

O-23-12
3/15/23

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Area" dated September 2020 (the "**Redevelopment Plan**") for the Texaco Redevelopment Area which amended and superseded the Original Redevelopment Plan, Amended and Restated Redevelopment Plan, and Amendment No. 1; and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.