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November 5, 2014

Robert C. Holmes, Esq.
Rutgers School of Law - Newark
123 Washington Street
Newark, New Jersey

Re: Atlantic City Summit

Dear Mr. Holmes:

The New Jersey Institute for Social Justice, a state leader in building strategic partnerships to secure economic and social equity for New Jersey's urban residents, submits the enclosed proposal as a component of the proposed plans to spur economic growth in the Atlantic City region.

The ultimate goal is to grow the local economy by increasing the number of jobs for urban residents and encouraging the participation of small entrepreneurs and minority-owned businesses by including community benefit commitments in the financing of economic development in Atlantic City. Circulating more money into the local economy stimulates retail businesses, increases the demand for housing, improves neighborhoods and returns money to the City in the form of sales and property taxes.

A collaboration of anchor institutions (comprised of casinos, colleges and universities, hospitals and utilities) creating an innovation cluster focused on education, the environment, and health services, can utilize social covenant bonds to assist with the substantial rebuilding, construction and repurposing of existing facilities. These anchor institutions are major employers with a substantial economic impact who create and spur economic development for Atlantic City businesses and residents.

Anchor institutions (comprised of casinos, colleges and universities, hospitals and utilities) are major employers with a substantial economic impact who create and spur economic development for Atlantic City businesses and residents. A collaboration of these institutions in creating an innovation cluster focused on education, the environment, and health services, will introduce substantial new monies as they introduce new programs and construct and repurpose existing facilities.

The Institute proposes that any financing of construction, re-development or programming include a "Social Covenant Bond" requiring funding recipients to commit to specified levels of local hiring, apprenticeships, and the participation of minority and small business entrepreneurs to ensure that investment yields a direct and immediate impact on the local economy. The Social Covenant Bond model has broad support among public officials and leaders in New Jersey's investment and academic communities.

Thank you for your consideration.

Very truly yours,

Jerome C. Harris, Jr.
Interim President and CEO

Enclosure: NJISJ Atlantic City Proposal 11.5.14



SOCIAL COVENANT BONDS

LEVERAGING ANCHOR INSTITUTION INVESTMENTS TO CREATE JOBS AND STIMULATE THE ATLANTIC CITY REGIONAL ECONOMY

The Problem: Economic Devastation

With the passage of the New Jersey Casino Act of 1978, casinos in Atlantic City were forced to remit 1.25% of its revenue to the Casino Reinvestment Development Authority. The money paid to the Development Authority was to be used for the revitalization and development of Atlantic City. This did not happen. While the development of the casinos slowed down Atlantic City's decline. The casinos did not stop the decline. What did happen was that the casinos were developed and the city and its neighborhoods were left to fend for themselves. Fast forward thirty-six years later, the casinos are leaving and New Jersey leaders face the urgent task of restoring the Atlantic City economy after catastrophic economic and environmental events.

Superstorm Sandy, the persisting repercussions of the recession and mortgage foreclosure crisis, and now the closures of 5 casinos, have highlighted an accelerated the need for state government to identify resources that can offset economic losses and to fully leverage its investments. Further economic threat is the dislocation of workers, crime, the diversion of municipal resources to storm recovery and the potential halving of the city tax base.

The unemployment rate in Atlantic City is already above 11 percent.¹ Casino closures have put a quarter of the 32,000 gaming employees out of work; the total could exceed 9,000 should the Taj Mahal shutter as well. Foreclosure activity increased for the 28th time in the last 30 months; the city's foreclosure rate ranked the second highest for a metropolitan area nationwide.²

¹ Asbury Park Press, October 31, 2014.

² http://www.nj.com/news/index.ssf/2014/09/nj_foreclosure_rate.html. September 11, 2014

The Challenge: Community Revitalization

Shortly after the first summit convened by Governor Christie local Atlantic City activist and stakeholders identified short and long term concerns impacting the quality of life of Atlantic City residents that required attention. Faith, civic and business leaders raised these concerns at the New Jersey Black Issues Convention Annual Leadership and at the New Jersey State Conference of NAACP noting the statewide implications of proposals being developed. Based on these and subsequent discussions with local stakeholders the need for a community revitalization strategy was affirmed. One element of that strategy that appears promising is leveraging anchor institution investments to generate community benefits.

**The Opportunity: Leveraging Public Construction Financing
to Secure Community Benefits.**

One of the state's greatest assets is its Anchor Institutions, including those in Atlantic City, – the colleges and universities, museums, utilities, cultural centers and hospitals, deeply rooted in the community by virtue of their expansive, physical location. These anchor institutions employ thousands of workers who bring home significant incomes. These workers can spur economic development within Atlantic City by regenerating their dollar several times within the community. At the same time, the anchor institutions they work for can remit payments for property taxes, train the next generation of leaders, expand green space opportunities and keep the residents of New Jersey healthy. As creators of wealth, and beneficiaries of public investment, they should be fully leveraged to provide benefit to Atlantic City's residents by creating all kinds of community benefits for the local economy.

In other locales, such as Boston, MA and Cleveland, OH, Anchor Institutions have begun investing in their local communities, realizing that the success of the institution is inexorably tied to the success of the entire neighborhood. This trend is often traced to work at the University of Pennsylvania in the mid-90's, which, in response to a rise in violent crime in the local area, began a series of initiatives, in partnership with government, the private sector, and nonprofits to connect the University to the West Philadelphia neighborhood and its improvement.³ These anchor institutions spur economic development activities which assist in stabilizing the neighborhoods in which their workers and other residents reside.

³ John Kromer & Lucy Kerman, *West Philadelphia Initiatives: A Case Study in Urban Revitalization*, p. 3, available at http://www.community-wealth.org/_pdfs/articles-publications/anchors/report-kromer.pdf.

The collaboration of public entities and anchor institutions can offset damage from both the storm and the casino closings. The economic threats to Atlantic City will drive collaboration among the casinos, universities and colleges, utilities and hospitals to build, consolidate, and repurpose existing facilities. Investors repurposing the four closed casinos, Atlantic Care Regional Medical Center, Richard Stockton College, Atlantic Cape Community College have a common interest in the economic restoration of the Atlantic City region. In fact, it is in the best interest of these anchor institutions to drive economic development in Atlantic City. Economic development will spark increased levels of tourism and with consequent contributions to the retail economy. More revenue generates more tax revenue, not only by the municipality in property taxes, but also by the State of New Jersey in sales tax.

Projected construction in Atlantic City, whether for storm recovery or for new university, medical or tourist industry facilities, can provide substantial, direct financial benefit to the local economy through employment and the purchase of materials and supplies from local businesses. Federal reports estimate construction costs of \$29.5 billion to repair and replace the damage caused by the storm, and a net gain in jobs about 67,500 construction-related jobs per year.⁴ If those jobs come to the community, they will spur demand for housing, for goods and services, and reduce demands on public benefit programs.

However, spillover benefits accrue only if local residents have access to the jobs and local businesses have access to contracts to provide materials and services.

Whether we look to economic clusters or public and private partnerships and innovative forms of investment, we must develop options to do more with the precious investment dollars and with the institutional infrastructure at hand

**Our Proposal: Incorporating Social Covenant Bonds in Public
 Financing to Grow the Local Economy, Incentivize Local
 Hiring and Procurement and Other Community Benefits**

The New Jersey Institute for Social Justice has developed a model for increasing the number of sustainable jobs in underutilized urban labor markets by including community benefit agreements in the financing of construction by anchor institutions. The mechanism is designed to leverage every public dollar to maximize the benefits for regional residents by requiring local hiring and procurement as part of construction financing.

⁴ US Department of Commerce Economics and Statistics Administration, "Economic Impact of Hurricane Sandy." October 18, 2013.

Financial intermediaries like the New Jersey Educational Facilities Authority (NJEFA) and social impact investors can leverage their ability to facilitate market rate financing to ensure that economic development objectives are realized simultaneously with community benefit agreements

The Vehicle: Social Covenant Bonds⁵

Social Covenant Bonds are construction financing instruments which include specific commitments to social benefits thereby:

- Increasing the number of family-sustaining jobs for urban residents by requiring increased apprenticeships, local hiring and procurement among historically excluded groups;
- Promoting the continued circulation of the invested monies within the Atlantic City community;
- Including specific, measurable commitments, appropriate metrics and independent monitoring to provide transparent reporting to stakeholders, and
- Tapping and growing the capital market of socially responsible investors who seek to invest in secure, socially beneficial projects.⁶

Stakeholders and Advisors:

State officials, the New Jersey Education Finance Authority, university administrators, private foundations and social impact investment groups – both commercial and

⁵ Social Covenant Bonds are distinct from Social Impact Bonds. With *Social Covenant Bonds*, anchor institutions commit to specific, verifiable community benefits such as local hiring and local sourcing in exchange for reputational or modest financial incentives. With *Social Impact Bonds*, also called Pay for Success bonds (recently used to finance programs to reduce recidivism at Riker's Island and in Massachusetts), private investors finance innovations in government social service delivery on the expectation of financial return in the form of a share of public sector savings upon demonstration of specified results.

⁶ JP Morgan/GIIN reports that the social impact investors market is valued at \$8 billion and growing. *Cite* The study indicates that these investors are looking for "quality investment opportunities with a track record."

philanthropic – have advised on the development of the Social Covenant Bond model and continue to commit resources to the design of a pilot project.

Specific terms would be designed in consultation with the institutions involved, municipal authorities and neighborhood and community groups.

Win-Win:

New money flowing into deteriorating neighborhoods can bring jobs, reduce crime, build neighborhoods and strengthen urban communities. Public entities can tap new capital markets and fulfill promised commitments to economic revitalization without administrative delay, elevated risk or increased costs

Developers, government entities and community stakeholders are also able to access a new and widening stream of capital through a conservative investment vehicle. Community benefit commitments are commonly used and add neither risk nor delay. By incorporating community benefits in to the financial structure of the revitalization efforts we can enhance accountability and goal achievement.

What is the New Jersey Institute for Social Justice?

The New Jersey Institute for Social Justice is a research and advocacy organization dedicated to expanding access to economic opportunity and ensuring the civil rights and other basic entitlements for people of color and low-income individuals in the state's urban centers.

The Institute has a proven track record in developing partnerships among diverse stakeholders around a common agenda - whether it is workforce development, creating sustainable jobs in economically depressed areas, or legal and advocacy work to drive adult and juvenile justice reform. The Institute's workforce development programs, providing environmental remediation certification and construction careers pre-apprenticeship training , has contributed to a stable economic future for more than 400 traditionally hard to employ urban residents. Its Equal Justice programs build coalitions that successfully advocated for the reduction in solitary confinement of juveniles, and, most recently, the passage of the Opportunity to Compete Act.

New Jersey Institute for Social Justice Working Group

Jerome C. Harris, Jr., President and CEO
Marguerite R. Greenfield, Esq., Special Counsel
George Hampton, Senior Advisor
Lanisha D. Makle-Ridley, Equal Justice Fellow

Chapter 9 Bankruptcy Proceedings Relevant to Atlantic City's Current Situation

Recently, two major municipalities, Detroit (Michigan), and Stockton (California), have made headlines through their precedent setting Chapter 9 bankruptcy filings. In July of 2013, Detroit Michigan made U.S. history by filing for bankruptcy with the most municipal debt ever owed. Detroit owed an estimated \$17 to 18\$ billion dollars, with \$2.9 billion of that being unsecured. And, in 2012, Stockton filed for bankruptcy with \$240 million dollars in debt. Notably, Stockton's situation is similar to Atlantic City, in that both enjoyed a rapid influx of property tax revenue that ultimately was drastically reduced.

In both Bankruptcy cases, the Judges' found pension rights to be contractual in nature, and as such, they were subject to alteration through federal bankruptcy.

- On December 5, 2013, Bankruptcy Judge Steven Rhodes of the Eastern District of Michigan found that "*pension rights are contractual rights . . . subject to impairment in a federal bankruptcy proceeding.*" See In re City of Detroit, 504 B.R. 97, 153-54 (Bankr. E.D. Mich. 2013).
- On October 1, 2014, Bankruptcy Chief Judge Christopher Klein of the Eastern District of California ruled from the bench that Stockton's *obligation to the California Public Employees' Retirement System ("CalPERS") is contractual, and therefore can be altered through federal bankruptcy proceeding.*

Brief Overview of Chapter 9 Bankruptcy

A Chapter 9 bankruptcy allows for the reorganization of an insolvent government or quasi-governmental entity's finances. Specifically, this entails an adjustment, alteration, or reduction of the entity's financial obligations. The overarching goal is to make the entity's financial obligations more manageable.

In New Jersey, Chapter 9 bankruptcy has five (5) requirements:

1. **MUNICIPALITY.** The Entity filing must be a "Municipality," which in New Jersey is defined as "[a]ny county, municipality, school district or other political subdivision of this State[.]" N.J.S.A. § 52:27-40.
2. **INSOLVENCY.** The entity must be "insolvent," defined in section 109 of the Bankruptcy code as either 1) generally not paying its debts as they become due unless such debts are the subject of a bona fide dispute; or (2) unable to pay its debts as they become due. 11 U.S.C. § 101(32)(C)(i)-(ii).
STATE APPROVAL. The entity seeking to file Chapter 9 must seek approval from a "municipal finance commission" prior to filing. See N.J.S.A. § 52:27-40.
3. **DESIRE A PLAN TO ADJUST DEBTS.** A municipality must "desire a plan to adjust its debts," meaning its filing of Chapter 9 must be in good faith. See 11 U.S.C. § 109(c)(3)-(4).
4. **§ 109(c)(5) CONDITIONS.** The entity must have:
 1. obtained the agreement of creditors holding at least a majority in amount of the claims of each class that such entity intends to impair under a plan in a case under such chapter;
 2. negotiated in good faith with creditors and has failed to obtain the agreement of creditors holding at least a majority in amount of the claims

Chapter 9 Bankruptcy Appendix

of each class that such entity intends to impair under a plan in a case under such chapter;

3. be unable to negotiate with creditors because such negotiation is impracticable; or
4. reasonably believed that a creditor may attempt to obtain a transfer that is avoidable under section 547 of this title.

Origins and Purpose of Chapter 9 Bankruptcy

In 1933, during the Great Depression, Congress attempted to provide relief to municipalities by passing the Municipal Bankruptcy Act.¹ However, in 1936 the Supreme Court struck the law down as unconstitutional.² As a result, Congress passed an amended version of the Municipal Bankruptcy Act, one that would meet the Supreme Court's scrutiny.³ The Municipal Bankruptcy Act became the predecessor of modern-day Chapter 9 Bankruptcy. And in 1976, Congress made major alteration to the Act creating the foundation of modern-day Chapter 9 Bankruptcy.⁴

Advantages to Chapter 9

- **Automatic Stay**- A municipality that files for chapter 9 gets an "automatic stay," which halts any actions that can be taken against the municipality, the elected officials, and the inhabitants. See 11 U.S.C. § 922(a)(1). This stay provides the municipality with breathing room to focus on the restructuring of its debts.
- **Expert Arbiter** – Bankruptcy Judges are experts in restructuring and reorganizing debts.
- **Adjusting Obligations** – The municipalities' creditor's claims can be restructured, extended, or even reduced in some manner. These adjustments are limited, and creditors might be able to block a municipality from making such an adjustment.
- **No Interference in Municipality Operations** – The Tenth Amendment of the United States Constitution limits the Bankruptcy Court's ability to interfere with the municipality. Specifically, the Court cannot appoint a trustee to take control of the municipality, or liquidate the municipality's assets.

Disadvantages to Chapter 9

- **Cost and Distraction** – First, filing for Chapter 9 is expensive, in terms of legal fees and consulting costs. Second, high level officials will be distracted from running the municipality when dealing with the Bankruptcy proceedings. Lastly, Bankruptcy proceeding are highly publicized and can place a stigma on the community (I.E. Detroit has become synonymous with Bankruptcy).
- **Impact on Credit Markets** – A Municipality entering into Bankruptcy can expect a negative impact on their credit ratings.

¹ Municipal Bankruptcy Act, Pub. L. No. 251, 48 Stat. 798 (1934).

² Ashton v. Cameron Cty. Water Improvement Dist. No. One, 298 U.S. 513 (1936)

³ Municipal Bankruptcy Act, Pub. L. No. 302, 50 Stat. 652 (1937).

⁴ Lawrence P. King, Municipal Insolvency: The New Chapter IX of The Bankruptcy Act, 1976 Duke L. J. 1157, 1158 (1997).