

RESOLUTION OF THE TOWNSHIP OF IRVINGTON, NJ

No. **EDGO 17-0315-13**

Date of Adoption **MAR 15 2017**

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

Legislative Research Officer

PRESENTED BY COUNCIL MEMBER **FREDERIC** SECONDED BY **JONES**

RESOLUTION OF THE TOWNSHIP OF IRVINGTON, IN THE COUNTY OF ESSEX AUTHORIZING AN AMENDMENT TO THE DESIGNATION OF TORO REDEVELOPERS, LLC AS REDEVELOPER OF CERTAIN PROPERTIES LOCATED WITHIN THE TOWNSHIP OF IRVINGTON

WHEREAS, pursuant to the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq. (the "LRHL"), the Mayor and Municipal Council of the Township of Irvington (the "Township Council"), by resolution dated November 9, 2016 designated as an "area in need of rehabilitation" the entire area of the Township of Irvington, in the County of Essex (collectively, the "Property") and including without limitation, real property within the Township known as;

WHEREAS, on November 10, 2016 the Township of Irvington Municipal Council designated Toro Redevelopers, LLC as redeveloper of 81 Berkshire Place by Resolution No. UEZ16-1110-22

WHEREAS, Toro Redevelopers, LLC is seeking to be designated as redeveloper of 178 Union Avenue (the "Properties") as an area in need of rehabilitation pursuant to the LRHL (the "Rehabilitation 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, pursuant to that authority the Township Council caused a redevelopment plan for the Property to be prepared, entitled the *Redevelopment Plan Township-Wide Area in need of Rehabilitation* (the "Redevelopment Plan"); and

WHEREAS, the Township Council duly adopted a redevelopment plan governing the Rehabilitation Area, including, but not limited to, the Property above; and;

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

WHEREAS, Toro Redevelopers, LLC whose address is 90 40th Street, Irvington, New Jersey, 07111 (the "Redeveloper") submitted to the Township a Redeveloper's Application outlining the concept for the rehabilitation of the Property into mixed use commercial and residential units (the "Project") for review and consideration as to that portion of the Rehabilitation Area identified as the Property; and

WHEREAS, the Redeveloper submitted information in its Redeveloper's Application outlining its financial capabilities, experience, expertise and project concept descriptions for the Project and requested designation by the Township as the redeveloper for the Project; and

WHEREAS, the Township evaluated the Redeveloper's proposal according to criteria which included project concept descriptions and made the determination that the redevelopment of the Property thereof is in accordance with applicable provisions of the Redevelopment Plan will contribute to the rehabilitation of the Township in accordance with the legislative intent, goals and objectives of LRHL; and;

WHEREAS, the Township owns municipal tax liens attached to the Property and intends to initiate In Rem Foreclosure proceedings to acquire title to the Property and will subsequently transfer title to the Redeveloper pursuant to the attached Escrow Agreement affixed as Exhibit A.

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

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

2 Designation of the Developer. Toro Redevelopers, LLC is hereby designated as redeveloper, pursuant to N.J.S.A. 40A:12A-1 et seq., of the Project, subject to transfer of title of the Properties to the Redeveloper and the subsequent execution of a Redevelopment Agreement once transfer has taken place.

3 Execution of the Escrow Agreement to cover the Township's cost of Foreclosing on the Property.

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

PRESIDENT OF COUNCIL

MUNICIPAL CLERK

DATE **MAR 15 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

MAR 15 2017

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

**TOWNSHIP OF IRVINGTON
AMENDED FORECLOSURE ESCROW AGREEMENT**

THIS AMENDED ESCROW AGREEMENT ("Escrow Agreement") is made as of the ____ day of _____, 2017 by and between **Toro Redevelopers, LLC., by and through its agent, Samuel Cherilus** (the "**Proposed Redeveloper**"), with an address at 90 40th Street, Irvington, New Jersey, 07111 and **THE TOWNSHIP OF IRVINGTON**, a body corporate and politic of the State of New Jersey, (the "**Township**"), with an address at Irvington Township Municipal Building, 1 Civic Square, Irvington, New Jersey 07111.

WITNESSETH:

WHEREAS, the Proposed Redeveloper and the Township, in its capacity as redevelopment entity, intend to negotiate and enter into a Redevelopment Agreement (the "**Agreement**"), with the Proposed Redeveloper, **Toro Redevelopers, LLC.**, 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**"), comprising the following two (2) properties: **81 Berkshire Place, Block 228 Lot 3 and 178 Union Avenue, Block 264 Lot 9** on the Official Tax Maps of the Township (the "**Project Area**");

WHEREAS, the Township intends to initiate foreclosure proceedings on the above referenced properties and upon acquisition of title, enter into an agreement transferring title of said properties for a price to be determined pursuant to the terms of the Township's "Escrow Foreclosure Property Sale Policy" that was in effect as of the date of the signing of this agreement"; and,

WHEREAS, to facilitate foreclosure of the herein referenced properties, and as a precondition thereto, the Proposed Redeveloper has deposited with the Township the initial amount of **FIVE THOUSAND DOLLARS and 00/100 (\$5,000.00) 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 for one (1) uncontested in rem foreclosure actions at **FIVE THOUSAND DOLLARS and 00/100 (\$5,000.00) DOLLARS for each action** initiated by or on behalf of the Township arising out of or in connection with initiating and completing said action on the above referenced properties.

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 and/or the redevelopment application and

implementation process, including any applications for land use approvals that may be needed to implement the eventual 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 litigation expenses, administrative and professional charges incurred with the in rem foreclosure proceeding and transfer of the property to the Proposed Redeveloper this can include, but will not be limited to, selection and designation of the Proposed Redeveloper as Redeveloper, the negotiation and preparation of this 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 underlying foreclosure action.**

(b) Properly reimbursable professional charges shall be reasonable and necessary and shall relate to Reimbursable Activities performed by Township staff, 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 council committee held at the request of or with the consent of the Proposed Redeveloper, at an **additional** cost of up to \$1,000.00.

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 for the cost associated with preparing, filing, serving and litigation a foreclosure complaint and all administrative and professional costs associated or incurred there to.

(b) Administrative and Professional charges paid out of the escrow account shall include administrative 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 associated with the in rem litigation

proceeding as well as the cost of Township staff and outside professionals or consultants, including normal and typical expenses incurred in connection with such Reimbursable Activities.

(c) Each payment for outside 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 underlying in rem foreclosure action(s) is contested the Township will immediately notify the Proposed Redeveloper to facilitate the Proposed Redeveloper add additional funds up to **FIVE THOUSAND and 00/100 (\$5,000.00) DOLLARS per action to cover the cost increase anticipated from the contested action.** The Proposed Redeveloper shall deposit to the escrow account said additional funds within ten (10) business days of the Township's notice, failing which the Township may unilaterally cease work without liability to the Proposed Redeveloper.
6. **Contested Foreclosure.** In the case of a contested foreclosure, the Proposed Redeveloper has the right to terminate this agreement. The Township may choose to continue with the foreclosure proceeding and, if so, will attempt to recover costs incurred if the lien is redeemed or the matter is settled. Notwithstanding, if the Proposed Redeveloper exercises his/her/its rights with respect to this section, this Agreement is null and void except the return of Redeveloper's un-expensed escrow funds.
7. **Close Out Procedures.** Upon termination of the Agreement pursuant to section 6 above, the Proposed Redeveloper shall send written notice by certified mail to the Township of Irvington, Department of Economic Development and Grants Oversight, 1 Civic Square, Room 102, Irvington, New Jersey 0711, 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 thirty (30) days, and if so requested shall send an informational copy simultaneously to the Proposed

Redeveloper. Within thirty (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. **Completion of Foreclosure.** Upon completion of the foreclosure proceeding by the granting of a Final Judgment of Foreclosure by a Court of Competent Jurisdiction, the Township will immediately notify the Proposed Redeveloper. At such time, the Proposed Redeveloper and the Township will meet to complete a Redevelopment Agreement and any applicable plans, which will include the transfer or title of the above referenced properties to the Proposed Redeveloper, as outlined in this Agreement. The transfer of the property will be subject to the terms the Redevelopment Agreement and said Agreement will include a reversion of the subject property if same is not developed by the timelines set therein.
8. **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 fifteen (15) 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 thirty (30) 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 is not assignable or valid if transferred to any successor(s) of interest or heirs.

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 _____
Genia C. Philip, Esq., Director
Department of Economic
Development and Grants Oversight

Witness or Attest:

Toro Redevelopers, LLC.

By: _____
Samuel Cherilus, Sole Member