

**ORDINANCE #3347**

**INTRODUCED BY: BOARD OF COMMISSIONERS/READ BY COMMISSIONER THOMAS J. EVANS**

**INTRODUCED ON: AUGUST 2, 2016**

**PUBLISHED: AUGUST 3, 2016 / AUGUST 4, 2016**

**PUBLIC HEARING AND ADOPTION: AUGUST 16, 2016**

**PUBLISHED: AUGUST 17, 2016**

**ORDINANCE NO. 3347**

**AN ORDINANCE OF THE TOWNSHIP OF NUTLEY, IN THE COUNTY OF ESSEX, STATE OF NEW JERSEY, PROVIDING FOR THE SPECIAL ASSESSMENT OF THE COST OF CERTAIN IMPROVEMENTS ON BLOCK 201, LOT 1.03 WITHIN THE HOFFMANN-LA ROCHE REDEVELOPMENT AREA AND ESTABLISHING A MECHANISM FOR PAYMENT OF THE COST THEREOF**

THIS ORDINANCE AND ANY SPECIAL ASSESSMENT AGREEMENT ENTERED INTO AND ATTACHED HERETO FROM TIME TO TIME SECURES BONDS OR OTHER OBLIGATIONS ISSUED IN ACCORDANCE WITH THE PROVISIONS OF THE "REDEVELOPMENT AREA BOND FINANCING LAW" AND THE LIEN HEREOF IN FAVOR OF THE OWNERS OF SUCH BONDS OR OTHER OBLIGATIONS IS A MUNICIPAL LIEN SUPERIOR TO ALL OTHER NON-MUNICIPAL LIENS HEREINAFTER RECORDED

**WHEREAS**, pursuant to the Local Redevelopment and Housing Law, *N.J.S.A. 40A:12A-1 et seq.* (the "**Redevelopment Law**" or the "**Act**") and that certain Nutley Redevelopment Plan – Nutley HLR/Phase I adopted July 19, 2016 (as may be amended and supplemented from time to time, the "**Phase I Redevelopment Plan**"), the Township of Nutley (the "**Township**"), in the County of Essex, State of New Jersey, had adopted or intends to adopt a resolution authorizing the execution of a redevelopment agreement with Kingsland Street Urban Renewal, LLC (the "**Redeveloper**") with respect to a 10.98 acre portion of the Hoffmann-La Roche Redevelopment Area, as defined therein, comprised of Block 201, Lot 1 and Block 300, Lot 1 on the Tax Map of the Township of Nutley (to be subdivided into Block 201, Lots 1.01, 1.02, 1.03 and 1.04) (the "**Phase I Premises**") (as the same may be amended and supplemented in accordance with its terms, the "**Phase I Redevelopment Agreement**"); and

**WHEREAS**, the Phase I Redevelopment Agreement sets forth the terms and conditions by which the Redeveloper will redevelop the Phase I Premises, including the renovation, redevelopment and occupancy of certain existing buildings on the parcel to be designated as Block 201, Lot 1.03 (such structures and improvements, together with such block and lot, the "**Phase I Project**"); and

**WHEREAS**, those certain improvements enumerated at Exhibit C attached to the hereinafter defined Special Assessment Agreement (capitalized terms used in this special assessment ordinance (this "Ordinance") and not otherwise defined have the meaning given to such terms in the Special Assessment Agreement) and by this reference incorporated herein (the "**Local Improvements**") constitute a portion of the Phase I Project and also constitute qualified improvements under the Local Improvements Law, *N.J.S.A. 40:56-1, et seq.* (the "**Local Improvements Law**") and the Redevelopment Bond Law; and

**WHEREAS**, in order to finance the cost of the Local Improvements contemplated by the Phase I Redevelopment Agreement, the Township has determined that the cost of the Local Improvements should be assessed pursuant to *N.J.S.A. 40:56-1 et seq.* (the "**Local Improvements Law**") and/or pursuant to an assessment agreement under the Redevelopment Area Bond Financing Law pursuant to *N.J.S.A. 40A:12A-64 et seq.* (the "**RAB Law**"); and

**WHEREAS**, pursuant to Section 2.04 of the Phase I Redevelopment Agreement, the Redeveloper is responsible for the costs of implementation and completion of the Phase I Project, including the costs of Local Improvements within the Phase I Premises, which Local Improvements, in whole or in part, constitute (i) redevelopment projects to be undertaken pursuant to the Phase I Redevelopment Plan in the Hoffmann La Roche Redevelopment Area, all as contemplated by the Redevelopment Law and RAB Law, and (ii) local improvements within the meaning, and for the purposes set forth in the Local Improvement Law for which a special assessment may be imposed; and

**WHEREAS**, pursuant to the RAB Law, a municipality may issue bonds (as issued in connection with this Ordinance, the "**RABs**") to finance redevelopment projects pursuant to a redevelopment plan within an area in

need of redevelopment, which RABs may be secured by, among other things, a special assessment on certain property within an area in need of redevelopment,

**NOW, THEREFORE, BE IT ORDAINED AND ENACTED BY THE MAYOR AND BOARD OF COMMISSIONERS OF THE TOWNSHIP OF NUTLEY, IN THE COUNTY OF ESSEX, STATE OF NEW JERSEY, AS FOLLOWS:**

**Section 1.** The defined terms set forth in the recitals contained in this Ordinance are incorporated by reference as if set forth at length herein.

**Section 2.** The purpose of this Ordinance is to establish a mechanism for imposing special assessments of all or a portion of the cost of the Local Improvements to be developed, financed and constructed on or benefiting the Phase I Project. The Local Improvements will consist of the design, financing, construction and installation of various Local Improvements, including but not limited to, those set forth on Exhibit C to the Special Assessment Agreement attached hereto, including all work necessary therefor and incidental thereto with respect to the Phase I Project.

**Section 3.** Notice is hereby given to the owners of and holders of leasehold interests in the Phase I Project that the Township intends to make and levy special assessments against all such Phase I Project in the amount and at the time that such Local Improvements have been completed or at such later time as the Township may determine. The estimated aggregate cost of such Local Improvements for the Phase I Project subject to this Ordinance is \$1,000,000 (subject to the actual costs of such Local Improvements at the time of installation as certified to the Township Engineer), provided that the special assessments for any property affected by this Ordinance shall be made and levied in the manner provided by law and shall be as nearly as possible in proportion to and not in excess of the peculiar benefit, advantage or increase in value that the Phase I Project shall be deemed to receive by reason of the Local Improvements.

**Section 4.** The following additional matters are hereby determined, declared, recited and stated:

(a) The amount of any special assessment ("**Special Assessment**") levied against the Phase I Project shall be determined, at the option of the owner or lessee of the Phase I Project, in accordance with:

(i) the procedure set forth in the Local Improvements Law; or

(ii) pursuant to a special assessment agreement entered into by and between the Township and the affected property owner under *N.J.S.A. 40A:12A-66* of the RAB Law ("**Special Assessment Agreement**").

(b) Whether levied under the Local Improvements Law or a Special Assessment Agreement under Section 66 of the RAB Law, the Special Assessments shall be paid over a 30 year period in quarterly installments payable at the time and in the manner that generally applicable property taxes are required to be paid in the Township, with legal interest: (a) charged on the portion of the Special Assessments allocable to the RABs from the date of issuance through the date that all of the RABs are no longer outstanding, with such legal interest meaning the interest rate on the RABs; (b) charged on the portion of the Special Assessments allocable to the RABs with respect to any installment not paid when due, with such legal interest meaning the highest rate of interest permitted under New Jersey law in the case of unpaid taxes or tax liens until paid; and (c) charged on the portion of the Special Assessments not allocable to the RABs with respect to any installment not paid when due, with such legal interest meaning the highest rate of interest permitted under New Jersey law in the case of unpaid taxes or tax liens until paid, or such lesser portion as may be determined by the Township. The first such installment shall commence on the first business day of the quarter immediately following (i) the determination of the peculiar benefit, advantage or increase in value which particular lot or property shall be deemed to have received as a result of the Local Improvements, as required to under *N.J.S.A. 40:56-27* or (ii) with respect to the Phase I Project, at the time set forth in a Special Assessment Agreement under the RAB Law. Such Special Assessment shall remain a lien upon the affected Phase I Project described herein until the Special Assessment, with all installments and accrued interest thereon, applicable to the particular Phase I Project shall be paid and satisfied.

(c) No portion of the cost of the Local Improvements shall be paid from funds raised from the municipal tax levy or other available funds of the Township.

(d) Any Special Assessment levied pursuant to Section 4(a)(ii) of this Ordinance shall be subject to the terms and conditions set forth in a Special Assessment Agreement to be entered into by the Township and the affected property owner substantially in the form attached hereto as **Exhibit A**, together with such additions, deletions, modifications or revisions as may be required in consultation with counsel to the Township to facilitate the transaction contemplated hereby. Any Special Assessment Agreement executed from time to time, and

pursuant to which Special Assessment payments are securing bonds issued under the RAB Law, shall be recorded in accordance with the requirements of the RAB Law. The Mayor is hereby authorized and directed to execute the Special Assessment Agreement and the Township Clerk is hereby authorized and directed to attest to such signature, and to affix the corporate seal of the Township upon the Special Assessment Agreement.

**Section 5.** The Mayor is hereby authorized and directed to determine all matters and terms in connection with the Special Assessment or the Special Assessment Agreement, all in consultation with the counsel to the Township, and the manual or facsimile signature of the Mayor upon any documents shall be conclusive as to all such determinations. The Mayor, the Township Clerk and any other Township official, officer or professional, including but not limited to, redevelopment counsel, bond counsel, the financial advisor and the auditor to the Township, are each hereby authorized and directed to execute and deliver such documents as are necessary to facilitate the transactions contemplated hereby, and to take such actions or refrain from such actions as are necessary to facilitate the transactions contemplated hereby, in consultation with, as applicable, redevelopment counsel, bond counsel, the financial advisor and the auditor to the Township, and any and all actions taken heretofore with respect to the transactions contemplated hereby are hereby ratified and confirmed.

**Section 6.** This Ordinance shall take effect as provided by law.

<i>Record of Vote</i>	<i>Commissioner Steven L. Rogers</i>	<i>Commissioner Mauro G. Tucci</i>	<i>Commissioner Thomas J. Evans</i>	<i>Commissioner Alphonse Petracco</i>	<i>Mayor Joseph P. Scarpelli</i>
<i>Yes</i>	X		X		X
<i>No</i>					
<i>Not Voting</i>					
<i>Absent/Excused</i>		X		X	

I, Eleni Pettas, RMC, Municipal Clerk of the Township of Nutley, in the County of Essex, State of New Jersey, DO HEREBY CERTIFY the foregoing to be a true and exact copy of this ORDINANCE No. 3347, which was introduced by the Board of Commissioners at a meeting duly called and held on the 2<sup>nd</sup> day of August, 2016, and which was finally adopted by the Board of Commissioners at a meeting duly called and held on the 16<sup>th</sup> day of August, 2016.

CERTIFIED BY ME THIS 17<sup>th</sup> DAY OF August, 2016

  
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 ELENI PETTAS, RMC, Municipal Clerk