Lot A.2 - Amendment to Existing Abatement Requested Change Rental to Condominium

Amendment to Existing Tax Abatement Montgomery Gateway 353-381 Montgomery Street – Block 379 Lots G & G.T01
352-364 Montgomery Street - Block 380.381 Lot P
383-389 Montgomery Street - Block 405 Lot PL.B

---

1. **The Committee recommended approval of the application for Hudson Palisades to change from a rental to a Condo project at the rate of 10% of gross revenue for a long-term tax abatement for a twenty-year (20) period. The new abatement will provide more revenue to the City.**

2. **The Committee recommended approval of the application to Amendment an Existing Tax Abatement Montgomery Gateway due to a refinancing. The new rate to be increased to 8% of gross revenue +2% City Admin Fee. The expiration date will be the same, August 22, 2022. The new abatement will provide more revenue to the City.**

Rev. 1-27-12
Long Term Tax Exemption
N.J.S.A. 40A:20-1, et seq.
(Market Rate Residential Condominium)

Re: Hudson Palisade Urban Renewal, LLC
Approximately .20 Acres
Block 733, Lot A.2
325 Palisade Avenue Redevelopment Plan

PREAMBLE

THIS AMENDED AND RESTATED FINANCIAL AGREEMENT, [Amended Agreement] is made the _____day of_____, 2012 by and between **HUDSON PALISADES URBAN RENEWAL, LLC,** 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 c/o Anthony T. Colasanti, Esq., 4 York Avenue, West Caldwell, NJ 07006 [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 is the Owner of certain property designated as Block 733, Lot A.2, more commonly known by the street address of 325 Palisade Avenue, and more particularly described by the metes and bounds description set forth as Exhibit 1 to this Amended Agreement; and

WHEREAS, this property is located within the boundaries of the 325 Palisade Avenue Redevelopment Plan Area; and

WHEREAS, by the adoption of Ordinance 09-074 on June 17, 2009, the City approved a 20 year long term tax exemption to rehabilitate and remodel an existing three-story building, to contain approximately twenty-one (21) market rate residential condominium units and a 2,315 square feet parking unit with fourteen (14) spaces to be rented to the residents, with a service charge

equal to 10% of the Annual Gross Revenue for the first ten (10) years, and 12% of the Annual Gross Revenue for the remaining ten (10) years; and

WHEREAS, by application dated November 3, 2011, Hudson Palisades Urban Renewal, LLC applied for an amendment to the tax exemption to (1) to convert the residential project from rental to condominiums; and (2) reduce the percentage of service charge to 10% of the Annual Gross Revenue for the full term, which term will not be extended hereby; and

WHEREAS, 10% of initial Annual Gross Revenue for condominiums will actually generate $15,280 more than the 10%, and 12% of the Annual Gross Revenue based on rent; and provide further stability to the neighborhood by generating home ownership; 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 $42,048, whereas, the Annual Service charge as estimated, and will initially generate revenue to the City of approximately $52,000;

2. the Entity shall pay the City the sum of $34,973, as an affordable housing contribution pursuant to Ordinance 03-112;

3. it is expected that the Project will create approximately ten (10) jobs during construction and three (3) new permanent jobs;

4. the project should stabilize and contribute to the economic growth of existing local business and to the creation of new business, which cater to the new residents;

5. the Project will further the redevelopment objectives of the 325 Palisade Avenue Redevelopment Plan;

6. 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 insure that it will have a positive impact on the surrounding area; and

WHEREAS, the amendment will further support these objectives and provide even more revenue to the City; and

WHEREAS, by the adoption of Ordinance _____ on _____, the Municipal Council approved the above findings and the tax exemption application and authorized the execution of this Amended 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 Amended 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, 02-003, Ordinance 02-075, Ordinance 09-074, and Ordinance _____, which authorized the execution of this Amended 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 Amended 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 greater of 12% or 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, if payable on a per annum basis, 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 12% or the percentage per annum 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 Gross Revenue - The amount equal to the annual aggregate constant payments of principal and interest, assuming a purchase money mortgage encumbering the condominium unit to have been in an original amount equal to the initial value of the unit with its appurtenant interest in the common elements as stated in the master deed, if unsold by the urban renewal entity, or, if the unit is held by a unit purchaser, from time to time, the most recent true consideration paid for a deed to the condominium unit in a bona fide arm's length sale transaction, but not less than the initial assessed valuation of the condominium unit assessed at 100% of the true value, plus the total amount of common expenses charged to the unit pursuant to the by laws of the condominium association. The constant payments to principal and interest shall be calculated by assuming a loan amount as stated above at the prevailing lawful interest rate for mortgage financing on comparable properties within the municipality as of the date of the recording of the unit deed, for a term equal to the full term of the exemption from taxation stipulated in this Amended Agreement; and provided further that any gain realized by the Entity on the sale of any unit in fee simple, whether or not taxable under Federal or State law, shall not be included in computing gross revenue.

iv. 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.

v. 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 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.

vi. Certificate of Occupancy - A 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.

vii. 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 the project for a period equal to the term of this Amended Agreement.

viii. 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 Amended Agreement, or under the Law, beyond any applicable grace or cure periods.

ix. Entity - The term Entity within this Amended Agreement shall mean Hudson Palisades Urban Renewal, LLC, 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 the Law.

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

xi. 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.

xii. 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.

xiii. 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.

xiv. Law - 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 02-003, relating to long term tax exemption, as it may be amended and supplemented; Ordinance 02-075, Ordinance 09-074,

and Ordinance _____, which authorized the execution of this Amended Agreement; and Ordinance 07-123, as may be amended or supplemented from time to time, which requires the execution of a Project Labor Amended Agreement, and all other relevant Federal, State or City statutes, ordinances, resolutions, rules and regulations.

xv. Minimum Annual Service Charge - The Minimum Annual Service Charge shall be 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, or in the event the property was tax exempt, then the amount of the taxes that would have been assessed had the property been subject to conventional taxation, which initial amount the parties agree is approximately $52,000.

xvi. Net Profit - The Gross Revenues of the Entity less all operating and non-operating expenses of the Entity, all determined in accordance with generally accepted accounting principles, but:

(1) there shall be included in expenses: (a) all Annual Service charges paid pursuant to N.J.S.A. 40A:20-12; (b) all payments to the City of excess profits pursuant to N.J.S.A. 40A:20-15 or N.J.S.A. 40A:20-16; (c) an annual amount sufficient to amortize (utilizing the straight line method-equal annual amounts) the Total Project Cost and all capital costs determined in accordance with generally accepted accounting principles, of any other entity whose revenue is included in the computation of excess profits over the term of this Amended Agreement; (d) all reasonable annual operating expenses of the Entity and any other entity whose revenue is included in the computation of excess profits including the cost of all management fees, brokerage commissions, insurance premiums, all taxes or service charges paid, legal, accounting, or other professional service fees, utilities, building maintenance costs, building and office supplies and payments into repair or maintenance reserve accounts; (e) all payments of rent including but not limited to ground rent by the Entity; (f) all debt service; and

(2) there shall not be included in expenses either depreciation or obsolescence, interest on debt, except interest which is part of debt service, income taxes or salaries, bonuses or other compensation paid, directly or indirectly to directors, officers and stockholders of the entity, or officers, partners or other persons holding a proprietary ownership interest in the entity.

xvii. Pronouns - He or it shall mean the masculine, feminine or neuter gender, the singular,

as well as the plural, as context requires.

xviii. 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.

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

xx. 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). 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 and any extraordinary costs incurred including the cost of demolishing structures, relocation or removal of public utilities, cost of relocating displaced residents or buildings and the clearing of title. The Entity agrees that final Total Project Cost 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 Amended 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 733, Lot A.2, more commonly known by the street address of 325 Palisade Avenue, 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 rehabilitate and remodel an existing three-story building, to contain approximately twenty-one (21) market rate residential condominium units and a 2,315 square feet parking unit with fourteen (14) spaces to be rented to the residents, all of which is 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 is the owner of the property upon which the Project is to be constructed. Upon construction, the Entity represents that the Improvements will be managed and controlled as follows:

The project will be managed and controlled by the Entity until it is converted to condominium ownership pursuant to N.J.S.A. 46:8B-1 et seq., the Condominium Act, at which time the common areas of the Project will be managed and controlled by the condominium association. The individual condominium units of the Project will continue to be owned by the Entity until each unit is sold to a bona fide third party unit purchaser grantee.

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 Good Faith Estimate of Initial Sales

The Entity represents that its good faith projections of the initial sales prices for units in the Project are set forth in Exhibit 7.

ARTICLE III - DURATION OF AGREEMENT

Section 3.1 Term

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

and agreed by the parties hereto that this Amended Agreement shall remain in effect for the earlier of 25 years from the date of the adoption of Ordinance 09-074 on June 17, 2009, which approved the tax exemption or 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 by a corporation or association 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 the following payments to the City:

i. City Service Charge: an amount equal to the greater of: the Minimum Annual Service Charge or an Annual Service Charge equal to 10% of the Annual Gross Revenue. The Annual Service Charge shall be billed initially based upon the Entity's estimates of Annual Gross Revenue which shall not be less than the its estimate of Gross Revenue as set forth in its Financial Plan, attached hereto as Exhibit 6. Thereafter, the Annual Service Charge shall be adjusted in accordance with this Amended Agreement.

A Minimum Annual Service Charge shall be due beginning on the effective date of this Amended Agreement. 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.

ii. County Service Charge: an amount equal to 5% of the Annual Service Charge upon receipt of that charge, for remittance to the County by the City.

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 1st day of the month following Substantial Completion until the last day of the 6th year, the Annual Service Charge shall be 10% of Annual Gross Revenue;

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 13th 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 14th year following Substantial Completion until the last day of the 15th 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 16th 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 Credits

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 quarter 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 quarter. 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 Amended Agreement.

Section 4.4 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 4.5 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 4.6 Affordable Housing Contribution and Remedies

A. **Contribution**. The Entity shall pay the City the sum of $31,500 or $1500 per unit; and $1.50 per square foot or $3,473, as a contribution. The sum shall be due and payable as follows:

i. 1/3 on or before the effective adoption date of the ordinance approving the tax exemption, that is the effective date of the executed Amended Financial Agreement;

ii. 1/3 on or before the issuance of the first of any construction permit for the Project, but no later than six months after the date of the Amended Financial Agreement; and

iii. 1/3 on or before the date the first of any Certificate of Occupancy is issued for the Project, but no later than twenty-four (24) months after the date of the Amended Financial Agreement.

The Entity acknowledges that the City relies on this payment and will enter into Agreements in anticipation of receiving such funds in a timely manner.

B. **Remedies.** In the event that the Entity fails to timely pay the contribution, 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, Affordable Housing Contributions, and any interest thereon, are Material Conditions of this Amended 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 Master Deed

It shall be the obligation of the Entity to file with the Tax Assessor, a copy of the Master Deed for the condominium, upon its recordation in the Hudson County Register's Office.

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. An Auditor's Report: Within ninety (90) days after the close of each fiscal or calendar year, depending on the Entity's accounting basis that the Amended Agreement shall continue in effect, the Entity shall submit to the Mayor and Municipal 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: condominium unit purchase price, 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 Amended Agreement. The Report shall clearly identify and calculate the Net Profit for the Entity during the previous year.

B. Disclosure Statement: On the anniversary date of the execution of this Amended Agreement, and each and every year thereafter while this Amended Agreement is 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, 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.

Section 7.3 Inspection/Audit

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.

All costs incurred by the City to conduct the audit, including reasonable attorneys' fees if appropriate, shall be billed to the Entity and paid to the City as part of the Entity's Annual Service Charge. Delinquent payments shall accrue interest at the same rate as for a delinquent service charge.

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 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 five (5%) percent of the preceding year's Gross Revenue. Pursuant to N.J.S.A. 40A:20-14(b) there is expressly excluded from the calculation of Gross Revenue and Net Profit in the determination of Excess Profit, any gain realized by the Entity on the sale of any condominium unit, whether or not taxable under federal or state law.

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 one hundred and twenty (120) 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. The calculation of the entity's excess net profits shall include those project costs directly attributable to site remediation and cleanup expenses and any other costs excluded in the definition of Total Project Cost in Section 1.2 (xx) of this Amended Agreement even though those costs may have been deducted from the project costs for purposes of calculating the annual service charge.

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 ninety (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, shall be void unless approved in advance by Ordinance of the Municipal Council. 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 Amended 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 Amended Agreement or the Law; 4) the Entity's obligations under this Amended Agreement is fully assumed by the new Entity, 5) the Entity shall pay the City a transfer fee equal to 2% of the then current Annual Service Charge as required by N.J.S.A. 40A:20-10d. Nothing herein shall prohibit any transfer of the ownership interest in the entity itself provided that the transfer, if greater than 10%, is disclosed to the City in the annual disclosure statement or in correspondence sent to the City in advance of the filing of the annual disclosure statement.

Section 9.2 Approval for Sale of Condominium Unit

Subsequent to the filing of the master deed pursuant to N.J.S.A. 46:8B-1 et seq., the sale of a condominium unit to an individual bona fide unit purchaser grantee shall not require the consent or approval of the City or payment of the transfer fee and the grantee shall acquire title to the unit subject to the requirements for payment of the Annual Service Charge and all other terms and conditions of this Amended Agreement. However, within sixty (60) days of the date of title closing, the grantee shall be required to provide the City with a copy of the unit deed and the Affidavit of Consideration. In addition, at the request of the City, the grantee shall be required to provide any other evidence reasonably necessary to appropriate to enable the city to evaluate the bona fides of the sale and/or the actual consideration paid for the unit. The grantee need not personally reside in the unit.

Section 9.3 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 Amended Agreement, the Project shall be maintained and operated in accordance with the provisions of the Law. Operation of Project under this Amended 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 Amended Agreement. The Entity's failure to comply with the Law shall constitute a Default under this Amended Agreement and the City shall, among its other remedies, have the right to terminate the tax exemption.

Section 10.2 Disclosure of Lobbyist Representative

During the term of this Amended Agreement, the Entity must comply with Executive Order 2002-005, and Ordinance 02-075, requiring Written Disclosure of Lobbyist Representative Status. The Entity's failure to comply with the Executive Order or the Ordinance shall constitute a Default under this Amended Agreement and the City shall, among its other remedies, have the right to terminate the tax exemption.

ARTICLE XI - DEFAULT

Section 11.1 Default

Default shall be failure of the Entity to conform with the terms of this Amended 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 Amended Agreement in accordance with Section 12.1.

Should the Entity be in default due to a failure to pay any charges defined as Material Conditions in Section 4.7, the Entity shall not be subject to the default procedural remedies as provided herein but shall allow the City to proceed immediately to terminate the Amended 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.J.S.A. 54:5-1, et seq. and/or may declare a Default and terminate this Amended Agreement. Any default arising out of the Entity's failure to pay Land Taxes, the Minimum Annual Service Charge, Administrative Fees, Affordable Housing Contribution, 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 Amended Agreement as provided in Article XII. All of the remedies provided in this Amended 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 Amended 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, Affordable Housing Contribution 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, Affordable Housing Contribution, 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 Amended 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 Amended 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. However, under no circumstances will the Entity be entitled to any refund of any funds paid to the City to obtain the tax exemption, including but not limited to the Affordable Housing Contribution.

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 Amended 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 Amended 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 Amended 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.

Section 12.5 Termination Payment

In addition to any other remedies available to the City upon termination whether voluntary or upon default, the Entity shall pay to the City an amount equal to the difference between the service charge actually paid and the service charge that would have been due had each adjustment period provided in Section 4.2 hereof, been of the shortest duration permitted by law, thereby generating the most accelerated increases, permitted by law.

ARTICLE XIII - DISPUTE RESOLUTION

Section 13.1 Arbitration

In the event of a breach of the within Amended 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 IV, Section 4.7 as Material Conditions.

ARTICLE XIV - WAIVER

Section 14.1 Waiver

Nothing contained in this Amended Financial 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 Amended 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 Amended Agreement.

ARTICLE XV - INDEMNIFICATION

Section 15.1 Defined

It is understood and agreed that in the event the City shall be named as party defendant in any action by a third party alleging any breach, default or a violation of any of the provisions of this Amended 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, cost, expense (including reasonable attorneys' fees and costs, through trial and all stages of any appeal, including the cost of enforcing this indemnity) arising out of Amended 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 to be selected by the City, subject to the reasonable consent of the Entity. However, the City maintains the right to intervene as a party thereto, to which intervention the Entity consents; the expense thereof to be borne by the City.

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:

Hudson Palisades Urban Renewal, LLC
c/o Anthony T. Colasanti, Esq.
4 York Avenue – Second Floor
West Caldwell, New Jersey 07006

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 Amended 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 Amended Agreement or the Application, except a Material Condition, shall be judicially declared to be invalid or unenforceable, the remainder of this Amended 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 Amended 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 Amended Agreement, the parties shall cooperate with each other to take the actions reasonably required to restore the Amended 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 Amended 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 Amended Agreement if it would modify a Material Condition, the amount of the periodic adjustments or any other term of this Amended Agreement which would result in any economic reduction or loss to the City.

ARTICLE XVIII - MISCELLANEOUS

Section 18.1 Construction

This Amended 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 Amended 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 Amended Agreement, the Amended Agreement shall govern and prevail. In the event of conflict between the Amended 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 Amended Agreement. This Amended Agreement, the Ordinance authorizing the Amended Agreement, and the Application constitute the entire Amended 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 Amended Agreement and all conditions in the Ordinance of the Municipal Council approving this Amended Agreement are incorporated in this Amended 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 Amended 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. Good Faith Estimate of Initial Sales Prices;
8. Project Employment and Contracting Agreement & Project Labor 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.

WITNESS: **HUDSON PALISADES URBAN RENEWAL, LLC**

_____ _____

ATTEST: **CITY OF JERSEY CITY**

_____ _____

ROBERT BYRNE
CITY CLERK

JOHN KELLY
BUSINESS ADMINISTRATOR

City Clerk File No. Ord. 12-021

Agenda No. 3.H 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 12-021

TITLE: **ORDINANCE CONSENTING TO THE REFINANCE AND APPROVAL OF AN AMENDMENT TO THE AFFORDABLE HOUSING 40 YEAR TAX EXEMPTION AGREEMENT WITH MONTGOMERY GATEWAY ASSOCIATES, PURSUANT TO THE LIMITED DIVIDEND NON PROFIT HOUSING CORPORATION LAW, N.J.S.A. 55:16-1 TO 1) INCREASE THE ANNUAL SERVICE CHARGE FROM A 6.28% TO 8%; AND 2) TO ESTABLISH A 2% ADMINISTRATIVE FEE**

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

WHEREAS, Montgomery Gateway Associates is the owner of certain property commonly known by the street address of 353-81 Montgomery Street, Block 379, Lot G, 352-364 Montgomery Street, Blocks 380-381, Lot P, and 383-389 Montgomery Street, Block 405, Lot PL.B, Jersey City, NJ, and more particularly described by the metes and bounds description set forth as Exhibit 1 to this Amended Agreement [Property]; and

WHEREAS, Montgomery Gateway Associates is a New Jersey limited partnership organized pursuant to the Limited Dividend Nonprofit Housing Corporation Law, N.J.S.A. 55:16-1 et seq., [Law]; and

WHEREAS, by the adoption of a Resolution on September 20, 1979, the City of Jersey City approved a tax exemption for the Property for a term not to exceed 50 years or the length of the term of a mortgage from the New Jersey Housing Mortgage and Finance Agency [NJHMFA]; and

WHEREAS, the tax exemption, based upon 6.28% of annual gross revenue from the Property pursuant to the Law, became effective on September 1982, after the execution of a 40 year mortgage from the New Jersey Housing Mortgage and Finance Agency [HMFA]; and

WHEREAS, Montgomery Gateway Associates constructed 189 units of low income rental housing and a Superintendent's unit [Project], with a loan from the HMFA with affordability controls secured by the HMFA mortgage; and

WHEREAS, Montgomery Gateway Associates, now desires to undertake a refinance of the Project to be financed by an Oak Grove/Fannie Mae mortgage, further secured with affordability controls, as set forth in a recorded deed restriction and regulatory agreement with NJHMFA; and

WHEREAS, by an application dated June 10, 2011, as amended, Montgomery Gateway Associates applied to the City of Jersey City for its consent and approval of a refinance of the Project and an amendment to the tax abatement to allow an increase in the Annual Service Charge from 6.28% to 8%, and establishing a 2% of each prior year's Annual Service Charge as an Administrative Fee, under the Limited Dividend Nonprofit Housing Corporation Law, N.J.S.A. 55:16-1 et seq.; and

ORDINANCE CONSENTING TO THE REFINANCE AND APPROVAL OF AN AMENDMENT TO THE AFFORDABLE HOUSING 40 YEAR TAX EXEMPTION AGREEMENT WITH MONTGOMERY GATEWAY ASSOCIATES, PURSUANT TO THE LIMITED DIVIDEND NON PROFIT HOUSING CORPORATION LAW, N.J.S.A. 55:16-1 TO 1) INCREASE THE ANNUAL SERVICE CHARGE FROM A 6.28% TO 8%; AND 2) TO ESTABLISH A 2% ADMINISTRATIVE FEE

WHEREAS, as the result of the applicant's consent to amend the application to increase the service charge from 6.28% to 8% of annual gross revenue, the Tax Exemption Committee voted to recommend approval the tax exemption application to the Mayor and Council at its meeting of January 12, 2012; and

WHEREAS, the Project has reserves for capital improvements in the approximate sum of $500,000; and

WHEREAS, execution of the amendment and the refinance closing shall take place within ninety (90) days of the adoption of the within Ordinance; and

WHEREAS, there is an especially compelling need to supplement , improve and preserve existing affordable housing, particularly for low income citizens; and

WHEREAS, although the Limited Dividend Nonprofit Housing Corporation Law was repealed, pursuant to the enactment of the Long Term Tax Exemption Law, N.J.S.A. 40A:20-1 et seq., the Limited Dividend Nonprofit Housing Corporation Law, N.J.S.A. 55:16-1 et seq., was saved from repeal for any existing tax exemptions which continue to be governed thereunder.

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

1. The application of Montgomery Gateway Associates, a limited partnership organized pursuant to the Limited Dividend Nonprofit Housing Corporations or Associations Law, N.J.S.A. 55:18 et. seq., for approval of a refinance of the Project and an amendment to the tax exemption attached hereto as Exhibit A, is hereby approved subject to the following terms and conditions:

(a) Term: 40 years from September 1982, the effective date of the initial HMFA mortgage or August 31, 2022, provided that the Project continues to operate under the Law and remains subject to an HMFA deed restriction and regulatory agreement to insure low income housing affordability controls;

(b) Service Charge: increase from 6.28% to 8% of Annual Gross Revenue, or approximately $312,550 per year; and payment of a 2% administrative fee of $6,247;

(c) Project: 189 units of affordable rental housing and a Superintendent's unit, for low income citizens, with affordability controls secured by a recorded deed restriction with HMFA; and

(d) Property: commonly known by the street address of 353-81 Montgomery Street, Block 379, Lot G, 352-364 Montgomery Street, Blocks 380-381, Lot P, and 383-389 Montgomery Street, Block 405, Lot PL.B, Jersey City, New Jersey;

2. The Mayor or Business Administrator is authorized to execute any documents appropriate or necessary to effectuate the purposes of the within ordinance including an amended tax exemption Financial Agreement, subject to such modification as the Business Administrator and Corporation Counsel deems appropriate or necessary.

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

ORDINANCE CONSENTING TO THE REFINANCE AND APPROVAL OF AN AMENDMENT TO THE AFFORDABLE HOUSING 40 YEAR TAX EXEMPTION AGREEMENT WITH MONTGOMERY GATEWAY ASSOCIATES, PURSUANT TO THE LIMITED DIVIDEND NON PROFIT HOUSING CORPORATION LAW, N.J.S.A. 55:16-1 TO 1) INCREASE THE ANNUAL SERVICE CHARGE FROM A 6.28% TO 8%; AND 2) TO ESTABLISH A 2% ADMINISTRATIVE FEE

4. 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.

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

6. 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
1/31/12

APPROVED AS TO LEGAL FORM

Corporation Counsel

APPROVED:

APPROVED:

Business Administrator

Certification Required ☐

Not Required ☐

Department of Housing, Economic Development & Commerce

Director's Office

Inter-Office Memorandum

DATE: February 1, 2012

TO: City Council Members

FROM: Al Cameron, Deputy Director, HEDC

SUBJECT:

TAX ABATEMENT COMMITTEE RECOMMENDATIONS

Hudson Palisades Urban Renewal Company, LLC 325 Palisade Avenue Block 733 Lot A.2 - Amendment to Existing Abatement Requested Change Rental to Condominium

Amendment to Existing Tax Abatement Montgomery Gateway 353-381 Montgomery Street – Block 379 Lots G & G.T01
352-364 Montgomery Street - Block 380.381 Lot P
383-389 Montgomery Street - Block 405 Lot PL.B

---

1. **The Committee recommended approval of the application for Hudson Palisades to change from a rental to a Condo project at the rate of 10% of gross revenue for a long-term tax abatement for a twenty-year (20) period. The new abatement will provide more revenue to the City.**

2. **The Committee recommended approval of the application to Amendment an Existing Tax Abatement Montgomery Gateway due to a refinancing. The new rate to be increased to 8% of gross revenue +2% City Admin Fee. The expiration date will be the same, August 22, 2022. The new abatement will provide more revenue to the City.**

Rev. 1-31-12
N.J.S.A. 55:16-1 et seq.

Re: 353-81 Montgomery Street, Block 379, Lot G,
352-364 Montgomery Street, Blocks 380-381, Lot P,
383-389 Montgomery Street, Block 405, Lot PL.B

PREAMBLE

THIS AMENDED AND RESTATED FINANCIAL AGREEMENT, [Amended Agreement] made effective this_____day of _____, 2012, by and between **MONTGOMERY GATEWAY ASSOCIATES** [Entity], a New Jersey limited partnership organized pursuant to the Limited Dividend Nonprofit Housing Corporations or Associations Law, N.J.S.A. 55:16-1 et seq. [Limited Dividend Law] and approved by the Department of Community Affairs as an affordable housing limited dividend entity, having its principal office at 1060 Broad Street, Newark, New Jersey 07102, and the **CITY OF JERSEY CITY**, a Municipal Corporation in the County of Hudson and the State of New Jersey, [City], having its principal office at 280 Grove Street, Jersey City, New Jersey 07302.

RECITALS

WITNESSETH:

WHEREAS, Montgomery Gateway Associates, is the owner of certain property commonly known by the street address of 353-81 Montgomery Street, Block 379, Lot G, 352-364 Montgomery Street, Blocks 380-381, Lot P, and 383-389 Montgomery Street, Block 405, Lot PL.B, Jersey City, NJ, and more particularly described by the metes and bounds description set forth as Exhibit 1 to this Amended Agreement [Property]; and

WHEREAS, Montgomery Gateway Associates is a limited partnership organized pursuant to the Limited Dividend Nonprofit Housing Corporation Law, N.J.S.A. 55:16-1 et seq. ; and

WHEREAS, by the adoption of a Resolution on September 20, 1979 , the City of Jersey City approved a tax exemption for the Property for a term not to exceed 50 years or the length of the term of a mortgage from the New Jersey Housing Mortgage and Finance Agency [NJHMFA]; and

WHEREAS, the tax exemption based upon 6.28% of annual gross revenue from the Property pursuant to the Limited Dividend Non Profit Housing Corporation Law, N.J.S.A. 55:16-1 et seq., became effective in September 1982 after the execution of a 40 year mortgage from the New Jersey Housing Finance Agency [HMFA]; and

WHEREAS, Montgomery Gateway Associates constructed 189 units of low income rental housing and a Superintendent's unit [Project], with a loan from the HMFA with affordability controls secured by the HMFA mortgage; and

WHEREAS, Montgomery Gateway Associates now desires to undertake a refinance of the Project to be financed by an Oak Grove/Fannie Mae mortgage, further secured with affordability controls, as set forth in a recorded deed restriction and regulatory agreement with the HMFA; and

WHEREAS, by an application dated June 10, 2011 as amended, Montgomery Gateway Associates, applied to the City of Jersey City for its consent and approval of a refinance of the Project and an amendment to the tax abatement to allow an increase in the Annual Service Charge from 6.28% to an 8%, and establishing a 2% of each prior year's Annual Service Charge as an Administrative Fee, under the Limited Dividend Nonprofit Housing Corporation Law, N.J.S.A. 55:16-1 et seq.; and

WHEREAS, the Project has reserves for capital improvements in the approximate sum of $500,000; and

WHEREAS, there is an especially compelling need to supplement, improve and preserve existing affordable housing, particularly for low income citizens; and

WHEREAS, although the Limited Dividend Nonprofit Housing Corporation Law was repealed, pursuant to the enactment of the Long Term Tax Exemption Law, N.J.S.A. 40A:20-1 et seq., the Limited Dividend Nonprofit Housing Corporation Law, N.J.S.A. 55:16-1 et seq., was saved from repeal for any existing tax exemptions, which continue to be governed thereunder.

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 Amended Agreement shall be governed by the provisions of the Limited Dividend Law, N.J.S.A. 55:16-1 et seq., Executive Order of E.O. 10-001, and Ordinance _____, which authorized the execution of this Amended 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 amending the existing tax exemption.

Section 1.2 General Definitions

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

i. Agency or Authority- Department of Community Affairs, State of New Jersey.

ii. Annual 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, including but not limited to fees or income paid or received for parking, laundry, health club user fees or other services (such as lease premiums for views, fireplaces, etc.). No deductions will be allowed for operating or maintenance costs, including, but not limited to gas, electric, water and sewer, other utilities, garbage removal and insurance charges, whether paid for by the landlord, tenant or a third party, except for customary operating expenses of commercial tenants such as utilities, insurance and taxes (including payments in lieu of taxes) which shall be deducted from Gross Revenue based on the actual amount of such costs incurred.

iii. Auditor's Report - A complete financial statement outlining the financial status of the Project (for a period of time as indicated by context). 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 stockholder's equity, 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 reasonably required by the City or its auditors. 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.

iv. 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.

v. 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 Amended Agreement, or under the Law, beyond any applicable grace or cure periods.

vi. Entity - The term "Entity" within this Amended Agreement shall mean Montgomery Gateway Associates, which Entity was formed and qualified pursuant to Law. It shall also include any subsequent purchasers or successors in interest of the Project, provided they are formed and operate under the Law or the Long Term Tax Exemption Law and the transfer has been duly approved by the City.

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

viii. 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.

ix. 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 exempt from taxation.

x. 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.

xi. Law - Law shall refer to the Limited Dividend Nonprofit Housing Corporations or Associations Law, N.J.S.A. 55:16-1 et seq.; Executive Order 10-001, and

Ordinance _____ which authorized the execution of this Amended Agreement; and all other relevant Federal, State or City statutes, ordinances, resolutions, rules and/or regulations.

xii. Project - 189 units of low income housing and one superintendent's unit.

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

xiv. Property - Commonly known by the street address of 353-81 Montgomery Street, Block 379, Lot G, 352-364 Montgomery Street, Blocks 380-381, Lot P, and 383-389 Montgomery Street, Block 405, Lot PL.B.

xv. 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.

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

ARTICLE II - APPROVAL

Section 2.1 Approval of Tax Exemption

The City hereby restates its approval for a tax exemption for the Project, including the Property, to be maintained in accordance with the terms and conditions of this Amended Agreement and the provisions of the Law.

Section 2.2 Approval of Entity

Approval is granted to the Entity whose Certificate of Formation or certificate of Good Standing 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, as appropriate, the Secretary of State or Office of the Hudson County Clerk.

Section 2.3 Improvements to be Constructed

Entity represents that it has constructed 189 units of affordable rental housing and

a Superintendent's unit on the Property, all of which is more specifically described in the Application attached hereto as Exhibit 3.

Section 2.4 Construction Schedule

Construction of the Project was completed in or about 1982.

Section 2.5 Ownership, Management and Control

The Entity represents that it is the owner of the Property upon which the Project is constructed. The Entity represents that the Improvements will continue to be managed and controlled as follows:

The Entity shall manage the Improvements.

Section 2.6 Financial Plan

The Entity represents that the Improvements are currently subject to the Project Mortgage and it is expected that the Project Mortgage will be refinanced.

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, and are in accord with the recorded Regulatory Agreement between the Entity and the U.S. Department of Urban Development [HUD].

ARTICLE III - DURATION OF AMENDED AGREEMENT

Section 3.1 Term

So long as there is compliance with the Law and this Amended Agreement, it is understood and agreed by the parties hereto that this Amended Agreement shall remain in effect until August 31, 2022. Thereafter, the tax exemption shall expire and the land and improvements thereon shall be assessed and taxed according to the general law applicable to other non-exempt property in the City. The tax exemption shall only be effective only while the Project is owned by an entity formed and operating as a limited dividend entity organized under the Law, and subject to the affordability controls in the mortgage, deed or other recorded instrument and regulated by the Authority. Refinancing of the Project Mortgage shall not affect the validity of the tax exemption, provided the Project is owned by an entity formed and operating as a limited dividend entity organized under and subject

to the Law, including the Long Term Tax Exemption Law N.J.S.A. 40A:20-1 et seq., and regulated by the HMFA.

ARTICLE IV - ANNUAL SERVICE CHARGE

Section 4.1 Annual Service Charge

In consideration of the tax exemption, the Entity shall continue to make payment to the City of an Annual Service Charge equal to 8% of Annual Gross Revenue. In the event the Entity fails to timely pay the Annual Service Charge, the amount unpaid shall bear the highest rate of interest permitted in the case of unpaid taxes or tax liens on land until paid.

Section 4.2 Land Tax Credit

If the Law requires the Entity to pay Land Taxes in addition to the service charges, then the Entity will be entitled to a land tax credit against the service charges. In order to be entitled to the credit, however, the Entity is obligated to make timely Land Tax Payments, 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 Amended Agreement.

Section 4.3 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 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 4.4 Material Conditions

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

ARTICLE V - ANNUAL REPORTS

Section 5.1 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 5.2 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 Amended 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 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 Amended Agreement. The Report shall clearly identify and calculate the Net Profit for the Entity during the previous year.

B. Disclosure Statement: On the anniversary date of the execution of this Amended 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.

Section 5.3 Mortgage / Regulatory Agreement

The terms of the Regulatory Agreement with the HMFA shall contain affordability controls consistent with either New Jersey regulations. Within ninety (90) days after the

date the Entity closes on any successor mortgage or Amended Regulatory Agreement, the Entity shall file with the City a fully executed copy of the recorded copy of the mortgage, and the Regulatory Agreement.

Section 5.4 Inspection/Audit

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.

All costs incurred by the City to conduct the audit, including reasonable attorneys' fees if appropriate, shall be billed to the Entity and paid to the City as part of the Entity's Annual Service Charge. Interest shall accrue at the same rate as for a delinquent service charge.

ARTICLE VI- LIMITATION OF PROFITS AND RESERVES

Section 6.1 Limitation of Profits and Reserves

During the period of tax exemption as provided herein, the Entity's return on investment shall be limited in accordance with the regulations and conditions imposed by the Agency pursuant to the Law or any other applicable law.

ARTICLE VII - ASSIGNMENT AND/OR ASSUMPTION

Section 7.1 Prior Approval of Sale

Any change made in the ownership of the Project and sale or transfer of the Project, shall be void unless approved in advance by Ordinance of the Municipal Council. 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 Amended Agreement provided 1) the new Entity is formed and eligible to operate under the Law; 2) the Entity is not then in default of this Amended Agreement or the Law; and 3) the Entity's obligations under this Amended Agreement is fully assumed by the new Entity. Nothing

herein shall prohibit any transfer of the ownership interest in the Entity itself, provided that the transfer, if greater than 10%, is disclosed to the City in the Annual Disclosure Statement or in correspondence sent to the City in advance of the filing of the Annual Disclosure Statement.

Section 7.2 Severability.

It is an express condition of the granting of this tax exemption that during its duration, the Entity shall not, without the prior consent of the Municipal Council by Ordinance, convey, or transfer, all or part of the Project so as to sever, disconnect, or divide the Improvements from the lands which are basic to, embraced in, or underlying the exempted improvements.

ARTICLE VIII - COMPLIANCE

Section 8.1 Operation

During the term of this Amended Agreement, the Project shall be maintained and operated in accordance with the provisions of the Law. Operation of Project under this Amended Agreement shall not only be terminable as provided by N.J.S.A. 55:16-1, et seq., as currently amended and supplemented, but also by a Default under this Amended Agreement. The Entity's failure to comply with the Law shall constitute a Default under this Amended Agreement and the City shall, among its other remedies, have the right to terminate the tax exemption.

ARTICLE IX - DEFAULT

Section 9.1 Default

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

Section 9.2 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 Amended Agreement in accordance with Section 10.1.

Should the Entity be in default failure to pay any charges defined as Material Conditions in Section 4.4, the Entity shall not be subject to the default procedural remedies as provided herein but shall allow the City to proceed immediately to terminate the Amended Agreement as provided in Article X herein.

Section 9.3 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.J.S.A. 54:5-1, et seq. and/or may declare a Default and terminate this Amended Agreement. Any default arising out of the Entity's failure to pay Land Taxes, if required, or the Annual Service Charges shall not be subject to the default procedural remedies as provided in Article IX Land Taxes or the Annual Service Charges shall not be subject to the default procedural remedies as provided in Article IX herein but shall allow the City to proceed immediately to terminate the Amended Agreement as provided in Article X herein. All of the remedies provided in this Amended Agreement to the City, and all rights and remedies granted to it by law and equity shall be cumulative and concurrent. No determination of any provision of this Amended Agreement shall deprive the City of any of its remedies or actions against the Entity because of its failure to pay Land Taxes, or the Annual Service Charge. 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 determination. Further, the bringing of any action for Land Taxes, or the Annual Service Charge, 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 Amended Agreement, as if the charges were taxes or municipal liens on land.

ARTICLE X- TERMINATION

Section 10.1 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 9.2, the City may terminate this Amended Agreement upon thirty (30) days written notice to the Entity [Notice of Termination].

Section 10.2 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 Amended Agreement, the Entity shall provide a final accounting to the City. For purposes of rendering a final accounting the termination of the Amended Agreement shall be deemed to be the end of the fiscal year for the Entity.

Section 10.3 Conventional Taxes

Upon Termination or expiration of this Amended 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 XI - DISPUTE RESOLUTION

Section 11.1 Arbitration

In the event of a breach of the within Amended 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 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 IV, Section 4.4 as Material Conditions.

ARTICLE XII - WAIVER

Section 12.1 Waiver

Nothing contained in this Amended Financial 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 Amended 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 Amended Agreement.

ARTICLE XIII- NOTICE

Section 13.1 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 13.2 Sent by City

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

Montgomery Gateway Associates, L.P.
1060 Broad Street
Newark, New Jersey
Attn: J. Kenneth Pagano

and

Connell Foley, LLP
Harborside Financial Center
2510 Plaza Five
Jersey City, New Jersey 07312-4029
Attn: James C. McCann, Esq.

and

Oak Grove Commercial Mortgages, LLC
1705 W. Northwest Highway - Suite 145
Grapevine, TX 76051
Attn: Timothy Leonhard, Exec. V.P.

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 Amended 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 13.3 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 XIV-SEVERABILITY

Section 14.1 Severability

If any term, covenant or condition of this Amended Agreement or the Application, except a Material Condition, shall be judicially declared to be invalid or unenforceable, the remainder of this Amended 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 Amended 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 Amended Agreement, the parties shall cooperate with each other to take the actions reasonably required to restore the Amended Agreement in a manner contemplated by the parties. This shall include, but not be limited to the authorization and re-execution of this Amended Agreement in a form reasonably drafted to effectuate the original intent of the parties. However, the City shall not be required to restore the Amended Agreement if it would modify a Material Condition, the amount of the periodic adjustments or any other term of this Amended Agreement which

would result in any economic reduction or loss to the City.

ARTICLE XV - MISCELLANEOUS

Section 15.1 Construction

This Amended 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 Amended Agreement to be drawn since counsel for both the Entity and the City have combined in their review and approval of same.

Section 15.2 Conflicts

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

Section 15.3 Oral Representations

There have been no oral representations made by either of the parties hereto which are not contained in this Amended Agreement. This Amended Agreement, the Ordinance authorizing the Amended Agreement, and the Application constitute the entire Amended 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 15.4 Entire Document

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

Section 15.5 Good Faith

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

ARTICLE XVI - EXHIBITS

Section 16 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 Amended Agreement;
3. The Application with Exhibits;
4. Certificate of Formation or Good Standing.

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

ATTEST: **MONTGOMERY GATEWAY ASSOCIATES**

_____ _____

ATTEST: **CITY OF JERSEY CITY**

_____ _____

ROBERT BYRNE
CITY CLERK

JOHN KELLY
BUSINESS ADMINISTRATOR