

REGULAR COUNCIL MEETING
MAY 23, 2017

Council Chamber, Municipal Building
Irvington, N.J. – Tuesday Evening
May 23, 2017 - 8:00 P.M.

1. Pledge of Allegiance
2. Moment of Silence
3. Roll Call

Present: Renee C. Burgess, Vernal Cox, Charnette Frederic, Paul Inman, Sandra R. Jones, David Lyons

Absent: October Hudley (excused)

President Lyons read the Statement of Proper Notice pursuant to the Sunshine Law.

4. Hearing of Citizens on Agenda Items Only (limited to three minutes per person and thirty minutes total)

Elouise McDaniel, 214 Nesbit Terrace

5. Hearing of Council Members

President Lyons responded to the issues raised by the above referenced citizen.

6. Reports & Recommendations of Township Officers, Boards & Commissions

A. Reports

1. Minutes – Directors’ Meeting – May 9, 2017
2. Minutes – Joint Meeting – March 16, 2017

7. Reports of Committees

- A. Requests for Proposals Results – Urban Farming Consultant – May 11, 2017
- B. Bid Results – Snow Plowing and Snow Removal – May 11, 2017

8. Ordinances, Bills & Claims

A. Ordinances on 1st Reading

None

C. Bills & Claims

Jones – Lyons 1. Bill Lists

RESOLVED THAT THE BILLS AND CLAIMS AGAINST THE TOWNSHIP OF IRVINGTON FOR A PERIOD MAY 23, 2017, AS ENUMERATED ON THIS LIST FOR MATERIALS, SUPPLIES AND SERVICES FURNISHED, DELIVERED AND/OR PERFORMED HAVE BEEN CERTIFIED BY THE DEPARTMENTS AS CORRECT, EACH CLAIM AND PURCHASE ORDER HAVE BEEN VERIFIED AND REVIEWED FOR THE AVAILABILITY OF FUNDS, ACCURACY OF ACCOUNT CODING AND COMPLETENESS BY THE ADMINISTRATION, THEREFORE:

BE IT RESOLVED, BY THE MUNICIPAL COUNCIL OF THE TOWNSHIP OF IRVINGTON THAT THE FOLLOWING BE PAID BY THE CHIEF FINANCIAL OFFICER:

BILL LIST	\$5,191,057.89
TOTAL	\$5,191,057.89

Adopted
Absent: Hudley

Jones – Cox 2. Payrolls

April 22, 2017 through May 5, 2017

REGULAR	OVERTIME	OTHER EARNED	TOTAL
\$673,375.15	\$19,841.41	\$68,614.84	\$761,831.40

April 22, 2017 through May 5, 2017

REGULAR	OVERTIME	OTHER EARNED	TOTAL
\$921,990.06	\$66,292.66	\$30,648.32	\$1,018,931.04

May 6, 2017 through May 19, 2017

REGULAR	OVERTIME	OTHER EARNED	TOTAL
(-\$4,364.99)	(-\$4,364.99)	(-\$4,364.99)	(-\$4,364.99)

Adopted
Absent: Burgess, Hudley

9. Resolutions & Motions

A. Resolutions

Frederic – Cox 1. Authorize Removal of Handicapped Parking Space in Front of 8 Durand Place – Handicapped Resident No Longer Lives There

WHEREAS, N.J.S.A. 39:4-197.5 provides that a Municipality may by resolution provide for restricted parking spaces in front of residences for use by any person who has been issued a special vehicle identification card pursuant to the provisions of N.J.S.A. 39:4-205, when using a motor vehicle on which is displayed a certificate, for which a special vehicle identification card has been issued pursuant to N.J.S.A. 39:4-206; and

WHEREAS, a restricted handicapped parking space has been previously established at 8 Durand Place; and

WHEREAS, the handicapped resident for which the restricted handicapped parking space in front of 8 Durand Place has indicated in writing that said handicapped resident no longer resides at that address and that there is no longer any need to for the restricted handicapped parking space in front of 8 Durand Place:

NOW, THEREFORE, BE IT RESOLVED BY THE MUNICIPAL COUNCIL OF THE TOWNSHIP OF IRVINGTON that the restricted handicapped parking space heretofore established in front of 8 Durand Place be and the same is hereby rescinded; and

BE IT FURTHER RESOLVED that the Department of Public Works is directed to remove the restricted handicapped parking sign located in front of 8 Durand Place.

Adopted

Absent: Hudley

Jones – Inman 2. Authorize Change Order #1 – Installation of Playground Equipment at Grove Street Park - Increase Contract Amount by \$6,675.00 for Removal of Additional Asphalt – New Total Contract Price – \$48,098.00

RESOLUTION TO APPROVE CHANGE ORDER ONE FOR INSTALLATION OF NEW PLAYGROUND EQUIPMENT AT GROVE STREET PARK

WHEREAS, sealed bids were received on February 10, 2017 for the Installation of New Playground Equipment at Grove Street Park, and;

WHEREAS, a contract for this project was awarded on February 15, 2017 to Corby Associates Inc., PO Box 496, 590 Grand Ave, Ridgefield, NJ 07657 at their bid price of \$41,423.00, and;

WHEREAS, during the course of the construction, the vendor has determined that an additional 3.4-4 inches of solid asphalt needs to be removed from the playground and dispose of; and

WHEREAS, the architect and the Township Engineer reviewed the field conditions and quotes and approved the same in the amount \$6,675.00; and

WHEREAS, the proposed change order will result in an increase of the original contract in the amount of \$6,675.00 resulting in a new total contract price of \$48,098.00

NOW, THEREFORE, BE IT RESOLVED BY THE MUNICIPAL COUNCIL OF THE TOWNSHIP OF IRVINGTON that a Change Order number 1 the amount of \$6,675.00 is hereby approved.

BE IT FURTHER RESOLVED that pursuant to NJAC 5:34-5.2, the required certificate of Availability of Fund number C7-00235 for the above has been obtained from the Chief Financial Officer of the Township of Irvington and the appropriation to be charged for this expenditure in the amount of \$6,675.00 is account number C-04-56-849-019-918.

Adopted
Absent: Hudley

Cox – Frederic 3. Reject All Proposals for IDIS Consulting Services – Need to Revise Scope of Services

REJECTING REQUEST FOR PROPOSALS FOR IDIS CONSULTING SERVICES

WHEREAS, on May 9, 2017, the Township of Irvington accepted and opened RFPs for IDIS Consulting Services; and

WHEREAS, the Township received one proposal for this service; and

WHEREAS, the Director of Economic Development wishes to reject all proposals on the basis that the RFPs scope of the service must be revised; and

WHEREAS, the Local Public Contract Law, 40A:11-13.2.(d) provides that a municipality may reject all proposals when the scope of service must be revised; and

NOW THEREFORE BE IT RESOLVED by the Council of Township of Irvington, in the County of Essex, that all proposals received for IDIS Consulting Services is hereby rejected in accordance with the Local Public Contracts Law, NJSA 40A:11-13.2.(d); and

BE IT FURTHER RESOLVED that the Qualified Purchasing Agent is hereby authorized and directed to re-advertise for bid in accordance with the Local Public Contract Law.

Adopted
Absent: Hudley

Cox – Frederic 4. Authorize Increase in Contract With Two Rivers Title Company, LLC for In Rem Title Services by \$13,025.00 to Complete Required Work Through Expiration of Contract on October 01, 2017 – Total Contract Price 73,025.00

A RESOLUTION INCREASING THE NOT TO EXCEED AMOUNT FOR IN REM TITLE SERVICES CONTRACT

WHEREAS, resolution number DRF 16-1012-70 was approved by the Municipal Council on October 12, 2016 for In Rem Title Services; and

WHEREAS, the Director of Economic Development has advised that based on the Township is required to obtain title searches for demolition of properties; and

WHEREAS, it was determined that an additional \$13,025.00 is needed to complete the required work until the expiration of the contract on October 01, 2017; and

THEREFORE, BE IT RESOLVED, that the contract for contract for In Rem Title service is hereby amended to an amount not to exceed \$73,025.00 to Two Rivers Title Company, LLC, 26 Ayers Lane, Suite 202, Little Silver, NJ 07739; and,

BE IT RESOLVED, that the Mayor be and is hereby authorized to execute amended contract for this service with Two Rivers Title Company, LLC, 26 Ayers Lane, Suite 202, Little Silver, NJ 07739, increasing the total contract amount to \$73,025.00

BE IT RESOLVED, that Certification of Funds number C7-00232 has been obtained from the Chief Financial Officers for the total sum of \$13,025.00 charged to account number T-21-4 l-850-16B-803.

Adopted

Absent: Hudley

Inman – Cox 5. Authorize Settlements of Tax Appeals Dated May 12, 2017

RESOLUTION OF THE MAYOR AND TOWNSHIP COUNCIL OF THE TOWNSHIP OF IRVINGTON IN THE COUNTY OF ESSEX AUTHORIZING SETTLEMENT OF TAX APPEALS ON THE ATTACHED LIST DATED MAY 12, 2017 WHICH WERE TAKEN FROM ASSESSMENTS OF PROPERTIES LOCATED WITHIN THE TOWNSHIP OF IRVINGTON, ESSEX COUNTY, NEW JERSEY

WHEREAS, appeals of the real property tax assessments on the attached list dated April 7, 2017, have been challenged by the respective taxpayers; and

WHEREAS, each Block and Lot listed therein was assessed at the amount stated therein for the noted tax year(s); and

WHEREAS, the proposed Stipulations of Settlement, copies of which are incorporated herein as if set forth at length, have been reviewed and recommended by the Township Tax Assessor and Township Tax Expert; and

WHEREAS, the settlement of these matters on the attached list are in the best interest of the Township of Irvington.

NOW, THEREFORE, BE IT RESOLVED, by the Township of Irvington, New Jersey:

1. The Township's Tax Appeal Attorney, Matthew J. O'Donnell, Esq. is authorized to execute Stipulations of Settlement on behalf of the Township of Irvington with respect to the tax appeals on the attached list which are currently pending in the Tax Court of New Jersey for the tax year(s) listed therein and at the assessments stated therein.
2. All municipal officials are hereby authorized to take whatever action may be necessary to implement the terms of this Resolution and authorizes the Special Tax Counsel to enter into the Stipulation of Settlement as provided by Taxpayer.

Adopted

Absent: Hudley

Frederic – Jones 6. Establish Handicapped Parking Spaces in Front of 18 Stockman Place, 71 Wilson Place, 54 Harrison Place, 2nd Floor, and 44 Berkshire Place, 1st Floor

WHEREAS, N.J.S.A. 39:4-197.5 provides that the Municipality may by resolution provide for restricted parking spaces in front of residences for use by any person who has been issued a special vehicle identification card pursuant to the provision of N.J.S.A. 39:4-205, when using a motor vehicle on which is displayed a certificate, for which a special vehicle identification card has been issued pursuant to N.J.S.A. 39:4-206; and

WHEREAS, requests have been made for restricted parking spaces in front of 18 Stockman Place, 71 Wilson Place, 54 Harrison Place, 2nd Floor, and 44 Berkshire Place, 1st Floor:

NOW, THEREFORE, BE IT RESOLVED BY THE MUNICIPAL COUNCIL OF THE TOWNSHIP OF IRVINGTON that a parking space restricted for use by any person who has been issued a special vehicle identification card pursuant to the provisions of N.J.S.A. 39:4-205, when using a motor vehicle on which is displayed a certificate, for which a special vehicle identification card has been issued pursuant to N.J.S.A. 39:4-206, be established in front of 18 Stockman Place, 71 Wilson Place, 54 Harrison Place, 2nd Floor, and 44 Berkshire Place, 1st Floor; and

BE IT FURTHER RESOLVED that the Department of Public Works is directed to place a sign designating and handicapped parking spaces.

Adopted

Absent: Hudley

Jones – Frederic 7. Authorize Payment Plan for Outstanding Municipal Lien - 97- 99 Mt. Vernon Avenue, Block 228, Lot 27 – Total Amount to Redeem – \$21,132.28 – Payable Within 36 Months

Redeem Municipal Held Lien in Installments

WHEREAS, N.J.S.A. 54:5-65 provides authority for the governing body to authorize redemption of a municipally held lien by installment payments to include principal and interest; and,

WHEREAS, Harold Cornelius, owner of record of Block 228, Lot 27, also known as 97-99 Mt. Vernon Avenue, Municipality of Irvington, is desirous of satisfying Tax Title Lien # 14-00983 in the amount of \$21,132.28 by the installment payment plan.

NOW, THEREFORE, BE IT RESOLVED, BY THE MUNICIPAL COUNCIL OF THE TOWNSHIP OF IRVINGTON, COUNTY OF ESSEX, STATE OF NEW JERSEY, hereby authorize an installment payment plan \$763.98 as set forth on the attached schedule and that in addition to said installments being promptly paid on the first of each month, for 36 months, all current year's taxes, subsequent taxes, assessments or other municipal liens imposed shall be promptly paid when due.

BE IT FURTHER RESOLVED, that the final payment shall be sufficient to include all amounts due the municipality and secured by the tax sale lien, except for current year's taxes, and shall include interest properly chargeable on the respective unpaid balances.

BE IT FURTHER RESOLVED, that if installment payments are regularly and promptly made in accordance with the attached schedule, then the municipality will suspend any action to cut off or foreclose the right of redemption, and will agree not to assign, transfer or otherwise alienate the tax title lien it holds.

BE IT FURTHER RESOLVED, if any unpaid installment remains unpaid after 30 days of due date, then the municipality may proceed to enforce or foreclose the tax sale lien, or sell, assign, transfer or alienate it and shall proceed only for the unpaid balance after proper credit of such installment payments as were made.

BE IT FURTHER RESOLVED that a certified copy of this resolution, along with an attached installment schedule will be forwarded to the Tax Collector and the property owner.

Adopted
Absent: Hudley

Inman – Frederic 8. Authorize Payment Plan for Outstanding Municipal Lien - 955 Grove Street, Block 210, Lot 53 – Total Amount to Redeem – \$11,754.79 – Payable Within 36 Months

Redeem Municipal Held Lien in Installments

WHEREAS, N.J.S.A. 54:5-65 provides authority for the governing body to authorize redemption of a municipally held lien by installment payments to include principal and interest; and,

WHEREAS, David and Sharon Crosby, owner of record of Block 210, Lot 53, also known as 955 Grove Street, Municipality of Irvington, is desirous of satisfying Tax Title Lien # 16-00832 in the amount of \$11,754.79 by the installment payment plan.

NOW, THEREFORE, BE IT RESOLVED, BY THE MUNICIPAL COUNCIL OF THE TOWNSHIP OF IRVINGTON, COUNTY OF ESSEX, STATE OF NEW JERSEY, hereby authorize an installment payment plan \$424.96 as set forth on the attached schedule and that in addition to said installments being promptly paid on the first of each month, for 36 months, all current year's taxes, subsequent taxes, assessments or other municipal liens imposed shall be promptly paid when due.

BE IT FURTHER RESOLVED, that the final payment shall be sufficient to include all amounts due the municipality and secured by the tax sale lien, except for current year's taxes, and shall include interest properly chargeable on the respective unpaid balances.

BE IT FURTHER RESOLVED, that if installment payments are regularly and promptly made in accordance with the attached schedule, then the municipality will suspend any action to cut off or foreclose the right of redemption, and will agree not to assign, transfer or otherwise alienate the tax title lien it holds.

BE IT FURTHER RESOLVED, if any unpaid installment remains unpaid after 30 days of due date, then the municipality may proceed to enforce or foreclose the tax sale lien, or sell, assign, transfer or alienate it and shall proceed only for the unpaid balance after proper credit of such installment payments as were made.

BE IT FURTHER RESOLVED that a certified copy of this resolution, along with an attached installment schedule will be forwarded to the Tax Collector and the property owner.

Adopted
Absent: Hudley

Inman – Jones 9. Authorize Payment Plan for Outstanding Municipal Lien - 916 Stuyvesant Avenue, C06.1 - Block 316, Lot 41, Q C06.1 – Total Amount to Redeem – \$23,396.98 – Payable Within 36 Months

Redeem Municipal Held Lien in Installments

WHEREAS, N.J.S.A. 54:5-65 provides authority for the governing body to authorize redemption of a municipally held lien by installment payments to include principal and interest; and,

WHEREAS, Wally Choice (BFM Holdings), owner of record of Block 316, Lot 41, Q C06.1, also known as 916 Stuyvesant Avenue, C06.1, Municipality of Irvington, is desirous of satisfying Tax Title Lien # 112052 in the amount of \$23,396.98 by the installment payment plan.

NOW, THEREFORE, BE IT RESOLVED, BY THE MUNICIPAL COUNCIL OF THE TOWNSHIP OF IRVINGTON, COUNTY OF ESSEX, STATE OF NEW JERSEY, hereby authorize an installment payment plan \$845.86 as set forth on the attached schedule and that in addition to said installments being promptly paid on the first of each month, for 36 months, all current year's taxes, subsequent taxes, assessments or other municipal liens imposed shall be promptly paid when due.

BE IT FURTHER RESOLVED, that the final payment shall be sufficient to include all amounts due the municipality and secured by the tax sale lien, except for current year's taxes, and shall include interest properly chargeable on the respective unpaid balances.

BE IT FURTHER RESOLVED, that if installment payments are regularly and promptly made in accordance with the attached schedule, then the municipality will suspend any action to cut off or foreclose the right of redemption, and will agree not to assign, transfer or otherwise alienate the tax title lien it holds.

BE IT FURTHER RESOLVED, if any unpaid installment remains unpaid after 30 days of due date, then the municipality may proceed to enforce or foreclose the tax sale lien, or sell, assign, transfer or alienate it and shall proceed only for the unpaid balance after proper credit of such installment payments as were made.

BE IT FURTHER RESOLVED, that a certified copy of this resolution, along with an attached installment schedule will be forwarded to the Tax Collector and the property owner.

Adopted
Absent: Hudley

Cox – Inman 10. Authorize Payment Plan for Outstanding Municipal Lien
- 916 Stuyvesant Avenue, C19.1 - Block 316, Lot 41, Q C19.1 – Total Amount to Redeem
– \$24,035.88 – Payable Within 36 Months

Redeem Municipal Held Lien in Installments

WHEREAS, N.J.S.A. 54:5-65 provides authority for the governing body to authorize redemption of a municipally held lien by installment payments to include principal and interest; and,

WHEREAS, Wally Choice (BFM Holdings), owner of record of Block 316, Lot 41, Q C19.1, also known as 916 Stuyvesant Avenue, C19.1, Municipality of Irvington, is desirous of satisfying Tax Title Lien # 101764 in the amount of \$24,035.88 by the installment payment plan.

NOW, THEREFORE, BE IT RESOLVED, BY THE MUNICIPAL COUNCIL OF THE TOWNSHIP OF IRVINGTON, COUNTY OF ESSEX, STATE OF NEW JERSEY, hereby authorize an installment payment plan \$868.95 as set forth on the attached schedule and that in addition to said installments being promptly paid on the first of each month, for 36 months, all current year's taxes, subsequent taxes, assessments or other municipal liens imposed shall be promptly paid when due.

BE IT FURTHER RESOLVED, that the final payment shall be sufficient to include all amounts due the municipality and secured by the tax sale lien, except for current year's taxes, and shall include interest properly chargeable on the respective unpaid balances.

BE IT FURTHER RESOLVED, that if installment payments are regularly and promptly made in accordance with the attached schedule, then the municipality will suspend any action to cut off or foreclose the right of redemption, and will agree not to assign, transfer or otherwise alienate the tax title lien it holds.

BE IT FURTHER RESOLVED, if any unpaid installment remains unpaid after 30 days of due date, then the municipality may proceed to enforce or foreclose the tax sale lien, or sell, assign, transfer or alienate it and shall proceed only for the unpaid balance after proper credit of such installment payments as were made.

BE IT FURTHER RESOLVED, that a certified copy of this resolution, along with an attached installment schedule will be forwarded to the Tax Collector and the property owner.

Adopted
Absent: Hudley

Cox – Jones 11. Authorize Contract Over the Pay to Play Threshold of \$17,500.00 but Under the Bid Threshold of \$40,000.00 for Pick of Recyclables - Integrity Recycling and Waste Solutions, Inc.

**AUTHORIZING PURCHASE OVER THE PAY TO PLAY THRESHOLD OF
\$17,500.00**

WHEREAS, the Township of Irvington intends to enter into contracts with vendors over the pay-to-play threshold of \$17,500.00 through this resolution and properly executed purchase orders as needed, which shall be subject to all the conditions applicable law of N.J.A.C. 5:34- et seq; and,

WHEREAS, the Township has obtained two quotes for this service from Integrity Recycling and Waste Solutions Inc., and Joseph Smentkowski, Inc, herein attached; and WHEREAS, Integrity Recycling and Waste Solutions Inc, 111 Route 31, Suite 223, Flemington, NJ 08822 has provided the lowest quote; and

WHEREAS, in compliance with 19:44a-20.13 et., seq., Integrity Recycling and Waste Solutions Inc will exceed the Pay-to-Play threshold of \$17,500.00 for calendar year 2017; and,

WHEREAS, Integrity Recycling and Waste Solutions Inc has completed the Township C-271, elect reports and political disclosure forms. These forms are on file in the Division of Purchasing Office and the Municipal Clerk; and

WHEREAS, all purchases to the above vendor will not exceed the bid threshold of \$40,000.00; and

NOW, THEREFORE, BE IT RESLOVED, that the Municipal Council of the Township of Irvington hereby authorizes the Qualified Purchasing Agent to pay the above vendor in excess of pay to play threshold \$17,500.00 but under the bid threshold of \$40,000.00; and

BE IT RESOLVED that the required Certification of Availability of Funds, No.C7-00234, in the amount of \$20,000.00, from Account number 7-01-32-465-465-181 has been obtained from the Chief Financial Officer.

BE IT FURTHER RESOLVED that the duration of this authorization shall be until December 31, 2017

BE IT FURTHER RESOLVED a separate resolution will be submitted to the Municipal Council for all addition vendors exceeding the bid threshold of \$17,500.00.

Adopted
Absent: Hudley

Frederic – Cox 12. Authorize Non-Fair and Open Contract for Professional Planner – Nishuane Group LLC – May 24, 2017 to May 23, 2018 - Not To Exceed \$5,000.00

A RESOLUTION AWARDDING A NON FAIR AND OPEN CONTRACT TO NISHUANE GROUP LLC FOR PLANNER SERVICE

WHEREAS, the Township of Irvington has a need for the services of Planner Service as an alternative method contract pursuant to the provisions of N.J.S.A. 19:44A-20.4 or 20.5 as appropriate; and,

WHEREAS, the Local Public Contract Law (N.J.S.A. 40:A 11-1 et seq.), requires that the resolution of appointment be publicly advertised when professional services are engaged without competitive bids; and,

WHEREAS, the Director of Community Development has requested in writing that this service is needed to complete various redevelopment applications; and,

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WHEREAS, Nishuane Group LLC has completed the required C.271 Political Contribution forms and the same are on file in the Office of the Municipal Clerk and Division of Purchasing; and,

NOW THEREFORE, BE IT RESOLVED BY THE MUNICIPAL COUNCIL OF THE TOWNSHIP OF IRVINGTON that a contract for a Planner service be awarded to Nishuane Group LLC., 105 Grove Street, Suite 1, Montclair, NJ 07042, for an amount not to exceed \$5,000.00; and

BE IT FURTHER RESOLVED this appointment is being made without competitive bidding because this appointment involve members of recognized professions, licensed and regulated by law, and are therefore specifically exempt under N.J.S.A. 40A:11-5.

BE IT FURTHER RESOLVED that the Township Attorney is hereby authorized and directed to prepare the necessary contract and the Mayor and Township Clerk are authorized and directed to sign the same; and

BE IT FURTHER RESOLVED that the Municipal Clerk shall published a copy of this resolution in the newspaper as required by law.

BE IT FURTHER RESOLVED This Contract will start on May 24, 2017 and expire on May 23, 2018.

BE IT RESOLVED that the required Certification of Availability of Funds, No.C7-00229, in the amount of \$5,000.00, from Account number 7-01-21-180-185-299 has been obtained from the Chief Financial Officer.

Adopted
Absent: Hudley

Lyons – Cox 13. Authorize Professional Services Contract for Outside Counsel Services in the Matter of Reggie Frank Versus Captain Michael Torisiello - Eric M. Bernstein and Associates, LLC - For a Total Amount Not to Exceed \$2,000.00

RESOLUTION RATIFYING PROFESSIONAL SERVICES CONTRACT FOR LITIGATION/DEFENSE COUNSEL SERVICES

WHEREAS, resolution number TA 16-1110-45 qualified fifteen firms to provide litigation/defense counsel services for the Township of Irvington from November 01, 2016 until October 31, 2017; and

WHEREAS, the resolution requires that all cases assigned to counsel for this purpose must be approved by the Municipal Council; and

WHEREAS, the Township Attorney has determined that Eric M. Bernstein & Associates, LLC

has the most experience to defend the Captain Michael Torsiello, in the matter of Reggie Frank v. Captain Michael Torsiello, Docket No. ESX-L-016159-16;

WHEREAS, the Township Attorney has recommended that a contract be awarded to Eric M. Bernstein & Associates, LLC, 34 Mountain Blvd., Bldg. A, Warren, NJ, 07059; and

NOW THEREFORE, BE IT RESOLVED BY THE MUNICIPAL COUNCIL OF THE TOWNSHIP OF IRVINGTON that a contract for Litigation/Defense counsel services be awarded to Eric M. Bernstein & Associates, LLC, 34 Mountain Blvd., Bldg. A, Warren, NJ, 07059 for a contract amount not to exceed \$2,000.00. The billing rate for this contract is \$150.00 per hour; and

BE IT FURTHER RESOLVED that the Township Attorney is hereby authorized and directed to prepare the necessary contracts for this case and the Mayor and Township Clerk are authorized and directed to sign the same; and

BE IT FURTHER RESOLVED, that funds for this service will be paid from the Insurance fund for a contract amount not to exceed \$2,000.00. The billing rate for this contract is \$150.00 per hour.

Adopted
Absent: Hudley

Jones – Lyons 14. Authorize Professional Services Contract for Outside Counsel Services Representing Joseph Santiago in the Matter of Joseph L. Barron, et al Versus Rick Fuentes, et al – Roth D'Aquanni - For a Total Amount Not to Exceed \$15,000.00

RESOLUTION RATIFYING PROFESSIONAL SERVICES CONTRACT FOR LITIGATION/DEFENSE COUNSEL SERVICES

WHEREAS, resolution number TA 16-1110-45 qualified fifteen firms to provide litigation/defense counsel services for the Township of Irvington from November 01, 2016 until October 31, 2017; and

WHEREAS, the resolution requires that all cases assigned to counsel for this purpose must be approved by the Municipal Council; and

WHEREAS, the Township Attorney has determined that Roth D'Aquanni, LLC has the most experience to defend the **Joseph Santiago** in the matter of Joseph L. Barron, et al, v. Rick Fuentes, et al, Case No. 2:17-CV-00735-WJM-MF; and

WHEREAS, the Township Attorney has recommended that a contract be awarded to Roth D'Aquanni, LLC, 150 Morris Avenue, Suite 303, Springfield, New Jersey, 07081; and

NOW THEREFORE, BE IT RESOLVED BY THE MUNICIPAL COUNCIL OF THE TOWNSHIP OF IRVINGTON that a contract for Litigation/Defense counsel services be awarded to Roth D'Aquanni, LLC, 150 Morris Avenue, Suite 303, Springfield, New Jersey, 07081 for a contract amount not to exceed \$15,000.00. The billing rate for this contract is \$150.00 per hour; and

BE IT FURTHER RESOLVED that the Township Attorney is hereby authorized and directed to prepare the necessary contracts for this case and the Mayor and Township Clerk are authorized and directed to sign the same; and

BE IT FURTHER RESOLVED, that funds for this service will paid from the Insurance fund for a contract amount not to exceed \$15,000.00. The billing rate for this contract is \$150.00 per hour.

Adopted

Absent: Hudley

Lyons – Cox 15. Authorize Professional Services Contract for Outside Counsel Services in the Matter of Appraisal Services Versus the Township of Irvington – Lebowitz, Oleske, Connahan & Kasar, PC - For a Total Amount Not to Exceed \$2,000.00

RESOLUTION RATIFYING PROFESSIONAL SERVICES CONTRACT FOR LITIGATION/DEFENSE COUNSEL SERVICES

WHEREAS, resolution number TA 16-1110-45 qualified fifteen firms to provide litigation/defense counsel services for the Township of Irvington from November 01, 2016 until October 31, 2017; and

WHEREAS, the resolution requires that all cases assigned to counsel for this purpose must be approved by the Municipal Council; and

WHEREAS, the Township Attorney has determined that Lebowitz, Oleske, Connahan & Kassar, LLC.. has the most experience to defend the Township of Irvington in the matter Appraisal Systems v. Township of Irvington, et als., Docket No. ESX-L-398-17;

WHEREAS, the Township Attorney has recommended that a contract be awarded to Lebowitz, Oleske, Connahan & Kassar, LLC., 26 Columbia Turnpike, Suite 105, Florham Park , New Jersey, 07932; and

NOW THEREFORE, BE IT RESOLVED BY THE MUNICIPAL COUNCIL OF THE TOWNSHIP OF IRVINGTON that a contract for Litigation/Defense counsel services be awarded to Lebowitz, Oleske, Connahan & Kassar, LLC. 26 Columbia Turnpike, Suite 105, Florham Park, New Jersey, 07932 for a contract amount not to exceed \$5,000.00. The billing rate for this contract is \$150.00 per hour; and

BE IT FURTHER RESOLVED that the Township Attorney is hereby authorized and directed to prepare the necessary contracts for this case and the Mayor and Township Clerk are authorized and directed to sign the same; and

BE IT FURTHER RESOLVED, that funds for this service will paid from the Insurance fund for a contract amount not to exceed \$12,075.00. The billing rate for this contract is \$150.00 per hour.

Adopted

Absent: Hudley

Lyons – Cox 16. Authorize Professional Services Contract for Outside Counsel Services Representing the Township of Irvington in the Matter of Joseph L Barron, et al Versus Rick Fuentes, et al – Lebowitz, Oleske, Connahan & Kasar, PC - For a Total Amount Not to Exceed \$15,000.00

**RESOLUTION RATIFYING PROFESSIONAL SERVICES CONTRACT
FOR LITIGATION/DEFENSE COUNSEL SERVICES**

WHEREAS, resolution number TA 16-1110-45 qualified fifteen firms to provide litigation/defense counsel services for the Township of Irvington from November 01, 2016 until October 31, 2017; and

WHEREAS, the resolution requires that all cases assigned to counsel for this purpose must be approved by the Municipal Council; and

WHEREAS, the Township Attorney has determined that Lebowitz, Oleske, Connahan & Kassar, P.C. has the most experience to defend the Township of Irvington in the matter of Joseph L. Barron, et al, v. Rick Fuentes, et al, Case No. 2:17-CV-00735-WJM-MF; and

WHEREAS, the Township Attorney has recommended that a contract be awarded to Lebowitz, Oleske, Connahan & Kassar, P.C., 26 Columbia Turnpike, Suite 105, Florham Park, New Jersey, 07932; and

NOW THEREFORE, BE IT RESOLVED BY THE MUNICIPAL COUNCIL OF THE TOWNSHIP OF IRVINGTON that a contract for Litigation/Defense counsel services be awarded to Lebowitz, Oleske, Connahan & Kassar, P.C., 26 Columbia Turnpike, Suite 105, Florham Park, New Jersey, 07932 for a contract amount not to exceed \$15,000.00. The billing rate for this contract is \$150.00 per hour; and

BE IT FURTHER RESOLVED that the Township Attorney is hereby authorized and directed to prepare the necessary contracts for this case and the Mayor and Township Clerk are authorized and directed to sign the same; and

BE IT FURTHER RESOLVED, that funds for this service will be paid from the Insurance fund for a contract amount not to exceed \$15,000.00. The billing rate for this contract is \$150.00 per hour.

Adopted
Absent: Hudley

Cox – Lyons 17. Authorize Professional Services Contract for Outside Counsel Services in the Matter of Crissundra Brewton Versus the County of Essex, et al – Lamb Kretzer, LLC - For a Total Amount Not to Exceed \$10,000.00

**RESOLUTION RATIFYING PROFESSIONAL SERVICES CONTRACT FOR
LITIGATION/DEFENSE COUNSEL SERVICES**

WHEREAS, resolution number TA 16-1110-45 qualified fifteen firms to provide litigation/defense counsel services for the Township of Irvington from November 01, 2016 until October 31, 2017; and

WHEREAS, the resolution requires that all cases assigned to counsel for this purpose must be approved by the Municipal Council; and

WHEREAS, the Township Attorney has determined that Lamb Kretzer, LLC has the most experience to defend the Township of Irvington in the matter of Crissundra Brewton v. County of Essex, et al., Docket No. ESX-L-1276-17; and

WHEREAS, the Township Attorney has recommended that a contract be awarded to Lamb Kretzer, LLC, 110B Meadowlands Parkway, Suite 201, Secaucus, New Jersey, 07094; and

NOW THEREFORE, BE IT RESOLVED BY THE MUNICIPAL COUNCIL OF THE TOWNSHIP OF IRVINGTON that a contract for Litigation/Defense counsel services be awarded to Lamb Kretzer, LLC, 110B Meadowlands Parkway, Suite 201, Secaucus, New Jersey, 07094 for a contract amount not to exceed \$10,000.00. The billing rate for this contract is \$150.00 per hour; and

BE IT FURTHER RESOLVED that the Township Attorney is hereby authorized and directed to prepare the necessary contracts for this case and the Mayor and Township Clerk are authorized and directed to sign the same; and

BE IT FURTHER RESOLVED, that funds for this service will be paid from the Insurance fund for a contract amount not to exceed \$10,000.00. The billing rate for this contract is \$150.00 per hour.

Adopted
Absent: Hudley

Jones – Lyons 18. Authorize Amendment to Redevelopment and Financial Agreement for 1111 Springfield Avenue

**RESOLUTION OF THE TOWNSHIP OF IRVINGTON, IN
THE COUNTY OF ESSEX REINSTATING THE
DESIGNATION OF FINOMUS IRVINGTON RE
HOLDINGS, LLC AS REDEVELOPER OF CERTAIN
PROPERTY LOCATED WITHIN THE TOWNSHIP OF
IRVINGTON AND AUTHORIZING THE EXECUTION
OF AN AMENDED AND RESTATED
REDEVELOPMENT AGREEMENT IN CONNECTION
THEREWITH**

WHEREAS, the Township of Irvington, in the County of Essex, New Jersey (the “**Township**”), a public body corporate and politic of the State of New Jersey is authorized pursuant to the Local Redevelopment and Housing Law, *N.J.S.A. 40A:12A-1*

et seq. (the “**Redevelopment Law**”), to determine whether certain parcels of land within the Township constitute an area in need of rehabilitation and/or an area in need of redevelopment; and

WHEREAS, by Resolution dated February 27, 2007, the Municipal Council of the Township (the “**Township Council**”) designated certain parcels located within the Township's Urban Enterprise Zone as an area in need of rehabilitation (the “**Rehabilitation Area**”) in accordance with the requirements of the Redevelopment Law; and

WHEREAS, the Redevelopment Law authorizes municipalities to adopt a redevelopment plan for an area designated as an “area in need of rehabilitation” pursuant to which redevelopment projects are to be undertaken; and

WHEREAS, the Township Council duly adopted a redevelopment plan by Ordinance MC No. 3351 dated September 11, 2007, entitled the *Urban Enterprise Zone Area in Need of Rehabilitation Redevelopment Plan*, governing the UEZ Rehabilitation Area, including, but not limited to, the Property (the “**Redevelopment Plan**”) in accordance with *N.J.S.A.* 40A:12A-7; and

WHEREAS, to realize the redevelopment of the UEZ Rehabilitation Area, the Township determined to exercise the powers of redevelopment and serve as the “Redevelopment Entity” responsible for carrying out redevelopment projects in the UEZ Rehabilitation Area in accordance with the Redevelopment Plan, pursuant to *N.J.S.A.* 40A: 12A-4(c); and

WHEREAS, in response to a Request for Qualifications dated March 18, 2015 issued by the Township for the redevelopment of Township owned property, the Redeveloper submitted a concept for the development of a new 2,136 square foot drive thru restaurant with supporting parking and site improvements (the “**Project**”) to the Township for its review and consideration as to that portion of the Rehabilitation Area identified as Block 336, Lot I on the official tax maps of the Township (the “**Property**”) and commonly known as 1111 Springfield Avenue, Irvington, New Jersey; and

WHEREAS, by Resolution, the Township Council authorized the designation of Finomus Irvington RE Holdings, LLC (the “**Entity**”) as the “redeveloper” of the Property and further authorized the execution of a redevelopment and purchase and sale agreement by and between the Township and Finomus; and

WHEREAS, the Parties entered into that certain Redevelopment and Purchase and Sale Agreement dated as of September 28, 2015 with respect to the Property (the “**Prior Redevelopment Agreement**”), which specified terms of the proposed transfer of the Property and the rights and responsibilities of the Township and the Entity with respect to the Project; and

WHEREAS, the Township previously terminated the Prior Redevelopment Agreement and the Entity’s designation as “redeveloper” of the Property; and

WHEREAS, the Township Council desires to reinstate the Entity as the “redeveloper” pursuant to Section 8 of the Redevelopment Law and to enter into an Amended and Restated Redevelopment Agreement with the Entity (the “**Agreement**,”) in the form attached hereto as *Exhibit A* in order to convey the Property to the Entity and implement the development, construction, operation and management of the Project; and

WHEREAS, the Township Council desires to authorize the execution of the Agreement with the Entity for the Project, which will amend and restate certain rights and obligations of the respective parties, as well as the anticipated time frame for the completion of certain tasks.

NOW THEREFORE BE IT RESOLVED, by the Municipal Council of the Township of Irvington, as follows:

1. **Generally.** The aforementioned recitals are incorporated herein as though fully set forth at length.
2. **Designation of Redeveloper.** The designation of Finomus Irvington RE Holdings, LLC as ‘redeveloper’ under the Redevelopment Law with respect to the Redevelopment Area is hereby reinstated, subject to the execution of the Agreement.
3. **Execution of the Agreement**
 - a. The Mayor is hereby authorized to execute the Agreement as substantially set forth in *Exhibit A*, subject to such revisions and modifications as may be deemed necessary in consultation with special counsel, and is further authorized to execute all other ancillary documents and to perform any and all necessary actions to carry out such an amendment.
 - b. The Mayor is further authorized to execute any and all other documents or interests necessary with respect to the sale of the Property and the implementation of the Project.
 - c. The Municipal Clerk is hereby authorized and directed, upon execution of the Agreement in accordance with the terms of Section 2(a) hereof, to attest to the signature of the Mayor upon such document and is hereby further authorized and directed to affix the corporate seal of the Township upon such document.
4. **Effective Date.** This resolution shall take effect immediately.

AMENDED AND RESTATED

REDEVELOPMENT AND

PURCHASE AND SALE AGREEMENT

By and Between

THE TOWNSHIP OF IRVINGTON

As Redevelopment Entity

and

FINOMUS IRVINGTON RE HOLDINGS, LLC

as Redeveloper

Dated: _____, 2017

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AMENDED AND RESTATED REDEVELOPMENT AGREEMENT

THIS AMENDED AND RESTATED REDEVELOPMENT AND PURCHASE AND SALE AGREEMENT (the “**Agreement**”) is made on this ____ day of _____, 2017 (the “**Effective Date**”) by and between the **TOWNSHIP OF IRVINGTON**, an instrumentality and agency of the State of New Jersey (the “**Township**”) and **FINOMUS IRVINGTON RE HOLDINGS, LLC**, a limited liability company of the State of New Jersey (the “**Redeveloper**”, and together with the Township, the “**Parties**”).

WITNESSETH:

WHEREAS, by Resolution dated February 27, 2007, the Municipal Council of the Township (the “**Township Council**”) designated certain parcels located within the Township's Urban Enterprise Zone as an area in need of rehabilitation (the “**Rehabilitation Area**”) in accordance with the requirements of the *Local Redevelopment and Housing Law N.J.S.A. 40A:12A-1 et seq.* (the “**Act**”); and

WHEREAS, the Act authorizes municipalities to adopt a redevelopment plan for an area designated as an “area in need of rehabilitation” pursuant to which redevelopment projects are to be undertaken; and

WHEREAS, the Township Council duly adopted a redevelopment plan by Ordinance MC No. 3351 dated September 11, 2007, entitled the *Urban Enterprise Zone Area in Need of Rehabilitation Redevelopment Plan*, governing the UEZ

Rehabilitation Area, including, but not limited to, the Property (the “**Redevelopment Plan**”) in accordance with *N.J.S.A.*

40A:12A-7; and

WHEREAS, to realize the redevelopment of the UEZ Rehabilitation Area, the Township determined to exercise the powers of redevelopment and serve as the “Redevelopment Entity” responsible for carrying out redevelopment projects in the UEZ Rehabilitation Area in accordance with the Redevelopment Plan, pursuant to *N.J.S.A.* 40A: 12A-4(c); and

WHEREAS, in response to a Request for Qualifications dated March 18, 2015 issued by the Township for the redevelopment of Township owned property, the Redeveloper submitted a concept for the development of a new 2,136 square foot drive thru restaurant with supporting parking and site improvements (the “**Project**”) to the Township for its review and consideration as to that portion of the Rehabilitation Area identified as Block 336, Lot I on the official tax maps of the Township (the “**Property**”) and commonly known as 1111 Springfield Avenue, Irvington, New Jersey; and

WHEREAS, by Resolution, the Township Council authorized the designation of Finomus Irvington RE Holdings, LLC as the “redeveloper” of the Property and further authorized the execution of a redevelopment and purchase and sale agreement by and between the Township and the Redeveloper; and

WHEREAS, the Parties entered into that certain Redevelopment and Purchase and Sale Agreement dated as of September 28, 2015 with respect to the Property (the “**Prior Redevelopment Agreement**”), which specified terms of the proposed transfer of the Property and the rights and responsibilities of the Township and the Redeveloper with respect to the Project; and

WHEREAS, the Township previously terminated the Prior Redevelopment Agreement and the Redevelopers designation as “redeveloper” of the Property; and

WHEREAS, the Parties desire to amend and restate the Prior Redevelopment Agreement so that the Redeveloper shall have redevelopment rights and obligations with respect to the Project, and in order to convey the Property to the Redeveloper and implement the development, construction, operation and management of the Project; and

WHEREAS, in order to effectuate the foregoing, the Parties wish to enter into this Amended and Restated Redevelopment Agreement,

NOW, THEREFORE, in consideration of the promises and mutual covenants contained herein, the Parties do hereby covenant and agree each with the other as follows:

ARTICLE 1

DEFINITIONS

1.01. Definitions. As used in this Agreement the following terms shall have the meanings ascribed to such terms below. Terms listed below in the singular form shall include the plural and words listed in the plural shall include the singular. Whenever the context may require, any pronoun that is used in this Agreement shall include the corresponding masculine, feminine and neuter. Unless otherwise noted, the words "include," "includes" and "including" when used in this Agreement shall be deemed to be followed by the phrase "without limitation". The words "agree," "agreements," "approval" and "consent" when used in this Agreement shall be deemed to be followed by the phrase "which shall not be unreasonably withheld or unduly delayed," except otherwise specified. All references to Sections, Articles or Exhibits shall refer to Sections, Articles or Exhibits in this Agreement unless otherwise specified.

“Act” shall be as defined in the recitals hereto.

“Agreement” shall be as defined in the preamble hereto.

“Annual Redevelopment Fee” is defined in Section 5.06.

“Applicable Laws” shall mean all federal, state and local laws, ordinances, approvals, rules, regulations and requirements applicable thereto including, but not limited to, the Act, the Municipal Land Use Law, relevant construction codes including construction codes governing access for people with disabilities, and such zoning, sanitary, pollution and other environmental safety ordinances, laws and such rules and regulations promulgated thereunder, and all applicable environmental laws and applicable federal and state labor standards.

“Building Permit” shall mean a building permit issued by or on behalf of the Township for the Project.

“Certificate of Completion” means written acknowledgement by the Township in recordable form that the Redeveloper has Completed Construction of the Project in accordance with the requirements of this Agreement.

“Certificate of Occupancy” shall mean a temporary or permanent certificate of occupancy as defined in the applicable section of the municipal code of the Township and the applicable provisions of the New Jersey Uniform Construction Code, *N.J.A.C. 5:23-1 et seq.*

“Closing” means the conveyance of title to the Property to the Redeveloper by the Township.

“Closing Date” is defined in Section 4.02(c).

“Commence Construction” and **“Commencement of Construction”** shall mean the date on which the construction force and machinery is mobilized for construction of the Project on the Property.

“Completion of Construction” and **“Complete Construction”** shall mean the completion of the Project in accordance with the Redevelopment Plan (sufficient for issuance of a Certificate of Occupancy if required by Applicable Laws) for the Project, subject to (i) completing minor conditions of the Governmental Approvals and (ii) installation of landscaping.

“Declaration of Covenants and Restrictions” shall mean the filing with the office of the Essex County Clerk of: (i) a notice of the covenants as set forth in Sections 3.02 of this Agreement and (ii) notice as to the existence of this Agreement by and between the Township and Redeveloper, substantially in the form as attached hereto as *Exhibit B*.

“Deed” is defined in Section 4.02(d)(i).

“Demolition” is defined in Section 4.02e(i) of the Agreement

“Effective Date” shall be as defined in the preamble hereto.

“Environmental Indemnification” is defined in Section 4.02(f).

“Escrow Account” is defined in Section 5.06.

“Event of Default” is defined in Section 6.01.

“Force Majeure” shall mean acts of God, fire, earthquake, explosion, the elements, war, riots, mob violence or civil disturbance, inability to procure or a general shortage of labor, equipment or facilities, energy, materials or supplies in the open market, failure of transportation, strikes, walkouts, actions of labor unions, court orders, laws, rules, regulations or orders of governmental or public agencies, bodies and authorities, or any other similar cause not within the control of the Redeveloper or the Township. Compliance with municipal laws regulating land use and construction, any legal requirements under any applicable environmental laws, as well as known NJDEP clearances, approvals, or permits typical of the development process and referred to in this Agreement shall not be considered or construed as events of Force Majeure. Economic factors and market conditions shall also not be considered or construed as events of Force Majeure.

“Good Faith Deposit” shall mean the FORTY-TWO THOUSAND FIVE HUNDRED and 00/100 DOLLARS (\$42,500.00) paid to the Township by Redeveloper pursuant to the Prior Redevelopment Agreement.

“Governmental Approvals” shall mean all governmental approvals required for the construction of the Project, including, without limitation: the Rehabilitation Plan; county planning board approvals; construction plans and specifications for the obtaining of building permits for the proposed construction; environmental approvals, consents and authorizations from the NJDEP and any other applicable agencies; sewerage capacity approvals, utilities-related permits and any and all other necessary permits, licenses, consents and approvals.

“Insurance Requirements” is defined in Section 4.02(e)(iii).

“Municipal Land Use Law” shall mean *N.J.S.A. 40:55D-1 et seq.*

“NJDEP” shall mean the New Jersey Department of Environmental Protection.

“Notice” is defined in Section 7.08.

“Permitted Exemptions” is defined in Section 4.02(d)(ii).

“Planning Board” shall mean the Township Planning Board.

“Preliminary Assessment” shall mean a preliminary environmental investigation of the Property to determine what environmental conditions exists on the Property in accordance with Applicable Laws, which may include, but not be limited to, the *Comprehensive Environmental Response, Compensation and Liability Act* (“CERCLA”) (42 U.S.C. § 9601-9675); the *Resource Conservation and Recovery Act of 1976* (“RCRA”) (42 U.S.C. § 6901 et seq.); the *Clean Water Act* (33 U.S.C. § 1251 et seq.); the *New Jersey Spill Compensation and Control Act* (the “*Spill Act*”) (N.J.S.A. 58:10-23.11 et seq.); the *Industrial Site Recovery Act*, as amended (“ISRA”) (N.J.S.A. 13:1K-6 et seq.); the *New Jersey Underground Storage of Hazardous Substances Act* (N.J.S.A. 58:10A-21 et seq.); the *New Jersey Water Pollution Control Act* (N.J.S.A. 58:10A-1 et seq.); the *New Jersey Environmental Rights Act* (N.J.S.A. 2A:35A-1 et seq.); and the rules and regulations promulgated thereunder.

“Prior Redevelopment Agreement” shall be as defined in the recitals hereto.

“Professional Services Fee” is defined in Section 5.07

“Project” shall be as defined in the recitals hereto. The Project shall encompass the redevelopment of the Property in compliance with the terms and conditions set forth in the Redevelopment Plan, Applicable Laws, Government Approvals and this Agreement.

“Property” shall be as defined in the recitals hereto.

“Purchase Price” is defined in Section 4.02(a).

“Redeveloper” shall be as defined in the preamble hereto.

“Redevelopment Entity” shall mean the Township acting in its capacity as a redevelopment entity pursuant to the Act and/or any permitted successors or assigns.

“Redevelopment Plan” shall be as defined in the recitals hereto.

“Rehabilitation Area” shall be as defined in the recitals hereto.

“Rehabilitation Plan” shall mean the final site plan with respect to the development of the Project submitted to and approved by, the Planning Board or its successor, in accordance with the Municipal Land Use Law.

“State” shall mean the State of New Jersey.

“Termination Notice” is defined in Section 6.02.

“Title Commitment” is defined in Section 4.02(d)(ii).

“Township” shall be as defined in the preamble hereto.

“Township Costs” shall mean all reasonable and necessary costs and expenses of the Township incurred in negotiation and implementation of this Agreement, including outside engineering and financial consultants fees, costs of counsel and any planning professionals. “Township Costs” shall not include charges for services performed in the ordinary course of employment by Township employees.

“Township Council” shall be as defined in the recitals hereto.

ARTICLE 2

REPRESENTATIONS AND WARRANTIES

2.01 Representations and Warranties of Redeveloper. Redeveloper hereby makes the following representations and warranties:

(a) Redeveloper has the legal capacity to enter into this Agreement and perform each of the undertakings set forth herein and in the Redevelopment Plan as of the date of this Agreement.

(b) Redeveloper is a duly organized and a validly existing legal entity under the laws of the State of New Jersey and all necessary consents have been duly adopted to authorize the execution and delivery of this Agreement and to authorize and direct the persons executing this Agreement to do so for and on the Redeveloper’s behalf.

(c) No receiver, liquidator, custodian or trustee of Redeveloper shall have been appointed as of the Effective Date, and no petition to reorganize Redeveloper pursuant to the United States Bankruptcy Code or any similar statute that is applicable to the Redeveloper shall have been filed as of the Effective Date.

(d) No adjudication of bankruptcy of the Redeveloper or a filing for voluntary bankruptcy by Redeveloper under the provisions of the United States Bankruptcy Code, 11 U.S.C. §101 *et seq.* or any other similar statute that is applicable to the Redeveloper shall have been filed.

(e) No indictment has been returned against any official of Redeveloper with respect to any transaction related to the transactions contemplated by the terms of this Agreement.

(f) Redeveloper's execution and delivery of this Agreement and its performance hereunder will not constitute a violation of any operating, partnership and/or stockholder agreement of Redeveloper or of any agreement, mortgage, indenture, instrument or judgment, to which Redeveloper is a party.

(g) Redeveloper is financially and technically capable of developing, designing, financing, constructing, operating, and maintaining the Project.

(h) To the best of Redeveloper's knowledge and belief, after diligent inquiry, there is no action, proceeding or investigation now pending, nor any basis therefore, known or believed to exist which (i) questions the validity of this Agreement or any action or act taken or to be taken by Redeveloper pursuant to this Agreement; or (ii) is likely to result in a material adverse change in Redeveloper's property, assets, liabilities or condition which will materially and substantially impair its ability to perform pursuant to the terms of this Agreement.

(i) Redeveloper's execution and delivery of this Agreement and its performance hereunder will not constitute a violation of any agreement, mortgage, indenture, instrument or judgment, to which Redeveloper is a party.

(j) To the best of Redeveloper's knowledge and belief after diligent inquiry all information and statements included in any information submitted to the Township and its agents, including but not limited to, McManimon, Scotland & Baumann, LLC, are true and correct in all respects. Redeveloper acknowledges that the facts and representations contained in the information submitted by Redeveloper are a material factor in the decision of the Township to enter into this Agreement.

(k) To the best of its knowledge after diligent inquiry, Redeveloper is not delinquent with respect to any taxes, payments in lieu of tax, service charge, or similar obligations owed to the Township for any property situated in the Township.

ARTICLE 3

COVENANTS AND RESTRICTIONS

3.01. Covenants and Restrictions. Redeveloper agrees to record the Declaration of Covenants and Restrictions in the office of the Essex County Clerk on the Property immediately following the Closing Date.

3.02. Description of Covenants. The covenants to be imposed upon Redeveloper, its successors and assigns, and recorded in the form of the Declaration of Covenants and Restrictions shall set forth that:

(a) Redeveloper shall construct the Project on the Property in accordance

with the Redevelopment Plan.

(b) Redeveloper shall not sell or otherwise transfer title to all or any portion of the Property without the written consent of the Township, provided however that a Certificate of Completion for the Property shall constitute written approval of such sale or transfer. Notwithstanding the foregoing, the Township consents to Redeveloper's lease of the Property to an affiliate, subsidiary or qualified commercial operator in the normal course of business.

(c) Redeveloper shall, in connection with the use or occupancy of the Property, not effect or execute any covenant, agreement, lease, conveyance or other instrument whereby the Property is restricted upon the basis of age, race, color, creed, religion, ancestry, national origin, sexual orientation, sex or familial status, and Redeveloper, its successors and assigns, shall comply with all Applicable Laws prohibiting discrimination or segregation by reason of age, race, color, creed, religion, ancestry, national origin, sexual orientation, sex or familial status.

(d) Redeveloper shall, upon Completion of Construction, obtain all Government Approvals required to authorize the occupancy and use of the Property for the purposes contemplated hereby.

(e) Redeveloper shall cause the Project to be developed, financed, constructed, operated and maintained at its sole cost and expense.

(f) Redeveloper shall develop, finance, construct, operate and maintain the Project consistent with Applicable Laws, Government Approvals, the Redevelopment Plan, and this Agreement including the obligation to use commercially reasonable efforts to meet all deadlines and timeframes set forth in this Agreement.

(g) Redeveloper shall not encumber, hypothecate or otherwise use the Property, or any part thereof as collateral for any transaction unrelated to the Project.

3.03. Effect and Duration of Covenants. It is intended and agreed that the covenants and restrictions set forth in Section 3.02 shall be covenants running with the land. All covenants in Section 3.02, in any event, and without regard to technical classification or designation, legal or otherwise, and except only as otherwise specifically provided in this Agreement, shall be binding, to the fullest extent permitted by law and equity, for the benefit and in favor of, and enforceable by the Township and its successors and assigns, and any successor in interest to the Property, or any part thereof, against Redeveloper, its successors and assigns and every successor in interest therein, and any party in possession or occupancy of the Property or any part thereof. Notwithstanding the foregoing, the agreements and covenants set forth in Article 3.02 shall cease and terminate upon the issuance of a Certificate of Completion for Project improvements, provided however, that the covenant in Section 3.02(c) shall remain in effect without limitation as to time.

3.04. Enforcement by Township. In amplification, and not in restriction of the provisions of this Article 3, it is intended and agreed that the Township and its successors and assigns shall be deemed beneficiaries of the agreements and covenants set forth in Section 3.02 both for and in their own right but also for the purposes of protecting the interests of the community and other parties, public or private, in whose favor or for whose benefit such agreements and covenants shall run in favor of the Township for the entire period during which such agreements and covenants shall be in force and effect, without regard to whether the Township has at any time been, remains, or is an owner of any land or interest therein to or in favor of which such agreements and covenants relate.

ARTICLE 4

PURCHASE AND SALE OF THE PROPERTY

4.01. Agreement to Sell and Purchase the Property. Subject to the terms and conditions herein, the Township agrees to sell the Property to Redeveloper, and Redeveloper agrees to purchase the Property from the Township, in consideration of Redeveloper's undertaking to construct the Project in accordance with the provisions of this Agreement and on the additional terms and conditions herein.

4.02. Terms and Conditions of Purchase and Sale.

4.02(a) Purchase Price. The agreed upon purchase price for the Property is **EIGHT HUNDRED FIFTY THOUSAND and 00/100 DOLLARS (\$850,000.00)** (the "**Purchase Price**"). Pursuant to the Prior Redevelopment Agreement, the Redeveloper submitted the Good Faith Deposit of **FORTY-TWO THOUSAND FIVE HUNDRED AND 00/100 DOLLARS (\$42,500.00)**, which the Parties have agreed is non-refundable, to the Township.

4.02(b) Redeveloper Conditions to Closing. If Redeveloper determines, in consultation with the Township, that the Property cannot be used for the Project due to the environmental condition of the Property based on a complete Preliminary Assessment and/or site investigation, Redeveloper may terminate this Agreement, at any time prior to the Closing Date.

4.02(c) Time and Place of Closing of Title. (i) Closing on the Property shall occur no later than forty-five (45) days from the Effective Date of this Agreement, **time being hereby made of the essence**, at a time to be mutually agreed upon by the Parties (the "**Closing Date**"). The Closing shall be held at the offices of McManimon, Scotland & Baumann, LLC or such other place as the Redeveloper and the Township may mutually agree.

(ii) Redeveloper's failure to appear to pay the Purchase Price and perform as required by the Agreement on the Closing Date shall be an Event of Default not subject to a cure period, and Township may immediately terminate the Agreement at the occurrence of said Event of Default.

4.02(d) Transfer of Ownership; Title. (i) At Closing, the Township shall give the

Redeveloper a properly executed Bargain and Sale Deed with Covenants Against Grantor's Acts (the "**Deed**") and an adequate affidavit of title, a properly executed Affidavit of Consideration or Exemption, a true copy of the Resolution of the Township Council authorizing the sale and conveyance, and such other documentation as may reasonably be requested by Redeveloper's title insurance company. The Deed will contain a limited right of reverter to the Township, which the Township may but is not obligated to exercise in the event this Agreement is terminated by reason of an Event of Default attributable to Redeveloper's acts or omissions after conveyance of the Property to Redeveloper. The Deed's limited right of reverter will specifically reference that it terminates upon issuance of a Certificate of Completion and issuance of a Certificate of Occupancy. Such right of reverter shall be subordinate to any mortgage on the Property. Upon the exercise of such right the Township will reimburse to the Redeveloper or the mortgagee, as the case may be, the Purchase Price; less any unpaid amounts due and owing to the Township by Redeveloper pursuant to the terms of this Agreement at the time the right is exercised.

(ii) The Township shall transfer and convey to the Redeveloper clear and marketable title to the Property, defined for purposes of this Agreement as insurable by a title insurance company licensed to do business in the State of New Jersey at regular rates free of all claims and rights of others, except for: (a) normal utility easements servicing the Property which do not interfere with Redeveloper's intended use thereof, development, construction or operation of the Project; (b) ALTA 1992 preprinted exceptions; and (c) any Permitted Exceptions (as hereinafter defined). Redeveloper shall order a title report and title insurance commitment (the "**Title Commitment**") within twenty (20) days of the Effective Date. Redeveloper shall provide the Township with a copy of the Title Commitment upon receipt thereof and shall notify the Township in writing of any objection to title within twenty (20) days following the receipt of the Title Commitment. Failure to notify the Township of an objection to title within such twenty (20) day period shall be deemed a waiver by Redeveloper of all objections to any lien, encumbrances or other exception revealed by the Title Commitment (as waived, or as otherwise deemed acceptable by Redeveloper, "**Permitted Exceptions**"). In the event Redeveloper does raise title objections, the Township shall have fifteen (15) days from the date of receipt of Redeveloper's written objections in which to decide whether to remedy the title defect(s) identified in such objection. If the Township does undertake to remedy the title defect(s) the Township shall be entitled to postpone the Closing Date for a reasonable period of time in order to effectuate such remedy, or in the case of liens or other unpermitted exceptions outstanding against the Property as of the Closing Date for which Township is responsible and which involve only the payment of money, to elect to apply any portion of the Purchase Price to pay and satisfy those items. In the event the Township is unable to remedy such title defect(s), then Redeveloper may either (a) waive the objection and proceed to Closing without an adjustment in the Purchase Price; or (b) terminate this Agreement, in which case Redeveloper's designation as "redeveloper" (as defined in the Act) shall simultaneously and automatically terminate.

If either the Township or Redeveloper do not comply with the requirements imposed upon them under the Title policy requirements; then and in that event, either party will demand compliance in writing of the other. If a responding party still does not

comply within three (3) business days of notification by the notifying party; then and in that event, the notifying party has the right to terminate this Agreement.

4.02(e) Physical Condition of the Property.

(i) The existing structure (commonly known as the Servicemen's Clubhouse) on the Property will be demolished by the Township prior to the Closing Date. The Demolition will include: 1. coordinating the Shut-Offs for water, gas & electricity; 2. rodent abatement of the property; 3. complete demolition of the above grade structure; 4. removing and disposing of all Demolition Debris/Waste; and 5. backfilling/grading of the cavity with "Certified Clean" fill soil (the "**Township Demolition**"). Redeveloper agrees to indemnify and hold the Township harmless against all damages, liability, claims, costs, or expenses and judgments incurred by or asserted against Township or the Property arising out of or in connection with the demolition of the structure. Redeveloper recognizes and acknowledges that the Township is making no representation or warranty as to the condition of the Property or its fitness for Redeveloper's intended use. At Closing, the Township shall deliver possession of the Property in the condition as it is on the date of this Agreement, deterioration from ordinary and reasonable usage and exposure to the elements and the agreed upon Demolition excepted.

(ii) At any time prior to Closing, Redeveloper and Redeveloper's agents, representatives and employees shall have the continuing right, on reasonable prior notice to the Township and at reasonable times, to enter the Property to carry out or perform any inspections, tests, investigations and studies of the Property, including, but not limited to, the Preliminary Assessment, which Redeveloper deems necessary or appropriate for purposes of ascertaining the physical feasibility of redeveloping, or to survey, the Property. The Township agrees to reasonably cooperate with Redeveloper and Redeveloper's professionals and consultants in making the Property available for such investigations and activities. Redeveloper shall promptly restore the Property or any improvements thereon, including the surface of the ground, to the reasonably same condition as just prior to any testing or disturbance. In addition to this Section 4.02, this process is supplemented by, and additionally described, in Sections 7.09, 7.10 and 7.11 below.

(iii) Redeveloper shall provide to the Township evidence of insurance coverage in types and amounts reasonably acceptable to Township and as further set forth herein as *Exhibit C* (the "**Insurance Requirements**"), prior to gaining access to the Property or conducting any tests or investigations thereon. All such Insurance Requirements shall name the Township as an additional insured. Redeveloper agrees to indemnify and hold the Township harmless against all damages, liability, claims, costs, expenses (including reasonable attorneys' fees) and judgments incurred by or asserted against Township or the Property arising out of or in connection with Redeveloper's due diligence activities at or on the Property, excluding, however, liability, claims, costs, or expenses arising out of existing violations of environmental laws or other Applicable Laws identified or discovered at the Property during the course of Redeveloper's investigations but not caused by Redeveloper. Redeveloper shall further be responsible for restoring the Property to its prior condition following any intrusive testing, sampling

or similar activity. Redeveloper's obligations under this Section shall survive delivery of the Deed or any termination of this Agreement.

4.02(f) Environmental Indemnification. Redeveloper hereby jointly and severally agrees, at its sole cost and expense, to unconditionally indemnify, defend and hold harmless Township, its employees and agents from any injuries, losses, liabilities, damages, liens, expenses (including, without limiting the generality of the foregoing, the costs of any environmental testing, remediation and the costs of attorney fees), charges, costs penalties, fines, actions, injunctions, suits, claims, judgments, or demands imposed, at any time, upon the Property and/or imposed upon, or incurred by, the Township, directly or indirectly, at any time: (a) as a result of or in connection with compliance with and/or violation(s) of any or all Applicable Laws by Redeveloper; (b) as a result of or in connection with compliance, or an attempt to comply by Redeveloper or any third party duly acting through Redeveloper, with any or all Applicable Laws; or (c) sustained as a result of any environmental conditions on, in, under or migrating to or from the Property, to the extent that any such liability attached to the Township as result of this Agreement, prior ownership by the Township or activities including without limitation claims against the Township by any third party (the "**Environmental Indemnification**").

4.02(g) Building and Zoning Laws. The Property is being sold subject to the Redevelopment Plan and all other Applicable Laws.

4.02(h) Risk of Loss. The Township is responsible for any damage or loss to the Property, except for normal wear and tear, until Closing except as otherwise provided in Sections 4.02 (a) through (g) with respect to Redeveloper's activities and investigations, if any, and with respect to the Demolition of the existing structure by the Township.

4.02(i) Brokerage Fees. The Township represents that concerning the purchase of the Property it has not dealt with or transacted any business with any broker, and the Redeveloper agrees to indemnify, defend and hold the Township harmless from any claim of any broker made as a result of the Township's actions inconsistent with the representations made herein. Township acknowledges that Redeveloper may have otherwise engaged a broker in connection with this transaction. Notwithstanding the foregoing, any obligation to such broker is a sole obligation of the Redeveloper and shall be separate and apart from, and in addition to, the Purchase Price. Under no circumstances shall any brokerage fees be paid from the proceeds of the Purchase Price due to the Township.

4.02(j) Non-Foreign Affidavit. The Township shall provide to the Redeveloper at Closing an adequate Non-Foreign Affidavit stating the inapplicability of 26 U.S.C. § 1445 to the sale of the Property.

4.02(k) Form 1099-B Filing. In compliance with the requirements of the Internal Revenue Code, the Redeveloper's attorney is responsible for collecting certain information from the Township necessary to complete and file Form 1099-B with the Internal Revenue Service. The Township agrees to supply all necessary information to the Redeveloper's attorney in order to facilitate such filing.

4.02(l) Closing Prorations. The following adjustments are to be made at the Closing as of 12:00 midnight of the day preceding the Closing Date as may be applicable: (i) water charges; (ii) sewer rents; (iii) gas; (iv) electric; (v) fuel (at the Township's cost therefore); (vi) real estate taxes; and (vii) any other items which shall be appropriate for adjustment under local closing standards and practices.

4.02(m) Bulk Sales Law. Prior to the Closing, Redeveloper shall have the right to comply with *N.J.S.A. 54:32B-22(c)* and *N.J.S.A. 54:50-38* and the Township shall cooperate in connection with such compliance.

4.02(n) Additional Documents. As reasonably requested by Redeveloper, and at no cost to the Township, the Township shall provide Redeveloper with documents in its possession relating to the condition of the Property including, but not necessarily limited to, surveys, title work, environmental reports or appraisals as of the Effective Date, excluding any privileged documents.

4.03. Default Related to Conveyance of the Property.

4.03(a) Default by the Township. If title to the Property does not close because of the Township's default under this Agreement, then the Redeveloper shall be entitled to pursue all remedies at law or equity available to it by reason of the Township's default; *provided, however*, that failure of the Township Council to authorize or approve the transaction shall not constitute a default by the Township, but only a failure of the condition precedent to the conveyance; and *provided further*, that under no circumstances shall the Township be liable for consequential, indirect or special damages or loss of profits or business opportunities of any kind.

4.03(b) Default by Redeveloper. Notwithstanding the contingencies set forth in Section 4.02(b), if title to the Property does not close due to an Event of Default of Redeveloper hereunder, in addition to all other rights and remedies provided hereunder, including but not limited to the termination of this Agreement, the Township shall be entitled to pursue all remedies at law or equity available to it by reason of the Redeveloper's default.

ARTICLE 5

PROJECT DETAILS

5.01. General Scope of Project. It is understood and agreed by and between the parties that Redeveloper has the right to develop the Property consistent with the terms of Applicable Laws, Government Approvals, Redevelopment Plan, and this Agreement.

5.02. Redeveloper Deadline: Governmental Approvals, Commencement of Construction and Completion of Construction. (a) Within sixty (60) days of the Closing Date, Redeveloper shall apply for full Building Permits. The Township shall use

commercially reasonable efforts to timely issue Building Permits, pursuant to and in accordance with all Applicable Laws.

(b) Within thirty (30) days of the receipt of the full Building Permits, Redeveloper shall Commence Construction.

(c) Within one (1) year of Commencement of Construction, Redeveloper shall Complete Construction.

5.03. Certificates of Occupancy and Certificates of Completion. (a) Upon Completion of Construction pursuant to 5.02, Redeveloper shall apply to the appropriate governmental officer or body for a Certificate of Occupancy.

(b) Following the issuance of the Certificate of Occupancy and the satisfaction of the terms and conditions of this Agreement, the Township agrees to issue a Certificate of Completion. The Certificate of Completion shall constitute a recordable conclusive determination of the satisfaction and termination of the agreements and covenants with respect to the Project in this Agreement and the Redevelopment Plan with respect to the obligations of Redeveloper to construct the Project within the dates for completion of same. Within thirty (30) days after written request by Redeveloper, the Township shall provide Redeveloper with the Certificate of Completion or a written statement setting forth in detail the reasons why it believes that Redeveloper has failed to complete the Project in accordance with the provisions of this Agreement or is otherwise in default under this or any other applicable agreement and what reasonable measures or acts will be necessary in the reasonable opinion of the Township in order for Redeveloper to be entitled to the Certificate of Completion.

5.04. First Source Employment. The Redeveloper shall make good faith efforts to employ and shall provide in its contracts with its contractors and subcontractors that they must make good faith efforts to employ residents of the Township in the construction of the Project in accordance with Chapter 15 of the Township's Municipal Ordinance. In addition to the foregoing, and consistent with market wages, the Redeveloper shall make good faith efforts to employ residents of the Township in the operation of the Project. The Redeveloper agrees to cooperate with the Township or its designee in developing a plan to coordinate training programs and employment recruitment efforts for Township residents. The Redeveloper will cooperate with efforts to recruit Township residents for all employment opportunities in connection with the Project, including participation in the Township job fairs and utilization of its central registry. The Redeveloper agrees to meet with appropriate Township officials to determine the status of recruitment and training efforts, and to plan future employment training and recruitment activities. All contracts entered into by the Redeveloper for the construction of the Project shall contain appropriate language to effectuate this provision. The Redeveloper shall submit quarterly reports to the Township regarding compliance with this Section 5.04. In addition, the Redeveloper covenants to enforce its contracts with its contractors and subcontractors if such parties are not in compliance with this Section.

5.05. State and Federal Environmental Remediation Applications. As reasonably requested by Redeveloper, and at no cost to the Township, the Township will cooperate with the Redeveloper in filing and pursuing applications for potentially available State or Federal governmental funding in connection with remediation activities required for the Property, as applicable, including, but not limited to, applications for monies available through the *Hazardous Discharge Site Remediation Fund* for investigation and remediation of the Property, and in investigating the availability of funding under the *Brownfields Reimbursement Program* administered by the New Jersey Economic Development Authority, Department of Treasury and the New Jersey Department of Environmental Protection, for reimbursement of all or any part of the environmental costs incurred as to the cleanup of the Property, as applicable.

5.06. Redevelopment Fee. The Redeveloper shall make payments to the Township in the amount of \$15,000 per year (the “**Annual Redevelopment Fee**”) to defray the costs of investments made by the Township to encourage the redevelopment of the Property. The Redeveloper’s obligation to pay the Annual Redevelopment Fee shall commence upon the Closing Date and such obligation shall end and terminate after payment of the Annual Redevelopment Fee for the year during which a Certificate of Occupancy is issued for the Project. The Annual Redevelopment Fee shall be due and payable on January 1st of each year for the amount incurred in the preceding year and shall be prorated for the first and last years during which such Annual Redevelopment Fee is payable. The final Annual Redevelopment Fee shall be paid upon issuance of the Certificate of Completion. The Annual Redevelopment Fee shall be deemed fully earned upon each due date thereof and there shall be no refund of the Annual Redevelopment Fee in the event of the termination of this Agreement.

5.07. Professional Services Fee. The Redeveloper shall reimburse the Township in the amount of TWENTY-SIX THOUSAND and 00/100 DOLLARS (\$26,000.00) for fees and costs incurred by the Township for services rendered by the Township’s professionals in connection with the Project (the “**Professional Services Fee**”). The Professional Services Fee shall be paid to the Township in immediately available funds upon execution of this Agreement.

ARTICLE 6

EVENTS OF DEFAULT; TERMINATION

6.01. Events of Default. Any one or more of the following shall constitute an “**Event of Default**” hereunder, subject to Force Majeure extension and tolling as provided elsewhere in this Agreement:

(a) Redeveloper’s failure to close on or prior to the Closing Date.

(b) Failure of Redeveloper to observe or perform any covenant, condition, representation, warranty or agreement hereunder and any other failure, act or omission by Redeveloper designated elsewhere in this Agreement as a “default”, and except as otherwise specified below the continuance of such default for a period of thirty (30) days after Notice from the Township specifying the nature of such default and requesting that

such default be remedied; *provided, however*, if the default is one that cannot be completely remedied within thirty (30) days after such Notice, it shall not be an Event of Default as long as Redeveloper is proceeding in good faith and with due diligence to remedy the same as soon as practicable, but in no event later than ninety (90) days after such Notice unless this Agreement specifically provides otherwise; *provided further, however*, Redeveloper's failure to close on the Closing Date shall not be subject to a cure period, and Township may immediately terminate the Agreement at the occurrence of said Event of Default.

(c) Redeveloper's failure or refusal to make any payment or deposit of funds required hereunder as and when required.

(d) (i) Redeveloper shall have applied for or consented to the appointment of a custodian, receiver, trustee or liquidator of all or a substantial part of his assets; (ii) a custodian shall have been legally appointed with or without consent of Redeveloper; or (iii) Redeveloper, (1) has made a general assignment for the benefit of creditors, or (2) has filed a voluntary petition in bankruptcy or a petition or an answer seeking an arrangement with creditors.

(e) Redeveloper (i) fails to perform its obligations with respect to the acquisition of the Property or the implementation of the Project in accordance with this Agreement, including but not limited to failure to Commence Construction or Complete Construction in accordance with this Agreement; or (ii) abandons the Project or substantially suspends construction work without the prior knowledge and consent of the Township.

(f) Redeveloper's failure to pay, or delinquency in the payment of, real property taxes or assessments, which failure or delinquency is not cured within thirty (30) days of Notice by the Township.

(g) Cancellation or termination by reason of any act or omission of Redeveloper of any insurance policy, performance or completion bond, letter of credit, guaranty or other surety required hereunder to be provided by Redeveloper for the benefit of the Township, immediately upon cancellation or termination thereof if not replaced with no resulting gaps in coverage.

6.02. Remedies Upon Event of Default. Whenever any Event of Default of Redeveloper shall have occurred, the Township may, on written notice to Redeveloper (a "**Termination Notice**") terminate this Agreement and Redeveloper's designation as Redeveloper hereunder, and take whatever other action at law or in equity as may appear necessary or desirable to enforce the performance or observance of any rights, remedies, obligations, agreements, or covenants of Redeveloper under this Agreement.

6.03. Force Majeure Extension. For the purposes of this Agreement, neither the Township nor Redeveloper shall be considered in breach or in default with respect to his obligations hereunder because of a delay in performance arising from a Force Majeure event. It is the purpose and intent of this provision that in the event of the occurrence of any such delay, the time or times for performance of the obligations of the Township or

Redeveloper shall be extended for the period of the delay; *provided, however*, that such delay is actually caused by or results from the Force Majeure event. The time for completion of any specified obligation hereunder shall be tolled for a period of time up to but not exceeding the period of delay resulting from the occurrence of such Force Majeure event.

6.04. No Waiver. Except as otherwise expressly provided in this Agreement, any failure or delay by either party in asserting any of its rights or remedies as to any default by the other party, shall not operate as a waiver of such default, or of any such rights or remedies, or to deprive the non-defaulting party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

6.05. Remedies Cumulative. No remedy conferred by any of the provisions of this Agreement is intended to be exclusive of any other remedy and each and every remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. The election of any one or more remedies shall not constitute a waiver of the right to pursue other available remedies.

6.06 Termination Rights Related to Litigation. If third party litigation is commenced challenging the validity of (i) the designation of the Rehabilitation Area, (ii) the Redevelopment Plan, or (iii) execution of this Agreement by the Township, the commencement of such litigation shall be a Force Majeure event effective as of the date of the filing of the summons and complaint if Redeveloper invokes the Force Majeure provisions of this Agreement; *provided, however*, that (a) if such litigation is finally determined in favor of the plaintiff with no further opportunity for appeal, then either party hereto may terminate this Agreement by written notice to the other, and (b) if such litigation is not finally determined (inclusive of the expiration of any applicable appeal period) but the Force Majeure extension has been in effect for at least eighteen (18) months from the date the complaint was filed, either party hereto may elect to terminate this Agreement.

ARTICLE 7

MISCELLANEOUS

7.01. No Consideration for Agreement. Redeveloper warrants it has not paid or given, and will not pay or give, any third person any money or other consideration for obtaining this Agreement, other than normal costs of conducting business and costs of professional services such as architects, engineers, financial consultants and attorneys. Redeveloper further warrants it has not paid or incurred any obligation to pay any officer or official of the Township any money or other consideration for or in connection with this Agreement.

7.02. Non-Liability of Officials and Employees of the Township. No member, official or employee of the Township shall be personally liable to Redeveloper, or any successor in interest, in the event of any default or breach by the Township, or for

any amount which may become due to Redeveloper or its successor, or on any obligation under the terms of this Agreement.

7.03. Modification of Agreement. No modification, waiver, amendment, discharge, or change of this Agreement shall be valid unless the same is in writing, duly authorized, and signed by Redeveloper and the Township.

7.04. Exhibits. Any and all Exhibits annexed to this Agreement are hereby made a part hereof.

7.05. Entire Agreement. This Agreement constitutes the entire agreement between the parties hereto and supersedes all prior oral and written agreements between the parties with respect to the subject matter hereof.

7.06. Severability. The validity of any one Article, Section, clause or provision of this Agreement shall not affect the validity of the remaining Articles, Section, clauses or provisions hereof.

7.07. Indemnification. Redeveloper, for itself and its successors and assigns, covenants and agrees, at its sole cost and expense to indemnify, defend and hold harmless the Township, its governing body, their respective officers, employees, agents, attorneys, consultants, representatives, and their respective successors and assigns, from any third party claims, liabilities, losses, costs, damages, penalties and expenses (including reasonable attorney's fees) resulting from or in connection with (i) any breach by Redeveloper or its agents, employees or consultants, of Redeveloper's obligations under this Agreement, or (ii) the acts or omissions of Redeveloper or of Redeveloper's agents, employees, or consultants in connection with the development, financing, design, construction, operation, or maintenance of the Project, provided, however, that no indemnification shall be required pursuant to this Section 7.07 in the event that the indemnification otherwise due pursuant to this Section 7.07 is attributable to the gross negligence of the Township.

7.08. Notices. Formal notices, demands and communications ("Notice") between the Township and Redeveloper shall be deemed given if dispatched to the address set forth below by registered or certified mail, postage prepaid, return receipt requested, or by a commercial overnight delivery service with packaging tracking capability and for which proof of delivery is available. In this case such notice is deemed effective upon delivery. Such written notices, demands and communications may be sent in the same manner to such other addresses as either party may from time to time designate by written Notice.

Copies of all notices, demands and communications shall be sent as follows:

To Township:

Township of Irvington
Attn: Hon. Tony Vauss, Mayor
1 Civic Square
Irvington, New Jersey 07111

With copies to: Township of Irvington
Attn: Ramon Rivera, Esq.
1 Civic Square
Irvington, New Jersey 07111

and

McManimon, Scotland & Baumann, LLC
Attn: Jong Sook Nee, Esq.
75 Livingston Avenue, Second Floor
Roseland, New Jersey 07068

To Redeveloper: Finomus Irvington RE Holdings, LLC
Attn: Rupal Patel, Managing Member
163 Washington Valley Road, Suite 104
Warren, New Jersey 07059

With copies to: Lawrence B. Sachs, Esq.
8G Auer Court
East Brunswick, NJ 08816

7.09. Contingency for Approvals of Rehabilitation Plan, Government Approvals and/or Building Permits. In addition to all other portions of this Agreement, Redeveloper's obligation to proceed to Closing under this Agreement is expressly contingent upon receipt of Rehabilitation Plan Approval; Franchisor Approvals defined herein; and an acceptable Environmental Inspection.

(a) Approvals. Redeveloper's final obligation to proceed to Closing under this Agreement is contingent upon the ability of Redeveloper to verify: (i) the Township's full and final approval of the Rehabilitation Plan of the Redeveloper for the subject Property (ii) obtain all required final and approvals, not subject to any opportunity of appeal by anyone, from the Township of Irvington, County of Essex, State of New Jersey, and/or such other necessary governmental and quasi-governmental boards or agencies having jurisdiction over the Property (collectively known as the "Government Entities") which are necessary to develop the Property in order to construct and operate a "Taco Bell" franchise restaurant establishment. This shall include all final and non-appealable contractual arrangements, approvals, licenses, agreements, permits and authorizations required for the lawful use, construction, ingress and egress, drainage, utilities, sewer and water capacity, parking and signage necessary by Redeveloper to develop the Property in the configuration and design set forth by Redeveloper in its plans and applications. Notwithstanding the forgoing, if such approvals set forth in this Section 7.09(a) are not obtained by the Closing Date, as such term is defined in Section 4.02(c), the Township may, in its sole discretion, terminate this Agreement.

(b) Approval Period Extension. During the process of construction, provided Redeveloper has submitted applications for various building permits and any other required Government Approvals necessary from the Township pursuant to the approved Rehabilitation Plan; and is diligently pursuing same and they are delayed through no fault

of Redeveloper, Redeveloper, upon written notice to Township ("Extension Notice"), shall be entitled to one (1) automatic extension comprised of a maximum period of ninety (90) days in order to complete the process necessary to achieve a Certificate of Completion and Certificate of Occupancy.

7.10. Contingency for Franchisor Approvals. Redeveloper's obligation to proceed to Closing under this Agreement is expressly conditioned and contingent upon the corporate approval of the franchisor of Taco Bell restaurants for the Redeveloper to develop and open the Property as a "Taco Bell" restaurant ("Franchisor Approval"), which Franchisor Approval must be obtained prior to the Closing Date. The acceptability or non-acceptability of any terms or conditions placed upon the Redeveloper either by the corporate franchisor of Taco Bell to obtain Franchisor Approval remains at the sole discretion of Redeveloper to accept or not as only it knows the economic factors impacting its ability to purchase the Property, demolish structures existing upon same and develop a new, commercially feasible establishment. In the event the Redeveloper determines it is not economically viable to pursue the Rehabilitation Plan at any time prior to the Closing Date, based upon the requirements of the Franchisor, then and in that event, Redeveloper may terminate this Agreement.

7.11. Environmental Representations and Contingency.

(a) Redeveloper, prior to the Closing Date, has its own right to conduct an independent environmental hazard investigation and inspection of the Property, and shall conduct such reasonable inspections and investigations as Redeveloper deems necessary.

(b) Redeveloper shall, at its option and prior to the Closing Date, be permitted to timely conduct what are commonly known as Phase I and Phase II inspections (with both parties representing that they are aware of the general nature of evaluations conducted under each phase) at its discretion. Copies of any such report obtained by the Redeveloper shall be forwarded to the Township upon completion. As separately defined, the Township does not have any mandatory obligation to remedy any condition determined by the Redeveloper which would prevent Closing.

(c) Redeveloper may have the Property inspected by any qualified and/or licensed third party inspection professional(s) including one that may be designated as a Licensed Site Remediation Professional. All inspection fees, appraisal fees, engineering fees, title inspection fees, and other costs and expenses of any kind incurred shall be at the sole expense of Redeveloper.

(d) Prior to the Closing, Township shall provide Redeveloper with a continuing right of reasonable access to the Property for the purpose of conducting surveys, architectural, engineering, geotechnical, and environmental inspections and tests. Redeveloper shall have the right to test the property for the existence of any underground storage tanks. Redeveloper shall keep the Property free and clear of any liens or encumbrances as a result of such entry by its agents, employees or representatives. If any inspection or test disturbs the Property, then it shall be restored to substantially the same condition as existed prior to any such inspection or test.

(e) At any time prior to the Closing Date, if the Redeveloper determines the existence of an environmental condition which it deems prohibitive of Closing, then and in that event, Redeveloper is permitted to terminate the Agreement and there will not be a Closing.

7.12. Miscellaneous Township Representation.

(a) The Parties acknowledge the Property was subject to a lease agreement with the Servicemen's Clubhouse dated April 4, 1991 (the "**Lease**"), which Lease was terminated by the Township on April 10, 2015. Prior to termination, the Volunteer Network for Veterans, Inc. instituted an action by filing of a complaint against the Township in the Superior Court of New Jersey, Law Division, Essex County, entitled Volunteer Network for Veterans, Inc. v. Township of Irvington, Docket No. ESX-L-4803-14 (the "**Action**"), which was dismissed in accordance with the terms of the Settlement Agreement dated March 6, 2015 (the "Settlement Agreement"). The Township represents that as of the date of this Agreement and continuing through Closing, to its best knowledge, and other than in connection with the Lease, the Action and/or Settlement Agreement:

(a) There is no current or pending litigation against Township for which it has received written notice and which, if deemed adversely to Township, could reasonably be expected to materially and adversely affect the Property.

(b) As of the date of this Agreement, Township has not entered into any contracts affecting the Property and which would prevent Closing.

(c) The Township has not received any written notice of default from any third party entity or individual which has not or cannot be cured prior to Closing.

(d) As of the date of this Agreement, any tenants, if any, at the Property shall have their occupancy fully and completely terminated, without any right of redemption or repossession, on or before the Closing.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.
SIGNATURES APPEAR ON THE FOLLOWING PAGE].

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of date first written above.

Attest:

TOWNSHIP OF IRVINGTON

Harold E. Wiener, Township Clerk

By: _____
Hon. Tony Vauss, Mayor

SEAL

Witness/Attest:
HOLDINGS, LLC

FINOMUS IRVINGTON RE

Name: _____ By: _____
Title: _____ Rupal Patel, Managing Member

EXHIBIT A

REDEVELOPMENT PLAN

EXHIBIT B

FORM OF DECLARATION OF COVENANTS AND RESTRICTIONS

Record and Return to: _____ Prepared by:
Jong Sook Nee, Esq.
McMANIMON, SCOTLAND & BAUMANN, LLC

75 Livingston Avenue, Second Floor Amelia J. Rideau, Esq.
Roseland, New Jersey 07068

DECLARATION OF COVENANTS AND RESTRICTIONS
Block 336, Lot 1, Township of Irvington, New Jersey (the “Property”)

(Record in Mortgage Book)

This Declaration of Covenants and Restrictions (“Declaration”) is made this _____ day of _____, 2017 by and between **THE TOWNSHIP OF IRVINGTON, NEW JERSEY** (the “**Township**”), a public body corporate and politic of the State of New Jersey having its offices at 1 Civic Square, Irvington, New Jersey 07111, in its capacity as redevelopment entity pursuant to *N.J.S.A. 40A: 12A-4(c)*; and

FINOMUS IRVINGTON RE HOLDINGS, LLC, a limited liability company of the State of New Jersey, having its offices at 163 Washington Valley Road, Suite 104, Warren, New Jersey 07059 (together with permitted successors or assigns hereinafter provided, referred to as the “**Redeveloper**”):

W I T N E S S E T H

WHEREAS, the *Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq.*, as amended and supplemented (the “**LRHL**”), provides a process for municipalities

to participate in the redevelopment and improvement of areas in need of rehabilitation; and

WHEREAS, the Municipal Council of the Township duly adopted a resolution determining that a portion of the Township’s Urban Enterprise Zone was an “area in need of rehabilitation” in accordance with the procedures and criteria in *N.J.S.A.* 40A:12A-14 of the *LRHL*; and

WHEREAS, the Municipal Council adopted by ordinance a redevelopment plan for the rehabilitation area (the “**Redevelopment Plan**”) in accordance with *N.J.S.A.* 40A:12A-7 of the *LRHL*; and

WHEREAS, in order to implement the development, financing, construction, operation and management of the Project, the Municipal Council by duly adopted resolution authorized the execution of a redevelopment agreement dated August 11, 2015 with the Redeveloper (the “**Agreement**”) in accordance with *N.J.S.A.* 40A:12A-8(f) of the *LRHL*; and

WHEREAS, *N.J.S.A.* 40A:12A-9(a) of the *LRHL* requires that all agreements, leases, deeds and other instruments between a municipality and a redeveloper shall contain a covenant running with the land requiring, among other things, that “. . . the owner shall construct only the uses established in the current redevelopment plan . . .”; and

WHEREAS, the Agreement contains such a covenant by the Redeveloper, and its successor or assigns, as well as three (3) perpetual covenants by the Redeveloper and its successor or assigns not to unlawfully discriminate upon the basis of age, race color creed, religion, ancestry, national origin, sex or familial status in the sale, lease, rental, use or occupancy of the Rehabilitation Area or any building or structures erected thereon, to comply with Applicable Laws, Governmental Approvals, the Agreement and the Redevelopment Plan and to maintain in good condition any improvements made on the Property (as defined above) in accordance with Article III of the Agreement; and

WHEREAS, the Agreement also provides that the Property, the Agreement and Redeveloper’s interest therein shall not be transferable, subject to certain conditions, prior to the issuance of a Certificate of Completion and further provides certain remedies to the Township for violations of the covenants and defaults under the Agreement; and

WHEREAS, the Agreement requires that such covenants be memorialized in a Declaration of Covenants and Restrictions and that said declaration be recorded in the office of the Essex County Register/Clerk.

NOW THEREFORE, IT IS AGREED AS FOLLOWS:

Section 1. Defined terms not otherwise defined herein shall have the meaning assigned to such terms in the Agreement.

Section 2. Redeveloper covenants and agrees that:

(A) Redeveloper shall construct the Project on the Property in accordance with the Redevelopment Plan.

(B) Until a Certificate of Completion has been issued for the Property in accordance with the Redevelopment Plan, Redeveloper shall not sell or otherwise transfer title to all or any portion of the Property without the written consent of the Township which shall not be unreasonably withheld.

(C) Redeveloper shall, in connection with its use or occupancy of the Project, not effect or execute any covenant, agreement, lease, conveyance or other instrument whereby the Property is restricted upon the basis of age, race, color, creed, religion, ancestry, national origin, sexual orientation, sex or familial status, and Redeveloper, its successors and assigns, shall comply with all Applicable Laws prohibiting discrimination or segregation by reason of age, race, color, creed, religion, ancestry, national origin, sexual orientation, sex or familial status.

(D) Redeveloper shall, upon Completion of Construction, obtain all Government Approvals required to authorize the occupancy and use of the Property for the purposes contemplated under the Agreement.

(E) Redeveloper shall cause the Project to be developed, financed, constructed, operated and maintained at its sole cost and expense.

(F) Redeveloper shall develop, finance, construct, operate and maintain the Project consistent with Applicable Laws, Government Approvals, the Redevelopment Plan, and the Agreement including the obligation to use commercially reasonable efforts to meet all deadlines and timeframes set forth in the Agreement.

(G) Redeveloper shall not encumber, hypothecate or otherwise use the Property, or any part thereof as collateral for any transaction unrelated to the Project.

(H) Redeveloper will promptly pay all outstanding Township Costs, and any and all taxes, service charges or similar obligations when owed to the Township with respect to any property situated in the Township.

Section 3. It is intended and agreed that the covenants and restrictions set forth in Section 2 of this Declaration shall run with the land and that they shall, in any event, and without regard to technical classification or designation, legal or otherwise, and except only as otherwise specifically provided in the Agreement and this Declaration, be binding, to the fullest extent permitted by law and equity, for the benefit and in favor of,

and enforceable by, the Township, its successors and assigns, and any successor in interest to the Property, or any part thereof, against Redeveloper, its successors and assigns and every successor in interest therein, and any person in possession or occupancy of the Property or any part thereof. The covenants and restrictions herein shall be binding on Redeveloper itself, each successor in interest to Redeveloper and each party in possession or occupancy, respectively, only for such period as Redeveloper or such successor or party shall be in possession or occupancy of the Property, the Project or any part thereof.

Section 4. In amplification, and not in restriction, of the provisions of Section 2 of this Declaration, it is intended and agreed that the Township and its successors and assigns shall be deemed beneficiaries of the covenants and restrictions set forth in the Agreement and this Declaration, both for and in their own right but also for the purposes of protecting the interests of the community and other parties, public or private, in whose favor or for whose benefit such covenants and restrictions have been provided. Such covenants and restrictions shall run in favor the Township for the entire period during which such covenants and restrictions shall be in force and effect, without regard to whether the Township has at any time been, remains, or is an owner of any land or interest therein. The Township shall have the right, in the event of any material breach of any such covenant or restriction, to exercise all the rights and remedies and to maintain any actions or suits at law or in equity or other proper proceedings to enforce the curing of such breach of covenant or restriction, to which it or any other beneficiaries of such agreement or covenant may be entitled.

Section 5. Upon redevelopment of the Property and completion of the Project, the covenants contained herein shall terminate and this Declaration will be discharged of record upon Redeveloper's receipt from the Township of a Certificate of Completion with respect to the Project, provided however, that the covenants in Section 2(c) of the Agreement shall remain in effect without limitation as to time.

IN WITNESS WHEREOF, the parties hereto have caused this **Declaration of Covenants and Restrictions** to be executed in their names by their duly authorized officials or managers, as the case may be, and their corporate seals to be hereunto affixed attested to by their duly authorized officers, all as of the date first written above.

Attest:

TOWNSHIP OF IRVINGTON

Harold E. Wiener, Township Clerk

By: _____
Hon. Tony Vauss, Mayor

SEAL

Witness/Attest:

FINOMUS IRVINGTON RE HOLDINGS, LLC

Name:

By: _____
Rupal Patel, Managing Member

Title:

EXHIBIT C

INSURANCE REQUIREMENTS

General. At all times the Redeveloper shall maintain, or cause to be maintained, insurance for the mutual benefit of the Township and Redeveloper as their interest may appear:

(1) Loss or damage by fire, and such other risks as may be included in the standard form of extended coverage insurance from time to time available, with minimum limits of \$50,000 each occurrence;

(2) Commercial General Liability insurance or its equivalent for bodily injury, personal injury, and property damage including loss of use, with minimum limits of \$1,000,000 each occurrence, \$1,000,000 personal injury, \$1,000,000 general aggregate and \$1,000,000 products/completed operations, plus excess ("umbrella") liability policy(s) with coverage of not less than \$1,000,000 per occurrence and \$1,000,000 annual aggregate. It is further understood that the Commercial General Liability insurance is primary and non-contributory, with the Township named as Additional Insured.

(3) Workers compensation insurance in an amount not less than \$500,000 or such greater amount as may be required under Applicable Laws for employees of Redeveloper and the Contractors.

Redeveloper's obligation to provide insurance as to the Project shall cease upon the issuance of a Certificate of Completion.

Restrictions. All insurance provided for under this Agreement will be reasonably effected under valid enforceable policies issued by insurers rated "A-" or better by A.M. Best and reasonably acceptable to the Township. Within seven (7) days of the execution of this Agreement, a certificate procured by Redeveloper pursuant to this Exhibit C (or certificates thereof) will be delivered to the Township. At least 30 days prior to the expiration date of any policy, the original renewal policy (or certificates thereof) for such insurance will be delivered by the Redeveloper to the Township as aforesaid, together with satisfactory evidence of payment of the premium thereon. All policies referred to in this *Exhibit C* will, to the extent then generally obtainable, contain agreements by the insurers that (a) any loss will be payable to the Redeveloper and the Township, as their interest may appear and (b) such policies may not be canceled except upon 30 days prior written notice to the named insured, additional insured/certificate holder and loss payee.

Township as Insured. All policies of insurance required herein shall name the Redeveloper as the insured and the Township as the additional insured, as their respective interests may appear.

Additional Insurance. Nothing in this Article shall prevent the Redeveloper from taking out insurance of the kind and in the amounts and with companies under a blanket insurance policy or policies which can cover other properties as well as the Property; provided, however, that any such policy of insurance must (a) specify therein, or the Redeveloper shall furnish the Township with a written statement from the insurers under such policies specifying the amount of the total insurance allocated to the Project, which amount will not be less than the amount required herein to be carried, and (b) Property will be written on a replacement cost, completed value basis.

Deductibles. All insurance provided under this *Exhibit C* may contain loss deductible clauses in such maximum amounts as the Township approves in its reasonable discretion.

Subrogation. All insurance policies obtained pursuant to this *Exhibit C* must include waivers of subrogation against the Township and Redeveloper.

EXHIBIT A

Prior Redevelopment Agreement

Adopted
Absent: Hudley

Jones – Frederic 19. Commemoration – Caribbean American Month, 2017

Recognizing June 2017 as Caribbean American Heritage Month 11th Anniversary Celebration

WHEREAS, in June 2005, the House of Representatives unanimously adopted H. Con. Res. 71, sponsored by Congresswoman Barbara Lee, recognizing the significance of Caribbean people and their descendants in the history and culture of the United States. On February 14, 2006, the resolution similarly passed the Senate, culminating a two-year, bipartisan and bicameral effort;

WHEREAS, the White House has issued an annual proclamation recognizing June as Caribbean- American Heritage Month. This year marks the eleventh anniversary of June as National Caribbean American Heritage Month;

WHEREAS, the Township of Irvington is home to and employer of many Caribbean Americans;

WHEREAS, to commemorate and celebrate Caribbean Heritage Month, the Township of Irvington is hosting a heritage month Flag Raising Ceremony on June 2, 2017 and a Caribbean Festival on June 24, 2017;

WHEREAS, as a result of this commemoration and celebration the Township of Irvington joins the President of the United States in recognizing that:

"Caribbean Americans are part of a great national tradition, descendants of hopeful, striving people who journeyed to our lands in search of a better life. They were drawn by a belief in the power of opportunity, a belief that through hard work and sacrifice, they could provide their children with chances they had never known. Thanks to these opportunities and their talent and perseverance, Caribbean Americans have contributed to every aspect of our society -- from science and medicine to business and the arts. During National Caribbean-American Heritage Month, we honor their history, culture, and essential role in the American narrative."

"As America celebrates our Caribbean heritage, let us hold fast to the spirit that makes our country a beacon to the world. This month, let us remember that we are always at our best when we focus not on what we can tear down, but on what we can build up. And together, let us strengthen the bonds that hold together the most diverse Nation on earth."

NOW, THEREFORE, Mayor Tony Vauss and the Township of Irvington Municipal Council do join the Nation, States, Counties and Cities throughout this great country in proclaiming June 2017 as Caribbean-American Heritage Month. We encourage all Americans to celebrate the history and culture of Caribbean Americans with appropriate ceremonies and activities; and,

BE IT FURTHER RESOLVED that a copy of this resolution be spread upon the minutes of this Governing Body in lasting tribute to Caribbean Heritage Month.

NOW, THEREFORE, Mayor Tony Vauss and the Township of Irvington Municipal Council hereby commends Ms. Ricketts for her civic, professional and philanthropic minded contributions to the residents of the Township of Irvington ;and,

BE IT FURTHER RESOLVED that a copy of this resolution be spread upon the minutes of this Governing Body in lasting tribute to Caribbean Heritage Month.

Adopted
Absent: Hudley

Jones - Inman 20. Commendation Commemoration of Caribbean American Month, 2017 – Orenhia Ricketts

2017 CARIBBEAN HERITAGE MONTH ORENHIA RICKETTS, OWNER

**THE AVON STORE – IRVINGTON BOARD MEMBER OF THE IRVINGTON
SPRINGFIELD BUSINESS IMPROVEMENT DISTRICT RECIPIENT -
BUSINESS CHAMPION AWARD**

WHEREAS, as history is filled with the far reaching accomplishments and contributions of Caribbean Americans, the Township of Irvington in partnership with the Caribbean American Heritage and Cultural Foundation of New Jersey, Inc. would like to present the Business Champion Award to Orenhia Ricketts who has been a business owner and philanthropist in the Township of Irvington;

WHEREAS, as a result of the far reaching accomplishments and contributions of Caribbean Americans, in June 2005, the House of Representatives unanimously adopted H. Con. Res. 71, sponsored by Congresswoman Barbara Lee, recognizing the significance of Caribbean people and their descendants in the history and culture of the United States. On February 14, 2006, the resolution similarly passed the Senate, culminating a two-year, bipartisan and bicameral effort;

WHEREAS, the White House has issued an annual proclamation recognizing June as Caribbean-American Heritage Month;

WHEREAS, this year marks the eleventh anniversary of June as National Caribbean American Heritage Month;

WHEREAS, the Township of Irvington is home to and employer of many Caribbean Americans; and

WHEREAS, to commemorate and celebrate Caribbean Heritage Month, the Township of Irvington is hosting a heritage month Flag Raising Ceremony on June 2, 2017 and a Caribbean Festival on June 24, 2017; and

WHEREAS, at the Flag Raising Ceremony on June 2nd, the Township wishes to commend, Ms. Orenhia Ricketts who has been a business owner in the Township since 2008 and participates in several civic activities including a Non-Profit called Hands for Giving, which provides services to school age students to provide them with school supplies, and as a volunteer at the Irvington Senior Center; and

WHEREAS, the Township of Irvington would also like to commend Ms. Ricketts for her philanthropic activities because of her selfless donation of Avon products to seniors at the Township of Irvington Senior Center as well as to other organizations to provide to persons who cannot otherwise to afford toiletries and other products.

NOW, THEREFORE, Mayor Tony Vauss and the Township of Irvington Municipal Council hereby commends Ms. Ricketts for her civic, professional and philanthropic minded contributions to the residents of the Township of Irvington ;and,

BE IT FURTHER RESOLVED that a copy of this resolution be spread upon the minutes of this Governing Body in lasting tribute to Caribbean Heritage Month.

Adopted
Absent: Hudley

Inman - Cox 21. Commendation Commemoration of Caribbean American Month, 2017 – Sergeant Ernest Exil

2017 CARIBBEAN HERITAGE MONTH ERNEST EXIL, SERGEANT AND S.E.R.T. TEAM SUPERVISOR TOWNSHIP OF IRVINGTON, DEPARTMENT OF PUBLIC SAFETY, DIVISION OF POLICE RECIPIENT - MAYOR'S AWARD

WHEREAS, as history is filled with the far reaching accomplishments and contributions of Caribbean Americans, the Township of Irvington in partnership with the Caribbean American Heritage and Cultural Foundation of New Jersey, Inc. would like to present the Mayor's Award to Ernest Exil who is a nineteen(!) year veteran of the Police Division and recognized community leader;

WHEREAS, as a result of the far reaching accomplishments and contributions of Caribbean Americans, in June 2005, the House of Representatives unanimously adopted H. Con. Res. 71, sponsored by Congresswoman Barbara Lee, recognizing the significance of Caribbean people and their descendants in the history and culture of the United States. On February 14, 2006, the resolution similarly passed the Senate, culminating a two-year, bipartisan and bicameral effort;

WHEREAS, the White House has issued an annual proclamation recognizing June as Caribbean-American Heritage Month;

WHEREAS, this year marks the eleventh anniversary of June as National Caribbean American Heritage Month;

WHEREAS, the Township of Irvington is home to and employer of many Caribbean Americans;

WHEREAS, to commemorate and celebrate Caribbean Heritage Month, the Township of Irvington is hosting a heritage month Flag Raising Ceremony on June 2, 2017 and a Caribbean Festival on June 24, 2017;

WHEREAS, at the Flag Raising Ceremony on June 2nd, the Township wishes to commend, Sergeant Exil who is a nineteen (19) year veteran of the Department of Public Safety, Division of Police and is the Supervisor of the Mayor's Special Enforcement Response Team (S.E.R.T.) and Executive Detail. Sergeant Exil is also the former supervisor of the Selective Area Field Enforcement (S.A.F.E.) Unit;

WHEREAS, the Township of Irvington would also like to commend Sergeant Exil for his mentorship of Irvington youth and his tireless service as a link to connect Irvington Haitian residents to resources and services as well as for selflessly undertaking the role of providing community relations assistance to Township residents;

NOW, THEREFORE, Mayor Tony Vauss and the Township of Irvington Municipal Council hereby commends Sergeant Exit for his civic, professional and community minded contributions to the residents of the Township of Irvington; and,

BE IT FURTHER RESOLVED that a copy of this resolution be spread upon the minutes of this Governing Body in lasting tribute to Caribbean Heritage Month.

Adopted

Absent: Hudley

Jones - Lyons 22. Commendation Commemoration of Caribbean American Month, 2017 – Michelle Gill

**RESOLUTION OF COMMENDATION - 2017 CARIBBEAN HERITAGE
MONTH MICHELLE GILL**

FOUNDER, MICHELLE'S FOUNDATION, INC.

**CASE WORKER, STATE OF NEW JERSEY, DIVISION OF PROTECTION
AND PERMENANCY RECIPIENT - COMMUNITY CHAMPION AWARD**

WHEREAS, as history is filled with the far reaching accomplishments and contributions of Caribbean Americans, the Township of Irvington in partnership with the Caribbean American Heritage and Cultural Foundation of New Jersey, Inc. would like to present the Community Champion Award to Michelle Gill founder of the Michelle Foundation, Inc., who has provided services to the youth, the Community at large and the Caribbean Community;

WHEREAS, as a result of the far reaching accomplishments and contributions of Caribbean Americans, in June 2005, the House of Representatives unanimously adopted

H. Con. Res. 71, sponsored by Congresswoman Barbara Lee, recognizing the significance of Caribbean people and their descendants in the history and culture of the United States. On February 14, 2006, the resolution similarly passed the Senate, culminating a two-year, bipartisan and bicameral effort.

WHEREAS, the White House has issued an annual proclamation recognizing June as Caribbean-American Heritage Month;

WHEREAS, this year marks the eleventh anniversary of June as National Caribbean American Heritage Month;

WHEREAS, the Township of Irvington is home to and employer of many Caribbean Americans;

WHEREAS, to commemorate and celebrate Caribbean Heritage Month, the Township of Irvington is hosting a heritage month Flag Raising Ceremony on June 2, 2017 and a Caribbean Festival on June 24, 2017;

WHEREAS, at the Flag Raising Ceremony on June 2nd, the Township wishes to commend, Michelle Gill of Michelle's Foundation, Inc., who for the past six years sponsored a BACK TO SCHOOL DRIVE in the Township of Irvington to provide school supplies to children whose parents cannot afford to purchase these supplies and has as a result distributed approximately \$3,600.00 supply filled backpacks;

WHEREAS, the Township of Irvington would also like to commend Ms. Gill for her services to youth which she provides daily as a case worker with the State of New Jersey, Division of Child Protection and Permanency (formerly DYFS);

NOW, THEREFORE, Mayor Tony Vauss and the Township of Irvington Municipal Council hereby commends Michelle Gill for her civic, professional and community minded contributions to the residents of the Township of Irvington ;and,

BE IT FURTHER RESOLVED that a copy of this resolution be spread upon the minutes of this Governing Body in lasting tribute to Caribbean Heritage Month.

Adopted
Absent: Hudley

10. Communications

1. Verizon – Petition for Certification for Providing Cable Television Service to 60% or More of Households in Irvington

11. Pending Business

None

12. Miscellaneous

A. Bingos and Raffles

None

NON-CONSENT AGENDA ITEMS

8. Ordinances, Bills & Claims

B. Ordinances on 2nd Reading

1. President Lyons: A \$2,065,000.00 Refunding Bond Ordinance for Tax Appeal Settlements was heard on April 11, 2017 with the final adoption scheduled for this date, place and time.

REFUNDING BOND ORDINANCE PROVIDING FOR PAYMENT OF AMOUNTS OWING TO OTHERS FOR TAXES LEVIED IN AND BY THE TOWNSHIP OF IRVINGTON, IN THE COUNTY OF ESSEX, NEW JERSEY, APPROPRIATING \$2,065,000 THEREFOR AND AUTHORIZING THE ISSUANCE OF \$2,065,000 REFUNDING BONDS OR NOTES OF THE TOWNSHIP FOR FINANCING THE COST THEREOF.

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

Section 1. The Township of Irvington, in the County of Essex, New Jersey (the "Township"), is hereby authorized to pay an aggregate amount not exceeding \$1,913,068 for amounts owed by the Township to the owners of various properties for taxes levied in the Township (plus certain costs associated therewith), as more particularly described on the List of Settled Appeals and available for inspection in the office of the Township Clerk, which list is hereby incorporated by reference as if set forth at length herein. Such amount shall be paid to taxpayers in the form of a refund, or used by the Township to reimburse tax appeal amounts applied as credits to taxpayers' future taxes payable, as applicable.

Section 2. An aggregate amount not exceeding \$150,000 for items of expense listed in and permitted under N.J.S.A. 40A:2-51(b) has been included in the aggregate principal amount of refunding bonds authorized herein.

Section 3. In order to finance the cost of the project described in Section 1 hereof, negotiable refunding bonds are hereby authorized to be issued in the principal amount of \$2,065,000 pursuant to the Local Bond Law and the Municipal Qualified Bond Act. In anticipation of the issuance of the refunding bonds, negotiable bond anticipation notes are hereby authorized to be issued pursuant to and within the limitations prescribed by the Local Bond Law. All refunding bond anticipation notes issued hereunder shall mature at such times as may be determined by the chief financial officer, provided that no note shall mature later than one year from its date. The 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 notes issued pursuant to this refunding bond ordinance, and the chief financial officer's signature upon the notes shall be conclusive evidence as to all such determinations.

All notes issued hereunder may be renewed from time to time, but all such notes including renewals shall mature and be paid no later than the seventh anniversary of the date of the original notes; provided, however, that no notes shall be renewed beyond the first or any succeeding anniversary date of the original notes unless an amount of such notes, at least equal to the first legally payable installment of the bonds in anticipation of which the notes are issued, determined in accordance with the maturity schedule for the bonds approved by the Local Finance Board, is paid and retired on or before such anniversary date; and provided, further, that the period during which the bond

anticipation notes and any renewals thereof and any permanent bonds are outstanding, shall not exceed the period set for the maturity of the bonds by the Local Finance Board.

The chief financial officer is hereby authorized to sell part or all of the 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 notes pursuant to this refunding bond ordinance is made. Such report must include the amount, the description, the interest rate and the maturity schedule of the notes sold, the price obtained and the name of the purchaser.

Section 4. The chief financial officer of the Township 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 Township and to execute such disclosure document on behalf of the Township. The chief financial officer is further authorized to enter into the appropriate undertaking to provide secondary market disclosure on behalf of the Township 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 Township 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 Township fails to comply

with its undertaking, the Township shall not be liable for any monetary damages, and the remedy shall be limited to specific performance of the undertaking.

Section 6. 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 Township as defined in the Local Bond Law is increased by the authorization of the bonds and notes provided in this refunding bond ordinance by \$2,065,000, but that the net debt of the Township determined as provided in the Local Bond Law is not increased by this refunding bond ordinance. The obligations authorized herein will be within all debt limitations prescribed by that Law.

Section 7. The full faith and credit of the Township are hereby pledged to the punctual payment of the principal of and the interest on the obligations authorized by this refunding bond ordinance. The obligations shall be direct, unlimited obligations of the Township, and the Township shall be obligated to levy *ad valorem* taxes upon all the taxable real property within the Township for the payment of the obligations and the interest thereon without limitation of rate or amount.

Section 8. A certified copy of this refunding bond ordinance as adopted on first reading has been filed with the Director of the Division of Local Government Services in the Department of Community Affairs of the State of New Jersey prior to final adoption, together with a complete statement in the form prescribed by the Director and signed by the chief financial officer of the Township as to the indebtedness to be financed by the issuance of the refunding bonds authorized herein.

Section 9. This refunding bond ordinance shall take effect 20 days after the first publication thereof after final adoption, as provided by the Local Bond Law, provided that the consent of the Local Finance Board has been endorsed upon a certified copy of this refunding bond ordinance as finally adopted.

Lyons – Frederic Motion to adjourn final adoption until June 27, 2017 regular Council Meeting

Adopted
Absent: Hudley

2. President Lyons: An ordinance establishing a one way street on Glorieux Street from Nesbit Terrace to Stuyvesant Avenue will be heard at this time. The Clerk will read the notice of hearing.

The Clerk read the notice of hearing.

The Clerk will read the ordinance by title.

**AN ORDINANCE AMENDING SECTION 192-98 OF THE GENERAL
ORDINANCES OF THE TOWNSHIP OF IRVINGTON.**

SECTION 1. Section 192-98 is amended by the addition of the following:

<u>Name of Street</u>	<u>Direction of Travel</u>	<u>Limits</u>
Glorieux Street	Westerly	From Nesbit Terrace to Stuyvesant Avenue

SECTION 2. All ordinances or parts thereof that are inconsistent herewith are hereby repealed.

SECTION 3. This ordinance shall take effect upon final passage and publication according to law.

The public hearing on this ordinance is now open.

There were no requests to be heard.

Cox – Jones Motion to close public hearing

Adopted
Absent: Hudley

Cox- Jones Motion to adopt this ordinance on second reading after public hearing.

Adopted
Abstain: Frederic
Absent: Hudley

3. President Lyons: An ordinance providing for parking for the senior bus only at the Senior Center located at 1073-1081 Springfield Avenue will be heard at this time. For the record, this notice is identical to the first notice of hearing that was read.

The Clerk will read the ordinance by title.

AN ORDINANCE AMENDING AND SUPPLEMENTING CHAPTER 192 OF THE REVISED CODE OF THE TOWNSHIP OF IRVINGTON TO ESTABLISH IRVINGTON SENIOR BUS PARKING ONLY IN FRONT OF 1073 – 1081 SPRINGFIELD AVENUE.

BE IT ORDAINED BY THE MUNICIPAL COUNCIL OF THE TOWNSHIP OF IRVINGTON AS FOLLOWS:

SECTION 1. Pursuant to N.J.S.A. 39:4-8(E), the following described location is designated as a bus stop for municipal buses and trams:

Beginning at a point, said point being the southerly intersection of the rights of way of Lincoln Place and Springfield Avenue and running along the southerly right of way of Springfield Avenue in an easterly direction 250 feet to a point in said right of way and extending a easterly a distance of 35 feet, said point being 10 feet easterly of the existing pedestrian crosswalk on Springfield Avenue located at 1077 Springfield Avenue.

SECTION 2. All ordinances or parts of ordinances inconsistent or in conflict with the provisions of this ordinance are hereby repealed.

SECTION 3. This ordinance shall take effect upon final passage and approval by law.

The public hearing on this ordinance is now open.

There were no requests to be heard.

Frederic – Jones

Motion to close public hearing

Adopted

Absent: Hudley

Frederic - Jones
hearing.

Motion to adopt this ordinance on second reading after public

Adopted

Absent: Hudley

4. President Lyons: An ordinance providing for rules and regulations for Constables will be heard at this time. For the record, this notice is identical to the first notice of hearing that was read.

The Clerk will read the ordinance by title.

AN ORDINANCE REGULATING CONSTABLES

WHEREAS, the State Legislature pursuant to N.J.S.A. 40A:9-120, has authorized municipalities to appoint by resolution not less than 2 and not more than 50 Constables; and

WHEREAS, the Irvington Municipal Council on November 25, 2014, establish an ordinance governing the appointment process for Constables and expressly outlining the powers and authorities of the appointed Constables and to avoid a misunderstanding by the appointed Constables or the public as to the scope of their powers and duties.

WHEREAS, the Irvington Municipal Council deems it necessary to amend this herein ordinance to further clarify the framework for appointment and the scope of their powers and duties.

NOW, THEREFORE, BE IT ORDAINED BY THE MUNICIPAL COUNCIL OF THE TOWNSHIP OF IRVINGTON, NEW JERSEY, THAT:

SECTION I. Municipal Ordinance MC 3518 of the Township of Irvington, New Jersey is hereby amended and supplemented to read as follows:

1. The Governing Body shall have the authority to appoint, by resolution, no more than 50 Constables in the following manner, recognizing that there are four wards, each represented by one council person and three at-large council persons in the Township of Irvington:

- a. Each Ward (East, West, South and North) council person shall have a total of five (5) appointments during his or her term of office;
- b. Each at-large council person shall have a total of six (6) appointments during his or her term of office;
- c. Council President shall have one (1) additional appointment.
- d. The total number of constables appointed at one time shall not exceed 39.
- e. Any council person who at the time of the adoption of the amendments to this ordinance who has met their quota as detailed above will not be able to make any new appointments.

2. Constables will be appointed for a one (1) year term, which appointment shall remain in effect until such time as it is amended or a resolution is adopted changing the term of Constables. The Municipal Council may change the term of appointment by resolution.

3. The Constable shall complete a notarized, executed application, in a form acceptable to the City Clerk and the Department of Public Safety, in conformity with State law.

4. The Constable for initial application and for renewal shall pay \$50.00 for each year of his or her term.

5. A person is eligible for appointment as a Constable if he/she is a resident and qualified voter of the Township of Irvington for at least three years prior to their appointment and pass a background and records check in accordance with current custom, practice and procedures of local law enforcement agencies, specifically, the

Township of Irvington Department of Public Safety. A constable candidate or re-appointee shall complete this process and be cleared for appointment by the Department of Public Safety prior to being placed on the Municipal Council agenda for a vote.

A Constable shall fulfill the following necessary requirements within 30 days of appointment: present him or herself at the Office of the City Clerk; post the surety bond; and, take the oath of office, in accordance with this ordinance and any applicable State law or regulation, as amended. Failure to fulfill all of the necessary requirements within 30 days of his or her appointment shall be cause to rescind the appointing resolution.

6. The Department of Public Safety shall issue a photo identification card and a badge to the Constable, after he/she has taken the oath of office and posted the required surety bond, which shall be filed in the Office of the City Clerk.

7. **Power and Authority.** Constables shall only have such power and authority as outlined in this ordinance and in specific statutes, including but not limited to N.J.S.A. 2A:33-9 (assisting with distraint (repossession) proceedings, and their appointment is expressly limited to these powers and authorities, notwithstanding any other prior or existing law or precedent. In particular, Constables shall be authorized to serve judicial process, including subpoenas and warrants, capias ad testificandum or other compulsory process issued by any court of the State; assist with distraint proceedings (repossession), including appraisal of property, as authorized by N.J.S.A. 2A:33-9; and, serving a lock-out for a landlord.

8. **Prohibited Activities.** Constables are expressly prohibited from acting in any manner contrary to State law or this Ordinance. Constables are expressly forbidden from holding themselves out as Constables to members of the public, or wearing any paraphernalia or insignia identifying themselves as Irvington Constables, when and if such individuals are acting as private security officers. Constables are also expressly prohibited, when acting in their official capacity as a Constable, from representing to others that they are or otherwise acting as if they are sworn officers of the Township of Irvington Department of Public Safety. The carrying or display of a firearm while performing the duties of a Constable is prohibited.

9. **Violations.** If a Constable shall be found to have violated the scope of duties, the rules and regulations established pursuant to this ordinance or their statutory duties, the Constable shall be removed by a notice of termination issued by the Public Safety Director or the sponsoring Council Member, pending adoption of a resolution terminating the appointment. The Municipal Council shall review and take action on the Public Safety Director's or sponsoring Council Member's recommendation at the first available Council meeting following the notice of termination. If a Constable is removed from office resulting from a finding of a violation of this Ordinance, he or she shall be ineligible for future appointment in the Township of Irvington. Notwithstanding the foregoing, if the Constable shall have failed to file the report required by N.J.S.A. 40A:9-126.1 for any reason except physical incapacity, and outlined in Section 17 of this Ordinance, no rescinding resolution shall be necessary, as provided by the statute.

10. **Apparel and Insignia.** Constables are expressly prohibited, when acting in their official capacity as a Constable, from wearing any insignia, clothing, hat or other paraphernalia identifying them as Constables or as employees or representatives of the Township of Irvington or the Department of Public Safety, except for the wearing or exhibiting of the official identification card and official badge, each issued by the Department of Public Safety. This ordinance does not intend or authorize and expressly prohibits the expenditure of public monies to purchase apparel or insignia for any

Constable (excluding the official photo identification card and the official badge), including a firearm.

11. **Identification Card and Badge.** Once a constable application is approved by the Municipal Council and the necessary requirements under 3, 4 and 5 above are met, the Department of Public Safety shall issue a photo identification card and badge to each Constable. A Constable shall not exhibit any identification card or other documentation or a badge not in conformity with this ordinance while engaged in his or her official business or at any other time. In no event shall the identification card or badge represent that the Constable is a sworn police officer and shall not be utilized or exhibited if the Constable is acting as a private security officer, acting independently or in the employ of a private security company. The identification card and badge shall be returned to the Department of Public Safety at the expiration of the Constable's term.

12. This ordinance is not intended to substitute for any licensing or registration requirements for private security officers or private detectives.

13. Notwithstanding anything to the contrary herein, this ordinance does not confer on a Constable the authority to act in any capacity involving a criminal proceeding or investigation. Neither this ordinance nor the appointment by the Municipal Council confers, nor are either intended to confer, a right on behalf of the Constable to carry a firearm.

14. Any complaint regarding a constable lodged with the City Clerk or the Township of Irvington Department of Public Safety, by any person, including representatives of the County of Essex, shall be investigated by the Township of Irvington Department of Public Safety or the Essex County Prosecutors Office, and may result in a recommendation for termination.

15. The appointment of the Constable does not and is not intended to establish an employment arrangement between the Constable and the Township of Irvington. Constables who would like to be considered for employment with the Township must also undergo all training, background check and physical and mental health screening required by the Department of Public Safety.

16. Each person appointed as a Constable, before entering upon the duties of his office, shall take and subscribe an oath of office which shall be filed with the City Clerk.

17. **Reporting Requirements.** As required by N.J.S.A. 40A:9-126.1, each Constable shall on or before the first Wednesday of every month, file with the City Clerk a report of his official activities, other than in connection with court or judicial proceedings, for the month immediately past. The City Clerk shall forward a copy to the Public Safety Director. The report shall list the names and addresses of all persons contacted by the Constable in his official capacity, together with the date, time and purpose of the contact. In addition, the report shall contain an accurate statement of all fees collected by the Constable and from whom and for what service each fee was collected. A template of the report shall be prepared by the City Clerk and provided to Constables for completion. Pursuant to N.J.S.A. 40A:9-126.1, a failure to comply with the reporting requirements of this Ordinance, for a period of two (2) consecutive months, except only for physical incapacity, shall result in his or her office being deemed vacant.

18. **Surety Bond.** As a condition of appointment, the Constable shall take an oath of office and shall post a surety bond in the amount of \$5,000.00, which bond shall be approved as to form and legality by resolution, approved by the Municipal Council as

to form, amount and sufficiency. The bond must be issued by and Bond Company licensed to do business in the State of New Jersey.

20. **Indemnification and Hold Harmless.** Constable shall sign prior to appoint an agreement agreeing to defend, indemnify and hold the Township of Irvington, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees, arising out of or resulting from the acts, errors or omissions of the Constable in performance of his or her duties as a Constable, except for injuries and damages caused by the sole negligence of the Township.

SECTION 2. SEVERABILITY. If any paragraph or provision of this ordinance be adjudicated invalid or unenforceable, such determination shall not, to the extent severable, affect any other paragraph or provision of this ordinance, which shall otherwise remain in full force and effect.

SECTION 3. REPEALER. All ordinances or provisions thereof inconsistent or conflicting with the provisions of this ordinance shall be repealed to the extent of such conflict or inconsistency.

SECTION 4. EFFECTIVE DATE. This ordinance shall take effect upon final passage and publication in accordance with the laws of the State of New Jersey.

The public hearing on this ordinance is now open.

There were no requests to be heard.

Jones – Lyons Motion to close public hearing

Adopted
Absent: Hudley

Jones – Lyons Motion to adopt this ordinance on second reading after public hearing.

Adopted
No: Frederic, Inman
Absent: Hudley

5. President Lyons: An ordinance amending and supplementing Section 82-6 of Revised Code regarding building construction permits will be heard at this time. For the record, this notice is identical to the first notice of hearing that was read.

The Clerk will read the ordinance by title.

AN ORDINANCE TO AMEND AND SUPPLEMENT CHAPTER 82 SECTION 82-6

BE IT ORDAINED BY THE MUNICIPAL COUNCIL FO THE TOWNSHIP OF IRVINGTON as follows:

SECTION 1. Section 82-6 of the Revised Code of the Township of Irvington is hereby amended and supplemented as follows:

§82-6 Building Construction permits

Any building construction permit issued by the Construction Code Official shall become invalid and any fees paid for building construction permit shall be nonrefundable if the authorized work is not commenced within 12 months after issuance of the permit or if the authorized work is suspended or abandoned for a period of six months after the time of commencing the work.

Interior or exterior building construction performed without a valid construction permit issued by the township is prohibited in the Township of Irvington. Any contractor and/or property owner “found” performing work without a permit will be fined a minimum of \$250 and a maximum of \$5,000 or a maximum of \$1,000 each for Building, Electrical and Plumbing or any other permit deemed necessary for the completion of the project so that it meets code. (ADDED)

In addition to the cost of applying for and obtaining the appropriate permit(s), applying for a permit does not constitute authority to start work unless written approval is provided by the Construction Official. You must have the actual permit posted on the property before work is started. In cases of emergency construction the contractor and/or property owner performing the work must make application for the permit on the first business day after the start of the emergency construction. (ADDED)

All ordinances or parts of ordinances inconsistent or in conflict with the provisions of this ordinance are hereby repealed.

This ordinance shall take effect upon final passage and publication according to law.

The public hearing on this ordinance is now open.

There were no requests to be heard.

Cox – Lyons

Motion to close public hearing

Adopted

Absent: Hudley

Cox – Lyons
hearing.

Motion to adopt this ordinance on second reading after public

Adopted

Absent: Hudley

9. Resolutions and Motions

A. Resolutions

Lyons – Burgess 23. Authorize Amendment to Redevelopment Agreement – 9-23 Berkeley Terrace and 794 Grove Street [WALK ON BY ADMINISTRATION]

**RESOLUTION OF THE TOWNSHIP OF IRVINGTON,
COUNTY OF ESSEX AUTHORIZING THE AMENDMENT,
ASSIGNMENT AND ASSUMPTION OF A REDEVELOPER
AGREEMENT BY AND AMONG THE TOWNSHIP OF
IRVINGTON, CB BERKELEY URBAN RENEWAL
ASSOCIATES, LLC AND CB BERKELEY TERRACE, LLC**

WHEREAS, the Local Redevelopment and Housing Law, *N.J.S.A. 40A:12A-1 et seq.*, as amended from time to time (the “**Act**”), provides a process for municipalities to participate in the redevelopment and improvement of areas in need of redevelopment and/or rehabilitation; and

WHEREAS, the Municipal Council (the “**Township Council**”) of the Township of Irvington (the “**Township**”), designated certain property within the Township, including, without limitation, the property identified on the official tax maps of the Township as Block 139, Lot 1 and Block 135, Lot 14, and more commonly known as 9-23 Berkeley Terrace and 794 Grove Street (the “**Property**”) as an area in need of redevelopment, pursuant to the Act (the “**Redevelopment Area**”); and

WHEREAS, the Redevelopment Area is currently subject to the *East Ward/East Springfield Avenue Redevelopment Plan*” (as amended, the “**Redevelopment Plan**”) which was duly adopted by the Township Council pursuant to the Act and in accordance with the procedures set forth therein; and

WHEREAS, pursuant to *N.J.S.A. 40A:12-4*, the Township has determined to act as the “Redevelopment Entity” (as such term is defined at *N.J.S.A. 40A:12A-3*) for the Redevelopment Area to exercise the powers contained in the Act; and

WHEREAS, CB Berkeley Urban Renewal Associates, LLC (the “**Redeveloper**”) is the contract-purchaser of the Property through its affiliate, CB Berkeley Terrace, LLC, and has signed a Purchase and Sale Agreement for the Property; and

WHEREAS, the Redeveloper proposed to rehabilitate the Property by: renovating the interior and exterior of the two (2) story, one-hundred fifty-three (153) unit residential buildings, adding passive and active outdoor amenity spaces for tenants, increasing security and arranging for on-site maintenance (the “**Project**”); and

WHEREAS, in accordance with Resolution No. UEZ 16-0614-9, the Township and Redeveloper entered into a Redeveloper Agreement dated _____, 2016 (the

“**Agreement**”), which Agreement sets forth the rights and responsibilities of the Township and the Redeveloper with respect to the Project and the Property; and

WHEREAS, Section 4.02 of the Agreement requires that the Redeveloper close on the financing and title to the Property by June 1, 2017; and

WHEREAS, on April 5, 2017, the Redeveloper provided notice to the Township that acquisition of the Property would not be completed by the June 1, 2017; however, in furtherance of the terms of the Agreement, the Redeveloper requested that the Township authorize an extension of the deadline to October 31, 2017; and

WHEREAS, Redeveloper desires to assign all of its right, title and interest in and to the Agreement to its affiliate, CB Berkeley Terrace, LLC; and

WHEREAS, CB Berkeley Terrace, LLC desires and intends to assume the same; and

WHEREAS, Section 3.02 of the Agreement requires written consent of the Township prior to an assignment by the Redeveloper; and

NOW THEREFORE, BE IT RESOLVED by the Irvington Township Council as follows:

1. Generally. The above recitals are incorporated herein by reference.
2. Execution of Amendment, Assignment and Assumption of Redeveloper Agreement Authorized.
 - a. The Mayor is hereby authorized to execute an Amendment, Assignment and Assumption Agreement, a form of which is attached hereto as Exhibit A (the "**Amendment**"), together with such additions, deletions and modifications as are necessary and desirable in consultation with counsel to effectuate the same.
 - b. The Township Clerk is hereby authorized and directed, upon execution of the Amendment in accordance with the terms of Section 2(a) hereof, to attest to the signature of the Mayor upon such document and is hereby further authorized and directed to affix the corporate seal of the Township upon such document.
3. Severability. If any part of this Resolution shall be deemed invalid, such parts shall be severed and the invalidity thereby shall not affect the remaining parts of this Resolution.
4. Availability of the Resolution. A copy of this resolution shall be available for public inspection at the offices of the Township.
5. Effective Date. This resolution shall take effect immediately.

AMENDMENT, ASSIGNMENT AND ASSUMPTION AGREEMENT

THIS AMENDMENT, ASSIGNMENT AND ASSUMPTION AGREEMENT (this “**Amendment**”) is entered into as of this ___ day of May, 2017, by and among **CB BERKELEY URBAN RENEWAL ASSOCIATES, LLC**, a New Jersey limited liability company, with principal offices located at c/o CB Cubed, LLC, 745 Fifth Avenue, 29th Floor, New York, New York 10151 (the “**Redeveloper Assignor**”); **CB BERKELEY TERRACE, LLC** with an address at c/o CB Cubed, LLC, 745 Fifth Avenue, 29th Floor, New York, NY 10151 (the “**Assignee**”); and the **TOWNSHIP OF IRVINGTON**, a body corporate and politic of the State of New Jersey with offices located at Civic Square, Irvington, New Jersey 07111 (the “**Township**”).

WITNESSETH

WHEREAS, acting in accordance with the *Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq.* (the “**Act**”), the Municipal Council (the “**Township Council**”) of the Township of Irvington (the “**Township**”), designated certain property within the Township, including, without limitation, the property identified on the official tax maps of the Township as Block 139, Lot 1 and Block 135, Lot 14, and more commonly known as 9-23 Berkeley Terrace and 794 Grove Street (the “**Property**”) as an area in need of redevelopment, pursuant to the Act (the “**Redevelopment Area**”); and

WHEREAS, the Redevelopment Area is currently subject to the *East Ward/East Springfield Avenue Redevelopment Plan*” (as amended, the “**Redevelopment Plan**”) which was duly adopted by the Township Council pursuant to the Act and in accordance with the procedures set forth therein; and

WHEREAS, the Redeveloper Assignor is the contract-purchaser of the Property through its affiliate, the Assignee, and has signed a Purchase and Sale Agreement for the Property; and

WHEREAS, the Redeveloper Assignor proposed to rehabilitate the Property by: renovating the interior and exterior of the two (2) story, one-hundred fifty-three (153) unit residential buildings, adding passive and active outdoor amenity spaces for tenants, increasing security and arranging for on-site maintenance (the “**Project**”); and

WHEREAS, in furtherance of the redevelopment of this area, the Township and Redeveloper Assignor entered into a Redeveloper Agreement dated _____, 2016 (the “**Agreement**”), which Agreement sets forth the rights and responsibilities of the Township and the Redeveloper Assignor with respect to the Project and the Property; and

WHEREAS, Section 4.02 of the Agreement requires that the Redeveloper Assignor close on the financing and title to the Property by June 1, 2017; and

WHEREAS, on April 5, 2017, the Redeveloper Assignor provided notice to the Township that acquisition of the Property would not be completed by the June 1, 2017; however, in furtherance of the terms of the Agreement, the Redeveloper Assignor

requested that the Township authorize an extension of the deadline to October 31, 2017; and

WHEREAS, the Redeveloper Assignor desires and intends to transfer its rights, duties and obligations under the Agreement with respect to the Project to Assignee, and Assignee desires and intends to assume the same; and

WHEREAS, the Redeveloper Assignor has requested an assignment of the Agreement to Assignee and an amendment to the Agreement to provide for an extension of the property acquisition deadline; and

WHEREAS, The Township, Redeveloper Assignor and Assignee desire to modify the Agreement to reflect their agreement as to the foregoing, as hereinafter set forth in this Amendment.

NOW THEREFORE, in consideration of the mutual covenants herein contained and for other good and valuable consideration, it is mutually covenanted and agreed as follows:

Section 1. Representations, Warranties and Covenants. (a) the Redeveloper Assignor represents, warrants and covenants as follows:

(i) it is duly incorporated and validly existing under the laws of the State of New Jersey, and all necessary resolutions or authorizations have been duly adopted to authorize the execution and delivery of this Amendment and direct the persons executing this Amendment to do so for and on its behalf;

(ii) it has the right to assign the Agreement with respect to the Project, and no other person, firm or corporation, other than the parties hereto, has any right, title or interest therein;

(iii) it has not previously sold, assigned, transferred, mortgaged, pledged or otherwise encumbered the Agreement with respect to the Project;

(iv) as of the date hereof, to the best of its knowledge and belief after diligent inquiry, there is no action, proceedings or investigation now pending, nor any basis therefor, known or believed to exist which questions the validity of this Amendment, the Redeveloper Assignor's execution thereof, or any action or act taken or to be taken by the Redeveloper Assignor pursuant to this Amendment;

(v) the execution and delivery of this Amendment and its performance hereunder will not constitute a violation of the Agreement or of any governmental approvals, nor of Redeveloper Assignor's operating agreement or any other agreement, mortgage, indenture, instrument or judgment to which Redeveloper Assignor may be a party; and

(vi) Redeveloper Assignor has not received any notice of default under the Agreement, and has no knowledge of any facts and circumstances that would give rise to

a default thereunder. To the best of Redeveloper Assignor's knowledge, the Agreement is in full force and effect.

(b) the Assignee represents, warrants and covenants as follows:

(i) it is duly incorporated and validly existing under the laws of the State of New Jersey and all necessary resolutions or authorizations have been duly adopted to authorize the execution and delivery of this Amendment and direct the persons executing this Amendment to do so for and on its behalf;

(ii) it fully assumes Redeveloper Assignor's obligations with respect to the Project under the Agreement, on a going forward basis;

(iii) it will abide by all terms and conditions of the Agreement, as amended herein, with respect to the Project;

(iv) as of the date hereof, to the best of its knowledge and belief after diligent inquiry, there is no action, proceedings or investigation now pending, nor any basis therefor, known or believed to exist which (1) questions the validity of this Amendment, the Assignee's execution thereof, or any action or act taken or to be taken by the Assignee pursuant to this Amendment; or (2) is likely to result in a material adverse change in Assignee's property, assets, liabilities or condition which will materially and substantially impair Assignee's ability to perform its obligations pursuant to the terms of this Amendment; and

(v) the execution and delivery of this Assignment and its performance hereunder will not constitute a violation of the Agreement, as amended herein, or of any governmental approvals, nor of Assignee's operating agreement or any other agreement, mortgage, indenture, instrument or judgment to which Assignee may be a party.

Section 2. Assignment and Assumption of Rights, Duties and Obligations relating to the Agreement; Release of Redeveloper Assignor.

(a) Redeveloper Assignor hereby assigns, transfers and sets over to Assignee all of the Redeveloper Assignor's right, title, interest and benefit in and to the Agreement as amended by this Amendment.

(b) Assignee assumes all of Redeveloper Assignor's duties, obligations, rights, title and interest in, to and under the Agreement, including specifically, but not by way of limitation, the obligation to make any payments due to the Township thereunder.

(c) Assignee hereby releases the Redeveloper Assignor from all duties and obligations with respect to the Project under the Agreement, including the obligation to make any and all payments due to the Township with respect to the Project thereunder.

(d) Township hereby approves the assignment of the Agreement as amended by this Amendment by the Assignor to the Assignee.

Section 3. Amendments to the Agreement. (a) The Agreement is hereby amended with respect to the Project as follows:

- (i) Section 4.02(e) is amended to provide that: by October 31, 2017, assuming all conditions and contingencies under the PSA have been satisfied or waived, Redeveloper will have closed on the financing and title to the Property.
- (ii) Section 6.07 is amended to provide that any formal notices, demands and communications sent by the Township to the Redeveloper shall be delivered to:

Redeveloper:

CB Berkeley Terrace, LLC
c/o CB Cubed, LLC
745 Fifth Avenue, 29th Floor
New York, New York 10151
Attn: Josh Levy

with copy to counsel to Redeveloper:

Sokol Behot, LLP
433 Hackensack Avenue
Hackensack, New Jersey 07601
Attn: Jeffrey A. Zenn, Esq.

Section 4. Township Rights. The Assignor and Assignee acknowledge and agree that this Amendment is not intended to diminish or reduce any of the rights of the Township under the Agreement, including the right to enforce the terms thereof. Further, except as specifically modified and amended as set forth herein, the Agreement shall remain in full force and effect.

Section 5. Term. So long as no default has occurred with respect to the Project under the Agreement beyond the expiration of applicable notice and grace periods set forth therein, the Assignee shall have the right to retain, use and enjoy the benefits of the Agreement with respect to the Project pursuant to the provisions of this Amendment.

Section 6. Third Party Beneficiaries. Nothing contained herein is intended or shall be deemed to create or confer any rights upon any third person not a party hereto, whether a third party beneficiary or otherwise, except as expressly provided herein, nor shall anything contained herein be construed to create any relationship of partnership, agency, joint venture or the like between the parties hereto.

Section 7. Severability of Invalid Provisions. If any one or more of the provisions contained herein shall be held to be illegal or invalid in a final proceeding, then any such provisions shall be null and void and shall be deemed separable from the

remaining provisions and shall in no way affect the validity of any of the other provisions hereof.

Section 8. Governing Law. This Amendment shall be governed by and construed and enforced pursuant to the laws of the State of New Jersey, without regard to its conflict of law principles. Any action hereunder shall be brought exclusively in a court of the State of New Jersey, sitting in Essex County, New Jersey, and the parties hereto hereby waive objections to such venue. The parties hereto for themselves and their successors and assigns, hereby waive trial by jury in any action arising out of or in connection with this Assignment.

Section 9. Counterparts. This Amendment may be simultaneously executed in counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

{REMAINDER OF PAGE INTENTIONALLY LEFT BLANK}

IN WITNESS WHEREOF, the parties hereto have caused this Assignment to be properly executed as of the date first written above.

**CB BERKELEY URBAN RENEWAL
ASSOCIATES, LLC**

By: _____
Name:
Title:

CB BERKELEY TERRACE, LLC

By: _____
Name:
Title:

ATTEST:

TOWNSHIP OF IRVINGTON

Name: Harold E. Wiener
Title: Municipal Clerk

By: _____
Name: Tony Vauss
Title: Mayor

Council Member Inman and Council president Lyons spoke.

Adopted
No: Inman
Absent: Hudley

12. Miscellaneous

B. General Hearing of Citizens and Council Members (limited to five minutes per person)

Elouise McDaniel, 214 Nesbit Terrace
Tamika Russell, 30 Bamford Place

All of the Council Members present responded to the issues raised by the above referenced citizens.

13. Adjournment

There being no further business, the meeting was adjourned at 8:37 P.M.

David Lyons, Council President

Harold E. Wiener, Municipal Clerk