

**TOWN OF WEST NEW YORK
COUNTY OF HUDSON, STATE OF NEW JERSEY**

ORDINANCE #25/22

AN ORDINANCE OF THE TOWN OF WEST NEW YORK, COUNTY OF HUDSON, NEW JERSEY APPROVING THE PILOT AND AUTHORIZING THE MAYOR AND MUNICIPAL CLERK PURSUANT TO N.J.S.A. 40A:20-1 ET SEQ. TO EXECUTE A FINANCIAL AGREEMENT BY AND BETWEEN THE TOWN OF WEST NEW YORK AND TOLL PARCEL H URBAN RENEWAL, LLC FOR THE PROPERTY LOCATED ON BLOCK 168.01, LOT 7.11 AS SHOWN ON THE OFFICIAL TAX MAP OF THE TOWN OF WEST NEW YORK AND LOCATED IN THE WATERFRONT REDEVELOPMENT AREA

WHEREAS, on the basis of a preliminary investigation and recommendation of the Planning Board of the Town pursuant to the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq., the Board of Commissioners of the Town determined that certain property known as waterfront property and more particularly described, at that time, on the Tax Maps as Block 168, Lots 3, 3.01, 4, 4.01, 5, 6, 6.01, 7, 7.01, which were subsequently subdivided to create new blocks and lots, and all air rights and riparian rights attached or associated with these parcels should be classified as a redevelopment area in accordance with N.J.S.A. 40A:12A-5 (the “Redevelopment Area”); and

WHEREAS, on April 17, 1996, the Board of Commissioners passed Ordinance 16/96, adopting the redevelopment plan of the Town of West New York for the Redevelopment Area (the “Redevelopment Plan”); and

WHEREAS, the Redevelopment Plan calls for the Redevelopment Area to be developed as a mixed residential community consisting of approximately 4,060 apartment and condominium units, 100,000 square feet of neighborhood retail space, and associated uses, including roadways, parking facilities, walkways, parks and other recreational amenities (collectively, the “Improvements”); and

WHEREAS, thereafter the lots included in the Redevelopment Area were subdivided and new block and lot designations were assigned; and

WHEREAS, pursuant to the Redevelopment Plan, Roseland/Port Imperial, LLC (“RPI”) and the Town entered into a redevelopment agreement dated September 19, 1996, for the redevelopment of the Redevelopment Area, which was amended by agreement dated June 2017 (collectively referred to as the “Redevelopment Agreement”); and

WHEREAS, by assignment and assumption agreement dated June 16, 1998, the rights and obligations of RPI under the Redevelopment Agreement were assigned to, and assumed by, RPI’s affiliate, Roseland/Port Imperial Partners, L.P. (“Roseland”) and Roseland acquired title to lands comprising the Redevelopment Area; and

WHEREAS, in 2006, K. Hovnanian at Port Imperial Urban Renewal VIII, LLC (“KHOV”) assumed the outstanding obligations of Roseland under the Redevelopment Agreement related to property located within the Redevelopment Area identified as Block 168, Lot 7.11 on the Town tax map, commonly referred to as “Parcel H” (the “Project Site”), and acquired the Project Site from Roseland; and

WHEREAS, by agreement dated June 7, 2017, Toll Bros., Inc. entered into a contract to acquire the Project Site from KHOV and subsequently assigned its interest in the agreement to its affiliate Toll Port Imperial LLC; and

WHEREAS, by Resolution adopted on September 21, 2017, the Town consented to such transfer; and

WHEREAS, by assumption agreement dated February 1, 2018, Toll Port Imperial LLC assumed the outstanding obligations of KHOV under the Redevelopment Agreement related to the Project Site; and

WHEREAS, by Resolution memorialized on July 8, 2021, the Town Planning Board granted Toll Port Imperial LLC amended final major site plan approval with variance relief (the “Site Plan Approval”) for redevelopment of the Project Site with an approximately 73-unit residential condominium development, with other amenities and site improvements (the “Project”); and

WHEREAS, by an assumption agreement to be entered into between the parties, Toll Parcel H Urban Renewal, LLC (the “Entity”) shall assume the outstanding obligations of its affiliate, Toll Port Imperial LLC, under the Redevelopment Agreement that are related to the Project Site; and

WHEREAS, consistent with the terms and conditions set forth in the Redevelopment Agreement and the Site Plan Approval, the Entity will redevelop the Project Site with the construction of the Project; and

WHEREAS, the Entity was created for the purposes of acquiring, owning, holding, developing, maintaining, financing, mortgaging, improving, operating, leasing, managing, using, refinancing, selling, subdividing, or otherwise dealing with the Property and the Project; and

WHEREAS, pursuant to and in accordance with the provisions of the Long-Term Tax Exemption Law, constituting Chapter 431 of the Pamphlet Laws of 1991 of the State, and the acts amendatory thereof and supplement thereto (the “Long Term Tax Exemption Law”, as codified in N.J.S.A. 40A:20-1 et seq.), the Town is authorized to provide for payment in lieu of taxes within a redevelopment area; and

WHEREAS, in accordance with the Long Term Tax Exemption Law, the Entity filed an application with the Town for approval of a long term tax exemption (the “Long Term Tax Exemption” or “PILOT”) for the Project, (the “Application”); and

WHEREAS, the Entity has represented to the Town that the Project would not be feasible in its intended scope but for the provision of financial assistance by the Town; and

WHEREAS, in order to improve the feasibility of the Project, the Entity has requested a long-term tax exemption and financial agreement with respect to the Property pursuant to the Long-Term Tax Exemption Law; and

WHEREAS, after review of the request together with the Town Attorney, redevelopment counsel and the Town’s financial advisor, the Mayor recommends that the long-term tax exemption and financial agreement be approved; and

WHEREAS, the Entity has agreed to implement the Project in accordance with the Redevelopment Plan and in connection therewith, the Entity will devote substantial funds to the completion of the Project; and

WHEREAS, in addition to the profit limitations in the Long Term Tax Exemption Law, the nature of the Project entails an inherent profit limitation to the Entity through the extra costs, issues, and responsibilities associated with the Project that are not present outside of the redevelopment context and there is a need recognized by the Legislature to provide incentives to render implementation of redevelopment feasible; and

WHEREAS, in order to enhance the economic viability of and opportunity for a successful Project, the Town will enter into a financial agreement with the Entity governing payments made to the Town in lieu of real estate taxes on the Project pursuant to the Long-Term Tax Exemption Law; and

WHEREAS, the provisions of the Long-Term Tax Exemption Law authorize the Town to accept, in lieu of real property taxes, an annual service charge (as defined in the financial agreement and referred to herein as the “PILOT”) to be paid by the Entity to the Town; and

WHEREAS, the PILOT shall be for a 20-year term with an annual service charge based on 12.5% of annual gross revenues for years 1-5; 13.5% for years 6-10; 14.5% for years 11-15; and 15% for years 16-20; and

WHEREAS, the Town and the Entity have reached agreement with respect to, among other things, the terms and conditions relating to the PILOT and desire to execute a Financial Agreement.

NOW, THEREFORE, BE IT ORDAINED AND ENACTED by the Board of Commissioners of the Town of West New York, County of Hudson, New Jersey, as follows:

Section 1. The Town acknowledges that Toll Parcel H Urban Renewal, LLC, by effectuating the redevelopment of the Project, will significantly limit its profits due to the extraordinary costs to be borne by the Entity, which will provide significant and long-term benefits to the Town.

Section 2. The Town makes the following findings:

- A. Relative benefits of the Project when compared to the costs:
 1. The projected Annual Service Charge over the 20-year term will generate an average annual revenue to the Town of approximately \$2,127,295 for the Property.
 2. It is estimated that the Project will create jobs during construction and permanent jobs.
 3. The Project will further the redevelopment objectives of the Redevelopment Plan for Redevelopment Area.
 4. The Town has determined that the benefits of the Project significantly outweigh the costs to the Town.
- B. Assessment of the importance of the tax exemption in development of the Project and influencing the locational decisions of probable occupants:
 1. The relative stability and predictability of the Annual Service Charge will make the Project more attractive to investors and lenders needed to finance the Project; and
 2. The relative stability and predictability of the Annual Service Charge will allow stabilization of the Project operating budget, allowing a high level of urban design and aesthetics as well as the use of high quality materials which will maintain the appearance of the building over the life of the Project, which will insure the likelihood of the success of the Project and insure that it will have a positive impact on the surrounding area.

- C. Based upon the above determinations by the Town and the provisions of N.J.S.A. 40A:20-12, this Agreement contains appropriate tax exemption provisions and an appropriate Annual Service Charge schedule.

Section 3. The PILOT is hereby accepted and approved.

Section 4. The Financial Agreement shall be for a twenty (20) year term with an annual service charge based on 12.5% of annual gross revenues for years 1-5; 13.5% for years 6-10; 14.5% for years 11-15; and 15% for years 16-20, all in accordance with the Long-Term Tax Exemption Law.

Section 5. The Financial Agreement is hereby authorized to be executed and delivered on behalf of the Town by the Mayor in substantially the form attached hereto as Exhibit A subject to modification or revision as deemed necessary and appropriate after consultation with counsel. The Municipal Clerk is hereby authorized and directed to attest to the execution of the Financial Agreement by the Mayor and to affix the corporate seal of the Town to the Financial Agreement.

Section 6. The Town Clerk shall file certified copies of this Ordinance and the Financial Agreement with the Tax Assessor of the Town in accordance with Section 12 of the Long Term Tax Exemption Law.

Section 7. In accordance with the Long Term Tax Exemption Law, within ten (10) calendar days following the later of the effective date of this Ordinance or the execution of the Financial Agreement by the Entity, the Town Clerk also shall transmit a certified copy of this Ordinance and the Financial Agreement to the chief financial officer of Hudson County and to the Hudson County Counsel for informational purposes.

Section 8. The Mayor and Town Clerk are hereby authorized to take such action and to execute such other documents, on behalf of the Town, in consultation with counsel, as is necessary to effectuate the terms of the Financial Agreement.

Section 9. If any part(s) of this Ordinance shall be deemed invalid, such part(s) shall be severed and the invalidity thereby shall not affect the remaining parts of this Ordinance.

Section 10. This Ordinance shall take effect upon final passage and publication as required by law.

Introduced: September 7, 2022

Adopted: September 28, 2022

Statement

The foregoing ordinance having been previously adopted for first reading and published was further considered by the Mayor and Board of Commissioners of the Town of West New York on **September 28, 2022** and at said date was duly and finally adopted after public hearing thereon.

Adelanny Plaza, RMC
Town Clerk

Commissioner Victor M. Barrera

Commissioner Cosmo A. Cirillo, PhD.

Commissioner Margarita A. Guzman

Commissioner Yoleisy Yanez

Mayor Gabriel Rodriguez
BOARD OF COMMISSIONERS

Attest: _____
Adelanny Plaza, RMC
Town Clerk

EXHIBIT A

FORM OF FINANCIAL AGREEMENT