#219-14

TOWNSHIP OF NORTH BERGEN
ORDINANCE

AN ORDINANCE AMENDING ORDINANCE 25-09 APPROVING THE AMENDMENT OF A FIVE (5) YEAR TAX EXEMPTION PURSUANT TO THE PROVISIONS OF N.J.S.A. 40A:21-1, ET SEQ., FOR PROPERTY DESIGNATED AS BLOCK 458.01, LOT 8 ON THE TOWNSHIP'S TAX MAP AND MORE COMMONLY KNOWN BY THE STREET ADDRESS OF 2100 88TH STREET, NORTH BERGEN, NEW JERSEY

WHEREAS, the Township of North Bergen, contains certain Urban Enterprise Commercial neighborhoods which are considered as areas in need of redevelopment which authorize the Township to adopt an ordinance to utilize tax exemptions pursuant to N.J.S.A. 40A:21-1, et seq., the Five (5) Year Exemption and Abatement Law; and

WHEREAS, pursuant to N.J.S.A. 40A:21-1 et seq., the Township of North Bergen adopted Ordinance 1135-08 to allow Five (5) Year Tax Exemptions which allows the Tax Assessor to regard the full and true value or a portion thereof of certain improvements as not increasing the full and true value of certain property for a period of five (5) years, provided the owner's application is approved by the Tax Assessor and by Ordinance of the Board of Commissioners; and

WHEREAS, North Bergen Eat II, LLC ("Owner") is the owner of certain property located at and commonly known as 2100 88th Street, Township of North Bergen, County of Hudson, State of New Jersey and designated as Block 458.01, Lot 8 on the Tax Assessor's Map [Property]; and

WHEREAS, on or about July 25, 2008, the Owner applied for a five year tax exemption to construct a shopping center in phases consisting of eleven retail stores on the Property [Improvements] pursuant to N.J.S.A. 40A:21-1 et seq. and Ordinance No. 1135-08; and

WHEREAS, the Township reviewed the application, approved the construction of the Improvements and authorized the execution of a Tax Agreement by the adoption of Ordinance No. 1142-08 on August 20, 2008; and

WHEREAS, pursuant thereto, the Township and Owner entered into a Tax Exemption Agreement dated September 11, 2008; and

WHEREAS, the Agreement was amended as approved pursuant to Ordinance No. 25-09 amending Ordinance No. 1142-08; and

WHEREAS, after a full review of all information provided by North Bergen Eat II, LLC, including the final project costs and tenant improvement costs, it is now necessary to amend the payment schedule set forth in the original tax agreement dated September 11, 2008, amended 2009; and

WHEREAS, North Bergen Eat II, LLC proposes to pay the Township, in addition to the full taxes on the land, which shall continue to be conventionally assessed and taxed pursuant to the Amended Agreement, the tax payment for the new improvements on the property for the year 2014 as follows:

> 2014 - $2,150,000. Payment can be paid quarterly in the amount of $362,500 on February 1st, May 1st, August 1st and the balance of $1,062,500 shall be paid on November 1st.

NOW, THEREFORE, BE IT ORDAINED by the Board of Commissioners of the Township of North Bergen that:

Section 1

1. The application, incorporated herein by reference, for a five (5) year tax exemption for each phase of the project for the full and true value of new construction of a retail shopping center consisting of eleven retail stores, located in Block 458.01, Lot 8 on the Township's Tax Map and more commonly known by the street address of 2100 88th Street, Township of North Bergen, is hereby approved.

2. The Mayor or Township Administrator is hereby authorized to execute an amended tax exemption agreement which shall contain at a minimum, the following terms and conditions:

(a) tax payment on the new improvements shall be:

1. 2009 - $500,000 in the first quarter. This payment can be made in two payments of $250,000 on February 1st and May 1st or one payment of $500,000 on May 1st.

2. 2010 - $1,450,000. Payment can be paid quarterly in the amount of $362,500 on February 1st, May 1st, August 1st and November 1st.

3. 2011 - $1,450,000. Payment can be paid quarterly in the amount of $362,500 on February 1st, May 1st, August 1st and November 1st.

4. 2012 - $1,450,000. Payment can be paid quarterly in the amount of $362,500 on February 1st, May 1st, August 1st and November 1st.

5. 2013 - $1,450,000. Payment can be paid quarterly in the amount of $362,500 on February 1st, May 1st, August 1st and November 1st.

6. 2014 - $2,150,000. Payment can be paid quarterly in the amount of $362,500 on February 1st, May 1st, August 1st and the balance of $1,062,500 shall be paid on November 1st.

(b) The project shall be subject to all federal, state and local laws; and regulations on pollution control, worker safety, discrimination in employment, zoning, planning, and building code requirements pursuant to N.J.S.A. 40A:21-11(b).

(c) If during any tax year prior to the termination of the tax agreement, the property owner ceases to operate or disposes of the property; or fails to meet the conditions for qualifying, then the tax which would have otherwise been payable for each tax year shall become due and payable from the property owner as if no exemption and abatement had been granted. The collector forthwith and the tax collector shall, within 15 days thereof, notify the owner of the property of the amount of taxes due.

(d) With respect to the disposal of the property, where it is determined that the new owner of the property will continue to use the property pursuant to the conditions which qualified the property; no tax shall be due, the exemption shall continue and the agreement shall remain in effect.

(e) At the termination of a tax exemption agreement, the new improvements shall be subject to all applicable real property taxes as provided by State law and regulation and local ordinance; but nothing herein shall prohibit a project, at the termination of an agreement, from qualifying for, an receiving the full benefits of, any other tax preferences provided by law.

(f) Nothing contained in the application for Tax Abatement shall bind the Township in any manner from establishing the tax assessment for the property at the expiration of the Tax Agreement. The Tax Assessor can take into consideration the configuration of the site and then current income and expense statements to establish the tax assessment.

3. The form of amended tax exemption agreement is attached hereto as Exhibit A, subject to such modification as the Township Attorney or Township Administrator deems necessary.

4. The Township Administrator shall send a copy of the fully executed Amended Tax Agreement to the Director of the Division of Local Government Services in the Department of Community Affairs within thirty (30) days of execution pursuant to N.J.S.A. 40a:21-11(d).

Section 2

All ordinances and parts of ordinances inconsistent herewith are hereby repealed.

Section 3

This ordinance shall take effect at the time and in the manner provided by law.

Introduced: July 16, 2014

Published: July 22, 2014 & August 25, 2014

Adopted: August 20, 2014

Attest: Erin Barillas
Township Clerk

Comm. Cabrera	YES
Comm. Ferraro	YES
Comm. Gargiulo	YES
Comm. Pascual	YES
President Sacco	YES

SECOND AMENDED
TAX AGREEMENT
FIVE YEAR/NEW CONSTRUCTION

THIS AGREEMENT made on this ______ day of ________________ 2014, by and between the TOWNSHIP OF NORTH BERGEN [Township], a municipal corporation organized under the laws of the State of New Jersey and having a principal place of business at 4233 Kennedy Boulevard, North Bergen, New Jersey and NORTH BERGEN EAT II, L.L.C. [Applicant], whose principal place of business is 210 Route 4 East, Paramus, New Jersey 07652-0910.

WITNESSETH

WHEREAS, the Board of Commissioners has indicated its intention to utilize the five year tax exemption provisions authorized by Article VIII, Section I, Paragraph VI of the New Jersey State Constitution and the Five Year Exemption Law, N.J.S.A. 40A:21-1 et seq. for improvements and projects by the adoption of Ordinance No. 1135-08 on May 14, 2008; and

WHEREAS, the Applicant is the owner of certain property located at and commonly known as 2100 88th Street, Township of North Bergen, County of Hudson, State of New Jersey and designated as Block 458.01, Lot 8 on the Tax Assessor's Map, and more particularly described in the metes and bounds description attached hereto as Exhibit "A" [Property]; and

WHEREAS, on or about July 25, 2008, the Applicant applied for a five year tax exemption to construct a shopping center in phases consisting of eleven retail stores on the Property [Improvements] pursuant to N.J.S.A. 40A:21-1 et seq. and Ordinance No. 1135-08; and

WHERE AS, pursuant thereto, the Township and Applicant entered into a Tax Agreement dated September 11, 2008; which was subsequently amended by Amended Tax Agreement dated ________________ 2009;

WHEREAS, the parties have now agreed to amend the payment schedule commensurate with the verified cost of the Project; and

WHEREAS, the Township has reviewed the proposed amendment and authorized the execution of a Second Amended Tax Agreement by adoption of Ordinance No. __________ - 14 on ______________ 2014;

NOW THEREFORE, IN CONSIDERATION of the mutual promises and covenants hereinafter contained, the parties hereto agree as follows:

ARTICLE I: APPROVAL OF TAX EXEMPTION

The Township hereby agrees to a tax exemption for the construction of a shopping center in phases consisting of eleven retail stores on Property, as further described in the Application, attached hereto as Exhibit "B", pursuant to the provisions of N.J.S.A. 40A:21-1 et seq. and Ordinance Nos. 1135-08, ___________-09 and _____________-14 which authorize the execution of this Tax Agreement and its subsequent amendments, subject to the terms and conditions thereof.

ARTICLE II: IN LIEU OF TAX PAYMENTS

The Applicant hereby agrees to make payments on the new Improvements, (separate and apart from taxes on the land which shall continue to be subject to conventional assessment and taxation and for which the Applicant shall receive no credit against the in lieu of tax payment) in lieu of full property tax payments based upon two percent (2%) of the project cost specified in the application according to the following schedule:

1. 2009 – $500,000 in the first quarter. This payment can be made in two payments of $250,000 on February 1st and May 1st or one payment of $500,000 on May 1st.

2. 2010 – $1,450,000 Payment can be paid quarterly in the amount of $362,500 on February 1st, May 1st, August 1st and November 1st.

3. 2011 – $1,450,000 Payment can be paid quarterly in the amount of $362,500 on February 1st, May 1st, August 1st and November 1st.

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5. 2013 – $1,450,000 Payment can be paid quarterly in the amount of $362,500 on February 1st, May 1st, August 1st and November 1st.

6. 2014 – $2,150,000 Payment can be paid quarterly in the amount of $362,500 on February 1st, May 1st and August 1st, with the balance of $1,062,500 being due on November 1st.

ARTICLE III: APPLICATION FEE

The Applicant has paid the sum of $5,000.00 to the Township by way of an Application Fee.

ARTICLE IV: FEDERAL, STATE AND LOCAL LAW

The construction of the Improvements is subject to all applicable federal, state and local laws and regulations on pollution control, worker safety, and discrimination in employment, zoning, planning and building code requirements.

ARTICLE V: TERM OF EXEMPTION

The Tax Exemption granted shall be valid and effective for a period of five (5) full calendar years from the date of Substantial Completion of each phase of the Project, which shall ordinarily mean the date on which the Township issues, or the Project is eligible to receive, a Certificate of Occupancy, whether temporary or final, for part or the whole of the Project.

Notwithstanding, the parties agree that this tax exemption commences January 1, 2009. During the term of the tax exemption, the Applicant shall make an in lieu of tax payment to the Township in accordance with the schedule set forth above. Prior to the commencement of the tax exemption, the Applicant shall pay full conventional taxes on the Improvements. Upon expiration thereof, the Applicant shall pay full conventional taxes on the Improvements as set forth in Article X.

ARTICLE VI: ADDITIONAL IMPROVEMENT ELIGIBILIY FOR ABATEMENT

An additional improvement by applicant completed on the property which has been granted and abatement pursuant to this ordinance, shall be qualified for an abatement just as if such property had not received a previous abatement. In this instance, the applicant shall submit an application for the additional improvement abatement, which shall be considered as separate for the purpose of calculating the abatement pursuant to this ordinance, which additional abatement shall be subject to the review and approval of the Board of Commissioners subject to the provision of N.J.S.A. 40A:21-14.

ARTICLE VII: APPROVAL OF APPLICATION AND RECORDING AS PART OF TAX RECORDS

Applicant shall file with the Tax Assessor of the Township of North Bergen the form prescribed by the Director of the Division of Taxation of the Department of the Treasury within thirty (30) days following the completion of the improvements as evidenced by the issuance of a Certificate of Occupancy. The applicable form shall be filed in accordance with the provision of N.J.S.A. 40A:21-16.

ARTICLE VIII: COUNTY EQUALIZATION AND SCHOOL AID

Pursuant to N.J.S.A. 40A:21-11c, the percentage, which the payment in lieu of taxes for the tax exempt property bears to the property tax which would have been paid had an exemption not been granted for the property under this Agreement, shall be applied to the valuation of the property to determine the reduced valuation of the property to be included in the valuation of the Township for determining equalization for county tax apportionment and school aid, during the term of the tax exemption agreement covering this property. At the expiration or termination of this Agreement, the reduced valuation procedure required under the law shall not long apply.

In the event that the County of Hudson asserts that it is entitled to an amount greater than five percent (5%) of the total abatement received by the Township, the Applicant shall pay such greater amount in addition to the amounts set forth in Article II.

ARTICLE IX: OPERATION OR DISPOSITION OF PROPERTY

In the event that during any year prior to the termination of this Agreement, the Applicant ceases to operate or disposes of the Property, or fails to meet the conditions for qualifying for tax exemption under this Agreement or pursuant to law, then the tax which would have otherwise been payable for that year, but not previous years, shall become due and payable from the

Applicant as if no exemption has been granted. However, with respect to the disposal of the Property, in the event it is determined that the new owner will continue to use the Property pursuant to the conditions which qualify the Property for exemption, the tax exemption shall continue and this Agreement shall remain in full force and effect.

ARTICLE X: TERMINATION / ELIGIBILITY FOR ADDITIONAL TAX EXEMPTION

Upon the termination of this Agreement for tax exemption, the Project shall be subject to all applicable real property taxes as provided by State Laws and Regulations and Township Ordinances. However, nothing herein shall be deemed to prohibit the Project, at the termination of this Agreement, from qualifying for and receiving the full benefits of any other tax preferences allowed by law and receiving the full benefits of any other tax preferences allowed by law. Furthermore, nothing herein shall prohibit the Applicant from exercising any rights under any other tax provisions of the State Law or Township Ordinances.

Nothing contained in the application for Tax Abatement or this Agreement shall bind the Township in any manner from establishing the tax assessment for the property at the expiration of the Tax Abatement. The Tax Assessor can take into consideration the configuration of the site and the current income and expense statements to establish the tax assessment. Notwithstanding the foregoing, the Applicant agrees that, provided the assessed value of the Property does not exceed $56,112,500 for tax years 2015 and 2016 and $68,212,500 for 2017, it waives its right to appeal such assessment in the enumerated tax years.

The tax assessment established for the property (land value) shall not be subject to appeal by applicant during the term of this abatement.

ARTICLE XI: NOTICES

All notices to be given with respect to this Agreement shall be in writing. Each notice shall be sent registered or certified mail, postage prepaid, return receipt requested, to the party to be notified at the addresses set forth below or at such other address as either party may from time to time designate in writing.

Notice of Township: Christopher Pianese, Administrator
Township of North Bergen
4233 Kennedy Boulevard
North Bergen, New Jersey 07047

Notice to Applicant: NORTH BERGEN EAT II, L.L.C.
210 Route 4 East
Paramus, New Jersey 07652-0910

ARTICLE XII: GENERAL PROVISIONS

This Agreement contains the entire Agreement between the parties and cannot be amended or modified except by written instrument executed by the parties hereto.

In the event that any provision or term of this Agreement shall be held invalid or unenforceable by a Court of competent jurisdiction, such holding shall not invalidate or render unenforceable any provision thereof; provided, however, that the Township continues to receive the full benefit of any economic term hereunder.

This Agreement shall be governed by and construed in accordance with the Laws of the State f New Jersey.

This Agreement may be executed in several counterparts, each of which shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the Township and the Applicant have caused this Agreement to be executed on the date and year first written above.

WITNESS:

NORTH BERGEN EAT II, L.L.C.

____

ATTEST:

Liz Gonzalez
Administrative Clerk

TOWNSHIP OF NORTH BERGEN

By: ______________________________
Christopher Pianese
Township Administrator

SECOND AMENDED
TAX AGREEMENT
FIVE YEAR/NEW CONSTRUCTION

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WHEREAS, pursuant thereto, the Township and Applicant entered into a Tax Agreement dated September 11, 2008; which was subsequently amended by Amended Tax Agreement approved by Ordinance 25-09;

WHEREAS, the parties have now agreed to amend the payment schedule commensurate with the verified cost of the Project; and

WHEREAS, the Township has reviewed the proposed amendment and authorized the execution of a Second Amended Tax Agreement by adoption of Ordinance No. 219-14 on August 20, 2014, Exhibit "C";

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Notwithstanding, the parties agree that this tax exemption commences January 1, 2009. During the term of the tax exemption, the Applicant shall make an in lieu of tax payment to the Township in accordance with the schedule set forth above. Prior to the commencement of the tax exemption, the Applicant shall pay full conventional taxes on the Improvements. Upon expiration thereof, the Applicant shall pay full conventional taxes on the Improvements as set forth in Article X.

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Upon the termination of this Agreement for tax exemption, the Project shall be subject to all applicable real property taxes as provided by State Laws and Regulations and Township Ordinances. However, nothing herein shall be deemed to prohibit the Project, at the termination of this Agreement, from qualifying for and receiving the full benefits of any other tax preferences allowed by law and receiving the full benefits of any other tax preferences allowed by law. Furthermore, nothing herein shall prohibit the Applicant from exercising any rights under any other tax provisions of the State Law or Township Ordinances.

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In the event that any provision or term of this Agreement shall be held invalid or unenforceable by a Court of competent jurisdiction, such holding shall not invalidate or render unenforceable any provision thereof; provided, however, that the Township continues to receive the full benefit of any economic term hereunder.

This Agreement shall be governed by and construed in accordance with the Laws of the State f New Jersey.

This Agreement may be executed in several counterparts, each of which shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the Township and the Applicant have caused this Agreement to be executed on the date and year first written above.

WITNESS: **NORTH BERGEN EAT II, L.L.C.**

ATTEST: **TOWNSHIP OF NORTH BERGEN**

By: ______________________________
Christopher Pianese
Township Administrator

813092.1

EXHIBIT A

METES AND BOUNDS DESCRIPTION

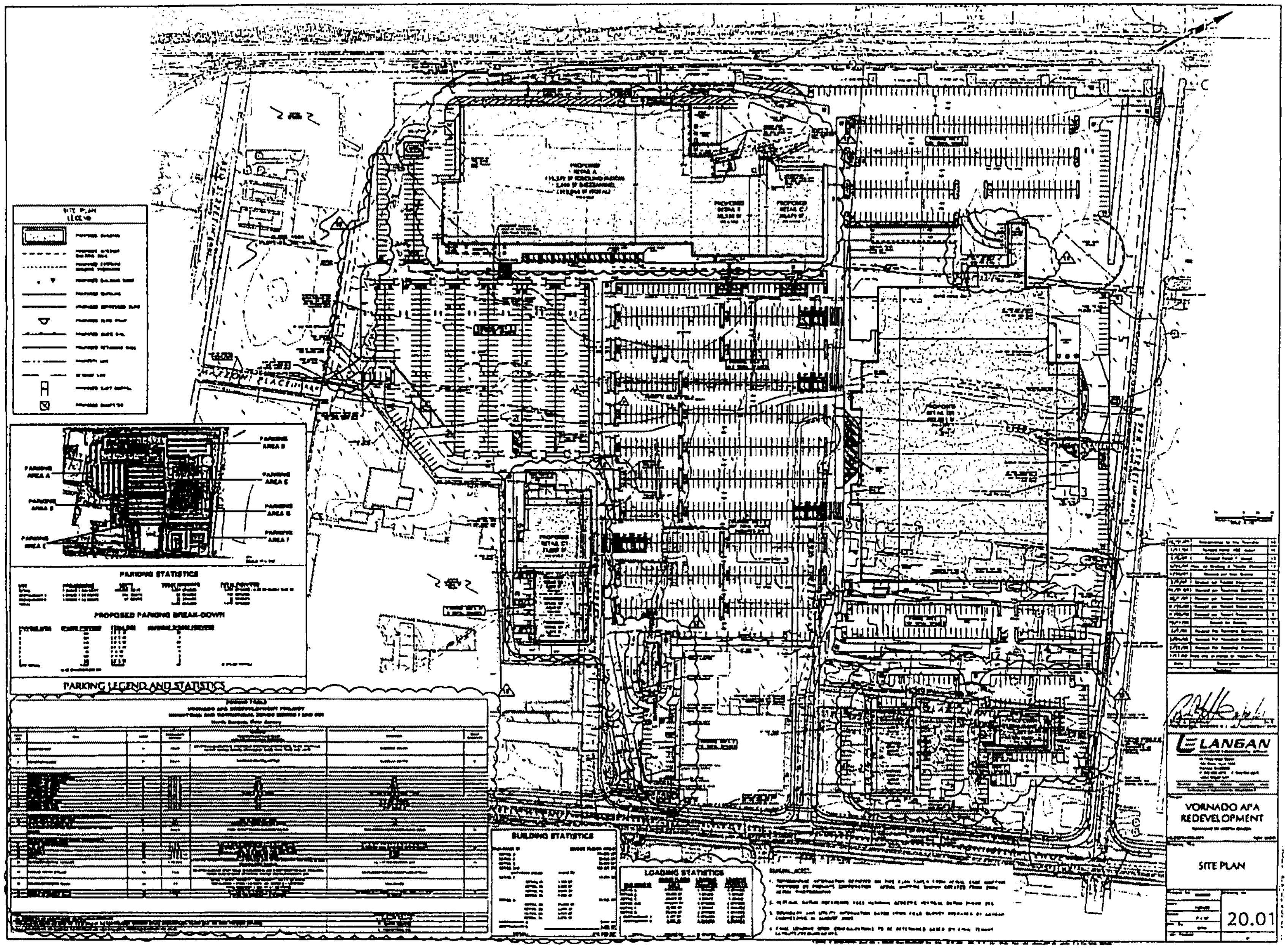

SITE PLAN
LEGEND
PARKING STATISTICS
PROPOSED PARKING BREAK-DOWN
PARKING LEGEND AND STATISTICS
BUILDING STATISTICS
LOADING STATISTICS
HARROW PLACE
LANGAN
VORNADO AFA
REDEVELOPMENT
SITE PLAN
20.01

EXHIBIT B

FIVE-YEAR TAX ABATEMENT APPLICATION

APPLICATION FOR APPROVAL OF A
FIVE-YEAR TAX ABATEMENT ON
BEHALF OF NORTH BERGEN EAT II, L.L.C.

<u>Applicant</u>

North Bergen EAT II, L.L.C.
c/o Vornado Realty Trust
210 Route 4 East
North Bergen, NJ 07652

<u>Prepared By:</u>

Joseph G. Ragno, Esq.
Waters,McPherson,McNeill,P.C.
300 Lighting Way
Secaucus, N.J. 07096
(201) 863-4400
Attorney for Applicant

Date: July 25, 2008

TABLE OF CONTENTS

EXHIBIT INDEX

I. Introduction: General Description

The Applicant, North Bergen EAT II, L.L.C.("NB-EAT"), a Delaware limited liability company, proposes a 420,000 square foot shopping center project, which is the subject of this Application (the "Project").

NB-EAT is the owner of the Project Site, which is currently vacant. NB-EAT will be responsible for construction of the Project and, upon completion of construction of the Project, the Project will be operated by Vornado Realty Trust ("VRT") or an affiliate.

II. Nature of Application

The present application is for approval of a five-year tax abatement between NB-EAT and the Township of North Bergen the "Five-Year Exemption and Abatement Law", N.J.S.A. 40A:21-1 et seq. and Ordinance #1135-08 (the "Law") on the following terms:

A. Term of the Tax Abatement

For each phase of the Project the tax abatement shall have a term of five (5) full years as measured from the date of substantial completion of that phase of the Project.

B. Estimated Annual Payment In Lieu of Tax on Improvements During Abatement

The Project Improvements will be exempt from local and real state taxation for the term of the tax abatement and, in lieu of full taxation on the Project Improvements, NB-EAT will agree to make a payment in lieu of tax during the term of the abatement for the Project which, consistent with N.J.S.A. 40A:21-10(a) and Ordinance #1135-08, Section 3a, shall be based upon two percent (2%) of project cost as defined in the Law, but in no event less than the amounts specified on the

Minimum Annual Payment in Lieu of Tax Schedule attached as Exhibit A.

III. Identification of Property

A. Legal Description

The Project as proposed will be constructed on a site approximately 38 acres in area known as 2100 88th Street, described as Block 458.01, Lot 8 on the Tax Map of the Township of North Bergen ("Project Site"). See Site Plan and Resolution, Exhibit B.

B. Zoning

The Project site is located in the Tonnelle Avenue Redevelopment Area. The Project is a permitted use under the applicable zoning. In this regard, on March 8, 2006, the Planning Board adopted a resolution granting site plan approval for the Project. Site Plan and Resolution, Exhibit B.

C. Current Real Estate Taxes

The Project is situated on the property known as Block 458.01, Lot 8. The assessed value of the Project Site for tax year 2008 is $12,450,000. Therefore, it is estimated that the real estate taxes attributable to the Project Site will be approximately $526,663 in 2008 (based on the 2007 tax rate of $4.23 per hundred).

IV. Description of Project and Operations

A. Description of Proposed Project

The proposed development consists of a 420,000 sf shopping center to be constructed in phases. At completion is it expected that the center will include as major tenants, Walmart, BJs, Circuit City and Applebee's. The site is the former APA property and has undergone substantial environmental remediation in connection with the prior use. See Site Plan and Resolution, Exhibit B.

B. Estimated Cost of the Project

The estimated "cost of the project", as such term is defined in N.J.S.A. 40A:21-10(a), is approximately $55 million. (An Estimated Cost of the Project is attached as Exhibit C).

Pursuant to Ordinance #1135-08; Sec. 3a and N.J.S.A 40A:21-10a, the two percent (2%) of project cost has been selected as the most appropriate basis for the calculation of the Annual Payment In Lieu of Tax due pursuant to the tax abatement subject to the Minimum Annual Payment in Lieu of Tax Schedule, Exhibit A.

C. Project Leasing Activity

It is estimated that the completed Project will be leased to a variety of third-party tenants on terms indicated on Projected Rent Roll, Exhibit D.

D. Construction Schedule

It is expected that certain elements of the Project may be completed by January 1, 2009 with the balance projected to be complete by the 4th Quarter 2009. The construction schedule is subject to modification depending on the time required to obtain necessary governmental approvals and permits and other factors beyond the control of NB-EAT. Construction Schedule, Exhibit E.

E. Jobs Creation

The construction of the NB-EAT Project, as defined herein, will generate approximately 300 construction jobs and, on completion, approximately 150 permanent jobs.

In addition, the construction and eventual operation of the Project will result in the creation of secondary employment opportunities in the immediate vicinity of the Project Site due to the fact that both construction and post-construction employees are expected to patronize local businesses.

Since there are no businesses representing employment located on the Project Site, the Project will not result in the loss or displacement of existing jobs.

NB-EAT agrees to comply with all Federal, State, County and Township laws, rules, regulations and ordinances as they relate to employment practices.

F. Ownership and Operation

As of the date of the Application, the Project Site is owned by NB-EAT which will itself construct or cause to be constructed the Project Improvements and, upon completion, the Project will be operated by VRT or an affiliate.

G. Source of Funding

NB-EAT anticipates that construction for the Project Improvements will be financed internally.

H. Estimated Taxes Upon Expiration of Abatement

In the first full year following the expiration of the tax abatement, it is projected, that conventional taxes of approximately $2 million will be generated by the Project, inclusive of land taxes.

V. Statement of Reasons for the Tax Abatement

A. Need for the Tax Abatement

In order for the Project to be economically feasible and competitive with other commercial projects in the Township, the expenses associated with remediating the Project Site and constructing the Project and the increase in real estate taxes which would otherwise result must be offset by tax relief. The tax abatement proposed would generate from the Project $6 million in revenues over its entire term. It is projected that conventional taxes on the completed Project over the same period would be substantially more and if the Project is not built, substantially less.

The NB-EAT Project cannot be built on the site in the absence of a tax abatement as proposed in this Application and the stability and level competitive playing field it affords.

VI. Certification as Proposed Project's Compliance with State and Local Redevelopment Laws

NB-EAT certifies that the Project is located in an area designated as an Urban Enterprise Zone and is within the Tonnelle Avenue Redevelopment Area and that the Project and its owner will comply in all aspects with the laws, regulations and ordinances of the State of New Jersey and the Township of North Bergen, specifically, without limitation, the "Five-Year Exemption and Abatement Law," and North Bergen Ordinance #1135-08 implementing the "Five-Year Exemption and Abatement Law,"; and applicable zoning.

VII. Ownership Disclosure

NB-EAT is a Delaware limited liability company whose members are disclosed on Disclosure Statement, Exhibit F. As such, NB-EAT is fully authorized to own and develop the Project under the terms of the Law and to enter into a tax agreement to implement the requested tax abatement.

I hereby certify to the best of my knowledge and belief, that all of the information contained in this Application is true and correct and that I have made a diligent inquiry to confirm the accuracy of all such information.

WATERS, MCPHERSON, MCNEILL, P.C.
Attorneys for Applicant

Dated: July 25, 2008

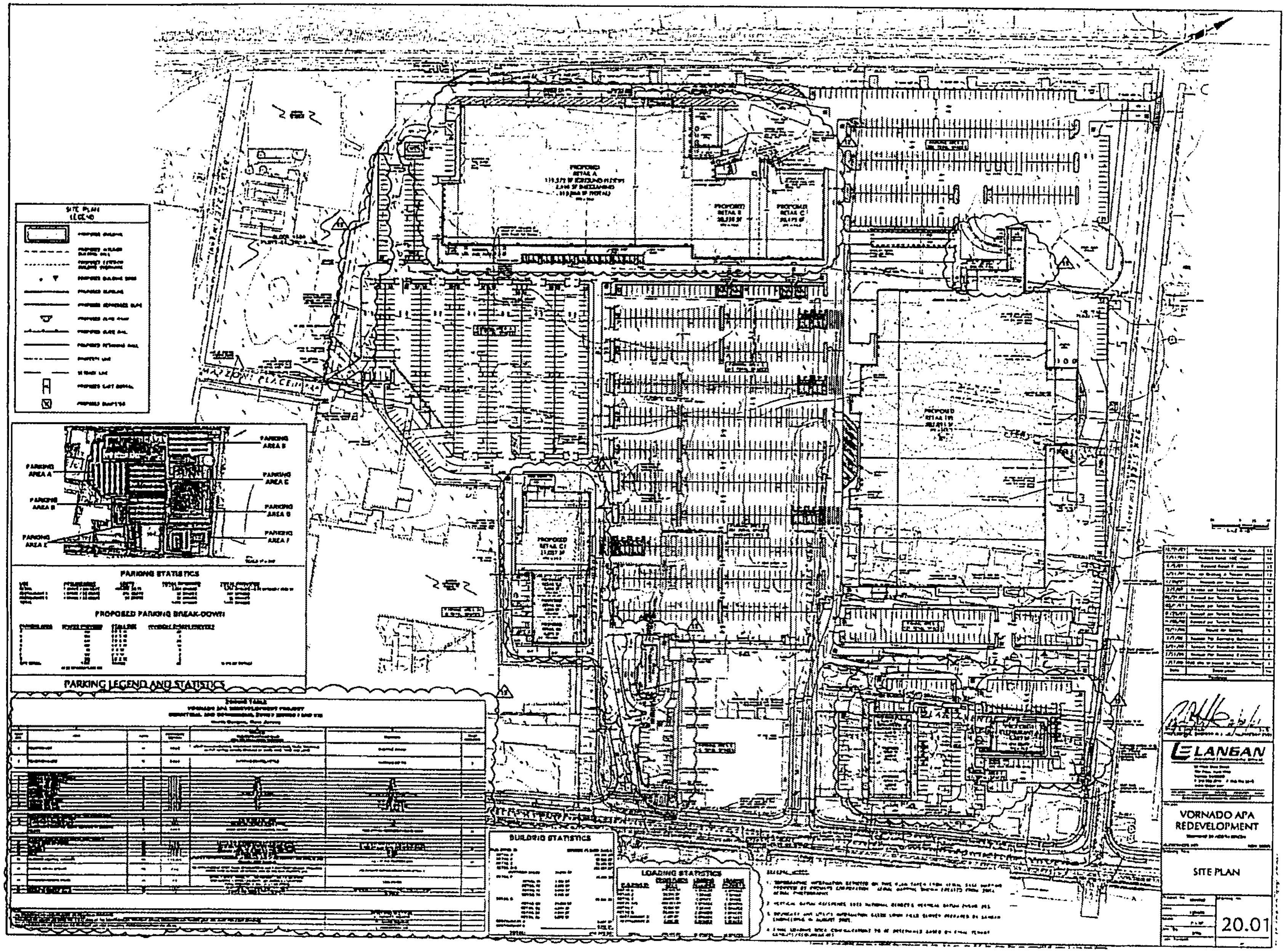
Joseph G. Ragno

501660.2

EXHIBIT A

MINIMUM ANNUAL PAYMENT IN LIEU OF TAX SCHEDULE

2009	$ 500,000
2010	$ 1,100,000
2011	$ 1,100,000
2012	$ 1,100,000
2013	$ 1,100,000
2014	$ 1,100,000



SITE PLAN LEGEND
PARKING AREA A
PARKING AREA B
PARKING AREA C
PARKING AREA D
PARKING AREA E
PARKING AREA F
PARKING STATISTICS
PROPOSED PARKING BREAK-DOWN
PARKING LEGEND AND STATISTICS
ZONING TABLE
BUILDING STATISTICS
LOADING STATISTICS
PROPOSED RETAIL A
PROPOSED RETAIL B
PROPOSED RETAIL C
PROPOSED RETAIL C1
HAYDEN PLACE
LANGAN
VORNADO APA REDEVELOPMENT
SITE PLAN
20.01

TOWNSHIP OF NORTH BERGEN
PLANNING BOARD
RESOLUTION NUMBER 2006-12
CASE NUMBER 59-05

WHEREAS, an application has been submitted by **VORNADO NORTH BERGEN TONELLE PLAZA, LLC** for site plan approval to construct a shopping center on premises designated as Block 458A, Lots 6A-10, 12b and 26-35, Block 459, Lots 20-34G, Block 459A, Lots 1-12 and 17-38 and Block 460, Lots A, A1 and B and commonly known as 2100 88th Street, North Bergen, New Jersey; and

WHEREAS, along with the application, applicant has submitted a site plan prepared by Langan Engineering and Environmental Services, 50 West State Street, Trenton, New Jersey 08608, consisting of fourteen sheets dated November 4, 2005, revised through February 24, 2006; and

WHEREAS, the applicant has submitted proof that notification by mail or personal service at least 10 days prior to the date set forth for public hearing within 200 feet from the extreme limits of the property in accordance with the Zoning Ordinance of the Township of North Bergen as amended and supplemented and N.J.S.A. 40:55D-1 et seq. has been completed and that the application has been deemed complete for review; and

WHEREAS, the Planning Board of the Township of North Bergen has considered the site plan application to construct the shopping center with reference to the objectives set forth in the applicable Zoning Ordinance of the Township of North Bergen as amended and supplemented; and

WHEREAS, the request for the construction of the shopping center was reviewed by the Planning Board of the Township of North Bergen with reference to sound and prudent zoning and planning principles reviewed in conjunction with the aforementioned Township Ordinance objectives, including but not limited to, the proposed uses based upon the plans as presented to the Board; and

WHEREAS, a public hearing was held on March 8, 2006, at which time the Planning Board heard testimony from the following individuals:

Ryan Linthicum - Engineer

Charles P. Dietz - Architect

Michael Jovishoff - Planner; and

WHEREAS, the Board considered, in addition to the application and drawings submitted, the following exhibits marked into evidence:

A-1 Colorized Booklet

A-2 Aerial Map

A-3 Aerial Map superimposed with site plan

A-4 Site Utility Plan

A-5 Rendered Perspective of 91st Street; and

WHEREAS, the Board also considered the presentation of Dennis J. Oury, Esq., the applicant's attorney, and gave due consideration to all individuals desiring to be heard and after due deliberation, did find and determine that:

A. <u>The Subject Property</u>.

1. The subject property is located at 2100 88th Street, North Bergen, New Jersey. The property consists of numerous lots and extends from near 85th Street to 91st

Street, west of Tonnelle Avenue to the railroad. The site includes the former APA Transport Corp site and the former town pool site. All existing structures on the site will be demolished. The plan also includes vacating 88th Street, 89th Street and Nolan Avenue.

2. The lot has an unusual configuration in that the lot width is discontinuous when measured along Tonnelle Avenue, because an existing industrial building owned by a third party is not included in the project. The lot width is defined as a distance between the side lot lines at the setback line, the most narrow of which at this site would be 145 feet. If measured where the lot is continuous from the north side lot line to the south side lot line, the lot width is approximately 1,100 feet. The lot depth is 1,380 feet and consists of 38.35 acres.

2. A portion of the site is located in the C-2 Zone along Tonnelle Avenue, which extends approximately 100 feet to the west of Tonnelle Avenue. The remainder of the site is located in the I - Industrial Zone. Shopping centers are a permitted use in the C-2 Zone and a conditional use in the I - Industrial Zone.

3. The property is designated as Block 458A, Lots 6A through 10, 12b and Lots 26 through 35; Block 459, Lots 20 through 34G; Block 459A, Lots 1 through 12 and 17 through 38 and Block 460, Lots A, A1 and B on the Tax Assessment Map of the Township of North Bergen.

B. <u>The Proposal</u>.

1. Applicant has submitted a proposal for the redevelopment of an existing industrial site utilized as a truck terminal/warehouse and pool site into a shopping center.

2. The applicant proposes to demolish all existing structures on the site and to construct a shopping center consisting of seven retail stores, a bank and a restaurant.

All of the buildings are oriented to be facing the large parking area in the center of the proposed development.

3. Ryan Linthicum, the applicant's engineer, testified as to the project. Mr. Linthicum testified that the buildings will be clustered - one cluster on the western side and one on the northern side and then several smaller ones scattered throughout the site. Mr. Linthicum testified that the cluster on the western side consists of three retail buildings designated as A, B and C with parking fields in front of those building. Building A is 115,396 square feet. Building B is 24,595 square feet and Building C is 21,920 square feet. Mr. Linthicum testified that Building D is 138,885 square feet, Building E is 64,171 square feet and Building F is 12,947 square feet. Mr. Linthicum then indicated that the proposed restaurant is 5,160 square feet and the proposed bank is 4,550 square feet. Finally, Mr. Linthicum testified that Building G is 32,500 square feet.

4. Mr. Linthicum testified that the site will have access from three streets - 88th Street, 89th Street and 91st Street. Mr. Linthicum testified that all three of these streets will be used as access points to the site. Mr. Linthicum indicated that 85th Street will continue as is as the entry to the site, as will 89th Street. Mr. Linthicum testified that the main access will be located off of 91st Street. Mr. Linthicum testified that larger truck traffic would come onto the site from 91st Street, access the various loading docks and exit on 89th Street. Mr. Linthicum testified that there is a traffic signal at 88th Street, which will provide with left and right turn in and left and right turn out. Mr. Linthicum testified that as to 89th Street, entry and exit will be restricted to right turns only and 91st Street will have a left-hand turn lane down into 91st Street.

5. Mr. Linthicum further testified to the parking and loading requirements. The applicant is providing 1,884 parking spaces where 1,466 is required and 8 loading docks where 7 is required as to Building D.

6. Mr. Linthicum then testified as to the sanitary sewer referring to Exhibit A-4 for the site. He indicated that sanitary sewer flows from Buildings D, E, F, G, and the restaurant and the bank will go to 91st Street to the existing main and A, B and C have been designed to send sanitary flows to 85 Street via Mazzoni Place. The same flow is true for the water service. Mr. Linthicum testified that through grading and the proposed drainage plan, stormwater runoff will discharge into Bellman's Creek.

7. Mr. Linthicum testified as to the landscape proposed for the site and along 91st Street. He indicated that the applicant proposed to install the landscaping to the rear of the site in order to act as a buffer between this site and the pool site and railroad.

8. Mr. Linthicum further indicated that the application was in compliance with the Zoning Ordinance and variance free. One waiver is required for site lighting in which 4 foot candles are proposed and 2 foot candles are required. The design of the lighting was for security purposes.

9. Charles P. Dietz, the applicant's architect, testified that the design proposed was to provide a theme of architecture of material and color throughout the project even though there will be many different tenants. Mr. Dietz testified that although not every building will look exactly alike, certain elements will be continued on all the buildings. Mr. Dietz testified that the rear of the buildings will be a smooth face block with an architectural testured coating that will be a neutral color with continuous gutters and downspouts, which will tie into the stormwater system. Mr. Dietz testified that at this time,

no signage is included in this application, but that a separate application will be made for that in the future once the tenants are known.

10. Michael Jovishoff, the applicant's planner, confirmed thqat the application was in compliance with the Township Zoning Ordinance and Master Plan and variance free with the exception of the site lighting waiver.

11. The Board also considered the testimony of Derek McGrath, the Township Engineer and John Curry, the Board Planner. In addition to their reports dated March 2, 2006 and March 6, 2006 respectively, the Engineer and Planner have indicated that the applicant has substantially complied with their comments and concerns with respect to the application.

The Board makes the following findings and conclusions with respect to this application:

A. This matter is a request for site plan approval to permit construction of a shopping center. The Board has considered the testimony presented on behalf of the applicant. In addition, the Board has reviewed the Township of North Bergen Zoning Ordinance, Master Plan. The Board has also reviewed the application and supplemental documents and all materials marked into evidence which is incorporated herein by reference.

B. The Board finds that the applicant has met its burden of proof in support of granting the application for site plan approval. No variances are required and the applicant has met or exceeded all of the zoning requirements established for this zone. In addition, the applicant has demonstrated that the proposed plan accommodates the road widening being implemented by the NJDOT.

C. The Planning Board hereby determines that the overall objectives of sound and prudent zoning and planning principles warrant the grant of site plan approval as requested in the application.

D. The Planning Board hereby determines that the design waivers are exceptions to the requirements of the Township of North Bergen's Site Plan Ordinance with respect to the permitted levels of illumination from the proposed parking lot lighting are reasonable, appropriate and within the general purpose and intent of the provisions for site plan review and approval as contained therein. In support of this finding, the Board has determined that the enforcement of the Ordinance is impractical and exact undue hardship because of peculiar conditions relating to the subject premises, including the location of the site within a commercial and industrial area and the topography of the site in relation to adjoining nearby properties and the lighting levels of other commercial properties and roadways abutting the subject premises. The Board also notes the absence of any adverse impact of the proposed lighting levels upon other properties within the area provided that appropriate shielding is installed.

NOW, THEREFORE, BE IT RESOLVED by the Planning Board of the Township of North Bergen as follows:

1. That site plan approval is hereby granted to Vornado North Bergen Tonelle Plaza LLC subject to the following terms and conditions:

A. That the site be developed in accordance with the current plans and renderings as submitted to the Board which have been made part of this application, except as modified by the Board as set forth herein.

B. That the applicant shall comply with any and all federal, state, county and local rules and regulations with regard to the granting of this application, including, but not by way of limitation, the applicant's payments of all fees and charges established by the Township of North Bergen for review of the subject application.

C. The applicant shall comply with the report of the Township Engineer dated March 2, 2006 and such further reports issued after review of revised drawings, including but not limited to televising the sewer at the end of 91st Street extending to Westside Avenue and to work with the Township in effectuating repairs, if necessary.

D. The applicant shall comply with the report of the Planning Board Planner dated March 6, 2006, including the placement of additional trees on the site and specifically along the westerly portion of the site adjacent to the railroad tracks.

E. The applicant shall construct a "radical" triangle at the 88th Street intersection to prevent lefthand turns in or out of the site.

F. A revised architectural drawing shall be submitted for review and approval by the Planning Board Planner delineating architectural enhancements to the rear of the buildings adjacent to the railroad tracks and located along 91st Street.

G. The Board specifically grants lighting waivers as requested for the reasons set forth in this resolution. All lights are to be shielded so as not to affect residents on the hill across Tonnelle Avenue.

H. The applicant shall continue to work with the New Jersey Department of Transportation and the Township with respect to the left turn on 91st Street and signalling on Tonnelle Avenue and 91st Street.

I. The applicant shall also post performance and cash bonds as approved in amounts determined by the Township Engineer as reviewed by the Board Attorney for all improvements required in connection with the site plan.

J. Prior to the commencement of any operation and prior to the installation of any improvements, the applicant shall enter into a Developer's Agreement among the developer, the Township and the Planning Board which shall be in the form prepared by the Planning Board Attorney and approved by the Township Attorney.

K. This approval is specifically conditioned upon the Hudson County Planning Board approval or waiver. In the event that the Hudson County Planning Board approval is required, or the County Planning Board requests any revisions to the plans as approved by this Board, the applicant shall present such revisions to this Board for further review.

L. This approval is specifically conditioned upon the applicant complying with the provisions of the law requiring approval from Soil Conservation and Sediment Control Authority.

M. This application is specifically conditioned and subject to approval by the Township of North Bergen Municipal Utilities Authority. If the applicant proposes a sanitary sewer extension, the applicant shall provide a copy of the CP-1 application to the Township of North Bergen Municipal Utilities Authority for endorsement and also provide a copy to this Board for review.

N. The applicant shall consult with the Board's Planner in order to develop an enhanced landscape lighting plan for the entire site which shall be submitted to this Board and to the Construction Official and deemed to be part of the approved application.

O. That the applicant shall post any performance guaranty or make any cash contributions for any additional roadway improvements that may be contemplated along Tonnelle Avenue by the New Jersey Department of Transportation, which will benefit the site.

P. That the applicant shall dedicate any additional right-of-way to the NJDOT to accommodate the proposed road widening as depicted on the site plan.

Q. That the applicant shall submit to this Board and application for subdivision approval for the consolidation of the lots depicted on the site plan and the subdivision of the lots to be conveyed to the Hudson County School of Technology.

BE IT FURTHER RESOLVED that the Chairman, Vice Chairman and Secretary of the Planning Board are hereby authorized to affix their signatures to this Resolution granting site plan approval and lighting waiver and the applicant is authorized to advertise the action taken by way of this Resolution in a local newspaper, and, further, the Secretary of the Board is authorized to send copies of this Resolution to the Construction Code Official and to the applicant.

MOVED BY: Mr. Arnone
SECONDED BY: Mr. Maietta

VOTE: FOR 5 AGAINST 0 ABSTAIN 0

MEMORIALIZATION
MOVED BY: Mr. Ahto
SECONDED BY: Mr. Awadallah
VOTE: FOR 4 AGAINST 0 ABSTAIN 2

Attest:

Geraldine Baker
Secretary/Clerk

APPROVED

Harry D. Mayo, III, Chairman

George Ahto, V. Chairman

I certify that the foregoing is a true copy of the Resolution adopted on April 6, 2006.

Geraldine Baker

Geraldine Baker, Secretary/ Clerk

NOTICE OF APPROVAL
RESOLUTION NUMBER 2006-12
CASE NUMBER 59-05

TAKE NOTICE that on March 8, 2006 the Planning Board of the Township of North Bergen granted the application of Vornado North Bergen Tonelle Plaza, LLC relating to premises located at Block 458A, Lots 6A-10, 12b and 26-35, Block 459, Lots 20-34G, Block 459A, Lots 1-12 and 17-38 and Block 460, Lots A, A1 and B and commonly known as 2100 88th Street, North Bergen, New Jersey. The applicant has requested site plan approval to construct a shopping center, and the Resolution granting the application is filed in the Office of the Planning Board and is available for inspection.

Geraldine Baker

Geraldine Baker, Secretary / Clerk
North Bergen Planning Board

Dated: April 6, 2006

EXHIBIT C

ESTIMATED PROJECT COSTS

It is estimated that the cost of construction on the Project will be approximately $55,000,000 as defined in N.J.S.A. 40A:21-10a.

APA Site, North Bergen, NJ

	SF	Rent psf	Rent $		
Wal-Mart	203,091	13.00	2,640,183		
Petsmart	20,087	29.50	592,567		
Staples	20,388	28.00	570,864		
BJ's	115,396	18.08	2,086,360		
Circuit City	21,057	32.00	673,824		
Sleepys	4,000	30.00	120,000		
Vitamin Shoppes	4,000	48.00	192,000		
Applebees	6,200	29.44	182,528		
Restaurant Pad	3,500	58.00	203,000		
Vacant Retail next to Circuity City	12,375	30.00	371,250		
Vacant Retail next to Sleepys	4,500	30.00	135,000		
	414,594		7,767,575	$	18.74
Credit Loss/Management Fees			310,703		
Net Operating Income			7,456,872		

EXHIBIT E

ESTIMATED
CONSTRUCTION SCHEDULE

Phase I Completion ....January 2009

Phase II Completion................January 2010

EXHIBIT F

OWNERSHIP DISCLOSURE

The Applicant, North Bergen EAT II, L.L.C. is a single member L.L.C. with that member being:

Vornado North Bergen Tonnelle Plaza, L.L.C.
210 Route 4 East
Paramus, NJ 07652

#219-14

TOWNSHIP OF NORTH BERGEN
ORDINANCE #

AN ORDINANCE AMENDING ORDINANCE 25-09 APPROVING THE AMENDMENT OF A FIVE (5) YEAR TAX EXEMPTION PURSUANT TO THE PROVISIONS OF N.J.S.A. 40A:21-1, ET SEQ., FOR PROPERTY DESIGNATED AS BLOCK 458.01, LOT 8 ON THE TOWNSHIP'S TAX MAP AND MORE COMMONLY KNOWN BY THE STREET ADDRESS OF 2100 88TH STREET, NORTH BERGEN, NEW JERSEY

WHEREAS, the Township of North Bergen, contains certain Urban Enterprise Commercial neighborhoods which are considered as areas in need of redevelopment which authorize the Township to adopt an ordinance to utilize tax exemptions pursuant to N.J.S.A. 40A:21-1, et seq., the Five (5) Year Exemption and Abatement Law; and

WHEREAS, pursuant to N.J.S.A. 40A:21-1 et seq., the Township of North Bergen adopted Ordinance 1135-08 to allow Five (5) Year Tax Exemptions which allows the Tax Assessor to regard the full and true value or a portion thereof of certain improvements as not increasing the full and true value of certain property for a period of five (5) years, provided the owner's application is approved by the Tax Assessor and by Ordinance of the Board of Commissioners; and

WHEREAS, North Bergen Eat II, LLC ("Owner") is the owner of certain property located at and commonly known as 2100 88th Street, Township of North Bergen, County of Hudson, State of New Jersey and designated as Block 458.01, Lot 8 on the Tax Assessor's Map [Property]; and

WHEREAS, on or about July 25, 2008, the Owner applied for a five year tax exemption to construct a shopping center in phases consisting of eleven retail stores on the Property [Improvements] pursuant to N.J.S.A. 40A:21-1 et seq. and Ordinance No. 1135-08; and

WHEREAS, the Township reviewed the application, approved the construction of the Improvements and authorized the execution of a Tax Agreement by the adoption of Ordinance No. 1142-08 on August 20, 2008; and

WHEREAS, pursuant thereto, the Township and Owner entered into a Tax Exemption Agreement dated September 11, 2008; and

WHEREAS, the Agreement was amended as approved pursuant to Ordinance No. 25-09 amending Ordinance No. 1142-08; and

WHEREAS, after a full review of all information provided by North Bergen Eat II, LLC, including the final project costs and tenant improvement costs, it is now necessary to amend the payment schedule set forth in the original tax agreement dated September 11, 2008, amended 2009; and

WHEREAS, North Bergen Eat II, LLC proposes to pay the Township, in addition to the full taxes on the land, which shall continue to be conventionally assessed and taxed pursuant to the Amended Agreement, the tax payment for the new improvements on the property for the year 2014 as follows:

> 2014 - $2,150,000. Payment can be paid quarterly in the amount of $362,500 on February 1st, May 1st, August 1st and the balance of $1,062,500 shall be paid on November 1st.

NOW, THEREFORE, BE IT ORDAINED by the Board of Commissioners of the Township of North Bergen that:

Section 1

1. The application, incorporated herein by reference, for a five (5) year tax exemption for each phase of the project for the full and true value of new construction of a retail shopping center consisting of eleven retail stores, located in Block 458.01, Lot 8 on the Township's Tax Map and more commonly known by the street address of 2100 88th Street, Township of North Bergen, is hereby approved.

2. The Mayor or Township Administrator is hereby authorized to execute an amended tax exemption agreement which shall contain at a minimum, the following terms and conditions:

(a) tax payment on the new improvements shall be:

1. 2009 - $500,000 in the first quarter. This payment can be made in two payments of $250,000 on February 1st and May 1st or one payment of $500,000 on May 1st.

2. 2010 - $1,450,000. Payment can be paid quarterly in the amount of $362,500 on February 1st, May 1st, August 1st and November 1st.

3. 2011 - $1,450,000. Payment can be paid quarterly in the amount of $362,500 on February 1st, May 1st, August 1st and November 1st.

4. 2012 - $1,450,000. Payment can be paid quarterly in the amount of $362,500 on February 1st, May 1st, August 1st and November 1st.

5. 2013 - $1,450,000. Payment can be paid quarterly in the amount of $362,500 on February 1st, May 1st, August 1st and November 1st.

6. 2014 - $2,150,000. Payment can be paid quarterly in the amount of $362,500 on February 1st, May 1st, August 1st and the balance of $1,062,500 shall be paid on November 1st.

(b) The project shall be subject to all federal, state and local laws; and regulations on pollution control, worker safety, discrimination in employment, zoning, planning, and building code requirements pursuant to N.J.S.A. 40A:21-11(b).

(c) If during any tax year prior to the termination of the tax agreement, the property owner ceases to operate or disposes of the property; or fails to meet the conditions for qualifying, then the tax which would have otherwise been payable for each tax year shall become due and payable from the property owner as if no exemption and abatement had been granted. The collector forthwith and the tax collector shall, within 15 days thereof, notify the owner of the property of the amount of taxes due.

(d) With respect to the disposal of the property, where it is determined that the new owner of the property will continue to use the property pursuant to the conditions which qualified the property; no tax shall be due, the exemption shall continue and the agreement shall remain in effect.

(e) At the termination of a tax exemption agreement, the new improvements shall be subject to all applicable real property taxes as provided by State law and regulation and local ordinance; but nothing herein shall prohibit a project, at the termination of an agreement, from qualifying for, an receiving the full benefits of, any other tax preferences provided by law.

(f) Nothing contained in the application for Tax Abatement shall bind the Township in any manner from establishing the tax assessment for the property at the expiration of the Tax Agreement. The Tax Assessor can take into consideration the configuration of the site and then current income and expense statements to establish the tax assessment.

3. The form of amended tax exemption agreement is attached hereto as Exhibit A, subject to such modification as the Township Attorney or Township Administrator deems necessary.

4. The Township Administrator shall send a copy of the fully executed Amended Tax Agreement to the Director of the Division of Local Government Services in the Department of Community Affairs within thirty (30) days of execution pursuant to N.J.S.A. 40a:21-11(d).

Section 2

All ordinances and parts of ordinances inconsistent herewith are hereby repealed.

Section 3

This ordinance shall take effect at the time and in the manner provided by law.

Introduced: July 16, 2014

Published: July 22, 2014

Adopted: Adopted 20, 2014