

CITY OF VINELAND

RESOLUTION NO. 2016-_____

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

WHEREAS, on January 27, 2016, the City of Vineland filed a Declaration of Taking pursuant to N.J.S.A. 20:3-17 for certain property located within the redevelopment area, more specifically known as Block 4201 Lot 5 (Property), and is one of the properties which are the subject of a redevelopment project and a Redevelopment and Participation Agreement dated January 15, 2006, as amended, (Redevelopment Agreement) with Landis Senior Urban Renewal Partners LLC (Redeveloper); and

WHEREAS, on August 8, 2016, the Superior Court of New Jersey Cumberland County entered an Order adjudicating that the City is vested with title to the Property and thereafter, the City and Redeveloper entered into a Sixth Amendment to the Redeveloper Agreement, which provides for the purchase price for the Property to be the actual cost for acquisition, which amount has not yet been set in accordance with NJSA 20:3-17; and

WHEREAS, delay in the transfer of the Property to the Redeveloper may jeopardize funding for the redevelopment project and City Council finds it to be in the best interest of the City and the redevelopment project to transfer the Property prior to the purchase price having been determined with the understanding that the Redeveloper Agreement requires the Redeveloper to pay actual cost for transfer or to be in violation of the Redevelopment Agreement; and

WHEREAS, due to passage of time outside of the control of the City or Redeveloper, certain deadline dates have not been met, although many satisfied, and the Redeveloper and City Council, as the Redevelopment Entity wish to avoid any technical defaults under the Redeveloper Agreement and to amend the Redeveloper Agreement consistent with present calculations; and

WHEREAS, Section 9.2 of the Fourth Amendment to the Redevelopers Agreement requires Redeveloper to complete all site plan requirements to the northwest corner of East and Landis Avenues, Quadrant 1, prior to obtaining construction permits for the redevelopment project in accordance with the Redeveloper Agreement, but may proceed with construction provided a surety bond be posted, and then only with the consent of the City; and

WHEREAS, the Redeveloper has completed all requirements necessary for Quadrant 1, excepting modifications to handicapped ramps and further has posted a bond for the faithful completion of this work, which shall be completed in conjunction with the site work on the Property and in no event beyond December 31, 2016.

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NOW THEREFORE BE IT RESOLVED by the Council of the City of Vineland as Redevelopment Entity that Council President is authorized to execute the Seventh Amendment to the Redevelopment and Participation Agreement in substantially the same form and substance as attached hereto and made a part hereof.

Adopted:

President of Council

ATTEST:

City Clerk

Seventh Amendment to the Redevelopment and Participation Agreement

THIS Seventh Amendment to the Redevelopment and Participation Agreement (this "Amendment") is dated the _____ day of September, 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") for the Landis Square project (the "Project");

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: 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 is subject to appeal pursuant to N.J.S.A. 20:3-2;

WHEREAS: Subsequent to the August 8, 2016 Order the parties entered into a 6th Amendment to the Redevelopment Agreement.

WHEREAS: Paragraph 2 of the Sixth Amendment to the Redevelopment Agreement provided that the purchase price for Lot 5 was to 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;

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: The Redeveloper has requested the City to transfer to property to the Redeveloper before the Commissioners' Hearing and before the actual cost incurred by the City to Acquire Lot 5 has been determined;

WHEREAS: The City's appraisal of Lot 5 reflected that its fair market value was \$150,000.00. This does not include other costs incurred or to be incurred by the City in connection with the acquisition of Lot 5;

WHEREAS: In order to record a Deed transferring title to Lot 5 to the Redeveloper it is necessary to set forth the Consideration paid, even though the transfer is exempt from the Realty Transfer Fee and is not subject to the Mansion Tax;

WHEREAS: Under the Fifth 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; and

WHEREAS: Due to delays beyond the Redeveloper's control the original Construction Schedule for the Project needs to be updated to reflect the currently agreed timetable for the Project, the associated governmental approvals, and for the Project financing; and

WHEREAS: Due to the passage of time and intervening actions of the Redeveloper certain covenants in the Redevelopment Agreement (as amended) need to be revised to reflect the updated Project status and to remove obsolete references;

NOW THEREFORE, 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 Seventh Amendment to the Redevelopment Agreement, the Parties hereto, each binding itself, its successors and assigns, do mutually promise, covenant and agree as follows:

1. The Affidavit of Consideration and Residency Certificate, which are to be filed with the Cumberland County Clerk, along with the Deed for Lot 5, shall recite that the Consideration for Lot 5 is \$1 and such other consideration as is reflected in the Redevelopment Agreement. The parties recognize and agree that this is only an estimate.

2. Nothing in the Deed, Affidavit of Consideration or Residency Certificate shall affect the sale price of Lot 5, which shall remain the City's actual cost to acquire Lot 5 as determined in accordance with paragraph 2 of the 6th Amendment to the Redevelopment Agreement.

3. The parties agree that the terms of this Redevelopment Agreement, including the Sixth Amendment thereto and this Seventh Amendment, shall not merge into the Deed and shall survive closing.

4. It is agreed that all Project Contingencies set forth in Section 2.1 of the Redevelopment

Agreement (as previously amended) have been fully satisfied to the City's satisfaction, and that any deadlines heretofore established for the satisfaction of those Project Contingencies have been relaxed as necessary by mutual agreement of the parties to avoid any technical defaults under the Redevelopment Agreement (as previously amended).

5. It is agreed that the Construction Schedule defined in Article I of the Redevelopment Agreement (as previously amended) is hereby revised to reflect that schedule items (1)-(4) thereof have been fully satisfied to the City's satisfaction, and that any deadlines heretofore established for the satisfaction of those Construction Schedule items (1)-(4) have been relaxed as necessary by mutual agreement of the parties to avoid any technical defaults under the Redevelopment Agreement (as previously amended). The deadline for the completion of Project demolition in Quadrant III is hereby extended by mutual agreement of the parties to November 30, 2016. The phrase "Project Schedule" set forth in Section 4-1(b) of the Fourth Amendment to the Redevelopment Agreement is hereby revised to read "Construction Schedule" so as to conform it with the definitions set forth in Article I.

6. Section 8.2(b) of the Redevelopment Agreement (as previously amended) is hereby amended to read as follows:

"The following transactions are exceptions to the prohibition set forth in the previous subparagraph and shall not require prior approval by the City ("Permitted Transactions"), the written consent of the City to such transfers being deemed given hereby provided notice of same is given to the City: (1) a mortgage or mortgages for the purposes of financing the Project Costs associated with, or incurred in connection with, the acquisition of the Property or the development and construction of the Project, specifically including (but not limited to) a mortgage executed in favor of the Century Savings Bank of Vineland, New Jersey, provided that the occurrence of an Event of Default as to Redeveloper hereunder constitutes an event of default by Redeveloper under the loan documents documenting such financing; (2) any lease, option agreement or contract of sale for all or any portion of the Project with occupancy of the relevant portion of the Project; (3) utility and other development easements; (4) assignments to Permitted Assignees; (5) the execution of the Amended and Restated Operating Agreement of Redeveloper (the "Operating Agreement") by and among Landis Senior Managing Member LLC, First Sterling Investor 166 LLC (the "Investor") and Sterling Corporate Services, Inc., in which the Investor acquires a 99.98% non-managing member interest in Redeveloper and Sterling Corporate Services, Inc. acquires a 0.01% non-managing member interest in Redeveloper; (6) the transfer by any non-managing member of Redeveloper of its interest in Redeveloper, or any transfer of interests within such non-managing member, and (7) the removal of the managing member of Redeveloper by the Investor pursuant to the terms of the Operating Agreement, provided that the replacement managing member of Redeveloper is an affiliate of the Investor."

7. The Redeveloper has completed all requirements set forth in Section 9.2 of the Fourth Amendment to the Redevelopment and Participation Agreement excepting modifications to the handicap ramps on Quadrant I to comply with design standards. In accordance with said Section, Redeveloper has posted surety acceptable to the City Engineer to assure the faithful performance of the completion of the modifications and City Council as the Redevelopment Entity has authorized the Redeveloper to commence construction on Quadrant III. Redeveloper shall complete the modifications to the handicap ramps no later than December 31, 2016. Notwithstanding anything herein to the contrary, failure to comply with this Section shall not be an Event of Default under the terms and conditions of the

Redevelopment and Participation Agreement or any amendments thereto, and the City may seek completion through posted surety subsequent to December 31, 2016.

8. Section 11.1 of the Redevelopment Agreement (as previously amended) is amended to provide, with regard to all Events of Default set forth thereunder in which notice to the Redeveloper is required and an opportunity to cure the ostensible default is provided to the Redeveloper, that the City shall simultaneously provide a copy of the written notice of the ostensible default to the Century Savings Bank and First Sterling Investor 166 LLC, and that the City agrees: (1) that it will accept any cure by Century Savings Bank and/or First Sterling Investor 166 LLC on the same terms as if the Redeveloper had cured the ostensible default; and (2) that if Century Savings Bank and/or First Sterling Investor 166 LLC commence(s) a cure, it/they will get the benefit of any extended cure period that is available as if the Redeveloper had commenced the cure. Notices to Century Savings Bank shall be given in accordance with and shall be effective as set forth in section 13.1 of the Fourth Amendment at Century Savings Bank, 1376 W. Sherman Avenue, Vineland, NJ 08360, Attention: President, or such other address as Century Savings Bank shall designate by notice to the parties. Notices to First Sterling Investor 166 LLC shall be given in accordance with and shall be effective as set forth in section 13.1 of the Fourth Amendment at First Sterling Investor 166 LLC, 111 Great Neck Rd, Great Neck, NY 11021, Attention: Victor Sostar, or such other address as First Sterling Investor 166 shall designate by notice to the parties.

9. It is agreed that the City's termination right set forth in subsection (1) of Section 12.1 of the Redevelopment Agreement (as previously amended) relating to the timetable for the Redeveloper to make applications for all Governmental Approvals is waived by the City and deemed previously satisfied to the City's satisfaction without causing a technical default under the Redevelopment Agreement (as previously amended).

10. Section 2 of the Fifth Amendment to the Redevelopment Agreement is hereby amended to reflect that Landis Senior Urban Renewal Partners LLC is currently owned 0.01% by Landis Senior Managing Member LLC and 99.99% by Hans Lampart, and that the members thereof intend to enter into an Amended and Restated Operating Agreement of Redeveloper in which First Sterling Investor 166 LLC will acquire a 99.98% interest and Sterling Corporate Services, Inc. acquires a 0.01% non-managing member interest in Redeveloper.

11. 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 First, Second, Third, Fourth, Fifth, and Sixth Amendments thereto shall remain in full force and effect.

12. 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.

13. 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.

14. 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.

15. 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.

16. 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.

17. 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.

18. The undersigned agree to the terms of this Seventh Amendment to the Redevelopment and Participation Agreement modifying the terms of the Redevelopment and Participation Agreement dated January 15, 2008 as modified by the First, Second, Third, Fourth, Fifth, and Sixth Amendments thereto.

WITNESS:

REDEVELOPER:

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

By: _____
Landis Senior Managing Member LLC, Managing
Member

By: Hans Lampart, President

Execution Date: _____

HANS LAMPART

Hans Lampart
Execution Date: _____

WITNESS

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REDEVELOPMENT ENTITY
THE CITY OF VINELAND, by its Governing
Body, VINELAND CITY COUNCIL

By: _____

Name: Anthony Fanucci

Title: President, Vineland City Council

Execution Date: _____