

O: 2014- 05

ORDINANCE OF THE TOWN OF PHILLIPSBURG, COUNTY OF WARREN, NEW JERSEY APPROVING THE APPLICATION AND FINANCIAL AGREEMENT FOR TAX EXEMPTION OF PHILLIPSBURG RIVERVIEW URBAN RENEWAL, LLC FOR THE CONSTRUCTION OF A REDEVELOPMENT PROJECT LOCATED IN THE RIVERVIEW REDEVELOPMENT AREA

WHEREAS, by Resolution R:2005-77 adopted on April 19, 2005 the Town Council of the Town of Phillipsburg (the "**Town Council**"), pursuant to N.J.S.A. 40A:12A-6(a), and acting as the Town's redevelopment entity, authorized the Planning Board of the Town (the "**Planning Board**") to undertake a preliminary investigation and hearing regarding whether the Riverfront Redevelopment Study Area (the "**Study Area**") is an area in need of redevelopment in accordance with the criteria set forth in the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq. (the "**Local Redevelopment and Housing Law**"); and

WHEREAS, consistent with N.J.S.A. 40A:12A-6(b)(1), the Planning Board caused to be prepared a map showing the boundaries of the Study Area and the location of the various parcels of the Project Site (defined below) included therein and commissioned a study to determine whether the Study Area constitutes an area in need of redevelopment (the "**Needs Study**"), which was prepared by Schoor DePalma, Carolyn Neighbor, P.P.; and

WHEREAS, consistent with the requirements contained in N.J.S.A. 40A:12A-6(b)(3), the Planning Board provided notice and conducted a public hearing on August 1, 2005, for the purpose of considering whether the areas delineated in the Needs Study constitute an area in need of redevelopment; and

WHEREAS, at the public hearing, the Planning Board received and considered all comments regarding the Needs Study and the proposed designation of the Study Area as an area in need of redevelopment and also received and considered evidence in support of the determination that the Study Area meets the criteria for an area in need of redevelopment set forth in N.J.S.A. 40A:12A-5; and

WHEREAS, the Planning Board, by Resolution adopted on August 1, 2005, determined the Study Area (including the Project Site) to be an area in need of redevelopment pursuant to the statutory criteria set forth in Sections (a), (b), (c), (d), (e) and (g) of N.J.S.A. 40A:12A-5 and referred its findings to the Town Council for consideration, together with the Planning Board's recommendation that the Study Area be designated as an area in need of redevelopment by the Council pursuant to N.J.S.A. 40A:12A-5; and

WHEREAS, by Resolution R:2005-150, adopted on August 2, 2005, the Town Council approved the Needs Study and determined that the Study Area is an "area in need of redevelopment" pursuant to N.J.S.A. 40A:12A-5; and

WHEREAS, by Resolution R:2005-77, adopted on April 19, 2005, the Town Council, pursuant to N.J.S.A. 40A:12A-7, also authorized the Planning Board, if it determined that the Study Area constituted an “area in need of redevelopment” (the “**Redevelopment Area**”), to prepare a Redevelopment Plan for the Study Area; and

WHEREAS, the Planning Board commissioned Schoor DePalma, Carolyn Neighbor, P.P. to prepare a redevelopment plan for the Redevelopment Area (the "**Original Redevelopment Plan**"); and

WHEREAS, at its meeting on August 1, 2005, the Planning Board considered the Original Redevelopment Plan and received and considered public comments on the Original Redevelopment Plan; and

WHEREAS, by Resolution adopted on August 1, 2005, the Planning Board approved the Original Redevelopment Plan and recommended its adoption to the Town Council; and

WHEREAS, on August 2, 2005 the Town Council conducted a public hearing concerning the Original Redevelopment Plan as recommended by the Planning Board, and adopted the “Riverfront Redevelopment Area Redevelopment Plan” by Ordinance 2005-30; and

WHEREAS, the Town has previously determined to effect the redevelopment of the Redevelopment Area (including the Project Site) through the selection of a "master redeveloper" who shall be responsible for (a) remediation of the Redevelopment Area and construction of macro-infrastructure improvements thereon, and (b) construction of a mixed-use redevelopment project thereon (whether directly or through the sale of approved and improved buildable development areas to one or more development entities qualified to carry out such development); and

WHEREAS, pursuant to Resolution No. R:2005-75, adopted on April 19, 2005, the Town Council conditionally designated Peron Construction Phillipsburg, LLC (the “**Peron**”) as the master redeveloper to undertake the redevelopment of the entire Redevelopment Area on the terms and conditions as may be set forth in an "Agreement" to be negotiated between the Parties; and

WHEREAS, on March 28, 2006, the Town and Peron executed an “Agreement for the Redevelopment of the Phillipsburg Riverview Redevelopment Area” as amended by the first addendum thereto (the “**Original Redevelopment Agreement**”); and

WHEREAS, on June 22, 2006, the Redeveloper received preliminary and final site plan approval with variances and subdivisions for the redevelopment of Block 2102, Lots 2 and 11 as further described on *Exhibit B* (the “**Project Site**,”); and

WHEREAS, on December 5, 2006, the Town and Peron executed a “Developers Agreement” (the “Developer’s Agreement” and, together with the Original Redevelopment Agreement, the “**Prior Agreements**”); and

WHEREAS, due to certain events beyond either the Town or Peron's control (i.e. an historic and international economic collapse) the redevelopment of the Project Site commenced but was not completed; and

WHEREAS, the Planning Board commissioned VanCleaf Engineering Associates, David K. Maski, PP, AICP to prepare a revised redevelopment plan for the Redevelopment Area (the "**Redevelopment Plan**"); and

WHEREAS, at its meeting on June 27, 2013 the Planning Board considered the Redevelopment Plan and received and considered public comments on the Redevelopment Plan; and

WHEREAS, by Resolution adopted on December 23, 2013 the Planning Board approved the Redevelopment Plan and recommended its adoption to the Town Council; and

WHEREAS on November 4, 2013 the Town Council conducted a public hearing concerning the Redevelopment Plan as recommended by the Planning Board, and adopted same by Ordinance 2013-19 ; and

WHEREAS, an affiliate of Peron, Phillipsburg Riverview Urban Renewal, LLC (the "Entity"), has since been created to undertake the redevelopment of the Project Site; and

WHEREAS, the Parties have revised the planned redevelopment project for the Project Site in recognition of the economic and other changes that have impacted on the original project all as described herein; and

WHEREAS, in order to effectuate the public purposes set forth in the Redevelopment Plan and in order to set forth the terms and conditions under which the Parties shall carry out their respective obligations with respect to redevelopment of the Project Site, the Town and Peron shall execute an "Amended and Restated Redevelopment Agreement" (the "**Redevelopment Agreement**") and undertake the Project (defined therein); and

WHEREAS, pursuant to and in accordance with the provisions of the Long Term Tax Exemption Law and the New Jersey Redevelopment Area Bond Financing Law, N.J.S.A. 40A:12A-64 et seq., as amended and supplemented (the "**Bond Financing Law**"), the Town is authorized to provide for and accept, in lieu of real property taxes, an annual service charge paid by the Entity to the Town; and

WHEREAS, pursuant to and in accordance with the provisions of the Bond Financing Law, specifically N.J.S.A. 40A:12A-65 and 67(a), the New Jersey Economic Development Agency, or such other governmental entity (other than the Town) as may be designated by the Entity (the "Issuing Entity") may issue bonds (the "**Redevelopment Bonds**") in order to finance a portion of a redevelopment project, which bonds may be secured by the annual service charge; and

WHEREAS, the Entity submitted to the Mayor of the Town (the “**Mayor**”) an application for tax exemption, which is on file with the Town Clerk (the “**Application**”), requesting an exemption of the improvements constituting the Project and the land upon which the Project will be constructed pursuant to the Long Term Tax Exemption Law; and

WHEREAS, the Entity also submitted to the Mayor a form of financial agreement (the “**Financial Agreement**”, a copy of which is attached hereto as **Exhibit A**) establishing the rights, responsibilities and obligations of the Entity; and

WHEREAS, such Financial Agreement provides for, among other things, the exemption described above, the payment of an annual service charge in lieu of taxes, the issuance of Redevelopment Bonds and the pledge of the Pledged Annual Service Charge (as described therein) to the payment of debt service on the Redevelopment Bonds; and

WHEREAS, the Mayor submitted the Application and Financial Agreement to the Town Council with his recommendation for approval, a copy of which recommendation is on file with the Town Clerk; and

WHEREAS, the Town Council has determined that the Project represents an undertaking permitted by the Long Term Tax Exemption Law, and has further determined that the Project constitutes improvements made for the purposes of clearance, replanning, development or redevelopment of an area in need of redevelopment within the Town, as authorized by the Local Redevelopment and Housing Law, the Bond Financing Law and the Long Term Tax Exemption Law.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF PHILLIPSBURG, NEW JERSEY AS FOLLOWS:

Section 1. The Application filed by the Entity is hereby approved.

Section 2. The Mayor is hereby authorized to execute the Financial Agreement substantially in the form attached hereto as **Exhibit A**, subject to modification or revision, as deemed necessary and appropriate after consultation with counsel. The Mayor is further authorized to undertake all actions necessary or permitted to further the redevelopment of the Project Site and the provisions of such Financial Agreement including those set forth therein.

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

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

Section 5. This ordinance shall take effect in accordance with applicable law.

EXHIBIT A

Form of Financial Agreement