

REGULAR COUNCIL MEETING
MAY 29, 2013

Council Chamber, Municipal Building
Irvington, N.J. – Wednesday Evening
May 29, 2013 - 8:00 P.M.

1. Pledge of Allegiance
2. Moment of Silence
3. Roll Call

Present: Charnette Frederic, Paul Inman, Lebby C. Jones, Sandra R. Jones, David Lyons, Andrea C. McElroy, D. Bilal Beasley

Absent: None

President Beasley read the Statement of Proper Notice pursuant to the Sunshine Law.

4. Hearing of Citizens on Agenda Items Only (limited to three minutes per person and thirty minutes total)

5. Hearing of Council Members

There were no requests to be heard.

6. Reports & Recommendations of Township Officers, Boards & Commissions

A. Reports

1. Minutes – Directors’ Meeting – 5-14-13
2. Municipal Court – Monthly – April
3. Joint Meeting – Annual Report Year 2012
4. Joint Meeting – Minutes – May 17, 2013
5. Planning Board Minutes – May 5, 2013

7. Reports of Committees

A. Purchasing Committee Minutes – 5-8-13

8. Ordinances, Bills & Claims

A. Ordinances on 1st Reading

None

C. Bills & Claims

McElroy – S. Jones 2. Payrolls

April 20, 2013 through May 3, 2013

REGULAR	OVERTIME	OTHER EARNED	TOTAL
\$1,374,340.44	\$137,856.55	\$19,873.15	\$1,532,070.14

Adopted

9. Resolutions & Motions

A. Resolutions

MINUTES – COUNCIL MEETING – MAY 29, 2013 – PAGE 2

Beasley – L.C. Jones 1. Designate Greene Terrace Park and Green Terrace as “Trustee Robert Earl Pittman Park” and Greene Terrace as “Trustee Robert Earl Pittman Lane”

**“TRUSTEE ROBERT EARL PITTMAN PARK
TRUSTEE ROBERT EARL PITTMAN LANE
– IN HONORARIUM”**

WHEREAS, Trustee Robert Earl Pittman was born on June 24, 1932 in the city of Headland Alabama to John Lee and Ruby Pittman, after moving to Panama City with his parents and siblings Robert attended that city's school system; and

WHEREAS, Trustee Robert's life reflected faith, courage, diligence and hard work in every aspect possible; as an employee, he worked his way up the corporate ladder from laborer to superintend of the Chemical Division at Essex Chemical in a short time and continued to work in management for various Chemical companies until he finally retired in 2006; and

WHEREAS, he served his church Solid Rock for the past 25 years as Chairman of the Trustee Board; he served as Chairman of the Board for the Garden State Grand Lodge and was a member of the Nia Lodge of the Garden State Grand Lodge and also served as a member of the Irvington Planning Board; and

WHEREAS, the Irvington Municipal Council is desirous of renaming the Greene Terrace Park to the Trustee Robert Earl Pittman Park in honor of the hard work of Trustee Robert Earl Pittman and to erect street signs in the area surrounding the park signifying “Trustee Robert Earl Pittman Lane” in recognition of his many years of service to the Township of Irvington:

NOW, THEREFORE, BE IT RESOLVED BY THE TOWNSHIP OF IRVINGTON that street signs signifying “Trustee Robert Earl Pittman Lane” be placed above all street signs surrounding Greene Terrace Park to recognize Trustee Robert Earl Pittman for his many years of service to the Township of Irvington as a community leader; and

BE IT FURTHER RESOLVED that the Greene Terrace Park shall hereinafter be known and designated as “Trustee Robert Earl Pittman Park” in honor of this great man; and

BE IT FURTHER RESOLVED that the Department of Neighborhood Services and the Department of Parks and Recreation be authorized and directed to take all the necessary steps to see that proper signage is erected to so designate the Greene Terrace Park as the “Trustee Robert Earl Pittman Park” and to erect street signs signifying “Trustee Robert Earl Pittman Lane” above all street signs surrounding Greene Terrace Park.

Adopted

Frederic – Beasley 2. Commemoration - Haitian Flag Day - May 18, 2013

**RESOLUTION OF COMMEMORATION
HAITIAN FLAG DAY**

WHEREAS, for a country's citizens, the national flag is indisputably a symbol of general pride. They would consider any offense to their flag to be an offense to their country. Beyond being an icon though, a flag's origin can often say a lot about a nation's social make-up or history. Haitians feel no different and even reserve a special day to honor it, that day is May 18, 2013; and

WHEREAS in Haiti, Flag Day is a major national holiday celebrated with great fanfare on the grounds of the national palace. Flag Day is also observed by Haitians in the Diaspora. In The United States Haitians give homage to the red and blue by carrying it around with them or on their persona for at least a week. Haiti's flag's origin is tightly linked to a history of struggle for freedom; and

WHEREAS in the early days of revolt in St. Domingue, the slaves did not have a flag. Toussaint Louverture. and the army of revolted slaves fought successively for the Spanish against the French (1793-1794), for the French against Spain and England (1794-1802) and ultimately against France. As such, he carried the color of whichever European power he was fighting for. He later realized

that it was silly to use the same flag as the enemies. He then invented his own flag, which was a white piece of cloth with a Negro head to represent the blacks; and

WHEREAS, after Toussaint's deportation, The Indigene Army went back to the French flag for a while. As early as February 1803 however, Petion, leader of the mulattoes and Dessalines had decided to create a unique flag to represent their troops; and

WHEREAS, by 1803 as we saw, the leaders of the free slaves and the men of color had decided to fight for the creation of an independent nation. On May 18, 1803, in the city of Arcahaie, not far from Port-au-Prince, they agreed on an official flag with blue and red bands placed vertically and this, their first flag was sewn by a lady named Catherine Flon; and

WHEREAS, on Independence Day however, January 1st 1804, the flag was modified again. The Blue and Red bands were placed horizontally this time, with the blue band on top of the red band. This was the first flag of the independent republic. In 1805, shortly after Jean-Jacques Dessalines proclaimed himself emperor, the Haitian flag color was changed to black and red bands placed vertically respectively. After the emperor's death, in 1806, the country will be divided into two republics for 14 years. Alexandre Petion went back to 1804's flag that was blue and red only this time he added the white squared portion that included the country arms and the famous phrase "L'UNION FAIT LA FORCE", meaning that through unity we find strength; and

NOW, THEREFORE, BE IT RESOLVED BY THE MUNICIPAL COUNCIL OF THE TOWNSHIP OF IRVINGTON that it hereby recognizes May 18, 2013 as Haitian Flag Day and honors this country's citizens and their ancestors who so bravely fought for their freedom from slavery.

BE IT FURTHER RESOLVED that a copy of this resolution be spread upon the minutes of this governing body in lasting tribute to Haitian Flag Day.

Adopted

McElroy – S. Jones 3. Authorize Use of \$18,780.00 in Housing Rehabilitation Assistance Loan Program Funds - 10 Cottage Place

WHEREAS, Shirley West, owner of 10 Cottage Place, Irvington, New Jersey gave a mortgage to the Irvington Township HUD/CDBG Housing Rehabilitation Assistance Loan Program in the amount of \$ 18,780.00 recorded in Book 12033 Page 780 on 3/1/2007 and in the amount of \$ 3,048.00 recorded in Book 112161 page 9652 on 10/9/2008, in the Office of the Essex County Register's Office; and

WHEREAS, such was previously approved by the Municipal Council by Resolution No. OCDP 06-0627-36 adopted on 6/27/2006, for HUD/CDBG Housing Rehabilitation \$18,780.00 and a \$3,048.00 mortgage for additional rehabilitation work; and

WHEREAS, Shirley West seeks to have the Township of Irvington subordinate its mortgages to a new mortgage given by Quicken Loans to Mortgage Electronic Registration Systems, Inc., as shown in the attached Subordination Agreement; and

WHEREAS, the Director of Community Development recommends the requested action as detailed in the attached letter:

NOW, THEREFORE, BE IT RESOLVED BY THE MUNICIPAL COUNCIL OF THE TOWNSHIP OF IRVINGTON that the Township agrees to subordinate its loan to the new mortgage given by Quicken loans to Mortgage Electronic Registration Systems, Inc.; and

BE IT FURTHER RESOLVED that the Mayor and the Clerk are authorized to execute the attached Subordination Agreement.

Adopted

McElroy – Frederic 4. Authorize Use of \$29,258.00 in Housing Rehabilitation Assistance Loan Program Funds - 8 Gifford Place

WHEREAS, Geraldine Holman, owner of 8 Gifford Place, Irvington, New Jersey gave a mortgage to the Irvington Township HUD/CDBG Housing Rehabilitation Assistance Loan Program in the amount of \$ 29,258.00 recorded in Book 12192 Page 9268 on 5/8/2009 in the Office of the Essex County Register's Office; and

WHEREAS, such was previously approved by the Municipal Council by Resolution No. OCDP 09-0428-13 adopted on 4/28/2009, for HUD/CDBG Housing Rehabilitation; and

WHEREAS, Geraldine Holman seeks to have the Township of Irvington subordinate its mortgages to a new mortgage given by Solutions Star Settlement Services to Capital One, N.A., as shown in the attached Subordination Agreement; and

WHEREAS, the Director of Community Development recommends the requested action as detailed in the attached letter:

NOW, THEREFORE, BE IT RESOLVED BY THE MUNICIPAL COUNCIL OF THE TOWNSHIP OF IRVINGTON that the Township agrees to subordinate its loan to the new mortgage given by Solutions Star Settlement Services to Capital One, N.A.; and

BE IT FURTHER RESOLVED that the Mayor and the Clerk are authorized to execute the attached Subordination Agreement.

Adopted

S. Jones – Frederic 5. Authorize Use of \$10,000.00 in HUD/HOME Irvington Homebuyer Assistance Loan Program – 9 Lentz Place

WHEREAS, the Township of Irvington has obligated funds for the purpose of financing its HUD/HOME Irvington Homebuyer Assistance Loan Program; and

WHEREAS, the Township of Irvington has committed to funds obligated for its HUD/HOME Irvington Homebuyer Assistance Loan Program in accordance with its previously adopted "Policy and Procedural Manual for the Homebuyer Program" per application to the Township's HUD/HOME Program; and

WHEREAS the Township of Irvington's HUD/HOME Irvington Homebuyer Program staff and supervisor have certified that the applicant(s) identified herein are eligible for the HUD/HOME Irvington Homebuyer Assistance Loan Program benefits in accordance with the Township's adopted policies and procedures; and

WHEREAS, the Mayor has previously authorized the provision of the requested HUD/HOME Irvington Homebuyer Assistance Loan Program benefits in accordance with the provisions of said policy.

NOW THEREFORE, BE IT RESOLVED BY THE MUNICIPAL COUNCIL OF THE TOWNSHIP OF IRVINGTON that the Township of Irvington does ratify and approve the provision of the HUD/HOME Irvington Homebuyer Assistance Loan Program funds to the applicant(s) in the amount set forth in the Irvington Homebuyers Assistance Program Agreement – Case No. HB-2011-0016, in the amount of \$ 10,000.00; and

BE IT FURTHER RESOLVED that the aforesaid funds are to be used toward Down Payment for the process of purchasing the premises known as 9 Lentz Place, IRVINGTON, NEW JERSEY, Exhibit A, Sales Contract; and

BE IT FURTHER RESOLVED that the aforesaid funds are to use Irvington Homebuyer Assistance Loan Program funds and are to be paid to Dominique Samy and C. Brian Daly, Esq., subject to having provided the Office of Community Development & Planning with a true copy of their contract of sale, mortgage commitment and appraisal, and whose attorney and title company is properly licensed to practice law and transfer title by the State of New Jersey and the Homebuyer Assistance Program Agreement between the applicant(s); and

BE IT FURTHER RESOLVED that any such funds not expended in the Purchase of the subject property in accordance with adopted policy and procedures shall be recaptured by the TOWNSHIP OF IRVINGTON for use in assisting other HUD/HOME Irvington Homebuyer Assistance Loan Program applicant(s); and

BE IT FURTHER RESOLVED that pursuant to N.J.A.C. 5:34-5.2, the required Certificate of Funds Req. No. C3-00287 for the above have been obtained from the Chief Financial Officer of the Township and the appropriation to be charged for the expenditure is Account No. T-21-41-850-11A805 in the amount of \$ 10,000.00.

Adopted

Frederic –Beasley 6. Constable Appointment – Timothy Holmes

WHEREAS, application has been made for the Office of Constable by Timothy Holmes, who resides at 1154 Clinton Avenue, Irvington, New Jersey:

NOW, THEREFORE, BE IT RESOLVED BY THE MUNICIPAL COUNCIL OF THE TOWNSHIP OF IRVINGTON, NEW JERSEY that Timothy Holmes, 1154 Clinton Avenue in the Township of Irvington be and he is hereby appointed to the Office of Constable for a term of three years from the date of May 29, 2013; and

BE IT FURTHER RESOLVED that the above named person shall be notified of his appointment for the term aforesaid by the Township Clerk and directed to present herself to him and take and subscribe to the oath as provided by law, and to file with the Township Clerk at the same time a surety bond in the sum of \$1,000.00 to remain in force for the full term above set forth, the surety on said bond being a surety company duly authorized to do business in the State of New Jersey, said bond to be conditioned as provided by law, and that said bond be approved as to form by the Township Attorney.

Council Member Lyons spoke

Adopted
No: Lyons

S. Jones – McElroy 7. Resolution of Sorrow – Reed Patterson, Jr.

WHEREAS, the Irvington Municipal Council wishes to express their deep sorrow on the passing of REED PATTERSON, JR. on May 2, 2013; and

WHEREAS, Reed Patterson, Jr. was born on June 25, 1935 in San Antonio Texas to the late Reed Patterson and late Lee Anna Mulkey; and

WHEREAS, Reed received his formal education in San Antonio, upon graduation enlisted in the United States Army and proudly received an Honorable Discharge; and

WHEREAS, Reed moved to New Jersey and began working with the General Foam Corporation until his retirement and was a committed member of the #13742 United Steelworkers of America District #9 Local Union; and

WHEREAS, Reed married Verna M. Curry Butler in 1998. They traveled often, affectionately caring for one another while enjoying each other's company and that of family and friends; and

WHEREAS, Reed attended Compton College matriculating in Advanced Golf; where he also trained and developed the foundation for the game of golf; and

WHEREAS, Reed was predeceased in death by his parents, Reed Patterson and Lee Anna Mulkey and his brother George Foreman; and

WHEREAS, leaves to cherish in his memories, his loving wife Verna Butler Patterson; brother, Albert Gale (Doris); sister, Sadie Miller; stepdaughters, Dr. Kim Butler Perry (Benjamin) and Jeneene Butler; grandchildren, Benjamin and Christopher Perry; brother-in-laws, William, Milton

Jr., Frederick (Celestine) Curry and Charles Chapman; sister-in-law, Flora Curry and a host of relatives and friends; and

WHEREAS, Vern writes the following touching words expressing her thoughts about Reed:
“Reed, I still wake up and expect to see your face and hear your voice. I can’t believe you’re gone but I know the love we shared will always keep you near. Thank you for loving me and for giving me so many years of joy. We didn’t have enough time together but the time we had filled my heart with a lifetime of memories. Now, play as much golf as you can until I get there...”

NOW, THEREFORE, BE IT RESOLVED BY THE MUNICIPAL COUNCIL OF THE TOWNSHIP OF IRVINGTON that it hereby mourns the death of Reed Patterson Jr. and sends its sincerest condolences to the members of his family and dear friends.

BE IT FURTHER RESOLVED that a copy of this resolution be spread upon the minutes of this governing body as a lasting tribute to Reed Patterson Jr.

Adopted

S. Jones – Beasley 8. Award Bid – Summer Food Program – Karson Food Services Inc. – \$137,330.00

AWARD CONTRACT FOR THE 2013 SUMMER FOOD SERVICES

WHEREAS, sealed bids were received on May 08, 2013 for Summer Food Services 2013 in response to published advertisement for bids in the New Jersey Star Ledger on April 22, 2013; and

WHEREAS, two bids were received and opened from Metropolitan Foods/DBA Driscoll Foods and Karson Food Service; and

WHEREAS, said bids were referred to Purchasing Agent, Parks and Recreation Director and the Summer Foods Services Director for recommendation to the Municipal Council; and

WHEREAS, the Purchasing Agent, Parks and Recreation Director and the Summer Foods Services Director have recommended that the award should be made to Karson Food Service Inc., 3409 Rose Ave., Ocean, NJ 07712 on the basis of their lowest responsible, responsive bid of \$107,629.55; and

BE IT FURTHER RESOLVED, the Municipal Clerk is hereby authorized to return the bid bonds to the unsuccessfully bidders; and

BE IT FURTHER RESOLVED, that the Township Attorney is hereby authorized and directed to prepare the necessary contract and the Mayor and the Township Clerk are authorized and directed to sign the same; and

BE IT FURTHER RESOLVED, that the required certification of availability of funds C3-00288 in the amount of \$107,629.55 from account number G-02-XX-714-13A-299 has been obtained from the Chief Financial Officer.

Adopted

L.C. Jones – McElroy 9. Authorize Legal Settlement – Abdul Rahman - \$70,000.00

RESOLUTION APPROVING THE FINAL DISPOSITION OF ASIYAH ABDULRAHMAN VS. TOWNSHIP OF IRVINGTON, ET AL.

WHEREAS, the matter of Asiyah AbdulRahman v. Township of Irvington, et al, was filed in the Superior Court of New Jersey, Docket No. ATL-L-4818-11; and

WHEREAS, an arbitration award in favor of the Plaintiff in the amount of Seventy Nine Thousand Four Hundred Fifty Four Dollars (\$79,454.00) was rendered on February 26, 2013; and

WHEREAS, the Township of Irvington Administration and the Municipal Council deem it in the best interest to bring this matter to a resolution, thus saving the Township further expense in the

defense thereof and curtailing any excessive liability that could result from this litigation which would include the awarding of attorneys fees in excess of this proposed settlement; and

WHEREAS, plaintiff has agreed to accept settlement in the amount of Seventy Thousand Dollars (\$70,000.00).

WHEREAS, the Office of the Township Attorney has reviewed, monitored and consulted with counsel and all relevant municipal officials and pursuant thereto recommend that this matter be concluded:

NOW, THEREFORE, BE IT RESOLVED BY THE MUNICIPAL COUNCIL OF THE TOWNSHIP OF IRVINGTON that it hereby agrees to a settlement of the above matter in the amount of Seventy Thousand Dollars (\$70,000.00) to be paid to the firm of WESTMORELAND VESPER & QUATTRONE, AND ASIYAH ABDULRAHMAN, subject to the execution of a Release and Settlement agreement, executed Stipulation of Dismissal with Prejudice; and

BE IT FURTHER RESOLVED that this matter is hereby concluded with absolutely no admission of liability on behalf of the Township of Irvington, its Mayor or any agents, officers or personnel; and

BE IT FURTHER RESOLVED that the settlement funds will be processed through D&H Alternative Risk Solution, the Township's third party liability administrator.

Council Member Inman spoke

Adopted

10. Communications & Petitions

A. Communications

1. League of Municipalities – Legislative Bulletin #2

11. Pending Business

None

12. Miscellaneous

A. Bingos and Raffles

None

NON-CONSENT AGENDA ITEMS

B. Ordinances on 2nd Reading

1. President Beasley: An ordinance authorizing a financial agreement for a redevelopment project at the former Irvington General Hospital Site will be heard at this time. The Clerk will read the notice of hearing.

The Clerk read the notice of hearing.

The Clerk will read the ordinance by title.

AN ORDINANCE OF THE TOWNSHIP OF IRVINGTON AUTHORIZING THE EXECUTION OF A FINANCIAL AGREEMENT WITH HILLTOP PARTNERS URBAN RENEWAL I LLC GRANTING A TAX EXEMPTION FOR PHASE I OF THE HILLTOP DEVELOPMENT

WHEREAS, the Township of Irvington (the “Township”), acting through its Municipal Council, pursuant to Section 8(f) of the *Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq.* (the “Act”), may contract with redevelopers for the planning, replanning,

construction, or undertaking of any project or redevelopment work all as set forth under the Act; and

WHEREAS, the Township designated Kapwood, LLC (the “**Redeveloper**”), as the approved redeveloper selected by the Township to implement a portion of the *Redevelopment Plan for the Urban Enterprise Zone* adopted September 12, 2007 (as amended, the “**Redevelopment Plan**”) for the redevelopment of the former Irvington General Hospital site that shall consist of a total of approximately 700 mixed income residential units together with commercial space and associated parking constructed in seven phases (the “**Redevelopment Project**”) pursuant to that certain Redevelopment Agreement by and between the Redeveloper and the Township dated October 12, 2012 (as amended, the “**Redevelopment Agreement**”); and

WHEREAS, the Redeveloper, together with Urban Builders Collaborative NJ, LLC caused the creation of Hilltop Partners Urban Renewal I LLC (the “**Entity**”), an urban renewal entity pursuant to the *Long Term Tax Exemption Law, N.J.S.A. 40A:20-1 et seq.* (the “**Law**”) to implement the first phase of the Redevelopment Project consisting of a new thirteen (13) story multi-family building comprised of 198 residential units consisting of one, two, and three-bedroom apartments along with associated off-street parking (collectively, the “**Project**”) on property identified as a portion of Block 324 Lot 1 (the “**Land**”); and

WHEREAS, the Law permits the Township to provide a tax exemption for the provision of housing to be constructed, acquired or rehabilitated by an urban renewal entity; and

WHEREAS, the Entity is a single purpose urban renewal entity created pursuant to the Law for the development, operation and maintenance of the Project; and

WHEREAS, in order to improve the feasibility of the Project, the Entity submitted an application (the “**Application**”) to the Township requesting a long term tax exemption and a financial agreement (the “**Financial Agreement**”) with respect to the Land pursuant to the Law, which Application is on file with the Township Clerk; and

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

WHEREAS, after review of the Application, the Mayor recommended that the Application be approved; and

WHEREAS, the Township determined that based on information set forth in the Application, the Project would not be feasible without such assistance;

NOW, THEREFORE BE IT ORDAINED by the Municipal Council of the Township of Irvington that:

1. The aforementioned recitals are incorporated herein as though fully set forth at length.
2. The Application, which is on file with the Township Clerk and has been recommended for approval to the Municipal Council by the Mayor, is hereby accepted and approved.
3. The current ownership interests of the Entity and Redeveloper, as set forth in the Application, are hereby acknowledged and consented to by the Township in accordance with Article 7 of the Redevelopment Agreement.
4. The Mayor is hereby authorized to execute the Financial Agreement, substantially in the form attached hereto as Exhibit A, subject to such modifications or revisions deemed necessary and appropriate in consultation with counsel.
5. The Clerk of the Township is hereby authorized and directed upon the execution of the Financial Agreement in accordance with the terms of the agreement,

to attest the signature of the Mayor upon such document and is hereby further authorized and directed thereupon to affix the corporate seal of the Township upon such document.

6. The Township Clerk shall file certified copies of this ordinance and the Financial Agreement with the Tax Assessor of the City and the Director of the Division of the Local Government Services within the Department of Community Affairs in accordance with Section 12 of the *Long Term Tax Exemption Law, N.J.S.A. 40A:20-1 et seq.*

7. If any part of this Ordinance shall be deemed invalid, such parts shall be severed and the invalidity thereby shall not affect the remaining parts of this Ordinance.

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

EXHIBIT A

FINANCIAL AGREEMENT

THIS FINANCIAL AGREEMENT (hereinafter the "Agreement" or the "Financial Agreement"), made this ____ day of _____, 2013, by and between Hilltop Partners Urban Renewal I LLC, an urban renewal entity qualified to do business under the provisions of the Long Term Tax Exemption Law as amended and supplemented, N.J.S.A. 40A:20-1, et seq. (the "Long Term Tax Exemption Law"), with an address of 1212 Springfield Avenue, Irvington, NJ 07111 (the "Entity") and the Township of Irvington, a municipal corporation in the County of Essex and the State of New Jersey (the "Township").

W I T N E S S E T H:

WHEREAS, the Township created the Township Urban Enterprise Zone (the "UEZ"), by Resolution 94-0809-5 dated August 9, 1994; and

WHEREAS, the Township designated certain parcels located within and contiguous to the UEZ as an area in need of rehabilitation (the "**UEZ Rehabilitation Area**") by Resolution 07-0227-5 dated February 27, 2007 in accordance with N.J.S.A. 40A:12A-14; and

WHEREAS, the Township adopted a redevelopment plan for the UEZ Rehabilitation Area (the "**Redevelopment Plan**") by Ordinance MC No. 3351 dated September 11, 2007 in accordance with N.J.S.A. 40A:12A-7; and

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

WHEREAS, Section 5 of the LRHL states that an urban enterprise zone area "shall be considered sufficient for the determination that the area is in need of redevelopment . . . for the purpose of granting tax exemptions within the urban enterprise district"; and

WHEREAS, the Entity has applied for a long term tax exemption for a residential rental affordable housing project located within the UEZ Rehabilitation Area Redevelopment Plan 13-0219-5 on land identified on the official tax map of the Township of Irvington as Block 324, Lot 1.04, and more commonly known as 806-842 Chancellor Avenue, Irvington, NJ 07111 (the "Property"), consisting of a new 245,533 square foot thirteen (13) story multi-family building comprised of 198 residential units consisting of one, two, and three-bedroom apartments of which fifty percent (50%) will be Affordable Housing Units (as such term is defined herein) and ten (10) of which shall be set aside for special needs tenants along with associated off-street parking as described more fully within the Application (as such term is defined herein) (collectively, the "Project"); and

WHEREAS, in order to improve the feasibility of the Project, the Entity made application to the Township requesting a long term tax exemption and financial agreement with respect to the

Land (the “**Application**”) pursuant to the *Long Term Tax Exemption Law*, N.J.S.A. 40A:20-1 et seq., which Application is on file with the Township Clerk; and

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

WHEREAS, after review of the Application, the Mayor recommended that the Application be approved; and

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

WHEREAS, the Township does hereby grant its approval for the Project to be developed and to be maintained upon the terms and conditions hereinafter set forth,

NOW, THEREFORE, in consideration of the mutual covenants herein contained and for other good and valuable consideration, it is mutually covenanted and agreed as follows:

ARTICLE I **GENERAL PROVISIONS**

1.01 Governing Law. This Agreement shall be governed by the provisions of the Long Term Tax Exemption Law and the Local Redevelopment and Housing Law, as may be amended and supplemented, N.J.S.A. 40A:20-1 et seq., and all appropriate municipal ordinances or resolutions pertaining to tax exemptions, being referred to herein as the “Law”. It is expressly understood and agreed that the Township expressly relies upon the facts, data, and representations contained within the Entity’s Application (which is attached hereto) in granting this tax exemption.

1.02 General Definitions. Unless specifically provided otherwise or the context otherwise requires, the following terms when used in this Agreement shall mean:

Affordable Housing Units – Residential units that are constructed for occupancy by low or moderate income households as such terms are defined under N.J.S.A. 52:27D-304 and which have affordability controls as required under the rules of the Council on Affordable Housing.

Allowable Net Profit - The amount arrived at by applying the Allowable Profit Rate to Total Project Cost pursuant to the provisions of N.J.S.A. 40A:20-3(c).

Allowable Profit Rate - The greater of twelve percent (12%) or the percentage per annum arrived at by adding 1 ¼ % to the annual interest percentage rate payable on the Entity's initial permanent mortgage financing. If the initial permanent mortgage is insured or guaranteed by a governmental agency, the mortgage insurance premium or similar charge shall be considered as interest for this purpose. If there is no permanent mortgage financing, or if the financing is internal or undertaken by a related party, the Allowable Profit Rate shall be the greater of twelve percent (12%) or the percentage per annum arrived at by adding 1 ¼% per annum to the interest rate per annum that the Township determines to be the prevailing rate of mortgage financing on comparable

improvements in the county. The provisions of N.J.S.A. 40A:20-3(b) are incorporated herein by reference.

Annual Gross Revenue – shall be as defined in N.J.S.A. 40A:20-3(a) and Section 4.03 of this Agreement.

Annual Service Charge - The amount the Entity has agreed to pay the Township pursuant to Article IV hereof for municipal services supplied to the Project, which sum is in lieu of any taxes on the Improvements, which amount shall be pro-rated in the year in which the Annual Service Charge begins and the year in which the Annual Service Charge terminates.

Annual Service Charge Start Date – the Annual Service Charge Start Date shall be the date of Substantial Completion of the Project.

Application - The application filed by the Entity pursuant to N.J.S.A. 40A:20-8 with the Mayor of the Township for a long-term tax exemption for the Project, attached hereto as Exhibit A.

Auditor's Report - A complete financial statement outlining the financial status of the Project (for a period of time as indicated by context), which shall also include a certification of Total Project Cost and clear computation of Net Profit as provided in N.J.S.A. 40A:20-3(c). The contents of the Auditor's Report shall have been prepared in conformity with generally accepted accounting principles. The Auditor's Report shall be certified as to its conformance with such principles by a certified public accountant who is licensed to practice that profession in the State of New Jersey.

Certificate of Occupancy - Document, whether temporary or permanent, issued by the Township authorizing occupancy of a building, in whole or in part, pursuant to N.J.S.A. 52:27D-133.

Cumulative Allowable Net Profit – In accordance with the calculation set forth in the Long Tax Exemption Law, specifically N.J.S.A. 40A:20-15, an amount equal to the sum of the Allowable Net Profit of the Entity in each year from and including the year that any Improvement is completed up to and including the year for which the Cumulative Allowable Net Profit is being calculated.

Cumulative Net Profit – In accordance with the calculation set forth in the Long Tax Exemption Law, specifically N.J.S.A. 40A:20-15, an amount equal to the sum of the Net Profit of the Entity in each year from and including the year that any Improvement is completed up to and including the year for which the Cumulative Net Profit is being calculated.

Default - Shall be a breach of or the failure of the Entity to perform any obligation imposed upon the Entity by the terms of this Agreement, or under the Law, beyond any applicable grace or cure periods.

Entity - The term Entity within this Agreement shall mean Hilltop Partners Urban Renewal I LLC, an urban renewal entity qualified to do business under the provisions of the Long Term Tax Exemption Law with an address of 1212 Springfield Avenue, Irvington, NJ 07111.

Excess Net Profit – In any given year, an amount equal to the sum of (a) the Cumulative Net Profit, minus (b) the Cumulative Allowable Net Profit.

Gross Revenue - The annual Gross Revenue of the Entity as defined in N.J.S.A. 40A:20-3(a).

Improvements - Any building, structure or fixture permanently affixed to the Land and to be constructed and/or rehabilitated and tax exempted under this Agreement.

In Rem Tax Foreclosure - A summary proceeding by which the Township may enforce the lien for taxes due and owing by a tax sale. Said foreclosure is governed by N.J.S.A. 54:5-1 to 54:5-129 et seq.

Land - The land, but not the Improvements, identified on the official tax map of the Township of Irvington as Block 324, Lot 1.04, and more commonly known as 806-842 Chancellor Avenue, Irvington, NJ 07111, and more particularly described by the metes and bounds description set forth within Exhibit A of this Agreement.

Land Taxes - The amount of taxes assessed on the value of Land on which the Project is located.

Land Tax Payments - payments made on the quarterly due dates for Land Taxes as determined by the Tax Assessor and the Tax Collector.

Law - Law shall refer to the Long Term Tax Exemption Law, as amended and supplemented, N.J.S.A. 40A:20-1, et seq., as it may be amended and supplemented; the ordinance which authorized the execution of this Agreement; and all other relevant Federal, State or Township statutes, ordinances, resolutions, rules and/or regulations.

Local Redevelopment and Housing Law – N.J.S.A. 40A:12A-1 et seq.

Long Term Tax Exemption Law - N.J.S.A. 40A:20-1 et seq.

Material Conditions – As defined in Section 4.08 hereof.

Minimum Annual Service Charge - The minimum annual service charge shall be the amount of the total taxes levied against all real property within the Project in the last full tax year in which the area was subject to taxation. The Minimum Annual Service Charge shall be paid in each year in which the Annual Service Charge, calculated pursuant to N.J.S.A. 40A:20-12(2) and the Financial Agreement, would be less than the Minimum Annual Service Charge.

Moderate Income Housing - housing affordable according to federal Department of Housing and Urban Development or other recognized standards for home ownership and rental costs and occupied or reserved for occupancy by households with a gross household income equal to more than 50% but less than 80% of the median gross household income.

Net Profit – The Gross Revenue of the Entity, less all operating and non-operating expenses of the Entity, all determined in accordance with generally accepted accounting principles and the provisions of N.J.S.A. 40A:20-3(c).

Ordinance – The ordinance adopted by the Municipal Council adopting the long term tax exemption for the Property.

Pronouns - He or it shall mean the masculine, feminine or neuter gender, the singular, as well as the plural, as context requires.

Property – The real property identified on the official tax map of Township of Irvington as Block 324, Lot 1.04, and more commonly known as 806-842 Chancellor Avenue, Irvington, NJ 07111, including both the Land and the Improvements thereon which are the subject of this Agreement.

Substantial Completion - The determination by the Township that the Project is ready for the use intended, which ordinarily shall mean the date on which such Project receives, or is eligible to receive, a Certificate of Occupancy.

Tax Sale Law – N.J.S.A. 54:5-1 et seq.

Termination - Any action or omission which by operation of the terms of this Financial Agreement shall cause the Entity to relinquish its tax exemption.

Total Project Cost – The total cost of construction and/or rehabilitation of the Project through the date a Certificate(s) of Occupancy is issued for the entire Project, which categories of cost are as defined in N.J.S.A. 40A:20-3(h). There shall be included in Total Project Cost the actual costs incurred to construct and/or rehabilitate the Improvements which are specifically described in the Application attached as Exhibit A hereto.

Total Project Cost Audit – A report prepared by a certified public accountant, who is licensed to do business in the state of New Jersey on behalf of the Entity that sets forth the Total Project Cost for the Project. The Total Project Cost shall be supported by a certification of the licensed architect for the Project as required by N.J.S.A. 40A:20-3(h)(4).

1.03 Exhibits Incorporated. The Application (including all exhibits to the Application) are attached to this Financial Agreement as Exhibit A and are incorporated herein and made part hereof.

ARTICLE II **APPROVALS**

2.01 Township Approval of Tax Exemption. Pursuant to the Ordinance, any and all Improvements constructed pursuant to this Project shall be exempt from taxation as provided for herein and under the Long Term Tax Exemption Law. In accordance with the Long Term Tax Exemption Law, specifically N.J.S.A. 40A:20-12, such tax exemption shall constitute a single continuing exemption from local property taxation for the duration of this Financial Agreement. The Project shall be as described in the Application and the Entity hereby expressly covenants,

warrants and represents that the Property, including any Improvements related thereto, shall be used, managed and operated for purposes set forth in the Application and in accordance with the Law.

2.02 Approval of Entity. The Entity represents that its Certificate of Formation as attached hereto contains all the requisite provisions of law, has been reviewed and approved by the Commissioner of the Department of Community Affairs, and has been filed with, as appropriate, the Department of Treasury, all in accordance with N.J.S.A. 40A:20-5.

ARTICLE III DURATION AND TERMINATION OF AGREEMENT

3.01 Term. It is expressly understood and agreed by the parties that this Agreement, including the obligation to pay Annual Service Charges required under Article IV hereof and the tax exemption granted and referred to within Section 2.01 hereof, shall commence on the Effective Date and shall remain in effect until the earlier of (i) thirty (30) years from the Annual Service Charge Start Date, (ii) the Entity's voluntary termination of this Agreement in accordance with the requirements of Section 3.02, or (iii) the occurrence of a Default as set forth within Article XIV of this Agreement. Upon the expiration of the tax exemption provided for herein, all restrictions and limitations of this Financial Agreement imposed upon the Entity and the Property, including the Improvements related thereto, shall terminate upon the end of the fiscal year of the Entity in accordance with N.J.S.A. 40A:20-13 and the Improvements and Land shall thereafter be assessed and taxed according to the general law applicable to other non-exempt property in the Township; provided, however, that (i) the requirement to make payment of any Annual Service Charge due and owing hereunder, (ii) the requirement to make payment to the Township of any reserves, Net Profit, or Excess Net Profit, and (iii) any and all related remedies available to the Township shall survive the termination of this Agreement; and further provided that the Entity has rendered, and that the Township has accepted, the Entity's final accounting in accordance with N.J.S.A. 40A:20-12.

3.02 Voluntary Termination of Agreement by Entity. At any time after the expiration of one year from the completion date of the Project (which the parties agree shall be the Annual Service Charge Start Date for purposes of this section), the Entity may voluntarily terminate this Agreement and relinquish its status as an urban renewal entity under the Long Term Tax Exemption Law. If that occurs, the date of termination shall be deemed to be the close of the fiscal year of the Entity and the procedure for the apportionment of any taxes and/or Annual Service Charges, as applicable, shall be the same as would otherwise be applicable to any other property located within the Township upon a change in the exemption or tax status of such property.

ARTICLE IV ANNUAL SERVICE CHARGE

4.01 Commencement of Annual Service Charge. In consideration of the tax exemption, the Entity shall make payment of the Annual Service Charge on the Annual Service Charge Start Date. In the event that the Entity fails to timely pay any installment, the amount past due shall bear the highest rate of interest permitted under applicable New Jersey law and then being assessed by the Township against other delinquent taxpayers in the case of unpaid taxes or tax liens on the land until paid.

4.02 Payment of Annual Service Charge. The Annual Service Charge shall be due on the first day of the month following the Annual Service Charge Start Date. The Annual Service Charge will be prorated in the year in which the Annual Service Charge Start Date begins and terminates. The Annual Service Charge shall continue for a period of thirty (30) years from the Annual Service Charge Start Date for the Project in accordance with the terms contained herein.

4.03 Annual Gross Revenue. The Annual Gross Revenue shall be calculated as the total of all revenues that would normally be payable to a landlord in the case where the landlord is responsible to pay all costs of operations and maintenance as well as to pay the full cost of the capital required to construct the Project. To the extent that the actual revenues collected by the Entity are less than such amount, due to any reason including without limitation, the payment of expenses by tenants that would normally be paid by the landlord, such as insurance, taxes and or maintenance or the existence of an intermediate entity between the Entity and any tenant, but specifically excluding reductions in revenue due to vacancies within the Project, the Township shall have the right, at its

sole discretion, to recalculate the amount that the revenues would have been, without such issues and to utilize the results of its recalculations in all determinations of Annual Service Charges.

4.04 Calculation of Annual Service Charges. (a) The Annual Service Charges will be calculated in five stages as follows:

STAGE ONE:

For years one through fifteen (1-15) applicant proposes 10% annual service charge on the commercial income derived from parking revenue and 4.33% annual service charge is projected on the residential income.

STAGE TWO:

For years sixteen through twenty-one (16-21) is projected based on 10% service on the commercial income derived from parking revenue and a 4.33% annual service charge on the residential income or 20% of taxation assessed on the property, whichever shall be greater.

STAGE THREE:

For years twenty-two through twenty-seven (22-27) the Applicant shall pay an amount equal to the amount of Annual Service Charge or forty percent (40%) of the amount otherwise due on the value of the land and improvements, whichever shall be greater.

STAGE FOUR:

For years twenty-eight through twenty-nine (28-29) the Applicant shall pay an amount equal to the amount of Annual Service Charge or sixty percent (60%) of the amount otherwise due on the value of the land and improvements, whichever shall be greater.

STAGE FIVE:

For year thirty (30), the Applicant shall pay an amount equal to the amount of Annual Service Charge or eighty percent (80%) of the amount otherwise due on the value of the land and improvements, whichever shall be greater.

(b) In no event shall the Annual Service Charge, excluding taxes on the Land, in any year after the Annual Service Charge Start Date be less than the Minimum Annual Service Charge. The parties agree that the Minimum Annual Service Charge for the Project shall be \$ _____. The Minimum Annual Service Charge shall not be reduced through any tax appeal on Land and/or Improvement during the period the Agreement is in force and effect.

(c) The Entity and the Township acknowledge their mutual intent and assumption that no residential rental tenant of the Property will have an income greater than eighty percent (80%) of the applicable Moderate Income Housing area median income (AMI), and the Annual Service Charges set forth above are based upon the accuracy of such assumption. Accordingly, and notwithstanding anything in this Section 4.04 to the contrary, for each residential unit leased by a tenant whose annual income, determined as of the date such tenant signs a lease for a residential unit at the Property, exceeds 80% of the then applicable area median income, the Annual Service Charge for each year that such tenant's lease is in effect shall be modified so as to include 10% (not 4.33%) of the residential income from such unit; it being understood and agreed, however, that the Annual Service Charge shall continue to include 4.33% of the residential income from all other residential units.

4.05 Land Taxes. The Entity is required to pay both the Annual Service Charge and the Land Tax Payments. The Entity is obligated to make timely Land Tax Payments in order to be entitled to a Land Tax credit against the Annual Service Charge for the subsequent year. The Entity shall be entitled to a credit for the amount, without interest, of the Land Tax Payments made in the last four preceding quarterly installments against the Annual Service Charge. In any year that the Entity fails to make any Land Tax Payments if and when due and owing, such delinquency shall render the Entity ineligible for any Land Tax Payment credits against the Annual Service Charge for that year. No credit will be applied against the Annual Service Charge for partial payments of Land Taxes. In addition, the Township shall have, among this remedy and other remedies, the right to proceed against the property pursuant to the In Rem Tax Foreclosure Act, N.J.S.A. 54:5-1, et seq. and/or to declare a Default.

4.06 Annual Service Charge Installments. Payment of the Annual Service Charge shall be paid to the Township on a quarterly basis on February 1, May 1, August 1, and November 1 after the Annual Service Charge Start Date, subject, nevertheless, to adjustment for over or underpayment within thirty-five (35) days after the close of each calendar year. In the event that the Entity fails to timely pay any installment, the amount past due shall bear the rate of interest permitted under applicable New Jersey law and then being assessed by the Township against other delinquent taxpayers in the case of unpaid taxes or tax liens on the land until paid.

4.07 Administrative Fee. The Entity agrees that the Entity shall pay to the Township a fee of two percent (2%) of the Annual Service Charge as an administrative fee to be paid annually for the term of this Agreement. For purposes of enforcement of collections only, such payments shall be considered to be an additional part of the Annual Service Charge.

(a) From the Annual Service Charge paid by the Entity and received by the Township, the Township shall annually remit to the School District and the County respectively, an amount equal to the percentage of ordinary taxes allocated to the School District and the County for each tax year during the term of this Agreement. Notwithstanding the foregoing, the amount remitted to the County shall be an amount not less than five percent (5%) of the Annual Service Charge in accordance with the provisions of N.J.S.A. 40A:20-12.

4.08 Material Conditions and Severability. It is expressly agreed and understood that all payments of Annual Service Charges and any interest payments, penalties or costs of collection due thereon and payment of Land Taxes, if applicable, and water and sewer charges, are material conditions of this Agreement ("Material Conditions"). If any other term, covenant or condition of this Financial Agreement or the Application, as to any person or circumstance shall, to any extent, be determined to be invalid or unenforceable, the remainder of this Agreement or the application of such term, covenant or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each remaining term, covenant or condition of this Financial Agreement shall be valid and enforced to the fullest extent permitted by law.

4.09 Payments. Neither the Entity nor the Township may alter the amounts or dates as established in this Article IV, other than as set forth herein.

4.10 Annual Service Charge as Municipal Lien. The Annual Service Charge and other related municipal charges shall be a continuous, municipal lien on the Land and Improvements and any subsequent Annual Service Charge, including any interest, penalties or costs of collection thereof, shall be added and shall relate back to and part of the initial municipal lien. The Entity hereby acknowledges, understands and agrees that the Annual Service Charge shall constitute an automatic, enforceable and perfected statutory municipal lien for all purposes, including specifically and without limitation, the Federal bankruptcy code, regardless of whether the amount of the Annual Service Charge has been determined.

4.11 Percentage of Annual Service Charge Paid to County. Upon receipt, the Township shall remit five percent (5%) of the Annual Service Charge to Essex County pursuant to N.J.S.A. 40A:20-12.

ARTICLE V

ADDITIONAL PROJECT COVENANTS

5.01 Improvements to be Constructed. The proposed development will result in a thirteen (13) story building featuring approximately one hundred and ninety-eight (198) multifamily units comprised of seventy-seven (77) one bedroom units; seventy-eight (78) two bedroom units and forty-three (43) three bedroom units.

5.02 Construction Schedule. The Entity agrees to diligently undertake to commence construction and complete the Project in accordance with Section 5.01 of the Financial Agreement. Failure to commence or complete construction in accordance with that schedule shall be grounds for Termination of this Agreement.

5.03 Ownership, Management and Control. The Entity represents that it shall take title to the Land upon which the Project is to be constructed prior to undertaking any construction thereon and prior to this tax exemption taking effect. Once the Entity takes title to the Land, it shall provide a copy of the recorded deed to the Director so that the Director may thereafter issue a Notice to Proceed with construction of the Project. The Entity agrees that the deed for the Land shall refer to this Agreement and include a provision substantially identical to Section 4.04(c) of this Agreement, which provision shall (i) apply specifically to the Property but no other real property included in the deed, and (ii) survive for so long as this Agreement remains in effect.

5.04 Project Financing. The Entity represents that the Improvements shall be financed in accordance with the financing commitments attached to the Application.

ARTICLE VI

CERTIFICATE OF OCCUPANCY

6.01 Certificate of Occupancy. It is understood and agreed by the parties that it shall be the obligation of the Entity to make all good faith efforts to obtain and maintain Certificates of Occupancy for the Property and the Improvements related thereto in a timely manner.

6.02 Filing of Certificate of Occupancy. It shall be the primary responsibility of the Entity to forthwith file with both the Tax Assessor and the Tax Collector a copy of the Certificate of Occupancy. Failure of the Entity to file such issued Certificate of Occupancy as required by the preceding paragraph shall not militate against any action or non-action, taken by the Township, including, if appropriate, retroactive billing with interest for any charges determined to be due, in the absence of such filing by the Entity.

ARTICLE VII

TOWNSHIP DETERMINATIONS

7.01 Benefits and Importance of Tax Exemption. In accordance with the Long Term Tax Exemption Law, specifically N.J.S.A. 40A:20-11, the Township finds and determines that this Agreement is to the direct benefit of the health, welfare and financial well-being of the Township and its citizens because it allows for the construction of approximately one hundred and ninety-eight (198) multifamily units with fifty percent (50%) consisting of Affordable Housing Units, ten (10) of which shall be set aside for special needs tenants, along with a community room, warming kitchen, and management offices. Additionally, the Township has determined that:

(a) the benefits of the Project, including (i) the construction of the Improvements which will provide affordable housing to residents of the Township, (ii) the approximately 100 jobs created during the construction period, and (iii) the approximately 4 permanent jobs created by the Project, outweigh any costs associated with the tax exemption; and

(b) without the tax exemption granted herein, the Project would not otherwise be undertaken.

ARTICLE VIII

REPORTS AND AUDITS

8.01 Accounting System. The Entity agrees to maintain a system of accounting and internal controls established and administered in accordance with generally accepted accounting principles.

8.02 Total Project Cost Audit. Within ninety (90) days after the Substantial Completion of the Project, the Entity shall submit to the Mayor, Municipal Council, the Tax Collector and the Township Clerk, who shall advise those municipal officials required to be advised, an audit of Total Project Cost, supported by a certification of the licensed architect for the Project as required by N.J.S.A. 40A:20-3(h)(4).

8.03 Annual Audit. (a) Within ninety (90) days after the close of each fiscal or calendar year, depending on the Entity's accounting basis, that this Agreement shall continue in effect, the Entity shall submit to the Mayor, Municipal Council, the Tax Collector and the Township Clerk, who

shall advise those municipal officials required to be advised, and the NJ Division of Local Government Services in the Department of Community Affairs, its Auditor's Report for the preceding fiscal or calendar year certified by an independent certified public accountant. The Report shall clearly identify and calculate the Net Profit for the Entity during the previous year. The Entity agrees to calculate its Net Profit pursuant to N.J.S.A. 40A:20-3(c). The Entity assumes all costs associated with preparation of the annual audit.

8.04 Limitation on Profits and Reserves. During the period of tax exemption as provided herein, the Entity shall be subject to a limitation of its profits pursuant to the provisions of N.J.S.A. 40A:20-15. Pursuant to N.J.S.A. 40A:20-3(c), this calculation is completed in accordance with generally accepted accounting principles.

8.05 Payment of Dividend and Excess Profit Charge. In the event the Net Profits of the Entity, in any fiscal year, shall exceed the Allowable Net Profits for such period, then the Entity, within ninety (90) days after the end of such fiscal year, shall pay such excess Net Profits to the Township as an additional service charge. The calculation of Net Profit and Allowable Net Profit shall be made in the manner required pursuant to N.J.S.A. 40A:20-3(c) and 40A:20-15. The parties agree that any excess Net Profit will be paid to the Township as an additional Annual Service Charge.

8.06 Prohibition Against Use of Master Leases or Related Techniques. The Entity agrees that the intent of this Agreement is to account for all revenue arising from the Project as if it accrues to the benefit of the Entity. The Entity shall therefore have no right to enter into any lease, contract or other agreement the effect of which is to interpose another person corporation or other entity between the Entity and the end users of the Project for the purpose of reducing the amount of revenue accounted for as benefiting the Entity. To the extent that the Township, in its sole discretion, determines that such an arrangement has been put in place, the Township shall have the right to recast the financial statements of the Entity so as to account for the Annual Gross Revenue and Net Profit as would have accrued to the Entity had the arrangement not been in existence, and to require the Entity to make payments of the Annual Service Charge based on such recast financial statements.

8.07 Disclosure Statement. On each anniversary date of the execution of this Agreement, if there has been a change in ownership or interest from the prior year's filing, the Entity shall submit to the Mayor, Municipal Council, the Tax Collector and the Township Clerk, who shall advise those municipal officials required to be advised, a Disclosure Statement listing the persons having an ownership interest in the Project, and the extent of the ownership interest of each, and such additional information as the Township may request from time to time.

8.08 Inspection. The Entity shall permit the inspection of its property, equipment, buildings and other facilities of the Project, if deemed appropriate or necessary, by representatives duly authorized by the Township and NJ Division of Local Government Services in the Department of Community Affairs pursuant to N.J.S.A. 40A:20-9(e). It shall also permit, upon request, examination and audit of its books, contracts, records, documents and papers. Such examination or audit shall be made during the reasonable hours of the business day, in the presence of an officer or agent designated by the Entity. To the extent reasonably possible, the inspection will not materially interfere with construction or operation of the Project. All costs incurred by the Township to conduct such inspections and/or audits, including reasonable attorneys' fees if appropriate, shall be billed to the Entity and paid to the Township as an additional part of the Entity's Annual Service Charge.

ARTICLE IX

SALE AND/OR ASSIGNMENT PROVISIONS

9.01 Approval. As permitted by N.J.S.A. 40A:20-10, it is understood and agreed that the Township, on written application by the Entity after completion of the Project, may consent to a sale of the Project and the transfer of this Agreement provided: 1) the transferee entity does not own any other project subject to long term tax exemption at the time of transfer; 2) the transferee entity is an urban renewal entity formed and eligible to operate under the Law; 3) the Entity is not then in Default of this Agreement or the Law; 4) the Entity's obligations under this Agreement are fully assumed by the transferee entity; 5) the transferee entity agrees to abide by all terms and conditions of this Agreement including, without limitation, the filing of an application pursuant to N.J.S.A. 40A:20-8, and any other terms and conditions of the Township in regard to the Project;

and 6) the principal owners of the transferee entity possess the same business reputation, financial qualifications and credit worthiness as the Entity and are otherwise reputable. The Township may levy an administrative fee of two percent (2%) of the then applicable Annual Service Charge for the Project being transferred for processing any such application by the Entity.

9.02 Prohibition Against Severing of Improvements From Land. It is an express condition of the granting of this tax exemption that during its duration, the Entity shall not, without the prior consent of the Municipal Council by ordinance, convey, mortgage or transfer, all or part of the Project so as to sever, disconnect, or divide the Improvements from the Lands which are basic to, embraced in, or underlying the exempted Improvements.

9.03 Subordination of Fee Title. It is expressly understood and agreed that the Entity has the right, subordinate to the lien of the Annual Service Charges and to the rights of the Township hereunder, to encumber and/or assign the fee title to the Land and/or Improvements for the sole purpose of obtaining financing for use in the Project, and that any such encumbrance or assignment shall not be deemed to be a violation of this Agreement.

ARTICLE X WAIVER

10.01 No Waiver. Nothing contained in this Financial Agreement or otherwise shall constitute a waiver or relinquishment by the Township or the Entity of any rights and remedies provided by the law except for the express waiver herein of certain rights of acceleration and certain rights to terminate the Financial Agreement and tax exemption for violation of any of the conditions provided herein. Nothing herein shall be deemed to limit any right of recovery that the Township or the Entity has under law, in equity, or under any provision of this Financial Agreement.

ARTICLE XI NOTICE

11.01 Notice. Any notice required hereunder to be sent by any party to another party shall be sent to all other parties hereto simultaneously by certified or registered mail, return receipt requested, or by commercial overnight courier, as follows:

When sent to the Entity it shall be addressed as follows:

Hilltop Partners Urban Renewal I LLC
C/O Kapwood, LLC
1212 Springfield Avenue
Irvington, NJ 07111

The Entity has an affirmative duty to provide the Township with the new information in the event that the address for the Entity changes. The Entity must provide the Township with the name and address of the registered agent or party authorized to accept service of process on their behalf.

When sent to the Township, it shall be addressed to the Township Clerk, Township Hall, 1 Civic Square, Irvington, NJ 07111, with copies sent to Corporation Counsel, Marvin T. Braker, Esq, 1185 Morris Avenue, Suite 103, Union, NJ 07083 and the Director of the Department of Economic and Housing Development, One Civic Square, Municipal Building, Room 102, Irvington, NJ 07111, unless prior to the giving of notice the Township shall have notified the Entity otherwise. The notice to the Township shall identify the subject with the tax account numbers of the tax parcels comprising the Property.

ARTICLE XII COMPLIANCE

12.01 Statutes and Ordinances. The Entity hereby agrees at all times prior to the expiration or other Termination of this Financial Agreement to remain bound by the provisions of Federal and State law and any lawful ordinances and resolutions of the Township, including, but not limited to, the Long Term Tax Exemption Law. The Entity's failure to comply with such statutes or ordinances shall constitute a violation and breach of the Financial Agreement.

ARTICLE XIII
INDEMNIFICATION

13.01 Indemnification. It is understood and agreed that in the event the Township shall be named as party in any action brought against the Township or Entity by allegation of any breach, Default or a violation of any of the provisions of this Agreement and/or the provisions of the Long Term Tax Exemption Law or any other applicable law, the Entity shall indemnify and hold the Township harmless from and against all liability, losses, damages, demands, costs, claims, actions or expenses (including reasonable attorneys' fees and expenses) of every kind, character and nature arising out of or resulting from the action or inaction of the Entity and/or by reason of any breach, Default or a violation of any of the provisions of this Agreement, the provisions of N.J.S.A. 40A:20-1 et seq., and/or any other applicable law except for any misconduct by the Township or any of its officers, officials, employees or agents, and the Entity shall defend the suit at its own expense. However, the Township maintains the right to intervene as a party thereto, to which intervention the Entity hereby consents, the expense thereof to be borne by the Entity.

ARTICLE XIV
DEFAULT

14.01 Default. Default shall be any failure of the Entity to conform to the terms of this Agreement and/or any failure of the Entity to perform any obligation imposed upon the Entity by statute, ordinance or lawful regulation beyond any applicable notice, cure or grace period.

14.02 Cure Upon Default. Should the Entity be in Default of any obligation under this Agreement, the Township shall notify the Entity and any mortgagee of the Entity in writing of said Default ("Default Notice"). Said Default Notice shall set forth with particularity the basis of said Default. Except as otherwise limited by law, the Entity shall have sixty (60) days to cure any Default (other than a Default in payment of any installment of the Annual Service Charge) from the date of its receipt of the Default Notice. In the event of any uncured Default, the Township shall have the right to proceed against the Property pursuant to applicable provisions of the law. Upon any Default in payment of any installment of the Annual Service Charge, the Township shall have the right to proceed to In Rem Tax Foreclosure consistent with the provisions and procedures of the In Rem Tax Foreclosure law.

14.03 Remedies. In the event of any dispute between the parties, other than a dispute arising from the failure of the Entity to timely pay any portion of the Annual Service Charge or any other financial obligation required by this Agreement, the parties shall submit the dispute to the American Arbitration Association in New Jersey to be determined in accordance with its rules and regulations in such a fashion to accomplish the purpose of said laws. Costs for said arbitration shall be paid by the non-prevailing party. In the event of a Default on the part of the Entity to pay any installment of the Annual Service Charge required by Article IV above, the Township, in addition to its other remedies, reserves the right to proceed against the Entity's land and premises, in the manner provided by law, including the Tax Sale Law, and any act supplementary or amendatory thereof. Whenever the word "Taxes" appears, or is applied, directly or implied, to mean taxes or municipal liens on land, such statutory provisions shall be read, as far as it is pertinent to this Agreement, as if the Annual Service Charge were taxes or municipal liens on land. In either case, however, the Entity does not waive any defense it may have to contest the rights of the Township to proceed in the above-mentioned manner.

14.04 Remedies Upon Default Cumulative; No Waiver. Subject to the other terms and conditions of this Agreement, all of the remedies provided in this Agreement to the Township, and all rights and remedies granted to them by law and equity shall be cumulative and concurrent and no determination of the invalidity of any provision of this Agreement shall deprive the Township of any of their remedies or actions against the Entity because of Entity's failure to pay Land Taxes, the Annual Service Charge and/or any applicable water and sewer charges and interest payments. This right shall only apply to arrearages that are due and owing at the time, and the bringing of any action for Land Taxes, Annual Service Charges or other charges, or for breach of covenant or the resort of any other remedy herein provided for the recovery of Land Taxes, Annual Service Charges or other charges shall not be construed as a waiver of the right to proceed with In Rem Tax Foreclosure proceedings consistent with the terms and provisions of this Agreement.

14.05 Termination Upon Default of the Entity. In the event the Entity fails to cure or remedy the Default, including without limitation a Default as described in Section 14.01, within the time period provided in Section 14.02, the Township may terminate this Agreement upon thirty (30) days written notice to the Entity (“Notice of Termination”).

14.06 Final Accounting. Within ninety (90) days after the date of Termination, the Entity shall provide a final accounting and pay to the Township the reserve, if any, pursuant to the provisions of N.J.S.A. 40A:20-13 and 15, as well as any excess Net Profits. For purposes of rendering a final accounting, the Termination of the Agreement shall be deemed to be the end of the fiscal year for the Entity.

14.07 Conventional Taxes. Upon Termination or expiration of this Agreement, the tax exemption for the Project shall expire and the Land and the Improvements thereon shall thereafter be assessed and conventionally taxed according to the general law applicable to other nonexempt taxable property in the Township.

ARTICLE XV MISCELLANEOUS

15.01 Conflict. The parties agree that in the event of a conflict between the Ordinance, Application and this Financial Agreement, the language in this Financial Agreement shall govern and prevail.

15.02 Oral Representations. There have been no oral representations made by either of the parties hereto which are not contained in this Financial Agreement. This Financial Agreement, the Ordinance of the Township authorizing this Agreement, and the Application constitute the entire agreement between the parties regarding the long term tax exemption for the Property and there shall be no modifications thereto other than by a written instrument executed by the parties hereto and delivered to each of them.

15.03 Entire Document. All conditions in the Ordinance of the Township Council approving this Agreement are incorporated in this Agreement and made a part hereof.

15.04 Construction. This Financial Agreement shall be construed and enforced in accordance with the laws of the State of New Jersey, and without regard to or aid or any presumption or other rule requiring construction against the party drawing or causing this Agreement to be drawn since counsel for both the Entity and the Township have had the opportunity to review and approve the Financial Agreement.

15.05 Recording. This entire Agreement and the Ordinance, together with the Declaration of Restriction on Transfer of the Property described herein, will be filed and recorded with the Essex County Clerk by the Entity at the Entity's expense.

15.06 Municipal Services. The Entity shall make payments for municipal services, including water and sewer charges and any services that create a lien on parity with or superior to the lien for the Land Taxes and Annual Service Charges, as required by law. Nothing herein is intended to release Entity from its obligation to make such payments.

15.07 Delivery to Tax Assessor. Upon the Effective Date, the Clerk of the Township shall deliver to the Tax Assessor a certified copy of the Ordinance along with an executed copy of this Financial Agreement. Such delivery by the Township Clerk to the Tax Assessor shall constitute the certification as required in accordance with the Tax Exemption Law, specifically N.J.S.A. 40A:20-12. Upon such delivery, the Tax Assessor shall implement the tax exemption granted and provided herein and shall continue to enforce the tax exemption, without further certification by the Township Clerk, until the expiration of the tax exemption in accordance with the terms hereof.

15.08 Financing Matters. The financial information required by the final paragraph of N.J.S.A. 40A:20-9 are set forth in the Application.

15.09 Counterparts. This Agreement may be simultaneously executed in counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

15.10 Amendments. This Agreement may not be amended, changed, modified, altered or terminated without the written consent of the parties hereto.

15.11 Effective Date. This Agreement shall take effect as of the date that it is fully executed by the parties (the “Effective Date”).

IN WITNESS WHEREOF, the parties have caused these presents to be executed as of the day and year first above written.

Hilltop Partners Urban Renewal I LLC
By: Hilltop Partners MM, LLC
By: Kapwood, LLC

By: _____
PATRICK TERBORG

STATE OF _____)
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2013, by _____, a _____, by _____, its _____, on behalf of the company.

Commission Expiration: _____

Notary Public

THE TOWNSHIP OF IRVINGTON

By: _____

Mayor
APPROVED AS TO FORM AND LEGALITY

Corporation Counsel

APPROVED AS TO FORM

Director of Economic and Housing Development

ATTEST:

Township Clerk

The public hearing on this ordinance is now open.

Elouise McDaniel, 214 Nesbit Terrace

McElroy - L.C. Jones Motion to close public hearing

Adopted

McElroy – L.C. Jones Motion to adopt this ordinance on second reading after public hearing

Council Members Inman, Frederic, Lyons, L.C. Jones and Council President Beasley spoke.

Adopted

C. Bills & Claims

S. Jones – McElroy 1. Bill Lists

RESOLVED THAT THE BILLS AND CLAIMS AGAINST THE TOWNSHIP OF IRVINGTON FOR A PERIOD ENDING MAY 29, 2013, AS ENUMERATED ON THIS LIST FOR MATERIALS, SUPPLIES AND SERVICES FURNISHED, DELIVERED AND/OR PERFORMED HAVE BEEN CERTIFIED BY THE DEPARTMENTS AS CORRECT, EACH CLAIM AND PURCHASE ORDER HAVE BEEN VERIFIED AND REVIEWED FOR THE AVAILABILITY OF FUNDS, ACCURACY OF ACCOUNT CODING AND COMPLETENESS BY THE ADMINISTRATION, THEREFORE:

BE IT RESOLVED, BY THE MUNICIPAL COUNCIL OF THE TOWNSHIP OF IRVINGTON THAT THE FOLLOWING BE PAID BY THE CHIEF FINANCIAL OFFICER:

BILL LIST	\$1,853,184.66
SUPPLEMENTAL	\$1,618,695.83
TOTAL	\$3,471,880.49

Adopted
No: Inman, Lyons

9. Resolutions & Motions

A. Resolutions

McElroy – L.C. Jones 10. Waive 20 Day Time Period for Effective Date of Ordinance Authorizing a Financial Agreement for the Redevelopment Project at The Former Irvington General Hospital Site

WHEREAS, an Ordinance entitled " AN ORDINANCE OF THE TOWNSHIP OF IRVINGTON AUTHORIZING THE EXECUTION OF A FINANCIAL AGREEMENT WITH HILLTOP PARTNERS URBAN RENEWAL I LLC GRANTING A TAX EXEMPTION FOR PHASE I OF THE HILLTOP DEVELOPMENT" was passed on first reading by the Municipal Council on May 14, 2013, and duly adopted by the Municipal Council after a public hearing on second reading on May 29, 2013; and

WHEREAS, pursuant to N.J.S.A. 40:69A-181 (a) and Section 5-30 (d) of the Revised Code of the Township of Irvington, an Ordinance shall take effect twenty (20) days after final passage by the Municipal Council and approval by the Mayor; and

WHEREAS, pursuant to N.J.S.A. 40:69A-181 (b) and Section 5-30 (d) of the Revised Code of the Township of Irvington, two-thirds (2/3) of the full membership of the Municipal Council may declare an emergency, by written resolution, to reduce the twenty (20) day period prescribed by N.J.S.A. 40:69A-181 (a) and Section 5-30 (d) of the Revised Code of the Township of Irvington; and

WHEREAS, the Municipal Council is desirous of having said Ordinance take effect immediately upon the approval by the Mayor, or, in the event of a veto by the Mayor and override by the Municipal Council; immediately upon the Council's vote to override:

NOW, THEREFORE, BE IT RESOLVED BY THE MUNICIPAL COUNCIL OF THE TOWNSHIP OF IRVINGTON (not less than 2/3 of the full membership thereof affirmatively concurring) that pursuant to the provisions of N.J.S.A. 40:69A-181 (b) and Section 5-30 (d) of the Revised Code of the Township of Irvington, it does hereby declare that an emergency exists that an Ordinance entitled " AN ORDINANCE OF THE TOWNSHIP OF IRVINGTON AUTHORIZING THE EXECUTION OF A FINANCIAL AGREEMENT WITH HILLTOP PARTNERS URBAN RENEWAL I LLC GRANTING A TAX EXEMPTION FOR PHASE I OF THE HILLTOP

DEVELOPMENT” shall take effect immediately upon the approval of said ordinance by the Mayor, or, in the event of a veto by the Mayor and override by the Municipal Council; immediately upon the Council's vote to override.

Council Member Inman and Council President Beasley spoke.

Adopted
No: Inman, Lyons

Beasley – L.C. Jones 11. Authorize 2013 Sidewalk Sale

WHEREAS, the Springfield Avenue Center Business Improvement District proposes its annual Summer 2013 Sidewalk Sale and Activities to commence and include Thursday June 6, 2013, Friday, June 7, 2013, Saturday, June 8, 2013, (Rain Date: June 15, 2013) Thursday, July 11, 2013, Friday, July 12, 2013, Saturday, July 13, 2013, (Rain Date: July 20, 2013) Thursday, August 1, 2013, Friday, August 2, 2013 and Saturday, August 3, 2013 (Rain Date: August 10, 2013) to be done in conjunction with cultural events; and

WHEREAS, Section 171-11 of the Revised Code of the Township of Irvington provides that the provisions shall not prevent the placement of booths or showcases for the display of merchandise, foods and other material along the route of any parade or at the site of any cultural event duly licensed by the Township:

NOW, THEREFORE, BE IT RESOLVED BY THE MUNICIPAL COUNCIL OF THE TOWNSHIP OF IRVINGTON that it declares that the provisions of Section 171-11 are hereby met and the Springfield Avenue Center Business Improvement District schedule of Summer 2013 Sidewalk Sale and Activity are hereby approved as set forth herein:

Thursday June 6, 2013, Friday, June 7, 2013, Saturday, June 8, 2013, (Rain Date: June 15, 2013) Thursday, July 11, 2013, Friday, July 12, 2013, Saturday, July 13, 2013, (Rain Date: July 20, 2013) Thursday, August 1, 2013, Friday, August 2, 2013 and Saturday, August 3, 2013 (Rain Date: August 10, 2013)

Adopted

Beasley – Frederic 12. Replacement Appointment – Irvington Housing Authority Commissioner – Andre Lockhart Replacing James A. Davis

WHEREAS, a vacancy exists in the membership of the Irvington Housing Authority due to the passing of James A. Davis:

NOW, THEREFORE, BE IT RESOLVED BY THE MUNICIPAL COUNCIL OF THE TOWNSHIP OF IRVINGTON that the following named person is hereby appointed as a Commissioner of the Irvington Housing Authority to fill the unexpired term of James A. Davis, said term to expire as indicated below:

NAME & ADDRESS	TERM TO EXPIRE
Andre Lockhart 293 Isabella Avenue	11-22-14

Council Member Inman and Council President Beasley spoke.

Adopted
No: Inman, Lyons

L.C. Jones – McElroy 13. Introduction of Calendar Year 2013 Municipal Budget

BE IT RESOLVED, that the following statements of revenues and appropriations shall constitute the CY 2013 Municipal Budget of the Township of Irvington:

Total General Revenues	\$100,759,036.50
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Total General Appropriations \$100,759,036.50

BE IT FURTHER RESOLVED that a summary of said budget be published in the June 6, 2012 edition of the Irvington Herald along with a notice that the public hearing on said budget and tax resolution shall be held on July 9, 2013 at 8 o'clock P.M. in the Council Chamber, Municipal Building, Room 113, Civic Square, Irvington, New Jersey.

Council Member Frederic and Council President Beasley spoke.

Adopted
No: Frederic, Inman, Lyons

12. Miscellaneous

B. General Hearing of Citizens and Council Members (limited to five minutes per person)

Richard Williams, 197 Linden avenue
Eric Dixon, 17 Ruth Street
Elouise McDaniel, 214 Nesbit Terrace
Robert Shaw, 57 Coit Street
James Rasheed Williams, 519 – 21st Street
Frank McBee, 46 Durand Place
Rosemary Horner, 31 Oakland Street
Rudy Graves, 37 Oakland Street
Maxine Turnbull, 336 Isabella Avenue
Evangelist Derrick Harris, 40 Leslie Place
Gabriella Walker, 479 –South 20th Street
Richard Alston, 207 Linden Avenue
Herbert Glenn, P.O. Box 298, Irvington

Council Members L.C. Jones, Frederic, Lyons, Inman, S. Jones, McElroy and Council President Beasley addressed the issues raised by the above referenced citizens.

13. Adjournment

There being no further business the meeting adjourned at 9:52 P.M.

D. Bilal Beasley, Council President

Harold E. Wiener, Municipal Clerk