

CITY OF VINELAND

RESOLUTION NO. 2016-_____

RESOLUTION AUTHORIZING THE EXECUTION OF AN AMENDMENT TO THE REDEVELOPEMENT AND PARTICIPATION AGREEMENT BY AND BETWEEN THE CITY COUNCIL OF THE CITY OF VINELAND AS REDEVELOPMENT ENTITY AND LANDIS SENIOR URBAN RENEWAL PARTNERS LLC AS THE REDEVELOPER

WHEREAS, as part of the redevelopment of the Four Corners Project, the City was required to condemn Block 4201 Lot 5 (Property) which was granted by the Superior Court of New Jersey on August 8, 2016 and further appointing Commissioners for the purpose of determining the value of the Property; and

WHEREAS, the Redeveloper has requested the City transfer title to the Property so it may commence demolition and construction of the project in accordance with the Redevelopment and Participation Agreement, as amended; and

WHEREAS, Council finds it to be in the best interest of the City and the redevelopment of Landis Avenue.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Vineland as Redevelopment Entity that the Redevelopment and Participation Agreement be Amended and Council President is authorized to execute a 6th Amendment to the Development and Participation Agreement as attached hereto and made a part of.

Adopted:

President of Council

ATTEST:

City Clerk

Sixth Amendment to the Redevelopment and Participation Agreement

THIS Sixth Amendment to the Redevelopment and Participation Agreement (this "Amendment") is dated the _____ day of _____, 2016, is hereby entered into, by and between the Vineland City Council, the Governing Body of the City of Vineland (the "City"), a municipal corporation of the State of New Jersey, maintaining its principal offices at 640 E. Wood Street, Vineland, County of Cumberland, NJ 08362-1508, acting in the capacity of Redevelopment Entity pursuant to the provisions of the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 *et seq.*, and Landis Senior Urban Renewal Partners LLC (referred to as the "Redeveloper"), with offices located at 1873 Brookfield Street, Vineland, New Jersey; and Hans Lampart, an individual who is jointly and severally responsible under the terms of the Redevelopment and Participation Agreement.

WHEREAS: The City and the Redeveloper and or its predecessor, Hans Lampart, have executed a Redevelopment and Participation Agreement dated January 15, 2008; together with amendments to that Agreement dated: April 27, 2009; June 7, 2010; July 29, 2011; July 22, 2015 and February 26, 2016 (collectively referred to as the "Redevelopment Agreement") concerning the redevelopment of certain property within the City of Vineland, including , Block 4201, Lots 1, 2, 3, 4, 5, 6 & 53 of the tax map of the City of Vineland (the "Redevelopment Area");

WHEREAS: The Redeveloper had been successful in obtaining title to all the properties within the Redevelopment Area with the exception of Block 4201, Lot 5, a/k/a 929 East Landis Avenue, ("Lot 5") which was owned by Dusharm's Pro Foot, Inc. (Dusharm's);

WHEREAS: On January 27, 2016 the City filed a Declaration of Taking pursuant to N.J.S.A. 20:3-17, relating to Lot 5 with the Clerk of Cumberland County;

WHEREAS: Contemporaneous with the filing of the Declaration of Taking the City deposited with the Clerk of Superior Court the sum of \$250,000.00 as the estimated compensation for the taking. At the same time a Verified Complaint was filed with Cumberland County Superior Court (the "Court") seeking a judgment against the Dusharm's that the City was duly vested with fee simple title to and has duly exercised its authority to acquire Lot 5;

WHEREAS: On August 8, 2016 the Court entered an Order adjudicating that City was vested with the right to condemn and has duly exercised its powers of Eminent Domain to acquire Lot 5 (the "Order");

WHEREAS: The Order constitutes an adjudication of the plaintiff's right to condemn and subject to appeal pursuant to N.J.S.A. 20:3-2;

WHEREAS: The Redeveloper has requested the City to transfer Lot 5 to it prior to the expiration of Dusharm's right to appeal the Order;

WHEREAS: The Redeveloper has completed, or is about to complete the demolition of all the other structures in the Redevelopment Area;

WHEREAS: The Redeveloper has requested the City to transfer Lot 5 to it prior to the expiration of Dusharm's right to appeal the Order so that it may complete the demolition of all the structures in the Redevelopment Area and begin construction of the Redevelopment Project as that term is defined by the Redevelopment Agreement;

WHEREAS: The Redeveloper is concerned that a delay in the transfer of Lot 5 will jeopardize its funding for the Redevelopment Project and will lead to additional and unnecessary costs;

WHEREAS: Under the 5th Amendment to the Redevelopment Agreement Hans Lampart assigned and transferred his rights in and obligations under the Redevelopment Agreement to Landis Senior Housing Urban Renewal Partners LLC. The assignment of his rights under the Redevelopment Agreement to Landis Senior Housing Urban Renewal Partners LLC did not relieve Hans Lampart of any of the obligations of the Redeveloper under the Redevelopment Agreement. Hans Lampart remained jointly and severally responsible for the completion of the Redevelopment of the Property together with Landis Senior Housing Urban Renewal Partners LLC.

WHEREAS, the City, the Redeveloper, and Hans Lampart have agreed upon further amending the Redevelopment Agreement to provide the terms and conditions upon which Block 4201, Lot 5 is to be transferred to the Redeveloper;

NOW THEREFORE, for and in consideration of the premises and material representations, covenants and agreements herein set forth, and as an inducement to the City to enter into this 6th Amendment to the Redevelopment Agreement, the Parties hereto, each binding itself, its successors and assigns, do mutually promise, covenant and agree as follows:

1. **SALE OF PROPERTY.** In furtherance of the Redevelopment Project, and as an accommodation to the Redeveloper and Hans Lampart, the City agrees to sell and convey to the Redeveloper, and Redeveloper agrees to purchase from City all of the City's right, title and interest to a parcel of real property known as Block 4201, Lot 5, a/k/a 929 East Landis Avenue, Vineland New Jersey, together with all improvements located thereon.

2. **PURCHASE PRICE.** The purchase price of the Property shall be the actual cost of the City to acquire the Property as determined by the Commissioners appointed by the Court or other final determination of the amount to be paid to Dusharm's for Lot 5. In the event the Commissioners, or the Superior Court on appeal, determine that the fair market value of Lot 5 is in excess of \$250,000.00, the Redeveloper shall pay the excess to the City within 10 days of the date that the determination becomes final. The actual cost to purchase the property shall also include attorney fees incurred in connection with the acquisition of the Property, including the cost of proceeding to the Commissioner's hearing and any appeals of the Order and/or the Commissioner's award. The Redeveloper shall also be responsible for payment of all closing costs, including attorney fees incurred by the City, the realty transfer fee, and all recording fees and other costs as

provided for in Paragraph 5 below.

3. **INSPECTION/DUE DILIGENCE.** The Redeveloper has made its own investigation of Lot 5, and is satisfied with all conditions relating to Lot 5, including the environmental condition thereof. Redeveloper has made its own investigation with respect to the City's title to Lot 5 and will rely on the that investigation and the knowledge and experience of its consultants and attorneys.

4. **NO WARRANTIES OR REPRESENTATIONS.** The Redeveloper is purchasing the Property in "as-is" condition, with the intent to demolish the structure on Lot 5. Neither the City, or any other person acting or purporting to act on behalf of City has made any warranty or representation concerning the property which is not contained in the Redevelopment Agreement. The sale is based on the Redeveloper's own knowledge and inspection. Redeveloper understands and acknowledges that the City acquired its interest in Lot 5 by filing a Declaration of Taking, and depositing the estimated compensation of \$250,000.00 with the Clerk of Superior Court in accordance with N.J.S.A. 20:3-17 and N.J.S.A. 20:3-18.

5. **ADJUSTMENTS AT SETTLEMENT AND CLOSING COSTS.** There shall be no adjustment for taxes, unpaid assessments, or utilities. The Redeveloper shall take the Property subject to all accrued and unpaid taxes, assessments, utilities and other charges. At closing Redeveloper shall pay all closing costs and fees. Redeveloper shall be responsible for all cost arising out of or in any way related to the transfer of Lot 5 from the City to the Redeveloper. These costs include, but are not limited to, the preparation of the Deed, recording fees, real estate transfer fees and taxes, the City's attorney fees, the realty transfer fee, if any, =the full amount of the settlement/closing fee charged by the title company. Redeveloper shall be responsible for all costs, fees, taxes and other expenses relating to the transfer of Lot 5 to Redeveloper regardless of whether such costs, fees, taxes and expenses are customarily paid by a Buyer or Seller.

6. **TIME AND PLACE OF SETTLEMENT.** Closing will occur within ____ days of the Effective Date of this Amendment as defined in Paragraph 8 below. Closing shall be held at 640 East Wood Street, Vineland, New Jersey, unless the parties agree to a different location. In the event the Court, or the Appellate Division enters a stay of the Order, closing shall occur as soon as reasonably practical after such stay is lifted.

7. **DOCUMENTS TO BE DELIVERED AT SETTLEMENT.** At Settlement, the City will deliver to the Redeveloper the following, executed, acknowledged and in recordable form, as appropriate: (a) Quit Claim Deed; (b) Affidavit of Consideration; and (c) Residency Certificate.

8. **EFFECTIVE DATE.** This Amendment shall be effective on the date it is fully executed by all parties or the date on which the Redeveloper secures the Performance Bond or other security referenced in Paragraph 11 below, which ever occurs last (the "Effective Date").

9. **INDEMNIFICATION.** The Redeveloper, and Hans Lampart, agree to defend, indemnify, and hold the City harmless for and against any and all costs, damages, judgments or other liabilities, arising out of or in any way related to this Amendment, the transfer of Lot 5 pursuant to the terms of the Amendment, the demolition of the existing structure on Lot 5, or the construction

of the Redevelopment Project as it relates to Lot 5. The indemnification provided by this Amendment shall be broadly construed and includes, but is not limited to liability, damages, costs and judgments arising out of the acts or omissions of the City or the Redeveloper. The indemnification provided for by this Amendment specifically includes, but is not limited to, any damages arising out of the transfer of Lot 5 to the Redeveloper and the demolition of the structure on Lot 5. The indemnification provided by this Amendment also includes payment of any and all attorney fees and costs incurred by the City as a result of this Amendment, the transfer of Lot 5 pursuant to the terms of this Amendment, the demolition of the existing structure on Lot 5, or the construction of the Redevelopment Project as it relates to Lot 5.

10. ASSUMPTION OF RISK. The Redeveloper, and Hans Lampart, assume all risks associated with the transfer of title of Lot 5 from the City to the Redeveloper, including any risk relating to title to Lot 5. The Redeveloper, and Hans Lampart, have made their own investigation and have satisfied themselves that the City has the power and authority to transfer good and marketable title to Lot 5 based on the filing of the Declaration of Taking notwithstanding that the time to appeal the Order has not expired. The Redeveloper, and Hans Lampart, agree to assume the risk that the City does not have the power or authority to transfer good and marketable title to Lot 5 until such time as Dusharm's appeal rights have been exhausted. The Redeveloper, and Hans Lampart, also assume the risk and result of a successful appeal by Dusharm's, including all the legal consequences that may flow therefrom. The Redeveloper, and Hans Lampart, assume the risk of any damage claim arising out of the transfer of Lot 5 to the Redeveloper and the demolition of the structure on Lot 5.

11. SECURITY. As security for the Redevelopers performance under the terms of this 6th Amendment to the Redevelopment Agreement and the Indemnification granted to the City under Paragraph 9, Hans Lampart shall pledge to the City an IRA Account in the amount of \$150,000.00.

12. MORTGAGE. In accordance with the Redeveloper's obligations under the 5th Amendment to the Redevelopment Agreement, contemporaneous with the delivery of the Deed to Lot 5, the Redeveloper shall execute and deliver to the City a Mortgage covering Lot 5 in the principal amount of \$800,000.00 upon the terms and conditions set forth in the 5th Amendment to the Redevelopment Agreement.

13. DEPOSIT WITH CLERK OF SUPERIOR COURT. In the event it is eventually determined that the City lacked the authority to condemn Lot 5, the \$250,000.00 deposited with the Clerk of Superior Court, plus accrued interest, shall be paid to the City and applied: (1) against the balance of the loan made to the Redeveloper which was the source of the deposit; (2) then to any other outstanding loans made by the City or its economic development department in connection with the Redevelopment Project and (3) then to any other amounts owed by the Redeveloper to the City. In the event that the cost to acquire the Lot 5, as determined by the Commissioners appointed by the Court or other final determination of the amount to be paid to Dusharm's for Lot 5 is less than \$250,000.00 the balance shall be paid to the City and applied as provided for above.

14. RISK OF LOSS. Redeveloper assumes all risk of loss, destruction or damage to the Property or structure due to fire or other casualty through the completion of the Closing. The

destruction, loss or damage, to the Property or the structure shall not relieve the Redeveloper of its obligation to proceed to closing and payment of the Purchase Price as defined in Paragraph 2 above.

15. REAL ESTATE COMMISSIONS. Both parties warrant and represent that they have not engaged the services of a real estate agent or business broker in connection with the sale. In the event either party has engaged a real estate agent, business broker, or has in any way incurred a commission expense, that party shall be solely responsible for payment of same.

16. DEFAULT. A default under the terms of this Amendment shall constitute a default under the terms of the Redevelopment Agreement as modified by the 1st, 2nd, 3rd, 4th and 5th Amendments thereto, entitling the City to all the remedies available under the Redevelopment Agreement as modified.

17. CONFLICT WITH REDEVELOPMENT AGREEMENT. In the event that any of the provisions of this Amendment conflict with the terms of the Redevelopment Agreement the provisions of this Amendment shall control. All of the remaining provisions of the Redevelopment Agreement as modified by the 1st, 2nd, 3rd, 4th and 5th Amendments thereto shall remain in full force and effect.

18. PARTIES BOUND. This Amendment shall be binding upon the parties hereto and their respective heirs, administrators, executors, successors, and assigns. As an inducement to the City to enter into this Amendment, Hans Lampart agrees to the terms of this Amendment and to be bound thereby.

17. MULTIPLE COUNTERPARTS. This Amendment may be executed in separate counterparts transmitted by facsimile or electronically, each of which is deemed to be an original and all of which taken together constitute one and the same Amendment.

19. SEVERABILITY. Except as expressly provided herein to the contrary, each section, part, term or provision of this Amendment shall be considered severable. If any provision of this Amendment is for any reason ever construed or deemed to be illegal, invalid or unenforceable, the remaining provisions shall remain in full force and effect, and the legality, validity, and enforceability of such remaining provisions shall not be diminished or affected in any way.

20. AMENDMENT. Neither this Amendment nor any provision hereof may be changed, amended, modified, waived or discharged, orally or by any course of dealing, but only by an instrument in writing signed by the party against whom enforcement of the change, amendment, modification, waiver or discharge is sought.

21. TITLES AND SUBTITLES. Titles of the paragraphs and subparagraphs are placed herein for convenient reference only and shall not to any extent have the effect of modifying, amending or changing the express terms and provisions of this Amendment.

22. WORDS AND GENDER OR NUMBER. As used herein, unless the context

clearly indicates the contrary, the singular number shall include the plural, the plural the singular, and the use of any gender shall be applicable to all genders.

23. **JOINT NEGOTIATION.** This Amendment is the product of joint negotiation, and represents a cooperative effort to express the intent of the parties. This Amendment has been reviewed and approved by all parties and their attorneys. Accordingly the parties agree that any ambiguity in the terms of this Amendment shall not be construed against the party drafting this Amendment.

24. **SIGNATURES.** The undersigned agree to the terms of this 6th Amendment to the Redevelopment and Participation Agreement modifying the terms of the Redevelopment and Participation Agreement dated January 15, 2008 as modified by the 1st, 2nd, 3rd, 4th and 5th Amendments thereto.

WITNESS:

**REDEVELOPERS:
HANS LAMPART**

Hans Lampart

Execution Date: _____

**LANDIS SENIOR URBAN RENEWAL
PARTNERS LLC, a New Jersey Limited Liability
Company**

By: _____

Name: Hans Lampart

Title: Sole Member of Eastern Pacific Development,
LLC, Managing Member of Landis Senior Urban
Renewal Partners LLC

Execution Date: _____

WITNESS:

REDEVELOPMENT ENTITY

**THE CITY OF VINELAND, by its Governing
Body, VINELAND CITY COUNCIL**

By: _____

Name: Anthony Fanucci

Title: President, Vineland City Council

Execution Date: _____