R: 2019-170

RESOLUTION OF THE TOWN OF PHILLIPSBURG AUTHORIZING THE BIFURCATION OF CERTAIN AGREEMENTS IN CONNECTION WITH THE PHASING OF A REDEVELOPMENT PROJECT TO BE UNDERTAKEN WITHIN THE INGERSOLL RAND REDEVELOPMENT AREA AND APPROVING AGREEMENTS IN CONNECTION THEREWITH

**WHEREAS,** pursuant to the Local Redevelopment and Housing Law, as amended and supplemented, *N.J.S.A.* 40A:12A-1 *et seq.* (the **“Act”)**, the Town of Phillipsburg in the County of Warren, New Jersey (the “**Town**”) has designated the former Ingersoll Rand site, commonly known as Block 3401, Lots 1, 3, 4, 5, 6, 7, 8, and 9 on the tax map of the Town as an “area in need of redevelopment” (the **“Redevelopment Area**,**”** such Redevelopment Area having been previously designated 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 and Block 3301, Lots 1, 2, 4, 4.01, 5 and 6) and adopted a redevelopment plan for the Redevelopment Area entitled the *“Revised* Phillipsburg Commerce Park Redevelopment Plan,” as the same may be further amended and supplemented from time to time (the **“Redevelopment Plan**”); and

**WHEREAS,** pursuant to the Act, the Town and Opus Investments Limited Liability Company (“**Opus**”) entered into that certain Redevelopment Agreement dated September 2, 2015 (the “**Original Redevelopment Agreement”)**; and

**WHEREAS,** pursuant to the terms of the Original Redevelopment Agreement, Opus intended to construct an approximately 3,400,000 sq. ft. logistics and distribution center on the Redevelopment Area (the “**Project**”), with additional development on adjacent parcels located in the Township of Lopatcong; and

**WHEREAS**, the Project now consists of two phases (the “**Phase 1 Project**” and the “**Phase 2 Project**,” each as hereinafter described); and

**WHEREAS**, the Phase 1 Project includes the construction of three (3) warehouse/ light industrial buildings totaling approximately 1,202,243 square feet, consisting of “Building 3” (approximately 607,729 square feet), “Building 5” (approximately 175,055 square feet), and “Building 6” (approximately 419,459 square feet), and all on-site and off-site infrastructure required therefor, all to be constructed on the following parcels: Block 3401, Lots 5, 6, 7, 8, and 9 (collectively, the **“Phase 1 Land**”); and

**WHEREAS**, the Phase 2 Project includes the construction of two (2) warehouse/ light industrial building totaling approximately 1,670,700 square feet, consisting of “Building 1” (approximately 1,408,200 square feet) and “Building 4” (approximately 262,500 square feet), and all on-site and off-site infrastructure required therefor, all to be constructed on Block 3401, Lots 1, 3, and 4 (the “**Phase 2 Land**”); and

**WHEREAS**, in furtherance of the development of the Redevelopment Area, Philipsburg Commerce Park Urban Renewal Entity, LLC (the “**Initial Entity**”), an affiliate of Opus, applied to the Town for a tax exemption pursuant to the Long Term Tax Exemption Law and via Ordinance O: 2015-23 adopted on December 15, 2015 (the “**Financial Agreement Ordinance**”) the Town approved the execution of a financial agreement governing the payment by the Initial Entity of payments in lieu of real estate taxes in connection with the Project, which financial agreement was executed on December 18, 2015 (the “**Original Financial Agreement**”); and

**WHEREAS,** in furtherance of the development of the Project within the Redevelopment Area, certain improvements to the roadways, stormwater system, curbing, lighting and other infrastructure improvements are to be constructed within the Redevelopment Area (collectively, the “**Infrastructure Improvements**”**)**;and

**WHEREAS,** the Infrastructure Improvements will be, and are intended to be, improvements for which special assessments may be imposed pursuant to the Local and Other Improvements Law, *N.J.S.A.* 40:56-1 *et seq.,* as amended and supplemented (the **“Local Improvements Law”)** and/or *N.J.S.A.* 40A:12A-66(c)and such improvements will benefit the Redevelopment Area; and

**WHEREAS**, to defray some of the costs of the Infrastructure Improvements, thereby making the Project viable, the Town will issue one or more series of bonds (the “**Redevelopment Bonds**”) pursuant to the Redevelopment Area Bond Financing Law, *N.J.S.A.* 40A:12A-64 *et seq.* (the “**RAB Law**”) and that certain Trust Indenture (the “**Indenture**”), to be dated as of the first day of the month of issuance of the Redevelopment Bonds, by and between the Town and a bank (the “**Bond** **Trustee**”) (any series of Redevelopment Bonds allocable to the Phase 1 Project, the “**Phase 1 Bonds**,” and any series of Redevelopment Bonds allocable to the Phase 2 Project, the “**Phase 2 Bonds**”); and

**WHEREAS**, the Redevelopment Bonds shall be NON-RECOURSE to the Town; and

**WHEREAS,** in order to effect the mechanism for the payment of a special assessment to secure the Redevelopment Bonds, the Town adopted on December 15, 2015 that certain ordinance entitled “AN ORDINANCE OF THE TOWN OF PHILLIPSBURG, IN THE COUNTY OF WARREN, STATE OF NEW JERSEY, PROVIDING FOR THE SPECIAL ASSESSMENT OF THE COST OF CERTAIN ROADWAY AND OTHER INFRASTRUCTURE IMPROVEMENTS IN THE REDEVELOPMENT AREA CONSISTING OF BLOCK 3201, LOTS 7.01 - 7.13 AND BLOCK 3301, LOTS 1, 2, 4, 4.01, 5 AND 6 ON THE TAX MAP OF THE TOWN AND APPROVING AGREEMENTS IN CONNECTION THEREWITH” (the “**Special Assessment** **Ordinance**”), and the Town and the Initial Entity executed that certain Special Assessment Agreement, dated as of December 18, 2015 (the **“Original Special Assessment Agreement,**” and together with the Original Redevelopment Agreement and the Original Financial Agreement, the “**Original Town Documents**”); and

**WHEREAS**, pursuant to that certain “Assignment and Assumption of Redevelopment Agreement, Financial Agreement and Special Assessment Agreement,” dated January 31, 2018, the Original Redevelopment Agreement, Original Financial Agreement, and the Original Special Assessment Agreement were assigned by Opus and the Initial Entity, respectively, to I-78 Logistics Park Phillipsburg Urban Renewal, LLC (the “**Phase 2 Entity**”); and

**WHEREAS**, each of the Original Redevelopment Agreement, Original Financial Agreement authorized via the Financial Agreement Ordinance, and Original Special Assessment Agreement authorized via the Special Assessment Ordinance, provided that each such agreement, respectively, may be separated into separate agreements on phase by phase basis; and

**WHEREAS**, the Phase 2 Entity has applied to the Town to separate each of the Original Redevelopment Agreement, Original Financial Agreement, and Original Special Assessment Agreement on a phase by phase basis, such that each of the Phase 1 Project and Phase 2 Project shall be governed by its own redevelopment agreement, financial agreement, and special assessment agreement (the “**Phase 1 Redevelopment Agreement**,” “**Phase 2 Redevelopment Agreement**,” “**Phase 1 Financial Agreement**,” “**Phase 2 Financial Agreement**,” “**Phase 1 Special Assessment Agreement**,” and “**Phase 2 Special Assessment Agreement**,” respectively); and

**WHEREAS**, the Phase 2 Entity has requested that it be the redeveloper of the Phase 2 Project and party to the Phase 2 Redevelopment Agreement, Phase 2 Financial Agreement, and Phase 2 Special Assessment Agreement, respectively; and

**WHEREAS**, the Phase 2 Entity has requested that I-78 Logistics Park II Phillipsburg Urban Renewal, LLC (the “**Phase 1 Entity**,” an affiliate of the Phase 2 Entity) be the redeveloper of the Phase 1 Project and party to the Phase 1 Redevelopment Agreement, Phase 1 Financial Agreement, and Phase 1 Special Assessment Agreement, respectively; and

**NOW THEREFORE BE IT RESOLVED** by the Town Council of the Town of Phillipsburg, in the County of Warren, New Jersey as follows:

1. **GENERAL**

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

1. **TRANSFERS CONSTITUTE PERMITTED TRANSFERS**
2. The Town hereby determines that the transfer of the duties and obligations with respect to the Phase 1 Project under the Original Redevelopment Agreement from the Phase 2 Entity to the Phase 1 Entity constitutes a Permitted Transfer as defined in the Original Redevelopment Agreement. The Town hereby determines that there have been no events of default or violations of the terms of the Original Redevelopment Agreement, and hereby agrees and acknowledges that (i) the Phase 2 Entity shall be and is hereby released from all duties and obligations existing under the Original Redevelopment Agreement with respect to the Phase 1 Project and shall have no duties or obligations under the Phase 1 Redevelopment Agreement; and (ii) the Phase 1 Entity shall have no duties or obligations existing under the Original Redevelopment Agreement with respect to the Phase 2 Project and shall have no duties or obligations under the Phase 2 Redevelopment Agreement. Following the execution of the Phase 1 Redevelopment Agreement and Phase 2 Redevelopment Agreement by all parties thereto, respectively, the Original Redevelopment Agreement shall be superseded by such agreements.
3. The Town hereby determines that the transfer of the duties and obligations with respect to the Phase 1 Project under the Original Financial Agreement from the Phase 2 Entity to the Phase 1 Entity constitutes a permitted transfer under the Original Financial Agreement. The Town hereby determines that there have been no events of default or violations of the terms of the Original Financial Agreement and hereby agrees and acknowledges that (i) the Phase 2 Entity shall be and is hereby released from all duties and obligations existing under the Original Financial Agreement with respect to the Phase 1 Project and shall have no duties or obligations under the Phase 1 Financial Agreement; and (ii) the Phase 1 Entity shall have no duties or obligations existing under the Original Financial Agreement with respect to the Phase 2 Project and shall have no duties or obligations under the Phase 2 Financial Agreement. Following the execution of the Phase 1 Financial Agreement and Phase 2 Financial Agreement by all parties thereto, respectively, the Original Financial Agreement shall be superseded by such agreements.
4. The Town hereby determines that the transfer of the duties and obligations with respect to the Phase 1 Project under the Original Special Assessment Agreement from the Phase 2 Entity to the Phase 1 Entity constitutes a permitted transfer under the Original Special Assessment Agreement. The Town hereby determines that there have been no events of default or violations of the terms of the Original Special Assessment Agreement and hereby agrees and acknowledges that (i) the Phase 2 Entity shall be and is hereby released from all duties and obligations existing under the Original Special Assessment Agreement with respect to the Phase 1 Project and shall have no duties or obligations under the Phase 1 Special Assessment Agreement; and (ii) the Phase 1 Entity shall have no duties or obligations existing under the Original Special Assessment Agreement with respect to the Phase 2 Project and shall have no duties or obligations under the Phase 2 Special Assessment Agreement. Following the execution of the Phase 1 Special Assessment Agreement and Phase 2 Special Assessment Agreement by all parties thereto, respectively, the Original Special Assessment Agreement shall be superseded by such agreements.
5. **MAYOR AUTHORIZED AND DIRECTED**

The Mayor is hereby authorized and directed, no later than September 3, 2019, to execute and deliver the: (i) Phase 1 Redevelopment Agreement in substantially the form attached hereto as Exhibit A; (ii) Phase 2 Redevelopment Agreement in substantially the form attached hereto as Exhibit B; (iii) Phase 1 Financial Agreement in substantially the form attached hereto as Exhibit C; (iv) Phase 2 Financial Agreement in substantially the form attached hereto as Exhibit D; (v) Phase 1 Special Assessment Agreement in substantially the form attached hereto as Exhibit E; and (vi) Phase 2 Special Assessment Agreement in substantially the form attached hereto as Exhibit F. The Mayor is further hereby authorized to take all steps necessary to negotiate and execute any additional documents or agreements, perform such other actions, and undertake all actions reasonably necessary to effectuate the purpose and intent of this Resolution.

1. **SEVERABILITY**

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

1. **AVAILABILITY OF THE RESOLUTION**

A copy of this Resolution shall be available for public inspection at the offices of the Town.

1. **EFFECTIVE DATE**

This Resolution shall take effect immediately.

**CERTIFICATION**

I, Victoria L. Kleiner, Municipal Clerk for the Town of Phillipsburg, do hereby certify that the foregoing is a true copy of an Resolution duly adopted by the Town Council at their September 17, 2019 meeting.

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VICTORIA L. KLEINER,

Municipal Clerk