SPECIAL MEETING

OF THE MUNICIPAL COUNCIL OF THE CITY OF BAYONNE, IN THE COUNTY OF HUDSON, NEW JERSEY, HELD IN THE COUNCIL CHAMBER, MUNICIPAL BUILDING, 630 AVENUE C, ON WEDNESDAY, JANAURY 25, 2023

The Council met at 7:02 P.M.

The Council President LaPelusa announced: "I would like to advise all those present that notice of this Special meeting of the Municipal Council of the City of Bayonne of January 25, 2023 has been provided to the public in accordance with the provisions of the Open Public Meetings Act of the State of New Jersey. Notice of time and place of the meeting has been included in the annual notice of meetings, which was posted and filed with the City Clerk, and with the Jersey Journal and the Star Ledger. An additional Notice of time and place was posted and filed with the City Clerk and was forwarded to the Jersey Journal and the Star Ledger by on January 23, 2023."

The Regular Meeting of the Municipal Council of the City of Bayonne is now in session.

The Clerk called the roll.

Present were: Council Members Booker, Carroll, Perez, Weimmer and President LaPelusa

The Council President led the Pledge of Allegiance.

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01. Council Member Booker moved that following communication be received and filed, seconded by Council Member Carroll.

Madelene C. Medina
City Clerk
630 Avenue C
Bayonne, NJ 07002

Re: Special Meeting – January 25, 2023

Dear Ms. Medina:

Please be advised that it is necessary to call a special meeting of the Municipal Council on Wednesday, January 25, 2023 at 7:00 P.M, in the Dorothy E. Harrington Municipal Council Chambers.

The purpose of this special meeting is as follows:

1. ORDINANCE OF THE CITY OF BAYONNE, COUNTY OF HUDSON, STATE OF NEW JERSEY APPROVING A FINANCIAL AGREEMENT BY AND BETWEEN THE CITY OF BAYONNE AND TOGUS URBAN RENEWAL, LLC FOR THE PROPERTY IDENTIFIED AS BLOCK 332, LOT 3, BLOCK 360, LOT 2, BLOCK 390, LOTS 1 AND 2 (A.K.A. RG67), AND BLOCK 391, LOTS 1 AND 2

2 ORDINANCE OF THE CITY OF BAYONNE, COUNTY OF HUDSON, STATE OF NEW JERSEY, PROVIDING FOR THE SPECIAL ASSESSMENT OF THE COST OF CERTAIN IMPROVEMENTS ON THE PROPERTY IDENTIFIED AS BLOCK 332, LOT 3, BLOCK 360, LOT 2, BLOCK 390, LOTS 1 AND 2 (A.K.A. RG67), AND BLOCK 391, LOTS 1 AND 2

3. ORDINANCE OF THE CITY OF BAYONNE, COUNTY OF HUDSON, STATE OF NEW JERSEY, AUTHORIZING THE GUARANTY OF NOT-TO-EXCEED $65,000,000 AGGREGATE PRINCIPAL AMOUNT OF CITY GUARANTEED REDEVELOPMENT AREA BONDS

4. Authorizing a closed session to discuss matters within Attorney-client privilege pursuant to N.J.S.A. 10:4-12.

5. Authorizing Appropriation Reserve Transfer #2 in the CY 2022 budget.

Please ensure that the appropriate Open Public Meeting Act notice is effectuated.

Very truly yours,

James M. Davis
Mayor
(signed)

Yeas - Council Members Booker, Carroll, Perez, Weimmer and President LaPelusa.

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02. Council President LaPelusa moved the following resolution, seconded by Council Member Perez, which was read by the Clerk and adopted.

WHEREAS, pursuant to N.J.S.A. 10:4-12(a) the City of Bayonne's Municipal Council must conduct its meetings in open view of the public at all times, subject to the provisions of N.J.S.A. 10:4-12(b); and

WHEREAS, pursuant to N.J.S.A. 10:4-12(b)(7), the City of Bayonne's Municipal Council may exclude the public from that portion of a meeting wherein the City of Bayonne's Municipal Council discusses any matters falling within the attorney-client privilege, to the extent that confidentiality is required in order for the attorney to exercise his ethical duties as a lawyer; and

WHEREAS, pursuant to N.J.S.A. 10:4-12(b)(5), the City of Bayonne's Municipal Council may exclude the public from that portion of a meeting wherein the City of Bayonne's Municipal Council discusses any matter that could adversely affect the public interest if discussion of such matters was disclosed; and

WHEREAS, it is now necessary to review certain options and the legal implications and ramifications thereof for the purpose of discussing financial matters between the City of Bayonne; and

WHEREAS, the City of Bayonne's Municipal Council now deems it necessary to convene in a closed session in order to discuss the aforesaid matters; and

WHEREAS, it is the intention of the City of Bayonne's Municipal Council to keep reasonably comprehensible minutes of this closed session meeting pursuant to N.J.S.A. 10:4-14 and to make said minutes available to the general public after the finalization of the issues involved; now, therefore, be it

RESOLVED, that the City of Bayonne's Municipal Council shall now recess to a private session in order to discuss the matters set forth above; and be it further

RESOLVED, that the City of Bayonne's Municipal Council will not reconvene to public session at the conclusion of the private session, but no action will be taken on the matters discussed during the private session.

Yeas - Council Members Booker, Carroll, Perez, Weimmer and President LaPelusa.

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The Council adjourned to the closed at 7:05 P.M.

At 7:55 P.M. Council Member Perez moved to reconvene to the meeting, seconded by Council Member Booker, which motion was adopted.

Yeas - Council Members Booker, Carroll, Perez, Weimmer and President LaPelusa.

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Prior the Public portion of the meeting Jospeh Baumann, Esq. of McManimon, Scotland & Baumann. Legal Counsel for the City addressed the audience on the Togus 1888 Studios project and the purpose of the Financial Agreement and Guaranty of the Redevelopment Area Bonds**.**

The Council President waived the Five (5) minute time limit

03. The following persons spoke:

Gail Godesky addressed the council of the project and the development plan, she asked several questions of Mr. Baumann pertaining to employment, construction and the value of the property. Also questioned Mr. Baumann on why City was taking the lead on financing.

Mary Jane Desmond addressed the council and Mr. Baumann on the Bond Procedures in the event of default.

Melissa Godesky-Rodriguez addressed the council on necessary need for School Development and the differences in the bonding process when it does pertain School development projects.

Peter Frano addressed the council on the “1888 Studios Project” and the financing mechanism. Mr. Franco also addressed the matter of Water/Sewer Agreement adopted several years ago and live streaming meetings.

Patrick Desmand addressed the Council on the use of “local” union contractors and laborers.

Robert Benacki, Esq. financial advisor representing the “1888 Studios” development project discussed the scope of the project.

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04. Council President LaPelusa introduced**:**

ORDINANCE OF THE CITY OF BAYONNE, COUNTY OF HUDSON, STATE OF NEW JERSEY APPROVING TOGUS URBAN RENEWAL, LLC’S APPLICATION FOR TAX EXEMPTION AND AUTHORIZING THE EXECUTION OF A FINANCIAL AGREEMENT BY AND BETWEEN THE CITY OF BAYONNE AND TOGUS URBAN RENEWAL, LLC FOR THE PROPERTY IDENTIFIED AS BLOCK 332, LOT 3, BLOCK 360, LOT 2, BLOCK 390, LOTS 1 AND 2 (A.K.A. RG67), AND BLOCK 391, LOTS 1 AND 2

WHEREAS, the City of Bayonne, in the County of Hudson, New Jersey (the "City"), 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 City constitute an area in need of rehabilitation and/or an area in need of redevelopment; and

WHEREAS, in August 2003, the Municipal Council of the City (the “Governing Body”), acting in accordance with the Redevelopment Law adopted a resolution declaring property identified as Block 332, Lot 3, Block 360, Lot 2, Block 373, Lots 1, 2, 13, 14, and 15, Block 390, Lots 1 and 2 (a.k.a. RG67), and Block 391, Lots 1 and 2, and Block 511, Lots 5 and 6, as an “area in need of redevelopment” (collectively, the “Texaco Redevelopment Area”); and

WHEREAS, Togus Urban Renewal, LLC (the “Entity”) is the fee title owner to the following properties within the Texaco Redevelopment Area: Block 332, Lot 3, Block 360, Lot 2; Block 390, Lots 1 and 2 (a.k.a. RG67); and Block 391, Lots 1 and 2 (the “Property”); and

WHEREAS, the Governing Body adopted a redevelopment plan for the Texaco Redevelopment Area entitled “Redevelopment Plan Texaco Redevelopment Area” and dated January 2004 (the “Original Redevelopment Plan”); and

WHEREAS, pursuant to Resolution No. 14-09-17-096, adopted September 17, 2014, the Governing Body directed the Planning Board of the City (the “Planning Board”) to consider and recommend amendments to the Original Redevelopment Plan, conduct hearings on the recommended amendments and return its findings to the Governing Body for consideration, comment, approval and/or any other actions as may be deemed necessary by the Governing Body in accordance with the Redevelopment Law; and

WHEREAS, the “Amended and Restated Redevelopment Plan, Texaco Redevelopment Area, City of Bayonne, Hudson County, New Jersey” (the “Amended and Restated Redevelopment Plan”) dated September 8, 2015, was prepared for the Governing Body’s consideration; and

WHEREAS, the Planning Board reviewed the Amended and Restated Redevelopment Plan on September 8, 2015 and adopted a resolution recommending the adoption of the Amended and Restated Redevelopment Plan to the Governing Body and concluded that the Amended and Restated Redevelopment Plan is consistent with the Master Plan of the City; and

WHEREAS, on September 16, 2015, the Governing Body adopted Ordinance No. O-8 approving the Amended and Restated Redevelopment Plan, which superseded and replaced the Original Redevelopment Plan; and

WHEREAS, on June 19, 2019, the Governing Body adopted Ordinance No. O-19-41 authorizing an amendment to the Amended and Restated Redevelopment Plan, to include billboards as a permitted use, which amendment was entitled the "Amended Redevelopment Plan, Texaco" dated May 15, 2019 ("Amendment No. 1"); and

WHEREAS, on October 21, 2020, the Governing Body adopted Ordinance O-20-54, approving a redevelopment plan, entitled "Amended Redevelopment Plan Texaco Redevelopment Area" dated September 2020 (the "Redevelopment Plan") for the Texaco Redevelopment Area which amended and superseded the Original Redevelopment Plan, Amended and Restated Redevelopment Plan, and Amendment No. 1; and

WHEREAS, on December 16, 2020, the City adopted Resolution R-15 authorizing the negotiation and preparation of a redevelopment agreement with the Entity for the redevelopment of the Property; and

WHEREAS, Resolution R-15 also authorized the negotiation of a redevelopment agreement with the Entity (the "Redevelopment Agreement"); and

WHEREAS, the Entity proposes to develop, redevelop, and construct an entertainment and film studio, and additional principal and accessory uses complimentary to the principal film studio use in accordance with the Redevelopment Plan and related improvements on the Property as further described in the Redevelopment Agreement (the "Project"); and

WHEREAS, the Entity is or will be designated redeveloper of the Property; and

WHEREAS, in order to improve the feasibility of the Project, the Entity applied to the Mayor and Governing Body for a long term tax exemption for the Project in accordance with the Long Term Tax Exemption Law, N.J.S.A. 40A:20-1 et seq. (the "Exemption Law"), and the Redevelopment Area Bond Financing Law, N.J.S.A. 40A:12A-64 et seq. (the "RAB Law"), pursuant to an application dated January 26, 2022 (as amended and supplemented, the "Application"), which is on file with the City Clerk; and

WHEREAS, the City and the Entity reviewed the Application and negotiated the terms of a financial agreement pursuant to the Exemption Law (the "Financial Agreement"); and

WHEREAS, the City Council finds that the requested tax exemption will benefit the City and its inhabitants by improving the use of the Property and providing economic opportunities for residents through construction and permanent job creation, and the benefits would substantially outweigh the costs, if any, associated with the tax exemption; and

WHEREAS, the City Council further finds that the requested tax exemption is important to the City and that without the incentive of the tax exemption, it is unlikely that the Project will be undertaken; and

WHEREAS, the City Council deems it to be in the best interest of the City to pass an Ordinance approving the Entity's Application and authorizing the City to enter into the proposed Financial Agreement with the Entity attached to this ordinance; and

NOW THEREFORE, be it ordained that the City Council of the City of Bayonne does hereby adopt the tax exemptions for the Entity as follows:

Section 1. The development of the Project is hereby approved for the grant of a tax exemption under the Exemption Law by virtue of, pursuant to and in conformity with the provisions of the Exemption Law. The Application submitted by the Entity is hereby approved in accordance with Section 8 of the Exemption Law.

Section 2. The Mayor is hereby authorized to execute the Financial Agreement with the Entity, in substantially the form on file with the City Clerk and attached hereto as Exhibit A and subject to any further review, analysis or modifications that counsel may deem appropriate.

Section 3. During the term of the tax exemption with respect to the Entity there shall be paid to the City in lieu of any taxes to be paid on the improvements of the Project, an annual service charge determined as provided in the Financial Agreement.

Section 4. Counsel is authorized to prepare, and the Mayor is hereby authorized to execute, any additional documents that may be necessary to implement and carry out the intent of the Financial Agreement.

EXHIBIT A
AGREEMENT

THIS FINANCIAL AGREEMENT (the "Agreement") is made this ____ day of _____________, 2023 (the "Effective Date") between TOGUS URBAN RENEWAL LLC, a Delaware limited liability company, qualified to do business under the provisions of the Long Term Tax Exemption Law, *N.J.S.A.* 40A:20.c.1 *et seq.*) having its principal office at c/o Togus Urban Renewal LLC, 750 Lexington Avenue, 24th Floor, New York, New York 10022 (the "Entity"); and the CITY OF BAYONNE, a municipal corporation in the County of Hudson and State of New Jersey with an address of 630 Avenue C, Bayonne, New Jersey 07002 (the "City"; and together with the Entity, the "Parties" or "Party").

W I T N E S S E T H:

WHEREAS, in August 2003, the Municipal Council of the City (the "Governing Body"), acting in accordance with the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq. (the "Redevelopment Law") adopted a Resolution declaring property identified as Block 332, Lot 3, Block 360, Lot 2, Block 373, Lots 1, 2, 13, 14 and 15, Block 390, Lots 1 and 2 (a.k.a. RG67), Block 391, Lots 1 and 2, and Block 511, Lots 5 and 6 as an "area in need of redevelopment" (collectively, the "Texaco Redevelopment Area"); and

WHEREAS, the Governing Body adopted a redevelopment plan for the Texaco Redevelopment Area entitled "Redevelopment Plan Texaco Redevelopment Area" dated January 2004 (the "Original Redevelopment Plan"); and

WHEREAS, on September 17, 2014, the Governing Body adopted Resolution No. 14-09-17-096 directing the Planning Board of the City (the "Planning Board") to consider and recommend amendments to the Original Redevelopment Plan, conduct hearings on same and return its findings to the Governing Body for consideration, comment, approval and/or such other actions as may be deemed necessary by the Governing Body in accordance with the provisions of *N.J.S.A.* 40A:12A-7; and

WHEREAS, thereafter a redevelopment plan entitled the "Amended and Restated Redevelopment Plan, Texaco Redevelopment Area, City of Bayonne, Hudson County, New Jersey" dated September 8, 2015 (the "Amended and Restated Redevelopment Plan") was prepared for the Governing Body's consideration; and

WHEREAS, on September 8, 2015, the Planning Board reviewed the Amended and Restated Redevelopment Plan and adopted a resolution recommending the adoption of the Amended and Restated Redevelopment Plan to the Governing Body and concluded that the Amended and Restated Redevelopment Plan is consistent with the Master Plan of the City; and

WHEREAS, on September 16, 2015, the Governing Body adopted by Ordinance No. O-8 adopted approving the Amended and Restated Redevelopment Plan, which superseded and replaced the Original Redevelopment Plan; and

WHEREAS, on June 19, 2019, the Governing Body adopted Ordinance No. O-19-41 authorizing an amendment to the Amended and Restated Redevelopment Plan, to include billboards as a permitted use, which amended was entitled the "Amended Redevelopment Plan, Texaco" dated May 15, 2019 ("Amendment No. 1"); and

WHEREAS, on October 21, 2020, the Governing Body adopted Ordinance O-20-54, approving a redevelopment plan, entitled "Amended Redevelopment Plan Texaco Redevelopment Area" dated September 2020 (the "Redevelopment Plan") for the Texaco Redevelopment Area which amended and superseded the Original Redevelopment Plan, Amended and Restated Redevelopment Plan and Amendment No. 1; and

WHEREAS, on December 16, 2020, the City adopted Resolution R-15 authorizing the negotiation and preparation of a redevelopment agreement with the Entity for the redevelopment of the Texaco Redevelopment Area; and

WHEREAS, the Entity is the fee title owner to the following properties within the Texaco Redevelopment Area: Block 332, Lot 3, Block 360, Lot 2; Block 390, Lots 1 and 2 (a.k.a. RG67); and Block 391, Lots 1 and 2, and as further described in Exhibit A (the "Property"); and

WHEREAS, the Property is in the Texaco Redevelopment Area and is subject to the Redevelopment Plan; and

WHEREAS, the "Project" will consist of the necessary development, redevelopment, and construction of an entertainment and film studio, and additional principal and accessory uses complimentary to the principal film studio use in accordance with the Redevelopment Plan and related improvements on the Property as further described in the Redevelopment Agreement (defined below); and

WHEREAS, on December 16, 2020, the City adopted Resolution R-15 authorizing the execution of that certain Redevelopment Agreement with the Entity (the "Redevelopment Agreement"); and

WHEREAS, the Redevelopment Agreement provides in relevant part that the Entity proposes to construct the Project (as defined in the Redevelopment Agreement) on the Property in accordance with the Redevelopment Agreement and the Redevelopment Plan; and

WHEREAS, in order to improve the feasibility of the Project, the Entity applied to the Mayor and Governing Body for a long term tax exemption for the Project in accordance with the Long Term Tax Exemption Law, N.J.S.A. 40A:20-1 et seq. (the "Exemption Law"), and the Redevelopment Area Bond Financing Law, N.J.S.A. 40A:12A-64 et seq. (the "RAB Law"), pursuant to an application dated January 26, 2022 (as amended and supplemented, the "Application"), which is on file with the City Clerk; and

WHEREAS, the City has enacted Ordinance ________ (the "Exemption Ordinance"), which, among other things, approved a long term tax exemption with respect to the Project on the terms and conditions set forth herein and the execution of this Agreement; and

WHEREAS, pursuant to the RAB Law, specifically N.J.S.A. 40A:12A-68, the Annual Service Charge (as such term is defined herein) shall, upon the recordation of this Financial Agreement and the Ordinance, constitute a municipal lien on the Entity's interest in the Property and the Improvements (as hereinafter defined) of the Project within the meaning of Applicable Law (as such term is defined herein); and

WHEREAS, pursuant to and in accordance with the provisions of the RAB Law, and particularly N.J.S.A. 40A:12A-67(a), the City may issue bonds in order to finance a portion of the costs of the Project (the "Bonds") in accordance with the terms and provisions of an "Indenture of Trust" (the "Trust Indenture"), to be dated the first day of the month in which the Bonds are issued, by and between the City and the trustee named therein (the "Trustee"); and

WHEREAS, pursuant to the terms of this Financial Agreement and the Pledge Agreement (as defined herein), the Pledged Annual Service Charge (as defined herein) shall be pledged to the payment of the principal of and interest on the Bonds; and

WHEREAS, the Entity has represented, and the City has determined, that the assistance provided to the Project pursuant to this Financial Agreement will be a significant inducement for the Entity to proceed with the Project and that based on information set forth in the Application, the Project would not be feasible without such assistance; and

WHEREAS, pursuant to this Financial Agreement, the City, and the Entity desire to set forth in detail their mutual rights and obligations with respect to the Long Term Tax Exemption, payment of the Annual Service Charge by the Entity, and the issuance of the Bonds and provision for repayment thereof through the Pledged Annual Service Charge; and

WHEREAS, the Governing Body has reviewed the Application and has made the following findings:

A. Benefits of Project v. Costs.

i. The development and construction of the Project as set forth in the Redevelopment Agreement and Redevelopment Plan will be beneficial to the City by eradicating the environmental contamination upon the Property, generating significant employment opportunities to be enjoyed by the community, and will achieve the redevelopment goals and objectives of the City. These goals and objectives include, without limitation, to: (1) to provide for the coordinated and orderly development of vacant brownfield sites and underutilized transitional land within the Texaco Redevelopment Area in a manner consistent with the City Master Plan, Hudson County Strategic Revitalization Plan and State Development and Redevelopment Plan; (2) to enhance the physical condition of the area by completing site remediation, demolishing obsolete structures, rehabilitating physically deficient structures, making infrastructure improvements and providing for new development that will enhance the function and visual appearance of the area; (3) to require the development of a community park and a waterfront walkway having approximately 6.15 acres of land dedicated to such public purposes; (4) to ensure high-quality and visually attractive redevelopment through the creation appropriate buffering/screening, creative site plan layout, architectural design standards and access management; (5) to ensure compliance with all applicable NJDEP, NJDOT and other governmental standards for redevelopment; and (6) to generate economic development opportunities that will create private sector investment, produce new jobs, and increase tax ratables;

ii. It is anticipated that the development of the Project will create approximately two thou2,600 construction jobs over the duration of the construction of the Project, as well as approximately 2,100 full-time permanent jobs in connection with the operation of the Project.

iii. Current annual property taxes are approximately $1.2 million of which the City receives approximately $530,000. It is projected that, once fully operational, over $190,000,000 in direct, indirect and induced new local commerce annually will be generated by the Project as this will be a catalyst for other redevelopment projects in the City. The Unpledged Annual Service Charge to be paid to the City (including the City's share of Land Taxes) starts at an estimated $2.6 million (at full build out) and rises to an estimated $7.5 million over the thirty-year PILOT term. The City's representatives have determined that the benefits to the City accruing as a result of the Project, including the payment of current taxes, performing all necessary environmental remediation of the Property, the provision of public open space, including a waterfront walkway, the revitalization of the Property, the installation of infrastructure and the generation of jobs as described above, will substantially outweigh any costs to the City resulting from the Long Term Tax Exemption granted herein.

B. Importance of Long Term Tax Exemption.

The Governing Body's approval of the Long Term Tax Exemption set forth herein is essential to the success of this Project because:

i. The Project includes over 1.4 million square feet of total building space, including a structured parking garage and multiple buildings across approximately 58 upland acres. The Project also includes substantial on-site infrastructure (streets, sanitary sewers, storm sewers, utility lines and drainage facilities) and significant off-site improvements as required in the Bayonne site plan approval, including the park and waterfront walkway improvements. Such redevelopment will require significant capital improvements, including demolition of existing structures, environmental remediation, substantial fill to increase the elevation of the Property, and bulkhead improvements. In addition, due to the nature of financing and implementing the various improvements, which are desirable for the health, safety and welfare of the community, and the requirement for specialized tenant improvements specifications, the period of lease-out and unknown costs of the tenant build-out materially increase the risk and appurtenant costs of the Project. As a result, in the current real estate marketplace, the rents likely to be achieved by this Project are not sufficient to pay for the costs of the construction and the payment of future full taxes; however, current taxes and required annual tax levy increases thereon shall be paid.

ii. The relative stability and predictability of the Annual Service Charge associated with the Project will make it more attractive to financial institutions whose participation is necessary in order to finance the Project.

iii. The relative stability and predictability of the Annual Service Charge will allow the Entity to provide a high level of maintenance for the Project and will have a positive impact on the surrounding area and community.

iv. The financial benefit conferred by the Long Term Tax Exemption assists in the undertaking of environmental remediation and public infrastructure improvements as a part of the Project.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein, and for other good and valuable consideration, the Parties to this Agreement mutually covenant and agree as follows:

ARTICLE I - GENERAL PROVISIONS

Section 1.1 Governing Law

This Financial Agreement shall be governed by, as applicable, the provisions of the Exemption Law, the Redevelopment Law, the Ordinance, the RAB Law, and all other Applicable Law. It is expressly understood and agreed that the City relied upon the facts, data, and representations contained in the Application in its granting of the Long Term Tax Exemption and the Application is hereby incorporated into this Financial Agreement by reference.

Section 1.2 General Definitions.

Unless specifically provided otherwise or the context otherwise requires, when used in this Agreement, the following terms and phrases shall have the following respective meanings:

Acts – Shall have the meaning specified in the recitals.

Administrative Fee – Shall have the meaning specified in Section 4.9 hereof.

Agreement – Shall have the meaning specified in the preamble.

Allowable Net Profit (also referred to as "ANP") – The amount arrived at by applying the Allowable Profit Rate pursuant to the Exemption Law.

Allowable Profit Rate (also referred to as "APR") – The allowable profit rate as defined in N.J.S.A. 40A:20-3(b).

Annual Audited Statement – A complete financial statement outlining the financial status of the Project, which shall also include a computation of Net Profit, Allowable Net Profit, and Annual Gross Revenue, prepared annually by the Entity's certified public accountant. The Annual Audit Statement shall also include a statement as to the Project Debt as of the last day of the period of time that is the subject of such Annual Audit Statement. The contents of each Annual Audited Statement shall be prepared in conformity with Generally Accepted Accounting Principles, the Exemption Law, and this Agreement.

Annual Gross Revenue – Annual gross revenue of the Entity as defined as Gross Revenue in N.J.S.A. 40A:20-3(a) but specifically excluding, without limitation, the proceeds of any condemnation or casualty awards, insurance proceeds, any gain realized by the Entity on the sale, transfer, or other assignment or assumption of the Project or portion thereof, reimbursement of expenses by any tenant under any lease or rental agreement (including, without limitation, reimbursement of expense items such as Annual Service Charges, Land Taxes, utilities, sewer and water charges and other CAM charges), proceeds of any financing or refinancing, or proceeds from any disposition of a partner or a partner's interest in the Entity or any successor entity.

Annual Service Charge – The total annual amount that the Entity has agreed to pay for services supplied to the Project, which sum is in lieu of any taxes on the Improvements pursuant to the Exemption Law. The Annual Service Charge shall be calculated and paid pursuant to Article IV hereof.

Applicable Law - Any and all federal, state, and local laws, rules, regulations, rulings, court orders, statutes, and ordinances applicable to the Project, the Property, the Long Term Tax Exemption, the Annual Service Charge, or the Bonds.

ASC Commencement Date – The first day of the month following the date that the Project is eligible for its first Certificate of Occupancy, on which date the Entity shall commence payment of the Annual Service Charge, as more fully set forth herein.

Bonds – Shall have the meaning specified in the recitals and shall be initially issued with a full faith and credit guaranty of the City secured by the Pledged Annual Service Charge and the Letter of Credit. Bonds shall include nominal bonds issued in the amount of $5,000,000 or less and may be nonrecourse to the City.

Certificate of Occupancy - A temporary or permanent certificate of occupancy issued by the appropriate City official, pursuant to N.J.S.A. 52:27D-133, authorizing the occupancy of a building or any portion thereof.

City – Shall have the meaning specified in the preamble.

Control (including the correlative meanings of the terms "Controlling", "Controlled by" and "under direct or indirect common Control with") - As used with respect to any Person, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management policies of such Person, whether through the ownership of voting securities or by contract or otherwise.

County Share – Five percent (5%) of the Unpledged Annual Service Charge (after the Land Tax Credit) collected by the City, which the City shall remit to the County of Hudson.

Days – Whenever the word "Days" is used to denote time, it shall mean calendar days.

Debt Service Charges – Debt service including principal and interest paid or to be paid on the Bonds, reserves and administrative expenses related to the Bonds (or any Bonds issue to refinance the Bonds), as further described in the Trust Indenture.

Default – A breach or failure of the City or the Entity to perform any obligation imposed by the terms of this Agreement or under the Exemption Law, beyond any applicable grace or cure periods set forth in this Agreement.

Effective Date – Shall have the meaning specified in the preamble.

Entity – The entity specified in the preamble of this Agreement, which shall be qualified as an urban renewal entity under the Exemption Law. Unless the context provides otherwise, it shall also include any permitted Transferee, as set forth in Article IX hereof.

Excess Net Profits - The amount of Net Profits that exceeds the Allowable Net Profits for the applicable accounting period as determined in accordance with the Exemption Law.

Exemption Law – Shall have the meaning specified in the recitals.

Exemption Ordinance – Shall have the meaning specified in the recitals.

Exemption Term(s) – With respect to the Improvements, the period beginning on the applicable ASC Commencement Date and ending on the Termination Date.

Floor Annual Service Charge – The amount calculated pursuant to Section 4.2(b) hereof and as set forth in Exhibit B-2.

Governing Body – Shall have the meaning specified in the recitals.

Improvements – Any building, structure, improvement, addition, or fixture permanently affixed to the Property existing or to be constructed and exempt under this Agreement.

Land Taxes – The amount of real estate taxes levied on the Property, exclusive of any Improvements related thereto.

Land Tax Credit – Shall have the meaning specified in Section 4.5(b) hereof.

Letter of Credit – A direct pay letter of credit, to be approved by the City Administrator, securing the payment of the principal portion of the Debt Service Charges, which letter of credit shall not be required if the Bonds are nonrecourse to the City and are not guaranteed by the City. Further, the Letter of Credit shall be reviewed after seven (7) years from the Effective Date and, if the Entity is not in Default of this Agreement, the City shall meet with representatives of the Entity to negotiate a reduction in the Letter of Credit.

Long Term Tax Exemption – The long term tax exemption granted in accordance with the Exemption Law, the RAB Law, the Ordinance, and this Agreement.

Minimum Annual Service Charge – The minimum annual service charge shall be the amount of the total taxes levied against the Property in the last full tax year in which the Property was subject to taxation.

Minimum Municipal Share - An amount calculated pursuant to Exhibit C.

Net Profit – Annual Gross Revenue less all operating and non-operating expenses and costs of the Entity, all determined in accordance with generally accepted accounting principles and the provisions of the Exemption Law.

Party or Parties – Shall have the meaning specified in the recitals.

Payment Default - Nonpayment of any monetary amounts due hereunder, including all or a portion of the applicable taxes on the existing improvements, Land Taxes, Administrative Fee, or Annual Service Charge, as the case may be, or nonpayment of any payments under the Special Assessment Agreement or other agreement which provides that a nonpayment thereunder shall be a Payment Default under this Agreement.

Person – Shall mean any individual, sole proprietorship, corporation, partnership, joint venture, limited liability company or corporation, trust, unincorporated association, institution, public or governmental body, or any other entity.

Pledge Agreement – That certain Pledge Agreement to be dated the date of issuance of the Bonds, entered into by and between the City and the Trustee.

Pledged Annual Service Charge – An amount sufficient to pay the Debt Service Charges sixty (60) days prior to the date such amount is due which shall be set forth in Exhibit B-1 upon the issuance of the Bonds (which Exhibit B-1 shall be filed and recorded with the Hudson County Register by the City, at the Entity's expense).

Project – Shall have the meaning specified in the recitals.

Property – Shall have the meaning specified in the recitals.

PSF – Shall mean per square feet.

RAB Law – Shall have the meaning specified in the recitals.

Redevelopment Agreement – Shall have the meaning specified in the recitals.

Redevelopment Law – Shall have the meaning specified in the recitals.

Redevelopment Plan – Shall have the meaning specified in the recitals.

Secured Party or Secured Parties – Shall have the meaning defined in Section 9.3(a) of this Agreement.

Security Arrangements – Shall have the meaning defined in Section 9.3(a) of this Agreement.

Special Assessment Agreement – That certain "Special Assessment Agreement" to be entered into by and between the Entity and the City.

Substantial Completion – The determination by the City that the Project, in whole or in part, is ready for the use intended. The issuance of, or eligibility for, any Certificate of Occupancy for any portion of the Project exceeding 100,000 square feet of building space shall be conclusive proof of Substantial Completion.

Tax Sale Law – N.J.S.A. 54:5-1 et seq., as the same may be amended or supplemented from time to time.

Termination Date – The earlier to occur of: (i) the thirtieth (30^{th}) anniversary date of the ASC Commencement Date; (ii) such other date as this Agreement may terminate pursuant to the terms hereof or pursuant to Applicable Law; or (iii) the thirty-fifth (35^{th}) anniversary of the Effective Date.

Total Project Cost - The total cost of developing the Project, as calculated in accordance with N.J.S.A. 40A:20-3(h).

Transferee – Shall have the meaning specified in Article IX of this Agreement.

Trust Indenture - Shall have the meaning specified in the recitals.

Trustee – Shall have the meaning specified in the recitals.

Unpledged Annual Service Charge – The amount calculated pursuant to Exhibit B-2.

ARTICLE II - PROJECT AND PROPERTY

Section 2.1. City's Findings

Pursuant to the Exemption Law, the City finds that, in addition to the findings and determinations set forth in the recitals to this Agreement and incorporated by reference herein, the Long Term Tax Exemption granted pursuant to the Ordinance and this Agreement will benefit the City and the community by aiding the successful redevelopment of the Property, which exhibits the statutorily recognized redevelopment criteria. The benefits of granting the Long Term Tax Exemption will substantially outweigh the costs, if any, associated with the Long Term Tax Exemption. The Long Term Tax Exemption is important to the City and the Entity because without the incentive of the Long Term Tax Exemption, it is unlikely that the Project would be undertaken. The Long Term Tax Exemption is expected to attract future occupants to the Project, and it will help to offset the costs of developing and constructing the Project. The high costs associated with the development and construction of the Project and the real estate taxes that would otherwise be levied upon the Project would operate as a disincentive to the redevelopment of the Property and would therefore frustrate the objectives and goals of the Redevelopment Plan and would make the Project materially less competitive in the marketplace or impracticable to undertake.

Section 2.2 Approval of Agreement

The City hereby approves a Long Term Tax Exemption for the Improvements in accordance with the terms hereof, which are to be constructed and maintained on the Property in accordance with the terms and conditions set forth herein, the provisions of the Exemption Law, the Redevelopment Agreement, the Redevelopment Plan, the Redevelopment Law, and other Applicable Law.

Section 2.3 Approval of the Entity

The City hereby approves of the Entity in reliance upon the Entity's representation that its Certificate of Formation contains all the requisite provisions of law, has been reviewed and approved by the Commissioner of the Department of Community Affairs, and has been filed with, as appropriate, the Department of Treasury, all in accordance with N.J.S.A. 40A:20-5.

Section 2.4 Redevelopment of the Property

The Entity represents and covenants that it will develop and construct the Project in accordance with the terms of the Redevelopment Agreement and the Redevelopment Plan.

Section 2.5 Entity's Relationship to Property

The Entity represents that as of the Effective Date of this Agreement, it owns an undivided interest in the Property.

ARTICLE III – OWNERSHIP, MANAGEMENT, AND CONTROL

Section 3.1 Entity's Representations, Warranties, and Covenants

(a) The Entity represents that it will remain the owner of an undivided interest in the Property and owner of the Improvements throughout the development and construction of the Project, subject to its rights of transfer and other provisions set forth in Article IX hereof and the terms of the Redevelopment Agreement.

(b) To the extent not otherwise set forth herein, those items required by N.J.S.A. 40A:20-9 and/or the Exemption Ordinance to be included in this Agreement are set forth in the Application, which is incorporated herein as if set forth at length, and the Entity represents and warrants as to the accuracy of the contents thereof; however, to the extent that a conflict between the Application and this Agreement exists, the language in this Agreement shall govern and prevail. Furthermore, to the extent there is any conflict between the language in this Agreement and the Exemption Ordinance or any other ordinance, resolution (other than the resolution authorizing the Redevelopment Agreement or any other agreement with respect to the Project), or other official action heretofore adopted by the City, the language in this Agreement shall govern and prevail, and any such conflicting language in the Exemption Ordinance or other applicable City ordinance, resolution (other than the resolution authorizing the Redevelopment Agreement or any other agreement with respect to the Project), or other official action is hereby superseded as applied to the Project.

(c) After the Termination Date, all restrictions and limitations of this Agreement imposed upon the Entity, the Property, and the Project shall terminate, excluding (i) the requirement to make payment of any Annual Service Charge then due and owing hereunder, (ii) the requirement to make payment to the City of any then due and owing reserves or Excess Net Profit, if applicable, in accordance with Section 7.1 hereof, and (iii) any and all related and available remedies of the City or the Trustee, shall terminate upon the end of the fiscal year of the Entity in which the Termination Date occurs, in accordance with N.J.S.A. 40A:20-13; provided, however, that the Entity has rendered the Entity's final accounting in accordance with N.J.S.A. 40A:20A-12 and paid all amounts due hereunder.

(d) NOTWITHSTANDING THE PROVISION OF SECTION 8.1 HEREOF, IN ACCORDANCE WITH THE RAB LAW, SPECIFICALLY N.J.S.A. 40A:12A-66(A), DURING ANY PERIOD IN WHICH ANY BONDS REMAIN "OUTSTANDING" WITHIN THE MEANING OF THE TRUST INDENTURE, THE PROVISIONS OF THE EXEMPTION LAW PERMITTING THE ENTITY TO RELINQUISH ITS STATUS AS AN URBAN RENEWAL ENTITY, SPECIFICALLY N.J.S.A. 40A:20-9(G) AND N.J.S.A. 40A:20-13, SHALL BE INAPPLICABLE AND THE ENTITY SHALL NOT RELINQUISH ITS STATUS AS AN URBAN RENEWAL ENTITY DURING SUCH TIME PERIOD. IN ADDITION, THE ENTITY SHALL HAVE NO RIGHT TO TERMINATE, AND SHALL NOT TERMINATE, THIS AGREEMENT WHILE ANY BONDS REMAIN "OUTSTANDING" WITHIN THE MEANING OF THE TRUST INDENTURE.

ARTICLE IV- TAX EXEMPTION

Section 4.1 Duration of Tax Exemption

The Improvements shall be exempt from taxation during their respective Exemption Terms.

Section 4.2 Annual Service Charge

In consideration of the City granting the Entity the exemption set forth in Section 4.1 of this Agreement, during the Exemption Term, the Entity shall pay the City the Annual Service Charge. The Annual Service Charge (prior to the Land Tax Credit) shall be the greater of: (a) the Minimum Annual Service Charge plus the Pledged Annual Service Charge; (b) the Pledged Annual Service Charge plus the Unpledged Annual Service Charge (the "Floor Annual Service Charge"); (c) the Minimum Municipal Share plus the Land Tax Credit plus the Pledged Annual Service Charge (provided that if such amount exceeds the Floor Annual Service Charge, the Minimum Municipal Share shall be decreased by forty percent (40%) of the amount by which the amount calculated in this Section 4.2(c) exceeds the amount in Section 4.2(b)); (d) an amount equal to (i) ten percent (10%) of Annual Gross Revenues from the ASC Commencement Date through and including December 31st of the fifth (5th) anniversary of the December 31st immediately following the ASC Commencement Date and (ii) eighteen percent (18%) of Annual Gross Revenues from the fifth (5th) anniversary of the December 31st immediately following the ASC Commencement Date until the expiration or termination of this Agreement; or (e) an amount equal to (i) zero percent (0%) of OAT from the ASC Commencement Date through and including December 31st of the twentieth (20th) anniversary of the December 31st immediately following the ASC Commencement Date; (ii) twenty percent (20%) of OAT from the twentieth (20th) anniversary of the December 31st immediately following the ASC Commencement Date until the twenty-first (21st) anniversary of the December 31st immediately following the ASC Commencement Date; (iii) forty percent (40%) of OAT from the twenty-first (21st) anniversary of the December 31st immediately following the ASC Commencement Date until the twenty-fourth (24th) anniversary of the December 31st immediately following the ASC Commencement Date; (iv) sixty percent (60%) of OAT from the twenty-fourth (24th) anniversary of the December 31st immediately following the ASC Commencement Date until the twenty-seventh (27th) anniversary of the December 31st immediately following the ASC Commencement Date; and (v) eighty percent (80%) of OAT from the twenty-seventh (27th) anniversary of the December 31st immediately following the ASC Commencement Date until the expiration or termination of this Agreement.

Section 4.3 Pledged Annual Service Charge

The Entity shall pay the Pledged Annual Service Charge to the Trustee as described at Section 4.11 below and in the Trust Indenture.

Section 4.4 Unpledged Annual Service Charge

The Entity shall pay the City the Unpledged Annual Service Charge. The Unpledged Annual Service Charge shall equal the Annual Service Charge less the Pledged Annual Service Charge. Against the Unpledged Annual Service Charge the Entity shall be entitled to a Land Tax Credit as described in Section 4.5(b) hereof. Bonds (nominal or otherwise) shall remain outstanding as set forth in Section 3.1(d) hereof for the term of this Agreement.

Section 4.5 Land Taxes

(a) The Entity shall be obligated to make timely payments of the Land Taxes throughout the term of this Agreement, which such Land Taxes payments shall be a credit to the ASC pursuant to the following paragraph.

(b) From and after the ASC Commencement Date, the Entity shall be entitled to a credit for the amount, without interest, of the payments of Land Taxes applicable to the Project, made for the last four (4) preceding quarterly installments (the "Land Tax Credit") against the next due Unpledged Annual Service Charge. In any year that the Entity fails to make any Land Tax payments, if and when due and owing, subject to any grace periods, such delinquency shall render the Entity ineligible for any credits against the Unpledged Annual Service Charge for that year. No credit will be applied against the Unpledged Annual Service Charge for partial payments of Land Taxes. In addition, the City shall have, among this remedy and other remedies, the right to proceed against the Project, and/or to declare a Default.

Section 4.6 Quarterly Installments

The Annual Service Charge shall be paid in quarterly installments on those dates when ad valorem real estate tax payments on other properties within the City are due, subject to adjustment for overpayment or underpayment within thirty (30) Days after the close of each calendar year. The City shall issue the Entity bills for the Annual Service Charge in a manner generally consistent with the manner of its billing of ad valorem real estate tax payments on other property in the City.

Section 4.7 Rights and Obligations Related to Long Term Tax Exemption

All Annual Service Charge payments made pursuant to this Agreement shall be in lieu of taxes and the City shall have the rights and remedies of tax enforcement granted to a municipality by Applicable Law, including those of in rem tax foreclosure pursuant to N.J.S.A. 54:5-1, just as if said payments constituted regular real property tax obligations on other real properties within the City.

Section 4.8 Remittance to County

The City shall remit the County Share to the County of Hudson in accordance with N.J.S.A. 40A:20-12(b)(2)(e).

Section 4.9 Administrative Fee

After the ASC Commencement Date, the Entity (and/or any Transferee, as may be applicable from time to time) shall pay to the City no later than December 1st of each year an administrative fee for the preceding year (the "Administrative Fee") in an amount equal to two percent (2%) of the Annual Service Charge due for such year, which is permitted by N.J.S.A. 40A:20-9.

Section 4.10 Payments During Construction

The Parties agree that conventional property taxes are due from time to time in accordance with Applicable Law prior to the ASC Commencement Date. During such period, the partially constructed Improvements shall be exempt from taxation and therefore not subject to a partial, added, omitted or similar assessment based on the value of those incomplete Improvements, provided however, that if the Entity does not Substantially Complete the Improvements by the fifth (5th) anniversary of the Effective Date then, at such time, any partially constructed Improvements shall be subject to partial assessments in accordance with general tax law until the ASC Commencement Date.

Section 4.11 Payments to Trustee

At all times during the term of this Agreement, the Entity (and/or any Transferee as may be applicable from time to time) shall pay all Pledged Annual Service Charge(s) to the City or its representative (such as a Trustee), if any, due to the Trustee for application in accordance with the Trust Indenture.

The Entity (and/or any Transferee as may be applicable from time to time) shall pay the Unpledged Annual Service Charges and the Administrative Fee directly to the City.

ARTICLE V – CONSENT TO ANNUAL SERVICE CHARGE; PLEDGE OF PLEDGED ANNUAL SERVICE CHARGE TO BONDS

Section 5.1 Entity's Consent

The Entity hereby acknowledges, consents, and agrees (a) to the amount of the Annual Service Charge and to the liens established in this Agreement, (b) that it shall not contest the validity or amount of any such lien, and (c) that its remedies shall be limited to those specifically set forth herein and otherwise provided by Applicable Law.

If any installment of the Annual Service Charge is not paid in accordance with this Agreement on the date and in the full amount scheduled to be paid, the Entity hereby expressly waives any objection or right to challenge the use by the City or the Trustee of the enforcement of remedies to collect such installment of the Annual Service Charge as are afforded the City by law, including the Tax Sale Law; provided, however, that acceleration of any amounts due and owing to repay the Bonds shall be as set forth in the Trust Indenture, and if the Trust Indenture shall provide for no acceleration, such remedies shall be limited solely to the collection of delinquent and unpaid amounts past due for payment, including interest, penalties, and costs of collection provided for by the Tax Sale Law.

Section 5.2 Terms of and Security for the Bonds

(a) Pursuant to the RAB Law, specifically N.J.S.A. 40A:12A-67(c), and as security for the Bonds, the Pledged Annual Service Charge shall be pledged to the repayment of the Bonds, in accordance with and as further set forth in the Pledge Agreement.

(b) Pursuant to the RAB Law, specifically N.J.S.A. 40A:12A-67(c), and other Applicable Law, the Pledged Annual Service Charge shall not be included within the general funds of the City.

(c) The Unpledged Annual Service Charge shall in no event constitute a portion of the trust estate under the Trust Indenture, or otherwise constitute security for, the Bonds, and the Trustee, if it shall receive any Unpledged Annual Service Charges, shall not set-off any such amount against any unpaid Pledged Annual Service Charge, and accordingly, the Trustee shall transmit such Unpledged Annual Service Charge promptly to the City.

(d) It is hereby expressly understood by the Parties that under no circumstances shall the City be required to purchase, or otherwise fund, any tax lien, tax sale certificate, or other mechanism for the enforcement of the Annual Service Charge, the sole obligation of the City being to undertake the sale of the tax liens in the same manner, and at the same time, as generally applicable for unpaid taxes due and owing to the City, subject to all Applicable Laws (including bankruptcy laws).

(e) In addition to being secured by the Pledged Annual Service Charge and the Letter of Credit, the Bonds shall be secured by a full faith and credit guaranty of the City. The Bonds shall be issued with a maximum thirty-year (30) year amortization following a maximum of five (5) year interest-only period. The proceeds of the Bonds shall be approximately sixty-five million dollars ($65,000,000.00). However, nominal Bonds in the amount of five million ($5,000,000) or less may be issued as nonrecourse Bonds. The Bonds, other than nominal Bonds, shall fund two (2) years of capitalized interest, costs of issuance and certain portions of the Project (as determined by the Parties) in an amount of approximately sixty million dollars ($60,000,000.00). The City shall receive a completion guarantee for the construction of the Project n form and substance and from an entity approved either by a majority equity partner of the Entity or construction lender, and the City Administrator. The Bonds shall be issued, simultaneously with or subsequent to the expenditure of Project funds by the Entity whether through equity or debt after November 30, 2022. The proceeds of the Bonds for the Project shall be disbursed pro-rata with the disbursement of funds used for the Project. Should the Bonds be issued as non-recourse to the City or refunded or refinanced as non-recourse Bonds, then the Letter of Credit shall not be required by the City. Further, the Letter of Credit shall be reviewed after seven (7) years from the Effective Date and, if the Entity is not in Default, the City shall meet with representatives of the Entity to negotiate a reduction in the Letter of Credit.

ARTICLE VI - DISPUTE RESOLUTION

Section 6.1 Agreement to Arbitrate

Except with respect to nonpayment, if the City or the Entity breaches this Agreement, or a dispute arises between the Parties regarding the terms and provisions set forth herein, including, without limitation, with respect to the calculation of the Annual

Service Charge hereunder, then the Parties shall submit the dispute to the American Arbitration Association in the State of New Jersey, to be resolved in accordance with its rules and regulations in such fashion as to accomplish the purposes of the Exemption Law and this Agreement. The costs of the arbitrator shall be borne equally by the Parties involved in the arbitration. The award rendered by the arbitrator(s) shall be final, and judgment may be entered upon it in accordance with Applicable Law in any court having jurisdiction. Notwithstanding the foregoing, the Entity shall have the right to appeal any Land Taxes, but not the taxes assessed against the Improvements except as provided herein.

Section 6.2 Covenant to Make Payments

The Entity agrees that the timely payment of the taxes on the existing improvements, Land Taxes, the Administrative Fee, and the Annual Service Charge to the City, all as described herein, as well as continued compliance with the Applicable Laws, are material conditions of this Agreement. The failure to make any of the aforesaid payments in timely fashion shall constitute a breach of the Redevelopment Agreement, a breach of this Agreement, and a tax payment delinquency under Applicable Law.

Section 6.3 Notification of Breach Required

Other than with respect to a Payment Default, the City shall notify the Entity in writing of any breach relating to the terms of this Agreement. If the Entity fails to cure a Payment Default within ten (10) Days, or any other breach identified within thirty (30) Days after the actual delivery of such notice by the City, or within any additional periods to which the Parties may agree to, in writing, the City may invalidate the Long Term Tax Exemption upon thirty (30) Days' written notice to the Entity, which shall inform the Entity that the Long Term Tax Exemption shall terminate due to the breach of the terms of this Agreement.

Section 6.4 City’s Remedies Upon Default

The City’s remedies upon its declaration of Default shall be cumulative and concurrent. No determination under this Agreement shall deprive the City of its right to proceed against the Entity for the nonpayment of all or a portion of the applicable taxes on the existing improvements, Land Taxes, Administrative Fee, or Annual Service Charge, as the case may be, including any arrearage that would accrue in the absence of such determination.

Section 6.5 Force Majeure

Neither Party shall be liable to the other for failure to perform its obligations under this Agreement due to causes that are beyond the reasonable control and not substantially due to the fault or negligence of the Party seeking to excuse delay or failure of performance of an obligation hereunder by reason thereof, including, but not limited to, declarations of public emergency; acts of nature (as to weather-related events, limited to severe and unusual events or natural occurrences such as hurricanes, tornadoes, blizzards necessitating a declared statewide public emergency order, earthquakes, and floods); acts of the public enemy; acts of terrorism; acts of war; fire; epidemics or pandemics; quarantine restrictions; blackouts, power failures, or energy shortages; governmental embargoes; strikes or similar labor action by equipment or material suppliers or transporters; defaults or bankruptcies of contractors or subcontractors; or unavailability of necessary building materials. <u>Notwithstanding the foregoing, the payment of the Administrative Fee, Land Taxes, and Annual Service Charges are material conditions of this Agreement which shall not be excused by the occurrence of a Force Majeure event.</u>

ARTICLE VII - LIMITATION ON PROFITS; RESERVES; REFINANCING

Section 7.1 Entity's Covenant of Limitation on Profits

During the Exemption Term, the Entity's profits shall be limited, according to the provisions of the Exemption Law and the definitions set forth therein. In accordance with Section 15 of the Exemption Law, for any period, taken as one (1) accounting period, commencing on the ASC Commencement Date, and terminating at the end of the last full fiscal year of the Exemption Term, in which the Entity's Net Profits exceed the Allowable Net Profit, the Excess Net Profits shall be paid to the City as an additional Unpledged Annual Service Charge within one hundred twenty (120) Days of the close of the Entity's fiscal year. In accordance with N.J.S.A. 40A:20-15, Excess Net Profits shall be calculated on an annual but cumulative basis. The calculation of the Entity's Excess Net Profits shall include those project costs directly attributable to site remediation and cleanup expenses and any other costs excluded in the definition of Total Project Cost.

Section 7.2 Reserves Against Vacancies and Unpaid Rentals

Notwithstanding the foregoing and as permitted by Section 15 of the Exemption Law, during the Exemption Term, the Entity may maintain a reserve against vacancies, unpaid rentals, and contingencies in an amount of ten percent (10%) of Annual Gross Revenues for the last full fiscal year of the Project and may retain such part of those Excess Net Profits as is necessary to eliminate a deficiency in that reserve. The Entity's maintenance of the reserve hereunder shall not reduce the Unpledged Annual Service Charge payable to the City in any year, except in years where the Entity pays Excess Net Profits to the City or would have paid Excess Net Profits to the City but for the maintenance of the reserve.

Section 7.3 Refinancing

Prior to any refinancing of any permanent mortgage in connection with the Project prior to the completion of the seventh (7^{th}) full year following the ASC Commencement Date, the Entity shall provide written notice to the City of such financing together with an estimated capital needs assessment conducted by a third-party consultant, selected by the Entity, that estimates additional funding requirements to complete the Project, if any, and identifies the anticipated source of funding for same. Notwithstanding anything to the contrary herein, the Entity may refinance its construction loan with permanent mortgage financing, and no further City review or notice in connection with the same is required.

ARTICLE VIII - TERMINATION OF AGREEMENT AND INSPECTIONS

Section 8.1 Voluntary Termination of the Agreement by Entity

NEITHER THE ENTITY NOR ANY OTHER TRANSFEREE OR PURCHASER MAY TERMINATE THIS AGREEMENT AT ANY TIME WHILE THE BONDS ARE "OUTSTANDING" WITHIN THE MEANING OF THE TRUST INDENTURE. Once the Bonds are no longer "outstanding" within the meaning of the Trust Indenture, the Entity or any Transferee may at any time after the expiration of one (1) year from the ASC Commencement Date, notify the City that, as of a certain date designated in the notice, it relinquishes its status as an urban renewal entity under the Exemption Law and that the Entity, or Transferee, has obtained the consent of the Commissioner of the Department of Community Affairs, if required by Applicable Law. As of that date, all of the obligations and requirements contained in this Agreement shall terminate with respect to the Entity or Transferee. Notwithstanding the foregoing, such relinquishment shall not impact the obligation of the Entity or the Transferee, as applicable, to make payment of any applicable Administrative Fee, taxes on existing improvements, Land Taxes, or Annual Service Charge that has accrued up to and including the Termination Date, or the obligation of the Entity or the Transferee, as applicable, to perform the final accounting required by the Exemption Law and Section 8.2 below.

Section 8.2 Termination and Final Accounting

Within ninety (90) Days after the Termination Date, whether by affirmative action of the Entity or by virtue of the provisions of the Applicable Law or pursuant to the terms of this Agreement, the Entity shall provide a final accounting and pay to the City the reserve, if any, pursuant to N.J.S.A. 40A:20-15, as well as any Excess Net Profits, if any payable as of that date. For purposes of rendering a final accounting, the termination of this Agreement shall be deemed to be the end of the fiscal year for the Entity.

Section 8.3 Taxes After Termination Date

After the Termination Date, the Long Term Tax Exemption shall expire, and the Improvements on the Property constructed thereupon shall thereafter be assessed and conventionally taxed according to Applicable Law as other real property in the City.

Section 8.4 Rights of Inspection

The Entity shall permit the inspection of its property, equipment, buildings, and other facilities of the Project by representatives duly authorized by the City and Division of Local Government Services in the Department of Community Affairs pursuant to N.J.S.A. 40A:20-9(e). The Entity shall also permit, upon written request, examination and audit of its books, contracts, records, documents, and papers relating to the Project by representatives duly authorized by the City and Division of Local Government Services in the Department of Community Affairs pursuant to N.J.S.A. 40A:20-9(e). Such inspection shall be made upon five (5) Days' prior written notice, in the presence of an officer or agent designated by the Entity. To the extent reasonably possible, the inspection will not materially interfere with construction or operation of the Project. Nothing in this section shall be construed to affect, limit, or restrict the powers of municipal, county, State, or other officials from carrying out those inspections that are generally applicable outside of the Exemption Law context, including, but not limited to, inspections by fire officials, construction code officials, etc.

ARTICLE IX - TRANSFERS

Section 9.1 Conveyance of Project

As permitted in N.J.S.A. 40A:20-10(a), it is understood and agreed that the Entity may, upon written notice to the City, sell the Land or Project in its entirety or any portion thereof to another urban renewal entity, qualified and organized under the Exemption Law (hereinafter referred to as a "Transferee"), provided that: (a) the Entity has received a Certificate of Completion (as defined in the Redevelopment Agreement) for the entire Project from the City, (b) the Transferee shall have demonstrated to the reasonable satisfaction of the City that such Transferee possesses the experience and capitalization to maintain, manage and operate the Project; (c) such Transferee owns no other project subject to the Exemption Law at the time of the transfer, (d) the Entity is not then in Default of this Agreement or Applicable Law, and (e) the Transferee assumes the Entity's obligations under this Agreement. Prior to the issuance of the Certification of Completion the Entity may transfer the Land or Project in accordance with the provisions of Sections 8.03 and 8.04 of the Redevelopment Agreement provided Sections 9.1 (c), (d) and (e) above are met. Upon a Transferee's assumption of the Entity's obligations under this Agreement, the Long Term Tax Exemption shall continue to the benefit of the Transferee and any of its Transferees.

Section 9.2 Obligations of Entity and Transferee After Conveyance

If the Entity transfers the Project to a Transferee pursuant to and in accordance with Section 9.1 hereof, then the Entity shall be absolutely discharged from any further obligations regarding the Project. Within ninety (90) Days after the close of the fiscal year in which a transfer of the Project in its entirety occurs, the Entity shall pay to the City any Excess Net Profits payable to the City pursuant to this Financial Agreement and the Exemption Law, to the extent applicable.

Section 9.3 Collateral Assignment

It is expressly understood and agreed that the Entity has the right, to the extent permitted by the Exemption Law and the Redevelopment Agreement, to encumber and/or assign the fee title to portions of the Property and/or Improvements for purposes of (i) financing the design, development, and construction of the Project, or (ii) obtaining permanent mortgage financing relating to the Project and that any such encumbrance or assignment shall not be deemed to be a violation of this Agreement.

(a) The City acknowledges that the Entity and/or Transferees intend to obtain secured financing in connection with the acquisition, development, and construction of the Project. The City agrees that the Entity and/or its Transferees may, subject to compliance with the Redevelopment Agreement (if still in effect) and the Exemption Law, assign, pledge, hypothecate, or otherwise transfer its applicable rights under this Agreement and/or its interest in the Project to one or more secured parties or any agents therefor (each, a "Secured Party" and collectively, the "Secured Parties") as security for obligations of the Entity and/or its Transferees, incurred in connection with such secured financing (collectively, the "Security Arrangements"). The Entity or Transferee, as applicable, shall give the City written notice of any such Security Arrangements, together with the name and address of the Secured Party or Secured Parties. Failure to provide such notice waives any requirement of the City hereunder to provide any notice of Default or notice of intent to enforce its remedies under this Agreement.

(b) To the extent permitted by the Exemption Law, and subject to compliance with the Redevelopment Agreement (if still in effect), in the absence of a Default by the Entity, the City agrees to consent to any collateral assignment by the Entity to any Secured Party or Secured Parties of its interests in this Agreement as they relate to the Project and to permit each Secured Party to enforce its rights hereunder and under the applicable Security Arrangement and shall, upon request of the Secured Party, execute such documents as are typically requested by secured parties to acknowledge such consent. This provision shall not be construed to limit the City's right to payment from the Entity, nor shall the priority of such payments be affected by the Secured Party exercising its rights under any applicable Security Arrangement.

ARTICLE X - ADDITIONAL COVENANTS AND REPRESENTATIONS

Section 10.1 Management and Operation

Subject to its rights to transfer pursuant to Section 9.1 of this Financial Agreement, the Entity represents and covenants that it will continue to own an undivided interest in the Property and the Improvements of the Project.

Section 10.2 Computation of Gross Revenue

The Entity shall calculate the Annual Gross Revenue in accordance with the Exemption Law and this Financial Agreement and the computation of Annual Gross Revenue shall be shown on the Entity's Annual Audited Statement.

Section 10.3 Annual Audited Statement

For so long as the Entity owns the Project and within ninety (90) Days after the close of each fiscal or calendar year (depending on the Entity's accounting basis) that this Financial Agreement shall continue in effect, commencing for the year in which the

Project first achieves Substantial Completion, the Entity shall submit to the Mayor of the City, the Governing Body, and the City Clerk, its Annual Audited Statement for the preceding fiscal or calendar year in accordance with the Exemption Law. The report shall clearly identify and calculate the Net Profit for the Entity during the previous fiscal year. The Entity assumes all costs associated with preparation of the Annual Audited Statements.

Section 10.4 Total Project Cost Audit

Within ninety (90) Days after a final Certificate of Occupancy is issued for the Project, the Entity shall submit to the Mayor and Governing Body, an audit of Total Project Costs, certified as to actual construction costs by the Entity's architect.

Section 10.5 First Source Employment

(a) The Entity shall make good faith efforts to employ and shall provide in its contracts with its contractors and subcontractors that they must make good faith efforts to employ, residents of the City in the construction of the Project. The Entity shall make good faith efforts to ensure that the residents of the City are employed in the operation of the Project and shall, to the extent the Entity engages a staffing, management consulting, or similar company for the operation of the Project or recruitment of such resident employees provide in its contracts that the contractor make good faith efforts to ensure that residents of the City are employed in the operation of the Project.

(b) In addition to the foregoing, the Entity will cooperate with efforts to recruit City residents for all employment opportunities in connection with the Project, including participation in the City job fairs and utilization of its central registry. The Entity agrees to meet with appropriate City officials to determine the status of recruitment and training efforts, and to plan future employment training and recruitment activities. All contracts entered into by the Entity for the construction of the Project shall contain appropriate language to effectuate this provision. To the extent requested by the City, the Entity shall submit reports to the City regarding compliance with this Section.

Section 10.6. Prevailing Wages and Union Labor.

The City has a compelling interest to ensure that construction contracts for projects that receive tax abatements under the Exemption Law and include bonds guaranteed by the City (such as the Bonds) are executed at responsible costs and with the highest degree of quality and otherwise are designed to achieve the public policy considerations of the City. Accordingly, the Entity hereby represents, warrants, and covenants that prevailing wages will be paid as set forth in the Prevailing Wage Law, *N.J.S.A.* 34:11-56.25 *et seq.* and it will enter into a project labor agreement or in the alternative contract with a 100% union shop for all trades and applicable construction employees covering the construction of the entire Project. The Entity shall provide the City with a semiannual certification that 100% of all persons in the applicable trades and other construction employees engaged to build the Project are union members paid prevailing wages.

ARTICLE XI - MISCELLANEOUS PROVISIONS

Section 11.1 Governing Law

This Financial Agreement shall be governed by the provisions of Applicable Law including but not limited to the Exemption Law.

Section 11.2 Oral Representation

Neither Party hereto has made any oral representation that is not contained in this Financial Agreement. This Financial Agreement and the Application, including all of the

Exhibits attached and annexed thereto, constitute the entire Financial Agreement by and between the Parties.

Section 11.3 Modification

This Agreement shall not be amended, changed, modified, altered, or terminated, other than as may be set forth herein, without the written consent of both of the Parties hereto; provided, however, that notwithstanding anything contained herein to the contrary, no modification or amendment to this Financial Agreement that would reduce the amount of the Pledged Annual Service Charge shall be effective, or otherwise have any force and effect, unless permitted by, or otherwise provided for in, the Trust Indenture or with the express written consent of the Trustee.

Section 11.4 Notices

All notices required hereunder shall be sent by certified mail, return receipt requested, or by recognized overnight courier, with proof of delivery, addressed as follows:

a) When sent by the City to the Entity:

Togus Urban Renewal LLC,
750 Lexington Avenue, 24th Floor,
New York, New York 10022

With a copy to:

Sills Cummis & Gross P.C.
1037 Raymond Boulevard, 13th Floor,
Newark, New Jersey 07102
ATTN: Cecilia I. Lassiter, Esq.

b) When sent by the Entity to the City:

City of Bayonne
City Hall,
630 Avenue C,
Bayonne, New Jersey 07002
ATTN: Honorable Mayor Davis

With a copy to:

City of Bayonne
City Hall,
630 Avenue C,
Bayonne, New Jersey 07002
ATTN: City Administrator

And to:

McManimon, Scotland, & Baumann, LLC
75 Livingston Avenue
Roseland, New Jersey 07068
ATTN: Joseph P. Baumann Jr., Esq.

In addition, if the Entity delivers formal written notice to the City in accordance with this Financial Agreement, of the name and address of Entity's mortgagee, then the City shall provide such mortgagee with a copy of any notice required to be sent to the Entity. Any notice given by an attorney for a Party shall be effective for all purposes.

So long as any Bonds are outstanding, the Trustee shall receive copies of all notices given hereunder relating to the Project.

Section 11.5 Severability

If any term, covenant, or condition of this Financial Agreement shall be judicially declared to be invalid or unenforceable, the remainder of this Financial Agreement or the application of such term, covenant, or condition to Persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term, covenant, or condition of this Financial Agreement shall be valid and be enforced to the fullest extent permitted by Applicable Law.

If any portion of this Financial Agreement shall be judicially declared to be invalid and unenforceable and provided that a Default has not been declared pursuant to this Financial Agreement, the Parties shall cooperate with each other to take the actions reasonably required to restore the Financial Agreement in a manner contemplated by the Parties, including, but not limited to the authorization and amendment of this Financial Agreement in a form reasonably drafted to effectuate the original intent of the Parties.

Section 11.6 Good Faith

The Entity and the City agree to act in good faith in all of their dealings with each other.

Section 11.7 Certification

The City Clerk shall certify to the City Tax Assessor, pursuant to the Exemption Law, that this Financial Agreement entered into by the City and the Entity has been entered into and is in effect pursuant to the Exemption Law. The delivery by the City Clerk to the City Tax Assessor of a certified copy of the Ordinance shall constitute the required certification. Upon the delivery of the certification as required hereunder, the City Tax Assessor shall implement the Long Term Tax Exemption and continue to enforce the Long Term Tax Exemption without further certification by the City Clerk until the Termination Date. Further, within ten (10) Days of the execution of this Financial Agreement, the City Clerk shall provide a copy of the Financial Agreement and the Ordinance authorizing the same to the Hudson County Counsel and the Hudson County Chief Financial Officer for informational purposes in accordance with P.L. 2015, c. 247, Section 1, as codified in N.J.S.A. 40A:20-12.

Section 11.8 Exhibits

This Financial Agreement along with each Exhibit attached and annexed hereto is hereby deemed to replace in its entirety the proposed form which appears as an attachment to the Application and is hereby incorporated into such Application.

Section 11.9 Recording

Upon the Effective Date, this entire Agreement and the Ordinance shall be filed and recorded with the Hudson County Register by the City, at the Entity's expense, such that this Agreement and the Ordinance shall be reflected upon the land records of the County of Hudson as a municipal lien upon the Entity's undivided interest in the Property and any Improvements related thereto, and same may be discharged by the Entity or the City upon the Termination Date.

Section 11.10 Counterparts

This Financial 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 11.11 Estoppel Certificate

Within thirty (30) Days following written request therefor by the Entity, or any mortgagee or other party having an interest in the Project, the City shall issue a signed estoppel certificate in reasonable form stating that (i) this Financial Agreement is in full force and effect, (ii) to the best of the City's knowledge, no Default has occurred under this Agreement (nor any event which, with the passage of time and/or the giving of notice would result in the occurrence of a Default) or stating the nature of any Default, and (iii) stating any such other reasonable information as may be requested.

Section 11.12 Indemnification

Entity agrees to indemnify, hold harmless, and defend the City and its officers, agents, employees, contractors, and consultants (collectively, the "City Indemnified Parties"), and the Entity shall pay any and all liability, loss, cost, damage, claims, judgments or expenses, of any and all kinds or nature and however arising, imposed by law, including but not limited to, any and all claims by workmen, employees and agents of the Entity and unrelated third parties, which claims arise from the Project, which the City and/or the City Indemnified Parties may sustain, be subject to or be caused to incur by reason of (i) any claim, suit or action based upon personal injury, death, or damage to property, whether real, personal or mixed, in connection with the condition, use, possession, conduct, management, planning, design, construction installation, financing, marketing, leasing, or sale of the Project or based upon or arising out of the actual breach of contracts by the Entity of contracts entered into by the Entity which directly relate to the Project, except for any claim or suit arising from the intentional and willful acts of the City and/or the City Indemnified Parties, (ii) any other claim, suit or action brought against the City by a third party with respect to this Agreement, or (iii) Entity's performance of Entity's obligations pursuant to this Agreement, the failure by Entity to perform such obligations, any action or failure to act by Entity with respect to the Project to which this Agreement is applicable or in connection with any allegation of any of the foregoing. The provisions of this Section 11.12 shall survive termination of this Agreement due to an Event of Default by Entity and such indemnity shall be binding upon the Entity itself, each successor in interest to the project, the property, or any part thereof, respectively, for such period as Entity or such successor or party shall have title to the Property, Improvements, or any part thereof.

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties have caused this Financial Agreement to be executed the day and year first above written.

TOGUS URBAN RENEWAL, LLC,
a Delaware limited liability company

By: ________________________________
Name: Arpad Busson
Title: Authorized Signatory

ACKNOWLEDGMENT

STATE OF NEW JERSEY)
) SS.:
COUNTY OF ESSEX)

Be it remembered that on the ___ day of _______________, 20__, Arpad Busson personally appeared before me, and this person acknowledged under oath, to my satisfaction that:

(a) he is the Authorized Signatory of Togus Urban Renewal, LLC, the limited liability company named as Entity in the attached Financial Agreement;

(b) he is authorized to execute the attached Financial Agreement on behalf of the Entity;

(c) he executed the attached Financial Agreement on behalf of and as the act of the Entity; and

(d) the attached Financial Agreement was signed and made by the Entity as its duly authorized and voluntary act.

____

CITY OF BAYONNE

____
Mayor Jimmy Davis

ACKNOWLEDGMENT

STATE OF NEW JERSEY)
) SS.:
COUNTY OF HUDSON)

Be it remembered that on the ____, day of _______________, 20__, Mayor Jimmy Davis personally appeared before me, and this person acknowledged under oath, to my satisfaction that:

(a) he is the Mayor of the City of Bayonne, New Jersey, the City in the attached Financial Agreement;

(b) he is authorized to execute the attached Financial Agreement on behalf of the City;

(c) he executed the attached Financial Agreement on behalf of and as the act of the City; and

(d) the attached Financial Agreement was signed and made by the City as its duly authorized and voluntary act.

____

EXHIBIT A TO FINANCIAL AGREEMENT

PROPERTY DESCRIPTION

EXHIBIT B-1 TO FINANCIAL AGREEMENT

PLEDGED ANNUAL SERVICE CHARGE

EXHIBIT B-2 TO FINANCIAL AGREEMENT

The Unpledged Annual Service Charge shall equal the total PSF of the Improvements (excluding parking facility(ies)) as determined by the City Tax Assessor upon the issuance of each Certificate of Occupancy multiplied by the amounts set forth below. For purposes of this calculation Year 1 shall begin on the ASC Commencement Date and end on December 31st of such year.

Unpledged Annual Service Charge	
Year 1	$2.70
Year 2	$2.99
Year 3	$3.27
Year 4	$3.34
Year 5	$3.40
Year 6	$3.47
Year 7	$3.54
Year 8	$3.61
Year 9	$3.68
Year 10	$3.76
Year 11	$4.07
Year 12	$4.16
Year 13	$4.24
Year 14	$4.32
Year 15	$4.41
Year 16	$4.50
Year 17	$4.59
Year 18	$4.68
Year 19	$4.77
Year 20	$4.87
Year 21	$5.53
Year 22	$5.64
Year 23	$5.75
Year 24	$5.87
Year 25	$5.98
Year 26	$6.10
Year 27	$6.23
Year 28	$6.35
Year 29	$6.48
Year 30	$6.61

EXHIBIT C TO FINANCIAL AGREEMENT

The Minimum Municipal Share shall equal the total PSF of the Improvements (excluding parking facility(ies)) as determined by the City Tax Assessor upon the issuance of each Certificate of Occupancy multiplied by the amounts set forth below. For purposes of this calculation Year 1 shall begin on the ASC Commencement Date and end on December 31st of such year.

Minimum Municipal Share

Year 1	$1.00
Year 2	$1.25
Year 3	$1.50
Year 4	$1.53
Year 5	$1.56
Year 6	$1.59
Year 7	$1.62
Year 8	$1.66
Year 9	$1.69
Year 10	$1.72
Year 11	$2.00
Year 12	$2.04
Year 13	$2.08
Year 14	$2.12
Year 15	$2.16
Year 16	$2.21
Year 17	$2.25
Year 18	$2.30
Year 19	$2.34
Year 20	$2.39
Year 21	$3.00
Year 22	$3.06
Year 23	$3.12
Year 24	$3.18
Year 25	$3.25
Year 26	$3.31
Year 27	$3.38
Year 28	$3.45
Year 29	$3.51
Year 30	$3.59

Council President LaPelusa moved the following resolution, seconded by Council Member Perez, which was read by the Clerk and adopted.

BE IT RESOLVED, that an ordinance entitled "ORDINANCE OF THE CITY OF BAYONNE, COUNTY OF HUDSON, STATE OF NEW JERSEY APPROVING TOGUS URBAN RENEWAL, LLC'S APPLICATION FOR TAX EXEMPTION AND AUTHORIZING THE EXECUTION OF A FINANCIAL AGREEMENT BY AND BETWEEN THE CITY OF BAYONNE AND TOGUS URBAN RENEWAL, LLC FOR THE PROPERTY IDENTIFIED AS BLOCK 332, LOT 3, BLOCK 360, LOT 2, BLOCK 390, LOTS 1 AND 2 (A.K.A. RG67), AND BLOCK 391, LOTS 1 AND 2," just introduced, do now pass a first reading and that a meeting of this Council to be held Wednesday, February 15, 2023 at 7:00 P.M., or as soon thereafter as the matter can be reached, and the Dorothy E. Harrington Council Chamber, Municipal Building, 630 Avenue, Bayonne, New Jersey, are hereby fixed as the time and place when and where such ordinance will be further considered for final passage, at which time and place all persons interested shall be given an opportunity to be heard concerning the same; and, be it further

RESOLVED, that the City Clerk be and is hereby authorized and directed to publish said ordinance according to law, with a notice of its introduction and passage on first reading, and the time and place when and where said ordinance will be further considered for final passage.

Yeas - Council Members Booker, Carroll, Perez, Weimmer and President LaPelusa.

* * * * * * * * * *

05. Council Member Perez introduced**:**

ORDINANCE OF THE CITY OF BAYONNE, COUNTY OF HUDSON, STATE OF NEW JERSEY, PROVIDING FOR THE SPECIAL ASSESSMENT OF THE COST OF CERTAIN IMPROVEMENTS ON CERTAIN PROPERTY IDENTIFIED AS BLOCK 332, LOT 3, BLOCK 360, LOT 2, BLOCK 390, LOTS 1 AND 2 (A.K.A. RG67), AND BLOCK 391, LOTS 1 AND 2

WHEREAS, the City of Bayonne, in the County of Hudson, New Jersey (the "City"), 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 City constitute an area in need of rehabilitation and/or an area in need of redevelopment; and

WHEREAS, in August 2003, the Municipal Council of the City (the "Governing Body"), acting in accordance with the Redevelopment Law adopted a resolution declaring property identified as Block 332, Lot 3, Block 360, Lot 2, Block 373, Lots 1, 2, 13, 14, and 15, Block 390, Lots 1 and 2 (a.k.a. RG67), and Block 391, Lots 1 and 2, and Block 511, Lots 5 and 6, as an "area in need of redevelopment" (collectively, the "Texaco Redevelopment Area"); and

WHEREAS, Togus Urban Renewal, LLC (the "Entity") is the fee title owner to the following properties within the Texaco Redevelopment Area: Block 332, Lot 3, Block 360, Lot 2; Block 390, Lots 1 and 2 (a.k.a. RG67); and Block 391, Lots 1 and 2 (the "Property"); and

WHEREAS, the Governing Body adopted a redevelopment plan for the Texaco Redevelopment Area entitled "Redevelopment Plan Texaco Redevelopment Area" and dated January 2004 (the "Original Redevelopment Plan"); and

WHEREAS, following the Original Redevelopment Plan's adoption, the "Amended and Restated Redevelopment Plan, Texaco Redevelopment Area, City of Bayonne, Hudson County, New Jersey" (the "Amended and Restated Redevelopment Plan") dated September 8, 2015, was prepared for the Governing Body's consideration; and

WHEREAS, the Planning Board of the City (the "Planning Board") reviewed the Amended and Restated Redevelopment Plan on September 8, 2015 and adopted a resolution recommending the adoption of the Amended and Restated Redevelopment Plan to the Governing Body and concluded that the Amended and Restated Redevelopment Plan is consistent with the Master Plan of the City; and

WHEREAS, on September 16, 2015, the Governing Body adopted Ordinance No. O-8 approving the Amended and Restated Redevelopment Plan, which superseded and replaced the Original Redevelopment Plan; and

WHEREAS, on June 19, 2019, the Governing Body adopted Ordinance No. O-19-41 authorizing an amendment to the Amended and Restated Redevelopment Plan, to include billboards as a permitted use, which amendment was entitled the "Amended Redevelopment Plan, Texaco" dated May 15, 2019 ("Amendment No. 1"); and

WHEREAS, on October 21, 2020, the Governing Body adopted Ordinance O-20-54, approving a redevelopment plan, entitled "Amended Redevelopment Plan Texaco Redevelopment Area" dated September 2020 (the "Redevelopment Plan") for the Texaco Redevelopment Area which amended and superseded the Original Redevelopment Plan, Amended and Restated Redevelopment Plan, and Amendment No. 1; and

WHEREAS, on December 16, 2020, the City adopted Resolution R-15 authorizing the negotiation and preparation of a redevelopment agreement with the Entity for the redevelopment of the Property; and

WHEREAS, Resolution R-15 also authorized the negotiation of a redevelopment agreement with the Entity (the "Redevelopment Agreement"); and

WHEREAS, the Redevelopment Agreement provides in relevant part that the Entity proposes to construct the Project (as defined in the Redevelopment Agreement) on the Property in accordance with the Redevelopment Agreement and the Redevelopment Plan, including Improvements (as defined in the Financial Agreement) which constitute redevelopment projects to be undertaken pursuant to the Redevelopment Plan, all as contemplated by the Redevelopment Law and *N.J.S.A.* 40A:12A-64 *et seq.* (the "Bond Financing Law"); and

WHEREAS, the Entity applied to the Mayor and Governing Body for a long term tax exemption for the Project in accordance with the Long Term Tax Exemption Law and the Bond Financing Law pursuant to an application dated January 26, 2022 (as amended and supplemented, the "Application"), which is on file with the City Clerk; and

WHEREAS, by an ordinance simultaneously adopted with this this special assessment ordinance, the Application was approved by the City and a financial agreement has been authorized (the "Financial Agreement"); and

WHEREAS, in order to finance and facilitate the implementation of the Project, including the Improvements upon the Property, the City and the Entity have established a financial structure which includes (i) entry into the Financial Agreement providing for a payment in lieu of taxes; (ii) the issuance of bonds to finance the redevelopment of the Property in accordance with the Bond Financing Law; (iii) payment of a special assessment to the City by the Entity and (iv) provision of a letter of credit; and

WHEREAS, in order to effectuate this financial structure and the implementation of the Project, including the certain public and related infrastructure improvements, the City has determined that a portion of the cost of the Improvements should be assessed in accordance with the Local Improvements Law, *N.J.S.A.* 40:56-1 *et seq.* (the "Local Improvements Law"), and the Bond Financing Law and the terms of the hereinafter defined Special Assessment Agreement.

NOW THEREFORE, be it ordained that the City Council of the City of Bayonne does hereby adopt the tax exemptions for the Entity as follows:

Section 1. The defined terms set forth in the recitals contained in this Ordinance are incorporated by reference as it is set forth at length herein.

Section 2. The purpose of this special assessment ordinance is to establish a mechanism for imposing special assessments of all or a portion of the cost of the Improvements to be developed, financed and constructed on or benefitting the Property in accordance with the requirements of the Redevelopment Agreement. The Improvements will consist of the design, financing, construction and installation of the various Improvements further described in the Redevelopment Agreement, Financial Agreement and Special Assessment Agreement.

Section 3. Notice is hereby given to the owners of the Property that the City intends to make and levy special assessments against all such Property in the amount and at the time set forth in the Special Assessment Agreement. The estimated aggregate cost of such Improvements for the Property subject to this ordinance is $65,000,000.00, provided that the special assessments for any Property affected by this ordinance shall be made and levied in the manner provided by law and shall be as nearly as possible in proportion to and not in excess of the peculiar benefit, advantage or increase in value that the Property shall be deemed to receive by reason of the Improvements.

Section 4. The following additional matters are hereby determined, declared, recited and stated:

(a) The amount of any special assessment ("Special Assessment") levied against the Property shall be determined pursuant to a special assessment agreement entered into by and between the City and the Entity pursuant to the Local Improvements Law and *N.J.S.A.* 40A:12A-66 of the Bond Financing Law (the "Special Assessment Agreement").

(b) The Special Assessment shall be paid in accordance with the terms of the Special Assessment Agreement, in quarterly installments payable at the time and in the manner that generally applicable property taxes are required to be paid in the City, with legal interest if applicable. The first such installment shall commence at the time set forth in the Special Assessment Agreement. Such Special Assessment shall commence as a municipal lien upon the Property in accordance with the terms of the Special

Assessment Agreement and thereafter remain a municipal lien upon the Property until the Special Assessment, with all installments and accrued interest thereon, applicable to the Property shall be paid and satisfied and/or discharged in accordance with the terms of the Special Assessment Agreement.

(c) Any Special Assessment levied pursuant to this ordinance shall be subject to the terms and conditions set forth in a Special Assessment Agreement to be entered into substantially in the form attached hereto as Exhibit A, together with such additions, deletions, modifications or revisions as may be required in consultation with counsel to the City to facilitate the transaction contemplated hereby. The Mayor is hereby authorized and directed to execute the Special Assessment Agreement and the City Clerk is hereby authorized and directed to attest to such signature, and to affix the corporate seal of the City upon the Special Assessment Agreement.

(d) The City hereby determines that it shall have the right to charge the owner of the Property legal interest with respect to any installment not paid when due, with such legal interest meaning the highest rate of interest permitted under New Jersey law in the case of unpaid taxes or tax liens until paid, or such lesser portion as may be determined by the City, and the Special Assessment may be charged, collected and otherwise applied in the manner set forth in the Special Assessment Agreement.

Section 5. The Mayor is hereby authorized to determine all matters and terms in connection with the Special Assessment or the Special Assessment Agreement, all in consultation with the counsel to the City, and the manual or facsimile signature of the Mayor upon any documents shall be conclusive as to all such determinations. The Mayor, the Business Administrator, the Chief Financial Officer, the City Clerk and any other City official, officer or professional, including but not limited to, redevelopment counsel, bond counsel and the financial advisor to the City, are each hereby authorized and directed to execute and deliver such documents as are necessary to facilitate the transactions contemplated hereby, and to take such actions or refrain from such actions as are necessary to facilitate the transactions contemplated hereby, in consultation with, as applicable, redevelopment counsel, bond counsel and the financial advisor to the City, and any and all actions taken heretofore with respect to the transactions contemplated hereby are hereby ratified and confirmed.

Section 6. This ordinance shall take effect as provided by law.

<u>EXHIBIT A</u>

Special Assessment Agreement

(Block 332, Lot 3, Block 360, Lot 2, Block 390, Lots 1 and 2 (a.k.a. RG67), and Block 391, Lots 1 and 2)

By and Between

The City of Bayonne

and

Togus Urban Renewal LLC

THIS SPECIAL ASSESSMENT AGREEMENT (hereinafter "Agreement"), made this ______ day of ______________________, 2023, by and between TOGUS URBAN RENEWAL LLC, a Delaware limited liability company and an urban renewal entity, qualified to do business under the provisions of the *Long Term Tax Exemption Law of 1992*, as amended and supplemented, N.J.S.A. 40A:20-1 et seq. (the "Long Term Tax Exemption Law"), having its principal office at c/o Togus Urban Renewal LLC, 750 Lexington Avenue, 24th Floor, New York, New York 10022 (the "Entity"); and the CITY OF BAYONNE, a municipal corporation in the County of Hudson and State of New Jersey with an address of 630 Avenue C, Bayonne, New Jersey 07002 (the "City", and together with the Entity, the "Parties" or "Party").

WITNESSETH:

WHEREAS, the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1, et seq., as amended and supplemented (hereinafter referred to as the "Redevelopment Law"), provides a process for municipalities to participate in the redevelopment and improvement of parcel(s) of property designated as "areas in need of redevelopment"; and

WHEREAS, in August 2003, the Municipal Council of the City (the "Governing Body"), acting in accordance with the Redevelopment Law adopted a Resolution declaring property identified as Block 332, Lot 3, Block 360, Lot 2, Block 373, Lots 1, 2, 13, 14 and 15, Block 390, Lots 1 and 2 (a.k.a. RG67), Block 391, Lots 1 and 2, and Block 511, Lots 5 and 6 as an "area in need of redevelopment" (collectively, the "Texaco Redevelopment Area"); and

WHEREAS, the Governing Body adopted a redevelopment plan for the Texaco Redevelopment Area entitled "Redevelopment Plan Texaco Redevelopment Area" dated January 2004 (the "Original Redevelopment Plan"); and

WHEREAS, on September 17, 2014, the Governing Body adopted Resolution No. 14-09-17-096 directing the Planning Board of the City (the "Planning Board") to consider and recommend amendments to the Original Redevelopment Plan, conduct hearings on same and return its findings to the Governing Body for consideration, comment, approval and/or such other actions as may be deemed necessary by the Governing Body in accordance with the provisions of N.J.S.A. 40A:12A-7; and

WHEREAS, thereafter a redevelopment plan entitled the "Amended and Restated Redevelopment Plan, Texaco Redevelopment Area, City of Bayonne, Hudson County, New Jersey" dated September 8, 2015 (the "Amended and Restated Redevelopment Plan") was prepared for the Governing Body's consideration; and

WHEREAS, on September 8, 2015, the Planning Board reviewed the Amended and Restated Redevelopment Plan and adopted a resolution recommending the adoption of the Amended and Restated Redevelopment Plan to the Governing Body and concluded that the Amended and Restated Redevelopment Plan is consistent with the Master Plan of the City; and

WHEREAS, on September 16, 2015, the Governing Body adopted by Ordinance No. O-8 adopted approving the Amended and Restated Redevelopment Plan, which superseded and replaced the Original Redevelopment Plan; and

WHEREAS, on June 19, 2019, the Governing Body adopted Ordinance No. O-19-41 authorizing an amendment to the Amended and Restated Redevelopment Plan, to include billboards as a permitted use, which amended was entitled the "Amended Redevelopment Plan, Texaco" dated May 15, 2019 ("Amendment No. 1"); and

WHEREAS, on October 21, 2020, the Governing Body adopted Ordinance O-20-54, approving a redevelopment plan, entitled "Amended Redevelopment Plan Texaco Redevelopment Area" dated September 2020 (the "Redevelopment Plan") for the Texaco Redevelopment Area which amended and superseded the Original Redevelopment Plan, Amended and Restated Redevelopment Plan and Amendment No. 1; and

WHEREAS, on December 16, 2020, the City adopted Resolution R-15 authorizing the negotiation and preparation of a redevelopment agreement with the Entity for the redevelopment of the Texaco Redevelopment Area; and

WHEREAS, the Entity is the fee title owner to the following properties within the Texaco Redevelopment Area: Block 332, Lot 3, Block 360, Lot 2; Block 390, Lots 1 and 2 (a.k.a. RG67); and Block 391, Lots 1 and 2 (the "Property"); and

WHEREAS, the Property is in the Texaco Redevelopment Area and is subject to the Redevelopment Plan; and

WHEREAS, the "Project" will consist of the necessary development, redevelopment, and construction of an entertainment and film studio, and additional principal and accessory uses complimentary to the principal film studio use in accordance with the Redevelopment Plan and related improvements on the Property as further described in the Redevelopment Agreement (defined below); and

WHEREAS, on December 16, 2020, the City adopted Resolution R-15 authorizing the negotiation of a Redevelopment Agreement with the Entity (the "Redevelopment Agreement"); and

WHEREAS, the Redevelopment Agreement provides in relevant part that the Entity proposes to construct the Project (as defined in the Redevelopment Agreement) on the Property in accordance with the Redevelopment Agreement and the Redevelopment Plan; and

WHEREAS, the Project's additional principal and accessory uses complimentary to the principal film studio use in accordance with the Redevelopment Plan and related improvements on the Property all as set forth in Exhibit A hereto (the "Improvements") shall constitute local improvements within the meaning of, and for purposes of, N.J.S.A. 40:56-1 *et seq.* (the "Local Improvements Law"), and the Redevelopment Area Bond Financing Law, as amended and supplemented, N.J.S.A. 40A:12A-6, *et seq.* (the "RAB Law"), and

WHEREAS, on ___________________________, 2022, the _________ adopted _________ (the "___________"), authorizing the issuance of the Bonds in an amount not to exceed Sixty-Five Million Dollars ($65,000,000.00) to fund the costs associated with the Improvements, directing the special assessment of part of the cost thereof on the Property (the "Special Assessment") and authorizing the execution of one or more special assessment agreements in connection therewith; and

WHEREAS, the Parties agreed that the principal and interest on the Bonds shall be deemed the conferred benefit to the Property for the Improvements pursuant to the Local Improvements Law and the Redevelopment Area Bond Law; and

WHEREAS, as described in more detail in Section 3.02(f) below, it is the intent of the Parties that, so long as the Entity makes any required payment under the Financial Agreement, it shall not be required to make the payments otherwise required under this 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 – THIS AGREEMENT SHALL BE GOVERNED BY THE LAWS OF THIS STATE, INCLUDING THE PROVISIONS OF THE REDEVELOPMENT LAW, THE LOCAL IMPROVEMENTS LAW, THE REDEVELOPMENT AREA BOND LAW AND ALL OTHER APPLICABLE LAWS. IT IS HEREBY EXPRESSLY ACKNOWLEDGED, UNDERSTOOD AND AGREED THAT UPON THE RECORDATION OF THE ORDINANCE AND THIS AGREEMENT IN ACCORDANCE WITH SECTION 7.01 HEREOF, THE LAND, AND ANY IMPROVEMENT RELATED THERETO, SHALL BE SUBJECT TO AND GOVERNED BY THE TERMS OF THIS AGREEMENT AND THE ENTITY SHALL BE BOUND BY THE TERMS HEREOF.

Section 1.02 General Definitions – Capitalized terms used and defined in the preambles hereof shall have the meanings assigned to such terms. Unless specifically provided otherwise or the context otherwise requires, the following terms when used in this Agreement shall mean:

Bond Proceeds – shall mean the proceeds of the Bonds, including investment earnings thereon, which proceeds shall only be spent on the costs of the Improvements, as well as the Costs of Issuance.

Costs of Issuance – shall mean the cost and expense related to the authorization, sale and issuance of any series of the Bonds.

In Rem Tax Foreclosure – shall mean a summary proceeding by which the City may enforce the lien for taxes, special assessments and other statutory liens. Said foreclosure is governed by N.J.S.A. 54:5-1 *et seq.*

Land – shall mean the following properties within the Texaco Redevelopment Area: Block 332, Lot 3, Block 360, Lot 2; Block 390, Lots 1 and 2 (a.k.a. RG67); and Block 391, Lots 1 and 2, and more particularly described by the metes and bounds description set forth as Exhibit B to this Agreement.

Tax Sale Law – N.J.S.A. 54:5-1 *et seq.*, as the same may be amended or supplemented from time to time.

ARTICLE II
DURATION OF AGREEMENT

SECTION 2.01 Term. The Parties hereby expressly, irrevocably and unconditionally acknowledge, agree, warrant and covenant that this Agreement, including the obligation to pay the Special Assessment required under Article III hereof, shall remain in effect, until the earlier of (i) thirty (30) years from the date that the first Special Assessment amount is due in accordance with the terms hereof, (ii) the date on which no Bonds remain outstanding and (iii) the date on which the Entity shall, at its sole option, pay the Special Assessment amount set forth in Section 3.01(b).

ARTICLE III
ASSESSMENT AMOUNT

SECTION 3.01 Special Assessment Amount

(a) [The Parties hereby expressly and irrevocably acknowledge and agree that, with respect to the Property, the amount of the Special Assessment shall be $65,000,000.00 (the "Principal Amount"), plus interest payable on such Principal Amount, calculated as the interest payable by the City from time to time on such portion of the Bonds issued by the City to fund the Improvements (or a portion thereof). The Principal Amount is based on the _______ issuance of an initial series of Bonds in the form of a $65,000,000.00 __________ on ____________________ (the "Initial Redevelopment Area Bond Note"). As and when a new bond anticipation note, or a series of Bonds issued to permanently finance a bond anticipation note, is hereafter issued, the Principal Amount shall be adjusted (but not increased beyond $65,000,000), including interest and fees) and/or a new Exhibit C shall be attached hereto, as provided in Section 3.02(a), illustrating the Special Assessment payment obligations hereunder.]

(b) The Entity shall have the right, but not the obligation, at the maturity date of any outstanding note, to pay down all or a portion of the Special Assessment. As set forth in Section 2.01 hereof, in the event the Entity shall pay all of the Special Assessment, this Agreement shall terminate. The Entity must provide no less than ninety (90) days' notice to the City, prior to the applicable note maturity date, of its intention to pay the Special Assessment. In the absence of such notice, the City will either renew such note or permanently finance same, in its discretion.

SECTION 3.02 Special Assessment Installments

(a) The Special Assessment shall be payable in such amounts as set forth in Exhibit C attached hereto. Except as otherwise set forth in Exhibit C with respect to a bond anticipation note, the Special Assessment shall be payable quarterly on February 1, May 1, August 1 and November 1 of each year during the term of this Agreement. The estimated schedule at the time of the execution of this Agreement shall serve as the initial Exhibit C. Upon the issuance of the Bonds or any series of Bonds to refund or refinance the same, a new Exhibit C shall be attached to this Agreement reflecting such issuance, which new Exhibit C shall be subject to the terms of Section 3.02(b).

(b) Except with respect to a bond anticipation note, payment for which will be tied to the single maturity date thereof, the Special Assessment, as set forth in Exhibit C, shall be payable by the Entity in installments on the same due dates as the Annual Service Charge or Minimum Annual Service Charge under the Financial Agreement and shall never exceed and may be less than the Minimum Annual Service Charge or Annual Service Charge payable on the same dates under the Financial Agreement.

(c) The Entity hereby expressly, irrevocably and unconditionally agrees, warrants, covenants and accepts that in the event it fails to timely pay, in full, any installment of any Special Assessment amount, the amount past due shall bear the highest rate of interest permitted under New Jersey law in the case of unpaid taxes or tax liens on land until paid.

(d) Each installment payment of the Special Assessment is to be made to the City and shall be clearly identified as "Special Assessment Payment for Block 332, Lot 3, Block 360, Lot 2, Block 390, Lots 1 and 2 (a.k.a. RG67), and Block 391, Lots 1 and 2".

(e) In the event that the amount of the Special Assessment shall be modified in accordance with Sections 3.01(a) herein, Exhibit C shall be automatically updated to reflect such modifications. The Parties agree to cooperate with each other to execute and re-record a revised version of the Special Assessment Agreement to reflect such modified payment schedule.

(f) The City shall credit its receipt of Annual Service Charge or Minimum Annual Service Charge payments, as applicable, under the Financial Agreement, by or on behalf of the Entity against the Special Assessment due hereunder, but only to the extent of the amount of the Annual Service Charge or Minimum Annual Service Charge payments, as applicable, that are actually received by the City. It is the intent and agreement of the Parties that, so long as the Entity makes the full required payment under the Financial Agreement, it shall not be required to make the payment otherwise required under this Agreement.

(g) To the extent the City sets aside Bond Proceeds to pay interest thereon ("Capitalized Interest"), such Capitalized Interest shall be credited against Special Assessment payments due from the Entity on a *pro rata* basis.

(h) To the extent the City issues the Bonds in the form of a bond anticipation note(s), the principal of which will be due in full on the maturity date thereof, the Entity shall not be responsible for the full amount of such bond anticipation note(s) on such maturity date. Instead, the City shall issue a new bond anticipation note or series of bonds to refund the outstanding bond anticipation note and the Entity shall be obligated to pay only such amount of principal as is being paid down upon the issuance of the new bond anticipation note or bonds. Such terms shall be reflected in Exhibit C.

ARTICLE IV
MUNICIPAL LIEN; SUBORDINATION OF FEE TITLE

SECTION 4.01. Municipal Lien

(a) The Parties hereby expressly, irrevocably and unconditionally acknowledge, agree, warrant and covenant that in accordance with the Local Improvements Law, specifically N.J.S.A. 40:56-33, and the Redevelopment Area Bond Law, specifically N.J.S.A. 40A:12A-66(c), and such other statutes as may be sources of relevant authority, if any, upon the recordation of the Bond Ordinance and this Agreement, as set forth in Section 7.01 hereof, the Bond Ordinance, this Agreement and any amount due hereunder, including without limitation, the Special Assessment, shall constitute an automatic, enforceable and perfected statutory municipal lien for all purposes of law.

(b) The Parties, and for their successors and assigns, (i) acknowledge and agree that the Special Assessment, and the municipal lien created hereby, is valid and enforceable in accordance with all applicable law, including without limitation the Local Improvements Law and the Redevelopment Area Bond Law, and (ii) covenant not to challenge or contest, directly or indirectly, on any grounds whatsoever, the Special Assessment, including the amount thereof or the procedures followed in the adoption of, and publication of notice of adoption of, the Ordinance, or the lien created thereby.

(c) Notwithstanding anything to the contrary in this Agreement, in no event shall the Entity be subject to a lien on its property for payment of the Special Assessment in excess of its share due hereunder.

SECTION 4.02. Subordination of Fee Title

The Parties hereby expressly, irrevocably and unconditionally acknowledge, agree, warrant and covenant that the Entity has the right, subordinate to the municipal lien hereunder, as a matter of law, to encumber the fee title to its property, including any improvements related thereto, and that any such subordinate encumbrance shall not be deemed to be a violation of this Agreement.

ARTICLE V
DEFAULT

Section 5.01 Default - Default shall be failure of any Party to conform to the terms of this Agreement, and/or the failure of any Party to perform any obligation imposed upon such Party by applicable law beyond any applicable notice, cure or grace period. In addition, a default under this Agreement by the Entity shall only be considered a default against that specific Party, without any implication of default against any other Party under any other special assessment agreement.

Section 5.02 Cure Upon Default - Should any party be in default of any obligation under this Agreement, the other party shall notify the defaulting party and any mortgagee simultaneously, if applicable, in writing of said default. Except as otherwise limited by law, the defaulting party shall have sixty (60) days to cure any default, other than a payment default, for which the defaulting party shall have ten (10) days to cure. Notwithstanding the foregoing, if the Entity shall default in any of its obligations hereunder, before exercising any remedy against the Entity provided in Section 5.03 hereof, the City will provide any mortgagee a reasonable additional period of time to cure such default as follows (i) with respect to any default relating to a payment obligation, the mortgagee shall be permitted an additional ten (10) day cure period and (ii) with respect to any other default, an additional sixty (60) day cure period; provided, however, if such default is susceptible to cure, but is not reasonably susceptible to cure within such sixty (60) day period, such longer period (not to exceed one hundred eighty (180) days) as shall be reasonably necessary for mortgagee to effect such cure, provided that the mortgagee has commenced such cure within such sixty (60) day period and thereafter is diligently prosecuting same.

Section 5.03 Remedies for Default - (a) In the event of any uncured default by the City, the Entity may take whatever action at law or in equity, as may be necessary or desirable to enforce the performance or observance of any rights under this Agreement, including an action for specific performance or damages.

(b) In the event of any uncured default by the Entity, the City may take whatever action at law or in equity, as may be necessary or desirable to enforce the performance or observance of any rights under this Agreement, including an action for specific performance or damages. No default hereunder by the Entity shall terminate this Agreement (except as described herein) and its obligation to pay the Special Assessment amounts due hereunder, which shall continue in effect for the duration as set forth in Section 2.01 hereof.

Section 5.04 Default in the Payment of Special Assessment

Upon any uncured default by the Entity in payment of any installment of the Special Assessment, the City, in addition to their other remedies, reserves the right to proceed against the Land, and any improvements related thereto, in the manner provided by applicable law and shall have the right to proceed to In Rem Tax Foreclosure consistent with the provisions and procedures of the Tax Sale Law, except that the City shall not proceed to In Rem Tax Foreclosure until any mortgage has been given the opportunity to cure such default within the time period provided for herein. As set forth in the Redevelopment Area Bond Law, specifically *N.J.S.A.* 40A:12A-66(c), an event of an uncured default by the Entity in the payment of an installment of the Special Assessment shall not result in the acceleration of the subsequent installments of the Special Assessment and such subsequent installments shall be considered as not in default and the municipal lien for the subsequent installments of the Special Assessment not yet due shall continue.

ARTICLE VI
NOTICES

Section 6.01 Notice - Formal notices, demands and communications between and among the City and the Entity shall be in writing and deemed given if dispatched to the address set forth below by registered or certified mail, postage prepaid, return receipt requested, or by a commercial overnight delivery service with packaging tracking capability and for which proof of delivery is available. In that case such notice is deemed effective upon delivery. Such written notices, demands and communications may be sent in the same manner to such other addresses as either party may from time to time designate by written notice.

Copies of all notices, demands and communications shall be sent as follows:

If to the City:

City of Bayonne
City Hall,
630 Avenue C,
Bayonne, New Jersey 07002
Attn: Honorable Mayor Davis

with copies to:

City of Bayonne
City Hall,
630 Avenue C,
Bayonne, New Jersey 07002
Attn: City Administrator

Joseph P. Baumann, Esq.
McManimon, Scotland & Baumann, LLC
75 Livingston Avenue, 2nd Floor
Roseland, New Jersey 07068

If to the Entity:

Togus Urban Renewal LLC,
750 Lexington Avenue, 24th Floor,
New York, New York 10022

With a copy to:

Cecilia I. Lassieter, Esq.
Sills Cummis & Gross P.C.
1037 Raymond Boulevard, 13th Floor,
Newark, New Jersey 07102

ARTICLE VII
MISCELLANEOUS

Section 7.01 Recording – Upon the execution and delivery of this Agreement, the entire Agreement and the Bond Ordinance attached hereto as Exhibit D shall be filed and recorded with the Hudson County Clerk by the City, at the Entity's expense, such that this Agreement and the Ordinance shall be reflected upon the land records of the County of Hudson as a municipal lien upon and a covenant running with each and every parcel of Land and any improvements related thereto, and thereupon shall be binding on all successor owners of the Land.

Section 7.02 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 7.03 Amendments - This Agreement may not be amended, changed, modified, altered or terminated without the written consent of the Parties; provided, however, that the Parties agree the City may amend this Agreement to reflect a revised Exhibit C upon the issuance of a series of Bonds issued for the purpose of refunding or permanently financing the Initial Redevelopment Area Bond Note or subsequent notes or bonds issued under the Bond Ordinance.

Section 7.04 Severability of Invalid Provisions - If any one or more of the covenants, agreements or provisions herein contained shall be held to be illegal or invalid in a final proceeding, then any such covenants, agreements or provisions shall be null and void and shall be deemed separable from the remaining covenants, agreements or provisions and shall in no way affect the validity of any of the other provisions hereof.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of the day and year first above written.

ATTEST: CITY OF BAYONNE

MADELENE C. MEDINA, RMC
CITY CLERK

JAMES M. DAVIS
MAYOR

TOGUS URBAN RENEWAL, LLC

Arpad Busson, Authorized Signatory

EXHIBIT A

IMPROVEMENTS

EXHIBIT B

METES AND BOUNDS DESCRIPTION

EXHIBIT C

SPECIAL ASSESSMENT INSTALLMENTS

If the Bonds are issued as a Bond Anticipation Note, add the following:

[$_______ plus interest due thereon in the amount of $_______.

The foregoing amount is based on the issuance by the _______ of its $__________________ bond anticipation note on __________, 202__ (the "Initial Redevelopment Area Bond Note"), which will fund $______ in Public Improvement costs, along with Costs of Issuance of the Initial Redevelopment Area Bond Note. It is anticipated that the Initial Redevelopment Area Bond Note, together with maturing interest thereon, all due on ________, 202___, will be refinanced at maturity by the issuance of a future series of Bonds under the Bond Ordinance. This Exhibit C will automatically be amended to reflect the debt service due on such additional Bonds.]

If the Bonds are issued as a series of Bonds, add the following:

Installment Due Date	Payment Amount

EXHIBIT D

ORDINANCE

Council Member Perez moved the following resolution, seconded by Council Member Booker, which was read by the Clerk and adopted.

BE IT RESOLVED, that an ordinance entitled "ORDINANCE OF THE CITY OF BAYONNE, COUNTY OF HUDSON, STATE OF NEW JERSEY, PROVIDING FOR THE SPECIAL ASSESSMENT OF THE COST OF CERTAIN IMPROVEMENTS ON CERTAIN PROPERTY IDENTIFIED AS BLOCK 332, LOT 3, BLOCK 360, LOT 2, BLOCK 390, LOTS 1 AND 2 (A.K.A. RG67), AND BLOCK 391, LOTS 1 AND 2," just introduced, do now pass a first reading and that a meeting of this Council to be held Wednesday, ** at 7:00 P.M., or as soon thereafter as the matter can be reached, and the Dorothy E. Harrington Council Chamber, Municipal Building, 630 Avenue, Bayonne, New Jersey, are hereby fixed as the time and place when and where such ordinance will be further considered for final passage, at which time and place all persons interested shall be given an opportunity to be heard concerning the same; and, be it further

RESOLVED, that the City Clerk be and is hereby authorized and directed to publish said ordinance according to law, with a notice of its introduction and passage on first reading, and the time and place when and where said ordinance will be further considered for final passage.

Yeas - Council Members Booker, Carroll, Perez, Weimmer and President LaPelusa.

* * * * * * * * * *

06. Council President LaPelusa introduced:

ORDINANCE OF THE CITY OF BAYONNE, COUNTY OF HUDSON, STATE OF NEW JERSEY AUTHORIZING THE GUARANTY OF THE REDEVELOPMENT AREA BONDS IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED $65,000,000

WHEREAS, the City of Bayonne, in the County of Hudson, New Jersey (the "City"), 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 City constitute an area in need of rehabilitation and/or an area in need of redevelopment; and

WHEREAS, in August 2003, the Municipal Council of the City (the "Governing Body"), acting in accordance with the Redevelopment Law adopted a resolution declaring property identified as Block 332, Lot 3, Block 360, Lot 2, Block 373, Lots 1, 2, 13, 14, and 15, Block 390, Lots 1 and 2 (a.k.a. RG67), and Block 391, Lots 1 and 2, and Block 511, Lots 5 and 6, as an "area in need of redevelopment" (collectively, the "Texaco Redevelopment Area"); and

WHEREAS, Togus Urban Renewal, LLC (the "Entity") is the fee title owner to the following properties within the Texaco Redevelopment Area: Block 332, Lot 3, Block 360, Lot 2; Block 390, Lots 1 and 2 (a.k.a. RG67); and Block 391, Lots 1 and 2 (the "Property"); and

WHEREAS, the Governing Body adopted a redevelopment plan for the Texaco Redevelopment Area entitled "Redevelopment Plan Texaco Redevelopment Area" and dated January 2004 (the "Original Redevelopment Plan"); and

WHEREAS, following the Original Redevelopment Plan's adoption, the "Amended and Restated Redevelopment Plan, Texaco Redevelopment Area, City of Bayonne, Hudson County, New Jersey" (the "Amended and Restated Redevelopment Plan") dated September 8, 2015, was prepared for the Governing Body's consideration; and

WHEREAS, on June 19, 2019, the Governing Body adopted Ordinance No. O-19-41 authorizing an amendment to the Amended and Restated Redevelopment Plan, to include billboards as a permitted use, which amendment was entitled the "Amended Redevelopment Plan, Texaco" dated May 15, 2019 ("Amendment No. 1"); and

WHEREAS, on October 21, 2020, the Governing Body adopted Ordinance O-20-54, approving a redevelopment plan, entitled “Amended Redevelopment Plan Texaco Redevelopment Area” dated September 2020 (the “Redevelopment Plan”) for the Texaco Redevelopment Area which amended and superseded the Original Redevelopment Plan, Amended and Restated Redevelopment Plan, and Amendment No. 1; and

WHEREAS, on December 16, 2020, the City adopted Resolution R-15 authorizing the negotiation and preparation of a redevelopment agreement with the Entity for the redevelopment of the Property; and

WHEREAS, Resolution R-15 also authorized the negotiation of a redevelopment agreement with the Entity (the “Redevelopment Agreement”); and

WHEREAS, the Entity proposes to develop, redevelop, and construct an entertainment and film studio, and additional principal and accessory uses complimentary to the principal film studio use in accordance with the Redevelopment Plan and related improvements on the Property as further described in the Redevelopment Agreement (the “Project”); and

WHEREAS, the Entity is or will be designated redeveloper of the Property; and

WHEREAS, despite the Entity’s current and future substantial investment of "at-risk" equity and traditional borrowed funds for acquisition, development and construction of the Project, such amounts of equity and traditional borrowed funds may be insufficient to pay for all of the costs associated with the acquisition, development and construction of certain infrastructure improvements necessary for the Project; and

WHEREAS, pursuant to and in accordance with the provisions of 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 City is authorized to provide for and accept, in lieu of real property taxes, an annual service charge paid by the Redeveloper to the City in accordance with certain applicable provisions of the Long Term Tax Exemption Law, N.J.S.A. 40A:20-1 et seq. (the “Long Term Tax Exemption Law”); and

WHEREAS, the Entity applied to the Mayor and Governing Body for a long term tax exemption for the Project in accordance with the Long Term Tax Exemption Law and the Bond Financing Law pursuant to an application dated January 26, 2022 (as amended and supplemented, the “Application”), which is on file with the City Clerk; and

WHEREAS, by an ordinance simultaneously adopted with this this guaranty ordinance (the “Guaranty Ordinance”), the Application was approved by the City and a financial agreement has been authorized (the “Financial Agreement”); and

WHEREAS, in order to finance and facilitate the implementation of the Project, including the Improvements (as defined in the Financial Agreement) upon the Property, the City and the Entity have established a financial structure which includes (i) entry into the Financial Agreement providing for a payment in lieu of taxes; (ii) the issuance of bonds to finance the redevelopment of the Property in accordance with the Bond Financing Law; (iii) payment of a special assessment to the City by the Entity and (iv) provision of a letter of credit (the “Letter of Credit”); and

WHEREAS, pursuant to and in accordance with the provisions of the Redevelopment Law and the Bond Financing Law, specifically N.J.S.A. 40A:12A-67(a), the City may issue bonds or may apply to an authority (as such term is defined in the Bond Financing Law) (an “Authority”) to issue bonds, which may be secured by the redevelopment project revenues; and

WHEREAS, the City shall authorize the issuance of not-to-exceed $65,000,000 aggregate principal amount of city guaranteed redevelopment area bonds or apply to an Authority to issue such bonds (the “Bonds”); and

WHEREAS, on November 9, 2022, by Resolution 22-11-09-050, the City authorized the submission of an application to the Local Finance Board, in the Division of Local Government Services, New Jersey Department of Community Affairs (the “Local Finance Board”), pursuant to N.J.S.A. 40A:12A-29(a)(3) and N.J.S.A. 40A:12A-67(g) for approvals with respect to the issuance of the Bonds; and

WHEREAS, as of the date of adoption of this Guaranty Ordinance, the Local Finance Board adopted a resolution providing all requisite approvals by the Local Finance Board for the issuance of the Bonds; and

WHEREAS, the City shall fully, unconditionally and irrevocably guaranty, the punctual payment, when due, of the principal of, redemption premium, if any, and interest on the Bonds in an aggregate principal not to exceed $65,000,000 at any one time outstanding in accordance with (i) the terms of this Guaranty Ordinance and (ii) a guaranty certificate to be executed by an authorized officer of the City on the face of each Bond (the "Guaranty Certificate" and, together with the Guaranty Ordinance, the "City Guaranty") all pursuant to the Redevelopment Law, the Bond Financing Law and other applicable law including laws governing an Authority, if applicable.

NOW THEREFORE, be it ordained that the City Council of the City of Bayonne does hereby adopt the tax exemptions for the Entity as follows:

Section 1. The recitals hereof are fully incorporated herein as though fully set forth at length.

Section 2. Pursuant to and in accordance with the terms of the Bond Financing Law, specifically *N.J.S.A.* 40A:12A-67(f), and other applicable law, the City is hereby authorized to, and hereby shall fully, unconditionally and irrevocably guaranty the punctual payment, when due, of the principal of, redemption premium, if any, and interest on the Bonds in the aggregate principal amount not to exceed $65,000,000, which Bonds are to be issued to finance the Project, on such terms and conditions as are reflected in this Guaranty Ordinance and the Guaranty Certificate on the face of each Bond. Notwithstanding the provisions of any other document or agreement, upon the endorsement of the Bonds referred to in Section 4 below, the City shall be fully, unconditionally and irrevocably obligated to pay, when due, the principal of, redemption premium, if any, and interest on the Bonds, in the same manner and to the same extent as in the case of recourse bonds issued by the City and accordingly, the City shall be unconditionally and irrevocably obligated to levy *ad valorem* taxes upon all of the taxable property within the City for the payment thereof without limitation as to rate or amount. This full, unconditional and irrevocable guaranty of the City effected hereby to pay, when due, the principal of, redemption premium, if any, and interest on the Bonds when due may not be waived, setoff or otherwise abrogated by action or inaction of the City or for any other reason. Accordingly, the City hereby waives its rights to assert any future defenses which may be available to the City in relieving it in whole or in part from its obligation to make the payments of the principal of, redemption premium, if any, and interest on the Bonds when due thereunder.

Section 3. The Mayor shall, by manual or facsimile signature, and is hereby authorized and directed to execute an endorsement on each of the Bonds evidencing this guaranty by the City as to the punctual payment of the principal of, redemption premium, if any, and interest thereon. The endorsement on each Bond shall be in substantially the following form, with such references to the Trust Indenture as may be required by the Trust Indenture, and absent the fully executed endorsement in such substantially following form on any such Bond, (which may be amended if such Bonds are issues by an Authority or otherwise require by the term of the financing) such Bond shall not be entitled to the benefits of this Guaranty Ordinance:

"GUARANTY OF THE CITY OF BAYONNE,
COUNTY OF HUDSON, STATE OF NEW JERSEY

The payment of the principal of and redemption premium, if any, and the interest on the within Bond shall be fully, irrevocably and unconditionally guaranteed by the City of Bayonne, County of Hudson, New Jersey (the "City") in accordance with the provisions of the Redevelopment Area Bond Financing Law, constituting Chapter 310 of the Pamphlet Laws of 2001 of the State and the acts amendatory thereof and supplemental thereto, the Local Redevelopment and Housing Law, constituting Chapter 79 of the Pamphlet Laws of 1992 of the State and the acts amendatory thereof and supplemental thereto, and the guaranty ordinance of the City finally adopted pursuant thereto, and the City is fully, irrevocably and unconditionally liable for the payment, when due of the principal and redemption premium, if any, and the interest due on this Bond, and, if necessary, the City shall levy *ad valorem* taxes upon all the taxable property within the City, without limitation as to rate or amount, in order to make such payments.

IN WITNESS WHEREOF, the City has caused this Guaranty to be executed by the manual or facsimile signature of its Mayor.

CITY OF BAYONNE,
COUNTY OF HUDSON,
STATE OF NEW JERSEY

By: ________________________
Mayor James A. Davis"

The Mayor is hereby further authorized and directed to execute or acknowledge and deliver such other certificates or agreements relating to this full, irrevocable and unconditional guaranty that may be required to comply with the terms of the Bonds, including without limitation, any agreement or certificate detailing the time and method that payment under this guaranty shall be made by the City. Such further agreement or certificate shall not in any manner relieve the City from its obligations hereunder and shall contain only such terms as are consistent with or within the parameters herein set forth.

Section 4. The City is hereby authorized, to the extent necessary, to enter into a guaranty agreement with the Trustee for or the holders of the Bonds, as applicable, to effectuate the guaranty authorized by this Guaranty Ordinance. The appropriate officials of the City are hereby authorized to execute and deliver such agreement upon satisfaction of all of the conditions precedent to the closing of the Bonds.

Section 5. The full faith and credit of the City are hereby pledged to the punctual payment of the principal of and the interest on the obligations authorized by this Guaranty Ordinance. The obligations shall be direct, unlimited obligations of the City, and the City shall be obligated to levy *ad valorem* taxes upon all the taxable real property within the City for the payment of the obligations and the interest thereon without limitation of rate or amount.

Section 6. The City Clerk is hereby authorized and directed to publish and post notice of this Guaranty Ordinance as required by applicable law.

Section 7. This Guaranty Ordinance shall be adopted and take effect at the time and in the manner provided by law.

Council President LaPelusa moved the following resolution, seconded by Council Member Perez, which was read by the Clerk and adopted.

BE IT RESOLVED, that an ordinance entitled "ORDINANCE OF THE CITY OF BAYONNE, COUNTY OF HUDSON, STATE OF NEW JERSEY AUTHORIZING THE GUARANTY OF THE REDEVELOPMENT AREA BONDS IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED $65,000,000," just introduced, do now pass a first reading and that a meeting of this Council to be held Wednesday, ** at 7:00 P.M., or as soon thereafter as the matter can be reached, and the Dorothy E. Harrington Council Chamber, Municipal Building, 630 Avenue, Bayonne, New Jersey, are hereby fixed as the time and place when and where such ordinance will be further considered for final passage, at which time and place all persons interested shall be given an opportunity to be heard concerning the same; and, be it further

RESOLVED, that the City Clerk be and is hereby authorized and directed to publish said ordinance according to law, with a notice of its introduction and passage on first reading, and the time and place when and where said ordinance will be further considered for final passage.

Yeas - Council Members Booker, Carroll, Perez, Weimmer and President LaPelusa.

* * * * * * * * * *

07. Council President LaPelusa moved the following resolution, seconded by Council Member Perez, which was read by the Clerk and adopted.

WHEREAS, the Comptroller is hereby authorized to make the following Calendar Year 2022 budgetary appropriation transfers in accordance with N.J.S.A 40A:4-59.

NOW, THEREFORE, BE IT RESOLVED by the Municipal Council of the City of Bayonne with at least two-thirds of the full membership of the Municipal Council concurring:

ACCOUNT DESCRIPTION	FROM	TO
Primary & General Election OE	$48,185.00	

Rent Control OE			$11,600.00
Buildings & Grounds OE			$ 5,000.00
Vehicle Maintenance OE			$30,000.00
Defined Contribution Retirement Acct.			$ 1,585.00
	TOTAL:	$48,185.00	$48,185.00

Yeas - Council Members Booker, Carroll, Perez, Weimmer and President LaPelusa.

* * * * * * * * * *

. At ** P.M., Council Member ** moved to adjourn, seconded by Council Member ** , which motion was adopted.

Yeas - Council Members Carroll, Gullace, La Pelusa, Perez, and President Nadrowski.

* * * * * * * * * *

President – Sharon Nadrowski

City Clerk – Robert F. Sloan