

RESOLUTION OF THE TOWNSHIP OF IRVINGTON, NJ

No. **UEZ16-0517-8**

Date of Adoption **May 3, 2016**

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


Legislative Research Officer

PRESENTED BY COUNCIL MEMBER **COX**

SECONDED BY **BURGESS**

RESOLUTION OF THE TOWNSHIP OF IRVINGTON, COUNTY OF ESSEX AUTHORIZING EXECUTION OF THE THIRD AMENDMENT TO THE REDEVELOPMENT AND PURCHASE AND SALE AGREEMENT FOR THE DEVELOPMENT OF THE IRVINGTON GENERAL HOSPITAL SITE

WHEREAS, the Municipal Council of the Township of Irvington (the "**Township Council**") designated parcels located in the Township's Urban Enterprise Zone as an area in need of rehabilitation (the "**UEZ Rehabilitation Area**") by Resolution UEZ 07-0227-5; and

WHEREAS, the *Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq.* (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, in accordance with the provisions of *N.J.S.A. 40A:12A-7* the Township Council adopted a Redevelopment Plan for the UEZ Rehabilitation Area by Ordinance No. 3351 in accordance with the requirements of *N.J.S.A. 40A:12A-7*; and

WHEREAS, to realize the redevelopment of the UEZ Rehabilitation Area, the Township Council 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, Kapwood, LLC (the "**Redeveloper**") submitted a concept for mixed-use redevelopment (the "**Project**") to the Township of Irvington (the "**Township**") for its review and consideration for a portion of the UEZ Rehabilitation Area identified as Block 324 Lot 1 on the official tax maps of the Township (the "**Property**") and commonly referred to as the Irvington General Hospital Site; and

WHEREAS, the Township entered into a Redevelopment and Purchase and Sale Agreement with Redeveloper dated October 12, 2012 (as amended by the First Amendment to Redevelopment and Purchase and Sale Agreement and the Second Amendment to the Redevelopment and Purchase and Sale Agreement, the "**Redevelopment Agreement**"), which Redevelopment Agreement sets forth the rights and responsibilities of the Township and the Redeveloper with respect to the Project and the Property; and

WHEREAS, capitalized terms used but not specifically defined herein shall have the meanings ascribed to them in the Redevelopment Agreement; and

WHEREAS, the Redevelopment Agreement specifies the respective rights and responsibilities of the Township and the Redeveloper with respect to the Project, including but not limited to, timeframes to complete certain due diligence and the submission of site plan and building permit applications; and

WHEREAS, since Effective Date of the Redevelopment Agreement, and in accordance with the terms thereof, the Township Administration and Redeveloper have been working together to refine the proposed Project, with the ultimate objective of increasing its ultimate potential for successful completion and implementation, all in the best interests of the Township and its residents; and

WHEREAS, the Township and the Redeveloper have agreed on certain changes related to the implementation of the Project, and the impact of financing each Phase of the Project; and

WHEREAS, a draft of the proposed “*Third Amendment to Redevelopment and Purchase and Sale Agreement*” (the “RDA Third Amendment”), setting forth the proposed modifications to the Redevelopment Agreement, is attached hereto as Exhibit A; and

WHEREAS, the Redeveloper heretofore partnered with Urban Builders Collaborative NJ, LLC (“UBC”) to effectuate the development of the Project and in furtherance of the partnership, created Hilltop Partners MM, LLC, a new limited liability corporation pursuant to the *New Jersey Limited Liability Company Act, N.J.S.A. 42:2B-1 et seq.* (“Hilltop”), which Hilltop entity is owned 35% by Redeveloper and 65% by UBC; and

NOW, THEREFORE BE IT RESOLVED by the Municipal Council of the Township of Irvington, in the County of Essex, New Jersey, as follows:

1. The aforementioned recitals and the Exhibit hereto are incorporated herein as though fully set forth at length.
2. The Township hereby authorizes the execution of the RDA Third Amendment in substantially the form attached hereto as Exhibit A. The Mayor is hereby authorized to execute the RDA Third Amendment in substantially the form attached hereto, with such additions, deletions and modifications as may be necessary in consultation with the Township Attorney and Special Redevelopment Counsel.
3. 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. A copy of this Resolution shall be available for public inspection at the offices of the Township.
5. This Resolution shall take effect upon final passage.

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 VICE PRESIDENT	X			
COX	X				LYONS	X			
HUDLEY	X				FREDERIC, PRESIDENT	X			
INMAN				X					

PRESIDENT OF COUNCIL [Signature] MUNICIPAL CLERK [Signature] DATE May 3, 2016

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 5/17/16

ADMINISTRATOR ☐ ASSESSOR ☐ BLDG ☐ CFO ☐ COLLECTOR ☐ COURT ☐ ENGINEER ☐ FIRE ☐ HEALTH ☐ HOUSING ☐ INIC ☐ JUDGE ☐
 LEGAL ☐ LIBR ☐ LICEN ☐ MAYOR ☐ OCDP ☐ PARKS ☐ PAYROLL ☐ PUBLIC SAFETY~DIR ☐ PUBLIC WORKS ☐ PURCHASING ☐ SEC~PB/ZBA ☐
 TRAFFIC ☐ ZONING~OFF ☐ DLGS ☐ GNCD ☐ OTHER(S): _____

cc

**THIRD AMENDMENT
TO
REDEVELOPMENT AND PURCHASE AND SALE AGREEMENT**

This THIRD AMENDMENT TO REDEVELOPMENT AND PURCHASE AND SALE AGREEMENT (this “**Amendment**”) is entered into as of May ____, 2016 by and between **THE TOWNSHIP OF IRVINGTON**, a public body corporate and politic of the State of New Jersey, in its capacity as redevelopment entity pursuant to N.J.S.A. 40A:12A-4(c) (the “**Township**”), and **HILLTOP PARTNERS MM, LLC**, a New Jersey limited liability company, as a successor in interest to Kapwood, LLC (collectively, the “**Redeveloper**”).

1. BACKGROUND AND PURPOSE.

(a) The Municipal Council of the Township (the “**Township Council**”) designated parcels located in the Township’s Urban Enterprise Zone as an area in need of rehabilitation (the “**UEZ Rehabilitation Area**”) by Resolution UEZ 07-0227-5.

(b) The *Local Redevelopment and Housing Law*, N.J.S.A. 40A:12A-1 *et seq.* (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.

(c) In accordance with the provisions of N.J.S.A. 40A:12A-7 the Township Council adopted a Redevelopment Plan for the UEZ Rehabilitation Area by Ordinance No. 3351 in accordance with the requirements of N.J.S.A. 40A:12A-7.

(d) To realize the redevelopment of the UEZ Rehabilitation Area, the Township Council 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).

(e) The Redeveloper submitted a concept for mixed-use redevelopment to the Township for its review and consideration for a portion of the UEZ Rehabilitation Area identified as Block 324 Lot 1 on the official tax maps of the Township (the “**Property**”) and commonly referred to as the Irvington General Hospital Site.

(f) The Township entered into a Redevelopment and Purchase and Sale Agreement with Redeveloper dated October 12, 2012 (the “**Original RDA**”) setting forth the rights and responsibilities of the Township and the Redeveloper with respect to the Project and the Property.

(g) The Township and Redeveloper entered into a First Amendment to Redevelopment and Purchase and Sale Agreement dated as of May 10, 2013 (the “**1st RDA Amendment**”).

(h) The Township and Redeveloper entered into a Second Amendment to Redevelopment and Purchase and Sale Agreement dated as of May 10, 2013 (the “**2nd RDA Amendment**” together with the Original RDA and the 1st RDA Amendment, the “**Existing RDA**”).

(i) Capitalized terms used and not otherwise defined in this Amendment shall have the meanings given to them in the Existing RDA. The Existing RDA, as amended by this Amendment, will hereinafter be referred to at times as the “**Redevelopment Agreement**”. All references in the Existing RDA to “this Agreement”, “this Redevelopment Agreement” or “the Redevelopment Agreement” shall be deemed references to the Existing RDA, as amended by this Amendment and as may hereafter be further amended from time to time.

(j) The Township and the Redeveloper desire to amend the Existing RDA in accordance with, and for the purposes set forth in, this Amendment.

2. PHASE 1 DESCRIPTION. SECTION 2.4 OF THE EXISTING RDA, AS AMENDED BY THE 2ND RDA AMENDMENT, IS HEREBY FURTHER AMENDED TO PROVIDE THAT:

Phase 1, located on Lot 1.04 shall consist of approximately 114 residential units, together with associated parking.

3. PHASED CERTIFICATED OF COMPLETION. SECTION 4.6 OF THE EXISTING RDA IS HEREBY DELETED IN ITS ENTIRETY AND SHALL BE REPLACED BY THE FOLLOWING NEW SECTION 4.6:

4.6 Certificate of Occupancy and Certificate of Completion. Upon Completion of Construction for each Phase of the Project and in accordance with the Construction Schedule for such Phase, the Redeveloper shall apply to the appropriate governmental officer or body for a Temporary Certificate of Occupancy or Certificate of Occupancy for such Phase of the Project and as required under Applicable Laws. Following the issuance of all required Certificates of Occupancy a particular Phase of the Project, and the satisfaction of the terms and conditions of this Agreement with respect to such Phase, the Township agrees to issue a Certificate of Completion, in proper form for recording, which shall acknowledge that the Redeveloper has performed all of its duties and obligations under this Redevelopment Agreement and has completed construction of the applicable Phase of the Project in accordance with the requirements of this Redevelopment Agreement. Within thirty (30) Days after receipt of the Notice of Completion from the Redeveloper, the Township shall provide the Redeveloper with the Certificate of Completion or a written statement setting forth in detail the reasons why it believes that the Redeveloper has failed to complete the applicable Phase of the Project for which the Notice of Completion was delivered in accordance with the provisions of this Redevelopment Agreement or is otherwise in Default under this Agreement with respect to such Phase, and what reasonable measures or acts will be necessary in the opinion of the Township in order for the Redeveloper to be entitled to the Certificate of Completion for such Phase. When issued, the Certificate of Completion shall constitute a recordable, conclusive determination of the satisfaction and termination of the agreements and covenants (as limited herein) in this

Redevelopment Agreement and the Redevelopment Plan with respect to the obligations of the Redeveloper to construct the applicable Phase of the Project. Unless otherwise required by this Agreement, Governmental Approval or Applicable Laws, upon the issuance of the Certificate of Completion, the provisions of this Agreement shall no longer encumber the Phase of the Project which has received a Certificate of Completion and the respective portion of the Property; provided, however, that any other documents theretofore delivered pursuant to this Agreement that by their terms are intended to survive Completion of Construction (including, without limitation and by of example only, any Deed restrictions, the Declaration of Restrictions, etc.) shall not be affected by delivery of the Certificate of Completion except as otherwise expressly provided therein. If, within thirty (30) Days of its receipt of the Notice of Completion from the Redeveloper, the Township fails to deliver the Certificate of Completion or a written statement setting forth in detail the reasons why it believes that the Redeveloper has failed to complete the Project or Phase thereof in accordance with the provisions of this Redevelopment Agreement, then (a) Redeveloper shall be deemed to have completed the applicable Phase of the Project in accordance with the provisions of this Agreement and any right of reverter hereunder shall be cancelled without any further action necessary from the Township.

4. **PERMITTED CONSTRUCTION LIENS.** SECTION 7.3 OF THE EXISTING RDA IS HEREBY DELETED IN ITS ENTIRETY AND SHALL BE REPLACED BY THE FOLLOWING NEW SECTION 7.3:

7.3 **Consent to Permitted Transfers.** The Township hereby consents, without the necessity of further approvals from any entity, to the following Transfers: (a) a Mortgage or related security granted by the Redeveloper or a Project Entity to a Mortgagee for the purpose of obtaining the financing necessary to enable the Redeveloper to perform its obligations under this Redevelopment Agreement, including any Mortgage or Mortgages and other liens and encumbrances granted by the Redeveloper to a Mortgagee for the purpose of financing costs associated with the acquisition, development, construction, or marketing of the Project; provided, however, that: (i) the Redeveloper shall give the Township at least fifteen (15) days prior written notice of such Permitted Transfer, including a description of the nature of such Permitted Transfer, and the name(s) and address(es) of the transferee and any parties, individuals or entities involved in such Permitted Transfer; (ii) the Redeveloper shall simultaneously provide to the Township true and complete copies of all construction schedules and project budgets submitted to such Mortgagee; (iii) the amount of such mortgage, lien or other encumbrance does not exceed the Redevelopers costs associated with the acquisition, development, construction or marketing of the Project as depicted in the Project Budget approved by the Township; and (iv) except with regard to any mortgage related to acquisition or construction costs, that any mortgage, lien or other encumbrance for such costs shall not attach until after that portion of the construction is completed (v) easements necessary for the development of the Project; and (vi) the sale and/or lease of residential units, commercial space, retail space and/or a childcare center consistent with the Concept Plan and (vii) the admission of investors with a non-managing interest to the Project Entity following notice to the Township (each a "Permitted Transfer").

5. **MORTGAGEE RESPONSIBILITIES.** SECTION 8.2 OF THE EXISTING RDA IS HEREBY DELETED IN ITS ENTIRETY AND SHALL BE REPLACED BY THE FOLLOWING NEW SECTION 8.2:

8.2 Obligations of Mortgagee.

Notwithstanding any of the provision of this Redevelopment Agreement to the contrary, including but not limited to those which are or are intended to be covenants running with the land, the holder of any mortgage authorized by this Redevelopment Agreement or affiliate of such holder utilized in a foreclosure or pre-foreclosure action or a deed in lieu of foreclosure (such holder or affiliate of holder a "Permitted Mortgagee") who obtains title to the Property or any part thereof as a result of foreclosure proceedings, or action in lieu thereof, but not including (a) any other party who thereafter obtains title to the Property or portion thereof from or through any Permitted Mortgagee or (b) any other purchaser at foreclosure sale, other than the Permitted Mortgagee shall in no way be obligated by the provisions of this Redevelopment Agreement to construct or complete the Project or to guarantee such construction or completion; provided that nothing in this Article or any other Article or provision of this Redevelopment Agreement shall be deemed or construed to permit or authorize any Permitted Mortgagee to devote the Property or any portion thereof to any uses, or to construct any project thereon, other than those uses provided or permitted under this Agreement, the Redevelopment Plan, Governmental Approvals and Applicable Laws.

6. MORTGAGEE & EQUITY PROVIDER RIGHT TO CURE. SECTION 8.3 OF THE EXISTING RDA IS HEREBY DELETED IN ITS ENTIRETY AND SHALL BE REPLACED BY THE FOLLOWING NEW SECTION 8.3:

8.3 Notice of Default to Mortgagee and Right to Cure.

Whenever the Township shall deliver any notice or demand to the Redeveloper with respect to any breach or Default by the Redeveloper under this Redevelopment Agreement, the Township shall at the same time deliver to (a) the Permitted Mortgagee and (b) any equity investor used in the syndication of tax credits and owning greater than 50% of the respective Project Entity (the "Equity Provider"), a copy of such notice or demand, provided that the Redeveloper has delivered to the Township a written notice of the name and address of such Permitted Mortgagee and Equity Provider. Township shall provide to such Permitted Mortgagee and Equity Provider an opportunity to cure any such breach or Default and shall not exercise its right to re-enter and reacquire the Property or any improvements thereon or any other rights or remedies of Township under this Redevelopment Agreement if:

(i) In the case of a default that is curable without possession of the Property, the Permitted Mortgagee cured or caused to be cured such default within ninety (90) days after Township's giving of notice of such default to the Permitted Mortgagee; or

(ii) In the case of a default where possession of the Property is required in order to cure such default, or is a default under the covenants and restrictions of paragraph (c) below, the Permitted Mortgagee shall proceed, within one hundred and twenty (120) days after the Permitted Mortgagee shall have received notice of the default from Township (or such longer period as the Township shall agree to), to institute proceedings relating to an enforcement of the mortgage and/or loan documents held by the Permitted Mortgagee (the "Enforcement Action"), and shall have notified Township that it is instituting such

proceedings and shall prosecute such proceedings in good faith and with commercially reasonable diligence to obtain title and possession of the Property and, upon obtaining title to and possession of the Property, shall commence to cure the default within the period hereinafter provided, and prosecute such cure to completion with reasonable diligence. During the period of time that the Permitted Mortgagee is prosecuting any Enforcement Action, the Permitted Mortgagee shall provide to the Township a monthly report as to the status and progress of the Enforcement Action.

It is agreed that if proceedings relating to an Enforcement Action shall be commenced or there shall be a transfer of title to the Property via foreclosure or via a deed in lieu foreclosure (regardless of whether the proceedings relating to a foreclosure shall have been commenced) the time periods for commencement of construction and completion of construction required pursuant to the terms of this Redevelopment Agreement with respect to the applicable phase so acquired shall be as follows:

If the Permitted Mortgagee shall have acquired title to the Property via a foreclosure or a deed in lieu of foreclosure or otherwise, then, regardless of whether any prior owner of the Property shall have previously commenced any construction on the Property, (i) the Permitted Mortgagee shall have a period of nine (9) months after the date of its acquisition of title to the Property to commence the initial construction of the Property, or if construction shall have been previously commenced by a prior owner of such Property, to re-commence construction of such Property, and (ii) the Permitted Mortgagee shall have a period of twenty four (24) months from the date of such commencement or re-commencement of the construction, in which to complete the construction of the applicable Phase of the Project.

It is acknowledged and agreed that each Permitted Mortgagee shall only be permitted to utilize the foregoing provisions with respect to the Phase that such Permitted Mortgagee is financing.

7. EVENT OF DEFAULT. SECTION 9.2(D) OF THE EXISTING RDA IS HEREBY AMENDED AND SUPPLEMENTED TO FURTHER PROVIDE THAT:

Notwithstanding anything to the contrary herein, the Parties acknowledge and agree that a Default or Event of Default with respect to any Phase shall not, in and of itself without an independent Default or Event of Default with respect to another Phase of the Project, constitute a Default or Event of Default under any other Phase. Notwithstanding the foregoing however, the parties acknowledge that a single Default or Event of Default can be independently applicable to one or more Phases, in accordance with the terms of this Agreement.

8. RATIFICATION. Except as specifically modified by this Amendment, the Redevelopment Agreement remains in full force and effect and is ratified and affirmed by the Township and the Redeveloper. To the extent that there is a conflict between the provisions of this Amendment and the provisions of the Existing RDA, the provisions of this Amendment shall be controlling.

9. **GOVERNING LAW.** This Amendment shall be governed by and construed in accordance with the laws of the State of New Jersey, but without giving effect to any choice of law provisions which might otherwise make the laws of a different jurisdiction govern or apply.

10. **COUNTERPARTS.** This Amendment may be signed in any number of counterparts, with the same effect as if all the signatories had signed the same document, and all of which when taken together shall constitute a single agreement. Delivery of a signed counterpart by fax or as a .pdf attachment to an email message shall constitute sufficient delivery.

* * * *

IN WITNESS WHEREOF, the undersigned have executed and delivered this Third Amendment to Redevelopment and Purchase and Sale Agreement as of the date first set forth above.

ATTEST:

TOWNSHIP OF IRVINGTON

By: _____
Hon. Tony Vauss, Mayor

WITNESS:

KAPWOOD, LLC

By: _____
Name:
Title:

WITNESS:

HILLTOP PARTNERS MM, LLC

By: _____
Name:
Title: