

O-19-14
02/20/19

ORDINANCE OF THE CITY OF BAYONNE, COUNTY OF HUDSON, NEW JERSEY AUTHORIZING A FIRST AMENDMENT TO FINANCIAL AGREEMENTS WITH PSIP AVENUE A URBAN RENEWAL II, LLC WITH RESPECT TO BLOCK 333.03, LOTS 1 AND 4 (A.K.A. PHASE 1) AND TO PSIP AVENUE A URBAN RENEWAL, LLC WITH RESPECT TO BLOCK 333.02, LOT 1 AND BLOCK 333.03, LOTS 2 AND 3 (A.K.A. PHASE 2) IN THE CITY OF BAYONNE

WHEREAS, the City of Bayonne (the “City”) entered into a Financial Agreement with PSIP Avenue A Urban Renewal II, LLC dated **November 3, 2017** and recorded in the office of the Hudson County Register on **November 6, 2017** in Book **9252**, Page **645** (the “**Phase 1 Financial Agreement**”), for a long term tax exemption on Phase 1 of the project, which property is located at Block 333.03, Lots 1 and 4 on the tax maps of the City (the “**Phase 1 Property**”); and

WHEREAS, the City entered into a Financial Agreement with PSIP Avenue A Urban Renewal, LLC dated **November 3, 2017** and recorded in the office of the Hudson County Register on **November 6, 2017** in Book **9252**, Page **830** (the “**Phase 2 Financial Agreement**”), for a long term tax exemption on Phase 2 of the project, which property is located at Block **333.02**, Lot **1** and Block **333.03**, Lots **2** and **3** on the tax maps of the City (the “**Phase 2 Property**”); and

WHEREAS, PSIP Avenue A Urban Renewal II, LLC and PSIP Avenue A Urban Renewal, LLC now desire to amend the Phase 1 Financial Agreement and Phase 2 Financial Agreement, respectively, in order to correct certain discrepancies therein; and

WHEREAS, the City has agreed to amend the Phase 1 Financial Agreement substantially in the form of the First Amendment to Financial Agreement attached hereto as Exhibit A to Ordinance; and

WHEREAS, the City has agreed to amend the Phase 2 Financial Agreement substantially in the form of the First Amendment to Financial Agreement attached hereto as Exhibit B to Ordinance.

NOW, THEREFORE, BE IT ORDAINED BY THE MUNICIPAL COUNCIL OF THE CITY OF BAYONNE, NEW JERSEY AS FOLLOWS:

Section 1. The Municipal Council hereby consents to the First Amendment to the Phase 1 Financial Agreement and the First Amendment to the Phase 2 Financial Agreement.

Section 2. The Mayor is hereby authorized to execute the First Amendment to the Phase 1 Financial Agreement substantially in the form attached hereto as Exhibit A, and the First Amendment to the Phase 2 Financial Agreement substantially in the form attached hereto as

Exhibit B, and subject to any further review, analysis or modifications that counsel may deem appropriate.

Section 3. All actions taken by or on behalf of the City prior to the date of adoption hereof in connection with the transactions contemplated herein are hereby ratified and approved.

Section 4. This ordinance shall take effect immediately upon final passage.

EXHIBIT A TO ORDINANCE

FIRST AMENDMENT TO PHASE 1 FINANCIAL AGREEMENT

FIRST AMENDMENT TO FINANCIAL AGREEMENT

BY AND BETWEEN

THE CITY OF BAYONNE

AND

PSIP AVENUE A URBAN RENEWAL II, LLC

DATED AS OF NOVEMBER 3, 2017

AMENDED AS OF FEBRUARY __, 2019

THIS FIRST AMENDMENT TO FINANCIAL AGREEMENT (hereinafter this “**First Amendment**”), is made this ___ day of **FEBRUARY, 2019** by and between **PSIP AVENUE A URBAN RENEWAL II, LLC**, an urban renewal entity qualified to do business under the provisions of the Long Term Tax Exemption Law of 1992, N.J.S.A. 40A:20-1 et seq., as amended and supplemented (the “**Long Term Tax Exemption Law**”), with offices at c/o Penwood Real Estate Investment Management, LLC, 75 Isham Road, 4th Floor, West Hartford, CT 06107 (together with its permitted successors and assigns, the “**Entity**”) and the **CITY OF BAYONNE**, a municipal corporation in the County of Hudson and the State of New Jersey (together with its permitted successors and assigns, the “**City**”, and together with the Entity, the “**Parties**” or “**Party**”).

WITNESSETH:

WHEREAS, the Parties entered into a Financial Agreement dated November 3, 2017 (the “**Financial Agreement**”) relating to the Project, as defined therein; and

WHEREAS, in order to correct certain discrepancies in the Financial Agreement, the Parties have determined to execute this First Amendment.

NOW, THEREFORE, in consideration of the mutual covenants herein contained and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is mutually covenanted and agreed as follows:

The first Whereas clause in the Financial Agreement shall be amended in its entirety and replaced by the following two Whereas clauses, to read as follows:

“WHEREAS, the Entity is the owner of the property identified on the Tax Maps of the City as **Block 310, Lots 1, 2, 3, 11, and part of Lots 4, 12 and 13, and Block 333.01, Lots 6 and part of Lot 5** and more particularly described by the metes and bounds description attached hereto as **Exhibit A**, which property has been consolidated and replatted into Block 333.03, Lots 1 and 4, of subdivision map entitled *“Major Subdivision Plat, PSIP Avenue A LLC, Avenue “A” @ Bayonne Court, Lots 1-9 & 11-13, Block 310; Lot 7, Block 301.01; Lot 1, Block 311.01; Lots 1-6, Block 333.01; and Lot 1, Block 333.02, City of Bayonne, Hudson County, State of New Jersey,”* (collectively and as platted, the **“Property”**); and

WHEREAS, the Entity has submitted an application for tax exemption to the City with respect to certain property described therein, which shall hereafter refer to the Property, as platted and restated as provided above (the **“Application”**); and”

The definition of **“Land”** in Section 1.02 of the Financial Agreement is hereby amended and restated to read as follows: “Land – the real property but NOT the Improvements, known as Block 333.03, Lots 1 and 4 on the tax maps of the City of Bayonne, New Jersey, as more particularly described by the metes and bounds description set forth in *Exhibit A* of this Agreement.”

The definition of **“Total Project Costs”** in Section 1.02 of the Financial Agreement shall be amended to read as follows:

“Total Project Cost – The total cost of the Project through the date a Certificate(s) of Occupancy is issued for the entire Project, which categories of cost are as defined in N.J.S.A. 40A:20-3(h), including without limitation the cost of the Land and the actual costs incurred to construct the Improvements which are specifically described in the Application, whether such costs are or were incurred by (a) the Entity directly, or (b) the sole member of the Entity on behalf of the Entity and reimbursed by the Entity to such sole member.”

The first sentence of Section 2.05 of the Financial Agreement shall be deleted and replaced by the following two sentences:

“The Entity represents that it is or will be the Owner of the Property after the Property is subdivided and consolidated in accordance with the major subdivision map entitled *“Major Subdivision Plat, PSIP Avenue A LLC, Avenue “A” @ Bayonne Court, Lots 1-9 & 11-13, Block 310; Lot 7, Block 301.01; Lot 1, Block 311.01; Lots 1-6, Block 333.01; and Lot 1, Block 333.02, City of Bayonne, Hudson County, State of New Jersey,”* prepared by James C. Weed of Control Point Associates Inc., dated October 3, 2018, which subdivision plat was filed in the Hudson County Register’s Office on October 29, 2018 as Instrument Number 20181029130000180 (**“Subdivision Plat”**). Any construction and improvements undertaken by the sole member of the Entity prior to the conveyance of the Land

to the Entity shall be deemed for all purposes of this Agreement to have been undertaken by the Entity.”

The first sentence of Section 2.06 of the Financial Agreement shall be deleted and replaced by the following sentence:

“The sole member of the Entity has previously incurred an aggregate amount of [\$17,921,858 - TO BE UPDATED AT THE TIME OF EXECUTION OF THE AMENDMENT] with respect to Land and Improvements on behalf of the Entity which shall be reimbursed by the Entity to such sole member.”

Further, the following sentence is added to the end of Section 2.06:

“The mortgage amortization, interest rate and principal amount of any Project related financing shall be deemed updated upon any refinance(s) of Project related debt or the incurrence of any additional debt from time to time.”

Section 10.01(A) of the Financial Agreement is hereby amended to change the address for notices to the Entity as follows:

“PSIP AVENUE A URBAN RENEWAL II, LLC
c/o Penwood Real Estate Investment Management, LLC,
75 Isham Road, 4th Floor,
West Hartford, CT 06107”

Copies to Sills Cummis & Gross, P.C. remain the same.

Further, the following sentence is added to the end of Section 10.01: “Either party may change or update its notices address by written notice to the other party given as provided above.”

Exhibit A attached hereto, which is a corrected metes and bounds description, shall substitute and replace the Exhibit A attached to the Financial Agreement.

Miscellaneous.

Except as expressly modified by this First Amendment, all of the terms and conditions of the Financial Agreement shall continue in full force and effect, and all Parties hereto shall be entitled to the benefits thereof.

The preamble to, recitals of, and exhibits attached to this First Amendment are hereby incorporated into this First Amendment by reference and made a part of this First Amendment as if set forth at length herein.

This First Amendment may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original, and all of which when taken together shall constitute one and the same agreement.

This First Amendment, including the validity thereof and the rights and obligations of the parties hereunder, shall be construed in accordance with and governed by the laws of the State of New Jersey.

All capitalized terms used, but not otherwise defined herein, shall have the meanings ascribed to them in the Financial Agreement, unless otherwise specifically set forth herein to the contrary.

City and Entity do each hereby warrant that it has full right and authority to enter into this First Amendment.

This First Amendment is an amendment to the Financial Agreement. Unless the context of this First Amendment otherwise requires, the Financial Agreement and this First Amendment shall be read together and shall have effect as if the provisions of the Financial Agreement and this First Amendment were contained in one agreement. In the event of a conflict between the Financial Agreement and this First Amendment, the First Amendment shall control absent a manifest intent to the contrary. Upon the execution of this First Amendment, all references in the Financial Agreement to the “Financial Agreement”, “this Agreement”, “hereto”, “hereof”, “hereunder” or words of like import referring to the Financial Agreement shall mean the Financial Agreement as amended by this First Amendment.

[SIGNATURES APPEAR ON SUCCESSIVE PAGE]

IN WITNESS WHEREOF, the parties have duly executed this First Amendment the day and year first above written.

**PSIP AVENUE A URBAN
RENEWAL II, LLC**, a New Jersey
limited liability company

WITNESS:

Name:

By: _____

ATTEST:

THE CITY OF BAYONNE

ROBERT F. SLOAN
City Clerk

By: _____
JAMES M. DAVIS
Mayor

EXHIBIT A

CORRECTED METES AND BOUNDS DESCRIPTION

EXHIBIT B TO ORDINANCE

FIRST AMENDMENT TO PHASE 2 FINANCIAL AGREEMENT

FIRST AMENDMENT TO FINANCIAL AGREEMENT

BY AND BETWEEN

THE CITY OF BAYONNE

AND

PSIP AVENUE A URBAN RENEWAL, LLC

DATED AS OF NOVEMBER 3, 2017

AMENDED AS OF FEBRUARY __, 2019

THIS FIRST AMENDMENT TO FINANCIAL AGREEMENT (hereinafter this “**First Amendment**”), is made this ___ day of **FEBRUARY, 2019** by and between **PSIP AVENUE A URBAN RENEWAL, LLC**, an urban renewal entity qualified to do business under the provisions of the Long Term Tax Exemption Law of 1992, N.J.S.A. 40A:20-1 et seq., as amended and supplemented (the “**Long Term Tax Exemption Law**”), with offices at c/o Penwood Real Estate Investment Management, LLC, 75 Isham Road, 4th Floor, West Hartford, CT 06107 (together with its permitted successors and assigns, the “**Entity**”) and the **CITY OF BAYONNE**, a municipal corporation in the County of Hudson and the State of New Jersey (together with its permitted successors and assigns, the “**City**”, and together with the Entity, the “**Parties**” or “**Party**”).

WITNESSETH:

WHEREAS, the Parties entered into a Financial Agreement dated November 3, 2017 (the “**Financial Agreement**”) relating to the Project, as defined therein; and

WHEREAS, in order to correct certain discrepancies in the Financial Agreement, the Parties have determined to execute this First Amendment.

NOW, THEREFORE, in consideration of the mutual covenants herein contained and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is mutually covenanted and agreed as follows:

The first Whereas clause in the Financial Agreement shall be amended in its entirety and replaced by the following two Whereas clauses, to read as follows:

“**WHEREAS**, the Entity is the owner of the property identified on the Tax Maps of the City as **Block 310, Lots 5, 6, 7, 8, 9, and part of Lots 4, 12 and 13, and Block 311.01, Lot 1; Block 333.01, Lots 1-4, and part of Lot 5; Block 333.02, Lot 1; and Block 301.01, Lot 7** all as more particularly described by the metes and bounds description attached hereto as ***Exhibit A***, which property has been consolidated and replatted into Block 333.03, Lots 2 and 3, of subdivision map entitled “*Major Subdivision Plat, PSIP Avenue A LLC, Avenue “A” @ Bayonne Court, Lots 1-9 & 11-13, Block 310; Lot 7, Block 301.01; Lot 1, Block 311.01; Lots 1-6, Block 333.01; and Lot 1, Block 333.02, City of Bayonne, Hudson County, State of New Jersey,*” (collectively and as platted, the “**Property**”); and

WHEREAS, the Entity has submitted an application for tax exemption to the City with respect to certain property described therein, which shall hereafter refer to the Property, as platted and restated as provided above (the “**Application**”); and”

The definition of “**Land**” in Section 1.02 of the Financial Agreement is hereby amended and restated to read as follows: “**Land** – the real property but NOT the Improvements, known as

Block 333.03, Lots 2 and 3 on the tax maps of the City of Bayonne, New Jersey, as more particularly described by the metes and bounds description set forth in *Exhibit A* of this Agreement.”

The definition of “Total Project Costs” in Section 1.02 of the Financial Agreement shall be amended to read as follows:

“Total Project Cost – The total cost of the Project through the date a Certificate(s) of Occupancy is issued for the entire Project, which categories of cost are as defined in N.J.S.A. 40A:20-3(h), including without limitation the cost of the Land and the actual costs incurred to construct the Improvements which are specifically described in the Application, whether such costs are or were incurred by (a) the Entity directly, or (b) the sole member of the Entity on behalf of the Entity and reimbursed by the Entity to such sole member.”

Section 2.04 of the Financial Agreement is hereby amended by deleting both references to “twelve (12) months of the Effective Date” and replacing it with “eighteen (18) months of the Effective Date.”

The first sentence of Section 2.05 of the Financial Agreement shall be deleted and replaced by the following two sentences:

“The Entity represents that it is or will be the Owner of the Property after the Property is subdivided and consolidated in accordance with the major subdivision map entitled “*Major Subdivision Plat, PSIP Avenue A LLC, Avenue “A” @ Bayonne Court, Lots 1-9 & 11-13, Block 310; Lot 7, Block 301.01; Lot 1, Block 311.01; Lots 1-6, Block 333.01; and Lot 1, Block 333.02, City of Bayonne, Hudson County, State of New Jersey,*” prepared by James C. Weed of Control Point Associates Inc., dated October 3, 2018, which subdivision plat was filed in the Hudson County Register’s Office on October 29, 2018 as Instrument Number 20181029130000180 (“**Subdivision Plat**”). Any construction and improvements undertaken by the sole member of the Entity prior to the conveyance of the Land to the Entity shall be deemed for all purposes of this Agreement to have been undertaken by the Entity.”

The first sentence of Section 2.06 of the Financial Agreement shall be deleted and replaced by the following sentence:

“The sole member of the Entity has previously incurred an aggregate amount of [\$6,041,752 – TO BE UPDATED AT THE TIME OF EXECUTION OF THE AMENDMENT] with respect to Land and Improvements on behalf of the Entity which shall be reimbursed by the Entity to such sole member.”

Further, the following sentence is added to the end of Section 2.06:

“The mortgage amortization, interest rate and principal amount of any Project related financing shall be deemed updated upon any refinance(s) of Project related debt or the incurrence of any additional debt from time to time.”

Section 10.01(A) of the Financial Agreement is hereby amended to change the address for notices to the Entity as follows:

“PSIP AVENUE A URBAN RENEWAL, LLC
c/o Penwood Real Estate Investment Management, LLC,
75 Isham Road, 4th Floor,
West Hartford, CT 06107”

Copies to Sills Cummis & Gross, P.C. remain the same.

Further, the following sentence is added to the end of Section 10.01: “Either party may change or update its notices address by written notice to the other party given as provided above.”

Exhibit A attached hereto, which is a corrected metes and bounds description, shall substitute and replace the Exhibit A attached to the Financial Agreement.

Miscellaneous.

Except as expressly modified by this First Amendment, all of the terms and conditions of the Financial Agreement shall continue in full force and effect, and all Parties hereto shall be entitled to the benefits thereof.

The preamble to, recitals of, and exhibits attached to this First Amendment are hereby incorporated into this First Amendment by reference and made a part of this First Amendment as if set forth at length herein.

This First Amendment may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original, and all of which when taken together shall constitute one and the same agreement.

This First Amendment, including the validity thereof and the rights and obligations of the parties hereunder, shall be construed in accordance with and governed by the laws of the State of New Jersey.

All capitalized terms used, but not otherwise defined herein, shall have the meanings ascribed to them in the Financial Agreement, unless otherwise specifically set forth herein to the contrary.

City and Entity do each hereby warrant that it has full right and authority to enter into this First Amendment.

This First Amendment is an amendment to the Financial Agreement. Unless the context of this First Amendment otherwise requires, the Financial Agreement and this First Amendment shall be read together and shall have effect as if the provisions of the Financial Agreement and this First Amendment were contained in one agreement. In the event of a conflict between the Financial Agreement and this First Amendment, the First Amendment shall control

absent a manifest intent to the contrary. Upon the execution of this First Amendment, all references in the Financial Agreement to the “Financial Agreement”, “this Agreement”, “hereto”, “hereof”, “hereunder” or words of like import referring to the Financial Agreement shall mean the Financial Agreement as amended by this First Amendment.

[SIGNATURES APPEAR ON SUCCESSIVE PAGE]

IN WITNESS WHEREOF, the parties have duly executed this First Amendment the day and year first above written.

**PSIP AVENUE A URBAN
RENEWAL, LLC**, a New Jersey
limited liability company

WITNESS:

Name:

By: _____

ATTEST:

THE CITY OF BAYONNE

ROBERT F. SLOAN
City Clerk

By: _____
JAMES M. DAVIS
Mayor

EXHIBIT A

CORRECTED METES AND BOUNDS DESCRIPTION