

(3) 1st reading
3-6-13

INTRODUCED BY:
SECONDED BY:

CITY OF HOBOKEN, NEW JERSEY

ORDINANCE NO. Z-235

BOND ORDINANCE AUTHORIZING THE REHABILITATION AND RECONSTRUCTION OF PIER "A" IN THE CITY OF HOBOKEN, COUNTY OF HUDSON, NEW JERSEY; APPROPRIATING THE SUM OF \$2,500,000 THEREFOR; AUTHORIZING THE ISSUANCE OF GENERAL OBLIGATION BONDS OR BOND ANTICIPATION NOTES OF THE CITY OF HOBOKEN, COUNTY OF HUDSON, NEW JERSEY, IN THE AGGREGATE PRINCIPAL AMOUNT OF UP TO \$2,375,000; MAKING CERTAIN DETERMINATIONS AND COVENANTS; AND AUTHORIZING CERTAIN RELATED ACTIONS IN CONNECTION WITH THE FOREGOING

BE IT ORDAINED by the City Council of the City of Hoboken, County of Hudson, New Jersey (not less than two-thirds of all the members thereof affirmatively concurring), pursuant to the provisions of the Local Bond Law, Chapter 169 of the Laws of 1960 of the State of New Jersey, as amended and supplemented ("Local Bond Law"), as follows:

Section 1. The purposes described in Section 7 hereof are hereby authorized as general improvements to be made or acquired by the City of Hoboken, County of Hudson, New Jersey ("City").

Section 2. It is hereby found, determined and declared as follows:

- (a) the estimated amount to be raised by the City from all sources for the purposes stated in Section 7 hereof is \$2,500,000;
- (b) the estimated amount of bonds or bond anticipation notes to be issued for the purposes stated in Section 7 hereof is \$2,375,000; and
- (c) a down payment in the amount of \$125,000 for the purposes stated in Section 7 hereof is currently available in accordance with the requirements of Section 11 of the Local Bond Law, *N.J.S.A. 40A:2-11*.

Section 3. The sum of \$2,375,000, to be raised by the issuance of bonds or bond anticipation notes, together with the sum of \$125,000, which amount represents the required down payment, is hereby appropriated for the purposes stated in this bond ordinance ("Bond Ordinance").

Section 4. The issuance of negotiable bonds of the City in an amount not to exceed \$2,375,000 to finance the costs of the purposes described in Section 7 hereof is hereby authorized. Said bonds shall be sold in accordance with the requirements of the Local Bond Law.

Section 5. In order to temporarily finance the purposes described in Section 7 hereof, the issuance of bond anticipation notes of the City in an amount not to exceed \$2,375,000 is hereby authorized. Pursuant to the Local Bond Law, the Chief Financial Officer is hereby authorized to sell part or all of the bond anticipation notes from time to time at public or private sale and to deliver the same to the purchasers thereof upon receipt of payment of the purchase price plus accrued interest from their date to delivery thereof. The Chief Financial Officer is hereby directed to report in writing to the governing body at the meeting next succeeding the date when any sale or delivery of the bond anticipation notes pursuant to this Bond Ordinance is made. Such report must include the amount, the description, the interest rate and the maturity schedule of the bond anticipation notes sold, the price obtained and the name of the purchaser.

Section 6. The amount of the proceeds of the obligations authorized by this Bond Ordinance which may be used for the payment of interest on such obligations, accounting, engineering, legal fees and other items as provided in Section 20 of the Local Bond Law, *N.J.S.A. 40A:2-20*, shall not exceed the sum of \$600,000.

Section 7. The improvements hereby authorized and the purposes for which said obligations are to be issued; the estimated costs of each said purpose; the amount of down payment for each said purpose; the maximum amount obligations to be issued for each said purpose and the period of usefulness of each said purpose within the limitations of the Local Bond Law are as follows:

<u>Purpose/Improvement</u>	<u>Estimated Total Cost</u>	<u>Down Payment</u>	<u>Amount of Obligations</u>	<u>Period of Usefulness</u>
A. Rehabilitation and Reconstruction of Pier "A", as more particularly described in the documentation on file in the Office of the Director of the Department of Health and Human Services and available for inspection during normal City hours, together with the acquisition of all materials and equipment and completion of all work necessary therefor or related thereto	\$2,500,000	\$125,000	\$2,375,000	15 years

Section 8. The average period of useful life of the several purposes for the financing of which this Bond Ordinance authorizes the issuance of bonds or bond anticipation notes, taking into consideration respective amounts of bonds or bond anticipation notes authorized for said several purposes, is not less than 15.00 years.

Section 9. Grants or other monies received from any governmental entity, any person, any corporation or any other source, if any, will be applied to the payment of, or repayment of obligations issued to finance the costs of the purposes described in Section 7 above.

Section 10. The supplemental debt statement provided for in Section 10 of the Local Bond Law, *N.J.S.A. 40A:2-10*, was duly filed in the office of the Clerk prior to the passage of this Bond Ordinance on first reading and a complete executed duplicate original thereof has been filed in the Office of the Director of the Division of Local Government Services in the Department of Community Affairs of the State of New Jersey. The supplemental debt statement shows that the gross debt of the City, as defined in Section 43 of the Local Bond Law, *N.J.S.A. 40A:2-43*, is

increased by this Bond Ordinance by \$2,375,000 and that the obligations authorized by this Bond Ordinance will be within all debt limitations prescribed by said Local Bond Law.

Section 11. The full faith and credit of the City are irrevocably pledged to the punctual payment of the principal of and interest on the bonds or bond anticipation notes authorized by this Bond Ordinance, and to the extent payment is not otherwise provided, the City shall levy *ad valorem* taxes on all taxable real property without limitation as to rate or amount for the payment thereof.

Section 12. The applicable Capital Budget of the City is hereby amended to conform with the provisions of this Bond Ordinance to the extent of any inconsistency therewith, and the resolution promulgated by the Local Finance Board showing full detail of the amended applicable Capital Budget and Capital Program as approved by the Director of the Division of Local Government Services, is on file with the Clerk and available for inspection.

Section 13. The City hereby declares its intent to reimburse itself from the proceeds of the bonds or bond anticipation notes authorized by this Bond Ordinance pursuant to Income Tax Regulation Section 1.150-2(e), promulgated under the Internal Revenue Code of 1986, as amended ("Code"), for "original expenditures", as defined in Income Tax Regulation Section 1.150-2(c)(2), made by the City prior to the issuance of such bonds or bond anticipation notes.

Section 14. The City hereby covenants as follows:

(a) it shall take all actions necessary to ensure that the interest paid on the bonds or bond anticipation notes authorized by the Bond Ordinance is exempt from the gross income of the owners thereof for federal income taxation purposes, and will not become a specific item of tax preference pursuant to Section 57(a)(5) of the Code;

(b) it will not make any use of the proceeds of the bonds or bond anticipation notes or do or suffer any other action that would cause the bonds or bond anticipation notes to be "arbitrage bonds" as such term is defined in Section 148(a) of the Code and the Regulations promulgated thereunder;

(c) it shall calculate or cause to be calculated and pay, when due, the rebatable arbitrage with respect to the "gross proceeds" (as such term is used in Section 148(f) of the Code) of the bonds or bond anticipation notes;

(d) it shall timely file with the Ogden, Utah Service Center of the Internal Revenue Service, such information report or reports as may be required by Sections 148(f) and 149(e) of the Code; and

(e) it shall take no action that would cause the bonds or bond anticipation notes to be "federally guaranteed" within the meaning of Section 149(b) of the Code.

Section 15. The improvements authorized hereby are not current expenses and are improvements that the City may lawfully make. No part of the cost of the improvements authorized hereby has been or shall be specially assessed on any property specially benefited thereby.

Section 16. All ordinances, or parts of ordinances, inconsistent herewith are hereby repealed to the extent of such inconsistency.

Section 17. In accordance with the Local Bond Law, this Bond Ordinance shall take effect twenty (20) days after the first publication thereof after final passage.

Introduction:

Councilperson	Yea	Nay	Abstain	No Vote
Ravi Bhalla	/			
Theresa Castellano	/			
Jen Giattino	/			
Elizabeth Mason	/			
David Mello	/			
Tim Occhipinti	/			
Michael Russo		/		
President Peter Cunningham	/			

Final Reading:

Councilperson	Yea	Nay	Abstain	No Vote
Ravi Bhalla				
Theresa Castellano				
Jen Giattino				
Elizabeth Mason				
David Mello				
Tim Occhipinti				
Michael Russo				
President Peter Cunningham				

Approved as to Legal Form:

Mellissa Longo, Interim Corporation Counsel

Adopted by the Hoboken City Council
By a Vote of ____ Yeas to ____ Nays
On the ____ day of ____, 2013

James Farina, City Clerk

Vetoed by the Mayor for the following reasons: _____

-or-
 Approved by the Mayor
On the ____ day of ____, 2013

Dawn Zimmer, Mayor

Notice of Pending Bond Ordinance and Summary

The bond ordinance, the summary terms of which are included herein, was introduced and passed upon first reading at a meeting of the City Council of the City of Hoboken, in the County of Hudson, State of New Jersey, on March 6, 2013. It will be further considered for final passage, after public hearing thereon, at a meeting of the City Council to be held at City Hall, 94 Washington Street, Hoboken, New Jersey on March 20, 2013 at 7:00 o'clock PM. During the week prior to and up to and including the date of such meeting copies of the full ordinance will be available at no cost and during regular business hours, at the City Clerk's office for the members of the general public who shall request the same. The summary of the terms of such bond ordinance follows:

Title: **BOND ORDINANCE AUTHORIZING THE REHABILITATION AND RECONSTRUCTION OF PIER "A" IN THE CITY OF HOBOKEN, COUNTY OF HUDSON, NEW JERSEY; APPROPRIATING THE SUM OF \$2,500,000 THEREFOR; AUTHORIZING THE ISSUANCE OF GENERAL OBLIGATION BONDS OR BOND ANTICIPATION NOTES OF THE CITY OF HOBOKEN, COUNTY OF HUDSON, NEW JERSEY, IN THE AGGREGATE PRINCIPAL AMOUNT OF UP TO \$2,375,000; MAKING CERTAIN DETERMINATIONS AND COVENANTS; AND AUTHORIZING CERTAIN RELATED ACTIONS IN CONNECTION WITH THE FOREGOING**

<u>Purpose/Improvement</u>	<u>Estimated Total Cost</u>	<u>Down Payment</u>	<u>Amount of Obligations</u>	<u>Period of Usefulness</u>
A. Rehabilitation and Reconstruction of Pier "A", as more particularly described in the documentation on file in the Office of the Director of the Department of Health and Human Services and available for inspection during normal City hours, together with the acquisition of all materials and equipment and completion of all work necessary therefor or related thereto	\$2,500,000	\$125,000	\$2,375,000	15 years

Appropriation: \$2,500,000
Bonds/Notes Authorized: \$2,375,000
Grants (if any) Appropriated: N/A
Section 20 Costs: \$600,000
Useful Life: 15.00 years

JAMES J. FARINA, RMC, City Clerk

This Notice is published pursuant to N.J.S.A. 40A:2-17.

Bond Ordinance Statements and Summary

The bond ordinance, the summary terms of which are included herein, has been finally adopted by the City Council of the City of Hoboken, in the County of Hudson, State of New Jersey on _____, 2013 and the twenty (20) day period of limitation within which a suit, action or proceeding questioning the validity of such ordinance can be commenced, as provided in the Local Bond Law, has begun to run from the date of the first publication of this statement. Copies of the full ordinance are available at no cost and during regular business hours, at the City Clerk's office in the Municipal Building, 94 Washington Street, Hoboken, New Jersey, for members of the general public who request the same. The summary of the terms of such bond ordinance follows:

Title: **BOND ORDINANCE AUTHORIZING THE
REHABILITATION AND RECONSTRUCTION OF PIER "A"
IN THE CITY OF HOBOKEN, COUNTY OF HUDSON, NEW
JERSEY; APPROPRIATING THE SUM OF \$2,500,000
THEREFOR; AUTHORIZING THE ISSUANCE OF
GENERAL OBLIGATION BONDS OR BOND
ANTICIPATION NOTES OF THE CITY OF HOBOKEN,
COUNTY OF HUDSON, NEW JERSEY, IN THE
AGGREGATE PRINCIPAL AMOUNT OF UP TO \$2,375,000;
MAKING CERTAIN DETERMINATIONS AND
COVENANTS; AND AUTHORIZING CERTAIN RELATED
ACTIONS IN CONNECTION WITH THE FOREGOING**

	<u>Estimated Total Cost</u>	<u>Down Payment</u>	<u>Amount of Obligations</u>	<u>Period of Usefulness</u>
A. <u>Purpose/Improvement</u> Rehabilitation and Reconstruction of Pier "A", as more particularly described in the documentation on file in the Office of the Director of the Department of Health and Human Services and available for inspection during normal City hours, together with the acquisition of all materials and equipment and completion of all work necessary therefor or related thereto	\$2,500,000	\$125,000	\$2,375,000	15 years

Appropriation: \$2,500,000
 Bonds/Notes Authorized: \$2,375,000
 Grants (if any) Appropriated: N/A
 Section 20 Costs: \$600,000
 Useful Life: 15.00 years

JAMES J. FARINA, RMC, City Clerk

This Notice is published pursuant to N.J.S.A. 40A:2-17.

#VALUE!

Department of Community Affairs Supplemental Debt Statement

0905 **0905 Hoboken City - County of Hudson** Prepared as of: **6-Mar-2013**

Budget Year Ending: 12/31/2013 (Month-DD) 2013 (year)

Name: George DeStefano Phone: 201-420-2028
 Title: CFO Fax: 201-420-2019
 Address: 94 Washington St. Email: gdestefano@hobokennj.org
Hoboken, NJ 07030 CFO Cert #: N-0362

George DeStefano, Being duly sworn, deposes and says: Deponent is the Chief Financial Officer of the 0905 Hoboken City - County of Hudson here and in the statement hereinafter mentioned called the local unit. The Supplemental Debt Statement annexed hereto and hereby made a part hereof is a true statement of the debt condition of the local unit as of the date therein stated and is computed as provided by the Local Bond Law of New Jersey.

By checking this box, I am swearing that the above statement is true. (The Email function will not work until you acknowledge the above statement as true)

	Net Debt as per Annual Debt Statement	Decrease (Since December 31, last past)	Increase	Net Debt
Bonds and Notes for School Purposes	\$ -	\$ -	\$ -	\$ -
Bonds and Notes for Self Liquidating Purposes	\$ -	\$ -	\$ -	\$ -
Other Bonds and Notes	\$ 102,151,678.58	\$ 49,985.44	\$ -	\$ 102,101,693.14
2 Net Debt at the time of this statement is				\$ 102,101,693.14

The amounts and purposes separately itemized of the obligations about to be authorized, and any deductions which may be made on account of each such item are: (see Note "C" below)

Bond Ordinance	Purposes	Amount	Deduction	Net
	Improvements to various parks and recreation facilities	\$ 1,140,000.00	\$ -	\$ 1,140,000.00
	Rehabilitation and reconstruction of Pier "A"	\$ 2,375,000.00	\$ -	\$ 2,375,000.00
	Construction of a 9/11 Memorial	\$ 475,000.00	\$ -	\$ 475,000.00
	Improvements to pedestrian walkways and installation of traffic safety improvements	\$ 2,850,000.00	\$ -	\$ 2,850,000.00
	Acquisition of various capital equipment and vehicles	\$ 247,000.00	\$ -	\$ 247,000.00
		\$ -	\$ -	\$ -
		\$ 7,087,000.00	\$ -	\$ 7,087,000.00

4 The net debt of the local unit determined by the addition of the net debt amounts stated in items 2 and 3 above is: \$ 109,188,693.14

5 Equalized valuation basis (the average of the equalized valuations of real estate, including improvements and the assessed valuation of class II railroad property of the local unit for the last 3 preceding years) as stated in the Annual Debt Statement or the revision thereof last filed.

Year	Equalized Valuation Real Property with Improvements plus assessed valuation of Class II RR Property	Net
(1) 2010	Equalized Valuation Real Property with Improvements plus assessed valuation of Class II RR Property	\$ 10,243,080,661.00
(2) 2011	Equalized Valuation Real Property with Improvements plus assessed valuation of Class II RR Property	\$ 9,703,632,086.00
(3) 2012	Equalized Valuation Real Property with Improvements plus assessed valuation of Class II RR Property	\$ 9,597,139,703.00

6 Equalized Valuation Basis - Average of (1), (2) and (3): \$ 9,847,950,816.67

7 Net Debt (Line 4 above) expressed as a percentage of such equalized valuation basis (Line 6 above) is: 1.109%

NOTES

- A. If authorization of bonds or notes is permitted by an exception to the debt limit, specify the particular paragraph of N.J.S.A. 40A:2-7 or other section of law providing such exception.
- B. This form is also to be used in the bonding of separate (not Type I) school districts as required by N.J.S.A. 18A:24-16, and filed before the school district election. In such case pages 4, 5 and 6 should be completed to set forth the computation supporting any deduction in line 3 above.
- C. Only the amount of bonds or notes about to be authorized should be entered. The amount of the "down payment" provided in the bond ordinance should not be included nor shown as a deduction.

Sponsored by: Melbo
Seconded by: Shelton

CITY OF HOBOKEN
ORDINANCE No.: 2-230

AN ORDINANCE OF THE COUNCIL OF THE CITY OF HOBOKEN GRANTING A NON-EXCLUSIVE TEMPORARY REVOCABLE EASEMENT FOR CERTAIN ENCROACHMENTS WITHIN THE PUBLIC RIGHT-OF-WAY ALONG OBSERVER HIGHWAY, BETWEEN PATERSON AVENUE AND JACKSON STREET, MORE PARTICULARLY KNOWN AS BLOCK 14, LOT 1 ON THE TAX MAPS OF THE CITY OF HOBOKEN, AND COMMONLY REFERED TO AS 61 JACKSON STREET

WHEREAS, Stephen R. Spector, attorney for the applicant, 118 Clinton Street LLC (hereinafter called "Grantee"), has petitioned the City of Hoboken (hereinafter call "Grantor"), on behalf of his client, who desires the use of municipal land, identified on the attached property survey as certain portions of the right-of-way along Observer Highway between Paterson Avenue and Jackson Streets, as an easement including the right to construct, operate and maintain structural columns, walls, a roof over-hang, and walkway errantly constructed outside of the property line; and

WHEREAS, the Zoning Board of Adjustment has conditioned development approval of the property at 61 Jackson Street, more particularly described as Block 14, Lot 1, on the Tax Map of the City of Hoboken, upon obtaining an encroachment agreement ("Easement") from the governing body of the City of Hoboken; and

WHEREAS, in consideration of \$16,758.84 per annum for the term of the easement, as determined in the sole discretion of the City, which amount shall be subject to the CPI terms herein, and for other good and valuable consideration, receipt of which is hereby acknowledged, Grantor is willing to enter into a non-exclusive temporary revocable easement for the use of the property as described herein, subject to the terms and conditions set forth herein.

NOW, THEREFORE, the parties hereto mutually agree as follows:

- A. Grantor hereby grants Grantee a Non-Exclusive Temporary Revocable Easement to use the following described property (the site plan shall be attached to this agreement as Schedule A, and shall be incorporated by reference):

BEGINNING at a point in the northerly line of Observer Highway, a distance of 4.83 feet easterly from the intersection formed by the easterly line of Jackson Street and the northerly line of Observer Highway and running thence:

1. S-12°-39'-21.6"-W and onto the R.O.W of Observer Highway, a distance of 7.83 feet to a point; thence
2. S-77°-20'-38.4"-E and continuing along the R.O.W. of Observer Highway, a distance of 48.47 feet to a point; thence
3. N-12°-39'-21.6"-E and continuing along the R.O.W. of Observer Highway, a distance of 6.15 feet to a point in the northerly line of Observer Highway; thence
4. S-77°-20'-38.4"-W and continuing along the R.O.W. of Observer Highway, a distance of 12.90 feet to a point; thence

5. N-12°-39'-21.6"-E and continuing along the R.O.W. of Observer Highway, a distance of 1.33 feet onto the northerly line of Observer Highway;

6. N-77°-20'-38.4"-W and continuing along the northerly line of Observer Highway, a distance of 64.90 feet to a point, said point or place of beginning.

The above being known as a portion of the public right-of-way of Observer Highway fronting Lot 1 in Block 14, as shown on the official Tax Map of the City of Hoboken, and commonly known as 61 Jackson Street; the encroachment includes columns, a roof overhang, walkway, and concrete platform elevated above sidewalk grade along Observer Highway, said encroachment area is 399.02 square feet.

- B. This Easement grants the right to construct, operate and maintain structural columns, walls, and a roof over-hang making up the southerly wall of the bar/restaurant to be known as *The Downtown Pub*, and an elevated walkway adjacent thereto (hereinafter "Improvements") within the above described property. Grantee agrees to assume sole responsibility for the construction, operation and maintenance of said Improvements within the property. Grantee agrees to, upon Grantor's request, timely repair any damage to Grantor's property or improvements occurring from Grantee's construction, operation or maintenance of said Improvement.
- C. Only such rights are granted hereby as are necessary for construction, operation and maintenance of the Improvements. Grantor reserves the right to use the property in any manner and for any purpose not inconsistent with the aforesaid purpose. Grantee agrees to relocate said improvements, at its sole cost and expense upon termination of this agreement.
- D. Grantee agrees to defend, indemnify and hold harmless Grantor, its officers, agents and employees, from and against all claims, demands, judgments, costs and expenses (including reasonable attorney's fees) which may arise by reason of injury to any person or damage to any property attributable to the negligence of Grantee, Grantee's officers, agents and employees, in connection with Grantee's construction, operation and maintenance of said Improvements and its use of or presence on the property.
- E. Grantee agrees to provide for general liability insurance in an amount of at least \$1,000,000.00/\$2,000,000.00, which shall include the City of Hoboken and its officers and employees as additional insured. Said insurance shall have a thirty day notice of policy cancellation upon the City of Hoboken. A copy of said insurance coverage shall be provided to the Office of Corporation Counsel prior to this easement becoming effective. If at any point the insurance lapses or is otherwise terminated, for any reason, this easement shall terminate effective immediately without notice or opportunity to cure.
- F. This Easement shall automatically cease upon non-use for any six (6) consecutive months, and all interests granted herein shall revert to Grantor, or its successors in interest.
- G. This Easement shall automatically cease upon destruction, or partial destruction, of the Improvements, by or for any reason, whereby reconstruction of the Improvements would be necessary to continue use of the building.
- H. This Easement shall be for a term up to Ninety-Nine (99) years after the date of adoption by the governing body. The termination date may be extended only by mutual written consent of both parties and subsequent adoption of an ordinance extending the term, which shall be in the sole discretion of the City; provided, however, that no amendment to the Easement, whether to the term or otherwise, shall be effective unless in writing, adopted by ordinance of the governing body, and signed by both parties. This easement shall terminate immediately if at any point the annual fee lapses for greater than a thirty day period past the payment due date, for any reason,

without the need for notice or opportunity to cure. The annual fee shall be paid on the date the Ordinance approving the within Easement becomes effective according to applicable law, and annually on the same date thereafter.

- I. In addition to the rights of termination as described herein, the City shall have the right, in its sole discretion, to terminate this Easement for cause, which shall include but not be limited to concerns of public safety, health and welfare, upon Ninety (90) days written notice to grantee.
- J. All notices referred to in the Easement shall be sent to the respective parties at the address stated in § K, *infra*.
- K. The rights granted to and duties assumed by Grantee under this Easement are personal, and shall not run with the land, and may not be assigned or delegated by Grantee without the prior written consent of Grantor. Any attempted assignment or delegation by Grantee without the prior written consent of the Grantor shall be void ab initio.
- L. This Easement may be amended from time to time, as may be necessary, by mutual written consent of both parties; provided, however, that no amendment to the Easement shall be effective unless in writing, adopted by ordinance of the governing body, and signed by both parties.
- M. Both parties agree that time is of the essence and that time specifications contained herein shall be strictly construed. Both parties were represented by competent legal counsel of their own choosing during the drafting of this agreement, and this agreement shall not be construed in favor of or against either party. This agreement shall be subject to and interpreted in accordance with the laws of the State of New Jersey.
- N. The annual fee for Grantee's rights under this Agreement shall be Sixteen Thousand Seven Hundred Fifty Eight Dollars and Eighty Four Cents (\$16,758.84) per annum, which represents \$3.50/s.f./month at 399.02 s.f. of encroachment. This fee shall be subject to all the terms herein, including but not limited to Section O.
- O. CPI Adjustments During Fifth and Every Subsequent Fifth Year of Term. Effective as of the first day of each five-year anniversary of the Commencement Date, the annual fee payable hereunder shall escalate on a five-year basis as follows:

CONSUMER PRICE INDEX ESCALATION

(a) Definitions. For purposes of this clause, the following definitions shall apply:

(1) the term "Base Month" shall mean the month in which the Commencement Date shall occur.

(2) the term "Consumer Price Index" or "CPI" shall mean the U.S. Bureau of Labor Statistics Consumer Price Index for Urban Wage Earners and Clerical Workers, New York, N.Y. - Northeastern N.J. (1982-84 equals 100). All items, or any renamed local index covering the metropolitan New York, Northeastern New Jersey area or any other successor or substitute index appropriately adjusted.

(3) the term "Base Index" shall mean the Consumer Price Index that shall be in effect in the Base Month.

(4) the term "Change Date" shall mean the first day of every five-year anniversary of the Commencement Date, and on that same date every five (5) years thereafter.

(b) Adjustment. Effective on the Change Date, the annual fee payable hereunder shall escalate as follows:

The escalation of annual fees shall be based on one-half of the percentage increase of the Consumer Price Index for the month prior to the Change Date (the "Percentage Increase"). In the event that the Consumer Price Index for the month prior to the Change Date exceeds the Base Index, **then the annual fee shall be increased by the Percentage Increase**: the annual fee shall be multiplied by the Percentage Increase, and the resulting product shall be added to the annual fee; such sum shall be the escalated annual fee effective as of the Change Date. Grantee covenants and agrees that said escalated fee shall thereafter be payable until the next Change Date pursuant to the terms of this Agreement.

(c) Formula and Example. The following illustrates the intentions of the parties hereto as to the computation of the aforesaid escalation of annual fee:

(1) Formula. The formula used to calculate the escalation of annual fee pursuant to this clause shall be:

$$\frac{(\text{Current CPI} - \text{Base Index}) \times 1/2 \times \text{Fee} + \text{Fee}}{\text{Base Index}} = \text{Escalated Fee}$$

(2) Example. **Assume** that the monthly fee is \$156,250, the Base Index (February, 2018) is 178.6, and the CPI for the month preceding the Change Date is 200.0:

$$\begin{aligned} 200.0 - 178.6 &= 21.4 \\ 21.4/178.6 &= 0.12 \\ 1/2 \text{ of } .12 &= 0.06 \\ 0.06 \times \$156,250 &= \$9,375 \\ \$156,250 + \$9,375 &= \$165,625 \end{aligned}$$

(d) Figures Unavailable. In the event that the Consumer Price Index is unavailable as of the Change Date, Grantee shall continue to make annual fee payments based on the fee the Grantee had been paying immediately prior to the Change Date Until such Consumer Price Index is Made available; at that time the annual fee shall escalate in accordance with this clause and Grantee shall make a retroactive payment to Grantor equal to the difference between (i) the fee due from the date the first increase in the fee became effective until the increase was finally computed; and (ii) the fee actually paid by Grantee from the date the increase became effective until the date such increase was finally computed.

(e) No Recomputations. No subsequent adjustments or recomputations, retroactive or otherwise, shall be made to the Consumer Price Index due to any revision that may later be made to the first published figure of the Consumer Price Index for any month.

(f) No Fee Decrease. In no event shall the annual fee in a given year be less than the annual fee for the immediately preceding year.

(g) No Waiver. Any delay or failure of Grantor in computing, billing or requesting payment by Grantee of the escalation of annual fee as provided herein shall not

constitute a waiver of or in any way impair the continuing obligation of Grantee to pay such escalation of annual fees.

(h) Survival. Grantee's obligation to pay escalated annual fees pursuant to this clause shall continue and shall cover all periods up to the date that this Agreement is scheduled to expire, and shall survive any expiration, earlier termination, or extension of this Agreement.

(i) Right to Use Old Index. In the event that the Consumer Price Index ceases to use 1982/84=100 as the basis of calculation, or if, in Grantor's sole judgment, a substantial change is made in the method used by the federal government to determine the Consumer Price Index or the items used to calculate the Consumer Price Index, then the Consumer Price Index shall be converted ("Conversion") to the figure that would have been calculated at (or as close to such figure as shall be practical) had the manner of calculating the Consumer Price Index in effect as of the date of this Agreement not been altered. As used herein, it shall be deemed a "substantial change" in the manner in which the Consumer Price Index is calculated if the federal government adjusts the method in which the Consumer Price Index is determined in an attempt to more accurately reflect changes in the cost-of-living.

(j) Option to Use Now CPI. If, in Grantor's sole judgment, the Conversion is impossible or impractical, then the revised Consumer Price Index shall be deemed to replace the original Consumer Price Index for purposes of this clause.

P. Both parties represent and warrant that they have the authority to execute this Easement agreement.

GRANTEE:
118 Clinton Street LLC
Danny Tattoli, Agent of Record
401 Jefferson Street
Hoboken, New Jersey 07030

GRANTOR:
City of Hoboken
Dawn Zimmer, Mayor
94 Washington Street
Hoboken, New Jersey 07030

Q. If the construction as contemplated herein is not complete, and a certificate of occupancy obtained on or before September 1, 2013, then this easement shall terminate automatically, without refund of the fees paid and consideration obtained.

[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

THIS EASEMENT AGREEMENT is made this _____ day of _____, 2013, by and between the City of Hoboken (Grantor), and 118 Clinton Street LLC (Grantee), whose agent is Danny Tattoli.

IN WITNESS WHEREOF, the parties have executed this Easement Agreement to be effective on the day and year first above written.

GRANTEE:

GRANTOR:

Agent of Record - Danny Tattoli

Mayor - Dawn Zimmer

Date: _____

Date: _____

SS: On this ____ day of ____, 2013
_____ came before me as Agent of
Record of Grantee, and swore of affirmed
Under Oath to be the authorized agent to
Bind the Grantor to the herein agreement.
Notary:

SS: On this ____ day of ____, 2013
_____ came before me as Mayor of
the City Grantor, and swore or affirmed,
under oath to be the authorized agent to
bind the Grantor to the herein agreement.
Notary:

Date of Introduction: February 20, 2013

Approved:

Approved as to Form:

Quentin Wiest, Business Administrator

Mellissa Longo, Corporation Counsel

RECORD OF COUNCIL VOTE ON 1 ST READING			
Council Person	Aye/	Nay	N.V.
Bhalla	/		
Castellano	/		
Giattino	/		
	/		
Mason	/		
Mello	/		
Occhipinti	/		
Russo	/		
Pres. Cunningham	/		

RECORD OF COUNCIL VOTE ON 2 ND READING			
Council Person	Aye	Nay	N.V.
Bhalla			
Castellano			
Giattino			
Mason			
Mello			
Occhipinti			
Russo			
Pres. Cunningham			

I hereby certify the above vote on this ____ day of _____, 2013.

James Farina, City Clerk

Approved by the Mayor of the City of Hoboken on the ____ day of _____, 2013.

Dawn Zimmer, Mayor

-or-

Vetoed by the Mayor for the following reasons:

1st reading (2) 4-17-13

Theresa Castellano

Sponsored by: Castellano

Seconded by: [Signature]

CITY OF HOBOKEN
ORDINANCE NO.: Z-238

Z-238

**AN ORDINANCE TO AMEND PORTIONS OF CHAPTER 93
TITLED "DOGS AND OTHER ANIMALS,"
SPECIFICALLY SECTION 93-1, SECTION 93-15
AND SECTION 93-17**

WHEREAS, Chapter 93 of the Administrative Code of the City of Hoboken titled "Dogs and Other Animals" currently addresses issues regarding animals in the City of Hoboken, including, but not limited to, licensing of dogs, kennels and pet shops; and

WHEREAS, the City Council wishes to ban the retail sale of dogs and cats within the City of Hoboken in the future;

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Hoboken that Sections 93-1, 93-15 and 93-17 of Chapter 93 of the Administrative Code of the City of Hoboken shall be amended as follows (additions noted in underline; ~~deletions~~—noted in ~~strikethrough~~):

SECTION ONE: AMENDMENTS

§ 93-1. Definitions

As used in this article, the following terms shall have the meanings indicated:

AUTHORIZED AGENT

A Sanitary Inspector First Grade or a Public Health Nuisance Investigator of the Hoboken Board of Health.

DOG

Any dog, bitch or spayed bitch.

DOG OF LICENSING AGE

Any dog which has attained the age of seven months or which possesses a set of permanent teeth.

GUIDE DOG

Any dog certified to serve and aid those members of our nation who suffer from a verified disability, and are at the time serving or aiding a person with a verified disability.

HEALTH OFFICER

The legally designated Health Officer of the City of Hoboken or his authorized representative.

KENNEL

Any establishment wherein or whereon the business of boarding or selling dogs or breeding dogs for sale is carried on, except a pet shop.

LEGALLY-EXISTING NONCONFORMING USE

Any pet shop wherein dogs or cats for sale are kept or displayed or any kennel where the business of boarding, selling or breeding dogs for sale is carried on or any pet shop operator in the City of Hoboken prior to the effective date of this ordinance. A legally-existing nonconforming use does not include any pet shop, pet shop operator or kennel whose license issued in accordance with § 93-7 is subsequently revoked.

OWNER (WHEN APPLIED TO THE PROPRIETORSHIP OF A DOG)

Includes every person having a right of property in such dog and every person who has such dog in his keeping.

PET GROOMING SHOP

Any room or group of rooms wherein dogs, cats or other animals are washed, cleaned or groomed.

PET SHOP

Any room or group of rooms, cage or exhibition pen, not part of a kennel, wherein dogs, cats, birds, fish, reptiles, lawful wildlife, rodents or insects for sale are kept or displayed.

PET SHOP OPERATOR

A person who owns and/or operates a pet shop.

POUND

An establishment for the confinement of dogs seized either under the provisions of this chapter or otherwise.

RULE OR ORDER

Directive of the Health Officer.

SHELTER

Any establishment where dogs are received, housed and distributed without charge.

§ 93-15. ~~(Reserved)~~ Prohibited acts, exceptions.

No pet shop or pet shop operator shall sell, offer for sale, barter, auction, breed or otherwise improperly dispose of cats or dogs, or both, in the City of Hoboken. This section shall not apply to legally-existing nonconforming uses or to the adoption of cats or dogs, or both. Nothing

contained herein shall prohibit a shelter, pound or other establishment from keeping, displaying, selling or otherwise transferring any cat or dog, or both, that has been seized, rescued or donated.

§ 93-17. Violations and penalties.

- A. Any person who shall violate any provision of this chapter shall, upon conviction, be punished by:
 - (1) A fine of not more than \$1,000, except with respect to a violation of § 93-16, which shall have a minimum fine of \$100 and a maximum fine of \$2,000; and/or;
 - (2) Community service for a period not more than 90 days or imprisonment for a term not exceeding 90 days.
- B. Each day's failure to comply with any provision, rule or other, except violations of § 93-16, shall constitute a separate and distinct offense.
- C. Each violation of § 93-16, regardless of the number of violations in any given day, shall constitute a separate and distinct offense.
- D. The names of those individuals convicted of violating § 93-16 shall be publicized by prominently placing their names, along with the date and location of the violation, and any other information deemed relevant by the City, on the website operated by the City of Hoboken, www.hobokennj.org, for a period of not less than two months following the date of conviction. This provision does not preclude the City from taking other steps as necessary to increase public awareness of violations of § 93-16.
- E. Any person who is convicted of violating any provision of Chapter 93 of the Code of the City of Hoboken, within one year of the date of a previous violation of that same provision, and who was fined for the previous violation, shall be sentenced to an additional fine as a repeat offender. The additional fine imposed by the court upon a person for a repeated offense shall not be less than the minimum nor shall it exceed the maximum fine fixed for a violation of the chapter, but shall be calculated separately from the fine imposed for the violation of the chapter, as provided for by N.J.S.A. 40:69A-29.
- F. The violation of one of more provisions of § 93-15 shall be subject to abatement summarily by a restraining order or by an injunction issued by a court of competent jurisdiction.

SECTION TWO: REPEAL OF INCONSISTENT PROVISIONS

All ordinances or parts thereof in conflict or inconsistent with this Ordinance are hereby repealed, but only however, to the extent of such conflict or inconsistency, it being the legislative

intent that all ordinances or part of ordinances now existing or in effect unless the same being conflict or are inconsistent with any provision of this Ordinance shall remain in effect.

SECTION THREE: SEVERABILITY

The provisions of this Ordinance are declared to be severable, and if any section, subsection, sentence, clause or phrase thereof for any reason be held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not effect the validity of the remaining sections, subsections, sentences, clauses and phrases of this Ordinance, but shall remain in effect; it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

SECTION FOUR: EFFECTIVE DATE

This Ordinance shall take effect upon passage and publication as provided by law.

SECTION FIVE: CODIFICATION

This Ordinance shall be a part of the code of the City of Hoboken as though codified and fully set forth therein. The City Clerk shall have this Ordinance codified and incorporated in the official copies of the Code.

The City Clerk and the Corporation Counsel are authorized and directed to change any Chapter, Article and/or Section number of the Code of the City of Hoboken in the event that the codification of this Ordinance reveals that there is a conflict between the numbers and the existing Code, and in order to avoid confusion and possible accidental repealers of existing provisions not intended to be repealed.

Date of Introduction: April 17, 2013

Introduction:

Councilperson	Yea	Nay	Abstain	No Vote
Ravi Bhalla	/			
Theresa Castellano	/			
Jen Giattino	/			
Elizabeth Mason	/			
David Mello	/			
Tim Occhipinti	/			
Michael Russo	/			
President Peter Cunningham	/			

Final Reading:

Councilperson	Yea	Nay	Abstain	No Vote
Ravi Bhalla				

Theresa Castellano				
Jen Giattino				
Elizabeth Mason				
David Mello				
Tim Occhipinti				
Michael Russo				
President Peter Cunningham				

Approved as to Legal Form:

Mellissa L. Longo, Corporation Counsel

Adopted by the Hoboken City Council
By a Vote of ____ Yeas to ____ Nays
On the ____ day of ____, 2013

James Farina, City Clerk

Vetoed by the Mayor for the following reasons: _____

-or-

Approved by the Mayor
On the ____ day of ____, 2013

Dawn Zimmer, Mayor

886-5