

TOWNSHIP OF MAPLEWOOD



ORDINANCE

#2778-15

AN ORDINANCE AUTHORIZING THE EXECUTION OF A TAX AGREEMENT WITH MAPLEWOOD REDEVELOPERS, LLC AND GRANTING A TAX EXEMPTION

Interpretive Statement

This ordinance will grant the Redeveloper a Five (5) year tax abatement pursuant to New Jersey Statutes.

WHEREAS, the Township of Maplewood, in the County of Essex, New Jersey (the "**Township**"), a public body corporate and politic of the State of New Jersey, is authorized pursuant to the Local Redevelopment and Housing Law, *N.J.S.A. 40A:12A-1 et seq.* (the "**Redevelopment Law**") to determine whether certain parcels of land within the Township constitute an area in need of rehabilitation or an area in need of redevelopment; and

WHEREAS, the Township Committee (the "**Committee**") has adopted a resolution designating Block 13.09, Lots 180, 181 and 185 on the tax map of the Township as an area in need of rehabilitation (the "**Rehabilitation Area**") pursuant to the Redevelopment Law; and

WHEREAS, pursuant to and in accordance with the provisions of the Five-Year Exemption and Abatement Law, *N.J.S.A. 40A:21-1 et seq.* (the "**Tax Exemption Law**"), the Township is authorized to provide for a tax exemption and for payments-in-lieu-of-taxes to benefit parcels within a designated area in need of rehabilitation or area in need of redevelopment; and

WHEREAS, on February 3, 2015, the Committee adopted Ordinance 2768-15 (the "**Ordinance**") which authorizes the grant of five-year tax exemptions on a project by project basis for the new construction of multiple dwellings, commercial uses and industrial uses within the Rehabilitation Area and authorizes the entering of tax agreements with regard to same; and

WHEREAS, Maplewood Redevelopers, LLC (the "**Applicant**") has submitted an application (the "**Exemption Application**", a copy of which is on file with the Township) to the Township requesting a five-year tax exemption pursuant to the Ordinance and the Tax Exemption Law with respect to the rehabilitation of the property commonly known as Block 13.09, Lot 181 and a portion of Lot 180 on the tax map of the Township, proposed for subdivision and consolidation into a new Lot 181 (the "**Property**") for the construction of a mixed-use project consisting of 20 market-rate residential apartments, 9,145 square feet of retail space and underground and surface parking and related improvements (the "**Project**"); and

WHEREAS, the Committee has reviewed the terms of a proposed tax agreement (the "**Tax Agreement**," in the form attached hereto as *Exhibit A*) implementing a five-year tax exemption for the Project; and

WHEREAS, the Committee has determined that the authorization of a tax exemption for the construction of the Project on the Property is in the best interests of the Township, will facilitate the rehabilitation of the Property for productive use, will provide gainful employment within the

Township, assist in the economic development of the Township, increase the tax base of the Township, and expand commerce within the Township,

NOW THEREFORE BE IT ORDAINED by the Township Committee of the Township of Maplewood, in the County of Essex, State of New Jersey as follows:

I. GENERAL

The aforementioned recitals are incorporated herein as though fully set forth at length.

II. APPLICATION FOR EXEMPTION APPROVED

The Exemption Application, which is on file with the Township Clerk, is hereby accepted and approved.

III. EXECUTION OF TAX AGREEMENT AUTHORIZED

(a) The Committee hereby approves the grant of a tax exemption to the Applicant for the construction of the Project on the Property. The Mayor is hereby authorized to execute the Tax Agreement, substantially in the form as attached hereto as *Exhibit A*, subject to modification or revision as deemed necessary and appropriate in consultation with counsel. The Tax Agreement shall be for no longer than five years following completion of the Project and shall be subject to all provisions of the Tax Exemption Law and the Ordinance.

(b) The Clerk of the Township is hereby authorized and directed, upon the execution of the Tax Agreement in accordance with the terms of Section III (a) hereof, to attest to the signature of the Mayor upon such document and to thereupon affix the corporate seal of the Township.

(c) Within thirty (30) days of its execution, the Township Clerk shall file a copy of the Tax Agreement with the Director of the Division of Local Government Services within the Department of Community Affairs, in accordance with Section 11 of the Tax Exemption Law.

IV. SEVERABILITY

If any part of this ordinance shall be deemed invalid, such parts shall be severed and the invalidity thereby shall not affect the remaining parts of this ordinance.

V. REPEAL OF PRIOR ORDINANCES

Ordinances or parts of Ordinances inconsistent with the provisions of this Ordinance be and the same are hereby repealed to the extent of any such inconsistencies.

VI. AVAILABILITY OF THE ORDINANCE

A copy of this ordinance shall be available for public inspection at the offices of the Township.

VII. EFFECTIVE DATE

This Ordinance shall take effect after final passage and publication and as provided by law.

PUBLIC NOTICE is hereby given that the foregoing proposed Ordinance was introduced and read by title for the first time at a meeting of the Township Committee of the Township of Maplewood, held on March 17, 2015, and that the Committee will meet again on April 7, 2015 at 7:30 p.m. at the Municipal Building, 574 Valley Street, Maplewood, New Jersey, at which time

and place the Committee will hold a public hearing on the Ordinance and proceeded to consider the said Ordinance on second reading and final passage.

The purpose of the foregoing proposed Ordinance is to approve the Tax Agreement for Tax Exemption of Maplewood Redevelopers, LLC, in connection with the rehabilitation of property identified as Block 13.09, Lot 181 and a portion of Lot 180 on the Township of Maplewood Tax Map, described in more detail in the Ordinance. A copy of the Tax Agreement and the Exemption Application are available for review by the public at the Maplewood Municipal Building, 574 Valley Street, Maplewood, New Jersey, during regular business hours.

ELIZABETH J. FRITZEN, R.M.C.
Township Clerk

Record and Return to:

Jennifer L. Credidio, Esq.
McManimon, Scotland & Baumann, LLC
75 Livingston Avenue, 2nd Floor
Roseland, New Jersey 07068

TAX AGREEMENT

THIS TAX AGREEMENT (hereinafter “**Agreement**” or “**Tax Agreement**”), made this _____ day of _____, 2015 by and between the **TOWNSHIP OF MAPLEWOOD**, a municipal corporation of the State of New Jersey (the “**State**”) with offices at 574 Valley Street, Maplewood, New Jersey 07040 (the “**Township**”) and **MAPLEWOOD REDEVELOPERS, L.L.C.**, a New Jersey limited liability company with business offices located at 54 Horse Hill Road, Suite 201, Cedar Knolls, New Jersey 07927, and its successors and assigns (the “**Redeveloper**”).

WITNESSETH:

WHEREAS, the Mayor and Governing Body of the Township (the “**Governing Body**”) has adopted an ordinance designating Block 13.09, Lots 180, 181 and 185 on the tax map of the Township as an area in need of rehabilitation (the “**Rehabilitation Area**”) under the Local Redevelopment and Housing Law, *N.J.S.A. 40A:12A-1 et seq.* (the “**Redevelopment Law**”); and

WHEREAS, on July 16, 2013 the Governing Body adopted an ordinance implementing a redevelopment plan for the Rehabilitation Area in accordance with the *N.J.S.A. 40A:12A-7* (the “**Redevelopment Plan**”); and

WHEREAS, the Governing Body acts as the redevelopment entity for such Redevelopment Plan in accordance with *N.J.S.A. 40A:12A-4*; and

WHEREAS, the Governing Body has designated the Redeveloper as redeveloper of a portion of the Rehabilitation Area and has authorized the execution of that certain redevelopment agreement in connection therewith (the “**Redevelopment Agreement**”); and

WHEREAS, pursuant to and in accordance with the provisions of the Five-Year Exemption and Abatement Law, *N.J.S.A. 40A:21-1 et seq.* (the “**Tax Exemption Law**” and together with the Redevelopment Law, the “**Acts**”), the Township is authorized to provide for a tax exemption and for payments in lieu of taxes in an area in need of rehabilitation or area in need of redevelopment; and

WHEREAS, on February 3, 2015, the Governing Body adopted Ordinance 2768-15 permitting tax exemptions for the construction of commercial uses, multiple dwellings, and

mixed use projects (as such terms are defined in the Tax Exemption Law) in the Rehabilitation Area and authorizing tax agreements for same; and

WHEREAS, the Redeveloper has submitted an application to the Township for a tax exemption, all in accordance with the Tax Exemption Law, including without limitation *N.J.S.A.* 40A:21-9 (the "**Exemption Application**", a copy of which is attached hereto as Exhibit A) and the Exemption Application was accepted and approved pursuant to Ordinance _____ of the Governing Body duly adopted on _____ (the "**Ordinance**") which authorized the execution of this Tax Agreement with the Redeveloper; and

WHEREAS, the Township and the Redeveloper have reached agreement with respect to, among other things, the terms and conditions relating to the tax exemption and payments in lieu of taxes and desire to execute this Tax Agreement.

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

ARTICLE I GENERAL PROVISIONS

SECTION 1.01 General Definitions

(a) The following terms shall have the respective meanings ascribed to such terms in the preambles:

- Acts
- Agreement
- Exemption Application
- Governing Body
- Ordinance
- Redeveloper
- Redevelopment Agreement
- Redevelopment Law
- Redevelopment Plan
- Rehabilitation Area
- State
- Tax Agreement
- Tax Exemption Law
- Township

(b) The following terms as used in this Tax Agreement shall, unless the context clearly requires otherwise, have the following meanings:

Certificate of Occupancy - The document issued by the Township in accordance with the New Jersey Administrative Code, authorizing the permanent occupancy of a building or structure, or a portion thereof, on the Project Site.

Improvements – Shall mean, individually or collectively, as the case may be, only those improvements approved by the Planning Board under the Site Plan Approval to be constructed on, in or under the Project Site in accordance with the Redevelopment Agreement comprised of approximately twenty (20) residential rental units, approximately 9,145 square feet of retail space, structured and surface parking, related amenity space and improvements, including all appurtenances attached thereto and made a part thereof.

In Rem Tax Foreclosure - A summary proceeding by which the Township may enforce the lien for taxes or other municipal charges due and owing by a tax sale, all in accordance with the Tax Sale Law, *N.J.S.A. 54:5-1 et seq.*

Material Condition – Shall have the meaning applied to such term as set forth in Section 4.05 hereof.

Project – Means the development of the Improvements, pursuant to the Site Plan Approval in, on and around the Project Site pursuant to the terms set forth in this Agreement and the Redevelopment Agreement.

Project Completion Date – Means the earlier of: (i) the issuance of a Certificate of Occupancy for the entire Project; or (ii) two years from the date of any building permit with respect to the Project, other than a demolition permit.

Project Site – Means the land shown and described on Schedule 1 annexed hereto, which is that portion of the Rehabilitation Area for which the Redeveloper has been designated by the Township as redeveloper under the Redevelopment Law.

Site Plan Approval – preliminary and final site plan approval granted by the Township Planning Board for the Project upon the Project Site.

Tax Assessor - The tax assessor for the Township.

Tax Sale Law – *N.J.S.A. 54:5-1 et seq.*, as the same may be amended and supplemented from time to time.

Tax Year – A twelve (12) month period which is determined to be a tax year in accordance with the Township's tax calendar as prescribed by all applicable law.

SECTION 1.02 Exhibits and Schedules Incorporated

All exhibits and schedules referred to in this Tax Agreement and attached hereto are incorporated herein and made part hereof. Such exhibits and schedules include:

Schedule 1 Metes and bounds description of the Project Site

Exhibit A Exemption Application

ARTICLE II
APPROVAL

SECTION 2.01 Township Approval of Tax Exemption

Pursuant to the Ordinance, the Improvements on the Project Site shall be exempt from real property taxation until the fifth (5th) anniversary of the Project Completion Date as provided for herein and in the Tax Exemption Law. The Redeveloper hereby expressly covenants, warrants and represents that the Project, including any Improvements related thereto, shall be used, managed and operated for the purposes set forth in the Exemption Application and in accordance with the Redevelopment Agreement, the Acts and all applicable law. Prior to the Project Completion Date, the Project Site, including any and all current improvements related thereto, shall be assessed and taxed according to the general law applicable to all other non-exempt property located within the Township. For reference purposes, and not by way of limitation, the estimated assessment on the land portion of the Project Site for calendar year 2015 is \$696,800.00, which applying the 2014 tax rates would yield a total tax payment on the land of \$24,558.23. This estimated assessment, and the generally applicable tax rates, may change from time to time in accordance with general law. For reference purposes, and not by way of limitation, the estimated assessment on the existing improvements on the Project Site (the "Existing Improvements") for calendar year 2015 is \$978,500.00, which applying the 2014 tax rates would yield a total tax payment on the current improvements of \$34,482.34. This estimated assessment, and the generally applicable tax rates, may change from time to time in accordance with general law, including by means of a tax appeal if filed with respect thereto. Notwithstanding the foregoing, the parties acknowledge and agree that the Redevelopment Plan contemplates that the Redeveloper will demolish the Existing Improvements. Furthermore, the Project Site is currently owned by the Township and is exempt from taxation. If, upon Redeveloper's acquisition of the Project Site from the Township, a demolition permit for the Existing Improvements has been issued by the Township, then the issuance of such permit shall serve as evidence that the Existing Improvements are obsolete and the assessment on the Existing Improvements will be eliminated, provided, however, that if the Existing Improvements are not actually demolished prior to December 31, 2015, then the Assessor may reassess the value of the Existing Improvements in accordance with applicable law.

SECTION 2.02 Township Approval of Project to be Undertaken by the Redeveloper

Approval is hereby granted by the Township to the Redeveloper for the development, financing, acquisition, construction, management and operation of the Project, which shall in all respects comply and conform to the Redevelopment Agreement and all applicable statutes of the State, and the lawful regulations made pursuant thereto, governing land, building(s) and the use thereof.

SECTION 2.03 Improvements to be Constructed

The Redeveloper hereby covenants, warrants and represents that it will construct and/or renovate the Project Site in accordance with the Redevelopment Agreement and the Redevelopment Plan.

ARTICLE III
DURATION OF AGREEMENT

SECTION 3.01 Term

(a) It is hereby expressly understood and agreed by the parties that the tax exemption granted and referred to in Section 2.01 hereof and the obligation to make payments in lieu of taxes required under Article IV hereof shall, provided that there shall not be a default under this Tax Agreement or the Redevelopment Agreement, remain in effect until the fifth (5th) anniversary of the Project Completion Date. Upon the expiration of the tax exemption granted and provided for herein, the Improvements related thereto shall thereafter be assessed and taxed according to the general law applicable to all other non-exempt property located within the Township.

(b) Upon the expiration of the tax exemption provided for herein, all restrictions and limitations of this Tax Agreement imposed upon the Redeveloper and the Project Site, including any Improvements related thereto, excluding (i) the requirement to make payment of any payments in lieu of taxes due and owing hereunder, and (ii) any and all related and available remedies of the Township, shall terminate.

SECTION 3.02 Apportionment

Notwithstanding anything contained in this Tax Agreement to the contrary, in the event that this Tax Agreement shall be terminated, the procedure for the apportionment of any taxes shall be the same as would otherwise be applicable to, in accordance with the laws of the State, any other property located within the Township upon a change in the exemption or tax status of such property.

SECTION 3.03 Termination

(a) If at any time during the term of this Tax Agreement there shall be a default by the Redeveloper of any or all of the provisions of this Tax Agreement or the Redevelopment Agreement, which default shall not have otherwise been cured or remedied in accordance with the terms hereof or thereof, this Tax Agreement shall automatically terminate and the Project, including any Improvements related thereto, shall thereafter be assessed and taxed according to the general law applicable to all other non-exempt property located within the Township.

(b) In accordance with the Tax Exemption Law, including without limitation *N.J.S.A. 40A:21-12*, and notwithstanding anything to the contrary in this Agreement, if, during the term

of this Agreement, the Entity (i) ceases to operate or disposes of the Project Site and the new owner of the Project Site fails to use the Project Site pursuant to the conditions which qualified the Project Site, or (ii) fails to meet the conditions for qualifying for the short term tax exemption granted pursuant to this Agreement, then the tax which would otherwise have been payable for each tax year shall become due and payable from the Redeveloper to the Township as if no exemption had been granted.

ARTICLE IV
ANNUAL SERVICE CHARGE

SECTION 4.01 **Commencement of Payment in Lieu of Taxes**

The Redeveloper shall make payments in lieu of taxes on the Improvements commencing on the Project Completion Date.

SECTION 4.02 **Payments in Lieu of Taxes**

(a) The Redeveloper shall make payments in lieu of taxes to the Township, on a tax phase-in basis based on the value of the Improvements, in the following manner:

(i) In the twelve months following the Project Completion Date, zero percent (0%) of the real property tax otherwise due on the Improvements;

(ii) In the second year following the Project Completion Date, an amount equal to twenty percent (20%) of the real property taxes otherwise due on the Improvements, as determined by the Tax Assessor in accordance with applicable law;

(iii) In the third year following the Project Completion Date, an amount equal to forty percent (40%) of the real property taxes otherwise due on the Improvements, as determined by the Tax Assessor in accordance with applicable law;

(iv) In the fourth year following the Project Completion Date, an amount equal to sixty percent (60%) of the real property taxes otherwise due on the Improvements, as determined by the Tax Assessor in accordance with applicable law;

(v) In the fifth year following the Project Completion Date, an amount equal to eighty percent (80%) of the real property taxes otherwise due on the Improvements, as determined by the Tax Assessor in accordance with applicable law.

For reference purposes, and not by way of limitation, the estimated assessment on the Improvements as if complete as of January 1, 2016 is \$2,887,700, which applying the 2015 tax rates would yield a total tax payment on the Improvements of \$101,757.78. This estimated assessment, and the generally applicable tax rates, may change from time to time in accordance with general law.

(b) Payments in lieu of taxes shall be due and payable in quarterly installments on those dates when real property taxes are otherwise due and payable.

(c) If any installment of the payments in lieu of taxes is not paid to the Township in accordance with this Tax Agreement on the date and in the full amount scheduled to be paid, the Redeveloper hereby expressly waives any objection or right to challenge the use by the Township of the enforcement of remedies to collect such installment of the payment in lieu of taxes as are afforded the Township by law, including without limitation the Tax Sale Law.

(d) In the event that the Redeveloper fails to timely pay any installment of the payments in lieu of taxes, the amount past due shall bear the highest rate of interest permitted under applicable State law in the case of unpaid taxes or tax liens on land until paid.

SECTION 4.03 Municipal Charges

The Redeveloper hereby expressly acknowledges, understands, and agrees that, in addition to the payments in lieu of taxes, it shall be responsible for the payment (without any credit whatsoever hereunder) of all other applicable municipal charges that may, from time to time, be lawfully assessed upon the Project Site, including, without limitation, any and all real property taxes on the land, special benefit assessments, water and sewer charges, and other municipal charges, whether presently existing or hereinafter imposed, and that the Township may enforce such assessments and charges in any manner (including, but not limited to, foreclosure or tax sale) permitted by applicable law.

SECTION 4.04 Consent of the Redeveloper to the Payments in Lieu of Taxes

Subject to the terms of this Agreement, the Redeveloper's obligation to pay the payments in lieu of taxes shall be absolute and unconditional and shall not be subject to any defense, set-off, recoupment or counterclaim under any circumstances. The Redeveloper's remedies shall be limited to those specifically set forth herein and otherwise provided by law.

SECTION 4.05 Material Conditions

It is expressly agreed and understood that (a) all payments of payments in lieu of taxes and other municipal charges, and any interest payments, penalties or costs of collection due thereon, and (b) compliance with the Redevelopment Agreement are material conditions of this Agreement ("**Material Conditions**"). If any other term, covenant or condition of this Tax Agreement or the Exemption Application, as to any person or circumstance shall, to any extent, be determined to be invalid or unenforceable by virtue of a non-appealable order of a court of competent jurisdiction, the remainder of this Tax 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 remaining term, covenant or condition of this Tax Agreement shall be valid and enforced to the fullest extent permitted by law.

ARTICLE V **CERTIFICATE OF OCCUPANCY**

SECTION 5.01 Certificate of Occupancy

It is understood and agreed that the Redeveloper shall be obligated to make application for and make all good faith efforts to obtain Certificate(s) of Occupancy for the Project and the Improvements related thereto in accordance with the project schedule set forth in the Redevelopment Agreement.

SECTION 5.02 Filing of Certificate of Occupancy

It shall be the primary responsibility of the Redeveloper to forthwith file with the Tax Assessor, Tax Collector, and Chief Financial Officer of the Township a copy of any such Certificate(s) of Occupancy.

ARTICLE VI
SALE AND/OR TRANSFER; CHANGE IN USE

SECTION 6.01 Sale and/or Transfer

If the Redeveloper disposes of the Project Site prior to the Project Completion Date, such disposition must comply with the terms of the Redevelopment Agreement, including any requirement to obtain the consent of the Township to such disposition, if applicable. If the Redeveloper disposes of the Project Site prior to the expiration or earlier termination of this Agreement, then this Tax Agreement shall remain in full force and effect, provided that thirty (30) days' prior written notice of such disposition is provided to the Township by the Redeveloper, and further provided that the subsequent owner of the Project Site continues to operate, maintain and utilize the Project Site, including the Improvements related thereto, pursuant to the terms hereof and the conditions which originally qualified the Project Site, including the Improvements related thereto, for the tax exemption granted herein.

In the event of a sale and/or transfer of the Project Site that does not result in the termination of this Tax Agreement in accordance with this Section, and provided that this Tax Agreement shall not otherwise be terminated in accordance with the terms hereof, all of the rights, duties, responsibilities and obligations of the Redeveloper hereunder shall automatically become the rights, duties, responsibilities and obligations of the subsequent owner.

SECTION 6.02 Change in Use

In the event that the Redeveloper shall cease to operate and utilize the Project Site and the Improvements related thereto for the purpose set forth herein and in the Redevelopment Agreement, this Tax Agreement shall automatically terminate and the Project Site, including the Improvements related thereto, shall be assessed and taxed according to the general law applicable to all other non-exempt property located within the Township and Section 3.03 hereof.

SECTION 6.03 Subordination of Fee Title

It is expressly acknowledged, understood and agreed that the Redeveloper has the right, subordinate to the lien, as a matter of law, of this Tax Agreement, the payments in lieu of taxes, and to the rights of the Township hereunder, to encumber the fee title to the Project Site, including any Improvements related thereto, and that any such subordinate encumbrance shall not be deemed to be a violation of this Tax Agreement.

SECTION 6.04 Operation of Project

At all times during the term of this Agreement, the Project Site, including any Improvements related thereto, shall be operated in accordance with all applicable laws and shall be subject to all applicable laws and regulations regarding pollution control, worker safety, discrimination in employment, housing provision, zoning, planning and building code requirements. The Redeveloper shall be free to lease units in the Project without the consent of the Township.

ARTICLE VII
WAIVER

SECTION 7.01 Waiver

Nothing contained in this Tax Agreement or otherwise shall constitute a waiver or relinquishment by the Township of any rights and remedies provided by law, including without limitation, the right to terminate this Tax Agreement. Nothing herein shall be deemed to limit any right of recovery that the Township has under law, in equity, or under any provision of this Tax Agreement.

ARTICLE VIII
NOTICE

SECTION 8.01 Notice

Any notice required hereunder to be sent by any party to another party shall be sent to all other parties hereto simultaneously by certified or registered mail, return receipt requested, hand delivery, or reputable overnight delivery service for next business day delivery, as follows:

- (a) When sent to the Redeveloper:

Maplewood Redeveloper, L.L.C.
54 Horse Hill Road, Suite 201,
Cedar Knolls, New Jersey 07927

with copy to:

Mandelbaum Salsburg, Esq.
Craig W. Alexander
155 Prospect Ave.
West Orange, NJ 07052

Andy S. Norin, Esq.
Drinker Biddle & Reath LLP
600 Campus Drive
Florham Park, New Jersey 07932

(b) When sent to any subsequent owner, other than the Redeveloper, as may be permitted in accordance with Section 6.01 hereof, it shall be addressed to such owner's address as set forth in the tax records of the Township;

(c) When sent to the Township:

The Township of Maplewood
574 Valley Street
Maplewood, New Jersey 07040
Attn: Business Administrator

with copies to:

Roger Desiderio, Esq.
Bendit, Weinstock
80 Main Street
West Orange, New Jersey 07052

Jennifer L. Credidio, Esq.
McManimon, Scotland & Baumann, LLC
75 Livingston Avenue
Roseland, New Jersey 07068

ARTICLE IX **COMPLIANCE**

SECTION 9.01 Statutes and Ordinances

The Redeveloper hereby expressly agrees at all times prior to the expiration or other termination of this Tax Agreement to remain bound by the provisions of the Redevelopment Agreement, if applicable, and all federal and State law, including without limitation, the Acts and any lawful ordinances and resolutions of the Township. The Redeveloper's failure to comply with the Redevelopment Agreement, if applicable, and such statutes, ordinances or resolutions shall constitute a violation and breach of this Tax Agreement.

ARTICLE X
CONSTRUCTION

SECTION 10.01 Construction

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

ARTICLE XI
INDEMNIFICATION

SECTION 11.01 Indemnification

(a) It is hereby expressly acknowledged, understood and agreed that in the event the Township shall be named as party defendant in any action by reason of any breach, default or a violation of any of the provisions of this Tax Agreement and/or the provisions of the Acts by the Redeveloper, or any challenge to the validity of this Tax Agreement, the Redeveloper shall indemnify and hold the Township harmless from and against all liability, losses, damages, demands, costs, claims, actions or expenses (including attorneys' fees and expenses) of every kind, character and nature arising out of or resulting from the action or inaction of the Redeveloper and/or by reason of any breach, default or a violation of any of the provisions of this Tax Agreement, the provisions of the Acts, and/or any Federal or State law and/or any challenge to the validity of this Tax Agreement. Notwithstanding anything to the contrary contained herein, Redeveloper shall have the right to terminate this Agreement rather than defend any challenge to the validity of this Tax Agreement.

(b) In the event the Redeveloper alone is named a party defendant to any action of the type set forth in subsection (a) above, the Township maintains the right to intervene as a party thereto, to which intervention the Redeveloper hereby expressly consents, and to carry out their own defense, the reasonable cost of which shall be borne by the Redeveloper.

ARTICLE XII
DEFAULT

SECTION 12.01 Default

A default hereunder shall be deemed to have occurred if the Redeveloper fails to conform to the terms of this Tax Agreement, the Redevelopment Agreement, if applicable, or fails to perform any obligation imposed upon the Redeveloper by statute, ordinance or lawful regulation, it being hereby expressly acknowledged and understood by the parties hereto that in the event of a default by the Redeveloper which default shall not otherwise be cured or remedied in accordance with the terms of this Tax Agreement or the Redevelopment Agreement, as applicable, the tax exemption granted herein shall immediately cease and shall have no further

force and effect and the Improvements shall thereafter be assessed and taxed according to the general law applicable to all other non-exempt property located within the Township and Section 3.03 hereof.

SECTION 12.02 Cure Upon Default

Should the Redeveloper be in default of any obligation under this Tax Agreement, the Township shall notify the Redeveloper in writing of said default. Said notice shall set forth with particularity the basis of said default. Except as otherwise limited by law, the Redeveloper shall have thirty (30) days to cure any default (other than a default in payment of any installment of the payments in lieu of taxes in which case Redeveloper shall have ten (10) days to cure). In the case of a default, other than a payment default, which cannot with diligence be remedied or cured, or the remedy or cure of which cannot be commenced, within the time periods set forth herein, the Redeveloper shall have such additional time as reasonably necessary to remedy or cure such default provided that the Redeveloper shall at all times act with diligence, and in good faith, to remedy or cure such default as soon as practicable, but in no event more than ninety (90) additional days, unless the Township in its sole discretion, shall so consent. Upon the expiration of such default and cure period, the Township shall have the right to proceed against the Project Site, including any Improvements related thereto, pursuant to any and all applicable provisions of law.

SECTION 12.03 Remedies

In the event of a default of this Tax Agreement by any of the parties hereto or a dispute arising between the parties in reference to the terms and provisions as set forth herein, other than those items specifically included as Material Conditions herein, any party may apply to the Superior Court of New Jersey by an appropriate proceeding, to settle and resolve said dispute in such fashion as will tend to accomplish the purposes of the Acts. In the event the Superior Court shall not entertain jurisdiction or, in the event of a breach of Material Condition, 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 said laws. Costs for said arbitration shall be paid by the non-prevailing party. In the event of a default on the part of the Redeveloper to pay any installment of the payments in lieu of taxes required by Article IV hereof, the Township, in addition to its other remedies, specifically and without limitation, reserves the right to proceed against the Project Site, including any Improvements related thereto, in the manner provided by law, including without limitation, the Tax Sale Law, and any act supplementary or amendatory thereof. Whenever the word "Taxes" appears, or is applied, directly or implied, to mean taxes or municipal liens on land, such statutory provisions shall be read, as far as it is pertinent to this Tax Agreement, as if the payments in lieu of taxes were taxes or municipal liens on land. In either case, however, the Redeveloper does not waive any defense it may have to contest the rights of the Township to proceed in the above-mentioned manner.

SECTION 12.04 Remedies Upon Default Cumulative; No Waiver

Subject to the provisions of Section 12.03 hereof and the other terms and conditions of this Tax Agreement, all of the remedies provided in this Tax Agreement to the Township, and all rights and remedies granted to it by law and equity shall be cumulative and concurrent and no determination of the invalidity of any provision of this Tax Agreement shall deprive the Township of any of their remedies or actions against the Redeveloper or the Project Site, including any Improvements related thereto, because of the Redeveloper's failure to pay the payments in lieu of taxes and/or any applicable municipal service charges and interest payments. This right shall only apply to arrearages that are due and owing at the time, and the bringing of any action for payments in lieu of taxes or other charges, or for breach of covenant or the resort of any other remedy herein provided for the recovery of payments in lieu of taxes or other charges shall not be construed as a waiver of the right to proceed with an In Rem Foreclosure action consistent with the terms and provisions of the Tax Sale Law and this Tax Agreement. In addition to all of its other rights and remedies, in the event of a default of this Tax Agreement, the Township may terminate this Tax Agreement and the tax exemption granted herein shall immediately cease and shall have no further force and effect and the Project Site, including any Improvements related thereto, shall thereafter be assessed and taxed according to the general law applicable to all other non-exempt property located within the Township and Section 3.03 hereof.

ARTICLE XIII **MISCELLANEOUS**

SECTION 13.01 Conflict

(a) The parties agree that in the event of a conflict between the Exemption Application and this Tax Agreement, the language in this Tax Agreement shall govern and prevail.

(b) The parties agree that in the event of a conflict between the Redevelopment Agreement and this Tax Agreement, the language in the Redevelopment Agreement shall govern and prevail.

SECTION 13.02 Oral Representations

There have been no oral representations made by any of the parties hereto which are not contained in this Tax Agreement. This Tax Agreement, the Ordinance, the Exemption Application, and the Redevelopment Agreement constitute the entire agreement between the parties and there shall be no modifications thereto other than by a written instrument executed by the parties hereto and delivered to each of them. Notwithstanding anything contained herein to the contrary, no waiver of any rights granted hereunder and no modification or amendment to this Tax Agreement shall be effective, or otherwise have any force and effect without the express written consent of the parties hereto.

SECTION 13.03 Redeveloper's Consent

The Redeveloper hereby acknowledges, consents and agrees (a) to the amount of the payments in lieu of taxes and to the liens established in this Tax Agreement, (b) that it shall not contest the validity or amount of any such lien (subject only to Redeveloper's right to challenge the amount of the assessment) and (c) that its remedies shall be limited to those specifically set forth herein and otherwise provided by law.

SECTION 13.04 Filing with Local Government Services

In accordance with the Tax Exemption Law, including without limitation *N.J.S.A. 40A:21-11*, within thirty (30) days of the execution of this Tax Agreement, the Township shall cause this Tax Agreement to be filed with the Director of the Division of Local Government Services in the Department of Community Affairs of the State.

SECTION 13.05 Recording

This entire Tax Agreement and the Ordinance shall be filed and recorded with the Essex County Register such that this Tax Agreement and the Ordinance shall be reflected upon the land records of the County of Essex as a municipal lien upon and a covenant running with the Project Site, including any Improvements related thereto.

SECTION 13.06 Delivery to Tax Assessor

The Clerk of the Township shall deliver to the Tax Assessor a certified copy of the Ordinance along with an executed copy of this Tax Agreement. Upon such delivery, the Tax Assessor shall implement the tax exemption granted and provided herein and shall continue to enforce the tax exemption, without further certification by the Township Clerk, until the expiration of the tax exemption in accordance with the terms hereof.

SECTION 13.07 Amendments

This Tax Agreement may not be amended, changed, modified, altered or terminated without the written consent of the parties hereto.

SECTION 13.08 Good Faith

In their dealings with each other, the parties agree that they shall act in good faith.

SECTION 13.09 Entire Document

All conditions in the Ordinance and the Exemption Application are incorporated in this Tax Agreement and made a part hereof.

SECTION 13.10 Counterparts

This Tax Agreement may be simultaneously executed in counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

SECTION 13.11 Estoppel Certificate

Within thirty (30) days following written request therefore by the Redeveloper, or any mortgagee, purchaser, tenant or other party having an interest in the Project, the Township shall issue a signed estoppel certificate in reasonable form stating that (i) this Tax Agreement is in full force and effect, (ii) to the best of the Township's knowledge, no default has occurred under this Tax Agreement (nor any event which, with the passage of time and the giving of notice would result in the occurrence of a default) or stating the nature of any default; and (iii) stating any such other reasonable information as may be requested. In the event the estoppel certificate discloses a default, it shall also state the manner in which such default may be cured.

[The remainder of this page is intentionally left blank = signature page to follow]

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

ATTEST:

Maplewood Redevelopers, L.L.C.

By: _____

ATTEST:

The Township of Maplewood

Elizabeth J. Fritzen, Township Clerk

By: _____
Victor De Luca, Mayor

[SEAL]

STATE OF NEW JERSEY)
)
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2014, by Maplewood Redevelopers, L.L.C., a limited liability company of the State of New Jersey (the "Redeveloper"), by _____, its _____, on behalf of the Redeveloper.

Notary Public

Commission Expiration: _____

STATE OF NEW JERSEY)
)
COUNTY OF BERGEN)

The foregoing instrument was acknowledged before me this ____ day of _____, 2014, by the Township of Maplewood (the "Township"), a municipal corporation of the State of New Jersey, by Victor De Luca, its Mayor, on behalf of the Township.

Notary Public

Commission Expiration: _____

EXHIBIT A

Exemption Application

[on file with the Township]

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