

ORDINANCE 2023-11

ORDINANCE APPROVING THE TERMS AND AUTHORIZING THE EXECUTION OF FIRST AMENDMENT TO THE AMENDED FINANCIAL AGREEMENT BETWEEN THE TOWN OF PHILLIPSBURG AND PR BRIDGE I78 PHASE II OWNER URBAN RENWAL, LLC (ASSIGNEE OF I-78 LOGISTICS PARK II PHILLIPSBURG URBAN RENEWAL, LLC)

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, in its sole discretion, to provide for and accept, in lieu of real property taxes, an annual service charge to be paid by an urban renewal entity to the Town; and

WHEREAS, the Initial Entity, an urban renewal entity qualified to do business under the provisions of the Long Term Tax Exemption Law, submitted an application to the Town for the approval of the Project, an urban renewal project (the “**Exemption Application**”), in accordance with N.J.S.A. 40A:20-8; and

WHEREAS, on December 15, 2015, the Town adopted an ordinance, entitled, “ORDINANCE OF THE TOWN OF PHILLIPSBURG, COUNTY OF WARREN, NEW JERSEY APPROVING AN APPLICATION FOR A LONG TERM TAX EXEMPTION AND AUTHORIZING THE EXECUTION OF A FINANCIAL AGREEMENT FOR A TAX EXEMPTION FOR AN URBAN RENEWAL PROJECT WITH RESPECT TO 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.”, approving the Exemption Application and authorizing the execution of a financial agreement (the “**Original Financial Agreement**”) providing for the payment of an annual service charge by the Initial Entity to the Town (the “**Ordinance**”) with respect to the entire Project, which financial agreement was executed by the Initial Entity and the Town and is dated December 18, 2015; and

WHEREAS, the Original Financial Agreement and the Ordinance provided that such Original Financial Agreement may be separated into separate agreements on a phase by phase basis; 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 Town may issue recourse redevelopment project bonds (the “**Bonds**”), or an entity acting on behalf of the Town, may issue such bonds in order to finance a portion of a redevelopment project, which Bonds may be secured by the Annual Service Charge; and

WHEREAS, in order to assist in financing a portion of the costs of the Project relating to public infrastructure improvements and certain other costs, the Town has agreed that it shall issue, or reissue, the Bonds in accordance with the terms and provisions of an indenture of trust and/or a general bond resolution (the “**Indenture**”) authorizing the issuance of such Bonds (the portion of the Bonds allocable to the Phase 1 Project, the “**Phase 1 Bonds**,” and the portion of such Bonds allocable to the Phase 2 Project, the “**Phase 2 Bonds**”); and

WHEREAS, pursuant to the terms of the Original Financial Agreement and the Indenture and in accordance with the terms of the Bond Financing Law, specifically N.J.S.A. 40A:12A-67(a), a portion of the Annual Service Charge shall be pledged, on a first lien basis, to the payment of the principal or redemption premium of, and interest on, the Phase 2 Bonds; and

WHEREAS, pursuant to that certain “Assignment and Assumption of Redevelopment Agreement, Financial Agreement and Special Assessment Agreement,” the Original Redevelopment Agreement and the Original Financial Agreement, among other things, were assigned by Opus and the Initial Entity, respectively, to the Entity; and

WHEREAS, pursuant to Resolution No. 2019-171 of the Town Council (the “**Resolution**”), adopted on September 17, 2019 and as previously authorized via the Ordinance, the Town Council authorized the Original Financial Agreement to be separated into two financial agreements, including this Agreement with respect to the Phase 2 Project providing for the payment of an annual service charge (the “**Annual Service Charge**”) by the Entity to the Town, and that certain financial agreement dated of even date herewith by and between I-78 Logistics Park II Phillipsburg Urban Renewal, LLC and the Town (the “**Phase 1 Financial Agreement**”) with respect to the Phase 1 Project; and

WHEREAS, on even dated herewith, the Original Financial Agreement has been superseded by the Phase 1 Financial Agreement and this Agreement, respectively; and

WHEREAS, pursuant to the Resolution the Town Council authorized the Original Redevelopment Agreement to be separated into two redevelopment agreements, with respect to the Phase 1 Project an agreement by and between I-78 Logistics Park II Phillipsburg Urban Renewal, LLC and the Town (the “**Phase 1 Redevelopment Agreement**”) and with respect to the Phase 2 Project an agreement by and between the Entity and the Town (the “**Phase 2 Redevelopment Agreement**”); and

WHEREAS, the Original Redevelopment Agreement has been superseded by the Phase 1 Redevelopment Agreement and the Phase 2 Redevelopment Agreement, respectively; and

WHEREAS, pursuant to the Bond Financing Law, specifically N.J.S.A. 40A:12A-68, the Annual Service Charge, upon the recordation of the Agreement and this Ordinance, constituted and continues to constitute a municipal lien on the Phase 2 Redevelopment Area and the Phase 2 Project within the meaning of Applicable Laws; and

WHEREAS the Parties executed the Phase 2 Amended and Restated Financial Agreement dated September 18, 2019; and

WHEREAS the Town Council subsequently adopted Ordinance O:2019-29 on November 6, 2019 to ratify and approve the previously executed the Phase 2 Amended and Restated Financial Agreement since the Clerk of the Town was unable to locate the notices in connection with the Original Financial Agreement Ordinance; and

WHEREAS, the Town Council enacted Resolution R:2020-234 on December 1, 2020 approving the transfer of the Phase 2 Project from I-78 Logistics Park II Phillipsburg Urban Renewal, LLC to PR Bridge I78 Phase II Owner Urban Renewal, LLC and authorizing the execution of an Assumption and Assignment Agreement to effectuate the transfer the Phase 2 Amended and Restated Financial Agreement to PR Bridge I78 Phase II Owner Urban Renewal, LLC;

WHEREAS, I-78 Logistics Park II Phillipsburg Urban Renewal, LLC and PR Bridge I78 Phase II Owner Urban Renewal, LLC executed the authorized and approved assumption and assignment agreement whereby PR Bridge I78 Phase II Owner Urban Renewal, LLC assumed all rights and obligations of the Phase 2 Amended and Restated Financial Agreement; and

WHEREAS, the Entity sought and obtained amended approvals revising the physical configuration of the Phase 2 Project being developed on Block 3401, Lot 1 from the construction of two (2) warehouse/light industrial buildings totaling approximately 1,670,700 square feet in size (consisting of Building 1 of approximately 1,408,200 square feet and Building 4 of approximately 262,500 square feet), to the construction of one (1) warehouse/light industrial building totaling approximately 1,249,200 square feet in size (the “Amended Approvals”); and

WHEREAS, the Parties desire to amend the Phase 2 Amended and Restated Financial Agreement by revising the method of calculating the Pre-Land Tax Credit Annual Service Charge to be paid by the Redeveloper to the Township so that the amount of the Pre-land Tax Credit Annual Service Charge shall remain as originally projected based on the planned construction of 1,670,700 square feet of total building area, and so be unaffected by the Amended Approvals and concomitant 421,500 square foot reduction in the total Phase 2 Project building area; and

WHEREAS, the Parties must amend the Phase 2 Amended and Restated Financial Agreement since that agreement calculates the amount of the Pre-land Tax Credit Annual Service Charge by multiplying the total Phase 2 Project Rentable Square Footage by the Applicable Rate, which Applicable Rate starts at Forty-Five Cents (\$0.45) increasing by two percent (2%) each January 1st following the Annual Service Charge Start Date

NOW, THEREFORE, BE IT ORDAINED by the Town Council of the Town of Phillipsburg, in the County of Warren and State of New Jersey, as follows:

Section 1. Effective Date. The First Amendment to the Amended Financial Agreement shall be deemed effective following the final adoption and publication of this Ordinance, according to the laws of the State of New Jersey.

Section 2. Amendment to Section 1.02 General Definitions – Applicable Rate. The definition for “Applicable Rate” is hereby deleted from the First Amendment to the Amended Financial Agreement.

Section 3. Amendment to Section 1.02 General Definitions – Pre-Land Tax Credit Annual Service Charge. The definition for “Pre-Land Tax Credit Annual Service Charge” is amended to read as follows: “The Pre-Land Tax Credit Annual Service Charge for the first year following the Annual Service Charge Start Date shall be Seven Hundred Fifty-One Thousand Eight Hundred Fifteen Dollars (\$751,815) which amount is derived by multiplying the originally contemplated total Phase 2 Project total square footage of 1,670,700 by Forty-Five Cents (\$0.45). This amount shall increase by two percent (2%) each year thereafter in accordance with **Schedule 1** attached to the First Amendment.

Section 4. Approval of the amended Financial Agreement

The Mayor is hereby authorized to execute, on the Town’s behalf, the First Amendment to the Amended Financial Agreement substantially in the form attached hereto as **Exhibit 1**, subject to such necessary additions, deletions, modifications or alterations deemed necessary by the Mayor in consultation with the Town’s professional advisors. The executed copy of the First Amendment to the Amended Financial Agreement shall be certified by the Town Clerk and filed with the Office of the Town Clerk.

Section 3. Additional Authorizations

The Town, and the appropriate officials thereof, are hereby authorized to draft, amend, modify or make such necessary changes to the First Amendment to the Amended Financial Agreement or any other necessary documents to effectuate the purposes hereof.

Section 4. Severability

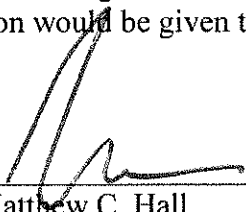
Should any section, clause, sentence, phrase or provision of this Ordinance be declared unconstitutional or invalid by a Court of competent jurisdiction, such decision shall not affect the remaining portions of this Ordinance.

Section 5. Repeal of Inconsistent Legislation

All ordinances or parts thereof to the extent inconsistent herewith are hereby repealed or rescinded.

NOTICE

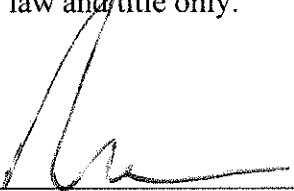
The Foregoing Ordinance was introduced at a regular meeting of the Town Council of the Town of Phillipsburg, in the County of Warren and State of New Jersey, held on the 20th day of June 2023. It will be further considered for final passage, after public hearing hereon, at a meeting of said Town Council to be held at the regular meeting of the Town Council on July 18, 2023 at which time any person who is interested thereon would be given the opportunity to be heard.



Matthew C. Hall
Acting Municipal Clerk

SECOND NOTICE OF ORDINANCE

NOTICE IS HEREBY GIVEN that at a regular meeting of the Town Council of the Town of Phillipsburg held on July 18, 2023 at 7:00 p.m. at the Phillipsburg Housing Authority Community Building, 535 Fisher Avenue, Phillipsburg, New Jersey, the foregoing Ordinance was presented and passed on second and final reading, after a public hearing thereon. The Ordinance was then ordered to be published according to law and title only.



Matthew C. Hall
Acting Municipal Clerk