

RESOLUTION OF THE TOWNSHIP OF IRVINGTON, NJ

No. UEZ15-0623-8

Date of Adoption JUNE 23, 2015

APPROVED AS TO FORM AND LEGALITY ON THE BASIS OF FACTS SET FORTH BY

[Signature]
Legislative Research Officer

PRESENTED BY COUNCIL MEMBER INMAN SECONDED BY FREDERIC

RESOLUTION OF THE TOWNSHIP OF IRVINGTON AUTHORIZING THE EXECUTION OF AN ESCROW AGREEMENT WITH PROPOSED REDEVELOPERS IN CONNECTION WITH THE REDEVELOPMENT OF PROPERTIES

WHEREAS, the Municipal Council of the Township of Irvington (the "Township Council"), designated certain real property within the Township of Irvington (the "Township") as an area in need of rehabilitation and/or redevelopment (the "Redevelopment Areas") pursuant to the *Local Redevelopment and Housing Law, N.J.S.A. 40A: 12A-1 et seq.* (the "LRHL"); and

WHEREAS, the Township Council duly adopted redevelopment plans governing the property located within the Redevelopment Areas (collectively, the "Redevelopment Plan"); and

WHEREAS, the Township has received, and anticipates continuing to receive, applications (each an, "Application") for the redevelopment of property located within the Redevelopment Areas and subject to the Redevelopment Plan, submitted by proposed redevelopers (each a "Proposed Developer") to the Township for review and consideration (as described in such Application, the "Project"); and

WHEREAS, the Township desires to enter into negotiations with Proposed Developers, for (i) a redevelopment agreement and/or (ii) an agreement for financial assistance, as may be applicable or appropriate for each respective Project (collectively, the "Agreement"); and

WHEREAS, the Proposed Developer shall defray certain costs incurred by or on behalf of the Township arising out of or in connection with the discussions and the potential negotiations associated with an Agreement, and the Township desires to enter into an escrow agreement establishing the mechanism for the deposit and disposition of funds to cover the Township's costs;

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

Section 1. Generally. The aforementioned recitals are incorporated herein as though fully set forth at length.

Section 2. Execution of Agreement. The Township Council hereby authorizes the Township Administration together with redevelopment counsel, to finalize and execute escrow agreements substantially in the form attached hereto as "Exhibit A" with such changes, deletions, and modifications as may be required to effect the transaction contemplated by this resolution, for any and all costs incurred by the Township and its professionals and consultants in reviewing and advising the Township with regard to the redevelopment of the Redevelopment Areas and the negotiation of an Agreement, provided however, that this resolution shall not be construed as an obligation of the Township to execute an Agreement with a Proposed Developer.

Section 3. Effective Date. This resolution shall take effect immediately

RECORD OF COUNCIL VOTE

X = Indicates Vote N.V. = No Vote A.B. = Absent

COUNCIL MEMBER	YES	NO	N.V.	A.B.	COUNCIL MEMBER	YES	NO	N.V.	A.B.
BURGESS, 1ST VICE PRESIDENT	X				JONES, 2ND VICEPRESIDENT	X			
COX	X				LYONS	X			
HUDLEY	X				FREDERIC, PRESIDENT	X			
INMAN	X								

PRESIDENT OF COUNCIL *[Signature]* MUNICIPAL CLERK *[Signature]* DATE JUNE 23, 2015

I hereby certify that the foregoing is a true copy of a Resolution duly adopted by the Municipal Council. In witness whereof I have hereunto set my hand and the Corporate Seal of the Township of Irvington.

MUNICIPAL CLERK *[Signature]* DATE JUN 23 2015

BA BLDG CFO COURT DHS DHW DPW ENG FIRE INIC JUDGE LIBR LICEN LEGAL MAYOR OCDP~DIR
 OCDP~AD P&R PAYROLL POL~DIR POL~CF PURCH SEC~PB/BA TAX~AS TAX~COL TRAFFIC UEZ
 ZONING~OFF DLGS GNCD OTHER(S): C. Chatman

FORM ESCROW AGREEMENT

THIS ESCROW AGREEMENT ("Escrow Agreement") is made as of the ____ day of [____], 20[] by and between [] (the "**Proposed Redeveloper**"), with an address at [] and **THE TOWNSHIP OF IRVINGTON**, a body corporate and politic of the State of New Jersey, (the "**Township**"), with an address at Municipal Building, Civic Square, Irvington, New Jersey 07111.

WITNESSETH:

WHEREAS, the Proposed Redeveloper and the Township, in its capacity as redevelopment entity, intend to negotiate a [Redevelopment Agreement and/or Financial Agreement] (the "**Agreement**"), with respect to the designation of the Proposed Redeveloper as "Redeveloper" and to provide for (i) the redevelopment of a portion of certain real property within that area that has been designated by the Township Council as an area in need of [redevelopment/rehabilitation] pursuant to the *Local Redevelopment and Housing Law, N.J.S.A. 40A: 12A-1 et seq.* (the "**LRHL**"), commonly known as [], comprising Block [] Lot [] on the Official Tax Maps of the Township (the "**Project Area**") and/or (ii) a payment in lieu of taxes pursuant to the *Long Term Tax Exemption Law, N.J.S.A. 40A:12A-1 et seq.* (the "**LTTE**"); and

WHEREAS, Township Council has duly adopted the ["____ *Redevelopment Plan*"] for the Project Area (as amended, the "**Redevelopment Plan**") pursuant to *N.J.S.A. 40A:12A-7* of the LRHL and in accordance with the procedures set forth therein; and

WHEREAS, as an inducement to the Township to engage in such negotiations, and as a precondition thereto, the Proposed Redeveloper has agreed to deposit with the Township the initial amount of [TEN THOUSAND and 00/100 (\$10,000.00) **DOLLARS** (the "**Escrow Deposit**")], to be deposited in an escrow account and disbursed in accordance with the provisions of this Escrow Agreement to defray certain costs incurred by or on behalf of the Township arising out of or in connection with the selection and designation of the Proposed Redeveloper as redeveloper and the negotiation and preparation of the Agreement.

NOW THEREFORE, in consideration of the foregoing, and for other good and valuable consideration, and intending to be legally bound hereby, the parties hereto agree as follows:

1. **Escrow Deposit.** The initial Escrow Deposit is separate from and in addition to all other application fees and escrow deposits that may be required by the Township pursuant to the terms of the Agreement, if the parties are successful in their negotiations and one is executed, including any applications for land use approvals that may be needed to implement the Redevelopment Plan. Additions to the Escrow Deposit may

subsequently become necessary to cover all reimbursable expenses incurred by the Township pursuant to the terms of this Escrow Agreement.

2. Scope of Reimbursable Services. (a) The Township shall be entitled to be reimbursed for all professional charges incurred in connection with the selection and designation of the Proposed Redeveloper as redeveloper, and the negotiation and preparation of the Agreement; the preparation and review of all related documents and materials, including but not limited to correspondence, meetings and all communications (including by telephone and e-mail) with the Proposed Redeveloper, its professionals, Township staff or retained professional(s) in the negotiation and preparation of such Agreement and related documents or materials (collectively, the "Reimbursable Activities"). **Reimbursement may include charges incurred in connection with Reimbursable Activities prior to the date of this Escrow Agreement, and is not contingent upon the outcome of the negotiations or execution of an Agreement.**

(b) Properly reimbursable professional charges shall be reasonable and necessary and shall relate to Reimbursable Activities performed by outside consultants and professionals.

(c) In addition to professional and consultant fees and expenses, properly reimbursable charges shall include a charge for each special meeting of a municipal board held at the request of or with the consent of the Proposed Redeveloper, at a cost of **\$1,000.00 per meeting.**

3. Deposit and Administration of Escrow Funds. The Escrow Deposit and all additions thereto shall be held by the Township in a banking institution or savings and loan association in the State of New Jersey insured by an agency of the federal government, or in any other fund or depository approved for such deposits by the State of New Jersey, in a segregated, non-interest bearing account referenced to this Escrow Agreement.

4. Payments from the Escrow Funds. (a) The Township shall use such funds to pay reimbursable professional charges or the charges for special meetings.

(b) Professional charges paid out of the escrow account shall include professional charges in connection with the Reimbursable Activities. The Proposed Redeveloper shall not be charged for any costs and expenses not associated with the Reimbursable Activities. The only costs that shall be added shall be actual out-of-pocket expenses of such professionals or outside consultants, including normal and typical expenses incurred in connection with such Reimbursable Activities.

(c) Each payment for professional services charged to the escrow account shall be pursuant to a voucher from the professional, identifying the personnel performing the Reimbursable Activities, each date the services were performed, the hours spent in not greater than one-quarter (1/4) hour increments, the hourly rate, and

specifying properly reimbursable expenses. All professionals shall submit the required vouchers or statements to the Township on a periodic basis in accordance with the schedule and procedures established by the Township. If so requested by the Proposed Redeveloper the professional shall simultaneously send an informational copy of each voucher or statement submitted to the Township to the Proposed Redeveloper; *provided*, that each such informational voucher or statement may be redacted if and as necessary to prevent disclosure of privileged or otherwise confidential matters.

5. **Accounting and Additional Deposits.** Upon the execution of an Agreement, termination of negotiations, or as reasonably requested by the Proposed Redeveloper, the Township shall prepare and send to the Proposed Redeveloper a statement which shall include an accounting of funds listing all deposits, disbursements and the cumulative balance of the escrow account. If at any time the balance in the escrow account is less than [**TWO THOUSAND FIVE HUNDRED and 00/100 (\$2,500.00) DOLLARS**], or if the escrow account otherwise contains insufficient funds to enable the Township to continue with the negotiations or document preparation, the Township shall provide the Proposed Redeveloper with a notice of the insufficient escrow deposit balance. The Proposed Redeveloper shall deposit to the escrow account additional funds such that the total amount on deposit shall be not less than [**TEN THOUSAND and 00/100 (\$10,000.00) DOLLARS**], such deposit to be made within five (5) business days of the Township's notice, failing which the Township may unilaterally cease work without liability to the Proposed Redeveloper.
6. **Close Out Procedures.** Upon termination of negotiations without an Agreement being executed, or upon the execution of an Agreement, and unless otherwise provided in the Agreement, the Proposed Redeveloper shall send written notice by certified mail to the Township, the Township and to the relevant municipal professional(s), requesting that the remaining balance of the Escrow Deposit be refunded, or otherwise applied as agreed to pursuant to the terms of the executed Agreement. After receipt of such notice, the professional(s) shall render a final bill to the Township within 30 days, and if so requested shall send an informational copy simultaneously to the Proposed Redeveloper. Within 30 days of receipt of the final bill the Township shall pay all outstanding bills and render a written final accounting to the Proposed Redeveloper detailing the uses to which the escrow funds were put. The Proposed Redeveloper will not be responsible for any additional charges once the final accounting has been rendered by the Township in accordance with this section. If an Agreement is executed and the Proposed Redeveloper so requests, the Township agrees to apply any balance remaining in the Escrow Deposit towards the funding of any escrow deposits that may be required to be posted pursuant to the terms of the executed Agreement.
7. **Disputed Charges.** (a) The Proposed Redeveloper may dispute the propriety or reasonableness of professional charges paid out of the Escrow Deposit by written notice to the Township. A copy of such notice shall be sent simultaneously to the professional(s) whose charges or estimated costs are the subject of the dispute. Such

written notice of a disputed charge shall be given within 45 days from the Proposed Redeveloper's receipt of the informational copy of the professional's voucher, except that if the professional has not supplied the Proposed Redeveloper with an informational copy of the voucher, then the Proposed Redeveloper shall send notice within 60 days from receipt of the first statement of activity against the escrow account containing the disputed charge. Failure to dispute a charge in writing within the prescribed time shall constitute the Proposed Redeveloper's acceptance of the charge and a waiver by the Proposed Redeveloper of all objections to the charge and to payment thereof out of the escrow account.

(b) During the pendency of a dispute the Township may continue to pay undisputed charges out of the escrow account. If a dispute over a charge is resolved in the Proposed Redeveloper's favor after having been paid, the Township shall reimburse the escrow account in the amount determined to be properly disputed.

8. Governing Law. This Escrow Agreement shall be governed, construed and enforced according to the laws of the State of New Jersey, without regard to its conflicts of laws principles. Any action hereunder shall be brought exclusively in a court of the State of New Jersey or in a United States Court having jurisdiction in the District of New Jersey, in either case sitting in Essex County, New Jersey, and the Proposed Redeveloper hereby waives all objections to such venue.

9. Successors and Assigns. This Escrow Agreement shall be binding upon, and inure to the benefit of, the parties hereto and upon each party's successors and assigns.

10. Entire Agreement; No Modification Unless in Writing. This Escrow Agreement contains the entire agreement of the parties relative to the subject matter hereof. Any amendment hereto or modification or variation hereof shall be ineffective unless in writing signed by each of the parties hereto.

11. Effective Date. This Escrow Agreement shall not become effective unless and until the initial Escrow Deposit is made.

The balance of this page intentionally left blank; signatures appear on next page.

IN WITNESS WHEREOF, the parties have executed this Agreement the date and year first above written.

Witness or Attest:

TOWNSHIP OF IRVINGTON

By: _____

Witness or Attest:

□

By: _____