

O-17-39
07/19/17

ORDINANCE OF THE CITY OF BAYONNE, COUNTY OF HUDSON, NEW JERSEY AUTHORIZING FIVE (5) YEAR TAX EXEMPTION ON THE ASSESSED VALUE OF NEW IMPROVEMENTS ONLY FOR NEWLY CONSTRUCTED UNITS WITH RESPECT TO THE PARCEL OF LAND LOCATED AT BLOCK 190, LOT 9 (A/K/A 536 BROADWAY) ON THE TAX MAP OF THE CITY OF BAYONNE.

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, 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 or an area in need of redevelopment; and

WHEREAS, on February 4, 1998 by resolution No. 98-02-04-040 the entire City was designated as an area in need of rehabilitation pursuant to the Redevelopment Law; and

WHEREAS, pursuant to the Five Year Exemption and Abatement Law, *N.J.S.A. 40A:21-1 et seq.* (the "Five Year Law") improvements to property located within an area in need of rehabilitation or redevelopment may qualify for short term tax exemptions; and

WHEREAS, on May 22, 2013 the Municipal Council adopted Ordinance No. O-13-15 authorizing tax exemptions for the construction of 'multiple dwellings' (as defined in the Hotel and Multiple Dwelling Law, *N.J.S.A. 55:13A-1 et seq.*) in the City as authorized under *N.J.S.A. 40A:21-8* of the Five Year Law; and

WHEREAS, **536 BROADWAY PARTNERSHIP, LLC** is the owner of and has developed a parcel of land located at **BLOCK 190, LOT 9**, (with a property address commonly known as "**536 Broadway**" which is also known as the "Project Area") on the tax map of the City and constructed or will cause to be constructed thereon certain real estate improvements consisting of **residential and retail/commercial** development containing **three stories, with four (4) residential dwelling units (two units on the second floor and two units on the third floor) and commercial/retail/parking on the first floor** (the "Project"); and

WHEREAS, **304 Broadway Partners Urban Renewal Co. LLC** has submitted an application to the City requesting a tax exemption under the Five Year Law for itself and/or on behalf of the new owners of the **residential/retail/commercial units** seeking a 5 year exemption agreement on the improvements; and

WHEREAS, the Municipal Council has determined that the authorization of a tax exemption for the aforesaid Project is in the best interests of the City and facilitates the goals of rehabilitation and productive use;

NOW THEREFORE BE IT ORDAINED, by the Municipal Council of the City of Bayonne, in the County of Hudson, New Jersey, as follows:

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

Section 2. The Municipal Council hereby approves an individual tax agreement for the exemption of real estate taxes on the parcel set forth above and any future sublots created by virtue of the development thereof in the Project Area allowing for a 5 Year exemption on the improvement on each individual parcel substantially in the form attached to this Ordinance and shall calculate payments in lieu of taxes in accordance with the tax phase-in basis and be in the form substantially as provided in **Exhibit A** also attached hereto. Each such agreement is intended to apply to the individual parcel involved for the five years following substantial completion of the property provided that the terms of the agreement are met and shall be executed with respect to each such parcel by the owner of that parcel following the effective date of this ordinance. Each such Tax Agreement shall be for no longer than five (5) years and only applicable to the assessed value of the new improvement (building) constructed on that parcel as such value is determined by the City Tax Assessor. Each such Tax Agreement shall also provide that; at all relevant times herein, the land values (land assessment) for the Project will NOT be subject to any Exemption or Abatement and that Land Taxes paid in full throughout any period of exemption on the improvement. If the effective date of this ordinance is subsequent to the date of substantial completion, the exemption shall nonetheless be credited from the first day of the Tax Year following substantial completion provided that the application was timely filed within 30 days of substantial completion and all other terms of the agreement are met. If the date of substantial completion should be prior to the effective date of this ordinance, the Mayor, in consultation with legal counsel to the City, is hereby authorized to execute each of these Tax Agreements, with such modifications or revisions deemed necessary by the Mayor, and to prepare, amend or execute any other agreements necessary to effectuate the Tax Agreement and this Ordinance.

Section 3. Within thirty (30) days of its execution, the City Clerk shall forward a copy of the Tax Agreement to the Director of the Division of Local Government Services in the Department of Community Affairs as prescribed by *N.J.S.A. 40A:21-11(d)*.

Section 4. If any part of this Ordinance shall be deemed invalid, such parts shall be severed and the invalidity thereby shall not affect the remaining parts of this Ordinance.

Section 5. This Ordinance shall take effect in accordance with all applicable laws.

EXHIBIT A

TAX AGREEMENT

THIS TAX AGREEMENT (hereinafter “Agreement” or “Tax Agreement”), made this _____ day of _____, _____ by and between the **CITY OF BAYONNE**, a municipal corporation of the State of New Jersey (the “State”) with offices at 630 Avenue C, Bayonne, New Jersey, 07002 (the “City”) and **”PROPERTY OWNER”** (meaning the current owner(s) at the time of substantial completion of each of the parcel in the City of Bayonne developed by **536 BROADWAY PARTNERSHIP, LLC** and known as **BLOCK 190, LOT 9** [the “Project Area”] or their successor at the time this agreement is executed). It is entered into in accordance with the provisions of the applicable Bayonne Municipal Ordinances

SECTION 1 General Definitions

The following terms as used in this Tax Agreement shall, unless the context clearly requires otherwise, have the following meanings:

Completion Date – Shall mean the date on which the Certificate of Occupancy has been issued for the Project as defined below.

Certificate of Occupancy - The document issued by the City in accordance with the New Jersey Administrative Code, authorizing the occupancy of a building or structure, for use as a residential dwelling, a Final or Temporary Certificate of Occupancy which allows occupancy and use for the intended residential purpose shall be deemed proof of substantial completion.

Improvements – Shall mean, individually or collectively, as the case may be, the improvements approved by the City to be constructed on, in or under the Project Area in accordance with the Redevelopment Agreement.

In Rem Tax Foreclosure - A summary proceeding by which the City may enforce the lien for taxes or other municipal charges due and owing by a tax sale, all in accordance with the Tax Sale Law, *N.J.S.A. 54:5-1 et seq.*

Project – Shall have the meaning ascribed to such term in the Exemption Application and the Redevelopment Agreement entered into between the City of Bayonne and **536 BROADWAY PARTNERSHIP, LLC**.

Project Completion Date - The date on which each and every Improvement of the Project shall be completed as set forth in the Redevelopment Agreement.

Tax Assessor - The tax assessor for the City

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

Tax Year – A twelve (12) month period which is determined to be a tax year in accordance with the City's tax calendar as prescribed by all applicable law.

SECTION 2 City Approval of Tax Exemption

(a) Pursuant to the Ordinance, and provided that the Project Completion Date shall be no later than **26 months following the effective date of this Ordinance**, the Improvements made in connection with the Project (But not the Land upon which they are situated) shall be exempt from real property taxation as provided for herein and in the Tax Exemption Law. The Project shall be as described in the Exemption Application and shall be built in accordance with all applicable law. Prior to the Project Completion Date, the Project Area, including any and all Improvements related thereto, shall be assessed and taxed according to the general law applicable to all other non-exempt property located within the City.

(b) In the event that the project completion date does not occur prior to **26 months following the effective date of this Ordinance**, this Tax Agreement, and the tax exemption granted herein, shall immediately cease and shall have no force and effect and the Project Area, including any Improvements related thereto, shall be assessed and taxed according to the general law applicable to all other non-exempt property located within the City.

SECTION 3 Term

(a) It is hereby expressly understood and agreed by the parties that this Agreement, including the obligation to make payments in lieu of taxes required under this agreement, shall, (provided that the Project Completion Date shall be no later than set forth above), commence on the first day of the tax year following the Project Completion Date and shall, provided that there shall not be a default under this Tax Agreement or the Redevelopment Agreement, remain in effect, for a period of five (5) years from the first day of the Tax Year following the Project Completion Date. Upon the expiration of the tax exemption granted and provided for herein, the Project Area, including any Improvements related thereto, shall thereafter be assessed and taxed according to the general law applicable to all other non-exempt property located within the City.

(b) Upon the expiration of the tax exemption provided for herein, all restrictions and limitations of this Tax Agreement imposed upon the Property Owner and the Project Area, including any Improvements related thereto, excluding (i) the requirement to make payment of any payments in lieu of taxes due and owing hereunder, and (ii) any and all related and available remedies of the City, shall terminate.

SECTION 4 Termination

(a) If at any time during the term of this Tax Agreement there shall be a default by the Property Owner of any of the provisions of this Tax Agreement, which default shall not have otherwise been cured or remedied in accordance with the terms hereof, this Tax Agreement shall automatically terminate and the parcel to which the agreement applies (Project Area), including any Improvements related thereto, shall thereafter be assessed and taxed according to the general law applicable to all other non-exempt property located within the City.

(b) In accordance with the Tax Exemption Law, including without limitation *N.J.S.A. 40A:21-12*, in the event that the City shall terminate this Tax Exemption Agreement in accordance with the terms hereof, the real property taxes that would have otherwise been due in each Tax Year governed by this Tax Agreement, if not for the tax exemption granted herein, shall become due and payable.

SECTION 5 Payments in Lieu of Taxes

The Property Owner shall make payments in lieu of taxes to the City, on a tax phase-in basis, as follows:

SEE SCHEDULE A" ATTACHED HERETO AND SPECIFICALLY MADE A PART HEREOF

The Property Owner shall make become responsible for these payments in lieu of taxes commencing the first day of tax year following the Project Completion Date. The property (Land and Improvements) shall be subject to regular taxation including partial and added assessments until the Exemption period on the improvements begins. As set forth in Schedule A, attached, the exemptions shall run from January 1 of the Tax year following completion until December 31st of the 5th year following completion. Payments in lieu of taxes shall be due and payable in quarterly installments on those dates when real property taxes are otherwise due and payable.

If any installment of the payments in lieu of taxes is not paid to the City in accordance with this Tax Agreement on the date and in the full amount scheduled to be paid, the Property Owner hereby expressly waives any objection or right to challenge the use by the City of the enforcement of remedies to collect such installment of the payment in lieu of taxes as are afforded the City by law, including but not limited to the Tax Sale Law.

In the event that the Property Owner fails to timely pay any installment of the payments in lieu of taxes, the amount past due shall bear the highest rate of interest permitted under applicable State law in the case of unpaid taxes or tax liens on land until paid.

SECTION 6 Municipal Charges

The Property Owner hereby expressly acknowledges, understands, and agrees that, in addition to the payments in lieu of taxes, it shall be responsible for the payment (without any credit whatsoever hereunder) of all other applicable municipal charges that may, from time to time, be lawfully assessed upon the parcel subject to this agreement (“Project Area”), including, without limitation, any and all special benefit assessments, water and sewer charges, and other municipal charges, whether presently existing or hereinafter imposed, and that the City may enforce such assessments and charges in any manner (including, but not limited to, foreclosure or tax sale) permitted by applicable law.

SECTION 7 Material Conditions

It is expressly agreed and understood that (a) all payments of land taxes and payments in lieu of taxes and other municipal charges, and any interest payments, penalties or costs of collection due thereon are material conditions of this Agreement (“Material Conditions”). If any other term, covenant or condition of this Tax Agreement or the Exemption Application, as to any person or circumstance shall, to any extent, be determined to be invalid or unenforceable by virtue of a non-appealable order of a court of competent jurisdiction, the remainder of this Tax 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 remaining term, covenant or condition of this Tax Agreement shall be valid and enforced to the fullest extent permitted by law.

SECTION 8 Certificate of Occupancy

It is understood and agreed that the Property Owner shall remain obligated to make application for and make all good faith efforts which are reasonable to obtain Certificate(s) of Occupancy in a timely manner for the Project Area and the Improvements related thereto.

SECTION 9 Filing of Certificate of Occupancy

It shall be the primary responsibility of the Property Owner to forthwith file with the Tax Assessor, Tax Collector, and Chief Financial Officer of the City a copy of any such Certificate of Occupancy.

SECTION 10 Sale and/or Transfer

In the event of the sale and/or transfer of the Project Area, or any Improvements related thereto, and provided that this Tax Agreement shall not otherwise be terminated in accordance with the terms hereof, all of the rights, duties, responsibilities and obligations of the Property Owner hereunder shall automatically become the rights, duties, responsibilities and obligations of the subsequent owner.

SECTION 11 Change in Use

In the event that the Property Owner shall cease to operate and utilize the Project Area and the Improvements related thereto for the purpose set forth herein this Tax Agreement shall automatically terminate and the Project Area, including the Improvements related thereto, shall be assessed and taxed according to the general law applicable to all other non-exempt property located within the City.

SECTION 12 Waiver

Nothing contained in this Tax Agreement or otherwise shall constitute a waiver or relinquishment by the City of any rights and remedies provided by law, including without limitation, the right to terminate this Tax Agreement. Nothing herein shall be deemed to limit any right of recovery that the City has under law, in equity, or under any provision of this Tax Agreement.

SECTION 13 Construction

This Tax Agreement shall be construed and enforced in accordance with the laws of the State of New Jersey.

SECTION 14 Indemnification

(a) It is hereby expressly acknowledged, understood and agreed that in the event the City shall be named as party defendant in any action by reason of any breach, default or a violation of any of the provisions of this Tax Agreement and/or the provisions of the Acts by the Property Owner, or any challenge to the validity of this Tax Agreement, the Property Owner shall indemnify and hold the City harmless from and against all liability, losses, damages, demands, costs, claims, actions or expenses (including attorneys' fees and expenses) of every kind, character and nature arising out of or resulting from the action or inaction of the Property Owner and/or by reason of any breach, default or a violation of any of the provisions of this Tax

Agreement, and/or any Federal or State law and/or any challenge to the validity of this Tax Agreement.

(b) In the event the Property Owner alone is named a party defendant to any action of the type set forth in subsection (a) above, the City maintains the right to intervene as a party thereto, to which intervention the Property Owner hereby expressly consents, and to carry out their own defense, the reasonable cost of which shall be borne by the Property Owner.

SECTION 15 Default

A default hereunder shall be deemed to have occurred if the Property Owner fails to conform to the terms of this Tax Agreement, or fails to perform any obligation imposed upon the Property Owner by statute, ordinance or lawful regulation.

In addition to all of its other rights and remedies, in the event of a default of this Tax Agreement, the City may terminate this Tax Agreement and the tax exemption granted herein shall immediately cease and shall have no further force and effect and the Project Area, including any Improvements related thereto, shall thereafter be assessed and taxed according to the general law applicable to all other non-exempt property located within the City.

SECTION 16 Cure Upon Default

Should the Property Owner be in default of any obligation under this Tax Agreement, the City shall notify the Property Owner in writing of said default. Said notice shall set forth with particularity the basis of said default. Except as otherwise limited by law, the Property Owner shall have ninety (30) days to cure any default (other than a default in payment of any installment of the payments in lieu of taxes in which case there shall be no cure period). In the case of a default which cannot with diligence be remedied or cured, or the remedy or cure of which cannot be commenced, within the time periods set forth herein, the Property Owner shall have such additional time as reasonably necessary to remedy or cure such default provided that the Property Owner shall at all times act with diligence, and in good faith, to remedy or cure such default as soon as practicable. Upon such default and cure period, the City shall have the right to proceed against the Project Area, including any Improvements related thereto, pursuant to any and all applicable provisions of law.

SECTION 17 Remedies

In the event of a default on the part of the Property Owner to pay any installment of the payments in lieu of taxes required by this agreement, the City, in addition to its other remedies, specifically and without limitation, reserves the right to proceed against the Project Area, including any Improvements related thereto, in the manner provided by law, including without

limitation, the Tax Sale Law, and any act supplementary or amendatory thereof. Whenever the word “Taxes” appears, or is applied, directly or implied, to mean taxes or municipal liens on land, such statutory provisions shall be read, as far as it is pertinent to this Tax Agreement, as if the payments in lieu of taxes were taxes or municipal liens on land. In either case, however, the Property Owner does not waive any defense it may have to contest the rights of the City to proceed in the above-mentioned manner.

SECTION 18 Remedies Upon Default Cumulative; No Waiver

Subject to the provisions of this Tax Agreement, all of the remedies provided in this Tax Agreement, all rights and remedies granted to the City by Law and equity shall be cumulative and concurrent and no determination of the invalidity of any provision of this Tax Agreement shall deprive the City of any of their remedies or actions against the Property Owner or the Project Area, including any Improvements related thereto, because of the Property Owner’s failure to pay the payments in lieu of taxes and/or any applicable municipal service charges and interest payments. This right shall only apply to arrearages that are due and owing at the time, and the bringing of any action for payments in lieu of taxes or other charges, or for breach of covenant or the resort of any other remedy herein provided for the recovery of payments in lieu of taxes or other charges shall not be construed as a waiver of the right to proceed with an In Rem Foreclosure action consistent with the terms and provisions of the Tax Sale Law and this Tax Agreement.

SECTION 19 Conflict

- (a) The parties agree that in the event of a conflict between the Exemption Application and this Tax Agreement, the language in this Tax Agreement shall govern and prevail.
- (b) The parties agree that in the event of a conflict between this Tax Agreement and its enabling Ordinance, the language in the Ordinance shall govern and prevail.

SECTION 20 Entire Agreement – No Oral Representations

All conditions in the Ordinance and the Exemption Application are incorporated in this Tax Agreement and made a part hereof. There have been no oral representations made by any of the parties hereto which are not contained in this Tax Agreement. This Tax Agreement, the Ordinance authorizing it and the Exemption Application constitute the entire agreement between the parties and there shall be no modifications thereto other than by a written instrument executed by the parties hereto and delivered to each of them. Notwithstanding anything contained herein to the contrary, no waiver of any rights granted hereunder and no modification or amendment to this Tax Agreement shall be effective, or otherwise have any force and effect without the express written consent of the parties hereto.

SECTION 21 Property Owner's Consent

The Property Owner hereby acknowledges, consents and agrees (a) to the amount of the payments in lieu of taxes and to the liens established in this Tax 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.

SECTION 22 Recording

This entire Tax Agreement and the Ordinance may, if the City of Bayonne in its sole discretion so chooses, be filed and recorded with the Hudson County Clerk such that this Tax Agreement and the Ordinance shall be reflected upon the land records of the County of Hudson as a covenant running with the Project Area, including any Improvements related thereto.

SECTION 23 Delivery to Tax Assessor

The Clerk of the City shall deliver to the Tax Assessor a certified copy of the Ordinance along with an executed copy of this Tax Agreement. Upon such delivery and proof of project completion being provided, the Tax Assessor shall implement the tax exemption granted and provided herein and shall continue to enforce the tax exemption, without further certification by the City Clerk, until the expiration of the tax exemption in accordance with the terms hereof.

SECTION 24 Amendments

This Tax Agreement may not be amended, changed, modified, altered or terminated without the written consent of the parties hereto.

IN WITNESS WHEREOF, the parties have caused these presents to be executed as of the day and year first above written.

ATTEST:

PROPERTY OWNER

By: _____

ATTEST:

CITY OF BAYONNE

Robert Sloan, City Clerk

By: _____
James M. Davis, Mayor

[SEAL]