

REGULAR COUNCIL MEETING
MARCH 28, 2022

Virtual Zoom Meeting
Irvington, N.J. – Monday Evening
March 28, 2022 - 7:30 P.M.

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

Present: Jamillah Z. Beasley (arrived at 7:36 P.M.), Vernal Cox, Sean C. Evans, Charnette Frederic, October Hudley, Orlander G. Vick, Renee C. Burgess, President

Absent: None

President Burgess 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. St. Hubert's Animal Welfare Center Monthly Report - February, 2022
2. Municipal Court Collections Project As Of January, 2022
3. Municipal Court Collections Project As Of February, 2022
4. Municipal Court – Mayor’s Monthly Report For January, 2022
5. Municipal Court – Mayor’s Monthly Report For February, 2022
6. Municipal Court Weekly Summary Report For The Week Of March 7, 2022 To March 11, 2022
7. Joint Meeting – Minutes – January 20, 2022
8. Municipal Court Weekly Summary Report For The Week Of March 14, 2022 To March 18, 2022
9. Joint Meeting – Second Quarter Assessment

7. Reports of Committees

- A. Bid Results – Snow Plowing and Removal – March 16, 2022

ALL ITEMS LISTED ON THE CONSENT AGENDA ARE CONSIDERED ROUTINE BY THE MUNICIPAL COUNCIL AND HAVE BEEN LISTED FOR ONE ROLL CALL VOTE FOR ADOPTION OF ALL ITEMS

8. Ordinances, Bills & Claims

A. Ordinances on First Reading

None

C. Bills & Claims

Burgess – Frederic

1. Bill Lists

RESOLVED THAT THE BILLS AND CLAIMS AGAINST THE TOWNSHIP OF IRVINGTON FOR A PERIOD MARCH 28, 2022 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

CALENDAR YEAR 2022	\$3,462,058.67
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Adopted

Frederic – Burgess

2. Payrolls

March 11, 2022

REGULAR	OVERTIME	OTHER	TOTAL
\$1,658,577.44	\$234,861.51	\$89,189.05	\$1,982,628.00

Adopted

9. Resolutions and Motions

A. Resolutions

Frederic – Hudley

1. Ratify Mayor's Nomination of Tyrone A. Young as Tax Collector For A Four Year Term Effective March 8, 2021

RESOLUTION CONFIRMING AND RATIFYING THE APPOINTMENT OF TYRONE A. YOUNG, CERTIFIED TAX COLLECTOR, AS MUNICIPAL TAX COLLECTOR

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WHEREAS, the Mayor has nominated Tyrone A. Young to the position of Municipal Tax Collector, effective on March 8, 2021, for a four (4) year term in accordance with N.J.S.A. 40A:9-141 and N.J.S.A. 40A:9-142; and

WHEREAS, Tyrone A. Young is a Certified Tax Collector; and

WHEREAS, the Municipal Council is desirous of confirming and ratifying said appointment of Tyrone A. Young, Certified Tax Collector, as Municipal Tax Collector for a four year term, effective March 8, 2021:

NOW, THEREFORE, BE IT RESOLVED BY THE MUNICIPAL COUNCIL OF THE TOWNSHIP OF IRVINGTON as follows:

1. The Mayor's nomination of Tyrone A. Young, Certified Tax Collector, as Municipal Tax Collector for a four year term, effective March 8, 2021, is hereby confirmed and ratified.

Adopted

Evans – Burgess

2. Authorize Reimbursement Of \$1,257.00 In Out Of Pocket Emergency Expenses For The Completion Of Various Township Project For Calendar Year 2020 – 2021- John Sowell

RESOLUTION TO REIMBURSE MUNICIPAL EMPLOYEE \$1257.00 FOR PAYMENT OF EMERGENCY EXPENSES FOR VARIOUS TOWNSHIP PRJOECTS

WHEREAS, all purchases of goods and services must be procured using a purchase order; and

WHEREAS, N.J.S.A 40A:5A-1 et eq, requires that all purchases of goods and services must be encumbered prior to the issuance of said service; and

WHEREAS, N.J.S.A. 40A:11-5(5)(a)(i) requires that all purchases must be procured in a fair, open and competitive manner; and

WHEREAS, N.J.S.A. 54A:7-1.2. requires all vendors that are paid with taxpayers funds are required to have a New Jersey Business Registration Certificate and W-9 form on file with the Municipality for tax and audit purposes; and

WHEREAS, John Sowell, Director of Neighborhood Preservation Program has incurred \$1257.00 in out of pocket emergency expenses for the completion of various Township Project for calendar year 2020 - 2021; and

WHEREAS, John Sowell has submitted a request to be reimbursed for this service, which he paid with a credit card/check for an amount of \$1257.00; and

NOW, THEREFORE, BE IT RESOLVED BY THE MUNICIPAL COUNCIL OF THE TOWNSHIP OF IRVINGTON authorize the Qualified Purchasing Agent to reimburse, John Sowell the total sum of \$1257.00 for various items for calendar year 2020 - 2021; and

BE IT RESOLVED that the required certification of availability of funds C22-0042 in the amount of \$1257.00 from account number 2-01-22-200-201-299 has been obtained from the Chief Financial Officer.

Adopted

Frederic – Hudley

3. Authorize Purchase Document Management Program Proprietary Software

For The Public Safety Department – Power DMS Incorporated - \$17,903.52

**RESOLUTION TO PURCHASE PROPRIETARY SOFTWARE TECHNOLOGY FOR
THE PUBLIC SAFETY DEPARTMENT**

WHEREAS, the Public Safety Department is required to use a document management program to distribute administration polices, general orders, memos and other vital documents to all members; and

WHEREAS, the technology and maintenance are proprietary software for Power DMS Incorporated; and

WHEREAS, the total cost of this software 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 software 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 Power DMS, INC for the total sum of \$17,903.52

NOW, THEREFORE, BE IT RESOLVED BY THE MUNICIPAL COUNCIL OF THE TOWNSHIP OF IRVINGTON hereby authorizes a service contract to for Power DMS Incorporated, 101 South Garland Ave, Suite 300, Orlando, FL 32801 under provisions of NJSA 40:11-5dd to purchase proprietary software for the total sum of \$17,903.52; 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 C22-0045 in the amount of \$8,159.22 charged to budget account number 1-01-25-240-240-262 and C22-0047 charged to account number 2-01-25-265-265-299 has been obtained from the Chief Financial Officer.

Adopted

Cox – Frederic 4. Authorizing Purchases Over The Pay To Play Threshold Of \$17,500.00
But Under The Bid Threshold Of \$44,000.00 For Training For The Fire
Department - All Hands Fire Equipment

**AUTHORIZING PURCHASES OVER THE PAY TO PLAY THRESHOLD OF \$17,500.00 BUT
UNDER THE BID THRESHOLD OF \$44,000.00 FOR TRAINING FOR THE FIRE DEPARTMENT**

WHEREAS, the Fire Department needs to train Firefighters and the total purchase will exceed the pay to play threshold; and

WHEREAS, the Township has obtained three quotes from All hands Fire Equipment & Training, East Coast Rescue Solutions and Capital Technical Rescue and Safety Consultants LLC herein attached; and

WHEREAS, All hands Fire Equipment and Training has provided the lowest quote for this service; and

WHEREAS, in compliance with 19:44a-20.13 et, seq., All Hands Fire Equipment will exceed the Pay-to-Play threshold of \$17,500.00 for calendar year 2022; and,

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WHEREAS, All Fire Equipment and Training has completed and submitted the Township C-271, elect reports and political disclosure forms. These forms are on file in the Division of Purchasing

WHEREAS, all purchases to the above vendor will not exceed the bid threshold of \$44,000.00; and

NOW, THEREFORE, BE IT RESOLVED, that the Municipal Council of the Township of Irvington hereby authorizes the Qualified Purchasing Agent to pay All Fire Equipment and Training for training service in excess of pay to play threshold \$17,500.00 but under the bid threshold of \$44,000.00; and

BE IT FURTHER RESOLVED that the duration of this authorization shall be until December 31, 2022

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.

BE IT RESOLVED, that the required certification of availability of funds C22-0046 in the amount of \$30,000.00 from account number G-02-xx-805-20A-299 has been obtained from the Chief Financial Officer and the remaining balance of \$10,000.00 will be paid on purchase order number 22-00902.

Adopted

Burgess – Hudley 5. Authorize Issuance Of Duplicate Certificate Of Sale – 285 Columbia Avenue, Block 72 Lot 26

RESOLUTION TO ISSUE DUPLICATE CERTIFICATE OF SALE

WHEREAS, the Tax Collector of this municipality has previously issued a tax sale certificate to TLOA OF NJ LLC, which is dated December 27, 2018, covering premises commonly known and referred to as Block 72 Lot 26 as set out on the municipal tax map then in use which certificate bears number 18-00328 and;

WHEREAS, the purchaser of the aforesaid tax sale certificate has indicated to the tax collector that they have lost or otherwise misplaced the original tax sale certificate and have duly filed the appropriate Affidavit of Loss with the Tax Collector, a copy of which is attached hereto;

NOW, THEREFORE, BE IT RESOLVED BY THE MUNICIPAL COUNCIL OF THE TOWNSHIP OF IRVINGTON that the Tax Collector of the Township of Irvington be and is hereby authorized, upon receipt of the appropriately executed and notarized Loss Affidavit and the payment of a fee of \$100.00 per certificate to issue an appropriate duplicate tax sale certificate to the said purchaser covering the certificate lost as previously described all in accordance with the requirements of Chapter 99 of Public Laws of 1997.

BE IT FURTHER RESOLVED that a copy of this Resolution and the Loss Affidavit be attached to the duplicate certificate to be issued to said purchaser and that said duplicate certificate shall be stamped or otherwise have imprinted upon it the word “Duplicate” as required by law.

Adopted

Hudley – Evans 6. Authorize Opt In To Examination Exemption - Civil Service Hiring Procedures

**TOWNSHIP OF IRVINGTON
COUNTY OF ESSEX
STATE OF NEW JERSEY**

**RESOLUTION TO OPT IN TO EXAMINATION
EXEMPTION CIVIL SERVICE HIRING PROCEDURES**

WHEREAS, the Township of Irvington, Essex County, State of Jersey (hereinafter referred to as the “Township”) is a jurisdiction governed by Title 11a and the Civil Service regulations and rules established under Title 4A of the Administrative Code; and

WHEREAS, P.L.2021, C.7 permits municipalities to hire police officers who may not have taken an open competitive examination for the title of Police Officer, but are otherwise duly qualified, have completed training, and hold a valid NJ Police Training Commission Certificate as Police Officer (Basic Course for Police Officer); and

WHEREAS, recently adopted State legislation, Bill S-3220, approved as P.L.2021, C.7, would permit a municipality to exempt any person for an entry-level law enforcement person from taking the Civil Service law enforcement exam, as long as they have completed the full Basic Course for Police Officers training course at a school approved and authorized by the New Jersey Police Training commission; and

WHEREAS, the legislation would also require that a municipal or county police department may hire a person under this exemption only upon adoption of a conflict of interest and nepotism policy; and

WHEREAS, The Township has duly established written policies governing nepotism and conflicts of interest; and

WHEREAS, in order to effectuate this policy, a municipality must affirmatively “opt in” by adopting a Resolution authorizing such a hiring policy; and

WHEREAS, Director of Public Safety Tracy Bowers has recommended that the Township effectuate this policy and “opt in” to this program in the interests of efficiency, expediency, and the promotion of public safety within the Township; and

WHEREAS, this “opt in” provision shall remain valid until changed by a rescinding resolution of the Governing Body.

NOW, THEREFORE, BE IT RESOLVED, by the Mayor and Township Committee of the Township of Irvington for the reasons set forth above that the Township hereby authorizes such hiring policies related to the examination exemption as set forth in Bill S-3220, P.L.2021, c.7.

BE IT FURTHER RESOLVED that copy of this Resolution shall be transmitted to the New Jersey Civil Service Commission.

Adopted

Vick – Beasley

7. Authorize Handicapped Parking Spaces in front of 54 Park Place, 62 Maple Avenue, 89 Augusta Street, 127 Chestnut Avenue, 156 19th Avenue, 46 Durand Place, 18 39th Street, 473 Stuyvesant Avenue, 10 38th Street, 97 Hopkins Place, 10 Rutgers Street, 17 Wills Place, 20 Cummings Street, 23 Tremont Street, 24 Sunset Terrace, 28 Vine Avenue, 36 Grant Place, 44 Allen Street, 46 Laval Avenue, 49 Florence Avenue, 50 Adams Street,

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56 Durand Place, 61 Laventhal Avenue, 65 Quabeck Avenue, 138 Lincoln Place, 176 Park Place and 387 Isabella Avenue

WHEREAS, N.J.S.A. 39:4-197.5 provides that a Municipality may by resolution provide for restricted parking space(s) in front of residence(s) 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 special vehicle identification card has been issued pursuant to N.J.S.A. 39:4-206; and

WHEREAS, request(s) have been made for restricted parking space(s) in front of **54 Park Place, 62 Maple Avenue, 89 Augusta Street, 127 Chestnut Avenue, 156 19th Avenue, 46 Durand Place, 18 39th Street, 473 Stuyvesant Avenue, 10 38th Street, 97 Hopkins Place, 10 Rutgers Street, 17 Wills Place, 20 Cummings Street, 23 Tremont Street, 24 Sunset Terrace, 28 Vine Avenue, 36 Grant Place, 44 Allen Street, 46 Laventhal Avenue, 49 Florence Avenue, 50 Adams Street, 56 Durand Place, 61 Laventhal Avenue, 65 Quabeck Avenue, 138 Lincoln Place, 176 Park Place and 387 Isabella Avenue :**

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 special vehicle identification card has been issued pursuant to N.J.S.A. 39:4-206, be established in front of **54 Park Place, 62 Maple Avenue, 89 Augusta Street, 127 Chestnut Avenue, 156 19th Avenue, 46 Durand Place, 18 39th Street, 473 Stuyvesant Avenue, 10 38th Street, 97 Hopkins Place, 10 Rutgers Street, 17 Wills Place, 20 Cummings Street, 23 Tremont Street, 24 Sunset Terrace, 28 Vine Avenue, 36 Grant Place, 44 Allen Street, 46 Laventhal Avenue, 49 Florence Avenue, 50 Adams Street, 56 Durand Place, 61 Laventhal Avenue, 65 Quabeck Avenue, 138 Lincoln Place, 176 Park Place and 387 Isabella Avenue;** and

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

Adopted

Hudley – Vick 8. Waive 20 Day Waiting Period for Effective Date of an Ordinance Amending Chapter 620, Article 24 Entitled Safety Work Zone For Construction

WHEREAS, an ordinance entitled “AN ORDINANCE AMENDING ARTICLE XXIV OF THE REVISED CODE OF THE TOWNSHIP OF IRVINGTON ENTITLED SAFETY WORK ZONE FOR CONSTRUCTION” was duly passed on first reading by the Municipal Council on March 14, 2022 and duly adopted by the Municipal Council on second reading after public hearing on March 28, 2022; and

WHEREAS, pursuant to N.J.S.A. 40:69A-181 (a) and Section 7-32 (d) of the Revised Code of the Township of Irvington, an ordinance shall take effect twenty (20) days after final passage by the Municipal Council and approval by the Mayor; and

WHEREAS, pursuant to N.J.S.A. 40:69A-181 (b) and Section 7-32 (d) of the Revised Code of the Township of Irvington, two- thirds (2/3) of the full membership of the Municipal Council may declare an emergency, by written resolution, to reduce this twenty (20) day period:

NOW, THEREFORE, BE IT RESOLVED BY THE MUNICIPAL COUNCIL OF THE TOWNSHIP OF IRVINGTON (not less than 2/3 of the full membership thereof affirmatively concurring) that pursuant to the provisions of N.J.S.A. 40:69A-181 (b) and Section 7-32 (d) of the Revised Code of the Township of Irvington, it does hereby declare that an emergency exists that an ordinance entitled " AN ORDINANCE AMENDING

ARTICLE XXIV OF THE REVISED CODE OF THE TOWNSHIP OF IRVINGTON ENTITLED SAFETY WORK ZONE FOR CONSTRUCTION” shall become effective immediately upon its approval by the Mayor.

Adopted

10. Communication and Petitions

A. Communications

None

11. Pending Business

None

NON-CONSENT AGENDA ITEMS

8. Ordinances, Bills & Claims (Continued)

B. Ordinances on Second Reading

1. President Burgess: An ordinance amending Chapter 620, Article 24 of the Revised Code entitled Safety Work Zone For Construction will be heard at this time. The Clerk will read the notice of hearing.

The Clerk read the notice of hearing.

The Clerk will read the ordinance by title.

AN ORDINANCE AMENDING ARTICLE XXIV OF THE REVISED CODE OF THE TOWNSHIP OF IRVINGTON ENTITLED SAFETY WORK ZONE FOR CONSTRUCTION

BE IT ORDAINED BY THE MUNICIPL COUNCIL AS FOLLOWS:

**Article XXIV
Safety Work Zone for Construction**

§ 620-133 Adoption of the Manual on Uniform Traffic Control Devices for Streets and Highways.

- A. The Council hereby finds and declares that problems of traffic control occur when traffic must be moved through or around street construction, maintenance operations and utility work, above and below ground, which requires blocking the roadway and obstructing the normal flow of traffic; also that such obstructions are or can become dangerous when not properly controlled. In order to better promote the public health, safety, peace and welfare, it is necessary to establish controls and regulations directed to the safety and expeditious movement of traffic through construction and maintenance zones and to provide safety for the work force performing these operations.
- B. The Township of Irvington in the County of Essex in the State of New Jersey does hereby adopt the current Manual on Uniform Traffic Control Devices, hereafter known as the "MUTCD," except as

hereby supplemented and amended, as it controls and regulates whenever construction maintenance operation utility work obstructs the normal flow of traffic. Any person, contractor or utility that fails to comply with the provisions of the MUTCD while performing such work is in violation of this article.

§ 620-134 Preconstruction meetings.

It shall be the responsibility of the person, contractor, or in the case of public utility, as required under the public utility agreement, wishing to conduct work on, under or above the roadway to contact the Irvington Public Safety Department in order to arrange a preconstruction meeting at least three business days in advance of any construction in order to submit plans for the safe movement of traffic and pedestrians during such period of construction work. Any person, contractor or utility who fails to comply with this section three business days prior to the start of such work or whose plans are not approved by the Traffic Division of the Irvington Public Safety Department is in violation of this article.

§ 620-135 Hazardous conditions.

The person, contractor or utility shall provide the Public Safety Department with at least two emergency contact phone numbers to be called in case of emergency problems at the construction or maintenance site. The contact numbers are to be supplied prior to the start of any work. If for any reason the emergency contact person does not respond to the call from the Public Safety Department to correct such hazardous conditions, a reasonable fee for such emergency services by the Township shall be charged to the person, contractor or utility for such conditions, and the site will be shut down until such conditions are alleviated.

§ 620-136 Road closings and detours.

Road closings and/or detours shall not be permitted unless approved by the Irvington Public Safety Department.

§ 620-137 Traffic directors (police officers).

Traffic directors (police officers) shall be posted at all construction or maintenance sites when determined by the Irvington Public Safety Department that they are necessary to provide for the safety and expeditious movement of traffic. Traffic directors shall be visible at all times when posted at construction or maintenance sites except where otherwise required by the nature of the construction or maintenance site.

§ 620-138 Authority to stop work.

The Irvington Public Safety Department shall have the authority to stop work, including the removal of equipment and vehicles, stored materials within the street right-of-way, backfilling of open excavations and/or other related work, in order to abate any nuisance and/or safety hazard or for any violation of this article.

§ 620-139 Site preparation.

- A. It is to be expressly understood that no materials, vehicles or equipment are to be placed in the roadway or sidewalk area until all construction signs, lights, devices and pavement markings are installed.
- B. At the conclusion of each day's work, the work area shall be left in a safe and orderly fashion. In the event that the work area is not left in a safe and orderly fashion, the Township shall contact the person, contractor or utility to remedy the condition. In the event that the person, contractor or utility fails to promptly respond, the Township reserves the right to remedy the condition at the cost and expense of the person, contractor or utility.

§ 620-140 Emergency repair work.

- A. In case of emergency repair work where construction maintenance operations or emergency utility work must be performed that will obstruct, interfere or detour traffic on any roadway in the Township, the person, contractor or utility performing such operation shall notify the Irvington Public Safety Department of such emergency operations. The person, contractor or utility shall disclose the nature of the emergency and the location and hours of operation.
- B. All emergency construction and maintenance operations shall be performed with full regard to safety and to keep traffic interference to an absolute minimum. During such emergency repair work, the person, contractor or utility shall comply with the provisions of the MUTCD while performing such emergency repair work.

§ 620-141 Maintenance and final repair of road openings.

- A. Unless otherwise directed by the Township Engineer or Director of Public Works, the following specifications shall govern the maintenance and repair of street openings by the permittee.
 - a. The permittee shall notify the Township Engineer, Director of the Department of Public Works at least 24 hours prior to final repair of the trench of road opening.
 - b. Eight inches of hot mix asphalt (six inches of bituminous stabilized base course and two inches of surface course asphalt) shall be placed and compacted so as to provide a smooth surface. A thin tack coat shall be applied to the sides of the existing pavement.
 - c. A deposit of \$ 1000.00 per square yard of opening shall be required for all road opening permits. Said deposit will be refundable at the satisfactory conclusion and inspection of the work. It shall be the responsibility of the permittee to maintain such pavement openings to the existing grade by the addition of bituminous concrete as required by this chapter. Should the permittee fail to maintain such pavement openings as required by this chapter, in the opinion of the Township Engineer, the Township Engineer shall notify the Director of the Department of Public Works of such failure and the Director of the Department of Public Works shall, upon 24 hours' notice, whether written or oral, to the permittee order such conformity with this chapter or such repair or any such work deemed necessary and proper by the Township Engineer and/or Director of the Department of Public Works, whereupon the Department of Public Works of the Township shall commence such work and the cost thereof shall be deducted from deposits received, if any, related to the road opening, excavation or other work. If sufficient funds are not available, the permittee shall be notified in writing and shall have 30 calendar days to remit payment or be subject to the penalties outlined in this chapter.
 - d. When in the opinion of the Township Engineer or Director of the Department of Public Works, settlement in the pavement opening has ceased, the bituminous concrete surface course and base course shall be removed to the required depth and the edges of the existing pavement shall be neatly cut back to a minimum of six inches with a pavement saw or pneumatic cutting tool, and permanent pavement shall be installed in the following manner:
 - e. There shall be no varying width in the final repair. The edges of the existing pavement shall be painted with asphaltic oil, and hot mixed bituminous concrete pavement shall be installed consisting of six inches of a NJ Department of Transportation approved bituminous stabilized base course mix, and two inches of a NJ Department of Transportation approved bituminous concrete surface course mix.
 - f. For openings in reinforced concrete pavement when the settlement in the temporary pavement

has ceased, the temporary pavement shall be removed to the required depth and permanent pavement shall be installed. The edges of the existing pavement shall be neatly cut back to a minimum of six inches with a pavement saw or pneumatic cutting tool to expose the existing reinforcement steel. There shall be no varying width in the final repair. New steel of the same size as the existing steel shall be wired to the existing steel with a six inch overlap. New concrete, 4500 psi, eight inches thick shall be installed to complete the permanent repair.

- g. Each permittee shall cover an open excavation with steel plates ramped to the elevation of the contiguous street, pavement or other portion of the public right-of-way or otherwise protected in accordance with guidelines prescribed by the Township Engineer and/or the Director of the Department of Public Works. Steel plates shall be allowed to remain for a period not to exceed 72 hours without the final repair being completed.
- h. Each permittee shall keep the area surrounding the work site clean and free of loose dirt or other debris in a manner deemed satisfactory to the Township Engineer and/or the Director of the Department of Public Works. Work sites shall be cleaned at the completion of each work day. In addition, the permittee shall remove all excess excavated material from the work site no later than the end of each workday or by 6:00pm.\
- i. Each permittee shall be subject to hazardous material guidelines for data collection, disposal, handling, release and treatment of hazardous material; site remediation and worker safety and training. The permittee shall be required to comply with all federal, state and local laws regarding hazardous material. For purposes of this subsection, hazardous materials shall mean any gas, material, substance or waste, which, because of its quantity, concentration or physical or chemical characteristics, is deemed by any federal, state or local government authority to pose a present or potential hazard to human health or safety or to the environment.
- j. Street restoration requirements for all road openings, excavation or other work within the Township shall be done in compliance with the most recent standards promulgated by the New Jersey Department of Transportation and/or Township Engineer, whichever is stricter.
- k. Any street in the Township which has been milled and resurfaced within the last 10 years for which a permit for road opening, excavation or other work is issued shall include the requirement that the party performing the work must resurface the road from curb to curb and from street corner to street corner. Furthermore, all driveways and/or sidewalks at any intersection impacted by work done under a road opening permit shall be restored as per Township Engineer's standards. All regular sidewalks, when being restored or replaced as part of a road opening, excavation or other work must also be restored as per the Township Engineer's standards. The acceptance of all work done under the aforesaid specifications shall be under the supervision of the township Engineer.
- l. Whenever or wherever any street is excavated the curbs and sidewalks abutting such street shall be considered an integral part of such street and shall be reconstructed and improved so as to conform to such street in accordance with the current specification(s) of the New Jersey Department of Transportation.
- m. Any crosswalks on the impacted street must be re-stripped and brick-inlayed crosswalks must be restored, if applicable.

§ 620-142 **Hours of operation.**

There shall be no construction, maintenance operation or utility work on any roadway in the Township before the hour of 9:00 a.m. or after 4:00 p.m. This time limit may be adjusted to permit work prior to 9:00 a.m. or after 4:00 p.m. by the officer in charge of the Traffic Bureau of the Irvington Public Safety Department or the Director of Public Safety or his designee. If it is determined that the construction or maintenance operations if started prior to 9:00 a.m. or after 4:00 p.m. would substantially delay traffic or cause a safety or health hazard, the work shall then be permitted only between 9:00 a.m. and 4:00 p.m.

§ 620-143 **Violations and penalties.**

Any person, contractor or utility who commits a violation of this article shall, upon conviction thereof, be subject to the penalty set forth in Chapter 1, Article III, Penalties, of the Township Code.

The public hearing on this Ordinance is now open

There were no requests to be heard.

Hudley - Vick Motion to close public hearing

Adopted

Hudley - Vick Motion to adopt this ordinance on second reading after public hearing.

Adopted

NOTE: Council Member Beasley arrived at this point at 7:36 P.M. and requested that, for the official record, the Clerk record her vote on all items on this evening's agenda in the affirmative

2. President Burgess: An ordinance authorizing the execution of a financial agreement with 885 18th Ave Urban Renewal LLC, and granting a tax exemption for 885 – 18th Avenue, Block 55, Lot 12 will be heard at this time. For the record, this notice is identical to the prior notice. The clerk will read the ordinance by title.

ORDINANCE OF THE TOWNSHIP OF IRVINGTON, IN THE COUNTY OF ESSEX, AUTHORIZING THE EXECUTION OF A FINANCIAL AGREEMENT WITH 885 18th AVE URBAN RENEWAL LLC, AND GRANTING A TAX EXEMPTION WITH RESPECT TO CERTAIN PROPERTY IDENTIFIED ON THE TOWNSHIP'S TAX MAP AS BLOCK 55, LOT 12 AND IDENTIFIED IN THE CITY TAX RECORDS AS 885 18TH AVENUE, IRVINGTON, NEW JERSEY

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

WHEREAS, the Municipal Council (the “**Township Council**”) of the Township of Irvington (the “**Township**”), by Resolution 94-0809-5 dated August 9, 1994, created the Township Urban Enterprise Zone (the “**UEZ**”) pursuant to the New Jersey Urban Enterprise Zones Act, *N.J.S.A. 52:27H-60 et seq.* (the “**UEZ Act**”); and

WHEREAS, in accordance with *N.J.S.A. 40A:12A-5(g)*, a municipality may grant a long-term tax exemption to property located within an Urban Enterprise Zone; and

WHEREAS, the Township Council duly adopted a redevelopment plan by Ordinance MC No. 3351 dated September 11, 2007, to govern the redevelopment of certain properties within and contiguous to the UEZ (as amended, the “**Redevelopment Plan**”) in accordance with N.J.S.A. 40A:12A-7; and

WHEREAS, 885 18th Ave Urban Renewal LLC (the “**Entity**”) is the owner of certain property located within the UEZ, which property is identified on the official tax map of the Township as Block 55, Lot 12 and identified in the Township tax records as 885 18th Avenue, Irvington, New Jersey 07111 (the “**Property**”); and

WHEREAS, the Entity propose to undertake the design, development, financing, rehabilitation and maintenance of the existing four-story masonry building into a multi-family residential building, consisting of nineteen (19) market rate residential units (comprised of ten (10) one-bedroom units and nine (9) two-bedroom units), together with certain other on-site and off-site improvements, (the “**Project**”); and

WHEREAS, in order to ensure the financial feasibility of the Project, the Entity made application to the Township requesting a long-term tax exemption and financial agreement pursuant to the Long-Term Tax Exemption Law, *N.J.S.A. 40A:20-1 et seq.*, which application is on file with the Township Clerk (the “**Application**”); and

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

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

WHEREAS, after review of the Application, the Township Council now desires to approve the Application and to authorize the execution of the proposed form of financial agreement (the “**Financial Agreement**”) in substantially the form attached hereto as Exhibit A, and by this reference incorporated herein as may be modified in consultation with counsel as set forth herein; and

WHEREAS, the Township hereby determines that the assistance provided to the Project pursuant to the Financial 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 Township Council of the Township of Irvington, in the County of Essex, New Jersey, as follows:

I. GENERAL

The aforementioned recitals are incorporated herein as though fully set forth at length.

II. APPLICATION FOR EXEMPTION APPROVED

The Application, which is on file with the Township Clerk and which has been recommended for approval to the Township Council by the Mayor, is hereby accepted and approved.

III. EXECUTION OF FINANCIAL AGREEMENT AUTHORIZED

- (a) The Mayor is hereby authorized to execute the Financial Agreement, substantially in the form attached hereto as Exhibit A, subject to modification or revision deemed necessary or

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appropriate by the Township in consultation with counsel, and to take all other necessary or appropriate action to effectuate such Financial Agreement.

- (b) The Township Clerk is hereby authorized and directed, upon the execution of the Financial Agreement in accordance with the terms of Section III(a) hereof, to attest to the signature of the Mayor upon such document and is hereby further authorized and directed to affix the corporate seal of the Township upon such document.
- (c) In accordance with P.L. 2015, c. 247, within ten (10) calendar days following the later of the effective date of this Ordinance or the execution of the Financial Agreement by the Entity, the Township Clerk shall transmit a certified copy of this Ordinance and the Financial Agreement to the chief financial officer of Essex County and to the Essex County Counsel for informational purposes, as well as to the Tax Assessor of the Township.

IV. SEVERABILITY

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.

V. AVAILABILITY OF THE ORDINANCE

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

VI. EFFECTIVE DATE

This Ordinance shall take effect according to law.

EXHIBIT A

Form of Financial Agreement

FINANCIAL AGREEMENT

THIS FINANCIAL AGREEMENT (hereinafter "Agreement" or "Financial Agreement"), is made as of the ____ day of _____, 2022, (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

885 18th AVE 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 an address of 885 18th Avenue, Irvington, New Jersey 07111 (hereinafter the "Entity"; and together with the Township, the "Parties" or, separately, each a "Party").

W I T N E S S E T H:

WHEREAS, the Municipal Council (the "Township Council") of the Township 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

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WHEREAS, the Township Council, by Resolution 94-0809-5 dated August 9, 1994, created the Township Urban Enterprise Zone (the "UEZ") pursuant to the New Jersey Urban Enterprise Zones Act, N.J.S.A. 52:27H-60 et seq. (the "UEZ Act"); and

WHEREAS, in accordance with N.J.S.A. 40A:12A-5(g), a municipality may grant a long-term tax exemption to property located within an Urban Enterprise Zone; and

WHEREAS, the Township Council duly adopted a redevelopment plan by Ordinance MC No. 3351 dated September 11, 2007, to govern the redevelopment of certain properties within and contiguous to the UEZ (as amended, the "Redevelopment Plan") in accordance with N.J.S.A. 40A:12A-7; and

WHEREAS, the Entity is the owner of certain property located within the UEZ, which property is identified on the official tax map of the Township as Block 55, Lot 12 and identified in the Township tax records as 885 18th Avenue, Irvington, New Jersey 07111 (the "Property"); and

WHEREAS, the Entity propose to undertake the design, development, financing, rehabilitation and maintenance of the existing four-story masonry building into a multi-family residential building, consisting of nineteen (19) market rate residential units (comprised of ten (10) one-bedroom units and nine (9) two-bedroom units), together with certain other on-site and off-site improvements, (the "Project", as further described in Exhibit A); 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 "Application", attached hereto as Exhibit A), requesting a long term tax exemption and a financial agreement with respect to the Project pursuant to the Exemption Law, which Application is on file with the Municipal Clerk of the Township (the "Township Clerk"); and

WHEREAS, as further described herein, the Township has 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 _____ on _____, 2022 (the "Ordinance"), the Township Council approved the 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.

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 1.01 Governing Law.

This Agreement shall be governed by and construed by the laws of the State (as defined herein), including (a) the 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

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principles. It is expressly understood and agreed that the Township expressly relies upon the facts, data, and representations contained within the Entity's Application (which is attached hereto) in granting this tax exemption.

SECTION 1.02 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:

Application
Agreement
Effective Date
Entity
Exemption Law
Financial Agreement
Ordinance
Parties/Party
Project
Property
Redevelopment Law
Redevelopment Plan
Township
Township Clerk
Township Council
UEZ
UEZ Act

(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 4.07 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(c).

Allowable Profit Rate - The greater of (i) twelve percent (12%) or (ii) 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 Gross Revenue - shall be as defined in N.J.S.A. 40A:20-3(a) and Section 4.03 of this Agreement.

Annual Service Charge - the amount the Entity has agreed to pay the Township pursuant to Article IV hereof for municipal services supplied to the Project, which sum is in lieu of any real estate taxes on the Improvements and on the Land, 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.

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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, 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.

Business Day(s) - All days except Saturdays, Sundays and the days observed as public holidays by the Township.

Certificate of Occupancy - A 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.

County - The County of Essex, State of New Jersey.

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

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

Debt Service - The amount required to make annual payments of principal and interest or the equivalent thereof on any construction mortgage, permanent mortgage or other financing including returns on institutional equity financing and market rate related party debt for the Project for a period equal to the term of the tax exemption granted by this Financial Agreement.

Default - 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. In addition, a default of the Entity under the Community Contribution Agreement which has extended beyond any applicable grace or periods set forth in the Community Contribution Agreement shall also constitute a default under this Financial Agreement

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

[Director - The Director of the Department of Economic Development and Grants Oversight.]

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

Effective Date - The date that this Agreement has been executed and delivered by both Parties and the Property has been acquired by the Entity.

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

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

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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 Township Code.

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 on the official tax map of the Township as Block 55, Lot 12 and identified in the Township tax records as 885 18th Avenue, Irvington, New Jersey 07111.

Land Tax - the amount of taxes assessed on the value of the Land, exclusive of the value of any improvements related thereto, in accordance with Applicable Law.

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

Material Conditions - shall have the meaning given to it in Section 4.08 of this Agreement.

Mayor - The mayor of the Township.

Minimum Annual Service Charge - 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. By way of reference, the taxes assessed on the Property in 2021 were: \$14,947.50.

Minority - shall be as defined by the New Jersey Department of Labor.

Minority Business Enterprise - shall be as defined by the New Jersey Department of Labor.

Net Profit - Annual Gross Revenue (AGR) less all operating and non-operating expenses of the Entity, all determined in accordance with generally accepted accounting principles and the provisions of N.J.S.A. 40A:20-3(c), but: (1) there shall be included in expenses: (a) all annual service charges paid pursuant to N.J.S.A. 40A:20-12; (b) all payments to the municipality of Excess Net Profits pursuant to N.J.S.A. 40A:20-15 or N.J.S.A. 40A:20-16; (c) an annual amount sufficient to amortize the Total Project Cost and all capital costs determined in accordance with generally accepted accounting principles, of any other entity whose revenue is included in the computation of Excess Net Profits, over the term of the abatement as set forth in this Financial Agreement; (d) all reasonable annual operating expenses of the Entity and any other entity whose revenue is included in the computation of Excess Net Profits, including the cost of all management fees, brokerage commissions, insurance premiums, all taxes or service charges paid, legal, accounting, or other professional service fees, utilities, building maintenance costs, building and office supplies, and payments into repair or maintenance reserve accounts; (e) all payments of rent including, but not limited to, ground rent by the Entity (if applicable); (f) all Debt Service; and (2) there shall not be included in expenses either depreciation or obsolescence, interest on debt, except interest which is part of Debt Service, income taxes, or salaries, bonuses or other compensation paid, directly or indirectly to directors, officers and stockholders of the Entity, or officers, partners or other persons holding any proprietary ownership interest in the Entity.

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.

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 Site Plan attached hereto as Exhibit B, and the minimum requirements of Applicable Laws or the Redevelopment Plan depending on the context of its use in this Agreement.

Small Business Enterprise - shall be as defined by the New Jersey Department of Labor.

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State - The State of New Jersey

Substantial Completion - shall mean 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.. The issuance of a Certificate of Occupancy shall be conclusive proof that the Project has reached Substantial Completion.

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 Code - the Municipal Code of the Township

Women's Business Enterprise - shall be as defined by the New Jersey Department of Labor.

SECTION 1.03 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.

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ARTICLE II

APPROVAL

SECTION 2.01 Approval of Tax Exemption

Pursuant to the Ordinance, the Land and the Improvements to be constructed and maintained thereon by the Entity pursuant to this Agreement shall be exempt from taxation as provided for herein and under the Exemption Law. In accordance with the Exemption Law, specifically N.J.S.A. 40A:20-12, such tax exemption shall constitute a single continuing exemption from local property taxation for the duration of this Financial Agreement.

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

SECTION 2.02 Approval of the Entity

The Entity represents that its Certificate of Formation, attached hereto as Exhibit C, 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 2.03 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 Plan and Applicable Law, the use of which Project is more specifically described in the Application. The Entity further expressly covenants, warrants and represents that the Property, including any Improvements related thereto, shall be used, managed and operated for the purposes set forth in the Application and in accordance with the Applicable Laws.

SECTION 2.04 Construction Schedule

The Entity agrees to diligently undertake the commencement of construction or cause the commencement of construction, and to complete the Project, or cause the completion of the Project in accordance with the approved Plans and the project schedule provided in the Application.

SECTION 2.05 Ownership, Management and Control

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

SECTION 2.06 Project Financing Plan

The Entity represents that the Improvements shall be financed in accordance with the representations set forth in the Financial Plan. The 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 2.07 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:

i. The development and rehabilitation of the Project as set forth in the Application and the Plan will be beneficial to the overall community; will achieve the goals and objectives of the Redevelopment Plan; will revitalize an unproductive property through the rehabilitation of a vacant and dilapidated building; will improve the quality of life for the community and will enhance the economic

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development of the Township. In addition, the Project will provide 19 units of quality housing.

ii. It is anticipated that the development of the Project will create approximately fifty-five (55) temporary jobs during the construction of the Project, as well as approximately two (2) permanent jobs in connection with the operation of the Project.

iii. The long vacant Property generated approximately \$14,947.50 in real estate taxes in the most recent tax year, of which the Township received only a portion.

Pursuant to this Financial Agreement, the Project is projected to generate revenue for the Township in the aggregate amount of approximately \$827,000 over the twenty-year term of this Agreement.

Therefore, the Township's authorized officers and employees have determined that the benefits to the Township accruing as a result of the Project will substantially outweigh any costs to the Township resulting from the long-term tax exemption granted herein.

(b) Assessment of the Importance of the Tax Exemption in Obtaining Development of the Project and Influencing the Locational Decisions of Probable Occupants:

i. The relative stability and predictability of the Annual Service Charge will make the Project more attractive to investors and lenders whose participation is necessary in order to finance the Project.

ii. The relative stability and predictability of the Annual Service Charge will allow the Entity to provide a high level of maintenance for the Property which will contribute importantly to the success of the Project and will have a positive impact on the surrounding area and community.

SECTION 2.08 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 N.J.S.A. 10:5-31 et seq., (P.L. 1975, c. 127), its attendant regulations at N.J.A.C. 17:27-1 et seq., and shall further comply with the community initiative requirements set forth in Article V.

ARTICLE III

DURATION OF AGREEMENT

SECTION 3.01 Term

(a) It is expressly understood and agreed by the Parties that this Agreement, including the obligation to pay Annual Service Charges required under Article IV hereof and the tax exemption granted and referred to within Section 2.01 hereof, shall commence on the Effective Date and shall remain in effect until the earlier of (i) thirty-five years from the date of execution hereof, (ii) thirty (30) years from the Annual Service Charge Start Date, (iii) the Entity's voluntary Termination of this Agreement in accordance with the requirements of Section 3.02, or (iv) the occurrence of a Default as set forth within Article XIV of this Agreement.

(b) Upon the expiration or Termination of the tax exemption provided for herein, all restrictions and limitations of this Financial Agreement imposed upon the Entity and the Property, including the Improvements related thereto, shall terminate upon the end of the fiscal year of the Entity in accordance with N.J.S.A. 40A:20-13 and the Improvements and Land shall thereafter be assessed and taxed according to the general law applicable to other non-exempt property in the Township; provided, however, that (i) the requirement to make payment of any Annual Service Charge due and owing hereunder, (ii) the requirement to make payment to the Township of any reserves, Net Profit, or Excess Net Profit, and (iii) any and all related remedies available to the Township shall survive the expiration or Termination of this Agreement; and further provided that the Entity has rendered, and that the Township has accepted, the Entity's final accounting in accordance with N.J.S.A. 40A:20-12.

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SECTION 3.02 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 Exemption Law; and that the Entity has obtained the consent of the Commissioner of the Department of Community Affairs. The date of Termination shall be deemed to be the close of the fiscal year of the Entity and the procedure for the apportionment of any taxes and/or Annual Service Charges, as applicable, shall be the same as would otherwise be applicable to any other property located within the Township upon a change in the exemption or tax status of such property.

ARTICLE IV

ANNUAL SERVICE CHARGE

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

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

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 at the end of a fiscal year 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.

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.

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 Annual Gross Revenue

The Annual Gross Revenue shall mean all revenues without limitation or set-off, and shall include, but not be limited to: (a) all rental income that would normally be payable to a landlord in the case where the landlord is responsible to pay all costs of operations and maintenance as well as to pay the full cost of the capital required to undertake the Project; and (b) all other income received by the Entity that is derived from or generated by the Project. To the extent that the actual revenues collected by the Entity are less than such amount, due to any reason including without limitation, the payment of expenses by tenants that would normally

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be paid by the landlord, such as insurance, taxes and or maintenance or the existence of an intermediate entity between the Entity and any tenant, but specifically excluding reductions in revenue due to vacancies within the Project, the Township shall have the right, at its sole discretion, to recalculate the amount that the revenues would have been, without such issues and to utilize the results of its recalculations in all determinations of Annual Service Charges.

SECTION 4.04 Annual Service Charge Schedule

(a) Pursuant to N.J.S.A. 40A:20-12, the Parties agree that commencing upon the Annual Service Charge Start Date and continuing for a period of five (5) years, through and inclusive of the fifth (5th) year, the Annual Service Charge for the Project shall be an amount equal to the greater of ten percent (10%) of Annual Gross Revenue, or (ii) the Minimum Annual Service Charge;

(b) Commencing in the sixth (6th) year after the Annual Service Charge Start Date and continuing for a period of five (5) years, through and inclusive of the tenth (10th) year after the Annual Service Charge Start Date, the Annual Service Charge shall be an amount equal to the greater of (i) eleven percent (11%) of Annual Gross Revenue, or (ii) the Minimum Annual Service Charge;

(c) Commencing in the eleventh (11th) year after the Annual Service Charge Start Date and continuing for a period of two (2) years, through and inclusive of the twelfth (12th) year after the Annual Service Charge Start Date, the Annual Service Charge shall be an amount equal to the greater of (i) twelve percent (12%) of Annual Gross Revenue, or (ii) the Minimum Annual Service Charge;

(d) Commencing in the thirteenth (13th) year after the Annual Service Charge Start Date and continuing for a period of one (1) year, through and inclusive of the thirteenth (13th) year after the Annual Service Charge Start Date, the Annual Service Charge shall be an amount equal to the greater of (i) twelve percent (12%) of Annual Gross Revenue, (ii) the Minimum Annual Service Charge, or (iii) twenty percent (20%) percent of the amount of taxes otherwise due on the value of the Land and Improvements;

(e) Commencing in the fourteenth (14th) year after the Annual Service Charge Start Date and continuing for a period of two (2) years, through and inclusive of the fifteenth (15th) year after the Annual Service Charge Start Date, the Annual Service Charge shall be an amount equal to the greater of (i) twelve percent (12%) of Annual Gross Revenue; (ii) the Minimum Annual Service Charge, or (iii) forty percent (40%) percent of the amount of taxes otherwise due on the value of the Land and Improvements;

(f) Commencing in the sixteenth (16th) year after the Annual Service Charge Start Date and continuing for a period of two (2) years, through and inclusive of the seventeenth (17th) year after the Annual Service Charge Start Date, the Annual Service Charge shall an amount equal to the greater of (i) thirteen percent (13%) of Annual Gross Revenue; (ii) the Minimum Annual Service Charge; or (iii) sixty percent (60%) percent of the amount of taxes otherwise due on the value of the Land and Improvements;

(g) Commencing in the eighteenth (18th) year after the Annual Service Charge Start Date and any year thereafter, the Annual Service Charge shall an amount equal to the greater of (i) thirteen percent (13%) of Annual Gross Revenue; (ii) the Minimum Annual Service Charge; or (iii) eighty percent (80%) percent of the amount of taxes otherwise due on the value of the Land and Improvements.

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 the last year in which the Property was subject to conventional taxation, the Property taxes due were \$14,947.50. Therefore, in accordance with the Exemption Law, the Parties agree that the Minimum Annual Service Charge for the Project shall be \$14,947.50.

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(c) 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 Property shall be exempt from Land Taxes from the Annual Service Charge Start Date through the expiration or Termination date in accordance with N.J.S.A. 40A:20-12; provided, however, that if such exemption of Land Taxes is invalidated by a court of competent jurisdiction, then this Agreement shall remain in full force and effect and shall be reformed to provide that:

- i. Land Taxes are assessed on the Property; and
- ii. the Entity shall be entitled to a credit against the Annual Service Charge for the amount, without interest, of the Land Tax payments timely made in the last four (4) preceding quarterly installments. Subject to the foregoing, the Entity is obligated to make timely Land Tax Payments in order to be entitled to a Land Tax credit against the Annual Service Charge for the subsequent year. In any year that the Entity fails to make any Land Tax Payments when due and owing, such delinquency shall render the Entity ineligible for any Land Tax Payment credits against the Annual Service Charge for that year. No credit will be applied against the Annual Service Charge for partial payments of Land Taxes. In addition, the Township shall have, among this remedy and other remedies, the right to proceed against the property pursuant to the In Rem Tax Foreclosure Act, N.J.S.A. 54:5-1, et seq. and/or to declare a Default in accordance with Article 14 hereof.

(b) The Entity hereby expressly acknowledges, understands, and agrees that, in addition to the Annual Service Charge, it shall be responsible for the payment (without any credit whatsoever) of all other applicable municipal charges that may, from time to time, be lawfully assessed upon the Property, including, without limitation, Land Taxes, if applicable, as well as, 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 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 Annual Service Charge in each year, prior to the application of any applicable Land Tax Credit, concurrently with or prior to the November 1st Annual Service Charge payment (the "Administrative Fee"). For purposes of enforcement of collections only, such payments shall be considered to be an additional part of the Annual Service Charge.

SECTION 4.08 Material Conditions

It is expressly agreed and understood that all payments of Annual Service Charges and any interest payments, penalties or costs of collection due thereon, payment of Land Taxes, if applicable, and water and sewer charges, are material conditions of this Agreement ("Material Conditions"). If any other term, covenant or condition of this 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 4.09 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 4.10 Annual Service Charge as Municipal Lien

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The Entity hereby expressly acknowledges, understands and agrees, and the Township acknowledges, without making any representation, warranty or covenant, that (a) the Annual Service Charge, and other related municipal charges, 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 (b) 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.

SECTION 4.11 Percentage of Annual Service Charge Paid to County

The Township shall remit five percent (5%) of the Annual Service Charge received by it to the County pursuant to N.J.S.A. 40A:20-12.

ARTICLE V

COMMUNITY INITIATIVES

SECTION 5.01 Equal Employment Opportunity

The Entity agrees that during construction of the Project:

(a) 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.

(b) 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.

(c) 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.

(d) 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 5.02 First Source

(a) The Entity agrees to employ and shall require in each of its contracts with contractors that they and their subcontractors must employ, residents of the Township 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. Thirty percent (30%) of billable construction laborer, administrative and clerical hours associated with the Project shall be provided by Township residents consistent with market wages. The Entity will engage in and cooperate with efforts to recruit Township residents for all employment opportunities in connection with the Project, including participation in Township job fairs and utilization of a central employment registry, if the Township maintains such a registry. Prior to the execution of the Financial Agreement, and in accordance with the provisions of the First Source Employment

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Ordinance, the Parties shall execute a First Source Agreement substantially in the form attached hereto as Exhibit D.

(b) 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.

SECTION 5.03 Affirmative Action

All contracts entered into by the Entity for the construction of the Project shall contain appropriate language to effectuate this provision. 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 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.

(b) 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 at a rate of 20%.

SECTION 5.04 Reporting and Enforcement.

The Director shall oversee and monitor the Entity's compliance with the First Source Employment requirements and affirmative action requirements at no cost to the Entity. The Entity agrees to meet periodically with the Director at the Director's request, to discuss the status of the Entity's employment efforts and compliance with the First Source Employment requirement.

(a) The Entity shall submit monthly reports regarding compliance with this Article V as the Township may reasonably require.

(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. Reports should also include businesses hired, recruitment efforts including advertisements and letters to community groups advising them of employment and business opportunities.

(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) The penalties for non-compliance shall be as set forth in the Township Code.

ARTICLE VI

CERTIFICATE OF OCCUPANCY

SECTION 6.01 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 to support and expedite the review, comment and approval of any complete and compliant application of the Entity seeking a Certificate of Occupancy.

SECTION 6.02 Filing of Certificate of Occupancy

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The Entity shall file or cause to be filed with both the Tax Assessor and the Tax Collector a copy of any 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 7.01 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 7.02 Periodic Reports/Notices

(a) Auditor's Report: Within ninety (90) days after the close of the Entity's fiscal year in each year that this Agreement shall continue in effect, 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 7.03 Inspection

Upon reasonable request with two (2) Business Days advance notice 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. Nothing in this section shall be construed to affect, limit or restrict the powers of municipal,

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county, State or other officials from carrying out those duties or inspections that are generally applicable outside of the Exemption Law context, including, but not limited to, inspections by fire officials, construction code officials, and so on.

SECTION 7.04 Limitation on Profits and Reserves

During the period of tax exemption as provided herein, the Entity shall be subject to a limitation of its profits 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. Upon the expiration or Termination of this Agreement, the amount of reserve, if any, shall be paid to the Township.

There is expressly included in the calculation of "Gross Revenue" and "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, as well as the proceeds of any refinancing undertaken by the Entity during the term of this Agreement.

SECTION 7.05 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.

SECTION 7.06 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 and this Agreement.

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 8.01 Approval

(a) As permitted by N.J.S.A. 40A:20-10, it is understood and agreed that, upon receipt of the approval of the Municipal Council, the Township, on written application by the Entity will consent to a sale or transfer of the Project and the

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assignment of this Agreement provided that the Township is satisfied that: (i) the transferee entity does not own any other Project subject to long term tax exemption at the time of transfer; (ii) the transferee entity is formed and eligible to operate under the Exemption Law; (iii) the Entity is not then in Default of this Agreement or the Exemption Law; (iv) the Entity's obligations under this Agreement are fully assumed by the transferee entity; (v) 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 (vi) the transferee entity and its principals 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.

SECTION 8.02 Operation of Project

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

SECTION 8.03 Subordination of Fee Title

It is expressly understood and agreed that the Entity has the right, subordinate to the lien of the Annual Service Charges and to the rights of the Township hereunder, to encumber and/or assign the fee title to the Land and/or Improvements for the sole purpose of obtaining financing for use in the 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 8.04 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 Township 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 9.01 No Waiver

Nothing contained in this Financial Agreement or otherwise shall constitute a waiver or relinquishment by the Township or the Entity of any rights and remedies provided by the law. Nothing herein shall be deemed to limit any right of recovery that the

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Township or the Entity has under law, in equity, or under any provision of this Financial Agreement.

ARTICLE X NOTICE

SECTION 10.01 Notice

Formal notices, demands and communications ("Notice") between the Township and Entity shall be deemed given if dispatched to the address set forth below by (a) United States Registered or Certified Mail, postage prepaid and return receipt requested; or (b) delivered by national overnight courier with delivery confirmation; or (c) electronic mail, facsimile or other telecopy transmission (with a hard copy and a transmission confirmation sent by a recognized overnight national carrier service for next business day delivery); or (d) delivered personally (with written acknowledgment of receipt) to the Parties at the following respective addresses:

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

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

and

McManimon, Scotland & Baumann, LLC
Attn: Glenn F. Scotland, Esq.
75 Livingston Avenue, Second Floor
Roseland, New Jersey 07068
Email: GScotland@msbnj.com

To Entity: 885 18th Ave Urban Renewal, LLC
885 18th Avenue
Irvington, New Jersey 07111
Attn:

With copies to:

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, or, if transmitted by electronic mail, facsimile or other telecopy transmission, upon receipt, provided receipt occurs before 5:00 p.m. on a business day in the jurisdiction of the recipient. Counsel for a Party may give notice to the other Party with the same effect as if given by the Party.

ARTICLE XI COMPLIANCE

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SECTION 11.01 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 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 12.01 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

ARTICLE XIII

SECTION 13.01 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, 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 grossly 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 ARTICLE XIV

SECTION 14.01 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 14.02 Cure Upon Default

Should the Entity be in Default of any obligation under this Agreement, the Township shall notify the Entity and any mortgagee of the Entity, in writing of said Default (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

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installment of the Annual Service Charge, or any other municipal charge, any of which the Entity shall have ten (10) days to cure) from the date of its receipt of the Default Notice; provided, however, that if any non-payment 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 14.03 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 or other municipal 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 other applicable municipal charges, including 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, the Annual Service Charge or any other applicable municipal 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 14.04 Remedies

The Township's customary tax payment enforcement proceedings shall apply to the collection of any delinquent payment of the Annual Service Charge or any other municipal charge. In the event of a Default on the part of the Entity to pay any installment of the Annual Service Charge or any other municipal 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.

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 14.05 Termination upon Default of the Entity

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

SECTION 14.06 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.

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SECTION 14.07 Conventional Taxes

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

ARTICLE XV

MISCELLANEOUS

ARTICLE XV

SECTION 15.01 Conflict

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

SECTION 15.02 Oral Representations

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

SECTION 15.03 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 Application constitute the entire agreement between the Parties as to the subject matter thereof and hereof.

SECTION 15.04 Good Faith

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

SECTION 15.05 Recording

Upon the acquisition of the Property by the Entity, the entire Agreement shall be filed and recorded with the office of the Essex County Register by the Township, at the Entity's expense, such that this Agreement 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 15.06 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 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 15.07 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 15.08 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 similar causes beyond the reasonable control of the Parties that have a material impact upon such Party's ability to perform its obligations hereunder.

SECTION 15.09 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 by the respective Parties. 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.

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SECTION 15.10 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 15.11 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 an executed copy of 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 by the Township to the County Counsel and the Chief Financial Officer of the County within 10 calendar days of the execution of the Agreement,

SECTION 15.12 Severability

If any terms or provision of this Agreement 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 15.13 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 actual 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.

SECTION 15.14 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.

EXHIBITS AND SCHEDULES

The following Exhibits are attached hereto and incorporated herein:

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

[SIGNATURE PAGE FOLLOWS]

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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: _____
Name: Harold E. Wiener
Title: Township Clerk

By: _____
Name: Tony Vauss
Title: Mayor

ACKNOWLEDGMENT

STATE OF NEW JERSEY :
: ss
COUNTY OF ESSEX :

The foregoing instrument was acknowledged before me this ____ day of _____, 2020, 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, who is known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same as the voluntary act 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.

885 18th AVE URBAN RENEWAL, LLC
Witness:

By: _____
Name:
Title:

By: _____
Name:
Title:

ACKNOWLEDGMENT

STATE OF NEW JERSEY :
: ss

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COUNTY OF _____ :

BE IT REMEMBERED, that on this _____ day of _____, 2022, before me, the subscriber, a Notary Public or Attorney at Law of New Jersey, personally appeared _____, who being by me duly sworn on (his/her) oath, deposes and makes proof to my satisfaction that (he/she) is the designated authorized signatory 885 18th Ave 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

Application

EXHIBIT B

Site Plan

EXHIBIT C

Certificate of Formation

EXHIBIT D

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 [_____] , LLC, ("Employer") on this _____ day of _____, 20__.

WITNESSETH:

WHEREAS, on _____, 20__, 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 [_____] , (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) [_____] ; and

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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:

- o The number of anticipated employment opportunities;
- o The job title and description of each anticipated employment opportunity; and
- o 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.

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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.

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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.
3. 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.
- 4.
5. 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.

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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

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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.

ATTEST:

TOWNSHIP OF IRVINGTON

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

By: _____
Name: Tony Vauss
Title: Mayor

[EMPLOYER]

WITNESS:

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.

Beasley- Hudley

Motion to close public hearing

Adopted

Beasley – Hudley

Motion to adopt this ordinance on second reading after public hearing.

Adopted

12. Miscellaneous

A. General Hearing of Citizens and Council Members limited to three minutes per person (MUST SIGN UP IN ADVANCE OF MEETING)

Doris Sherrill, 35 Augusta Street
Victoria Ransome, 92 Ellis Avenue

Council President Burgess responded to the comments made by the above citizens.

13. Adjournment

There being no further business, the meeting was adjourned at 7:48 P.M.

Renee C. Burgess, Council President

Harold E. Wiener, Municipal Clerk