

REGULAR COUNCIL MEETING
JULY 10, 2018

Council Chamber, Municipal Building
Irvington, N.J. – Tuesday Evening
July 10, 2018 - 8:00 P.M.

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

Present: Renee C. Burgess, Charnette Frederic, October Hudley, Sandra R. Jones, David Lyons

Absent: Vernal Cox (excused), Paul Inman (excused)

President Lyons 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)

There were no requests to be heard.

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 – June 26, 2018
2. Joint Meeting – 3rd Quarter Assessment
3. Joint Meeting – 2017 Annual Audit Report

7. Reports of Committees

None

8. Ordinances, Bills & Claims

A. Ordinances on 1st Reading

None

C. Bills & Claims

Jones – Burgess 1. Bill Lists

RESOLVED THAT THE BILLS AND CLAIMS AGAINST THE TOWNSHIP OF IRVINGTON FOR A PERIOD JULY 10, 2018, 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	\$3,836,071.13
TOTAL	\$3,836,071.13

Adopted
Absent: Cox, Inman

Jones – Lyons 2. Payrolls

June 16, 2018 through June 29, 2018

REGULAR	OVERTIME	OTHER EARNED	TOTAL
\$1,558,859.85	\$126,356.87	\$134,460.47	\$1,819,677.19

Adopted
Absent: Cox, Inman

9. Resolutions & Motions

A. Resolutions

Frederic – Jones 1. Authorize Handicapped Parking Spaces in Front of 24 Sunset Terrace and 96 Cummings Street

WHEREAS, N.J.S.A. 39:4-197.5 provides that the Municipality may by resolution provide for restricted parking spaces in front of residences for use by any person who has been issued a special vehicle identification card pursuant to the provision of N.J.S.A. 39:4-205, when using a motor vehicle on which is displayed a certificate, for which a special vehicle identification card has been issued pursuant to N.J.S.A. 39:4-206; and

WHEREAS, requests have been made for restricted parking spaces in front of 24 Sunset Terrace and 96 Cummings Street:

NOW, THEREFORE, BE IT RESOLVED BY THE MUNICIPAL COUNCIL OF THE TOWNSHIP OF IRVINGTON that a parking space restricted for use by any person who has been issued a special vehicle identification card pursuant to the provisions of N.J.S.A. 39:4-205, when using a motor vehicle on which is displayed a certificate, for which a

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special vehicle identification card has been issued pursuant to N.J.S.A. 36:4-206, be established in front of 24 Sunset Terrace and 96 Cummings Street:

BE IT FURTHER RESOLVED that the Department of Public Works is directed to place a sign designating said handicapped parking spaces.

Adopted
Absent: Cox, Inman

Frederic – Burgess 2. Authorize Purchase of Public Works Employee Uniforms Over the Pay to Play Threshold of \$17,500.00 and Under the \$40,000.00 Bid Threshold

AUTHORIZING PURCHASE OVER THE PAY TO PLAY THRESHOLD OF \$17,500.00 FOR DPW EMPLOYEES UNIFORMS

WHEREAS, the Township of Irvington intends to enter into contracts with vendors over the pay-to-play threshold of \$17,500.00 through this resolution and properly executed purchase orders as needed, which shall be subject to all the conditions applicable law of N.J.A.C. 5:34- et seq; and,

WHEREAS, the Department of Public Works is in need of employees uniforms; and

WHEREAS, the Department of Public Works has obtained three quotes from Unifirst, Keyport Army & Navy, and Specialty Graphics LLC; and

WHEREAS, Specialty Graphics LLC of 1950 Old Cuthbert Road, Unit H, Cherry Hill, NJ 08034 has provided the lowest quote for this service; and

WHEREAS, in compliance with 19:44a-20.13 et., seq., Specialty Graphics LLC will exceed the Pay-to-Play threshold of \$17,500.00 for calendar year 2018; and,

WHEREAS, Specialty Graphics LLC has completed the Township C-271, elect reports and political disclosure forms. These forms are on file in the Division of Purchasing Office and the Municipal Clerk; and

WHEREAS, all purchases to the above vendor will not exceed the bid threshold of \$40,000.00; and

NOW, THEREFORE, BE IT RESLOVED, that the Municipal Council of the Township of Irvington hereby authorizes the Qualified Purchasing Agent to pay the above vendor in excess of pay to play threshold \$17,500.00 but under the bid threshold of \$40,000.00; and

BE IT FURTHER RESLOVED, that the required certification of availability of funds C8-00336 in the amount of \$40,000.00 from account number 8-01-21-165-165-299 has been obtained from the Chief Financial Officer.

BE IT FURTHER RESOLVED that the duration of this authorization shall be until December 31, 2018; and

BE IT FURTHER RESOLVED a separate resolution will be submitted to the Municipal Council for all addition vendors exceeding the bid threshold of \$17,500.00.

Adopted
Absent: Cox, Inman

Hudley – Jones 3. Authorize Fair and Open Professional Services Contract for Substitute Prosecutor Services - Law Office of Drew J. Bauman, Esq. - \$300.00 Per Court Session - September 14, 2018 through September 13, 2019.

**RESOLUTION AUTHORIZING THE TOWNSHIP ATTORNEY TO USE
SUBSTITUTE PROSECUTORS ON AN ON-CALL BASIS THROUGH FAIR AND
OPEN PROFESSIONAL SERVICE CONTRACT**

WHEREAS, the Township of Irvington has a need for substitute prosecutors to be available on an on-call basis in the event of conflict cases or due to a shortage of available staff and;

WHEREAS, the Request for Qualifications for substitute prosecutors services was publicly advertised in the New Jersey Star Ledger on June 02, 2018 with a deadline for qualifications to be submitted on June 19, 2018; and

WHEREAS, one qualification was received and publicly opened; and

WHEREAS, said qualification was referred to the Township Attorney; and

WHEREAS, the Township Attorney has recommended award should be made to the following firm:

Law Office Drew J. Bauman
Drew J. Bauman
658 Ridgewood Road
Maplewood, NJ 07040

WHEREAS, the Township Attorney will contact the above firm when service is needed.

**NOW THEREFORE, BE IT RESOLVED BY THE MUNICIPAL COUNCIL OF THE
TOWNSHIP OF IRVINGTON THE FOLLOWING:**

1. The Township Attorney will contact the above firm on an on-call basis/as needed for substitute prosecuting services.
2. The Township Attorney will prepare the appropriate contract for this service.
3. The above vendor is hereby appointed for one year from September 14, 2018 through September 13, 2019.
4. The vendors will be paid an amount not to exceed \$300.00 per session.

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

Adopted
Absent: Cox, Inman

Jones – Frederic 4. Authorize Purchase of Two X-Ray Fluorescence Machines by State Contract – Thermo Scientific Portable Instruments, Inc – Not To Exceed \$53,740.00

RESOLUTION AUTHORIZING A CONTRACT WITH STATE CONTRACT VENDOR

WHEREAS, the Township of Irvington, pursuant to N.J.S.A. 40A:11-12a and N.J.A.C. 5:34-7.29(c), may by resolution and without advertising for bids, purchase any goods or services under the State of New Jersey Cooperative Purchasing Program; and

WHEREAS, the Health Department wishes to purchase two X-Ray fluorescence (XRF) machines for the Childhood Lead Exposure Prevention Program service; and

WHEREAS, in compliance with NJSA 19:44A-20.13 ET Seq., this contract will exceed the Pay to Play threshold of \$17,500.00; and

WHEREAS, under New Jersey state contract number 81355, Thermo Scientific Portable, Analytical Instruments Inc., has provided a quote for two XRF machines for calendar year 2018 for an amount not to exceed \$53,740.00; and

NOW, THEREFORE, BE IT RESOLVED, that the Municipal Council of the Township of Irvington hereby authorizes the Qualified Purchasing Agent to enter into a contract with Thermo Scientific Portable, Analytical Instruments Inc, 2 Radcliff road, Tewksbury, MA 01876 for calendar year 2018 for an amount not to exceed \$53,740.00 under the New Jersey State Contract number 81355; and

BE IT FURTHER RESOLVED, that the required certification of availability of funds C8-00349 in the amount of \$53,740.00 has been obtained from the Chief Financial Officer, charged to account number G-02-xx-784-18A-298; 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.

Adopted
Absent: Cox, Inman

Burgess – Jones 5. Award Bid – Disposal of Leaves, Brush and Vegetative Waste – Nature's Choice Corporation – Low Responsive, Responsible Bid – Not To Exceed \$120,000.00 From September 28, 2018 Through September 27, 2019

RESOLUTION AUTHORIZING A CONTRACT OF LEAVES, BRUSH AND MIXED VEGETATIVE WASTE FOR AN AMOUNT NOT TO EXCEED \$120,000.00

WHEREAS, the Invitation to Bid for leaves, brush and mixed vegetative waste was publicly advertised in the New Jersey Star Ledger on May 29, 2018 with a deadline for bids to be submitted on June 19, 2018;

WHEREAS, one bid was received and opened by the Municipal Clerk and Purchasing Agent;

WHEREAS, the bid was referred to the Public Works Director and it has recommended that the contract should be awarded to the following firm based on being the lowest, responsible and responsive bidder:

Nature's Choice Corporation
398 Lincoln Blvd.
Middlesex, N.J. 08846

NOW, THEREFORE, BE IT RESOLVED BY THE MUNICIPAL COUNCIL OF THE TOWNSHIP OF IRVINGTON that the award for leaves, brush and mixed vegetative waste be made to Nature's Choice Corporation of 398 Lincoln Blvd, Middlesex, NJ 08846 for removal and disposal in the amount of : \$12.95 per cubic yards for leaves, \$16.95 per cubic yard for brush and \$21.95 per cubic yard for mixed vegetative waste for an amount not to exceed \$120,000.00; and

BE IT FURTHER RESOLVED, that this contract is for one year, starting on September 28, 2018 until September 27, 2019 for removal of all leaves, brush and mixed vegetative waste including leaves season.

BE IT FURTHER RESOLVED that the Township Attorney is hereby directed to prepare the necessary contracts and the Township Clerk is hereby directed to return the bid security to the unsuccessful bidders; and

BE IT FURTHER RESOLVED, that the required certification of availability of funds C8-00339 in the amount of \$40,000.00 for the first four months from account number 8-01-32-465-465-118 has been obtained from the Chief Financial Officer and the remaining balance will be certified in the 2018 budget.

Adopted
Absent: Cox, Inman

Lyons – Hudley 6. Authorize Fair and Open Professional Services Contract with McManimon, Scotland and Baumann, LLC to Provide Legal Services to Assist in the Sale/Lease of the Township's Sewerage System – Not to Exceed \$25,000.00

**RESOLUTION AUTHORIZING FAIR AND OPEN PROFESSIONAL SERVICE
CONTRACT FOR AN ATTORNEY TO ASSIST WITH THE SALE/LEASE OF THE
TOWNSHIP SEWERAGE SYSTEM**

WHEREAS, the Request for Proposals for professional Attorney to assist with the Sewerage project was publicly advertised in the New Jersey Star Ledger on June 02, 2018 with a deadline for proposals to be submitted on June 20, 2018; and

WHEREAS, two proposals were received and publicly opened by the Purchasing Agent and Municipal Clerk; and

WHEREAS, said qualifications were referred to the Township Attorney; and

WHEREAS, the Township Attorney has recommended award should be made to the following firm:

McManimon, Scotland & Baumann, LLC
75 Livingston Avenue
2nd Floor
Roseland, N.J. 07068

NOW THEREFORE, BE IT RESOLVED BY THE MUNICIPAL COUNCIL OF THE TOWNSHIP OF IRVINGTON that a contract for Attorney service to assist with the Sewerage project be awarded to McManimon, Scotland & Baumann, LLC, 75 Livingston Ave, 2nd floor, Roseland, NJ 07068, on the basis of their response to the request for proposal selection criteria and qualifications, for an amount not to exceed \$25,000.00. This contract shall start on July 12, 2018 until July 11, 2019; and

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

BE IT RESOLVED that the required Certification of Availability of Funds, No.C8-00347, in the amount of \$10,000.00, from Account number 8-01-20-155-155-299 has been obtained from the Chief Financial Officer and the remaining balance of \$15,000.00 will be certified upon the adoption of the 2018 budget.

Adopted
Absent: Cox, Inman

Burgess - Lyons 7. Authorize Contract for Maintenance and Landscaping Services Above the \$17,500.00 Pay to Play Threshold and Below the \$40,000.00 Bid Threshold Based Upon Lowest Quotation - Anthony Quezada, D\B\A A&M Landscape and Construction – Not To Exceed \$39,800.00

AUTHORIZING PURCHASE OVER THE PAY TO PLAY THRESHOLD OF \$17,500.00 FOR MAINTENANCE AND LANDSCAPE SERVICE

WHEREAS, the Township of Irvington intends to enter into contracts with vendors over the pay-to-play threshold of \$17,500.00 through this resolution and properly executed purchase orders as needed, which shall be subject to all the conditions applicable law of N.J.A.C. 5:34- et seq; and,

WHEREAS, the Department of Public Works is in need of maintenance and landscape service; and

WHEREAS, the Department of Public Works has obtained two quotes from A & M Landscaping & Construction and All American Landscape LLC; and

WHEREAS, Anthony Quezada, DBA A&M Landscape and Construction of 199 Littleton Ave, 2nd Floor, Newark NJ 07103 has provided the lowest quote for this service; and

WHEREAS, in compliance with 19:44a-20.13 et., seq., Anthony Quezada, DBA A&M Landscape and Construction will exceed the Pay-to-Play threshold of \$17,500.00 for calendar year 2018; and,

WHEREAS, Anthony Quezada, DBA A&M Landscape and Construction has completed the Township C-271, elect reports and political disclosure forms. These forms are on file in the Division of Purchasing Office and the Municipal Clerk; and

WHEREAS, all purchases to the above vendor will not exceed the bid threshold of \$40,000.00; and

NOW, THEREFORE, BE IT RESOLVED that the Municipal Council of the Township of Irvington hereby authorizes the Qualified Purchasing Agent to pay the above vendor in excess of pay to play threshold \$17,500.00 but under the bid threshold of \$40,000.00; and

BE IT FURTHER RESOLVED that the required certification of availability of funds C8-0033 1 in the amount of \$39,800.00 from account number 8-01-21-165-165-299 has been obtained from the Chief Financial Officer.

BE IT FURTHER RESOLVED that the duration of this authorization shall be until December 31, 2018; and

BE IT FURTHER RESOLVED a separate resolution will be submitted to the Municipal Council for all addition vendors exceeding the bid threshold of \$17,500.00.

Adopted
Absent: Cox, Inman

Frederic – Hudley 8. Authorize Emergency Contract for Public Defender Services – GV Law Group, LLC, Fanya Veksler - \$200.00 Per Court Session - May 5, 2018, May 29, 2018, June 5, 2018 and June 19, 2018

RESOLUTION TO AWARD AN EMERGENCY FOR PUBLIC DEFENDER SERVICES

WHEREAS, resolution number TA 17-1227-52 approved the use of three Public Defenders on an on-call basis; and

WHEREAS, the two appointed Public Defenders and the Chief Public Defender were unavailable for several sessions on May 05, May 29, June 05, 2018 and June 19, 2018 and;

WHEREAS, the Business Administrator and the Mayor approved on an emergency basis the use of GV Law Group LLC, Fanya Veksler to serve as an alternate Public Defender, and;

WHEREAS, the Business Administrator and the Mayor wishes to pay GV Law Group LLC, Fanya Veksler, Fanya Veksler of 711 Jersey Ave, New Brunswick, NJ 08901 for the emergency service rendered, and;

WHEREAS, GV Law Group LLC, Fanya Veksler will be paid \$200.00 per session for services rendered from the above four days.

NOW, THEREFORE, BE IT RESOLVED BY THE MUNICIPAL COUNCIL OF THE TOWNSHIP OF IRVINGTON that it ratifies the decision of the Mayor and the Business Administrator of the Township of Irvington to authorize an emergency contract in the amount of \$800.00 per session to GV Law Group LLC, Fanya Veksler of 711 Jersey Ave, New Brunswick, NJ 08901 for Public Defender Service.

BE IT FURTHER RESOLVED, that the required certification of availability of funds C8-00346 in the amount of \$8,00.00 from account number 8-01-43-495-495-256 has been obtained from the Chief Financial Officer for this contract.

Adopted
Absent: Cox, Inman

Frederic – Jones 9. Authorize Vcontract fo rthe Purchase of Proprietary Street Sweeper Parts – W.E. Timerman, Inc. – Not to Exceed \$40,000.00

RESOLUTION TO PURCHASE PROPERITARY PARTS FOR ELGIN SWEEPER

WHEREAS, DPW is in need of parts for the Elgin Street Sweepers; and

WHEREAS, W.E. Timmerman Company Inc., is the sole authorized distributor for Eglin parts for this region; and

WHEREAS, the total cost for parts for calendar year will exceed the quote threshold; and

WHEREAS, under New Jersey Local Public Contract (NJSA 40A:11-5dd), the Township may award a contract for proprietary parts in lieu of bidding; and

WHEREAS, the Township would like to take advantage of provisions of NJSA 40:11-5 (dd) and award a service contract to W.E. Timmerman Co., Inc., Route 22, PO Box 71, Whitehouse, NJ 08888 for the total sum of \$40,000.00

NOW, THEREFORE, BE IT RESOLVED BY THE MUNICIPAL COUNCIL OF THE TOWNSHIP OF IRVINGTON hereby authorizes a service contract to W.E. Timmerman Co., Inc., Route 22, PO Box 71, Whitehouse, NJ 08888 under provisions of NJSA 40:11-5dd to purchase proprietary parts for the total sum of \$40,000.00; and

BE IT FURTHER RESOLVED, that the Township Attorney is directed to prepare the appropriate contract for such goods and services and the Mayor and Municipal Clerk is authorized to sign the same; and

BE IT FURTHER RESOLVED that the required availability of funds in the amount of \$40,000.00 has been obtained from the Chief Financial Officer, charged to budget account number 8-01-21-165-165-299 and 8-01-26-290-290-118.

Adopted
Absent: Cox, Inman

Frederic – Burgess 10. Authorize Participation in the Edward Byrne Memorial Justice Assistance Grant (JAG) P - June 26, 2018 – September 30, 2020 and Accepting Grant Amount of \$507,426.

AUTHORIZE THE TOWNSHIP OF IRVINGTON TO PARTICIPATE IN THE EDWARD BYRNE MEMORIAL JUSTICE ASSISTANCE GRANT (JAG) PROGRAM FROM JUNE 26, 2018 – SEPTEMBER 30, 2020. AUTHORIZING THE TOWNSHIP OF IRVINGTON TO ACCEPT THE LOCAL SOLICITATION IN THE AMOUNT OF \$507,426.

WHEREAS, this award is subject to all administrative and financial requirements; and

WHEREAS, including the timely submission of all financial and programmatic reports; and

WHEREAS, resolution of all interim audit findings; and

WHEREAS, the maintenance of a minimum level of cash-on-hand; and

WHEREAS, the award amount was granted to revitalize our technological capabilities and assures officer safety and wellness:

NOW, THEREFORE, BE IT RESOLVED, BY THE MUNICIPAL COUNCIL OF THE TOWNSHIP OF IRVINGTON that the Irvington Township Council accepts the Edward Byrne Memorial Justice Assistance Grant Award and its terms from June 26, 2018 to September 30, 2020 accepts the amount of the grant for \$507,426.00.

Adopted
Absent: Cox, Inman

10. Communications and Petitions

A. Communications

1. Essex County Tax Board Resolution – Oppose S-2029 - Revise Laws Concerning Assessment of Properties

11. Pending Business

None

12. Miscellaneous

A. Bingos and Raffles

None

NON-CONSENT AGENDA ITEMS

8. Ordinances, Bills & Claims

B. Ordinances on 2nd Reading

1. President Lyons: An ordinance authorize the approval of an application for a long term tax exemption and authorizing the execution of a financial agreement with Fayen 4 Urban Renewal, LLC for the Redevelopment 16 Woolsey Street, 20 Woolsey Street, 24 Woolsey Street, and 32 Woolsey Street 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

ORDINANCE OF THE TOWNSHIP OF IRVINGTON, COUNTY OF ESSEX, NEW JERSEY APPROVING AN APPLICATION FOR A LONG TERM TAX EXEMPTION AND AUTHORIZING THE EXECUTION OF A FINANCIAL AGREEMENT WITH FAYEN 4 URBAN RENEWAL, LLC

WHEREAS, the Municipal Council (the “**Township Council**”) of the Township of Irvington (the “**Township**”), a public body corporate and politic of the State of New Jersey, is authorized pursuant to the Local Redevelopment and Housing Law, *N.J.S.A. 40A:12A-1 et seq.* (the “**Redevelopment Law**”), to determine whether certain parcels of land within the Township constitute an area in need of rehabilitation and/or an area in need of redevelopment; and

WHEREAS, in accordance with the Redevelopment Law, the Township Council, designated certain property within the Township, including, without limitation, the property identified on the official tax maps of the Township as Blocks 183, 184, 185 and 186, as an area in need of redevelopment (the “**Redevelopment Area**”); and

WHEREAS, the Redevelopment Law authorizes municipalities to adopt a redevelopment plan for an area designated as an “area in need of redevelopment” pursuant to which redevelopment projects are to be undertaken; and

WHEREAS, the Redevelopment Area is subject to the *Coit Street Phase I Redevelopment Plan* (the “**Redevelopment Plan**”) which was duly adopted by the Township Council pursuant to the Redevelopment Law and in accordance with the procedures set forth therein; and

WHEREAS, pursuant to *N.J.S.A. 40A:12A-4*, the Township has determined to act as the “redevelopment entity”, as such term is defined at *N.J.S.A. 40A:12A-3*, responsible for carrying

out redevelopment projects in the Redevelopment Area in accordance with the Redevelopment Plan, pursuant to *N.J.S.A. 40A: 12A-4(c)*; and

WHEREAS, FAYEN 4 Urban Renewal, LLC (the “**Entity**”) is the owner of certain property within the Redevelopment Area identified on the official tax map of the Township as Block 184, Lots 5, 6, 7 and 8; and commonly known as 32 Woolsey Street, 24 Woolsey Street, 20 Woolsey Street, and 16 Woolsey Street (collectively, the “**Property**”); and

WHEREAS, the Township and the Entity propose to enter into that certain Redevelopment Agreement (the “**Redevelopment Agreement**”) pursuant to which the Entity will undertake the design, development, financing and construction of a seventy thousand (70,000) square foot warehouse and associated site improvements, (the “**Project**”), on the Property; and

WHEREAS, the Entity is a single purpose urban renewal entity created pursuant to the with the Long Term Tax Exemption Law, *N.J.S.A. 40A:20-1 et seq.* (the “**Exemption Law**”) for the development, operation and maintenance of the Project; and

WHEREAS, in order to enhance the economic viability of and opportunity for a successful project, the Entity has submitted an application to the Township requesting a long term tax exemption (the “**Application**”) and a form of financial agreement (the “**Financial Agreement**”), all in accordance with the Exemption Law, specifically *N.J.S.A. 40A:20-8*; 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, pursuant to *N.J.S.A. 40A:20-8*, the Mayor has reviewed the Application and has submitted the Application and Financial Agreement to the Township Council with his recommendation for approval; and

WHEREAS, upon review of the proposed Project, the Township has made the following findings with respect to the Project pursuant to *N.J.S.A. 40A:20-11*:

- The construction of the Project will result in the rehabilitation of the Property, substantial improvements to the infrastructure on the site, and community benefits in the form of both temporary construction jobs and permanent full-time jobs;
- The Project is consistent with the Redevelopment Plan, will further its objectives and will contribute to the economic growth of the Township; and
- The Financial Agreement was a material inducement to the Entity to undertake the Project in the Township and facilitate the rehabilitation of the Property and upon expiration of the exemption, the Project shall be fully assessed and conventionally taxed; and

WHEREAS, the Township Council determined that the assistance provided to the Project pursuant to this 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.

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 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.
4. 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.
5. Executed copies of the Financial Agreement shall be certified by and be filed with the Office of the Township Clerk. Further, the Clerk shall file certified copies of this ordinance and the Financial Agreement with the Tax Assessor of the Township, and County Counsel and the Chief Financial Officer of Essex County within 10 calendar days of the execution of the Financial Agreement
6. 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.
7. A copy of this Ordinance shall be available for public inspection at the offices of the Township.
8. This ordinance shall take effect in accordance with all applicable laws.

EXHIBIT A

Financial Agreement

FINANCIAL AGREEMENT

THIS FINANCIAL AGREEMENT (hereinafter "**Agreement**" or "**Financial Agreement**"), is made as of the ____ day of _____, 2018, (the "**Effective Date**") by and between

The **TOWNSHIP OF IRVINGTON**, a public body corporate and politic of the State of New Jersey, having its offices at Municipal Building, 1 Civic Square, Irvington, New Jersey 07111 in its capacity as a "redevelopment entity" pursuant to *N.J.S.A.* 40A:12A-4(c) (hereinafter referred as the "**Township**");

AND

FAYEN 4 URBAN RENEWAL, LLC, a New Jersey limited liability company qualified to do business as an urban renewal entity under the provisions of the *Long Term Tax Exemption Law, N.J.S.A. 40A:20-1 et seq.*, as same may be amended and supplemented, (the “**Exemption Law**”) with offices at 40 Woolsey Street, Irvington, New Jersey 07111-4012 (hereinafter the “**Entity**”; and together with the Township, the “**Parties**” or, separately, each a “**Party**”).

WITNESSETH:

WHEREAS, the Entity is the owner of certain property identified on the official tax map of the Township as Block 184, Lots 5, 6, 7 and 8; and commonly known as 32 Woolsey Street, 24 Woolsey Street, 20 Woolsey Street, and 16 Woolsey Street (collectively, the “**Property**”); and

WHEREAS, the Local Redevelopment and Housing Law, *N.J.S.A. 40A:12A-1 et seq.*, as amended from time to time (the “**Redevelopment Law**”), provides a process for municipalities to participate in the redevelopment and improvement of areas in need of redevelopment and areas in need of rehabilitation; and

WHEREAS, pursuant to the Redevelopment Law, the Municipal Council (the “**Township Council**”) of the Township, designated certain property within the Township, including, without limitation, the property identified on the official tax maps of the Township as Blocks 183, 184, 185 and 186, as an area in need of redevelopment (the “**Redevelopment Area**”); and

WHEREAS, the Redevelopment Law authorizes municipalities to adopt a redevelopment plan for an area designated as an “area in need of redevelopment” pursuant to which redevelopment projects are to be undertaken; and

WHEREAS, the Redevelopment Area is subject to the *Coit Street Phase I Redevelopment Plan* (the “**Redevelopment Plan**”) which was duly adopted by the Township Council pursuant to the Redevelopment Law and in accordance with the procedures set forth therein; and

WHEREAS, pursuant to *N.J.S.A. 40A:12A-4*, the Township has determined to act as the “redevelopment entity”, as such term is defined at *N.J.S.A. 40A:12A-3*, responsible for carrying out redevelopment projects in the Redevelopment Area in accordance with the Redevelopment Plan, pursuant to *N.J.S.A. 40A: 12A-4(c)*; and

WHEREAS, the Township and the Entity propose to enter into that certain Redevelopment Agreement (the “**Redevelopment Agreement**”) pursuant to which the Entity will undertake the design, development, financing and construction of a seventy thousand (70,000) square foot warehouse and associated site improvements, (the “**Project**”); and

WHEREAS, the Entity is a single purpose urban renewal entity created pursuant to the Exemption 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 “**Exemption Application**”, attached hereto as Exhibit A), requesting a long term tax exemption and a financial agreement (the “**Financial Agreement**”) with respect to the Project pursuant to the Exemption Law, which Exemption Application is on file with the Municipal Clerk of the Township (the “**Township Clerk**”); and

WHEREAS, the Township determined that the assistance provided to the Project pursuant to this 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, by the adoption of Ordinance MC _____ on _____, 2018 (the “**Ordinance**”), a copy of which is attached hereto as Exhibit B, the Township Council approved the Exemption Application and authorized the execution of this Agreement, and the Parties hereto desire to set forth in detail their mutual rights and obligations with respect to the tax exemption applicable to this Project; and

WHEREAS, the Township and the Entity enter into this Financial Agreement to memorialize the terms and conditions by which the Entity will pay an Annual Service Charge in lieu of real property taxes on the Project’s Improvements.

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

SECTION I.1 Governing Law.

This Agreement shall be governed by and construed by the laws of the State (as defined herein), including (a) the Long Term Tax Exemption Law, the Local Redevelopment and Housing Law and such other State statutes as may be sources of relevant authority, (b) the Ordinance, and (c) all other Applicable Laws, without regard to conflict of law principles.

SECTION I.2 Definitions.

Words that are capitalized, and which are not the first word of a sentence, are defined terms. As used in this Agreement, defined terms shall have the meaning assigned to such terms as set forth below.

(a) The following terms shall have the respective meanings ascribed to such terms in the preambles hereof:

Agreement
Effective Date

Entity
Exemption Application
Exemption Law
Financial Agreement
Parties/Party
Project
Property
Redevelopment Agreement
Redevelopment Area
Redevelopment Law
Redevelopment Plan
Township
Township Clerk
Township Council

–
(b) The following terms as used in this Agreement shall, unless the context clearly requires otherwise, have the following meanings:

Administrative Fee – shall have the meaning given to it in Section 4.03 of this Agreement.

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(b)*.

Allowable Profit Rate - The greater of (a) twelve percent (12%) or (b) the percentage per annum arrived at by adding one and one-quarter percent (1¼%) 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, if payable on a per annum basis, 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 (x) twelve percent (12%) or (y) the percentage per annum arrived at by adding one and one-quarter percent (1¼%) 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 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 real estate taxes on the Improvements, all as contemplated pursuant to the Exemption Law, which amount, if applicable, 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 date of the Substantial Completion of the Project.

Applicable Law – All Federal, State and local laws, ordinances, approvals, rules, regulations and requirements applicable thereto including, but not limited to, the Redevelopment Law and the Exemption Law, relevant construction codes including

construction codes governing access for persons with disabilities, and such zoning, sanitary, pollution and other environmental safety ordinances, laws and such rules and regulations thereunder, including all applicable environmental laws, and applicable federal and State labor standards and all applicable laws or regulations with respect to the payment of prevailing wages.

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 licensed to practice in the State.

Certificate of Occupancy – shall mean the 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*.

Council – shall mean the Municipal Council of the Township of Irvington.

County – shall mean the County of Essex, State of New Jersey.

Default - shall be a breach of or the failure of either Party to perform any obligation imposed upon such Party by the terms of this Agreement, beyond any applicable grace or cure periods set forth in this Agreement.

Default Notice - shall have the meaning given to it in Section 14.02 of this Agreement.

Director – shall mean the Director of the Department of Economic Development and Grants Oversight.

Disclosure Statement - shall have the meaning given to it in Section 7.02(c) of this Agreement.

Effective Date – the date upon which the last Party executes this Agreement.

Entity – shall mean the urban renewal entity specified in the preamble of this Agreement. Unless the context provides otherwise, it shall also include any transferee, as set forth in Section 8.01 of this Agreement.

Exemption Law - shall have the meaning given to it in the preamble of this Agreement.

Financial Plan – the financial plan prepared pursuant to *N.J.S.A. 40A:20-8(e)* and provided as an attachment to the Application.

First Source Employment Linkage Program Ordinance – Ordinance No MC 3172, adopted April 24, 2001, and the amendment thereto, Ordinance

No. MC 3567, adopted April 21, 2016, as codified in the Municipal Code of the Township.

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 any and all other buildings, structures or fixtures to be constructed on, in or under the Land in accordance with the terms hereof.

In Rem Tax Foreclosure - A summary proceeding by which the Township may enforce the lien for taxes due and owing by a tax sale in accordance with the provisions of the In Rem Tax Foreclosure Act and Tax Sale Law.

In Rem Tax Foreclosure Act – *N.J.S.A. 54:5-104.29 et seq.*, as may be amended or supplemented from time to time.

Land - the underlying land, but not the Improvements, designated as Block 184, Lots 5, 6, 7 and 8 on the tax map of the Township.

Land Taxes – the taxes assessed on the value of the Land, exclusive of the value of any improvements related thereto, of the Property in accordance with Applicable Law.

Land Tax Payments - Payments made on the quarterly due dates, including approved grace periods, if any, for Land Taxes as determined by the Tax Assessor and the Tax Collector.

Material Conditions – shall have the meaning given to it in Section 4.07 of this Agreement.

Mayor – the mayor of the Township

Minimum Annual Service Charge - the minimum annual service charge shall be the amount of the total taxes levied against the Property in the last full tax year in which the Property 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 this Agreement, would be less than the Minimum Annual Service Charge. The Parties acknowledge and agree that the tax levied against the Property, in the last full tax year in which it was subject to taxation (2018) was **[\$43,050.55]**.

Minority – shall mean a person who is a citizen or lawful permanent resident of the United States and who is either one or a combination of: (i) African American (a person having origins in any of the black racial groups of Africa), (ii) Alaskan Native and/or American Indian (a person having origins in any of the original peoples of North America), (iii) Asian American (a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, Hawaii or the Pacific Islands), (iv) Hispanic (a person of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race), or (v) Female (a person of the female gender).

Minority Business Enterprise – shall mean a sole proprietorship where the sole proprietor is a Minority person; or a business corporation where fifty-one (51%) percent of the interest in such corporation is beneficially owned by Minority persons and Minority persons occupy the majority of management and board positions and control all decisions

concerning the entity; or a partnership where fifty-one (51%) percent of the partnership interest in such partnership is beneficially owned by Minority persons and Minority persons occupy the majority of management and partnership positions and control all decisions concerning the entity; and which is certified as a bona fide minority business enterprise by a certifying agency designated by the Township.

Net Profit – As defined in N.J.S.A. 40A:20-3(c).

Notice - shall have the meaning given to it in Section 10.01.

Notice of Termination – shall have the meaning given to it in Section 14.04.

Ordinance – Ordinance No. MC _____ adopted by the Council on _____, 2018 attached hereto, adopting the subject tax exemption.

Party or Parties – shall have the meaning given to it in the preamble of this Agreement.

Plans - shall mean the plans, including site plans, building floor plans, building elevations, and/or architectural renderings for the Project or any portion thereof. “Plans” shall include, but shall not be limited to, the minimum requirements of Applicable Laws or the Redevelopment Plan depending on the context of its use in this Agreement.

Project – shall have the meaning given to it in the recitals of this Agreement.

Property – shall have the meaning given to it in the recitals of this Agreement, and shall include both the Land and Improvements thereon.

Small Business Enterprise – shall mean a business entity that is certified as a *bona fide* small business enterprise by a certifying agency designated by the Township.

State – The State of New Jersey

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 for the Project.

Tax Assessor – The Township tax assessor.

Tax Collector – The Township tax collector.

Tax Sale Law – N.J.S.A. 54:5-1 *et seq.*, as may be amended or supplemented from time to time.

Taxes - shall have the meaning given to it in Section 14.04 of this Agreement.

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

Total Project Cost - The total cost of constructing the Project, as set forth in N.J.S.A. 40A:20-3(h), excluding the actual costs incurred by the Entity, and certified to the Township by an independent and qualified architect or engineer, which are associated

with site remediation and cleanup of environmentally hazardous materials or contaminants in accordance with State or federal law.

Township – shall have the meaning given to it in the preamble of this Agreement.

Township Code - the Municipal Code of the Township

Women's Business Enterprise – shall mean a sole proprietorship where the sole proprietor is a woman; a business corporation where fifty-one (51%) percent of the interest in such corporation is beneficially owned by women and women occupy the majority of management and board positions and control all decisions concerning the entity; or a partnership where fifty-one (51%) percent of the partnership interest in such partnership is beneficially owned by women and women occupy the majority of management and partnership positions and control all decisions concerning the entity; and which is certified as a bona fide women's business enterprise by a certifying agency designated by the Township.

SECTION 1.3 Interpretations And Construction.

In this Agreement, unless the context otherwise requires:

- (a) The terms “hereby”, “hereof”, “hereto”, “herein”, “hereunder” and any similar terms, as used in this Agreement, refer to this Agreement, and the term “hereafter” means after, and the term “heretofore” means before the Effective Date of this Agreement.
- (b) Words importing a particular gender mean and include correlative words of every other gender and words importing the singular number mean and include the plural number and vice versa.
- (c) Words importing persons mean and include firms, associations, partnerships (including limited partnerships), trusts, corporations, limited liability companies and other legal entities, including public or governmental bodies, as well as natural persons.
- (d) Any headings preceding the texts of the several Articles and Sections of this Agreement, and any table of contents or marginal notes appended to copies hereof, shall be solely for convenience of reference and shall not constitute a part of this Agreement, nor shall they affect its meaning, construction or effect.
- (e) Unless otherwise indicated, all approvals, consents and acceptances required to be given or made by any Person or Party hereunder shall not be unreasonably withheld, conditioned, or delayed.
- (f) All notices to be given hereunder and responses thereto shall be given, unless a certain number of days is specified, within a reasonable time, which shall not be less than ten (10) days nor more than twenty (20) days, unless the context dictates otherwise.
- (g) All exhibits referred to in this Agreement and attached hereto are incorporated herein and made part hereof.

- (h) All references to Sections, Articles or Exhibits shall, unless indicated otherwise, refer to the Sections, Articles or Exhibits in this Agreement.

ARTICLE II

APPROVAL

SECTION II.1 Approval of Tax Exemption

Pursuant to the Ordinance, the Improvements to be constructed and maintained by the Entity on the Land designated on the Township tax maps as Block 184, Lots 5, 6, 7 and 8 shall be exempt from taxation as provided for herein and in the Exemption Law. In accordance with N.J.S.A. 40A:20-12, the tax exemption shall constitute a single continuing exemption from local property taxation for the duration of this Agreement.

It is expressly understood and agreed that the Township expressly has relied upon the facts, data and representations contained in the Exemption Application in granting the tax exemption described in this Agreement.

SECTION II.2 Approval of the Entity

The Entity represents that its certificate of formation, attached hereto as Exhibit D, contains all the requisite provisions of law, has been reviewed and approved by the Commissioner of the New Jersey 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.

SECTION II.3 Improvements to be Constructed

The Entity represents that it shall construct or cause to be constructed the Project in accordance with the approved Plans, the Redevelopment Agreement, the Redevelopment Plan and Applicable Law, the use of which Project is more specifically described in the Application.

SECTION II.4 Construction Schedule

The Entity agrees to diligently undertake the commencement or cause the commencement of the construction and completion of the Project substantially in accordance with the approved Plans and the Redevelopment Agreement

SECTION II.5 Ownership, Management and Control

The Entity represents that it owns the Property. The Entity covenants that it shall cause the redevelopment of the Property in conformance with the approved Plans, the Redevelopment Agreement, the Redevelopment Plan and all Applicable Laws.

The Entity covenants, warrants and represents that the Property and the Project shall be used, managed and operated for the purposes set forth in the Exemption Application, and in accordance with the Redevelopment Agreement, the Redevelopment Plan and all Applicable Laws.

SECTION II.6 Project Financing Plan

The Entity represents that the Improvements shall be financed substantially in accordance with the representations set forth in the Financial Plan. The Exemption Application and Financial Plan, made a part hereof, set forth the estimated Total Project Cost, amortization rate on Total Project Cost, the source of funds, the interest rates to be paid on construction financing, the source and amount of paid-in capital, the terms of any mortgage amortization, and rental schedules and lease terms, as applicable, in accordance with the Exemption Law.

SECTION II.7 Findings

In accordance with the Exemption Law, the Township hereby 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 rehabilitation of the Property, and further:

(a) Relative Benefits of the Project: The Project will provide improved aesthetics at the site and the surrounding area. The Property is currently the site of two (2), seventy (70) year old, thirteen thousand (13,000) square foot warehouses. Entity intends to demolish the existing warehouses and construct a single seventy thousand (70,000) square foot warehouse, as shown on the approved site plan for the Project that is attached as Exhibit C. The Project is expected to produce approximately 50-75 construction jobs and 3-4 permanent jobs associated with operation of same.

(b) Assessment of the Importance of the Tax Exemption in Obtaining Development of the Project and Influencing the Locational Decisions of Probable Occupants: The exemption is needed so the Project can attract sufficient investment to make it viable. The stability and predictability of the Annual Service Charge will make the Project more competitive and assist the Entity to undertake the Project in the Township. The exemption will allow the Entity to charge more competitive rent, which will influence the locational decisions of probable occupants and enhance the likelihood that the Project will achieve stabilization in the timeframe predicted.

SECTION II.8 Community Initiatives, Non-Discrimination and Affirmative Action

The Entity must comply with the requirements of all statutes, laws and regulations regarding non-discrimination and affirmative action in the employment of workers, including New Jersey P.L. 1975, c. 127 (N.J.A.C. 17:27), and shall further comply with the community initiative requirements set forth in Article V.

ARTICLE III

DURATION OF AGREEMENT

SECTION III.1 Term

This Agreement shall become operative on the Effective Date. The Parties understand and agree that this Agreement, including the obligation to pay the Annual Service Charge required under Article IV and the tax exemption granted and referred to in Section 2.01, shall remain in effect until the earlier of (i) thirty-five (35) years from Effective Date or (ii) thirty years (30) from the Annual Service Charge Start Date. At the expiration of the term hereof or upon Termination, the tax exemption for the Project shall expire and the Property shall thereafter be assessed and taxed according to the general law applicable to other non-exempt property in the Township. After expiration of the term hereof or upon Termination, all restrictions and limitations upon the Entity shall terminate upon the Entity's rendering and the Township's acceptance of its final accounting, pursuant to N.J.S.A. 40A:20-12.

SECTION III.2 Voluntary Termination by Entity

The Entity may at any time after the expiration of one year from the completion of the Project notify the Township that as of a certain date designated in the notice, it relinquishes its status under the Long Term Tax Exemption Law and that the Entity has obtained the consent of the Commissioner of the Department of Community Affairs. Upon Termination of the Agreement, all restrictions and limitations upon the Entity shall terminate upon the Entity's rendering and the Township's acceptance of its final accounting, pursuant to N.J.S.A. 40A:20-12.

ARTICLE IV

ANNUAL SERVICE CHARGE

SECTION 4.01 Consent of Entity to Annual Service Charge

The Entity hereby consents and agrees to the amount of the Annual Service Charge and to the liens described in this Agreement, and the Entity shall not contest the validity or amount of any such lawfully imposed lien. Notwithstanding anything herein to the contrary, the Entity's obligation to pay the Annual Service Charge shall be absolute and unconditional and shall not be subject to any defense, set-off, recoupment or counterclaim under any circumstances, including without limitation any loss of the status of the Entity as an urban renewal entity qualified under and as defined in the Exemption Law, or any violation by the Township of any provisions of this Agreement. The Entity's remedies shall be limited to those specifically set forth herein and as otherwise provided by Applicable Law.

SECTION 4.02 Payment of Annual Service Charge

(a) In consideration of the tax exemption, the Entity shall make payment of the Annual Service Charge commencing on the Annual Service Charge Start Date.

(b) Payment of the Annual Service Charge shall be made to the Township on a quarterly basis in accordance with the Township's property tax collection schedule, February 1st, May 1st, August 1st, and November 1st, subject, nevertheless, to adjustment for over or underpayment within thirty (30) days after the provision of the Auditor's Report pursuant to Section 7.02(a) hereof. The obligation to pay the Annual Service Charge shall continue until the expiration or Termination of the Agreement.

(c) In the event that the Entity fails to timely pay the Annual Service Charge or any installment thereof, the amount past due shall bear interest at the highest rate of interest permitted under the State law in the case of unpaid taxes or tax liens on land until paid.

(d) In accordance with the Exemption Law, specifically *N.J.S.A. 40A:20-12*, in the event of any change in the tax-exemption status as provided herein during any tax year, including but not limited to Termination, the procedure for the apportionment of any taxes and/or Annual Service Charge, as the case may be, shall be the same as in the case of other changes in tax exemption status to any other property located within the Township during the tax year, in accordance with Applicable Law.

SECTION 4.03 Administrative Fee

In addition to the Annual Service Charge, the Entity shall pay to the Township an annual fee of two percent (2%) of the projected Annual Service Charge upon the Annual Service Charge Start Date and each anniversary thereafter prior to the Termination Date (the "**Administrative Fee**"). In the event the Entity fails to pay the Administrative Fee when due and owing, the amount unpaid shall bear the highest rate of interest permitted under applicable New Jersey law in the case of unpaid taxes or tax liens until paid.

SECTION 4.04 Annual Service Charge Schedule

The Annual Service Charge throughout the term of this Agreement shall be as follows:

(a) Pursuant to *N.J.S.A. 40A:20-12*, the Parties agree that upon the Annual Service Charge Start Date, and continuing for a period of fifteen (15) years, the Annual Service Charge for the Project shall be (i) ten (10%) percent of the Gross Revenue for the Project or (ii) the Minimum Annual Service Charge.

(b) Commencing in the sixteenth (16th) year after the Annual Service Charge Start Date and continuing for a period of six (6) years (years 16 through 21 inclusive), the Annual Service Charge shall be an amount equal to the greater of (i) the amount stated in Section 4.04(a); (ii) the Minimum Annual Service Charge; or (iii) twenty (20%) percent of the amount of taxes otherwise due to the Township on the value of the Land and Improvements.

(c) Commencing in the twenty-second (22nd) year after the Annual Service Charge Start Date and continuing for a period of six (6) years (years 22 through 27

inclusive), the Annual Service Charge shall be an amount equal to the greater of (i) the amount stated in Section 4.04(a); (ii) the Minimum Annual Service Charge; or (iii) forty (40%) percent of the amount of taxes otherwise due to the Township on the value of the Land and Improvements.

(d) Commencing in the twenty-eighth (28th) year after the Annual Service Charge Start Date and continuing for a period of two (2) years (years 28 through 29 inclusive), the Annual Service Charge shall be an amount equal to the greater of (i) the amount stated in Section 4.04(a); (ii) the Minimum Annual Service Charge; or (iii) sixty (60%) percent of the amount of taxes otherwise due to the Township on the value of the Land and Improvements.

(e) Commencing in the thirtieth (30th) year after the Annual Service Charge Start Date and continuing for a period of one (1) year (year 30), the Annual Service Charge shall be an amount equal to the greater of (i) the amount stated in Section 4.04(a); (ii) the Minimum Annual Service Charge; or (iii) eighty (80%) percent of the amount of taxes otherwise due to the Township on the value of the Land and Improvements.

(f) From the Annual Service Charge paid by the Entity and received by the Township, the Township shall annually remit not less than five (5%) percent of the payment received to the County in accordance with the provisions of N.J.S.A. 40A:20-12.

(g) Notwithstanding anything to the contrary in this Financial Agreement, including, without limitation, Sections 4.04 and 4.06 hereof the Entity and the Township agree that beginning in Year 6 and continuing through the remainder of the Term, the application of the credit for the Land Tax against the Annual Service Charge shall not reduce the Annual Service Charge payment below thirty-thousand (\$30,000) dollars, with any corresponding increase to the Annual Service Charge being deemed in compliance with N.J.S.A. 40A:20-12(b)(1), as an amount not less than 10% of Annual Gross Revenue.

SECTION 4.05

Minimum Annual Service Charge

(a) The Minimum Annual Service Charge shall be paid in each year in which the Annual Service Charge, as calculated herein, would be less than the Minimum Annual Service Charge.

(b) In accordance with N.J.S.A. 54:3-21(b), except as otherwise provided by Applicable Law, the Annual Service Charge shall never be reduced below the Minimum Annual Service Charge through any tax appeal on the Land and/or Improvements or any other legal proceeding regarding the Project during the period that this Agreement is in force and effect.

SECTION 4.06

Land Taxes, Credits and Other Charges

(a) THE ENTITY HEREBY EXPRESSLY ACKNOWLEDGES, UNDERSTANDS AND AGREES THAT THE TAX EXEMPTION PROVIDED FOR HEREIN SHALL ONLY APPLY TO IMPROVEMENTS AND THAT LAND TAXES SHALL BE SEPARATELY ASSESSED BY THE TOWNSHIP ON THE PROPERTY IN ACCORDANCE WITH APPLICABLE LAW.

(b) The Entity is required to pay both the Annual Service Charge and to pay all Land Taxes. The Entity shall be entitled to credit for the amount, without interest, of the Land Taxes paid in the last four preceding quarterly installments against the Annual Service Charge. The Entity is obligated to pay timely Land Taxes in order to be entitled to a credit for Land Taxes against the Annual Service Charge for the subsequent year.

(c) The Entity hereby expressly acknowledges, understands, and agrees that, in addition to Annual Service Charges and Land Tax Payments, it shall be responsible for the payment (without any credit whatsoever hereunder) of all other applicable municipal charges that may, from time to time, be lawfully assessed upon its property, including, without limitation, any and all special benefit assessments, water and sewer charges, and other municipal charges, whether presently existing or hereinafter imposed, and that the Township may enforce such assessments and charges in any manner (including, but not limited to, foreclosure or tax sale) permitted by applicable law.

SECTION 4.07 Material Conditions

It is expressly agreed and understood that payment of Annual Service Charges and any interest payments, penalties or costs of collection due thereon, are material conditions of this Agreement (“**Material Conditions**”). If any other term, covenant or condition of this Agreement or the Application, as to any person or circumstance shall, to any extent, be determined to be invalid or unenforceable by virtue of a non-appealable order of a court of competent jurisdiction, 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 Agreement shall be valid and enforced to the fullest extent permitted by law.

SECTION 4.08 No Reduction in Payment of the Annual Service Charge

Neither the amounts nor dates established for payment of the Annual Service Charge, as provided in Section 4.04 hereof shall be reduced, amended or otherwise modified during the term of this Agreement.

SECTION 4.09 Annual Service Charge as Municipal Lien

The Entity hereby expressly acknowledges, understands and agrees, and the Township acknowledges, without making any representation, warranty or covenant, that (i) 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, and (ii) any applicable process, procedure or action of any court, government body or other relevant authority, including without limitation any confirmation hearing, to determine the amount of the Annual Service Charge due shall not affect the commencement or validity of the municipal lien.

ARTICLE V

COMMUNITY INITIATIVES

SECTION V.1 Equal Employment Opportunity

The Entity agrees that during construction of the Project:

(d) The Entity will not discriminate against any employee of the Entity or applicant for employment because of race, color, religion, sex, or national origin. The Entity will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation and selection for training, including apprenticeship. The Entity agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause and any such notices provided by the Township that are consistent therewith.

(e) The Entity will, in all solicitations or advertisements for employees placed by or on behalf of the Entity, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.

(f) The Entity shall use good faith and commercially reasonable efforts to include qualified and certified Minority Business Enterprises, Women's Business Enterprises, and Small Business Enterprises as subcontractors and suppliers to the Project wherever possible.

(g) The obligations contained in this Section shall be binding on all contractors and subcontractors to the extent that any work on the Project is done by any contractor or subcontractor, and any contract entered into by the Entity shall so provide.

SECTION V.2 First Source Employment

(a) The Entity agrees to use good faith and commercially reasonable efforts, to employ, and shall require in each of its contracts with contractors that they and their subcontractors use good faith and commercially reasonable efforts to employ qualified Township residents in the construction of the Project, and in the operation and maintenance of the Project following Completion of Construction for so long as this Financial Agreement remains in effect with respect to the Project.

(b) Prior to the execution of the Financial Agreement, and in accordance with the provisions of the First Source Employment Linkage Program Ordinance, the Parties shall execute a First Source Agreement substantially in the form attached hereto as Exhibit E.

SECTION V.3 Affirmative Action

The Entity, during the construction of the Project, covenants that it will comply with and shall provide in its contracts with its contractors and subcontractors, the following:

(a) The Entity shall use good faith and commercially reasonable efforts to undertake a program of local preference to facilitate entering into contracts with and/or purchasing good and services from local merchants and businesses located within the Township, including preferences for local retail and restaurant businesses;

(b) Where applicable, the Entity shall at all times conform to the laws, regulations, policies of the State, the Federal government, and other governmental bodies with respect to affirmative action and equal employment opportunities requirements, and particularly those which are imposed as a condition to receipt of any government sponsored funding for the Project, notwithstanding any other provision of this Agreement to the contrary.

(c) The Entity shall use good faith and commercially reasonable efforts to undertake a program of preference to facilitate entering into contracts with and/or purchasing goods and services from Minority Business Enterprises, Women's Businesses Enterprises, and Small Business Enterprises.

SECTION V.4 Reporting and Enforcement.

(a) The Entity shall submit semi-annual reports regarding compliance with this Article V as provided in the Municipal Code.

(b) Reports submitted by the Entity shall include names, addresses, ethnic origin of those who apply and are interviewed for employment, including those denied employment.

(c) The Entity covenants to enforce its contracts with its contractors and subcontractors if such parties are not in compliance with this Article V.

(d) In the event of a failure to comply with the provision of this Article V, the Director shall provide written notice to Entity of such non-compliance, and during

the following thirty (30) day period the Entity and the Director shall cooperate to identify and implement a plan to cure such non-compliance.

(e) If such non-compliance continues beyond such thirty (30) day period referenced above, and Entity has not taken action to correct such non-compliance during such period, the penalties for non-compliance shall be as set forth in the Municipal Code of the Township or as provided in the First Source Agreement.

ARTICLE VI

CERTIFICATE OF OCCUPANCY

SECTION VI.1 Certificate of Occupancy

It is understood and agreed that it shall be the obligation of the Entity to take such actions as are necessary under Applicable Laws to obtain a Certificate of Occupancy upon Substantial Completion of the Project, in accordance with the construction schedule referenced in Section 2.04. The Township shall, in good faith, reasonably cooperate with the Entity and use its best efforts to support and expedite the review, comment and approval of any application of the Entity seeking a Certificate of Occupancy.

SECTION VI.2 Filing of Certificate of Occupancy

The Entity shall file or cause to be filed with both the Tax Assessor and the Tax Collector a copy of the Certificate of Occupancy promptly upon receipt thereof by the Entity. Failure of the Entity to file or cause to be filed such issued Certificate of Occupancy as required by the preceding paragraph shall not militate against any action or non-action 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

REPORTS AND AUDITS

SECTION VII.1 Calculation of Net Profit.

For the purposes of this Agreement, the Entity agrees to calculate its “Net Profit” pursuant to N.J.S.A. 40A:20-3(c).

SECTION VII.2 Periodic Reports/Notices

(a) Auditor’s Report: Within ninety (90) days after the close of the Entity’s fiscal year that this Agreement shall continue in effect, according to the Entity’s accounting basis, the Entity shall submit to the Mayor, Township Council, the Tax Collector and the Township Clerk, who shall advise those municipal officials required to be advised, its Auditor’s Report for the preceding fiscal or calendar year. The Auditor’s Report shall clearly identify

and calculate the Net Profit for the Entity during the previous year. The Entity assumes all costs associated with preparation of the periodic reports. The Auditor's Report must include a calculation of the Gross Revenue as defined in this Financial Agreement.

(b) Total Project Cost Audit: Within ninety (90) days after the Substantial Completion of the Project, the Entity shall submit to the Mayor, the Council, the Tax Collector and the Township Clerk, who shall advise those municipal officials required to be advised, an audit of Total Project Cost, certified as to actual construction costs by an independent and qualified architect or engineer.

(c) Disclosure Statement: On each anniversary date of the Effective Date of this Agreement, the Entity shall submit to the Mayor, Township 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 reasonably request from time to time regarding such ownership interest in the Project (each a “**Disclosure Statement**”).

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

SECTION VII.3 Inspection

Upon reasonable request in writing, during normal business hours, the Entity shall permit (A) the inspection of its property, equipment, buildings and other facilities of the Project, and (B) the examination and audit of its books, contracts, records, documents and papers, in each case by representatives duly authorized by the Township and Division of Local Government Services in the New Jersey Department of Community Affairs, provided that such rights of inspection also shall extend to representatives in the Division of Local Government Services in the New Jersey Department of Community Affairs pursuant to N.J.S.A. 40A:20-9(e), duly authorized by the Township, as reasonably deemed necessary and appropriate by the Township. The inspections and examinations shall not in any manner 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.

SECTION VII.4 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 or dividends pursuant to the provisions of N.J.S.A. 40A:20-15 and N.J.S.A. 40A:20-3(c). Upon expiration or Termination of the tax exemption, the foregoing limitations on the profits or dividends of the Entity shall be of no further force or effect.

The Entity shall have the right in any year to establish and maintain a reserve against vacancies, unpaid rentals, and reasonable contingencies in an amount up to ten percent (10%) of the Annual Gross Revenues of the Entity for the last full fiscal year

preceding the year in which the reserve is established or maintained, and may retain such part of the excess Net Profits as is necessary to eliminate a deficiency in that reserve, as provided in N.J.S.A. 40A:20-15.

There is expressly excluded from calculation of “Gross Revenue” and from “Net Profit” as set forth in N.J.S.A. 40A:20-3 for the purpose of determining compliance with N.J.S.A. 40A:20-15 or N.J.S.A. 40A:20-16, the amount of any sale, including any gain realized thereby, by the Entity on the sale of all or any portion of the Project, including a Unit, whether or not taxable under federal or State law.

SECTION VII.5 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 Gross Revenue that 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.

Notwithstanding the foregoing, the Entity shall be permitted to enter into a lease for the operation and maintenance of the Project, including a lease to a related entity or affiliate including Manufacturers Reserve Supply Co., provided that such lease to a related entity or affiliate is based on market-based terms and rent.

The Entity agrees however, with respect to any such lease:

(a) The lease of the Project to a tenant shall be subject to the terms of this Financial Agreement but shall not require the consent or approval of the Township;

(b) The rent due under such lease shall be no less than the amounts set forth in Exhibit 19 of the Application, and the Entity shall not agree to any set-offs or credits that would reduce the rent due under such lease to less than said amount;

(c) The Entity shall not amend or modify such lease in a manner that adversely affects the Entity’s payments of the Annual Service Charge as contemplated by this Agreement; and

(d) If there is any default under such lease, including a default in the payment of rent which as a result reduces the amounts paid by the Entity in Annual Service Charge, such default shall constitute a Default of the Entity under this Agreement.

SECTION VII.6 Payment of Dividend and Excess Profit Charge

In the event the Net Profits of the Entity (after funding of any reserve described in Section 7.04), in any fiscal year, shall exceed the Allowable Net Profits for such period, then the Entity, within one hundred twenty (120) days after the end of such fiscal year, shall pay such excess Net Profits to the Township as an additional Annual 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 shall be treated by the Township as additional Annual Service Charge subject to the provisions of this Agreement.

ARTICLE VIII

ASSIGNMENT AND/OR ASSUMPTION

SECTION VIII.1 Approval

(a) 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 Substantial Completion, will 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 formed and eligible to operate under the Exemption Law; 3) the Entity is not then in Default of this Agreement or the Exemption 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 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.

(b) Where the consent or approval of the Township is sought for an assignment of the Agreement, the Township may levy an administrative fee of two percent (2%) of the then applicable Annual Service Charge for the review, preparation, and/or submission of documents to the Council for action on the requested assignment.

(c) If the Entity transfers the Project to another urban renewal entity, and the transferee entity has assumed all of the Entity's contractual obligations under this Agreement, then, pursuant to *N.J.S.A. 40A:20-6*, the Entity shall be discharged from any further obligation under this Agreement and shall be qualified to undertake another project pursuant to the Exemption Law. The date of transfer of title of the Project to a purchasing entity shall be considered to be the close of the fiscal year of the Entity. Within ninety (90) days after the date of the transfer of title, the Entity shall pay to the Township the amount of the reserve, if any, maintained by it, as well as the excess Net Profit, if any, pursuant to *N.J.S.A. 40A:20-15*.

(d) A Declaration of Restriction on Transfer will be recorded against the Property in the office of the Essex County Register simultaneously with the recordation of this Agreement on or after the Effective Date.

SECTION VIII.2 The Project shall be operated in accordance with the provisions of the Exemption Law, as may be amended and supplemented. Failure to operate the Project pursuant to the terms of this Operation of Project

Financial Agreement and the provisions of *N.J.S.A. 40A:20-1 et seq.*, shall be cause for Termination.

SECTION VIII.3 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 construction or operation of the Project, and that any such encumbrance or assignment shall not be deemed to be a violation of this Agreement. This section shall not prohibit the encumbrance of a mortgage lien on the Property, it being expressly understood that a mortgage lien takes subject to the municipal lien created by the Annual Service Charge under the Exemption Law.

SECTION VIII.4 Prohibition against Severing of Improvements From Land

The Entity hereby agrees at all times prior to the expiration or Termination of this Agreement to remain bound by the provisions of *N.J.S.A. 40A:20-1 et seq.*, as amended and supplemented. 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.

ARTICLE IX

WAIVER

SECTION IX.1 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. 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 X

NOTICE

SECTION X.1 Notice

Formal notices, demands and communications between the Township and Entity shall be deemed given if dispatched to the address set forth below by registered or certified mail, postage prepaid, return receipt requested, or by a commercial overnight delivery service with packaging tracking capability and for which proof of delivery is available ("**Notice**"). In that case such Notice is deemed effective upon delivery.

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 courier or overnight delivery service, as follows:

To Township: Township of Irvington
Attn: Musa A. Malik, Esq., Business Administrator
1 Civic Square
Irvington, New Jersey 07111

With copies to: Township of Irvington
Attn: Kyana Woolridge, Esq., Director
Department of Community Development
660 Stuyvesant Avenue
Irvington, New Jersey 07111

and

McManimon, Scotland & Baumann, LLC
Attn: Glenn Scotland, Esq.
75 Livingston Avenue, Second Floor
Roseland, New Jersey 07068

To Redeveloper: Fayen 4, L.L.C.
Attn: Stephen Boyd
40 Woolsey Street
Irvington, New Jersey 07111-4012

With copies to: Giordano, Halleran & Ciesla
Attn: Steven P. Gouin, Esq.
125 Half Mile Road, Suite 300
Red Bank, NJ 07701-6777

The foregoing addresses may be changed or supplemented by written notice given as above provided. Notice to the Township shall identify the subject with the block and lot numbers, and any other qualifying designation as may apply, of the tax parcels comprising the Property. Any such Notice sent by certified mail shall be deemed to have been received by the addressee on the third (3rd) business day after posting in the United States mail or, if transmitted by messenger or a priority delivery service, on the first (1st) business day after transmittal provided the sender has evidence of delivery. Counsel for a Party may give notice to the other Party with the same effect as if given by the Party.

ARTICLE XI

COMPLIANCE

SECTION XI.1 Statutes and Ordinances

The Entity hereby agrees at all times prior to the expiration or Termination of the tax exemption 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 substantially comply with such statutes or ordinances and the continuation of such noncompliance beyond any applicable notice, grace or cure period provided therein or herein, shall constitute a breach of this Agreement.

ARTICLE XII

CONSTRUCTION

SECTION XII.1 Construction

This Agreement shall be construed and enforced in accordance with the laws of the State, 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 combined in their review and approval of same.

ARTICLE XIII

INDEMNIFICATION

SECTION XIII.1 Indemnification

It is understood and agreed that in the event the Township shall be named as a party in any action brought against the Township or the Entity by allegation of any breach, Default or violation of any of the provisions of this Agreement and/or the provisions of the Exemption Law or by allegation, and materially arising from or relating to the Project under any other Applicable Laws, 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 violation of any of the provisions of this Agreement, the provisions of the Exemption Law and/or any other Applicable Laws; provided, however, that the Entity shall not be required to indemnify the Township for any willful or negligent act, omission or misconduct by the Township or any of its officers, officials, employees or agents. Upon the Township becoming aware of any claim or loss for which indemnification is sought, the Township shall promptly provide the Entity with written notice thereof and demand for indemnification. The Entity shall defend against any such claim or loss at its own expense. The Township maintains the right to intervene as a party thereto, to which intervention the Entity hereby consents, the reasonable expense thereof to be borne by the Entity.

ARTICLE XIV

DEFAULT; REMEDIES; TERMINATION

SECTION XIV.1 Default

Default shall be failure of the Entity to make payment of the Annual Service Charge when due hereunder or to otherwise fail to conform to the terms of this Agreement and any failure of the Entity to substantially observe and perform any other obligation imposed upon the Entity by Applicable Laws beyond any applicable notice, cure or grace period.

SECTION XIV.2 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 (the “**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; provided, however, that if such Default is not reasonably able to be cured within such sixty (60) day period and the Entity is diligently pursuing a cure, such cure period shall extend as long as the Entity continues diligently to pursue such cure, but in any event, not more than one hundred twenty (120) days from the date of Entity’s receipt of the Default Notice.

SECTION XIV.3 Remedies Upon Default Cumulative; No Waiver

In the event of any uncured Default, the Township shall have the right to proceed against the Project, and/or the Property pursuant to the provisions of Applicable Laws. 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 Tax Sale Law.

Subject to the other terms and conditions of this Agreement including Section 14.04, all of the remedies provided in this Agreement to the Township, and all rights and remedies granted to the Township 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 its remedies or actions against the Entity for 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 Charge 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 Charge or other charges shall not be construed as a waiver of the right to proceed with an In Rem Tax Foreclosure action consistent with the terms and provisions of this Agreement.

SECTION XIV.4 Remedies

The Township's customary tax payment enforcement proceedings shall apply to the collection of any delinquent payment of the Annual Service Charge. 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, and the continuance of such Default after expiration of any notice, grace or cure periods under Applicable Laws, the Township, in addition to its other remedies, reserves the right to proceed against the Entity's Land and Improvements, in the manner provided by Applicable Laws, including the Tax Sale Law, and any act supplementary or amendatory thereof, provided that it is understood and agreed that the Township shall look solely to the estate and property of the Entity in the Project (including the rental income and insurance proceeds therefrom) for the satisfaction of the Township's remedies for the collection of a judgment or other judicial process requiring the payment of money by the Entity in the event of any Default or breach by the Entity with respect to any of the terms, covenants and conditions of this Agreement to be observed or performed by the Entity, and any other obligation of the Entity created by, under or as a result of this Agreement, and no other property or assets of the Entity, or of their partners, beneficiaries, shareholders, officers, directors, members, managers, tenants, principals, agents or attorneys (as the case may be) (in any of their capacities) shall be subject to service, levy, execution or other enforcement procedures for the satisfaction of the Township's remedies. In no event shall the Township name the Entity's partners, members, shareholder's, officers, directors, managers, beneficiaries, tenants, shareholders, principals, agents or attorneys (in any of their capacities) to any suit or other proceeding to which the Township and/or Entity are a party arising out of or relating to this Agreement.

The Township shall pursue the collection of delinquent payments of the Annual Service Charge with the same diligence it employs in the collection of the Township's general *ad valorem* real estate taxes, including the commencement of an In Rem Tax Foreclosure. 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.

SECTION XIV.5 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**").

SECTION XIV.6 Final Accounting

For purposes of rendering a final accounting, the date of Termination, the date of expiration of this Agreement, or the sale of the Project, shall be deemed to be the last day of the fiscal year of the Entity. Within ninety (90) days after such date, 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.

SECTION XIV.7 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

SECTION XV.1 Conditions Precedent

This Agreement is expressly subject to the satisfaction by the Entity or the Township of the following conditions precedent:

(a) Receipt by the Entity of all Federal, State, county and municipal approvals required for the construction of the Project; and

(b) Enactment by the Township of all ordinances and other official action necessary under N.J.S.A. 40A:20-1 et seq. to enter into and effectuate the terms of this Agreement.

SECTION XV.2 Conflict

The Parties agree that in the event of a conflict between the Exemption Application and this Financial Agreement, the language in this Agreement shall govern and prevail.

SECTION XV.3 Oral Representations

There have been no oral representations made by either of the Parties which are not contained in this Agreement.

SECTION XV.4 Entire Document

All conditions in the Ordinance are incorporated in this Agreement and made a part hereof. This Agreement, with all attachments and exhibits, the Ordinance and the Exemption Application constitute the entire agreement between the Parties as to the subject matter thereof and hereof.

SECTION XV.5 Good Faith

In their dealings with each other, the Parties agree that they shall act in good faith.

SECTION XV.6 Recording

Upon the execution and delivery of this Agreement, the entire Agreement, including the Ordinance, shall be filed and recorded with the office of the Essex County Register by the Entity, at the Entity's expense, such that this Agreement and the Ordinance shall be reflected upon the land records of the County as a perfected statutory municipal lien upon and a covenant running with the Property.

SECTION XV.7 Municipal Services

The Entity shall make payments for municipal services, including, without limitation, water and sewer charges and any services that create a lien on a parity with or superior to the lien for the Land Taxes, if applicable, and the Annual Service Charge, as required by law. These charges are not included in the Annual Service Charge and shall be billed separately. Nothing herein is intended to release the Entity from its obligation to make such payments.

SECTION XV.8 Waste and Refuse Disposal

The Entity shall comply with the Township Mandatory Recycling Ordinance to ensure that used corrugated cardboard, glass bottles and jars, food and beverage cans, newspapers and magazines and other recyclables deemed mandatory by the Township are separated from waste and refuse emanating from the Project for the purpose of recycling.

SECTION XV.9 Force Majeure

Neither Party shall be liable to the other for failure to perform its obligations under this Agreement due to fire, flood, strikes, or other industrial disturbances, accidents, war, riot, insurrection, or other causes beyond the reasonable control of the Parties that have a material impact upon such Party's ability to perform its obligations hereunder.

SECTION XV.10 Arbitration

In the event of a dispute arising between the Parties in reference to the terms and provisions as set forth herein, then the Parties shall submit the dispute to the American Arbitration Association in the State, to be determined in accordance with its rules and regulations in such a fashion to accomplish the purposes of the Exemption Law and this Financial Agreement. The award rendered by the arbitrator(s) shall be final, and judgment may be entered upon it in accordance with Applicable Law in any court having jurisdiction. The costs of arbitration shall be borne equally by the Parties involved in the

arbitration. Notwithstanding anything herein to the contrary, no arbitrator shall have any power or authority to amend, alter, or modify any part of this Agreement, in any way.

SECTION XV.11 Amendments

This Agreement may not be amended, changed, modified, altered or terminated, other than as may be set forth herein, without the written consent of the Parties hereto and as provided by Applicable Law.

SECTION XV.12 Certification

The Township Clerk shall certify to the Tax Assessor that a Financial Agreement for the development of the Property has been entered into and is in effect as required by *N.J.S.A. 40A:20-1 et seq.* Delivery by the Township Clerk to the Tax Assessor of a certified copy of the Ordinance adopted by the Township Council approving the tax exemption described herein and this Agreement shall constitute the required certification. Upon certification as required hereunder, the Tax Assessor shall implement the exemption and continue to enforce that exemption without further certification by the Township Clerk until the expiration of the entitlement to exemption by the terms of this Agreement or until the Tax Assessor has been duly notified by the Township Clerk that the exemption has been terminated.

Further, upon the execution of this Agreement, a certified copy of the Ordinance and this Agreement shall forthwith be transmitted to the Director of the Division of Local Government Services, New Jersey Department of Community Affairs, by the Township Clerk.

SECTION XV.13 Severability

If any terms or provision of this Agreement or the Exemption Application thereof shall to any extent be held to be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to circumstances other than those to which it is invalid or unenforceable, shall not be affected thereby, and each other term and provision of this Agreement shall be valid and shall be enforced to the extent permitted by Applicable Laws. Further, provided that a Default has not been declared under this Agreement, the Parties shall cooperate to take the actions reasonably required to restore the Agreement in a manner contemplated by the Parties, including, but not limited to, the authorization and amendment of this Agreement in a form reasonably drafted to effectuate the original intent of the Parties. Notwithstanding the foregoing, if the long term tax exemption is declared invalid or unenforceable or if the benefit thereof is materially and adversely affected by judicial action, this Agreement shall be deemed null and void.

SECTION XV.14 Estoppel Certificate

Within thirty (30) days following written request therefor by the Entity, or any mortgagee, purchaser, tenant or other party having an interest in the Project, the Township shall issue a signed estoppel certificate in reasonable form stating: (i) that this Financial Agreement is in full force and effect; (ii) that to the best of the Township's knowledge, no Default has occurred under this Financial Agreement (nor any event which, with the

passage of time and the giving of notice would result in the occurrence of a Default), or stating the nature of any Default; and (iii) any such other reasonable information as may be requested. In the event the estoppel certificate discloses a Default, it shall also state the manner in which such Default may be cured.

SECTION XV.15

Counterparts; Electronic Signatures

This Agreement may be executed in counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument. Electronic or facsimile signatures shall constitute original signature for all purposes under this Agreement.

EXHIBITS AND SCHEDULES

The following Exhibits are attached hereto and incorporated herein:

- A. APPLICATION WITH EXHIBITS
- B. ORDINANCE
- C. APPROVED SITE PLAN
- D. CERTIFICATE OF FORMATION
- E. FORM OF FIRST SOURCE AGREEMENT

[SIGNATURE PAGE FOLLOWS]

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

Attest:

TOWNSHIP OF IRVINGTON

By: _____

By:

Name: Harold E. Wiener

Title: Municipal Clerk

Name: Tony Vauss

Title: Mayor

ACKNOWLEDGMENT

STATE OF NEW JERSEY :
: ss

COUNTY OF ESSEX:

The foregoing instrument was acknowledged before me this ____ day of _____, 2018, by the **Township of Irvington**, a municipal corporation of the County of Essex and State of New Jersey, by **Tony Vauss**, its Mayor, on behalf of the Township.

Notary Public

Commission Expiration: _____

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

FAYEN 4 URBAN RENEWAL,
LLC,
a New Jersey limited liability
company

Witness:

By: _____

By:

Name:

Name:

Title:

Title:

ACKNOWLEDGMENT

STATE OF NEW JERSEY :
: ss
COUNTY OF ESSEX:

BE IT REMEMBERED, that on this _____ day of _____, 2018, before me, the subscriber, a Notary Public or Attorney at Law of New Jersey, personally appeared _____, who being by me duly sworn on his oath, deposes and makes proof to my satisfaction that he is the designated authorized signatory of **Fayen 4 Urban Renewal, LLC**, the entity named in the within Instrument; that the execution, as well as the making of this Instrument, have been duly authorized by the entity and said Instrument was signed and delivered by said designated authorized signatory as and for the voluntary act and deed of said entity.

Notary or Attorney at Law
The State of New Jersey

EXHIBIT A

Exemption Application

EXHIBIT B

Ordinance

EXHIBIT C

Approved Site Plan

EXHIBIT D

Certificate of Formation

EXHIBIT E

Form of First Source Agreement

**TOWNSHIP OF IRVINGTON
DEPARTMENT OF ECONOMIC DEVELOPMENT AND GRANTS OVERSIGHT
FIRST SOURCE EMPLOYMENT LINKAGE PROGRAM AGREEMENT**

This First Source Employment Linkage Program Agreement (“Agreement”) is made and entered into by and between the TOWNSHIP OF IRVINGTON, New Jersey (“Township”) and FAYEN 4 URBAN RENEWAL, LLC, (“Employer”) on this _____ day of _____, 2018.

WITNESSETH:

WHEREAS, on _____, 2018, by Ordinance No. MC ____, the Township authorized the execution of a Financial Agreement by and between Employer and the Township (the “Financial Agreement”); and

WHEREAS, Employer intends to undertake the design, development, financing and construction of a seventy thousand (70,000) square foot warehouse and associated site improvements, (the "Project") in accordance with the terms of the Financial Agreement; and

WHEREAS, under the terms of the Financial Agreement, the Employer shall receive a tax exemption for the Project which reduces the cumulative amount of taxes otherwise due by \$100,000 or more; and

WHEREAS, in accordance with the terms of the Financial Agreement, Employer covenants to comply with the requirements of the Township’s First Source Employment Linkage Program (“FSELP”) as codified in the Townships’ Municipal Code and as provided in this Agreement (the “First Source Obligation”); and

WHEREAS, in accordance with Article V of the Financial Agreement, the Employer shall (i) make Good Faith Efforts, as such term is defined herein, to employ and shall provide in its contracts with its contractors and subcontractors that they must make Good Faith Efforts to employ qualified residents of the Township in the construction and operation of the Project, (ii) participate in Township job fairs and utilize of its central registry (iii) meet with appropriate Township officials to determine the status of recruitment and training efforts and to plan future employment training and recruitment activities and (iv) submit semi-annual reports to the Township regarding compliance; and

WHEREAS, in accordance with the FSELP, the Employer and the Township (collectively, the “Parties”) have determined to enter into this Agreement, which specifies the rights and responsibilities of the Township and the Employer with respect to the First Source Obligation,

NOW, THEREFORE, in consideration of the promises and mutual covenants herein contained the Parties hereto covenant and agree, each with the other, as follows.

I. GENERAL TERMS

A. Good Faith Effort Defined

Good Faith Effort shall be indicated by compliance with the following:

1. *Anticipated Opportunities.* The Employer or its designee shall, prior to the execution of this Agreement, provide the Director with a list of anticipated employment opportunities to be provided by the construction and operation of the Project. The list shall include, but is not limited to:
 - The number of anticipated employment opportunities;
 - The job title and description of each anticipated employment opportunity; and
 - The basic qualifications necessary for each anticipated employment opportunity
2. *Pre-Hiring Notification and Exclusivity Period.* At least fifteen (15) days prior to advertising for any employees outside of the FSELP (the "Exclusivity Period"), the Employer shall submit to the DEDGO a written pre-hiring notice of the qualifications of the prospective employees needed for any long term job, as well as a description of the job to be filled. This description shall include work hours, wage scale, benefits, and hiring schedule of the positions. This will enable the DEDGO to refer qualified applicants to the Employer. During this period, the Employer shall adhere to the above requirements of the Exclusivity Period. If any of the information submitted to prospective employees of the description of the job to be filled is modified, the Employer shall notify the DEDGO when such positions become available so that the DEDGO may notify the community that such opportunity exists. Further, the Employer shall interview any applicants referred to it by the DEDGO and shall provide proof of: the interview, the hiring determination, and the reason for the hiring determination in the semi-annual Compliance Report.
3. *Mandatory Bargaining Agreement.* All contracts entered into by the Employer or the Employer's contractors or subcontractors shall be required to comply with the provisions of this Agreement. The Employer will require the contractor or subcontractor to complete and provide the Director with a statement that it will so comply, and the Employer covenants to

enforce its contracts with its contractors and subcontractors if such parties are not in compliance.

4. *Collective Bargaining Agreement.* The Employer will cause its contractors and subcontractors to submit to the DEDGO copies of any collective bargaining agreements covering workers to be employed during the construction or operation of the Project;
5. *Reporting Requirements.* The Employer will submit a written semiannual employment report to the DEDGO in the form to be provided by the Director of the DEDGO (the “Compliance Report”).

Please note that Employer shall provide the necessary documentation of its Good Faith Efforts

B. Terms and Conditions

In accordance with Section 5.02 of the Financial Agreement, the Employer agrees to the following requirements pursuant to this First Source Agreement:

1. The first source for identifying employees to fill all positions created by the eligible Project will be the FSELP. Employer agrees to make a Good Faith Effort to fill positions through referrals from the Township of Irvington Department of Economic Development and Grants Oversight (“DEDGO”) or its partner organizations.
2. The Employer will make a Good Faith Effort to hire qualified Township residents to fill 30% of the jobs created by the construction and operation of the Project.
3. The Employer, or its designee, shall, prior to the execution of this Agreement, provide the Director of the Department of Economic Development and Grants Oversight (“DEDGO”) with a list of anticipated employment opportunities to be created by the construction and operation of the Project.
4. Employer must notify the DEDGO of new jobs created for new employees for the Project, within at least seven (7) business days (Monday – Friday) upon employer’s identification of the specific need. Notice of New Job Creation shall include, at a minimum, the number of employees needed by job title, qualifications, hiring date, rate of pay, hours of work, duration of employment, and a description of the work to be performed.
5. Employers must also submit written notice to the DEDGO of any job opening created as a result of internal promotions, terminations, or expansion within the current workforce for placement and referral by the DEDGO.

6. The Employer shall interview any applicants referred to it by the DEDGO and shall provide proof of: the interview, the hiring determination, and the reason for the hiring determination in the Compliance Report.
7. All contracts entered into by the Employer or the Employer's contractor or subcontractor for the construction and operation of the Project shall be required to comply with the provisions of this Agreement and the requirements of the FSELP. Employer covenants to enforce its contracts with its contractors and subcontractors if such parties are not in compliance and shall require all contractors or subcontractors to provide the DEDGO with a written statement that it will so comply. Notwithstanding the foregoing, Employer shall retain the primary responsibility for meeting the requirements imposed under this Agreement.
8. Employer agrees to offer all first employment opportunities to Qualified Residents for employment consideration, subject to any enforceable collective bargaining agreements. .
9. Employer shall cause its contractors and subcontractors to submit to the DEDGO copies of any collective bargaining agreements covering workers to be employed during the construction or operation of the Project.
10. Employer shall utilize nondiscriminatory screening criteria and shall have the sole discretion to interview and hire individuals referred or certified by the DEDGO as a qualified individual.
11. Employer agrees to only advertise any position that qualifies under this agreement to the DEDGO and its list of qualified individuals for not less than 15 days upon notification to the DEDGO of the existence of the position. The Employer also agrees that a longer period may be required by the DEDGO. During this period, the Employer may only publicize the availability of positions in accordance with this Agreement.
12. In accordance with Section 8.01 of the Financial Agreement, the transfer or assignment of the Project or Financial Agreement shall require the transferee to agree, in writing, to assume the obligations of this Agreement and to abide by all of its terms and conditions.
13. Nothing in this Agreement shall be interpreted to prohibit the continuation of any existing workforce training agreements.
14. The Employer also agrees that additional terms and requirements may be detailed in the applications and forms to be completed by the Employer with the DEDGO. [ATTACHED AS EXHIBIT]

C. Anticipated Employment Opportunities

Upon execution of this Agreement, the Employer shall provide a list of anticipated employment opportunities that the Employer, its contractor and subcontractors estimate will be created by the construction and operation of the Project. This list shall include:

1. The number of anticipated employment opportunities throughout the terms of the Contract;
2. The job title and description of each anticipated employment opportunity;
3. The basic qualifications necessary for each anticipated employment opportunity;
4. Projected employment needs for work performed under this contract.
5. Describe such needs by job Classification, weekly hour required, wages paid, and duration of employment.
6. Timely notification of Entry Level Positions as they become available.
7. Identification of English Language proficiency requirements or absence thereof; and;
8. Notification of projected hiring schedule and procedures for each job classification, including the time and place hiring for each entry level position.

D. Report and Record Keeping Obligations of the Employer

Employer must submit bi-annual reports in the standard reporting form distributed by the DEDGO (Compliance Reports”). The DEDGO may require more frequent submittals depending on the scope and complexity of the Project, or as requested by the Township Administration or Municipal Council. The Compliance Report shall include each employee’s name, last four digits of the social security number, job title, hire date, residence, and referral source.

Employer shall provide the following bi-annual cumulative statistics on the Compliance Reporting Form:

1. Number of new job openings created/available;
2. Number of new job openings listed with DEDGO;
3. Number of Irvington residents hired for new jobs;
4. Number of employees transferred to the Project;
5. Number of Irvington residents transferred to the Project;
6. Direct or indirect labor cost associated with the Project;;
7. Number of apprenticeship hours worked;
8. Number of apprenticeship hours worked by Irvington residents; and,
9. Workforce statistics throughout the term of the Financial Agreement.

Employers are required to maintain records as follows:

1. Maintain accurate records demonstrating the Employer's compliance with the FSELP requirements. Copies and addendums to this agreement, all forms, applications, employment records and correspondence covered under this agreement shall be maintained by the Employer.
2. If based on complaint, failure to report, or other reasonable cause, the DEDGO has reason to question Employer's Good Faith Effort; Employer may be required to demonstrate to the reasonable satisfaction of the Township that it has exercised Good Faith in its First Source hiring under this Agreement.
3. Documentation supporting Employers Good Faith Efforts to comply with the requirements of this Agreement.

E. Monitoring

The DEDGO shall monitor compliance with the provisions of this Agreement as authorized by the First Source Employment Linkage Program.

As part of monitoring and enforcement, the DEDGO may require the Employer, its Contractor and Subcontractor to grant admission to the Project site, access to employees, and review of employee records and documents.

The Employer also agrees that based on the scope of the Project, the DEDGO may require scheduled periodic meetings as part of its monitoring responsibilities.

The monitoring methods to determine First Source compliance are as follows:

1. Physical visit to the Project site to verify the accuracy of the information set forth in the Compliance Reports.
2. Review of certified payroll and personnel records to verify the accuracy of the information set forth in the Compliance Reports.
3. Conduct desk reviews of workforce statistics provided in Compliance Reports
4. Complete statistical reports that identify the overall Project, contractor, and subcontractor's percentage of hired Irvington residents and Irvington residents transferred to the Project.
5. Provide formal notification of non-compliance with the Good Faith Effort requirements, or an alleged breach of the First Source Agreement to Employer, Administration and Municipal Council.
6. Employer may be granted thirty (30) days to correct any alleged deficiencies stated in the non-compliance notification.

F. Placement

The Employer shall make all decisions on hiring new employees. Nothing contained herein shall be construed to require the Employer or agency, management agent or independent contractor engaged by the Employer to hire any individual candidate referred by the DEDGO. Nothing in this Agreement precludes Employer from using temporary or reassigned existing employees to perform essential functions of its operations, provided however; they fulfil their obligations under this Agreement to make Good Faith Efforts to fill such vacancies permanently with referrals from the DEDGO. For these purposes, “essential functions” means those functions absolutely necessary to remain open for business.

II. ENFORCEMENT/PENALTIES

A. Enforcement

Upon a determination by the DEDGO that an Employer has failed to comply with terms of this Agreement, the DEDGO may recommend the following penalties to the Township based on the severity of the non-compliance:

1. The termination of the Financial Agreement;
2. The denial of applications for any future economic benefit for a fixed period of time; or
3. That penalties be assessed as detailed below.

B. Penalties

If the Employer fails to comply with the Good Faith Effort requirements of this Agreement, the Township shall be entitled to liquidated damages in the amount of \$5,000.00 for every worker hired where the Employer failed to make such Good Faith Effort.

III. WAIVERS

The DEDGO may waive a First Source Obligation, for a Project, a time period, or a specific position, as applicable, if the Employer can successfully demonstrate either: (A) a minimum of thirty percent (30%) of the Employer’s workforce consists of Township residents throughout the duration of the Financial Agreement; or (B) a Good Faith Effort and any one of the following:

1. The Employer certifies and provides appropriate independent supporting documentation to demonstrate that the Employer is located significantly outside the Irvington area and none of the positions created as a result of the construction and operation of the Project will be available either within the Township, or in a surrounding area that is easily accessible by public transportation; or
2. The Employer certifies and provides appropriate independent supporting documentation to demonstrate that the available position created as a result of the construction and operation of the Project requires a unique set of skills, expertise, education

and/or license, making it necessary to consider candidates outside of the Township to identify qualified candidate; or

3. The Employer certifies and provides appropriate independent supporting documentation to demonstrate that there are insufficient numbers of Irvington residents in the labor market possessing the skills required by the Employer for the positions created as a result of the construction and operation of the Project.

IV. CONTROLLING REGULATIONS AND LAW

- A. If this agreement conflicts with any federal, New Jersey State or local laws or regulations the law or regulations shall prevail. If this agreement conflicts with any collective bargaining agreement or pre-existing written personnel policy, the collective bargaining agreement or pre-existing written personnel policy shall prevail. To the extent possible under such laws, regulations collective bargaining agreements or personnel policies, the Employer agrees to follow the procedures outlined in this Agreement.
- B. The Employer will not discriminate against an applicant for employment because of race, religion, age, handicap, color, sex, sexual orientation, national origin, ethnicity, citizenship or political affiliation.
- C. The Employer shall incorporate the provisions of this First Source Agreement in all contracts, agreements and purchase orders for labor with any service, maintenance, security management agent, agency or independent contractor engaged by the Employer whose personnel will be assigned to the Employer's Project and shall obligate such person or entity to comply with the First Source Obligations as described herein.

V. ASSIGNMENT MODIFICATION AND TERMINATION

- A. Employer agrees that this Agreement is binding on its successors and/or assigns until the termination or expiration of the Financial Agreement.
- B. The Township and the Employer may mutually agree in writing to modify this Agreement to improve the working relationship described herein.
- C. The Township shall be entitled to any damages set forth in the First Source Employment Linkage Program Ordinance, as the same may be amended from time to time, for any default by the Employer.

The balance of this page intentionally left blank; signatures appear on next page

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of the day and year first above written.

TOWNSHIP OF IRVINGTON

ATTEST:

By: _____
Name: Harold E. Wiener
Title: Municipal Clerk

By: _____
Name: Tony Vauss
Title: Mayor

WITNESS:

**FAYEN 4 URBAN RENEWAL, LLC,
a New Jersey limited liability company**

By: _____

Name:
Title:

By:

Name:
Title:

APPROVED AS TO FORM:

Director of Department of Economic
Development and Grants Oversight

The public hearing on this ordinance is now open

There were no requests to be heard.

Jones – Lyons

Motion to close public hearing

Adopted
Absent: Cox, Inman

Jones - Lyons

Motion to adopt this ordinance on second reading after public
hearing

Adopted
Absent: Cox, Inman

2. President Lyons: An ordinance establishing a CAP Bank for Calendar Year 2018 Municipal Budget will be heard at this time. For the record this notice is identical to the first notice of hearing that was read. The Clerk will read the ordinance by title.

TOWNSHIP OF IRVINGTON
CALENDAR FISCAL YEAR 2018
MODEL ORDINANCE TO EXCEED THE MUNICIPAL BUDGET APPROPRIATION
LIMITS AND TO ESTABLISH A CAP BANK
(N.J.S.A. 40A: 4-45.14)

WHEREAS, the Local Government Cap Law, N.J.S. 40A: 4-45.1 et seq., provides that in the preparation of its annual budget, a municipality shall limit any increase in said budget up to 2.5% unless authorized by ordinance to increase it to 3.5% over the previous year's final appropriations, subject to certain exceptions; and,

WHEREAS, N.J.S.A. 40A: 4-45.15a provides that a municipality may, when authorized by ordinance, appropriate the difference between the amount of its actual final appropriation and the 3.5% percentage rate as an exception to its final appropriations in either of the next two succeeding years; and,

WHEREAS, the Municipal Council of the Township of Irvington in the County of Essex finds it advisable and necessary to increase its SFY 2018 budget by up to 3.5% over the previous year's final appropriations, in the interest of promoting the health, safety and welfare of the citizens; and,

WHEREAS, the Municipal Council hereby determines that a 3.5 % increase in the budget for said year, amounting to \$2,820,907.00 in excess of the increase in final appropriations otherwise permitted by the Local Government Cap Law, is advisable and necessary; and,

WHEREAS the Municipal Council hereby determines that any amount authorized hereinabove that is not appropriated as part of the final budget shall be retained as an exception to final appropriation in either of the next two succeeding years.

NOW THEREFORE BE IT ORDAINED, by the Municipal Council of the Township of Irvington, in the County of Essex, a majority of the full authorized membership of this governing body affirmatively concurring, that, in the CY 2018 budget year, the final appropriations of the Township of Irvington shall, in accordance with this ordinance and N.J.S.A. 40A: 4-45.14, be increased by 3.5 %, amounting to \$ 2,820,907.00, and that the CY 2018 municipal budget for the Township of Irvington be approved and adopted in accordance with this ordinance; and,

BE IT FURTHER ORDAINED, that any that any amount authorized hereinabove that is not appropriated as part of the final budget shall be retained as an exception to final appropriation in either of the next two succeeding years; and,

BE IT FURTHER ORDAINED, that a certified copy of this ordinance as introduced be filed with the Director of the Division of Local Government Services within 5 days of introduction; and,

BE IT FURTHER ORDAINED, that a certified copy of this ordinance upon adoption, with the recorded vote included thereon, be filed with said Director within 5 days after such adoption.

The public hearing on this ordinance is now open

There were no requests to be heard.

Cox - Burgess

Motion to close public hearing

Absent: Cox, Inman

Adopted

Cox - Burgess

Motion to adopt this ordinance on second reading after public hearing

Adopted

Absent: Cox, Inman

13. Adjournment

ALCOHOLIC BEVERAGE CONTROL BOARD

JULY 10, 2018

1. Acting Chairman Lyons called the Meeting to Order

Roll Call

Present: Commissioners Burgess, Frederic, Dr. Hudley, Jones, Lyons

Absent: Commissioner Inman, Chairman Cox

2. New Business

Lyons – Jones A. Authorize Renewal of ABC Consumption License for the 2018-2019 Licensing Year - Antojito's Restaurant, Inc., 1240 Springfield Avenue, t/a Antojito's Restaurant

WHEREAS, the following named individuals, partnerships or corporations, being applicants for Plenary Retail Consumption Licenses for the year 2018-2019 to sell alcoholic beverages under the provisions of N.J.S.A. Title 33 having been investigated as required by said Law, and the Alcoholic Beverage Control Board being satisfied that said applicants in all things have met the requirements of the law and are suitable and proper individuals, partnerships or corporations to whom Plenary Retail Consumption Licenses for the sale of alcoholic beverages should be issued:

NOW THEREFORE BE IT RESOLVED BY THE MUNICIPAL COUNCIL ACTING AS THE ALCOHOLIC BEVERAGE CONTROL BOARD OF THE TOWNSHIP OF IRVINGTON that permanent Plenary Retail Consumption Licenses be issued to the following named individuals, partnerships and corporations for the sale of alcoholic beverages by the glass or other open receptacles to be consumed on the licensed premises and also for the sale of alcoholic beverages in original containers for consumption off the licensed premises for the year 2018-2019 at the address set opposite their respective name, viz:

0709-33-017-006 Antojito's Restaurant, Inc.
t/a Antojito's Restaurant

1240 Springfield Avenue

BE IT FURTHER RESOLVED that the said licenses be issued in the name of and under the seal of the Township of Irvington and be signed by a representative of the License Bureau, in order to fulfill the provisions of the Irvington Township Code, known as Ordinance MC 2622, which license, after being so signed, shall be released by the License Bureau to the licensee.

Adopted

Absent: Cox, Inman

12. Miscellaneous

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

There were no requests to be heard.

13. Adjournment

There being no further business, the meeting was adjourned at 8:12 P.M.

David Lyons, Council President

Harold E. Wiener, Municipal Clerk