

R: 2015 - 197

RESOLUTION OF THE TOWN OF PHILLIPSBURG IN THE COUNTY OF WARREN, NEW JERSEY, AUTHORIZING CERTAIN ACTIONS NECESSARY IN CONNECTION WITH THE SALE AND ISSUANCE OF NOT TO EXCEED \$2,500,000 AGGREGATE PRINCIPAL AMOUNT OF REDEVELOPMENT AREA BONDS AND AUTHORIZING THE APPROPRIATE OFFICIALS TO DO ALL ACTS AND THINGS DEEMED NECESSARY AND ADVISABLE IN CONNECTION WITH THE SALE, ISSUANCE AND DELIVERY OF SAID BONDS

WHEREAS, the Town Council of the Town of Phillipsburg, in the County of Warren, State of New Jersey (the "**Town**"), a public body corporate and politic of the State of New Jersey (the "**State**"), 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 Town constitute an area in need of rehabilitation and/or an area in need of redevelopment; and

WHEREAS, in 2000 and 2004, in accordance with the criteria set forth in the Redevelopment Law, the Town identified and designated the former Ingersoll Rand property commonly known as Block 3201, Lots 7.01, 7.02, 7.03, 7.04, 7.05, 7.06, 7.07, 7.08, 7.09, 7.10, 7.11, 7.12 and 7.13, Block 3301, Lots 1, 2, 4, 4.01, 5 and 6 on the tax map of the Town as an "area in need of redevelopment" (the "**Redevelopment Area**"); and

WHEREAS, in 2000, the Town adopted a redevelopment plan for the Redevelopment Area which was later amended by the "*Revised Phillipsburg Commerce Park Redevelopment Plan*" adopted on November 4, 2013 and further amended on July 17, 2015 (as amended, the "**Redevelopment Plan**"); and

WHEREAS, Opus Investments Limited Liability Company ("**Opus**") entered into a redevelopment agreement with the Town dated September 2, 2015 (the "**Redevelopment Agreement**") providing for the construction of an approximately 4.2 million square foot logistics and distribution center with on- and off-site infrastructure improvements in the Redevelopment Area and on land within the Township of Lopatcong (collectively, the "**Project**"); and

WHEREAS, Phillipsburg Commerce Park Urban Renewal Entity, LLC (the "**Entity**") is a wholly owned subsidiary of Opus and will construct or cause to be constructed the Project; and

WHEREAS, the Project shall conform to the Redevelopment Plan and will be in conformance with the master plan of the Town; and

WHEREAS, despite the Entity's substantial investment of equity and borrowed funds, such amounts are insufficient to pay for all of the costs associated with the development and construction of the Project; and

WHEREAS, in order to enhance the economic viability of and opportunity for a successful project, the Entity has submitted an application for the approval of the Project (the "**Exemption Application**") and a form of financial agreement (the "**Financial Agreement**") to the Town for the approval of an urban renewal project, all in accordance with the Long Term Tax Exemption Law, *N.J.S.A. 40A:20-1 et seq.* (the "**LTTE Law**"), specifically *N.J.S.A. 40A:20-8*; and

WHEREAS, pursuant to *N.J.S.A. 40A:20-8*, the Mayor has reviewed the Exemption Application and, by a letter dated December 1, 2015 (the "**Mayor's Recommendation**"), the Mayor has submitted the Exemption Application and Financial Agreement to the Town Council with his recommendation for approval, subject to the condition that the Entity pay, in lieu of tax payments on the Project, an annual service charge, such that the combined tax payment on the land and the annual service charge paid by the Entity each year shall be no less than the amount of the total property taxes that the Town has received from the Redevelopment Area, prior to redevelopment; and

WHEREAS, upon review of the proposed Project, the Exemption Application and the Mayor's Recommendation, the Town has made the following findings with respect to the Project pursuant to *N.J.S.A. 40A:20-11*:

1. The Redevelopment Area is not currently developed to its maximum potential. The Redevelopment Area is sparsely developed and underutilized and generates minimal taxes for the Town. Despite the development potential in the Redevelopment Area, a history of failed development attempts has artificially raised the cost of land acquisition and construction making development in the Redevelopment Area infeasible without financial assistance. Upon expiration of the exemption, the Project shall be fully assessed and conventionally taxed;

2. Given the costs as well as the uncertainty of current economic and market conditions and aggressive competition within the region, the investment risk makes the financing of the Project infeasible in the absence of a tax exemption provided by the Town;

3. The construction of the Project will result in the remediation of the Redevelopment Area, substantial improvements to the infrastructure on the site as well as community benefits in the form of increased jobs, ratables and recreational space;

4. The Project is consistent with the Redevelopment Plan, will further its objectives and will contribute to the economic growth of the Town;

5. The Financial Agreement was a material inducement to the Entity to undertake the Project in the Town and facilitate the redevelopment of the Redevelopment Area; and

6.

WHEREAS, in accordance with the provisions of the LTTE Law, the Town has adopted an ordinance to approve the Project and authorize the execution of the Financial Agreement; and

WHEREAS, the Town now desires to authorize the issuance of Redevelopment Area Bonds (the “**Redevelopment Area Bonds**” in accordance with the requirements of the Financial Agreement, which Redevelopment Area Bonds shall be secured only in accordance with the requirements of the Financial Agreement, and shall not be a general obligation of the Town.

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

SECTION 1. The Redevelopment Area Bonds are hereby authorized to be issued on either a negotiated basis with an investment banking firm or through a private placement with a qualified institutional investor. ***The Redevelopment Area Bonds shall be secured only in accordance with the requirements of the Financial Agreement, and shall not be a general obligation of the Town.***

SECTION 2. There is hereby delegated to the Chief Financial Officer, subject to the limitations contained herein and in consultation with Wilentz, Goldman & Spitzer, P.A., Woodbridge, New Jersey, Bond Counsel to the Town (“Bond Counsel”), the power with respect to the Redevelopment Area Bonds to determine and carry out the following:

a) the sale of the Redevelopment Area Bonds at private negotiated sale or private placement, with an investment banking firm or a qualified institutional investor, as applicable, in one or more series, and the dates of such sales;

b) the principal amount of Redevelopment Area Bonds to be issued, provided that such amount shall not exceed \$2,500,000;

c) the maturity dates and the principal amount of each maturity of the Redevelopment Area Bonds;

d) the interest payment dates and the coupon interest rates on the Redevelopment Area Bonds;

e) the denomination or denominations of and the manner of numbering and lettering the Redevelopment Area Bonds, provided that all Redevelopment Area Bonds of like maturity shall be identical in all respects, except as to denominations, amounts, numbers and letters;

f) provisions for the sale or exchange of the Redevelopment Area Bonds and for the delivery thereof;

g) the form of the Redevelopment Area Bonds shall be substantially in the form set forth in Exhibit A attached hereto, with such additions, deletions and omissions as may be necessary for the Town to market the Redevelopment

Area Bonds in accordance with the requirements of The Depository Trust Company, Jersey City, New Jersey (“DTC”) and the Purchase Contract (as defined herein), as and if applicable;

h) the direction for the application and investment of the proceeds of the Redevelopment Area Bonds; and

i) any other provisions deemed advisable by the Chief Financial Officer not in conflict with the provisions hereof.

The Chief Financial Officer shall execute a certificate evidencing the determinations or other actions taken pursuant to the authority granted hereunder, and any such certificate shall be conclusive evidence of the actions or determinations of the Chief Financial Officer as to the matters stated therein.

SECTION 3. The Mayor and Chief Financial Officer of the Town are hereby authorized and directed to execute by manual or facsimile signature the Redevelopment Area Bonds in the name of the Town and the corporate seal (or facsimile thereof) shall be thereunto affixed, imprinted, engraved or otherwise reproduced thereon. The Clerk of the Town is hereby authorized and directed to attest to such signature and to the affixing of said seal to the Redevelopment Area Bonds.

SECTION 4. The Chief Financial Officer, in consultation with Bond Counsel, is hereby authorized and directed to approve the Bond Purchase Contract (the “Purchase Contract”) for the Redevelopment Area Bonds, to be dated the date of sale of such Redevelopment Area Bonds and to be executed by the applicable investment banking firm or bond purchaser. The Chief Financial Officer is hereby authorized and directed on behalf of the Town to execute and deliver said Purchase Contract.

SECTION 5. The Chief Financial Officer, in consultation with Bond Counsel, is hereby authorized and directed to approve the Trustee/Paying Agent Agreement for the Redevelopment Area Bonds and the application of moneys paid to the Town and the County of Warren, New Jersey under the Financial Agreement (the “Trustee/Paying Agent Agreement”) with a qualified bank (the “Trustee/Paying Agent”) to be selected by the Chief Financial Officer, in consultation with Bond Counsel, to be dated the date of the closing on the Redevelopment Area Bonds. The Mayor and/or Council President of the Town are hereby authorized and directed to execute and deliver the Trustee Paying Agent Agreement in the name of the Town and the corporate seal (or facsimile thereof) shall be thereunto affixed, imprinted, engraved or otherwise reproduced thereon. The Clerk of the Town is hereby authorized and directed to attest to such signature and to the affixing of said seal to the Trustee/Paying Agent Agreement.

SECTION 6. It is hereby delegated to the Chief Financial Officer, the authority to “deem final”, in accordance with applicable rules of the federal Securities and Exchange Commission (the “SEC Rules”), a Preliminary Official Statement (the “Preliminary Official Statement”) to be used in connection with the marketing and sale of

the Redevelopment Area Bonds, if applicable. The Chief Financial Officer is hereby authorized and directed, with advice and consent of Bond Counsel, to execute and deliver a customary certificate evidencing the same. The preparation and distribution by the Town, in consultation with Bond Counsel, of such Preliminary Official Statement is hereby approved and any previous actions undertaken by various representatives and officers of the Town with respect thereto are hereby ratified and confirmed. Upon the sale of the Redevelopment Area Bonds to the investment banking firm or bond purchaser, the Preliminary Official Statement shall be so modified by the Chief Financial Officer, in consultation with Bond Counsel, to reflect the effect of the pricing of the Redevelopment Area Bonds and the Purchase Contract and any other revision not inconsistent with the substance thereof deemed necessary or advisable by Bond Counsel, and said Preliminary Official Statement as so modified shall constitute the final Official Statement (the "Official Statement") required under the SEC Rules. The Chief Financial Officer is authorized and directed on behalf of the Town to execute and deliver said Official Statement as required by the SEC Rules.

SECTION 7. The Town hereby covenants and agrees that it shall comply with and carry out all of the provisions of a Continuing Disclosure Certificate (the "Certificate") which will set forth the obligation of the Town to file budgetary, financial and operating data on an annual basis and notices of certain enumerated events deemed material in accordance with the requirements of the SEC Rules, if applicable. The Chief Financial Officer is hereby authorized and directed to execute and deliver such Certificate evidencing the Town's undertaking with respect to the SEC Rules.

SECTION 8. The Mayor, Council President and Chief Financial Officer or any other appropriate officer or representative of the Town, are hereby authorized and directed to execute and deliver any and all documents and to do and cause to be done any and all acts and things necessary or proper for carrying out the transactions contemplated by this resolution, the Purchase Contract, the Certificate and the Trustee/Paying Agent Agreement, and for the authorization, sale and issuance of the Redevelopment Area Bonds. The execution by such officials and officers of any such documents, with changes, insertions or omissions approved by the Chief Financial Officer, in consultation with Bond Counsel, as hereinabove provided, shall be conclusive and no further ratification or other action by the Town shall be required with respect thereto.

SECTION 9. To the extent permitted under applicable federal laws and regulations, the Redevelopment Area Bonds shall be designated as "qualified tax-exempt obligations" for purposes of section 265(b)(3)(B)(ii) of the Code, to the extent the Redevelopment Area Bonds qualify for such designation, as to be determined by Bond Counsel on behalf of the Town.

SECTION 10. All other resolutions adopted in connection with the Redevelopment Area Bonds and inconsistent herewith are hereby rescinded to the extent of such inconsistency.

SECTION 11. This resolution shall take effect immediately.

The foregoing resolution was adopted by the following roll call vote on December 15, 2015.

Recorded Vote

AYE:

NAY:

ABSTAIN:

ABSENT:

CERTIFICATION

I, VICTORIA L. KLEINER, Municipal Clerk of The Town of Phillipsburg in the County of Warren, New Jersey (the "Town"), DO HEREBY CERTIFY that the annexed resolution entitled, "**RESOLUTION OF THE TOWN OF PHILLIPSBURG IN THE COUNTY OF WARREN, NEW JERSEY, AUTHORIZING CERTAIN ACTIONS NECESSARY IN CONNECTION WITH THE SALE AND ISSUANCE OF NOT TO EXCEED \$2,500,000 AGGREGATE PRINCIPAL AMOUNT OF REDEVELOPMENT AREA BONDS AND AUTHORIZING THE APPROPRIATE OFFICIALS TO DO ALL ACTS AND THINGS DEEMED NECESSARY AND ADVISABLE IN CONNECTION WITH THE SALE, ISSUANCE AND DELIVERY OF SAID BONDS**", is a copy of a resolution which was duly adopted by the Town at a meeting duly called and held on December 15, 2015, in full compliance with the Open Public Meetings Act, N.J.S.A. 10:4-6 *et seq.*, at which meeting a quorum was present and acting throughout and which resolution has been compared by me with the original thereof as contained in the minutes as officially recorded in my office in the Minute Book of the Town and is a true, complete and correct copy thereof and the aforesaid resolution has not been repealed, amended or rescinded but remains in full force and effect on and as of the date hereof.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of said Town this 16th day of December, 2015.

(SEAL)

**VICTORIA L. KLEINER,
Municipal Clerk**

EXHIBIT A

**REGISTERED
NUMBER R-«number»**

**PRINCIPAL SUM
\$«sum»**

**UNITED STATES OF AMERICA
STATE OF NEW JERSEY
THE TOWN OF
OF PHILLIPSBURG
IN THE COUNTY OF WARREN**

REDEVELOPMENT AREA BOND, SERIES 201_

<u>DATE OF ORIGINAL ISSUE</u>	<u>MATURITY DATE</u>	<u>RATE OF INTEREST PER ANNUM</u>	<u>CUSIP NUMBER</u>
_____	_____, «date»	«rate»%	«cusip»

THE TOWN OF PHILLIPSBURG IN THE COUNTY OF WARREN, NEW JERSEY (the "Town") hereby acknowledges itself indebted and for value received promises to pay to CEDE & CO., as nominee of The Depository Trust Company, Jersey City, New Jersey ("DTC"), which will act as Securities Depository (the "Securities Depository"), on the MATURITY DATE specified above, the PRINCIPAL SUM, and to pay interest on such sum from the DATE OF ORIGINAL ISSUE of this Bond at the RATE OF INTEREST PER ANNUM specified above on _____ 15, 201_ and semi-annually thereafter on the fifteenth day of _____ and _____ in each year until maturity. Principal of and interest on this Bond will be paid to the Securities Depository by the Town or its duly appointed paying agent and will be credited to the participants of DTC, as listed on the records of DTC, as of each _____ 1 and _____ 1 next preceding the date of such payments (the "Record Dates" for such payments).

This Bond is not transferable as to principal or interest except to an authorized nominee of DTC. DTC shall be responsible for maintaining the book-entry system for recording the interests of its participants or the transfers of the interests among its participants. The participants are responsible for maintaining records regarding the beneficial ownership interests in the Bonds on behalf of individual purchasers.

The Bonds of this issue are subject to redemption prior to their stated maturities as follows:

This Bond is one of an authorized issue of Bonds and is issued pursuant to:
(i) Local Redevelopment and Housing Law, *N.J.S.A. 40A:12A-1 et seq.* and the Long

Term Tax Exemption Law, *N.J.S.A. 40A:20-1 et seq.*, as each are amended and supplemented; and (ii) a resolution adopted by the Town on December 15, 2015 (the "Authorization Proceedings").

This Bond is secured by _____.

It is hereby certified and recited that all conditions, acts and things required by the Constitution or the statutes of the State of New Jersey to exist, to have happened or to have been performed precedent to or in the issuance of this Bond exist, have happened and have been performed and that the issue of Bonds of which this is one, together with all other indebtedness of the Town, is within every debt and other limit prescribed by such Constitution or statutes.

IN WITNESS WHEREOF, the Town of Phillipsburg, in the County of Warren, State of New Jersey has caused this Bond to be executed in its name by the manual or facsimile signatures of its Mayor or Acting Mayor and its Chief Financial Officer, its corporate seal to be hereunto imprinted or affixed, this Bond and the seal to be attested to by the manual signature of its Clerk, and this Bond to be dated the Date of Original Issue as specified above.

ATTEST:

TOWN OF PHILLIPBURG

By: _____
VICTORIA L. KLEINER,
Municipal Clerk

By: _____
_____,
Mayor

By: _____
ROBERT J. MERLO,
Chief Financial Officer