CITY OF ABSECON

ORDINANCE 11-2019

ORDINANCE PROVIDING FOR A SUPPLEMENTAL APPROPRIATION OF $4,000,000 FOR THE ACQUISITION OF BLOCK 200, LOTS 12 AND 13 ON THE TAX MAP OF THE CITY OF ABSECON, IN THE COUNTY OF ATLANTIC, NEW JERSEY AND THE CONSTRUCTION OF A NEW FIREHOUSE BUILDING THEREOF IN AND BY THE CITY, AUTHORIZING THE ISSUANCE OF $4,000,000 BONDS OR NOTES OF THE CITY TO FINANCE THE COST THEREOF

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

WHEREAS, the Redevelopment Law confers certain contract, planning and financial powers upon a redevelopment entity, as defined in *N.J.S.A.* 40A:12A-3 of the Redevelopment Law, in order to implement redevelopment plans adopted pursuant thereto; and

WHEREAS, the City of Absecon (the "**City**") has elected to exercise these redevelopment entity powers directly, as permitted by *N.J.S.A.* 40A:12A-4 of the Redevelopment Law; and

WHEREAS, the City designated that certain area bordered by White Horse Pike (U.S. Route 30), New Road, New Jersey Avenue and Michigan Avenue, known as Block 203 Lots 1.01 and 1.02 on the tax map of the City, as an area in need of redevelopment pursuant to the Redevelopment Law (the "**Redevelopment Area**"); and

WHEREAS, by Ordinance No. 10-2017, duly and finally adopted October 5,2017, the City Council adopted the redevelopment plan dated August 16, 2017 (the "**Redevelopment Plan**"); and

WHEREAS, the City has deemed Redeveloper to be qualified to own, operate and complete construction of the Project; and

WHEREAS, on January 17, 2019, the City Council authorized execution of a redevelopment agreement by and between WP Absecon, LLC (the "**Redeveloper**") and the City (the "**Redevelopment Agreement**"), pursuant to which the Redeveloper will construct within the Redevelopment Area a project consisting of commercial and retail spaces (the "**Project**"); and

WHEREAS, in order to implement the Project it is necessary to acquire 544 New Jersey Avenue (also known as Block 200, Lots 12 and 13 on the tax Map of the City) (the "**Property**"), construct a new replacement firehouse and relocate the City's fire company to such facility; and

WHEREAS, the Redeveloper has represented to the City that financial assistance is necessary in order for the Project to be undertaken in its intended scope including the acquisition of the Property and construct the new firehouse; and

WHEREAS, in order to enhance the economic viability of, and opportunity for, a successful Project, the City will enter into a financial agreement in connection with the Project governing payments made to the City in lieu of real estate taxes for the respective components of the Project pursuant to the Long Term Tax Exemption Law, *N.J.S.A.* 40A:20-1 *et seq.*; and

WHEREAS, despite the Redeveloper's investment of equity and borrowed funds, such amounts are insufficient to pay for all the costs associated with the development and construction of the Project including the acquisition of the Property and the construction of the new firehouse; and

WHEREAS, in order to defray the cost to acquire the Property and construct a replacement firehouse as a component of the Project, the City agreed, upon satisfaction of such conditions as set forth herein, to issue general obligation bonds in one or more series in an aggregate principal amount not to exceed Three Million Dollars ($3,000,000) (the "**RABs**" or "**Bonds**") pursuant to the Redevelopment Law, the Redevelopment Area Bond Financing Law, *N.J.S.A.* 40A:12A-64 *et seq.* (the "**RAB Law**", as further defined herein), and/or the Local Bond Law, *N.J.S.A.* 40A:2-1 *et seq.* (the "**Local Bond Law**"), as applicable; and

WHEREAS, on February 21, 2019 pursuant to RAB Law and the Local Bond Law, the City finally adopted Ordinance #02-2019 entitled "Ordinance Providing for the Acquisition of Block 200, Lots 12 and 13 on the Tax Map of the City of Absecon, in the County of Atlantic, New Jersey and the Construction of a New Firehouse Building Thereon in and by the City, Appropriating $3,000,000 Therefor and Authorizing the Issuance of $3,000,000 Bonds or Notes of the City to Finance the Cost Thereof"; and

WHEREAS, in order to defray the cost to acquire the Property and construct a replacement firehouse as a component of the Project, the City agreed, upon satisfaction of such conditions as set forth herein, to issue additional general obligation bonds in one or more series in an aggregate principal amount not to exceed Four Million Dollars ($4,000,000) of RBAs or Bonds pursuant to the Redevelopment Law, the Redevelopment Area Bond Financing Law and the Local Bond Law, as applicable; and

WHEREAS, the City will use the proceeds of the Bonds to finance the acquisition of the Property and construction of the new firehouse as described in Section 3 of this bond ordinance.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ABSECON, IN THE COUNTY OF ATLANTIC, NEW JERSEY (not less than two-thirds of all members thereof affirmatively concurring) **AS FOLLOWS**:

Section 1. The improvement described in Section 3(a) of this bond ordinance is hereby authorized to be undertaken by the City of Absecon, in the County of Atlantic, New Jersey (the "**City**") as a general improvement. For the improvement or purpose described in Section 3(a), there is hereby appropriated the supplemental amount of $4,000,000, such sum being in addition to the $3,000,000 appropriated therefor by Ordinance #02-2019 (the "**Original Bond Ordinance**"). Pursuant to *N.J.S.A.* 40A:12A-37(c)(2) of the Redevelopment Law, no down payment is required, notwithstanding the requirements of Section 11 of the Local Bond Law, because the improvements and purposes set forth in Section 3 constitute a "redevelopment project" under the Redevelopment Law.

Section 2. In order to finance the additional cost of the improvement or purpose described in Section 3(a) of this bond ordinance, negotiable bonds are hereby authorized to be issued in the principal amount of $4,000,000 pursuant to the Local Bond Law and the Redevelopment Law. In anticipation of the issuance of the bonds, negotiable bond anticipation notes are hereby authorized to be issued pursuant to and within the limitations prescribed by the Local Bond Law and the Redevelopment Law.

Section 3. (a) The purpose for the financing of which the bonds are to be issued is the acquisition of the Property and the construction, equipping and furnishing of a new firehouse building, including all work and materials necessary therefor and incidental thereto, on the Property. In connection therewith, the City is authorized to acquire the Property and construct the new firehouse.

(b) The estimated maximum amount of bonds or bond anticipation notes to be issued for the improvement or purpose is $7,000,000, including the $3,000,000 authorized by the Original Bond Ordinance and the $4,000,000 bonds or bond anticipation notes authorized herein.

(c) The estimated cost of the improvement or purpose is $7,000,000, including the $3,000,000 appropriated by the Original Bond Ordinance and the $4,000,000 bonds or bond anticipation notes appropriated herein.

Section 4. All bond anticipation notes issued hereunder shall mature at such times as may be determined by the chief financial officer; provided that no bond anticipation note shall mature later than one year from its date. The bond anticipation notes shall bear interest at such rate or rates and be in such form as may be determined by the chief financial officer. The chief financial officer shall determine all matters in connection with bond anticipation notes issued pursuant to this bond ordinance, and the chief financial officer's signature upon the bond anticipation notes shall be conclusive evidence as to all such determinations. All bond anticipation notes issued hereunder may be renewed from time to time subject to the provisions of 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 them to the purchasers thereof upon receipt of payment of the purchase price plus accrued interest from their dates to the date of delivery thereof. The chief financial officer is 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 5. The City hereby certifies that it has adopted a capital budget or a temporary capital budget, as applicable. The capital or temporary capital budget of the City is hereby amended to conform with the provisions of this bond ordinance to the extent of any inconsistency herewith. To the extent that the purposes authorized herein are inconsistent with the adopted capital or temporary capital budget, a revised capital or temporary capital budget has been filed with the Division of Local Government Services.

Section 6. The following additional matters are hereby determined, declared, recited and stated:

(a) The improvement or purpose described in Section 3(a) of this bond ordinance is not a current expense. It is an improvement or purpose that the City may lawfully undertake as

a general improvement, and no part of the cost thereof has been or shall be specially assessed on property specially benefitted thereby.

(b) The period of usefulness of the improvement or purpose within the limitations of the Local Bond Law, according to the reasonable life thereof computed from the date of the bonds authorized by this bond ordinance, is thirty (30) years. Notwithstanding any other law to the contrary, the Redevelopment Law, *N.J.S.A.* 40A:12A-37(c) provides, among other things, that bonds or other obligations of any municipality issued pursuant thereto shall mature in annual installments ending not more than forty (40) years from the date of issuance.

(c) The Supplemental Debt Statement required by the Local Bond Law has been duly prepared and filed in the office of the Clerk, and a complete executed duplicate 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. Such statement shows that the gross debt of the City as defined in the Local Bond Law is increased by the authorization of the bonds and notes provided in this bond ordinance by $4,000,000, and the obligations authorized herein will be within all debt limitations prescribed by the Local Bond Law.

(d) An aggregate amount not exceeding $1,400,000 for items of expense listed in and permitted under *N.J.S.A.* 40A:2-20 is included in the estimated cost indicated herein for the purpose or improvement. Of this amount, $600,000 was estimated for these items of expense in the Original Bond Ordinance and an additional $800,000 is estimated therefor herein.

(e) The maximum interest rate on the bonds shall be 7% without further authorization of the City Council, which authorization may be by resolution.

Section 7. The City hereby declares the intent of the City to issue bonds or bond anticipation notes in the amount authorized in Section 2 of this bond ordinance and to use the proceeds to pay or reimburse expenditures for the costs of the purposes described in Section 3(a) of this bond ordinance. This Section 7 is a declaration of intent within the meaning and for purposes of Treasury Regulations of the federal income tax law.

Section 8. Any grant moneys received for the purpose described in Section 3(a) hereof, as well as net proceeds from the sale of the existing firehouse property, shall be applied either to direct payment of the cost of the improvement or to payment of the obligations issued pursuant to this bond ordinance. The amount of obligations authorized but not issued hereunder shall be reduced to the extent that such funds are so used.

Section 9. The chief financial officer of the City is hereby authorized to prepare and to update from time to time as necessary a financial disclosure document to be distributed in connection with the sale of obligations of the City and to execute such disclosure document on behalf of the City. The chief financial officer is further authorized to enter into the appropriate undertaking to provide secondary market disclosure on behalf of the City pursuant to Rule 15c2-12 of the Securities and Exchange Commission (the "**Rule**") for the benefit of holders and beneficial owners of obligations of the City and to amend such undertaking from time to time in connection with any change in law, or interpretation thereof, provided such undertaking is and continues to be, in the opinion of a nationally recognized bond counsel, consistent with the requirements of the Rule. In the event that the City fails to comply with its undertaking, the City shall not be liable for any monetary damages, and the remedy shall be limited to specific performance of the undertaking.

Section 10. The full faith and credit of the City are hereby pledged to the punctual payment of the principal of and the interest on the obligations authorized by this bond ordinance. The obligations shall be direct, unlimited obligations of the City, and the City shall be obligated to levy *ad valorem* taxes upon all the taxable real property within the City for the payment of the obligations and the interest thereon without limitation of rate or amount.

Section 11. This bond ordinance shall take effect twenty (20) days after the first publication thereof after final adoption, as provided by the Local Bond Law.

DATED: August 15th, 2019

SIGNED: _____
Kimberly Horton, Mayor

ATTEST: _____
Carie A. Crone, RMC, Municipal Clerk

Passed on first reading at a regular meeting of the Municipal Council held on August 1st, 2019. Laid over and advertised for public hearing and final adoption on August 15th, 2019. Notice is hereby given that the foregoing Ordinance was approved for final adoption by the Municipal Council of the City of Absecon at a regular meeting held on August 15th, 2019.