

TOWNSHIP OF MAPLEWOOD



ORDINANCE

2691-12

AN ORDINANCE
AUTHORIZING THE EXECUTION
OF A FINANCIAL AGREEMENT WITH
92 BURNETT AVENUE URBAN RENEWAL, LLC
AND GRANTING A TAX EXEMPTION

"Interpretive Statement"

This ordinance will grant a tax exemption and authorize a Payment in Lieu of Tax Agreement with 92 Burnett Avenue Urban Renewal, LLC.

WHEREAS, the Maplewood Township Committee ("Township Committee"), pursuant to the provisions of the *Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq.* (the "Act") and based upon the report and recommendation of the Maplewood Planning Board ("Planning Board ") designated Block 48.47, Lots 1, 1.01, 5.01, 7, 123, 124.01, 130.02, 131, 138, 140, 140.01, 143 and a portion of Lot 167 as an area in need of redevelopment ("Redevelopment Area 2"); and

WHEREAS, pursuant to *N.J.S.A. 40A:12-7*, the Township Committee, in accordance with the applicable provisions and requirements of the Act, oversaw the preparation of a redevelopment plan for Redevelopment Area 2 and by Ordinance 2388-07 approved and adopted such redevelopment plan (the "Initial Redevelopment Plan"); and

WHEREAS, pursuant to *N.J.S.A. 40A:12-7* and by Ordinance No. 2686-12, the Township Committee adopted an amendment to the Initial Redevelopment Plan (as amended, the "Redevelopment Plan"); and

WHEREAS, a portion of Redevelopment Area 2 having a street address of 92 Burnett Avenue and comprising Lots 5.01 and 7 in Block 48.47 (the "Land"), is owned or controlled by 92 Burnett Avenue Urban Renewal, LLC (the "URE"); and

WHEREAS, the URE presented a plan to the Township for the redevelopment of the Land consisting of the construction of approximately 126 residential units and related parking in accordance with the terms and conditions of the Redevelopment Plan (the "Project"); and

WHEREAS, in order to improve the feasibility of the construction, operation and maintenance of the Project, the URE made application to the Township requesting a long term tax exemption and financial agreement with respect to the Land (the "Application") pursuant to the *Long Term Tax Exemption Law, N.J.S.A. 40A:20-1 et seq.* (the "LTTE Law"), which Application is on file with the Township Clerk; and

WHEREAS, the URE is qualified to do business as an urban renewal entity under the provisions of the LTTE Law , and created for the development, operation and maintenance of the Project; and

WHEREAS, the URE has represented to the Township that the Project would not be feasible in its intended scope but for the provision of financial assistance by the Township; and

WHEREAS, after review of the Application, the Mayor recommended that the Application be approved; and

WHEREAS, the Township Committee has reviewed the terms of a proposed financial agreement (the "**Financial Agreement**"), a copy of which has been filed with the Township Clerk and which is attached hereto as Exhibit A and by this reference incorporated herein; and

WHEREAS, the Township hereby finds that the relevant benefits of the Project to the redevelopment of Redevelopment Area 2 outweigh the loss, if any, of property tax revenue in granting the long term tax exemption for the Project; and

WHEREAS, the Township hereby determines that the assistance provided to the Project pursuant to the Financial Agreement will be a significant inducement for the URE to proceed with the Project and that based on information set forth in the Application, the Project would not be feasible without such assistance,

NOW THEREFORE BE IT ORDAINED by the Township Committee of the Township of Maplewood, in the County of Essex, 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 Application, which is on file with the Township Clerk and has been recommended for approval to the Township Committee by the Mayor, is hereby accepted and approved.

III. EXECUTION OF FINANCIAL AGREEMENT AUTHORIZED

(a) The Mayor is hereby authorized to execute the Financial Agreement, substantially in the form as it has been presented to the Township Committee subject to modification or revision as deemed necessary and appropriate in consultation with counsel.

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

(c) The Township Clerk shall file certified copies of this ordinance and the Financial Agreement with the Tax Assessor of the Township and the Director of the Division of Local Government Services within the Department of Community Affairs in accordance with Section 12 of the LTTE 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. AVAILABILITY OF THE ORDINANCE

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

VI. 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.

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 April 17, 2012, and that Committee met again on May 1, 2012, at 7:30 p.m. at the Municipal Building, 574 Valley Street, Maplewood, New Jersey, at which time and place the Committee proceeded to consider the said Ordinance on second reading and final passage.

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

EXHIBIT A

Financial Agreement

FINANCIAL AGREEMENT

THIS FINANCIAL AGREEMENT (hereinafter "Agreement" or "Financial Agreement"), made this _____ day of _____, 2012 by and between 92 BURNETT AVENUE URBAN RENEWAL, LLC, a New Jersey limited liability company qualified as an urban renewal entity in accordance with the Long Term Tax Exemption Law of 1992, constituting Chapter 431 of the Pamphlet Laws of 1991 of the State of New Jersey (the "State"), and the acts amendatory thereof and supplemental thereto (the "Tax Exemption Law", as codified in N.J.S.A. 40A:20-1 et seq.), with offices at 10 Shawnee Drive, Watchung, New Jersey 07059 ("Urban Renewal Entity" or "URE") and the TOWNSHIP OF MAPLEWOOD, a municipal corporation in the County of Union and the State, with its offices at 574 Valley Street, Maplewood, New Jersey 07040 (the "Township").

WITNESSETH:

WHEREAS, the Maplewood Township Committee ("**Township Committee**"), pursuant to the provisions of the *Local Redevelopment and Housing Law*, N.J.S.A. 40A:12A-1 et seq. (the "*Act*") and based upon the report and recommendation of the Maplewood Planning Board ("**Planning Board**") designated Block 48.47, Lots 1, 1.01, 5.01, 7, 123, 124.01, 130.02, 131, 138, 140, 140.01, 143 and a portion of Lot 167 as an area in need of redevelopment ("**Redevelopment Area 2**"); and

WHEREAS, pursuant to N.J.S.A. 40A:12-7, the Township Committee, in accordance with the applicable provisions and requirements of the *Act*, oversaw the preparation of a redevelopment plan for Redevelopment Area 2 and by Ordinance 2388-07 approved and adopted such redevelopment plan (the "**Initial Redevelopment Plan**"), and as part of that approval directed that the Township's Zoning Map be amended and superseded to reflect the provisions of the Initial Redevelopment Plan; and

WHEREAS, pursuant to N.J.S.A. and by Ordinance No. _____, the Township Committee adopted an amendment to the Initial Redevelopment Plan (the "**Redevelopment Plan**") and as part of that approval directed that the Township's Zoning Map be amended and superseded to reflect the provisions of the Initial Redevelopment Plan; and

WHEREAS, a portion of Redevelopment Area 2 having a street address of 92 Burnett Avenue and comprising Lots 5.01 and 7 in Block 48.47 (the "**Universal Chain Site**"), is owned or controlled by the Urban Renewal Entity; and

WHEREAS, the Urban Renewal Entity has agreed to redevelop the Universal Chain Site and to devote substantial cash assets and borrowed funds for the completion of, among other things, the construction of 126 residential units in two (2) phases, in accordance with the terms and conditions of the Redevelopment Plan, subject to an amendment to remove the age restrictions on the Universal Chain Site (the "**Project**" or "**Redevelopment Project**"); and

WHEREAS, in order to implement the development, financing, construction, operation and management of the Project, the Township and the Urban Renewal Entity have entered into a redeveloper agreement for the Universal Chain Site dated _____, 2011 (along with any amendments thereto, the "**Redeveloper Agreement**"), which Redeveloper Agreement specifies the rights and responsibilities of the Township and the Urban Renewal Entity with respect to the Project; and

WHEREAS, any capitalized terms utilized in this Agreement but not defined herein shall have the meaning ascribed to that term in the Redeveloper Agreement; and

WHEREAS, in order to improve the feasibility of the Project and to allow the Project to be competitive, Urban Renewal Entity made application for a financial agreement on _____, 2012 (the "**Application**"), which Application is on file with the Township Clerk; and

WHEREAS, in order to enhance the economic viability of and opportunity for a successful project, the Township will enter into this Financial Agreement with the Urban Renewal Entity governing payments made to the Township in lieu of real estate taxes on the Project pursuant to the *Long Term Tax Exemption Law*; and

WHEREAS, the provisions of the *Long Term Tax Exemption Law* authorize the Township to accept, in lieu of real property taxes, an annual service charge paid by the Urban Renewal Entity to the Township based on this Agreement and the enumerated formulas set forth in the *Long Term Tax Exemption Law*; and

WHEREAS, the Urban Renewal Entity has agreed to make payment of the Annual Service Charge (as defined herein) to the Township, from which Annual Service Charge shall be deducted upon receipt of same the County Share (as defined herein); and

WHEREAS, the balance of the Annual Service Charge is to be used by the Township for any lawful purpose in the exercise of the Township's sole discretion; and

WHEREAS, the Township has determined that tax exemption for the Project permits (1) the redevelopment of the Universal Chain Site in accordance with the Act, (2) the provision of needed housing opportunities in the Township for low to moderate income families and (3) the remediation of environmentally troubled property and the improved utilization of currently underutilized land; and

WHEREAS, the Township Committee on _____, 2012 adopted Ordinance _____ approving the Application, including the Annual Service Charge, and authorized the execution of this Agreement (the "**Ordinance**"); and

WHEREAS, in order to satisfy requirements of the *Long Term Tax Exemption Law* and to set forth the terms and conditions under which the Parties shall carry out their respective obligations with respect to the payment of the Annual Service Charge by the Urban Renewal Entity, in lieu of real property taxes, the Parties have determined to execute this Financial 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 1.01 Governing Law and Provisions

THIS AGREEMENT SHALL BE GOVERNED BY THE LAWS OF THE STATE OF NEW JERSEY, INCLUDING THE PROVISIONS OF THE ACTS AND SUCH OTHER STATUTES AS MAY BE SOURCES OF RELEVANT AUTHORITY, IF ANY. IT IS HEREBY EXPRESSLY ACKNOWLEDGED, UNDERSTOOD AND AGREED THAT UPON THE RECORDATION OF THE APPROVING ORDINANCE AND THIS FINANCIAL AGREEMENT, EACH AND EVERY TAXABLE PARCEL, AS SUCH TERM IS DEFINED HEREIN, INCLUDING ANY IMPROVEMENT RELATED THERETO, SHALL BE SUBJECT TO AND GOVERNED BY THE TERMS OF THIS FINANCIAL AGREEMENT AND EACH AND EVERY OWNER, WHETHER IN FEE SIMPLE OR OTHERWISE, OF ANY SUCH TAXABLE PARCEL, REGARDLESS WHETHER SUCH OWNER SHALL BE URE, OR ANY OTHER OWNER, IT BEING HEREBY EXPRESSLY ACKNOWLEDGED THAT AS OF THE DATE HEREOF URE IS THE OWNER OF EACH AND EVERY TAXABLE PARCEL AND IMPROVEMENT WITHIN THE PROPERTY, SHALL BE BOUND BY THE TERMS HEREOF. IN THE EVENT OF ANY BREACH OR DEFAULT OF THIS FINANCIAL AGREEMENT BY AN OWNER (A "DEFAULTING OWNER"), SUCH BREACH OR DEFAULT SHALL NOT CONSTITUTE A BREACH OR DEFAULT BY ANY OTHER OWNER(S) (EACH, A "NON-DEFAULTING OWNER"), AND EACH OTHER NON-DEFAULTING OWNER OR SUCH NON-DEFAULTING

OWNER(S) RESPECTIVE TAXABLE PARCEL, INCLUDING ANY IMPROVEMENT RELATED THERETO, SHALL CONTINUE TO BE SUBJECT TO, GOVERNED AND BOUND BY THIS FINANCIAL AGREEMENT, BUT NONE OF THE REMEDIES AVAILABLE IN THIS AGREEMENT OR AT LAW OR IN EQUITY UPON SUCH BREACH OR DEFAULT SHALL BE EXERCISED AGAINST, OR IN SUCH A MANNER AS TO ADVERSELY AFFECT, ANY NON-DEFAULTING OWNER OR ITS RESPECTIVE TAXABLE PARCEL.

SECTION 1.02 General Definitions

(a) The following terms shall have the respective meanings ascribed to such terms in the preambles, or Section 1.01, hereof:

Agreement
Approving Ordinance
Township
Defaulting Owner
Exemption Application
Financial Agreement
Improvements
Non-Defaulting Owner
Ordinance
Project
Property
Redeveloper Agreement
Redevelopment Area
Redevelopment Project
URE
State
Tax Exemption Law

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

Allowable Net Profit – The annual amount of Net Profit not otherwise in excess of the Allowable Profit Rate.

Allowable Profit Rate – The greater of 12% or the percentage per annum arrived at by adding 1 1/4% per annum to the interest rate per annum which the municipality determines to be the prevailing rate on mortgage financing on comparable improvements in the County. The provisions set forth in N.J.S.A. 40A:20-3(b) are expressly incorporated herein by this reference.

Annual Service Charge – As defined in Article IV of this Agreement.

Annual Service Charge Start Date – as defined in Section 4.01(c).

Auditor's Report – A complete financial statement, the contents of which have been prepared in a manner consistent with GAAP and that fully details all items as required by the Tax Exemption Law, including without limitation, (a) the terms and interest rate on any mortgage(s) associated with the Property, or any Improvements related thereto, (b) the Net Profit for the period shown, including the calculation thereof, (c) such details as may relate to the financial affairs of URE Owner and to its operation and performance hereunder, that has been certified as to its conformance with such standards by a certified public accountant who is, or whose firm is, licensed to practice that profession in the State.

Certificate of Occupancy – The document issued by the Township, in accordance with the N.J.S.A. 52:27D-133, whether temporary or permanent, authorizing the occupancy of a building or structure, or a portion thereof.

Township Committee– The Township Committee of the Township of Maplewood.

County - The County of Essex, New Jersey.

County Amount - In accordance with the Tax Exemption Law, specifically N.J.S.A. 40A:20-12, five percent (5%) of any Annual Service Charge.

Construction Schedule - The certain schedule of construction and project milestones attached hereto as Exhibit D and incorporated herein by reference.

Cumulative Allowable Net Profit - In accordance with the calculation set forth in the Tax Exemption Law, specifically N.J.S.A. 40A:20-15, an amount equal to the sum of the Allowable Net Profit in each year from and including the year that any Improvement is completed up to and including the year for which the Cumulative Allowable Net Profit is being calculated.

Cumulative Net Profit - In accordance with the calculation set forth in the Tax Exemption Law, specifically N.J.S.A. 40A:20-15, an amount equal to the sum of the Net Profit of URE in each year from and including the year that any Improvement is completed up to and including the year for which the Cumulative Net Profit is being calculated.

Excess Net Profit - In any given year, an amount equal to (a) the Cumulative Net Profit, minus (b) the Cumulative Allowable Net Profit.

Fiscal Year - Each twelve month period from January 1 through the following December 31.

GAAP - Generally accepted accounting principles as in effect from time to time in the United States of America.

Gross Revenue - Shall have the meaning applied to such term in, and shall be calculated in accordance with, the Tax Exemption Law, specifically N.J.S.A. 40A:20-3(a) and Article VIII herein.

In Rem Tax Foreclosure or Tax Foreclosure - A summary proceeding by which the Township may enforce the lien for taxes due and owing by a tax sale, all in accordance with the Tax Sale Law.

Land Taxes - The taxes assessed on the value of the land portion, exclusive of the value of any Improvements related thereto, of the Property or any Taxable Parcel, in accordance with generally applicable law.

Land Use Applications - The applications filed in connection with the Project, and as approved by, either the Township or any other government authority having competent jurisdiction over the Redevelopment Project.

Material Condition - The timely payment of Land Taxes, Minimum Annual Services Charges, Annual Services Charges and any adjustments thereto, and Administrative Fees.

Mayor - The Mayor of the Township of Maplewood.

Minimum Annual Service Charge - The total taxes levied against the Property in the last full tax year in which the area was subject to taxation.

Net Profit - The annual Gross Revenue of the URE Owner less all annual operating and non-operating expenses, all determined in accordance with GAAP and the Tax Exemption Law, specifically N.J.S.A. 40A:20-3(c).

Non-URE Owner - Any Owner that is bona fide purchaser or grantee of a condominium unit or portion thereof, or any other Owner that is not required to be an urban renewal entity by this Agreement or the Tax Exemption Law.

Owner - URE and any subsequent URE Owner having purchased or succeeded in the interest of all or a portion of the Project, as well as any Non-URE Owner.

Phase(s) - Phase 1 and Phase 2.

Phase 1 - A portion of the Project consisting of the construction of the first building on the Redevelopment Parcels including _____ residential units and [description of improvements] in accordance with the Redevelopment Agreement and Redevelopment Plan.

Phase 2 - A portion of the Project consisting of the construction of the second building on the Redevelopment Parcels including _____ residential units and [description

of improvements] in accordance with the Redevelopment Agreement and Redevelopment Plan.

Substantial Completion – The determination by the Township that, as to each of Phase 1 and Phase 2, the Improvements constructed as a part of that Phase are ready for the use intended, which ordinarily shall mean the date on which a Certificate of Occupancy is issued for that Phase or a part thereof.

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.

Taxable Parcel – The Property, or with respect to any condominium unit, Taxable Parcel shall mean the Owner’s proportionate undivided percentage interest in the applicable portion of the Property for which a condominium unit is located.

Total Project Cost – Shall have the meaning as such term is defined, used and applied in the Tax Exemption Law, specifically N.J.S.A. 40A:20-3(h) for each Phase.

Urban Renewal Entity – Shall have the meaning as such term is defined, used and applied in the Tax Exemption Law.

URE Owner - Any Owner that in accordance with the Tax Exemption Law and this Financial Agreement is required to be an urban renewal entity, whether a limited dividend entity or a non-profit entity, regardless of whether such Owner is in fact an urban renewal entity.

SECTION 1.03 Exhibits Incorporated

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

Exhibits

- Exhibit A Exemption Application (including URE formation documents)
- Exhibit B Approving Ordinance
- Exhibit C Construction Schedule
- Exhibit D Development Costs

ARTICLE II
APPROVAL

SECTION 2.01 Township Approval of Tax Exemption

Pursuant to the Approval Ordinance, any and all Improvements located on the Property shall be exempt from taxation as provided for herein and in the Tax Exemption Law, commencing on the earlier to occur of (i) thirty years from the effective date of the Ordinance or (ii) the issuance of a Certificate of Occupancy for any part or the whole of the Project. In accordance with the Tax Exemption Law, specifically N.J.S.A. 40A:20-12, such tax exemption shall constitute a single continuing exemption from local property taxation for the duration of this Financial Agreement. The Project shall be as described in the Exemption Application and URE hereby expressly covenants, warrants and represents that the Property, including any Improvements related thereto, shall be used, managed and operated for the purposes set forth in the Exemption Application and the Land Use Applications related thereto and in accordance with the Tax Exemption Law.

ARTICLE III
DURATION OF AGREEMENT

SECTION 3.01 Term

- (a) It is hereby expressly understood and agreed by the parties that this Agreement shall remain in effect, unless extended for an additional period of time as provided in Section 3.01(d), for the earlier of (i) thirty-five (35) years from the date of execution hereof, (ii)

thirty (30) years from Substantial Completion, or (iii) termination as provided in Section 3.02.

(b) Upon the expiration of the tax exemption granted and provided for herein, the Improvements shall thereafter be assessed and taxed according to the general law applicable to other non-exempt property in the Township.

(c) Upon the expiration of the tax exemption provided for herein, all restrictions and limitations of this Financial Agreement imposed upon a URE Owner and its respective Taxable Parcel(s), including the Improvements related thereto, excluding (i) the requirement to make payment of any Annual Service Charge due and owing hereunder, and (ii) any and all related and available remedies of the Township, shall terminate upon the end of the fiscal year of the URE Owner, in accordance with N.J.S.A. 40A:20A-13, provided however, that the URE Owner has rendered, and the Township has accepted, the URE Owner's final accounting in accordance with N.J.S.A. 40A:20A-12.

SECTION 3.02 Termination

This Financial Agreement shall terminate upon the occurrence of any of the following:

(a) Termination of this Agreement by the URE Owner in the manner provided by the Tax Exemption Law, as required by N.J.S.A. 40A:20-9(g).

(b) An uncured Default resulting from the failure of URE Owner to commence or complete construction in commercially reasonable accordance with the Construction Schedule, as evidenced by a determination in Township's favor pursuant to Section 6.01 hereof.

(c) An uncured Default resulting from the failure of URE Owner to pay any sum due to Township under this Agreement, as evidenced by a determination in Township's favor pursuant to Section 6.01 hereof.

(d) An uncured Default resulting from the failure of URE Owner to submit audits pursuant to Article IX of this Agreement, as evidenced by a determination in Township's favor pursuant to Section 6.01 hereof.

(e) An uncured Default resulting from URE Owner's breach of any Material Condition of this Agreement, as evidenced by a determination in Township's favor pursuant to Section 6.01 hereof.

ARTICLE IV ANNUAL SERVICE CHARGE AND ADMINISTRATIVE FEE

SECTION 4.01 Annual Service Charge

(a) Beginning on the effective date of this Agreement, the Annual Service Charge shall be equal to the Minimum Annual Service Charge.

(b) In accordance with the Tax Exemption Law, specifically N.J.S.A. 40A:20-12, 11, the parties agree that the annual Gross Revenue of the URE Owner cannot be reasonably determined at this time and, therefore, the Annual Service Charge after Substantial Completion shall be calculated as a function of Total Project Cost. The amount of the Annual Service shall increase annually by the percentage equal to the annual percentage increase in the Township's tax levy and shall additionally be subject to staged adjustments pursuant to the Tax Exemption Law, specifically N.J.S.A. 40A:20-12(b).

(c) From the 1st day of the month following Substantial Completion (the "Annual Service Charge Start Date") until the last day of the of the 15th year following Substantial Completion, for each and every Taxable Parcel that constitutes the Project, the Annual Service Charge amount shall be calculated as the amount equal to the product of the Total Project Cost multiplied by two (2%) percent, as increased annually from the Annual Service Charge State Date by a percentage equal to the annual percentage increase in the Township's tax levy.

(d) From the 1st day of the 16th year following Substantial Completion until the last day of the of the 21st year following Substantial Completion, for each and every Taxable Parcel that constitutes the Project, the Annual Service Charge amount shall be calculated as the amount equal to the greater of (i) 20% of the amount of the taxes otherwise due on the value of the Property and Improvements, (ii) the product of the Total Project Cost multiplied by two (2%) percent, as increased annually from the Annual Service Charge Date by a percentage equal to the annual percentage increase in the Township's tax levy.

(e) From the 1st day of the 22nd year following Substantial Completion until the last day of the of the 24th year following Substantial Completion, for each and every Taxable Parcel that constitutes the Project, the Annual Service Charge amount shall be calculated as the amount equal to the greater of (i) 40% of the amount of the taxes otherwise due on the value of the Property and Improvements, (ii) the product of the Total Project Cost multiplied by two (2%) percent, as increased annually from the Annual Service Charge by a percentage equal to the annual percentage increase in the Township's tax levy.

(f) From the 1st day of the 25th year following Substantial Completion until the last day of the of the 27th year following Substantial Completion, for each and every Taxable Parcel that constitutes the Project, the Annual Service Charge amount shall be calculated as the amount equal to the greater of (i) 60% of the amount of the taxes otherwise due on the value of the Property and Improvements, (ii) the product of the Total Project Cost multiplied by two (2%) percent, as increased annually from the Annual Service Charge Date by a percentage equal to the annual percentage increase in the Township's tax levy.

(g) From the 1st day of the 28th year following Substantial Completion until the last day of the of the 30th year following Substantial Completion, for each and every Taxable Parcel that constitutes the Project, the Annual Service Charge amount shall be calculated as the amount equal to the greater of (i) 80% of the amount of the taxes otherwise due on the value of the Property and Improvements, (ii) the product of the Total Project Cost multiplied by two (2%) percent, as increased annually from the Annual Service Charge Date by a percentage equal to the annual percentage increase in the Township's tax levy.

(h) Notwithstanding anything herein to the contrary, including the exercise by the Township of any right or remedy provided for herein or otherwise available with respect hereto, each Owner shall pay to the Township each and every Annual Service Charge, as the same shall become due in accordance with the terms hereof.

SECTION 4.02 Annual Service Charge Installments

(a) The parties hereby expressly acknowledge and agree that in accordance with the Tax Exemption Law, specifically N.J.S.A. 40A:20-12, installments of the aforesaid Annual Service Charge, subject to credit for Land Taxes paid in accordance with Section 4.05 herein below, shall become due on February 1, May 1, August 1, and November 1 of each Fiscal Year in accordance with the Township's tax collection schedule and the allocation of the Annual Service Charge into quarterly installment amounts shall be determined and calculated in accordance with the same practice and method as are real property taxes with respect to other non-exempt property within the Township in accordance with generally applicable law.

(b) In the event that an Owner fails to timely pay, in full, any installment of any Annual Service Charge, or any other amount due hereunder, the arrearage shall accrue at the rate of interest charged for delinquent real estate taxes.

SECTION 4.03 Administrative Fee

In accordance with N.J.S.A. 40A:20-12, and the Ordinance, Owner shall pay an annual Administrative Fee to the Township in addition to the Annual Service Charge and Land Taxes. The Administrative Fee shall be calculated as two (2%) percent of each prior year's Annual Service Charge. This fee shall be billed and collected in the same manner as the Annual Service Charge. In the event that an Owner fails to timely pay the

Administrative Fee, the arrearage shall accrue at the rate of interest charged for delinquent real estate taxes.

SECTION 4.04 County Amount

In accordance with N.J.S.A. 40A:20-12, upon receipt by the Township of any Annual Service Charge, the Township hereby expressly covenants and agrees that it shall promptly remit the County Amount to the County.

SECTION 4.05 Land Taxes; Credits

(a) URE HEREBY EXPRESSLY ACKNOWLEDGES, UNDERSTANDS AND AGREES THAT THE TAX EXEMPTION PROVIDED FOR HEREIN SHALL ONLY APPLY TO IMPROVEMENTS AND THAT LAND TAXES SHALL BE SEPARATELY ASSESSED BY THE TOWNSHIP ON THE PROPERTY IN ACCORDANCE WITH APPLICABLE LAW.

(b) Owner is required to pay both the Annual Service Charge and to pay all Land Taxes. Owner is obligated to pay timely Land Taxes in order to be entitled to a credit for Land Taxes against the Annual Service Charge for the subsequent year. Owner shall be entitled to credit for the amount, without interest, of the Land Taxes paid in the last four preceding quarterly installments against the Annual Service Charge, subject to the provisions of Section 4.05(c) below.

(c) Upon Substantial Completion of Phase 1 and commencement of payment of the Annual Service Charge for Phase 1, and prior to the Substantial Completion of Phase 2, Owner shall receive a credit against the Annual Service Charge for Phase 1 equal to one half (50%) of the amount, without interest, of Land Taxes for the Property paid by Owner in the last four preceding quarterly installments. Owner hereby waives the other one half (50%) of the Land Tax credit, until such time as Owner completes Phase 2 and begins payment of an Annual Service Charge for Phase 2. Upon Substantial Completion of Phase 2 and commencement of payment of the Annual Service Charge for Phase 2, Owner shall receive a credit against the Annual Service Charge for Phase 2 equal to one half (50%) of the amount, without interest, of Land Taxes for the Property paid by Owner in the last four preceding quarterly installments.

ARTICLE V
LIMITATION OF PROFITS AND RESERVES

SECTION 5.01 Limitation on Profits and Reserves

(a) During the period of tax exemption as provided herein, the URE Owner shall be subject to a limitation of its profits pursuant to the provisions of N.J.S.A. 40A:20-15.

(b) URE Owner shall have the right to establish a reserve against vacancies, unpaid rentals, and reasonable contingencies in an amount equal to ten (10%) percent of the Gross Revenue of the URE Owner for the last full fiscal year preceding the year in 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 ten (10%) 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 for the purpose of determining Express Profit, any gain realized by the URE Owner on the sale of any condominium unit, whether or not taxable under federal or State law.

SECTION 5.02 Annual Payment of Excess Net Profit

In the event the Net Profit of the URE Owner, in any fiscal year, shall exceed the Allowable Net Profit for such period, then the URE Owner, within one hundred and twenty (120) days after the end of such fiscal year, shall pay such excess Net Profits to the Township as an additional service charge; provided, however, that URE Owner may maintain a reserve as determined pursuant to the above Section 5.01(b).

SECTION 5.03 Payment of Reserve/Excess

The date of termination, expiration or unauthorized sale shall be considered to be the close of the fiscal year of URE Owner, for the purposes of this Section 5.03. Within ninety (90) days after such date, the URE Owner shall pay to the Township the amount of the reserve, if any, maintained by it pursuant to this section and the excess Net Profit, if any.

ARTICLE VI
REMEDIES

SECTION 6.01 Remedies

In the event of a breach of this 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, any party may 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 Tax Exemption Law. Costs for said arbitration shall be paid by the non-prevailing party.

ARTICLE VII
TOWNSHIP DETERMINATIONS

SECTION 7.01 Benefits and Importance of Tax Exemption

In accordance with the Tax Exemption Law, specifically N.J.S.A. 40A:20-11, the Township hereby finds and determines that this Agreement is to the direct benefit of the health, welfare and financial well-being of the Township and its citizens because it allows for the re-development of a underutilized site into productive, useful and job-creating property, and further:

(a) The costs associated with the tax exemption granted herein are minor compared to the estimated Total Redevelopment Project Cost of \$_____ and the benefit created by (i) the construction a project consisting of a four (4) story building with approximately including 110 market-rate residential dwelling units and (ii) 16 affordable units..

(b) Without the tax exemption granted herein it is highly unlikely that the Redevelopment Project would otherwise be undertaken, as a source of funding all or a portion of the costs thereof is not otherwise available.

ARTICLE VIII
ANNUAL AUDITS

SECTION 8.01 Accounting System

The Owner hereby expressly covenants and agrees to maintain a system of accounting and internal controls established and administered in accordance with GAAP consistently applied, and as otherwise prescribed in the Tax Exemption Law, during the term of this Agreement.

SECTION 8.02 Periodic Reports

In accordance with the Ordinance and the Tax Exemption Law, specifically N.J.S.A. 40A:20-9(d), the Owner shall submit, on an annual basis and within ninety (90) days after the close of the calendar year or the Owner's fiscal year, depending upon the Owner's accounting basis, its Auditor's Report certified by an independent certified public accountant for the preceding fiscal or calendar year to the Mayor and Township counsel, who shall advise those municipal officials required to be advised, and to the Director of the Division of Local Government Services in the New Jersey Department of Community Affairs.

SECTION 8.03 Inspection

In accordance with the Tax Exemption Law, specifically N.J.S.A. 40A:20-9(e), upon the request of the Township, or the State, the Owner shall permit the inspection of the Property, including any Improvements related thereto, by the requesting party or its agents. It also shall permit, upon request of the Township, or the State, reasonable examination and audit of its books, contracts, records, documents and papers by representatives duly authorized by the Township or the State. Such inspection, examination or audit shall be made during the hours of the business day, in the presence of any officer or agent of Owner.

ARTICLE IX
ASSIGNMENT AND/OR ASSUMPTION

SECTION 9.01 Approval

(a) Only upon written notice to, and the approval of Township Committee, may any Owner sell or transfer all or a portion of its Taxable Parcel, including any Improvements related thereto. Any purported sale or other transfer of a Taxable Parcel, including any Improvement related thereto, in violation of this Section 9.01(a) shall be void ab initio.

(b) In accordance with the Tax Exemption Law, specifically N.J.S.A. 40A:20-6, and 15, in the event of any sale or transfer, in accordance with subsection (a) above, by a URE Owner that is a limited dividend entity, such URE Owner shall no longer be obligated hereunder, with regards to the respective Taxable Parcel sold are transferred as set forth in subsection (a) above.

(c) In accordance with the Tax Exemption Law, specifically N.J.S.A. 40A:20-6, and 16, in the event of any sale or transfer, in accordance with subsection (a) above, by a URE Owner that is a nonprofit entity, such URE Owner, shall no longer be obligated, with regards to the respective Taxable Parcel sold are transferred as set forth in subsection (a) above, under the terms hereof.

(d) THE PARTIES HEREBY EXPRESSLY ACKNOWLEDGE, UNDERSTAND AND AGREE THAT UPON THE CONVEYANCE, WHETHER BY SALE, GRANT, AWARD, GIFT, TRANSFER OR OTHERWISE, OF THE PROPERTY, INCLUDING ANY IMPROVEMENTS RELATED THERETO, WHETHER IN ACCORDANCE WITH AND PURSUANT TO THE TERMS HEREOF, THE TAX SALE LAW, OR OTHERWISE, THE PROPERTY, INCLUDING ANY IMPROVEMENTS RELATED THERETO, AND THE OWNER THEREOF, SHALL BE SUBJECT TO, GOVERNED AND BOUND BY THE TERMS OF THIS FINANCIAL AGREEMENT. ANY ACCEPTANCE OR CLAIM OF TITLE OR OWNERSHIP OF THE PROPERTY, INCLUDING ANY IMPROVEMENTS RELATED THERETO, SHALL CONSTITUTE AN ACKNOWLEDGEMENT AND ASSUMPTION, FOR ALL PURPOSES OF LAW, BY SUCH PERSON OR ENTITY ACCEPTING OR CLAIMING TITLE OR OWNERSHIP, THAT IT AND THE PROPERTY, INCLUDING ANY IMPROVEMENTS RELATED THERETO, SHALL BE SUBJECT TO, GOVERNED AND BOUND BY THIS FINANCIAL AGREEMENT.

SECTION 9.02 Operation of Redevelopment Project

Each Taxable Parcel, including any Improvements related thereto, shall be operated in accordance with all applicable laws.

SECTION 9.03 Subordination of Fee Title

It is expressly acknowledged, understood and agreed that the URE has the right, subordinate to the lien of the Annual Service Charges, and to the rights of the Township hereunder, to encumber the fee title to the Property, including any Improvements related thereto, and that any such subordinate encumbrance shall not be deemed to be a violation of this Agreement.

ARTICLE X
WAIVER

SECTION 10.01 Waiver

Nothing contained in this Financial Agreement or otherwise shall constitute a waiver or relinquishment by the Township of any rights and remedies provided by law, except for the express waiver herein. 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 Financial Agreement.

ARTICLE XI
NOTICE

SECTION 12.01 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, as follows:

- (a) When sent to URE, it shall be addressed as follows:

92 Burnett Avenue Urban Renewal, LLC
P.O. Box 4449
Warren, NJ 07059

With copy to:

David A. Checchio, Esq.
P.O. Box 4449
Warren, NJ 07059

- (b) When sent to the Township, it shall be addressed as follows:

Township of Maplewood
Municipal Building
574 Valley Street
Maplewood, New Jersey 07040
Attn: Township Attorney

With copy to:

Township of Maplewood
Municipal Building
574 Valley Street
Maplewood, New Jersey 07040
Attn: Township Administrator

And

Glenn F. Scotland, Esq.
McManimon & Scotland, LLC
1037 Raymond Boulevard
Newark, New Jersey 07102

ARTICLE XII
COMPLIANCE

SECTION 12.01 Statutes and Ordinances

The Owner hereby expressly agrees at all times prior to the expiration or other termination of this Financial Agreement to remain bound by the provisions of Federal and State law, including without limitation the Tax Exemption Law, the Land Use Applications and any lawful ordinances and resolutions of the Township. The Owner's failure to comply with any such statutes, ordinances or Land Use Applications shall constitute a violation and breach of this Financial Agreement.

SECTION 12.02 Total Project Cost Audit

The URE Owner hereby expressly agrees to submit certified audits of Total Project Costs by the project architect and a certified public accountant, as required by the Ordinance and the Tax Exemption Law.

ARTICLE XIII
CONSTRUCTION

SECTION 13.01 Construction

This Financial 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 Agreement to be drawn since counsel for both URE, as the Owner as of the date hereof, and the Township have combined in their review and approval of same.

ARTICLE XIV
DEFAULT

SECTION 14.01 Default

A default hereunder shall be deemed to have occurred if an Owner fails to conform to the terms of this Agreement or fails to perform any obligation imposed upon the Owner by statute, ordinance or lawful regulation.

SECTION 14.02 Cure Upon Default

Should the Owner be in default of any obligation under this Agreement, the Township shall notify the Owner in writing of said default. Said notice shall set forth with particularity the basis of said default. Except as otherwise limited by law, the Owner shall have sixty (60) days to cure any default (other than a default in payment of any installment of the Annual Service Charge in which case there shall be 30 day cure period), provided, however, in the case of a default other than a default in payment of any installment of the Annual Service Charge, the cure period shall be extended as reasonably necessary if the default is not reasonably capable of being cured in sixty (60) days and the Owner commences to cure and prosecutes such cure to completion as expeditiously as reasonably practicable. Subsequent to the sixty (60) days, as such period may be extended, the Township shall have the right to proceed against the Owner's Taxable

Parcel, including any Improvements related thereto, pursuant to any and all applicable provisions of law. Subject only to the provisions in Section 3.01 of this Agreement, no default hereunder shall terminate this Agreement. No default hereunder by Owner shall terminate the tax exemption described herein and the Owner's obligation to make payment of the Annual Service Charge, which shall continue in effect for the duration set forth in Article IV hereof. In no event shall any Non-Defaulting Owner or its property be subject to any lien or enforcement action as a result of the default of another Owner.

SECTION 14.03 Remedies Upon Default Cumulative; No Waiver

Subject to the provisions of Section 6.01 hereof and the other terms and conditions of this Agreement, all of the remedies provided in this Agreement to the Township, and all rights and remedies granted to it by law and equity shall be cumulative and concurrent and no determination of the invalidity of any provision of this Agreement shall deprive the Township of any of its remedies or actions against the Owner or the Owner's Taxable Parcel, including any Improvements related, because of the Owner's failure to pay Land Taxes, the Annual Service Charge and/or any applicable water and sewer 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 Land Taxes, Annual Service Charge or other charges, or for breach of covenant or the resort of any other remedy herein provided for the recovery of Land Taxes, Annual Service Charges or other charges shall not be construed as a waiver of the right to proceed with an In Rem Tax Foreclosure action consistent with the terms and provisions of the Tax Sale Law and this Agreement.

ARTICLE XV
MISCELLANEOUS

SECTION 15.01 Conflict

The parties agree that in the event of a conflict between the Exemption Application, the Approving Ordinance and this Financial Agreement, the language in this Financial Agreement shall govern and prevail.

SECTION 15.02 Oral Representations

There have been no oral representations made by either of the parties hereto which are not contained in this Financial Agreement. This Financial Agreement, the Approving Ordinance and the Exemption Application 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, in accordance with Section 17.09 herein.

SECTION 15.03 Municipal Services

The Owner shall make payments for municipal services, including water and sewer charges and any services that create a lien on a parity with or superior to the lien for the Land Taxes and Annual Service Charges, as required by law. Nothing herein is intended to release an Owner from its obligation to make such payments.

SECTION 15.04 Financing Matters

The financial information required by the final paragraph of N.J.S.A. 40A:20-9 is set forth in the Exemption Application.

SECTION 15.05 Filing with Local Government Services

In accordance with N.J.S.A. 40A:20-12, upon execution of this Agreement, the Township shall cause this Agreement and the Approving Ordinance to be filed with the

Director of the Division of Local Government Services in the Department of Community Affairs of the State.

SECTION 15.06 Recording

This entire Agreement and the Ordinance shall be filed and recorded with the Union County Clerk by the Township, at the URE's expense, such that this Agreement and the Ordinance shall be reflected upon the land records of the County of Union as a municipal lien upon and a covenant running with the Property, including any Improvements related thereto.

SECTION 15.07 Delivery to Tax Assessor

Upon the execution of this Financial Agreement, the Clerk of the Township shall deliver to the Tax Assessor a certified copy of the Approving Ordinance along with an executed copy of this Financial Agreement. Such delivery by the Township Clerk to the Tax Assessor shall constitute the certification as required in accordance with the Tax Exemption Law, specifically N.J.S.A. 40A:20-12. 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 15.08 Amendments

This Agreement may not be amended, changed, modified, altered or terminated without the written consent of the parties hereto, subject to approval by Township Council upon recommendation of the Mayor. The parties agree that all amendments, changes, modifications or alterations to this Agreement or the tax exemption granted and approved hereby, that are initiated at the request of an URE Owner shall require an application fee pursuant to the Ordinance.

SECTION 15.09 Entire Document

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

SECTION 15.10 Counterparts

This 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 15.11 Assignment

The sale of ownership of the Project to another URE owner shall require the consent of the Township.

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

ATTEST:

**92 BURNETT AVENUE URBAN
RENEWAL, LLC,**
a New Jersey limited liability company

By: _____

[SEAL]
ATTEST:

THE TOWNSHIP OF MAPLEWOOD

By: _____

Township Clerk

Mayor

EXHIBIT A
EXEMPTION APPLICATION

EXHIBIT B
APPROVING ORDINANCE

EXHIBIT C
CONSTRUCTION SCHEDULE

EXHIBIT D
ESTIMATED TOTAL PROJECT COST

- (1) Cost of land and improvements
- (2) Architect, engineer and attorney fees
- (3) Actual Construction Costs
- (4) Commissions and other expenses paid or payable in connection with initial leasing
- (5) Real estate taxes and assessments during the construction period
- (6) Developer's overhead calculated as a percentage of (4) above as required by N.J.S.A. 40A:20-3(h) (5%)
- (7) Additional Expenses (e.g., Insurance, Financing Costs, Other Costs)

Total Estimated Project Cost **\$**

I, _____, hereby state that the above is an estimated total project cost for the Project and all such units within the Project, collectively.

By: _____

Name:

Title: