

RESOLUTION OF THE TOWNSHIP OF IRVINGTON, NJ

No. **EDGO 17-0110-10**

Date of Adoption **JAN. 10, 2017**

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

Legislative Research Officer

PRESENTED BY COUNCIL MEMBER **JONES**

SECONDED BY **COX**

100 - 108 Grace Street, LLC.

WHEREAS, per HUD rules and regulations, all HUD/HOME and HOME CHDO Funds must be obligated within a 2 year period and expended within a 5 year period; and

WHEREAS, 100 - 108 Grace Street, LLC is currently developing housing projects in the Township's East Ward, Irvington; specifically six (6) (one) 1 family houses for sale to very low and low income eligible persons or families; and

WHEREAS, 100 - 108 Grace Street, LLC has demonstrated its commitment of redevelopment and revitalization in the East Ward of the Township of Irvington by increasing the supply of affordable housing in the Township of Irvington; and

WHEREAS, the Township of Irvington wishes to support redevelopment and revitalization initiatives throughout the Township of Irvington and has access to abandoned properties located in the targeted area of redevelopment where 100 - 108 Grace Street, LLC; and

WHEREAS, the Township of Irvington Department of Economic Development and Grants Oversight has collected all necessary applications and documentation as well as have taken the steps to access the capacity and ability of 100 - 108 Grace Street, LLC to complete the planned redevelopment; and

WHEREAS, the Township of Irvington, Department of Economic Development and Grants Oversight fully supports and has HOME funds to assist in the financing of affordable housing for low- and moderate-income Irvington families; and

WHEREAS, the Township of Irvington, Department of Economic Development and Grants Oversight wishes to award \$120,000.00 in HUD/HOME 100 - 108 Grace Street, LLC for the purposes of GAP funding to complete the project pursuant to the terms of the Redeveloper's Agreement. The total project cost is \$1,100,000.00.

NOW, THEREFORE, BE IT RESOLVED BY THE MUNICIPAL COUNCIL OF THE TOWNSHIP OF IRVINGTON that the Township does hereby ratify and approve the provision of HUD/HOME Program funds to 100 - 108 Grace Street, LLC in the amount set forth on the request for Approval/Director Authorization Form, in amount of \$120,000.00 to put on file in the Township Clerk's Office; and.

BE IT FURTHER RESOLVED that the aforesaid funds for 100 - 108 Grace Street, LLC are to be used for the new construction and/or rehabilitation of homes for low- and moderate-income Irvington families in the targeted area of redevelopment; and

BE IT FURTHER RESOLVED that pursuant to N.J.A.C. 5:34-5.2, the required Certification of Availability of Funds has been obtained from the Chief Financial Officer of the Township of Irvington, and the appropriation to be charged for this expenditure is: 100 - 108 Grace Street, LLC, Cert. No. R7-00005 in the amount of \$120,000.00.

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				INMAN	X			
COX	X				JONES, 2ND VICEPRESIDENT	X			
FREDERIC	X				LYONS, PRESIDENT	X			
DR. HUDLEY	X								

PRESIDENT OF COUNCIL

MUNICIPAL CLERK

DATE **JAN. 10, 2017**

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

DATE

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): **EDGO Dir.**

REDEVELOPER AGREEMENT

By and Between

THE TOWNSHIP OF IRVINGTON

As Redevelopment Entity

and

100 Grace Street, LLC.

as Redeveloper

Dated: January 9, 2017

TABLE OF CONTENTS

THIS REDEVELOPER AGREEMENT (the "**Agreement**") made this ____ day of _____, 20__ by and between

THE TOWNSHIP OF IRVINGTON, a public body corporate and politic of the State of New Jersey, having its offices at Municipal Building, 1 Civic Square, Irvington, New Jersey 07111 in its capacity as a "redevelopment entity" pursuant to *N.J.S.A. 40A:12A-4(c)* (hereinafter referred as the "**Township**");

AND

100 Grace St., LLC whose address is **60 Wilbur Road, New Jersey, 07621** (together with permitted successors or assigns hereinafter referred to as the "**Redeveloper**");

WITNESSETH

WHEREAS, the Municipal Council of the Township of Irvington (the "**Township Council**") designated the entire area of the Township as an area in need of rehabilitation (the "**Rehabilitation Area**") by Resolution UEZ 15-0623-9, dated June 23, 2015, after receiving a report from the Township Engineer that within the entire area of the Township, the water and sewer lines are at least 50 years old and are in need of substantial maintenance, and that the designation of the Rehabilitation Area as an area in need of rehabilitation is expected to prevent further deterioration and to promote the overall development of the Township (the "**Report**") and in accordance with the requirements of *N.J.S.A. 40:12A-14*; and

WHEREAS, pursuant to *N.J.S.A. 40:12A14*, prior to the adoption of a resolution designating the Rehabilitation Area as an area in need of rehabilitation, the Township Council submitted a copy of the proposed resolution designating the Rehabilitation Area as an area in need of rehabilitation to the Township Planning Board (the "**Planning Board**") for its review; and

WHEREAS, the Planning Board reviewed Resolution UEZ 15-0623-9 prior to its adoption and recommended that the Rehabilitation Area satisfied the statutory criteria for it to be designated as an area in need of rehabilitation in accordance with the requirements of *N.J.S.A. 40A:12A-14*; and

WHEREAS, the Redeveloper is the owner of certain property designated as **Tax Block 219, Lots 6.01, 6.02, 6.03, 6.04, 6.05 and 6.06**, more commonly known by the street addresses of 100 – 108 Grace Street, Irvington, New Jersey 07111 (the "**Property**"); and

WHEREAS the Property is located in the Rehabilitation Area; and

WHEREAS, the project proposed by the Redeveloper is **the completion of six (6) single family homes that the Redeveloper will transfer as affordable housing consistent with HUD Affordable Housing Guidelines as a result of the Township's Award of \$120,000.00 or \$20,000.00 per unit to make the homes affordable** (the "**Project**"); and

THIS REDEVELOPER AGREEMENT (the “**Agreement**”) made this ____ day of _____, 20__ by and between

THE TOWNSHIP OF IRVINGTON, a public body corporate and politic of the State of New Jersey, having its offices at Municipal Building, 1 Civic Square, Irvington, New Jersey 07111 in its capacity as a “redevelopment entity” pursuant to *N.J.S.A. 40A:12A-4(c)* (hereinafter referred as the “**Township**”);

AND

100 Grace St., LLC whose address is **60 Wilbur Road, New Jersey, 07621** (together with permitted successors or assigns hereinafter referred to as the “**Redeveloper**”):

WITNESSETH

WHEREAS, the Municipal Council of the Township of Irvington (the “**Township Council**”) designated the entire area of the Township as an area in need of rehabilitation (the “**Rehabilitation Area**”) by Resolution UEZ 15-0623-9, dated June 23, 2015, after receiving a report from the Township Engineer that within the entire area of the Township, the water and sewer lines are at least 50 years old and are in need of substantial maintenance, and that the designation of the Rehabilitation Area as an area in need of rehabilitation is expected to prevent further deterioration and to promote the overall development of the Township (the “**Report**”) and in accordance with the requirements of *N.J.S.A. 40:12A-14*; and

WHEREAS, pursuant to *N.J.S.A. 40:12A14*, prior to the adoption of a resolution designating the Rehabilitation Area as an area in need of rehabilitation, the Township Council submitted a copy of the proposed resolution designating the Rehabilitation Area as an area in need of rehabilitation to the Township Planning Board (the “**Planning Board**”) for its review; and

WHEREAS, the Planning Board reviewed Resolution UEZ 15-0623-9 prior to its adoption and recommended that the Rehabilitation Area satisfied the statutory criteria for it to be designated as an area in need of rehabilitation in accordance with the requirements of *N.J.S.A. 40A:12A-14*; and

WHEREAS, the Redeveloper is the owner of certain property designated as **Tax Block 219, Lots 6.01, 6.02, 6.03, 6.04, 6.05 and 6.06**, more commonly known by the street addresses of 100 – 108 Grace Street, , Irvington, New Jersey 07111 (the “**Property**”); and

WHEREAS the Property is located in the Rehabilitation Area; and

WHEREAS, the project proposed by the Redeveloper is contemplated to consist of [PROJECT DESCRIPTION] (the “**Project**”); and

WHEREAS, the Property is currently subject to the *Township-Wide Area in need of Rehabilitation Redevelopment Plan* (the “**Existing Redevelopment Plan**”) which was duly

adopted by the Municipal Council of the Township of Irvington (the "**Township Council**") pursuant to the *Local Redevelopment and Housing Law*, N.J.S.A. 40A:12A-1 *et seq.* (the "**Redevelopment Law**") and in accordance with the procedures set forth therein; and

WHEREAS, in accordance with the Redevelopment Law and by resolution duly adopted on _____, 20__ the Township Council authorized the Planning Board to conduct a preliminary investigation of the Property to determine if the Property meets the criteria of an area in need of redevelopment under the Redevelopment Law, (the "**Redevelopment Area**"); and

WHEREAS, pursuant to N.J.S.A. 40A:12A-4(a)(3) and N.J.S.A. 40A:12A-7 the Township Council is empowered to adopt a redevelopment plan pursuant to which redevelopment projects are to be undertaken or carried out within an "area in need of redevelopment," and

WHEREAS, in accordance with the provisions of N.J.S.A. 40A:12A-7 the Township utilized the Planning Board's experience and expertise in evaluating a proposed redevelopment plan (the "**Redevelopment Plan**") for the Redevelopment Area to determine, among other things, its consistency with the Township's land use and redevelopment goals and objectives; and

WHEREAS, the Planning Board reviewed the Redevelopment Plan and forwarded the Redevelopment Plan to the Township Council for adoption, which Redevelopment Plan was adopted by Ordinance No. _____ dated _____, 20__ in accordance with the requirements of N.J.S.A. 40A:12A-7; 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 Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 *et seq.* (the "Act"); and

WHEREAS, the Redeveloper submitted information outlining its financial capabilities, experience, expertise and project concept descriptions for the Project and requested designation by the Township as the redeveloper for the Property (the "**Redeveloper Application**") attached hereto as Exhibit A; and

WHEREAS, the Township has determined that the redevelopment of the Property in accordance with applicable provisions of the Redevelopment Plan will contribute to the rehabilitation and reinvigoration of the Township and to the social and economic improvement of the Township in accordance with the legislative intent, goals and objectives of the Act; and

WHEREAS, the Township evaluated the Redeveloper Application according to criteria which included project concept descriptions and determined to commence negotiations with Redeveloper to enter into a redevelopment agreement; and

WHEREAS, in order to implement the development, financing, construction, operation and management of the Project, the governing body of the Township has determined to designate the Redeveloper as the "redeveloper" (as defined in the Act) of the Property and to enter into this

Agreement, which specifies terms of the redevelopment of the Property and the rights and responsibilities of the Township and the Redeveloper with respect to the Project.

NOW THEREFORE, in consideration of the promises and mutual covenants herein contained, the parties hereto 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," unless otherwise specified. All references to Sections, Articles or Exhibits shall refer to Sections, Articles or Exhibits in this Agreement unless otherwise specified.

"Act" shall mean the New Jersey Local Redevelopment and Housing Law, *N.J.S.A. 40A:12A-1 et seq.*

"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 _____ in recordable form that the Redeveloper has Completed Construction of the Project (or a relevant Phase or portion thereof) in accordance with the requirements of this Redevelopment 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 Uniform Construction Code.

"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 Certificates of Occupancy for the Project, subject to (i) completing minor conditions of the Governmental Approvals; and (ii) installation of landscaping, final fixtures, and floor coverings.

“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.

“Effective Date” shall mean the date this Agreement is executed by the Township and Redeveloper.

“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.

“Governmental Approvals” shall mean all governmental approvals required for the construction of the Project, including, without limitation: 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; 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” no applicable.

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

“Notice” is defined in Section 6.07

“Planning Board” shall be as defined in the recitals hereto..

“Plans” shall mean the plans, including site plans, building floor plans, building elevations, architectural renderings for the Project or any portion thereof. “Plans” shall include,

but shall not be limited to, the minimum requirements of Applicable Laws or the Redevelopment Plan depending on the context of its use in this Agreement.

“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.

“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 Fee” is defined in Section 4.05

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

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

“State” shall mean the State of New Jersey.

“Termination Notice” is defined in Section 6.02.

“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 the Township. The Township hereby makes the following representations and warranties:

(a) The Redevelopment Plan has been duly adopted in compliance with all Applicable Laws and is currently in full force and effect.

(b) The Township is a municipal corporation, duly organized and existing under the laws of the State, that has the legal power, right and authority pursuant to the Act to enter into this Agreement and the instruments and documents referenced herein to which the Township is a party, to consummate the transactions contemplated hereby, to take any steps or actions contemplated hereby, and to perform its obligations hereunder and has duly executed this Agreement.

(c) All requisite action has been taken by the Township and all requisite consents have been obtained in connection with entering into this Agreement and the instruments and documents referenced herein to which the Township is a party, and the consummation of the transaction contemplated hereby, and to the best of the Township's knowledge and belief are authorized by all Applicable Laws. To the best knowledge of the Township there are no writs, injunctions, orders or decrees of any court or governmental body that would be violated by the Township entering into or performing its obligations under this Agreement.

(d) This Agreement has been duly executed by the Township, and is valid and legally binding upon the Township and enforceable in accordance with its terms on the basis of laws presently in effect and the execution and delivery thereof shall not, with due effect and the execution and delivery thereof shall not, with due notice or the passage of time, constitute a default under or violate the terms of any indenture, agreement or other instrument to which the Township is a party.

(e) The Township represents that to the best of its 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 questions the validity of the Redevelopment Plan or this Agreement or any action or act taken or to be taken by the Township pursuant to the Redevelopment Plan or Agreement.

(f) The use(s) of the Property, as contemplated by this Agreement, are authorized by the Act, Applicable Laws and the Redevelopment Plan.

2.02 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 duly organized and a validly existing legal entity under the laws of the State and all necessary resolutions 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 Redeveloper's behalf.

(c) 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.

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

(e) 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.

(f) To the best of their 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.

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

(h) 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.

(i) 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.

(j) 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.

ARTICLE 3

COVENANTS AND RESTRICTIONS

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

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

(a) Redeveloper shall construct the Project on the Property in accordance with the Redeveloper Application and the Redevelopment Plan.

(b) Redeveloper shall not sell, lease or otherwise transfer all or any portion of the Property without the written consent of the Township provided however that a Certificate of Occupancy shall constitute written approval for the sale or lease of a residential unit or retail space for which such Certificate of Occupancy has been issued a copy of which must be provided to the Department of Economic Development and Grants Oversight.

(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 authorizing the occupancy and uses 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.

(h) Redeveloper will promptly pay the Township Costs upon execution of this Agreement and any and all taxes, service charges or similar obligations when owed to the Township with respect to any property situated in the Township.

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 affordability restriction attached to this properties. 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

such 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

PROJECT DETAILS

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

4.02. Redeveloper Deadline: Governmental Approvals, Commencement of Construction and Completion of Construction. (a) Within ____ (#) [days/year] of the Effective Date, Redeveloper shall submit all applications for Governmental Approvals necessary for the Project.

(b) Within ____ (#) [days/year] of the receipt of all Building Permits, Redeveloper shall Commence Construction.

(c) Within ____ (#) [days/year(s)] of the receipt of all Building Permits, Redeveloper shall Complete Construction.

4.03. Certificates of Occupancy and Certificates of Completion. (a) Upon Completion of Construction pursuant to 4.02, Redeveloper shall apply to the appropriate governmental officer or body for a Certificate of Occupancy.

(b) Following the issuance of all of the Certificates 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 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.

4.04. 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.

4.05. Redevelopment Fee. Not applicable.

ARTICLE 5

EVENTS OF DEFAULT; TERMINATION

5.01. 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) 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" or 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.

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

(c) (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 its assets; (ii) a custodian shall have been legally appointed with or without consent of Redeveloper; (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 or has taken advantage of any insolvency law; or (iv) Redeveloper shall have suspended the transaction of its usual business.

(d) Redeveloper (i) fails to perform its obligations with respect to 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.

(e) 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.

(f) Cancellation or termination by reason of any act or omission of Redeveloper of any insurance policy, performance or completion, 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.

5.02. 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.

5.03. 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 its 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 a Force Majeure Event.

5.04 No Waiver. Except as otherwise expressly provided in this Agreement, any failure or delay by the Township in asserting any of its rights or remedies as to any default by Redeveloper, shall not operate as a waiver of such default, or of any such rights or remedies, or to deprive the Township 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.

5.05 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.

5.06 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 Redevelopment 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 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 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 may elect to terminate this Agreement.

ARTICLE 6

MISCELLANEOUS

6.01. 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.

6.02. Non-Liability of Officials and Employees of the Township and Redeveloper. 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. Redeveloper, and its employees, officers, or members shall not be personally liable to Township in the event of any default or breach by Redeveloper, or for any amount which may become due to Redeveloper or its successor, or any obligation under the terms of this Agreement.

6.03. 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 Developer and the Director of the Department of Economic Development and Grants Overnight.

6.04. Exhibits. Any and all Exhibits annexed to this Agreement are hereby made a part of this Agreement by this reference thereto.

6.05. 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.

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

6.07. 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:

To Redeveloper: [Redeveloper]

With copies to:

6.08. 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 and consultants, representatives and employees, agents, attorneys and consultants, representatives and employees and 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 5.07 in the event that the indemnification otherwise due pursuant to this Section 5.07 is attributable to the gross negligence of the Township.

6.09. Contingency for Approvals of Project, Government Approvals and/or Building Permits. In addition to all other portions of this Agreement, Redeveloper's obligation to proceed under this Agreement is expressly contingent upon receipt of Project Approval.

(a) Approvals. Redeveloper's final obligation to proceed under this Agreement is contingent upon the ability of Redeveloper to verify: (i) the Township's full and final approval of the Project for the subject Property (ii) obtain all required final 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. 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 6.09(a) are not obtained by [DATE] 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 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.

IN WITNESS WHEREOF, the parties have executed this Redeveloper Agreement effective as of the latest date of the signatures affixed hereto.

EXHIBIT A

FORM OF DECLARATION OF COVENANTS AND RESTRICTIONS

Affordable Housing Covenants

Sale, Lease and Use of the Property is governed by the Deed of Easement and Restrictive Covenants filed against the Property and recorded in the Essex County Clerk's Office on _____ instrument number _____, Deed Book _____ at Page _____, and is subject to all remedies set forth in the Restrictions.

The development of this Property has been subsidized by the Township of Irvington (the "Township") with funding from HOME Program Funds ("HOME") from the United States Department of Housing and Urban Development (HUD). The intent of the Affordable Housing Covenants is to bind the Grantee, its successors and/or assigns, those certain encumbrances, conditions, covenants, and restrictions set forth below, which encumbrances, conditions, covenants, and restrictions are expressly being made for the benefit of the Township and the public at large. The Township's Department of Economic Development and Grants Oversight shall serve as the administrative agent hereunder (the "Administrative Agent")

The Property is subject to the U.S. Department of Housing and Urban Development's ("HUD") HOME Program regulations and procedures governing resale. Specifically, the resale of the Property by the Grantee named herein or any future grantee must meet the affordability requirements set forth in 24 CFR 92.252 and 24 CFR 92.254 (the "Regulations"), as applicable, and as amended from time to time. Consistent with the Regulations, the following covenants (the "Affordable Housing Covenants") shall run with the land for the period of time specified herein and commencing on the date hereof:

- A. The Property shall remain subject to the affordability requirements of the Regulations for a period of ten (10) years from the date hereof (the "Restricted Period");
- B. During the Restricted Period, the initial purchaser shall at all times maintain the Property as his or her principal place of residence
- C. The Property shall be conveyed only to a household who intends to occupy the Property as its principal residence and who has been approved in advance and in writing by the Administrative Agent in accordance with the Regulations.
- D. The Property shall only be sold for an amount that does not exceed the maximum resale price (the "MRP") as established by the Administrative Agent pursuant to the Regulations; and,

- E. No refinancing, equity loan, secured letter of credit, or any other mortgage obligation or other debt (collectively, "Debt") secured by the Property, may be incurred except as approved in advance and in writing by the Administrative Agent. At no time shall the Administrative Agent approve any such Debt, if incurring the Debt would make the total of all such Debt exceed Ninety-Five Percent (95%) of the applicable MRP.
- F. Except as set forth in G, below, at no time shall the owner of the Property lease or rent the Property to any person or persons, except on a short-term hardship basis as approved in advance and in writing by the Administrative Agent.
- G. If the Property is a two-family home, the owner shall lease the rental unit only to income-certified low-income households approved in writing by the Administrative Agent, shall charge rent no greater than the maximum permitted rent as determined by the Administrative Agent, and shall submit for written approval of the Administrative Agent copies of all proposed leases prior to having them signed by any proposed tenant.
- H. No improvements may be made to the Property that would affect its bedroom configuration, and in any event, no improvement made to the Property will be taken into consideration to increase the MRP, except for improvements approved in advance and in writing by the Administrative Agent.

Remedies for Breach of Affordable Housing Covenants

A breach of the Affordable Housing Covenants will cause irreparable harm to the City and to the public. Therefore, in accordance with the Regulations:

- A. In the event of a threatened breach of any of the Affordable Housing Covenants by the Grantee, or any successor in interest or other owner of the Property, the City shall have all remedies provided for at law or equity, including the right to seek injunctive relief or specific performance.
- B. Upon the occurrence of a breach of any Affordable Housing Covenants by the Grantee, or any successor in interest or other owner of the Property, the City shall have all remedies provided at law or equity, including but not limited to forfeiture, foreclosure, recouping any funds from a sale in violation of the Covenants, diverting of rent proceeds from illegal rentals, injunctive relief to prevent further violation of said Covenants, entry on the premises, specific performance, and any other remedies provided for at law or equity.

REDEVELOPER APPLICATION

EXHIBIT B

