

ORDINANCE #3346

INTRODUCED BY: BOARD OF COMMISSINERS/READ BY COMMISSIONER THOMAS J. EVANS

INTRODUCED ON: AUGUST 2, 2016

PUBLISHED: AUGUST 3, 2016 / AUGUST 4, 2016

PUBLIC HEARING AND ADOPTION: AUGUST 16, 2016

PUBLISHED: AUGUST 17, 2016

ORDINANCE NO. 3346

ORDINANCE OF THE TOWNSHIP OF NUTLEY AUTHORIZING THE EXECUTION OF A FINANCIAL AGREEMENT WITH KINGSLAND STREET URBAN RENEWAL, LLC AND GRANTING A TAX EXEMPTION

THIS ORDINANCE AND ANY FINANCIAL AGREEMENT ENTERED INTO AND ATTACHED HERETO FROM TIME TO TIME SECURES BONDS OR OTHER OBLIGATIONS ISSUED IN ACCORDANCE WITH THE PROVISIONS OF THE "REDEVELOPMENT AREA BOND FINANCING LAW" AND THE LIEN HEREOF IN FAVOR OF THE OWNERS OF SUCH BONDS OR OTHER OBLIGATIONS IS A MUNICIPAL LIEN SUPERIOR TO ALL OTHER NON-MUNICIPAL LIENS HEREINAFTER RECORDED

WHEREAS, the *New Jersey Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq.* (the "Act") authorizes municipalities to determine whether certain parcels of land in the municipality constitute areas in need of redevelopment; and

WHEREAS, the Act confers certain contract, planning and financial powers upon a redevelopment entity, as defined in Section 3 of the Act, in order to implement redevelopment plans adopted pursuant thereto; and

WHEREAS, the Township of Nutley (the "**Township**"), in the County of Essex, State of New Jersey, has elected to exercise these redevelopment entity powers directly, as permitted by Section 4 of the Act; and

WHEREAS, on July 19, 2016, the Township adopted the "Nutley Redevelopment Plan – Nutley HLR/Phase I" (as may be amended and supplemented from time to time, the "**Phase I Redevelopment Plan**") with respect to an approximately 10.98 acre portion of the "Hoffmann-La Roche Redevelopment Area" as defined in the Phase I Redevelopment Plan, comprised of Block 201, Lot 1 and Block 300, Lot 1 on the Tax Map of the Township of Nutley (to be subdivided into Block 201, Lots 1.01, 1.02, 1.03 and 1.04) (the "**Phase I Premises**"); and

WHEREAS, pursuant to the Act, including Section 8 thereof (*N.J.S.A. 40A:12A-8*), a municipality is permitted to contract with a redeveloper to undertake redevelopment projects pursuant to a redevelopment plan within an area in need of redevelopment, as all such terms are defined in the Act; and

WHEREAS, the Township intends to adopt a resolution authorizing the execution of a Redevelopment Agreement (as the same may be amended and supplemented in accordance with its terms, the "Phase I Redevelopment Agreement") with Kingsland Street Urban Renewal, LLC (the "**Redeveloper**" or the "**Entity**") in connection with the redevelopment of the Phase I Premises; and

WHEREAS, in accordance with the Phase I Redevelopment Agreement and the Phase I Redevelopment Plan, the Redeveloper applied to subdivide the Phase I Premises (the "Subdivision"), which Subdivision was approved by the Planning Board on October 21, 2015 and has been or is about to be perfected and which Subdivision, *inter alia* (a) permits the subdivision of the Phase I Premises into a total of four (4) separately identifiable lots and reserves space for certain future private roads as shown on the Proposed Subdivision; (b) creates one (1) lot (Block 201, Lot 1.03) on which will be located portions of the existing structures known as Building 123 and Building 123A, which consist of a six-story building (Building 123) containing approximately 412,092 gross square feet of building area, and a second six-story building (Building 123A) functioning as a wing of Building 123 containing approximately 65,059 gross square feet as shown on the Proposed Subdivision (collectively, the "**Existing Buildings**"); (b) creates three (3) lots (Block 201, Lots 1.01, 1.02 and 1.04) to accommodate surface parking and open space for the Existing Buildings and/or the possible future redevelopment of same consistent and in accordance with the Phase I Redevelopment Plan (the "**Undeveloped Lots**") and;

WHEREAS, the Phase I Redevelopment Agreement provides, *inter alia*, for certain improvements to be made to the existing structures located on the parcel to be designated as Block 201, Lot 1.03 (such structures and improvements, the "**Phase I Project**"); and

WHEREAS, the Redeveloper has been qualified by the State of New Jersey to do business as an urban renewal entity under the provisions of the *Long Term Tax Exemption Law, N.J.S.A. 40A:20-1 et seq.* (the "**LTTE Law**"), and was created for the redevelopment, operation and maintenance of the Phase I Project; and

WHEREAS, in order to improve the feasibility of the renovation, operation and maintenance of the Phase I Project, the Entity made application to the Township requesting a long term tax exemption and financial agreement with respect to the Phase I Project (the “**Application**”) pursuant to the LTTE Law, which Application is on file with the Township Clerk; and

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

WHEREAS, after review of the Application, the Mayor recommended that the Application be approved on such terms as set forth in a proposed form of financial agreement (the “**Financial Agreement**”) substantially in the form attached hereto as **Exhibit A**, and by this reference incorporated herein, as may be modified in consultation with counsel as set forth herein, and

WHEREAS, the Board of Commissioners has reviewed the Application and the terms of the Financial Agreement, and wishes to approve the Application on such terms, subject to the designation of the Entity as a Redeveloper, as such term is defined in the Phase I Redevelopment Agreement, and the execution of an agreement with the Entity as a Redeveloper in accordance with the Phase I Redevelopment Agreement, which is expected to occur simultaneously herewith; and

WHEREAS, the Township hereby finds that the relevant benefits of the Phase I Project to the redevelopment of the Redevelopment Area (as defined in the Redevelopment Plan) outweigh the costs, if any, associated with the tax exemption, and in fact increase Township revenues over current levels by granting the long term tax exemption for the Phase I Project, which relevant benefits are further described in the Application and the Financial Agreement; and

WHEREAS, the Township hereby determines that the assistance provided to the Phase I Project pursuant to the Financial Agreement will be a significant inducement for the Entity to proceed with the Phase I Project and that based on information set forth in the Application, the Phase I Project would not be feasible without such assistance.

NOW, THEREFORE, BE IT ORDAINED AND ENACTED by the Board of Commissioners of the Township of Nutley, in the County of Essex, State of New Jersey as follows:

I. GENERAL

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

II. APPROVAL OF EXEMPTION FROM TAXATION

An exemption from taxation as set forth in the Application is hereby approved and granted to the Entity with respect to the Improvements for the Phase I Project in accordance with the terms set forth in the Financial Agreement; provided that in no event shall the term of the Financial Agreement exceed the earlier of thirty-five (35) years from the date of execution thereof or (ii) to the extent permitted by the LTTE Law, thirty (30) years from the Entity’s receive of a Certificate of Occupancy (as defined in the Financial Agreement) for the Phase I Project and only so long as the Entity remains subject to and in compliance with the Financial Agreement and the LTTE Law and any other agreement related to the Phase I Project or the Phase I Premises; and provided, further, that in no event shall the resulting property tax obligation in each year the property tax exemption is in effect, when combined with the Annual Service Charge as defined in the Financial Agreement, be less than the amount of the Land Taxes (as defined in the Financial Agreement) prior to redevelopment.

III. EXECUTION OF FINANCIAL AGREEMENT AUTHORIZED

(a) The Mayor is hereby authorized and directed to execute the Financial Agreement, substantially in the form as it has been presented to the Board of Commissioners, and attached hereto as **Exhibit A**, subject to additions, deletions, modifications, or revisions deemed necessary and appropriate in consultation with counsel.

(b) The Clerk of the Township is hereby authorized and directed, upon the execution of the Financial Agreement in accordance with the terms of Section II (a) hereof, to attest to the signature of the Mayor upon such document and is hereby further authorized and directed to affix the corporate seal of the Township upon such document.

(c) The Township Clerk shall file certified copies of this ordinance and the Financial Agreement with the Tax Assessor of the Township and the Director of the Division of Local Government Services within the New Jersey Department of Community Affairs in accordance with Section 12 of the LTTE Law.

IV. ENTITY OBLIGATIONS

(a) The Phase I Project shall conform with all Federal and State laws and ordinances and regulations of the Township relating to its construction and use.

(b) The Entity shall, in the operation of the Phase I Project, require compliance with all laws so that no person because of race, religious principles, color, national origin or ancestry, will be subject to discrimination.

(c) The Entity shall, from the time that the Annual Service Charge becomes effective, pay the Annual Service Charge as set forth in the Financial Agreement.

(d) The Entity shall complete the Phase I Project within the timeframes set forth in the Redevelopment Agreement.

V. SEVERABILITY

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.

IV. ACTION REGARDING FINANCIAL AGREEMENT

The Mayor is hereby authorized and directed to determine all matters and terms in connection with the Financial Agreement, all in consultation with the counsel to the Township, and the manual or facsimile signature of the Mayor upon any documents shall be conclusive as to all such determinations. The Mayor, the Township Clerk and any other Township official, officer or professional, including but not limited to, redevelopment counsel, bond counsel, the financial advisor and the auditor to the Township, 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, the financial advisor and the auditor to the Township, and any and all actions taken heretofore with respect to the transactions contemplated hereby are hereby ratified and confirmed.

V. AVAILABILITY OF THE ORDINANCE

A copy of this Ordinance shall be available for public inspection at the offices of the Township.

VI. EFFECTIVE DATE

This Ordinance shall take effect according to law.

<i>Record of Vote</i>	<i>Commissioner Steven L. Rogers</i>	<i>Commissioner Mauro G. Tucci</i>	<i>Commissioner Thomas J. Evans</i>	<i>Commissioner Alphonse Petracco</i>	<i>Mayor Joseph P. Scarpelli</i>
<i>Yes</i>	X		X		X
<i>No</i>					
<i>Not Voting</i>					
<i>Absent/Excused</i>		X		X	

I, Eleni Pettas, RMC, Municipal Clerk of the Township of Nutley, in the County of Essex, State of New Jersey, DO HEREBY CERTIFY the foregoing to be a true and exact copy of this ORDINANCE No. 3346, which was introduced by the Board of Commissioners at a meeting duly called and held on the 2nd day of August, 2016, and which was finally adopted by the Board of Commissioners at a meeting duly called and held on the 16th day of August, 2016.

CERTIFIED BY ME THIS 17th DAY OF August, 2016

Eleni Pettas
 ELANI PETTAS, RMC, Municipal Clerk