

EXECUTION COPY

LOAN AND SECURITY AGREEMENT

THIS LOAN AND SECURITY AGREEMENT, dated as of July 29, 2016, by and between the CITY OF ATLANTIC CITY, a municipal corporation of the State of New Jersey (the "City"), with an address at 1301 Bacharach Boulevard, Atlantic City, New Jersey 08401, and the NEW JERSEY DEPARTMENT OF COMMUNITY AFFAIRS ("DCA").

WHEREAS, pursuant to the Municipal Stabilization and Recovery Act, P.L. 2016, c. 4, N.J.S.A. 52:27BBBB-1 *et seq.* (the "Act"), a New Jersey municipality that, as determined by the Director of the Division of Local Government Services within DCA (the "Director"), has (i) experienced a decrease of more than fifty percent (50%) of its total assessed non-equalized property values during the five year period terminating at the end of the tax year as of the enactment of the Act, and (ii) experienced an increase in outstanding debt exceeding fifty percent (50%) during the immediately preceding five year period, may be designated by the Commissioner of DCA (the "Commissioner") as a "municipality in need of stabilization and recovery" pursuant to N.J.S.A. 52:27BBBB-4(a) of the Act and subject thereto;

WHEREAS, on June 6, 2016, the Commissioner made the final determination (pursuant to a recommendation by the Director) and decision to designate the City as a "municipality in need of stabilization and recovery" making the City subject to the provisions of the Act;

WHEREAS, pursuant to N.J.S.A. 52:27BBBB-4(b), the governing body of the City must prepare and adopt a resolution containing a five-year recovery plan consistent with the requirements of the Act;

WHEREAS, because the City has been designated as a municipality in need of stabilization and recovery, N.J.S.A. 52:27BBBB-16 of the Act permits the Treasurer of the State of New Jersey (the "Treasurer"), in consultation with the Commissioner, to direct the Director of the Division of Budget and Accounting to transfer appropriations from any New Jersey department to any other New Jersey department as may be necessary to provide a secured loan to the City for the exclusive purpose of covering expenses of the City during the 2016 calendar year, and for a term not to exceed 180 days on such terms and conditions that may be required by the Commissioner; and

WHEREAS, the City acknowledges that it is a municipality in need of stabilization and recovery pursuant to the Act and has requested that DCA make a secured loan to the City, and DCA has agreed to make a loan to the City in an amount not to exceed \$73,000,000, including amounts previously advanced to the City in the amount of \$8,490,740.87, subject to and in accordance with the terms hereof.

NOW THEREFORE, IN CONSIDERATION of the mutual covenants and undertakings herein contained, the City and DCA hereby agree as follows:

1. DEFINITIONS

Capitalized terms used in this Agreement shall have (unless otherwise expressly provided elsewhere herein) the following respective meanings:

“Advance” and “Advances” shall have the meaning set forth in Section 2.1.1 (a).

“Advance Termination Date” shall mean the earlier of November 1, 2016, and the Maturity Date.

“ACA Payments” shall mean any payments, in accordance with N.J.S.A. 52:27BBBB-24, made under N.J.S.A. 52:27BBBB-21, including, without limitation, any payments received by the State from the owner of each casino gaming property pursuant to N.J.S.A. 52:27BBBB-21(a), that are statutorily required to be subsequently remitted to the City pursuant to N.J.S.A. 52:27BBBB-21(c).

“Act” shall mean the Municipal Stabilization and Recovery Act as found in N.J.S.A. § 52:27BBBB-1 *et seq.*, and any regulations promulgated and rulings issued thereunder, all as amended from time to time.

“Agreement” shall mean this Loan and Security Agreement, including all amendments, restatements, modifications and supplements from time to time hereto and any appendices, exhibits or schedules to any of the foregoing.

“Appropriations Act” shall mean P.L. 2016, c. 10 as amended from time to time.

“Bader Field” shall have the meaning set forth in Section 5.1.

“Casino Property Tax Stabilization Act” shall mean P.L. 2016, c. 5 approved May 27, 2016, and any subsequent regulations promulgated and rulings issued thereunder, all as amended from time to time.

“Collateral” shall have the meaning set forth in Section 5.1.

“Commissioner” refers to the Commissioner of the New Jersey Department of Community Affairs.

“Default” shall mean any event which, with the passage of time or notice or both, would, unless cured or waived, become an Event of Default.

“Director” refers to the Director of the Division of Local Government Services within the New Jersey Department of Community Affairs.

“Division” refers to the Division of Local Government Services within the New Jersey Department of Community Affairs.

“Event of Default” shall have the meaning set forth in Section 8.1.

"GAAS" shall mean generally accepted auditing standards in the United States of America as in effect from time to time.

"Governmental Authority" shall mean any governmental department, commission, board, bureau, agency or instrumentality of the United States or of any state, commonwealth, nation, territory, possession, county or municipality, whether now or hereafter constituted or existing.

"IAT Funds" shall mean any funds allocated to the City pursuant to N.J.S.A. 52:27BBBB-25, including, without limitation, the moneys received by the Treasurer derived from investment alternative tax as contemplated by N.J.S.A. 52:27BBBB-25.

"Loan Documents" shall mean this Agreement, any note evidencing the Loan and any other documents executed in conjunction with this Agreement as each of the same may be amended, modified, supplemented or restated from time to time.

"Local Finance Board" shall have the meaning set forth in Section 9(e).

"Maturity Date" shall mean the earlier of (i) immediately upon a determination by the Commissioner regarding the Recovery Plan, and (ii) such date upon which payment of the Obligations may be accelerated pursuant to Section 8.2.

"MUA" shall mean the Atlantic City Municipal Utilities Authority.

"Obligations" shall have the meaning set forth in Section 5.1.

"Payment Default" an Event of Default under Section 8.1(a) hereof.

"Person" shall mean any individual, sole proprietorship, partnership, joint venture, trust, unincorporated organization, association, corporation, limited liability company, institution, public benefit corporation, entity, court or Governmental Authority.

"PILOT Payments" shall mean any payments, in accordance with N.J.S.A. 52:27BBBB-24, made under N.J.S.A. 52:27BBBB-20, including, without limitation, any payments in lieu of property taxes owed to the City pursuant to N.J.S.A. 52:27BBBB-20.

"Recovery Loan" shall mean the aggregate amount of Advances outstanding at any one time.

"Recovery Loan Budget" means the budget attached as Exhibit A hereto setting forth the City's proposed uses for the Recovery Loan (each of which uses must also be included in the proposed budget for the City for calendar year 2016 provided to DCA pursuant to Exhibit B hereof, as well as the final budget) including the time frame within which each Advance will be requested. All amendments to the Recovery Loan Budget shall be subject to the Director's prior written approval.

"Recovery Plan" shall mean the five year recovery plan required to be submitted by the City to the Commissioner not later than 150 days following Commissioner's June 6, 2016 final

determination that the City was a "municipality in need of stabilization and recovery" pursuant to N.J.S.A § 52:27BBB-4(b) of the Act.

"State Parties" shall mean the Treasurer, the State, the Director, the Commissioner, the Division and DCA.

"State" means the State of New Jersey.

2. THE LOAN

2.1 Recovery Loan.

2.1.1 Advances of the Recovery Loan.

(a) Upon and subject to the terms and conditions of this Agreement, DCA may, until the Advance Termination Date, make advances of the Recovery Loan for the City's use in accordance with the Act and the Recovery Loan Budget and upon the request of the City therefor (each, an "Advance"; and together, the "Advances") in accordance with this Agreement in an aggregate principal amount at any one time outstanding up to but not exceeding Seventy Three Million and 00/100 Dollars (\$73,000,000.00).

(b) The City acknowledges that, in anticipation of this Agreement, DCA advanced to the City \$8,490,740.87 on July 15, 2016 as a loan (the "Existing Advance") to make the City's Board of Education Tax Levy Payment for 2016 which was originally due on June 15, 2016 and extended to July 15, 2016. The City is indebted to DCA to repay the Existing Advance and the Existing Advance shall be deemed to be an Advance under the Recovery Loan and part of the Obligations for all purposes hereof, and shall be repaid with all other Advances in accordance with the terms hereof.

(c) Upon and subject to the terms and conditions hereto, until the Advance Termination Date, the City may from time to time borrow under this Section 2.1.1. The making of each Advance shall be subject to the prior satisfaction of the applicable conditions set forth in this Agreement, including, without limitation, Section 4 hereof, although no additional authorizing action by the City shall be required other than the initial authorizing resolution of the City Council. No Advances shall be made subsequent to the Advance Termination Date. Advances, once repaid, may not be reborrowed.

2.1.2 Use of Proceeds of the Recovery Loan. The City acknowledges that the Recovery Loan is intended to supplement the City's other sources of revenues and is not intended to cover payment of all of the City's expenses during the term of the Recovery Loan. Advances shall be used for the purposes set forth in the Recovery Loan Budget and for no other purposes without the prior written consent of the Director. The City shall use its existing funds to pay expenses prior to using the proceeds of an Advance. The use of proceeds of Advances as set forth in the Recovery Loan Budget shall include full payment of the City's 2016 Pension and Health Benefit expenses including amounts past due for 2016 obligations plus all such amounts becoming due before the Advance Termination Date. The City further agrees that promptly after the date of this Agreement, it will request and use the proceeds of an Advance, within two days

of its receipt of such Advance proceeds, to pay the City's first scheduled Board of Education Tax Levy Payment for fiscal year 2017 in the amount of \$9,781,697.75.

2.1.3 Advance Procedures. Unless otherwise agreed by the Director, all requests for an Advance shall be submitted by the City at least ten (10) days prior to the requested date of the loan disbursement, and supported by such receipts, invoices and other supporting documentation as may be required by the Director. Disbursements shall be made no more often than monthly; provided that the Director may disburse more frequently, if necessary, provided the City reasonably demonstrates to the Director that it cannot wait for the next monthly disbursement date to request such Advance. DCA will disburse only after the review and approval by the Director of the Advance request and the receipts, invoices and other supporting documentation requested by and provided to the Director. At the written request of the City, and at the option of the Director, DCA may make loan disbursements to a Person who is the subject of the disbursement request submitted by the City. DCA shall have no obligation after making loan disbursements in a particular manner to continue to make loan disbursements in that manner. DCA shall have no obligation regarding the proper application of loan proceeds after disbursement. DCA shall be under no obligation to make, and may withhold, any loan disbursement if there is a Default or Event of Default, or any condition precedent thereto has not been complied with to the Director's satisfaction. The City shall have no right to claim any loss or damage against any State Party or any of their respective representatives arising from DCA's decision to reject an Advance request or otherwise not to make an Advance, or from any alleged failure (i) to monitor loan disbursements, or (ii) to otherwise properly administer the Recovery Loan.

3. INTEREST, PAYMENTS AND MISCELLANEOUS CREDIT PROVISIONS

3.1 Interest Rate; Payments. The outstanding principal amount of the Recovery Loan shall bear interest at a rate per annum equal to a fixed rate of one and three-quarter percent (1.75%) per annum (the "Interest Rate"). Interest on the Loan shall be payable on the Maturity Date; provided however that so long as no Event of Default has occurred and is continuing on the Maturity Date, no payment of interest shall be due and all accrued interest shall be waived in full. The outstanding principal amount of all Advances shall be finally due and payable in full on the Maturity Date.

3.2 Prepayment of Recovery Loan. The City may prepay the Recovery Loan in part or in full at any time. In addition, in the event that all or any part of an Advance is used by the City to pay an expenditure that is recoverable from grants, upon the City's receipt of grant funds reimbursing the City for any such expenditure, the City shall immediately deliver such funds to DCA to be applied to pay down the balance of the Recovery Loan.

3.3 Payments. The parties acknowledge and agree that the Recovery Loan shall be repaid, in the first instance, from the ACA Payments and the IAT Funds, in any order, and then from any State Aid payable to or received by the City; and that, if those are insufficient to repay the Recovery Loan in full as of the Maturity Date, then and only then the State shall have recourse to the other Collateral in any order. Any ACA Payments which would otherwise be remitted from the State to the City pursuant to N.J.S.A. 52:27BBBB-21 [Section 4 of S1715]

shall be applied by the State to any and all amounts outstanding under the Recovery Loan as of the later of the Maturity Date and the operative date of the Casino Property Tax Stabilization Act, N.J.S.A. 52:27BBBB-18 et seq. [§13 of S1715]. Any IAT Funds allocated to the City pursuant to N.J.S.A. 52:27BBBB-25 [Section 9 of S1715] shall be immediately paid to the State and applied to any and all amounts outstanding under the Recovery Loan. If the ACA Payments and IAT Funds are insufficient to repay the Recovery Loan in full as of the Maturity Date, then the State may withhold any State Aid payable to the City and apply such funds to any and all amounts outstanding under the Recovery Loan. The City agrees that it shall not take any action to interfere with any State Party or Parties' right to collect any ACA Payments and IAT Funds to pay down the Recovery Loan, and shall cooperate with the State Parties with respect thereto.

4. CONDITIONS

4.1 **Conditions to DCA's Obligations Under this Agreement.** Notwithstanding any other provision of this Agreement, the effectiveness of this Agreement and the obligation of DCA to make the initial Advance of the Recovery Loan are subject to the fulfillment of each of the following conditions prior to or simultaneously therewith (each of which may be waived by the Director):

(a) DCA shall have received an authorizing resolution of the City Council of the City of Atlantic City certified by the City Clerk as of the date hereof, to be duly adopted and in full force and effect on such date, authorizing (a) the incurrence of the Recovery Loan and the transactions (including, without limitation, the grant of a security interest by the City to DCA) contemplated by the Loan Documents and (b) specific officers to execute and deliver this Agreement and the other Loan Documents; and

(b) DCA shall have received such additional documents and information as the Director or his representatives may request in connection therewith, all in form and substance satisfactory to DCA.

4.2 **Conditions to Each Advance.** The obligation of DCA to make the initial Advance and each additional Advance of the Recovery Loan is subject to the satisfaction of each of the following conditions (each of which may be waived by the Director):

(a) All of the representations and warranties of the City contained herein or in any of the other Loan Documents shall be correct on and as of the date hereof and the date of funding of each Advance as though made on and as of such date, and shall be deemed to be repeated by the City on such dates;

(b) There shall be no threatened or pending litigation relating to the Act, this Agreement and/or the Recovery Loan initiated by the City against the State;

(c) No breach of the terms of this Agreement by the City shall then exist,

(d) The City shall be fully complying with its obligation to dissolve the MUA in accordance with Section 6.9(a) in a timely manner; and

(c) No event shall have occurred and be continuing, or would result from the funding of any Advance, which constitutes or would constitute a Default or Event of Default.

5. COLLATERAL

5.1 As security for the payment and performance of the Recovery Loan and the payment and performance of each of its covenants, obligations and agreements under this Agreement and the other Loan Documents (collectively, the "Obligations"), the City acknowledges, and hereby grants to DCA a continuing security interest in and to all of the following: (i) in accordance with N.J.S.A. 52:27BBBB-24, a first priority statutory lien on the ACA Payments; (ii) all IAT Funds, (iii) any State aid from time to time payable to or received by the City, (iv) the Treasurer's statutory right to set-off against the Obligations any payments due or owing to the City from time to time from the State or any office, department, division, bureau, board, commission, or agency of the State, pursuant to the Appropriations Act, (v) a pledge of any net proceeds received by the City from a sale of the real property commonly known as Bader Field, Block 794, Lot 1, 1-BLDG, & 1-Lot ("Bader Field"), (vi) in the event of a dissolution of the MUA pursuant to Section 6.9(a), a pledge of the assets of the MUA, and (vii) in accordance with N.J.S.A. 52:27BBBB-24, a first priority statutory lien on the PILOT Payments (collectively, all of the foregoing, together with all products and proceeds thereof, the "Collateral"). The City shall take any and all steps requested by DCA at any time, and from time to time, to perfect, maintain, protect, and enforce DCA's security interest in the Collateral, including, without limitation, (a) executing and filing financing or continuation statements, and amendments thereof, in form and substance satisfactory to DCA, and (b) taking such other steps as may be deemed necessary or desirable by DCA to maintain DCA's security interest in the Collateral. Without limiting the foregoing, DCA is hereby authorized to file one or more financing statements, continuation statements, recordation filings or other documents for the purpose of perfecting, confirming, continuing, enforcing or protecting the security interest granted by the City, without the signature of the City, and naming the City as debtor and DCA as secured party.

6. REPRESENTATIONS, WARRANTIES AND COVENANTS

To induce DCA to enter into this Agreement and to make the Recovery Loan hereunder, the City makes the following representations and warranties to DCA, and covenants to DCA as follows, each and all of which shall survive the execution and delivery of this Agreement:

6.1 **Authorization; Non-Contravention.** The execution, delivery and performance by the City of this Agreement and the other Loan Documents to which it is a party are within its power, have been duly authorized by all necessary action taken by the duly authorized officers of the City and, if necessary, by making appropriate filings with any governmental agency or unit and are the legal, binding, valid and enforceable obligations of the City; and do not (i) contravene, or constitute (with or without the giving of notice or lapse of time or both) a violation of any provision of applicable law, a violation of the City's statutory or constitutional authority, or a default under any agreement, judgment, injunction, order, decree or other instrument binding upon or affecting the City, or (ii) give cause for the acceleration of any obligations of the City to any other creditor.

6.2 **Accurate Information.** All information now and hereafter furnished to DCA and the Division by or on behalf of the City is and will be true, correct and complete, to the best of the City's knowledge and belief, in all material respects. Any such information relating to the City's financial condition will accurately reflect the City's financial condition as of the date(s) thereof (including all contingent liabilities of every type).

6.3 **Access to Books & Records; Cooperation.** The City shall permit the Division and any representatives designated by the Director, upon reasonable prior notice, to visit and inspect its properties, to examine and make extracts from its books, records and such other documents of the City as the Division shall require, and make copies thereof, and to discuss its affairs, finances and condition with its officers, staff, accountants and other advisors, all at such reasonable times during normal business hours and as often as requested. The Division and its agents may enter upon any of the City's premises at any time during business hours and at any other reasonable time, and, from time to time, for the purpose of inspecting the Collateral and any and all records pertaining thereto and the operation of the City's business. The City shall fully cooperate with the foregoing and shall timely respond to any requests for information and other questions by the Division and its representatives.

6.4 **Notice of Default.** The City shall furnish to DCA immediately upon becoming aware of the existence of any condition or event which constitutes a Default or an Event of Default under any Loan Document, written notice specifying the nature and period of existence thereof and the action which the City is taking or proposes to take with respect thereto.

6.5 **Compliance with Other Agreements.** The City shall comply with all terms and conditions contained in this Agreement and any other Loan Document, including compliance with all of the terms of that certain Memorandum of Understanding entered into by the City and the Division on or about November 23, 2015, which remains in full force and effect, and any other Memorandum of Understanding or similar agreement hereafter entered into by the City with the Division.

6.6 **Reports and Notices.** The City covenants and agrees it shall deliver to DCA such information requested by the Division and its agents from time to time, including, without limitation, account balances and updated accounts payable schedules, a cash flow budget for such period specified by the Division, and financial statements and information pertaining to the City's financial condition. Such information shall be true, complete, and accurate.

6.7 **Security Interest in Collateral.** The provisions of this Agreement and the other Loan Documents create legal and valid liens on all the Collateral in favor of DCA, and such liens constitute perfected and continuing liens on the Collateral, securing the Obligations, enforceable against the City and all third parties, and having priority over all other liens on the Collateral. The City has good and indefeasible title to, or valid leasehold interests in, all of its real and personal property, free of all liens other than those being granted to DCA pursuant to this Agreement. The City will not create, incur, assume or permit to exist any lien or other encumbrance on any property or asset now owned or hereafter acquired by it, or assign or sell any income or revenues (including accounts) or rights in respect of any thereof, except in favor of DCA or another State Party.

6.8 **No Disposition of Assets.** The City will not; nor will it permit any instrumentality of the City to, sell, transfer, lease or otherwise dispose of any asset, except with the prior written consent of the Director.

6.9 **Dissolution of MUA; Bader Field.** (a) The City agrees to take all actions necessary, or otherwise directed by the DCA, (i) to dissolve the MUA effective upon the declaration of a Payment Default by DCA, including, but not limited to, the adoption of an ordinance on or before September 15, 2016 authorizing such dissolution, provided that such ordinance may provide for the revocation thereof in the event that the City repays the Recovery Loan in full at any time prior to the Maturity Date or prior to the declaration of a Payment Default by DCA, and (ii) upon dissolution of the MUA, to pledge all of the assets of the MUA to DCA as additional collateral for the Obligations. Without limiting the foregoing, the City shall take all steps necessary and/or directed by DCA to ensure the seamless and continuous operation of the MUA by the City post-dissolution with the same level of quality and services as those provided prior to dissolution. (b) The City shall establish a deposit account into which it shall deposit the net proceeds of the sale of Bader Field, which account shall be pledged to the DCA and subject to a control agreement in favor of DCA.

6.10 **Additional Terms.** The City covenants and agrees to comply with the covenants and other terms and conditions set forth on Exhibit B attached hereto and made a part hereof.

7. **Intentionally Omitted.**

8. **EVENTS OF DEFAULT: RIGHTS AND REMEDIES**

8.1 **Events of Default.** The occurrence of any one or more of the following events (regardless of the cause thereof) shall constitute an "Event of Default" hereunder:

(a) the failure of the City to pay any of the Obligations under this Agreement or any other Loan Document when due;

(b) the City shall fail to observe or timely perform any covenant, condition or agreement contained in this Agreement or any other Loan Document, including any failure of timely performance of the Obligations or breach or other default under this Agreement or any other Loan Document, other than payment Obligations covered by (a) above; provided that if such failure is curable in nature, such failure shall not constitute an Event of Default hereunder until the Director has provided notice of such failure to the City, and such failure is not cured by the City within ten (10) days thereof;

(c) the dissolution of, termination of existence of, appointment of a receiver for, assignment for the benefit of creditors of, or commencement (including the request by the City of such filing of the State) of any bankruptcy or insolvency proceeding by or against the City;

(d) a warranty, representation, or acknowledgement made or deemed made in the Loan Documents or furnished to the State Parties in connection with the Loan or any Advance proves false, or if of a continuing nature, becomes false;

(e) use of any proceeds of the Recovery Loan for any purpose prohibited by, or not specifically permitted by, this Agreement; and

(f) any action is commenced to modify, revoke or otherwise invalidate the ordinance adopted to dissolve the MUA pursuant to Section 6.9(a) hereof.

Notwithstanding the foregoing, if all ACA Payments, IAT Funds, and State Aid payable to or received by the City, which are available on the Maturity Date, are applied to payment of the Recovery Loan when available but are insufficient to pay the Recovery Loan in full on the Maturity Date, DCA agrees that it shall not declare an Event of Default hereunder due to the City's failure to pay the Recovery Loan in full on the Maturity Date; provided that (i) the City is not otherwise in default hereunder (after giving effect to any cure period), and (ii) the remaining balance of the Recovery Loan is paid in full within thirty (30) days of the Maturity Date.

8.2 Consequences of Default. Automatically upon the occurrence of an Event of Default described in paragraph (c) of Section 8.1, or upon the determination of DCA upon the occurrence of any other Event of Default, (i) any obligation of DCA to make Advances shall terminate immediately, (ii) DCA shall declare the Recovery Loan to become immediately due and payable, and (iii) the State Parties each shall be entitled to exercise forthwith and thereafter (to the extent and in such order and at such time or times as DCA may elect) any or all rights and remedies provided for herein, any provision of any other Loan Document or that may otherwise be available to any State Party by law. In addition to, and without limiting the foregoing, the City agrees that upon the determination of DCA upon the occurrence of any Event of Default DCA may take all or any of the following actions:

(a) Require the City to deliver each item of Collateral to DCA on demand, and DCA shall have, in addition to any other rights and remedies, the rights and remedies of a secured party under any applicable law, including, without limitation, the right, with or without legal process (to the extent permitted by law) and with or without prior notice or demand for performance, to take possession of the Collateral and without liability for trespass (to the extent permitted by law) to enter any premises where the Collateral may be located for the purpose of taking possession of or removing the Collateral (and for that purpose DCA may, enter upon any premises on which the Collateral may be situated and remove the Collateral therefrom) and, generally, to exercise any and all rights afforded to a secured party under applicable law. Without limiting the generality of the foregoing, the City agrees that DCA shall have the right, subject to the mandatory requirements of applicable law, to sell or otherwise dispose of all or any part of the Collateral, at public or private sale or at any broker's board or on any securities exchange, for cash, upon credit or for future delivery as DCA shall deem appropriate. Each such purchaser at any such sale shall hold the property sold absolutely, free from any claim or right on the part of the City, and the City hereby waives (to the extent permitted by law) all rights of redemption, stay, valuation and appraisal which the City now has or may at any time in the future have under any rule of law or statute now existing or hereafter enacted; and

(b) Any State Party may withhold any State aid payable to the City, to the extent permitted by law.

8.3 **Right of Setoff.** Whether or not an Event of Default shall have occurred and be continuing and whether or not the Division shall have declared the Obligations immediately due and payable, each State Party is hereby authorized at any time and from time to time, to the fullest extent permitted by law, to set off and apply any deposits, State-aid or other sums credited by or due from the State or any office, department, division, bureau, board, commission, or agency of the State to the City against any and all liabilities, direct or indirect, absolute or contingent, due or to become due, now existing or hereafter arising, of the City to DCA.

9. ACKNOWLEDGEMENTS

(a) Except as otherwise provided for in this Agreement and applicable law, the City expressly waives presentment, demand, protest and all other notices of any kind in connection with this Agreement and the other Loan Documents. The City acknowledges that it has been advised by counsel of its choice with respect to this Agreement, the other Loan Documents and the transactions evidenced by this Agreement and the other Loan Documents.

(b) The City acknowledges that, in connection with this Agreement and the transaction contemplated hereby, the State Parties will rely upon and assume the accuracy and completeness of all of the financial, legal, regulatory, accounting, tax and other information provided to, discussed with or reviewed by the State Parties for such purposes, and neither the Director nor any other State Party assumes any liability therefor or responsibility for the accuracy, completeness or independent verification thereof.

(c) The parties agree that the Act is consistent with and does not violate the terms of either the New Jersey Constitution or the United States Constitution, or any other applicable law, and that by entering into this Agreement, which is authorized by N.J.S.A. 52:27BBBB-16, the parties are knowingly, intelligently and voluntarily waiving any claims that the Act is unconstitutional or otherwise in contravention of applicable law, and each of them agree not to challenge the validity of the Act.

(d) The parties agree that occurrence of an Event of Default, including the failure of the City at any time to make a required repayment under this Agreement, including in circumstances where repayment has been accelerated, may be considered by the Commissioner as a factor in making his determination to approve or deny the Recovery Plan in accordance with N.J.S.A. 52:27BBBB-4(c).

(e) The parties agree that the Recovery Plan shall be prepared by the City, pursuant to N.J.S.A. 52:27BBBB-4(b), and that any assistance provided to the City by DCA, the Director, the Local Finance Board in the Division ("Local Finance Board"), or any other State Party, or any of their representatives, agents, advisors or consultants, in connection with the Recovery Plan shall not constitute DCA's endorsement of or agreement with any of the terms contained within the Recovery Plan or be used as a basis to challenge the Commissioner's decision with respect to the Recovery Plan.

10. MISCELLANEOUS

10.1 **Advances Subject to Appropriations and Statutory Restrictions.** Notwithstanding anything to the contrary elsewhere in this Agreement, DCA's agreement to

make any Advances hereunder is and shall be subject to and dependent upon appropriations being made by the State Legislature from time to time for such purpose and the availability of funds.

10.2 Complete Agreement. The Loan Documents constitute the complete agreement between the parties with respect to the subject matter hereof and may not be modified, altered or amended except by an agreement in writing signed by the City and DCA.

10.3 Other Agreements; No Limitation. This Agreement, including, without limitation, Exhibit B hereto, shall not be deemed to supersede or replace any other agreements between the City and any of the State Parties or any requirement of law applicable to the City, including any memorandum of understanding or memorandum of agreement; and the obligations of the City hereunder and under Exhibit B are in addition to, and do not limit, any other obligations of the City pursuant to applicable law or any other agreement entered into or made in favor of any State Party, including without limitation any memorandum of understanding or memorandum of agreement.

10.4 Amendments; Waiver; Consent. No amendment, modification, termination or waiver of any provision of this Agreement or any other Loan Document, nor consent to any departure by the City therefrom, shall in any event be effective unless the same shall be in writing and signed by DCA. Any waiver shall apply only to the specific instance or purpose for which it is given and shall not give rise to a course of dealing between the parties.

10.5 No Waiver by the State Parties. Any State Party's failure at any time or times, to require strict performance by the City of any provision of this Agreement and any of the other Loan Documents shall not waive, affect or diminish any right of the State Parties' thereafter to demand strict compliance and performance therewith. Any suspension or waiver by any State Party of an Event of Default by the City under the Loan Documents shall not suspend, waive or affect any other Event of Default by the City under this Agreement and any of the other Loan Documents whether the same is prior or subsequent thereto and whether of the same or of a different type. None of the undertakings, agreements, warranties, covenants and representations of the City contained in this Agreement or any of the other Loan Documents shall be deemed to have been suspended or waived unless such suspension or waiver is by an instrument in writing signed by the Director and directed to the City specifying such suspension or waiver.

10.6 Additional Remedies. The rights and remedies of the State Parties under this Agreement shall be cumulative and concurrent, may be pursued separately, successively or together, at the discretion of DCA or such State Party, and may be exercised as often as occasion therefore shall arise. The failure to exercise any such right or remedy shall in no event be construed as a waiver or release thereof. Recourse to the Collateral shall not be required.

10.7 Severability. Wherever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law. If any provision of this Agreement shall be or become unenforceable or invalid under then applicable law, the remaining provisions of this Agreement shall nevertheless continue in full force and effect, and the parties shall promptly and in good faith undertake to negotiate an amendment hereto to carry out the purposes of the invalidated provision. Should the parties be unable to agree on such an

amendment and if the State Parties deem the invalid or unenforceable provision material to their agreements hereunder, DCA may terminate this Agreement on notice in writing to the City at which time the Recovery Loan immediately shall become due and payable in full.

10.8 Parties. This Agreement and the other Loan Documents shall be binding upon, and inure to the benefit of, the successors of the City, and the successors and assigns of the State Parties; provided, however, the City may not assign its right to borrow under this Agreement.

10.9 Conflict of Terms; Survival. Except as otherwise specifically provided in this Agreement, if any provision contained in this Agreement is in conflict with, or inconsistent with, any provision in any of the other Loan Document, the provision contained in this Agreement shall govern and control. All of the City's undertakings, agreements, covenants, warranties and representations contained in this Agreement shall survive any termination or cancellation hereof and shall continue in full force and effect until such time as all of the Obligations have been paid indefeasibly in full.

10.10 Governing Law; Litigation; Consent to Jurisdiction; Venue.

(a) In all respects, including all matters of construction, validity and performance, this Agreement and the Obligations arising hereunder shall be governed by, and be construed and enforced in accordance with, the laws of the State applicable to contracts made and performed in such state, without regard to the principles of conflict of laws.

(b) IN CONNECTION WITH ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE ACT, OR ANY OF THE OTHER LOAN DOCUMENTS:

(i) THE PARTIES WAIVE THE RIGHT TO TRIAL BY JURY AND THE RIGHT TO INTERPOSE ANY SETOFF OR COUNTERCLAIM OF ANY NATURE, EXCEPT FOR MANDATORY COUNTERCLAIMS; AND

(ii) SOLE AND EXCLUSIVE JURISDICTION SHALL BE VESTED IN ANY COURT OF THE STATE OF NEW JERSEY LOCATED IN MERCER COUNTY, NEW JERSEY, AND THE PARTIES WAIVE ANY RIGHT TO OBJECT TO SUCH COURT AS AN INCONVENIENT FORUM.

10.11 Notices. Except as otherwise specifically provided in this Agreement, whenever it is provided in this Agreement that any notice, demand, request, consent, approval, declaration or other communication shall or may be given to or served upon any of the parties by another, or whenever any of the parties desires to give or serve upon another any communication with respect to this Agreement, each such notice, demand, request, consent, approval, declaration or other communication shall be in writing and either delivered in person and confirmed with a signed receipt (provided that rejection or other refusal to sign for or accept such notice shall not affect the effectiveness or the date of delivery for such notice) or sent by registered or certified mail, return receipt requested, postage prepaid, to the City's address shown above or such other address as provided hereunder, and to any State Party, as follows:

If to any State Party:

Department of Community Affairs
Division of Local Government Services
Attn: Timothy J. Cunningham, Director
101 South Broad Street
P.O. Box 803
Trenton, New Jersey 08625-0803

10.12 Sole Discretion. Except as may otherwise be expressly provided to the contrary, wherever pursuant to this Agreement, or any other document or instrument now or hereafter executed and delivered in connection therewith or otherwise with respect to the Recovery Loan, any State Party exercises any right given to it to consent or not consent, or to approve or disapprove, or any arrangement or term is to be satisfactory to a State Party, the decision of such State Party, as applicable, to consent or not consent, or to approve or disapprove, or to decide that arrangements or terms are satisfactory or not satisfactory, shall be in the sole and absolute discretion of such State Party, as applicable, and shall be final and conclusive.

10.13 No Third Party Beneficiaries. This Agreement and the other Loan Documents are solely for the benefit of the City and the State Parties, and nothing contained in this Agreement or the other Loan Documents shall be deemed to confer upon anyone other than such Persons any right to insist upon or to enforce the performance or observance of any of the obligations contained herein or therein.

10.14 Further Assurances. The City shall cooperate fully with the State Parties in order to carry out promptly and fully the terms and provisions of this Agreement. The City shall from time to time execute and deliver such other agreements, documents or instruments, including a promissory note, and take such other actions as may be required by this Agreement or as requested by the Director to effectuate the terms of this Agreement. Without limiting the foregoing, the City will execute and deliver, or cause to be executed and delivered, to DCA such documents, agreements and instruments, and will take or cause to be taken such further actions (including the filing and recording of financing statements, fixture filings, mortgages, deeds of trust and other documents and such other actions or deliveries required by DCA), which may be required by any applicable law or which the Director may, from time to time, reasonably request to carry out the terms and conditions of this Agreement and the other Loan Documents and to ensure perfection and priority of the liens created or intended to be created by this Agreement and the other Loan Documents.


10.15 Section Titles. The Section titles contained in this Agreement are used merely for convenience and shall have no substantive effect in interpreting this Agreement.

10.16 Counterparts. This Agreement may be executed in any number of separate counterparts, each of which shall, collectively and separately, constitute one agreement.


[Remainder of this page intentionally blank, next page is the signature page]

IN WITNESS WHEREOF, this Agreement has been duly executed as of the date first written above.

NEW JERSEY DEPARTMENT OF
COMMUNITY AFFAIRS, DIVISION
OF LOCAL GOVERNMENT
SERVICES

By: 
Name: Timothy J. Cunningham
Title: Director

THE CITY OF ATLANTIC CITY

By: 
Name: Donald A. Guardian
Title: Mayor

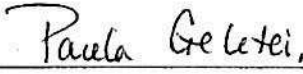
By: 
Name:
Title: City Clerk, Deputy

Exhibit A

Recovery Loan Budget

Anticipated Advance Amount	Anticipated Date of Advance	Use of Proceeds of Advance
\$	July __, 2016	

Exhibit B

Additional Terms

The City covenants and agrees to do the following:

1. All claims asserted in the litigation styled Hespe v. The City of Atlantic City, DKT. NO. ATL-L-688-16 shall be dismissed in their entirety immediately upon execution of this Agreement.
2. Submission of draft 2016 budget to the Division for approval by no later than August 15, 2016.
3. Issuance of estimated 3rd quarter property tax bills in sufficient time to ensure timely payment by taxpayers. The estimated 3rd quarter property tax bill shall include the following:
 - a. An increase to the school tax rate that appropriately accounts for the entire amount of the 2016 school levy; and
 - b. An increase to the county rate that appropriately accounts for the entire amount of the Atlantic County levy.
4. Weekly cash flow reporting of proposed weekly spend for the week following, and appropriate supporting information and information as requested by the Division or its representatives.
5. Weekly reporting of actual spend against the proposed weekly spend for that week or other frequency as agreed, and appropriate supporting information and information as requested by the Division or its representatives.
6. Weekly reporting of cash balances in all accounts, and the identification of purpose of those funds (e.g. current funds, individual trust funds, capital funds); for those funds commingled, the account balance shall be segregated to the separate funds as noted previously.
7. Weekly summary of all known accounts payable, identified by fund.
8. Weekly reporting of status of grant activity, including draws requested and payments received.
9. The City shall submit to the Director a copy of all judgments or settlements in excess of \$100,000. The Director may, at the Director's discretion, request copies of any other judgments or settlements involving the City or its employees. The City shall also provide a summary of outstanding litigation, any monetary "demands" made by plaintiffs and what the Self-Insured Retention (SIR) is for that case and any other related information sufficient to estimate the total amount of financial exposure facing the City regarding pending litigation.

10. The City will provide the Director or his representatives, with all the above information as well as any other reporting requirements contained in the Transitional Aid MOU and N.J.S.A. 52:27BB-1 *et seq.*
11. The City shall promptly pay in full, on the scheduled due date therefor, all Board of Education Tax Levy Payments, all County payments and all debt service payments.

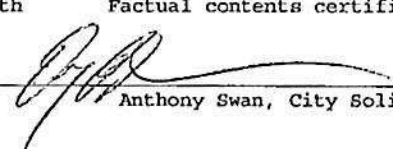
Resolution of the City of Atlantic City

No. 464

Approved as to Form and Legality on Basis of Facts Set Forth

Factual contents certified to by


Deputy City Solicitor /s/ Michael J. Perugini


Anthony Swan, City Solicitor

Prepared by City Solicitor's Office

Council Member SHABAZZ & SMALL presents the following Resolution:

RESOLUTION AUTHORIZING EXECUTION OF FINANCIAL DOCUMENTS

WHEREAS, the City of Atlantic City has found itself with various fiscal challenges; and

WHEREAS, it may be prudent in anticipation of meeting certain fiscal obligations, that the Mayor or his designees be authorized to execute a secured loan agreement between the City of Atlantic City and the State of New Jersey to help satisfy those obligations; and

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Atlantic City hereby authorizes the Mayor or his designees to execute the appropriate documents concerning a secured loan agreement between the City of Atlantic City and the State of New Jersey.

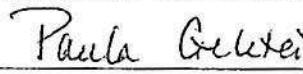
SH

July 28, 2016 3:53 PM

DO NOT USE SPACE BELOW THIS LINE													
RECORD OF COUNCIL VOTE ON FINAL PASSAGE													
COUNCIL MEMBER	AYE	NAY	N.V.	A.B.	MOT.	SEC.	COUNCIL MEMBER	AYE	NAY	N.V.	A.B.	MOT.	SEC.
CHENG				/			MARSH	/					/
DELGADO				/			RANDOLPH	/					
GILLIAM				/			SHABAZZ	/				/	
KURTZ	ABSTAIN						TIBBITT				/		
							SMALL, PRESIDENT	/					
X-Indicates Vote NV-Not Voting AB-Absent MOT-Motion SEC-Second													

This is a Certified True copy of the Original Resolution on file in the City Clerk's Office.

DATE OF ADOPTION: JULY 28, 2016


Paula Gelinei, Deputy City Clerk
/s/ Rhonda Williams, City Clerk

