

REGULAR COUNCIL MEETING  
MAY 10, 2021

Virtual Zoom Meeting  
Irvington, N.J. – Monday Evening  
May 10, 2021 - 7:30 P.M.

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

Present: Vernal C. Cox, Sean C. Evans, Charnette Frederic, October Hudley, Orlander G. Vick, Renee C. Burgess, President

Absent: Jamillah Z. Beasley

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

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

There were no requests to be heard.

5. Hearing of Council Members

There were no requests to be heard.

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

A. Reports

1. Municipal Court - Weekly Summary Report – April 21, 2021 to April 23, 2021
2. Municipal Court - Weekly Summary Report – April 26, 2021 to April 30, 2021

7. Reports of Committees

A. Bid Results - Snow Removal and Hauling – May 5, 2021

8. Ordinances, Bills & Claims

A. Ordinances on First Reading

None

B. Ordinances on Second Reading

None

C. Bills & Claims

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Cox - Hudley 1. Bill Lists

RESOLVED THAT THE BILLS AND CLAIMS AGAINST THE TOWNSHIP OF IRVINGTON FOR A PERIOD MAY 10, 2021 AS ENUMERATED ON THIS LIST FOR MATERIALS, SUPPLIES AND SERVICES FURNISHED, DELIVERED AND/OR PERFORMED HAVE BEEN CERTIFIED BY THE DEPARTMENTS AS CORRECT, EACH CLAIM AND PURCHASE ORDER HAVE BEEN VERIFIED AND REVIEWED FOR THE AVAILABILITY OF FUNDS, ACCURACY OF ACCOUNT CODING AND COMPLETENESS BY THE ADMINISTRATION, THEREFORE:

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

BILL LIST \$4,968,880.71

Adopted  
Absent: Beasley

Cox - Hudley 2. Payrolls

May 7, 2021

REGULAR	OVERTIME	OTHER	TOTAL
\$1,600,632.71	\$123,519.34	\$164,185.23	\$1,888,337.28

Adopted  
Absent: Beasley

9. Resolutions and Motion

A. Resolutions

Cox - Hudley 1. Designate Hilltop Partners Redeveloper, LLC as Redeveloper For The Redevelopment of the Former Irvington General Hospital Site, 832 Chancellor Avenue, Block 324, Lots 1.01, 1.02, 1.03, 1.04, 1.05, 1.06 and 1.07; and Authorizing the Execution of an Amended and Restated Redevelopment Agreement

**RESOLUTION OF THE TOWNSHIP OF IRVINGTON, COUNTY OF ESSEX, DESIGNATING HILLTOP PARTNERS REDEVELOPER, LLC AS REDEVELOPER FOR THE REDEVELOPMENT OF THE FORMER IRVINGTON GENERAL HOSPITAL SITE, IDENTIFIED ON THE OFFICIAL TAX MAPS OF THE TOWNSHIP AS BLOCK 324, LOTS 1.01, 1.02, 1.03, 1.04, 1.05,**

**1.06 AND 1.07; AND AUTHORIZING THE EXECUTION OF AN AMENDED & RESTATED REDEVELOPMENT AGREEMENT**

**WHEREAS**, the Municipal Council (the “**Township Council**”) of the Township of Irvington (the “**Township**”), a public body corporate and politic of the State of New Jersey, is authorized pursuant to the Local Redevelopment and Housing Law, *N.J.S.A. 40A:12A-1 et seq.* (the “**Redevelopment Law**”), to determine whether certain parcels of land within the Township constitute an area in need of rehabilitation and/or an area in need of redevelopment; and

**WHEREAS**, the Township Council, by Resolution 94-0809-5 dated August 9, 1994, created the Township Urban Enterprise Zone (the “**UEZ**”) pursuant to the New Jersey Urban Enterprise Zones Act, *N.J.S.A. 52:27H-60 et seq.* (the “**UEZ Act**”); and

**WHEREAS**, the Township Council designated certain properties within and contiguous to the UEZ as an area in need of rehabilitation (the “**UEZ Rehabilitation Area**”) by Resolution UEZ 07-0227-5, dated February 27, 2007 in accordance with the requirements of *N.J.S.A. 40A:12A-14*; and

**WHEREAS**, the Township Council duly adopted a redevelopment plan by Ordinance MC No. 3351 dated September 11, 2007, to govern the redevelopment of the UEZ Rehabilitation Area, (as amended and supplemented from time to time, the “**Redevelopment Plan**”) in accordance with *N.J.S.A. 40A:12A-7*; and

**WHEREAS**, pursuant to the Redevelopment Law, including Section 8 thereof (*N.J.S.A. 40A:12A-8*), a municipality is permitted to contract with a redeveloper to undertake redevelopment projects pursuant to a redevelopment plan within the area designated in that plan; 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”, as such term is defined at *N.J.S.A. 40A:12A-3*, responsible for carrying out redevelopment projects in accordance with the Redevelopment Plan, pursuant to *N.J.S.A. 40A:12A-4(c)*; and

**WHEREAS**, in order to effectuate the Redevelopment Plan, on September 9, 2019 the Township Council adopted Resolution No. OCDP 19-0909-20, authorizing the execution of an amended and restated redevelopment agreement with Hilltop Partners Redeveloper, LLC (the “**Redeveloper**”), for the multi-phase redevelopment of certain property now identified on the tax maps of the Township as Block 324, Lots 1.01, 1.02, 1.03, 1.04, 1.05, 1.06, and 1.07 (created through the subdivision of the parcel previously identified as Block 324, Lot 1) and formerly referred to as the Irvington General Hospital Site (the “**Project Area**”), and to set forth the terms and conditions with respect to such development (the “**2019 Agreement**”, which was not executed); and

**WHEREAS**, the Redeveloper has proposed certain modifications to the construction schedule, implementation and scope of Phase Two, Phase Three, Phase Four and Phase Five of the “project”, as defined in the 2019 Agreement (Phase One of which was completed), and has submitted to the Township for its review and consideration a concept plan for the revised project to be undertaken on the Project Area as described below:

Phase	Lot(s)	Description
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Phase One	1.04	One hundred fourteen (114) residential units and associated parking
Phase Two	1.05	Six (6) story senior housing complex with approximately ninety-six (96) residential units, a parking garage with approximately one hundred two (102) parking spaces, four (4) additional outdoor surface parking spaces and associated site improvements
Phase Three	1.02	Six (6) story building with approximately -eighty-eight (88) residential units with associated parking and site improvements
Phase Four	1.07	Six (6) story building with approximately eighty-eight (88) residential units with associated parking and site improvements
Phase Five	1.03	Ten (10) story building with approximately two-hundred twenty-five residential units with associated parking and site improvements (225) residential units with associated parking and site improvements
Phase Six	1.06	Eighteen (18) two-family duplex units with associated parking and site improvements
Phase Seven	1.01	One (1) story, approximately 3,600 sq. ft restaurant with associated parking and site improvements

(the “**Project**”); and

**WHEREAS**, the Redeveloper now proposes to implement Phase Two of the Project on Lot 1.05 of Block 324, by constructing thereon a new six (6) story, senior housing complex consisting of approximately ninety-six (96) apartments units (comprising: approximately four (4) studio units, ninety-one (91) one-bedroom units and one (1) two-bedroom superintendent unit), residential amenities, a new parking garage with approximately ninety-one (91) parking spaces, seven (7) additional outdoor surface parking spaces and associated site improvements on the Project Area (collectively, “**Phase Two**”), as more particularly set forth on Exhibit B annexed hereto and consistent with the present Redevelopment Plan, together with certain related on-site and off-site improvements; and

**WHEREAS**, Phase Two will consist of mixed income residential units with approximately twenty-seven percent (27%) of the residential units to be maintained as market rate rental units and approximately seventy-three percent (73%) of the residential units to be maintained and deed-restricted as affordable rental units, reserved for residents with a household income at or below 80% of the area median income (the “**AMI**”) for Essex County, for a period of forty-five (45) years from the issuance of the certificate of occupancy, in accordance with the Fair Housing Act, *N.J.S.A. 52:27D-301, et seq.*, (the “**Affordable Housing Units**”), which shall be subject to Affordability Controls. Approximately ten percent (10%) of the Affordable Housing Units, seven (7) units, will be set aside for residents with a household income at or below 30% AMI, approximately nine (9) of which set-aside units shall be reserved for special needs individuals; and

**WHEREAS**, the Township has determined that Redeveloper possesses the proper qualifications and experience to implement and complete the Project in accordance with the Redevelopment Plan; and

**WHEREAS**, in order to effectuate the Redevelopment Plan and the Project, the parties wish to amend and restate the 2019 Agreement such that the attached amended and restated redevelopment agreement with the Redeveloper, (the “**Redevelopment Agreement**”, in the form attached hereto as Exhibit A), shall supersede the 2019 Agreement, establish Redeveloper as the “redeveloper” of the Project, as that term is defined in the Redevelopment Law, and specify the respective rights and responsibilities of the Township and the Redeveloper with respect to the Project,

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

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

**Section 2.**     Execution of Redevelopment Agreement Authorized; Redeveloper Designated.

(a)     The Mayor is hereby authorized to execute the Redevelopment Agreement, substantially in the form attached hereto as Exhibit A, subject to modification or revision deemed necessary or desirable in consultation with counsel, and to take all other necessary or appropriate action to effectuate such Redevelopment Agreement. The Redevelopment Agreement shall supersede and replace the 2019 Agreement with respect to the development of the Project Area.

(b)     The Municipal Clerk is hereby authorized and directed, upon the execution of the Redevelopment Agreement in accordance with the terms of Section 2(a) hereof, to attest to the signature of the Mayor upon such document and is hereby further authorized and directed to affix the corporate seal of the Township upon such document.

(c)     Upon the execution and attestation of the Redevelopment Agreement, the Mayor, upon consultation with counsel to the Township, is hereby further authorized to take any and all actions, and execute and deliver such other documents, certificates and instruments necessary, desirable or convenient to effectuate the terms of the Redevelopment Agreement.

(d)     Upon execution of the Redevelopment Agreement, and so long as the Redevelopment Agreement remains in full force and effect, Redeveloper is hereby designated as “redeveloper” for the Project in accordance with the Redevelopment Law.

**Section 3.**     Severability. If any part of this Resolution shall be deemed invalid, such parts shall be severed and the invalidity thereby shall not affect the remaining parts of this Resolution.

**Section 4.**     Availability of the Resolution. A copy of this resolution shall be available for public inspection at the office of the Municipal Clerk.

**Section 5.**     Effective Date. This resolution shall take effect immediately

**EXHIBIT A**

**Form of Amended & Restated  
Redevelopment Agreement**

**AMENDED AND RESTATED  
REDEVELOPMENT AGREEMENT**

**By and Between  
THE TOWNSHIP OF IRVINGTON  
as Redevelopment Entity  
and**

**HILLTOP PARTNERS REDEVELOPER, LLC  
as Redeveloper**

**Dated as of \_\_\_\_\_ 2021**

**THIS AMENDED AND RESTATED REDEVELOPMENT AGREEMENT** (the “**Agreement**” or “**Redevelopment Agreement**”) dated this \_\_\_ day of \_\_\_\_\_ 2021 is entered into by and between **THE TOWNSHIP OF IRVINGTON** (hereinafter referred as the “**Township**”), a public body corporate and politic of the State of New Jersey having its offices at 1 Civic Square, Irvington, New Jersey 07111, in its capacity as redevelopment entity pursuant to N.J.S.A. 40A:12A-4(c), and **HILLTOP PARTNERS REDEVELOPER, LLC**, a New Jersey limited liability company having its offices at 334-336 East 110<sup>th</sup> Street, New York, New York 10029 (the “**Redeveloper**”; and together with the Township, the “**Parties**” or, separately, each a “**Party**”).

**W I T N E S S E T H**

**WHEREAS**, the Municipal Council (the “**Township Council**”) of the Township is authorized pursuant to the Local Redevelopment and Housing Law, *N.J.S.A. 40A:12A-1 et seq.* (the “**Redevelopment Law**”), to determine whether certain parcels of land within the Township constitute an area in need of rehabilitation and/or an area in need of redevelopment; and

**WHEREAS**, the Township Council, by Resolution 94-0809-5 dated August 9, 1994, created the Township Urban Enterprise Zone (the “**UEZ**”) pursuant to the New Jersey Urban Enterprise Zones Act, *N.J.S.A. 52:27H-60 et seq.* (the “**UEZ Act**”); and

**WHEREAS**, the Township Council designated certain properties within and contiguous to the UEZ as an area in need of rehabilitation (the “**UEZ Rehabilitation Area**”) by Resolution UEZ 07-0227-5, dated February 27, 2007 in accordance with the requirements of *N.J.S.A. 40A:12A-14*; and

**WHEREAS**, the Township Council duly adopted a redevelopment plan by Ordinance MC No. 3351 dated September 11, 2007, to govern the redevelopment of the UEZ Rehabilitation Area, (as amended and supplemented from time to time, the “**Redevelopment Plan**”) in accordance with *N.J.S.A. 40A:12A-7*; and

**WHEREAS**, to realize the redevelopment of the UEZ Rehabilitation Area, the Township Council determined to exercise the powers of redevelopment and serve as the “redevelopment entity”, as such term is defined at *N.J.S.A. 40A:12A-3*, responsible for carrying out redevelopment projects in accordance with the Redevelopment Plan, pursuant to *N.J.S.A. 40A:12A-4(c)*; and

**WHEREAS**, Kapwood, LLC (“**Kapwood**”) proposed to acquire certain property within the UEZ Rehabilitation Area now identified on the tax maps of the Township as Block 324, Lots 1.01, 1.02, 1.03, 1.04, 1.05, 1.06, and 1.07 (created through the subdivision of the parcel previously identified as Block 324, Lot 1) and commonly referred to as the Irvington General Hospital Site (the “**Property**”) and to develop thereon a mixed-use development; and

**WHEREAS**, the Township, as the then-owner of the Property, determined that the Property was no longer needed for public use, and that the redevelopment thereof in accordance with applicable provisions of the Redevelopment Plan would 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 Redevelopment Law; and

**WHEREAS**, in order to convey the Property and implement the development, financing, construction, operation and management of the mixed use development, the governing body of the Township determined to enter into that certain Redevelopment and Purchase and Sale Agreement with Kapwood dated October 12, 2012 (the “**2012 Agreement**”); as amended by the First Amendment to the 2012 Agreement dated as of May 10, 2013, the Second Amendment to the 2012 Agreement dated as of May 10, 2013, and the Third Amendment to the 2012 Agreement dated as of May 26, 2016 (collectively, together with the 2012 Agreement, the “**Prior Redevelopment Agreement**”); and

**WHEREAS**, the Township designated Kapwood, LLC as redeveloper of the Property in accordance with the Redevelopment Law and expressly subject to the execution of the 2012 Agreement by Resolution No. UEZ 12-0925-10 dated September 25, 2012; and

**WHEREAS**, Kapwood partnered with Urban Builders Collaborative NJ, LLC (“**UBCNJ**”) to effectuate the development of a mixed-use development to be constructed in seven (7) phases, each located on a distinct portion of the Property (the “**Original Project**”), and in furtherance of the partnership, created Hilltop Partners MM, LLC, a limited liability corporation pursuant to the *New Jersey Limited Liability Company Act, N.J.S.A. 42:2B-1 et seq.* (“**Hilltop MM**”) to acquire the Property from the Township and to act as the redeveloper for the Original Project pursuant to the terms of the Prior Redevelopment Agreement; and

**WHEREAS**, on December 19, 2015, Hilltop MM received governmental approvals for the subdivision of the Property into the seven (7) existing lots, Block 324, Lots 1.01, 1.02, 1.03, 1.04, 1.05, 1.06, and 1.07; and

**WHEREAS**, Hilltop MM undertook the development of Phase One of the Original Project, consisting of the development of 114 residential units and associated parking (“**Phase One**”) on Block 324, Lot 1.04; and

**WHEREAS**, it was contemplated that various phases of the Original Project would be financed, in part, by one or more of the following sources, among others: (1) an award of low income housing tax credits from the New Jersey Housing and Mortgage Finance Agency (“**HMFA**”); (2) Federal Home Loan Bank; (3) conventional financing from private commercial lenders; and/or (4) construction and/or permanent financing through HMFA (collectively, the “**Financing**”); and

**WHEREAS**, the Financing for the Original Project required a separate entity to serve as the guarantor entity, Urban Builder Collaborative, LLC (“**UBC**”) was created and granted a .05% interest in Hilltop MM, such that the ownership percentages for Hilltop MM were: 35% by Kapwood, 64.95% by UBCNJ and .05% by UBC; and

**WHEREAS**, the Financing for Phase One required Hilltop MM to be a single-purpose entity; and

**WHEREAS**, the members of Hilltop MM created the Redeveloper as a special purpose entity, which has the same principal members as Hilltop MM in the same percentages, to serve as the redeveloper for Block 324, Lots 1.01, 1.02, 1.03, 1.05, 1.06, and 1.07 (collectively, the “**Project Area**”); and

**WHEREAS**, on October 12, 2016, by Resolution No. UEZ 16-1012-18, the Township authorized the transfer of title of the Project Area and the assignment of the Redevelopment Agreement relating to the Project Area from Hilltop MM to the Redeveloper, and designated the Redeveloper as the redeveloper of the Project Area; and

**WHEREAS**, Hilltop MM has certified to the Township that construction of Phase One of the Project has been completed on Block 324, Lot 1.04 in accordance with the provisions of the Prior Redevelopment Agreement; and

**WHEREAS**, the Redeveloper has proposed certain modifications to the phasing, construction schedule, implementation and scope of the Original Project (Phase One of which is complete), and has submitted to the Township for its review and consideration a concept plan (the “**Concept Plan**”, attached hereto as Exhibit A) for the revised “**Project**” (as defined herein) to be undertaken on the Project Area; and

**WHEREAS**, the Redeveloper now proposes to implement Phase Two of the Project on Lot 1.05 of Block 324, and to construct thereon a new six (6) story, senior housing complex consisting of approximately ninety-six (96) apartments units (comprising: approximately four (4) studio units, ninety-one (91) one-bedroom units and one (1) two-bedroom superintendent unit), residential amenities, a new parking garage with approximately ninety-one (91) parking spaces, seven (7) additional outdoor surface parking spaces and associated site improvements on the Project Area (collectively, “**Phase Two**”), as more particularly set forth on Exhibit B annexed hereto and consistent with the present Redevelopment Plan, together with certain related on-site and off-site improvements; and

**WHEREAS**, Phase Two will consist of mixed income residential units with approximately twenty-seven percent (27%) of the residential units to be maintained as market rate rental units (the “**Market Rate Units**”) and approximately seventy-three percent (73%) of the residential units to be maintained and deed-restricted as affordable rental units, reserved for residents with a household income at or below 80% of the area median income for Essex County (the “**AMI**”), for a period of forty-five (45) years from the issuance of the certificate of occupancy, in accordance with the Fair Housing Act, *N.J.S.A. 52:27D-301, et seq.*, (the “**Affordable Housing Units**”), which shall be subject to “**Affordability Controls**” as set forth herein. Approximately ten percent (10%) of the Affordable Housing Units, seven (7) units, will be set aside for residents with a household income at or below 30% AMI, approximately nine (9) of which set-aside units shall be reserved for special needs individuals; and

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

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

## ARTICLE 1

### DEFINITIONS

**1.1. Definitions.** Words that are capitalized, and which are not the first word of a sentence, are defined terms. As used in this Agreement, defined terms shall have the meaning assigned to such terms as set forth below.

(a) The following terms shall have the respective meanings ascribed to such terms in the preambles and recitals hereto:

Affordability Controls  
Affordable Housing Units  
Agreement

Project Area  
Property  
Redeveloper



AMI	Redevelopment Agreement
Concept Plan	Redevelopment Law
Financing	Redevelopment Plan
Hilltop MM	Remaining Lots
HMFA	Township
Kapwood	Township Council
Market Rate Units	UBC
Original Project	UBCNJ
Parties/Party	UEZ
Phase One	UEZ Act
Phase Two	UEZ Rehabilitation Area
Prior Redevelopment Agreement	2012 Agreement Project

(b) As used in this Agreement, the following terms shall, unless the context clearly requires otherwise, 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”. All references to Sections, Articles or Exhibits shall refer to Sections, Articles or Exhibits in this Agreement unless otherwise specified.

“**Affiliate**” means: (a) any individual or entity that controls is controlled by or is under common control with the Redeveloper, (b) each individual or entity that owns or controls, whether beneficially or as a trustee, guardian or other fiduciary, equity interest of the Redeveloper, and (c) each of the Redeveloper’s members. The term “control” as used with respect to any Party, means the ownership, directly or indirectly of more than 50% of the voting stock of such corporation (or its equivalent for a limited liability company or partnership), or the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such corporation, partnership, association or other entity or organization, or to receive, directly or indirectly, more than 50% of the profits of such corporation, partnership, association or other entity or organization (whether through the ownership or voting stock, by contracts or otherwise).

“**Affordability Controls**” shall mean restrictions set on rents and tenant income limits on the Affordable Housing Units to be administered by the Redeveloper or its designee, compliance with which will be enforced by the Township or its delegated agent, subject to a deed restriction for a term of forty-five (45) years, as set forth in Section 4.9(b) herein.

“**AMI**” shall mean the area median income for Essex County, as such AMI is promulgated from time to time by the U.S. Department of Housing and Urban Development.

“**Annual Redevelopment Fee**” shall have the meaning set forth in Section 13.2 of this Agreement.

“**Applicable Laws**” shall mean all applicable federal, state and local laws, ordinances, approvals, rules, statutes, permits, resolutions, judgments, orders, decrees, directives, interpretations, standards, licenses and other similar requirements applicable thereto, including but not limited to, the Redevelopment Law; the Municipal Land Use Law, N.J.S.A. 40:55D -1 et seq.; the Fair Housing Act, N.J.S.A. 50:27D-301 et seq.; the New Jersey Housing and Mortgage Finance Agency Law, N.J.S.A. 55:14K-1 et seq.; the Fair Housing Act, the Zoning Ordinances of the Township of Irvington, Environmental Laws as and to the extent applicable pursuant to the terms

of the Redevelopment Plan; and all other applicable federal, state or local zoning, land use, environmental, health and safety laws, ordinances, rules and regulations, and federal and state labor standards or regulations, if any, including but not limited to the Prevailing Wage Act, if applicable.

**“Application”** means any application for Governmental Approvals submitted by or on behalf of the Redeveloper, including the Plans and Specifications, the Concept Plan and all plans, drawings, documentation and presentations necessary and appropriate for the purpose of obtaining any and all Governmental Approvals required to implement and complete the Project.

**“Building Permit”** shall mean, for any Phase, a building permit issued by or on behalf of the Township for such Phase.

**“Certificate of Completion”** means written acknowledgment by the Township in recordable form that the Redeveloper and/or a Project Entity have Completed Construction of the entire Project, substantially 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”, or “Commencement Date”** shall mean, with respect to any Phase of the Project, the date on which the construction force and machinery is mobilized for construction of the Project on the Project Area in accordance with Governmental Approvals as set forth in Section 4.4.

**“Completion of Construction”, “Complete Construction” or “Completion Date”** shall mean the date on which the Redeveloper has substantially completed construction of the Project.

**“Completion Notice”** shall mean a written notification of the Completion of Construction of the Project and request by Redeveloper to the Township Administration for the issuance by the Township of a Certificate of Completion for the Project.

**“Concept Plan”** shall mean a general plan depicting the Improvements which Redeveloper proposes to construct as part of the Project, a copy of which is annexed hereto as Exhibit A.

**“Construction Period”** shall mean the period beginning on the Commencement Date and ending on the Completion Date.

**“Construction Schedule”** shall mean the timetable and performance milestones, as approved in writing by Township Administration, for design, obtaining Governmental Approvals, environmental remediation, site preparation, and Completion of Construction of the Project as contained in the Concept Plan and certified site plan, as may be modified or adjusted from time to time in accordance with the provisions of this Agreement.

**“Days”** shall mean calendar days.

**“Declaration of Covenants and Restrictions” or “Declaration of Restrictions”** shall mean a written instrument to be executed by Redeveloper or Project Entity, initially recorded in the Office of the Essex County Register as of the date of transfer of the Property, and to be updated to the extent necessary to evidence conformance with this Amended and Restated Redevelopment Agreement, and to encumber the Property and run with the land, setting forth certain undertakings of and restrictions applicable to Redeveloper and its permitted successors and assigns in connection with the ownership, redevelopment or rehabilitation of the Project Area, all as more particularly described in Article 6 of this Agreement.

**“Declaration of Reverter”** shall have the meaning set forth within Section 9.8 of this Agreement.

**“Default”** means a condition or event which constitutes or would constitute, after notice and a right to cure or lapse of time or both, an Event of Default as more particularly defined in Article 9 of this Agreement.

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

**“Equity Provider”** shall be as defined in Section 8.3(a).

**“Enforcement Action”** shall be as defined in Section 8.3(b)(ii).

**“Environmental Laws”** means any and all federal, state, regional, and local laws, statutes, ordinances, regulations, rules, codes, consent decrees, judicial or administrative orders or decrees, directives or judgments relating to environmental contamination, damage to or protection of the environment, environmental conditions, or the use, handling, processing, distribution, generation, treatment, storage, disposal, manufacture or transport of Hazardous Substances materials or wastes, presently in effect or hereafter amended, modified, or adopted including, but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act (“CERCLA”), 42 U.S.C. sect. 9601-9675; the Resource Conservation and Recovery Act of 1976 (“RCRA”), 42 U.S.C. sect. 6901, et seq.; the Clean Water Act, 33 U.S.C. sect. 1251, et seq.; the New Jersey Spill Compensation and Control Act (the “Spill Act”), N.J.S.A. 58:10-23.11, et seq.; the Industrial Site Recovery Act, as amended (“ISRA”), N.J.S.A. 13:1K-6, et seq.; the New Jersey Underground Storage of Hazardous Substances Act, N.J.S.A. 58:10A-21, et seq.; the New Jersey Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq.; the New Jersey Environmental Rights Act, N.J.S.A. 2A:35A-1, et seq.; the Site Remediation Reform Act, N.J.S.A. 58:10C-1 et seq. (the “SRRA”); and the rules and regulations promulgated thereunder, as now in force or as may hereinafter be modified or amended.

**“Event of Default”** shall have the meaning set forth within Section 9.2 of this Agreement.

**“Fair Housing Act”** shall mean N.J.S.A. 52:27D-301, et seq.

**“FMR”** shall be as defined in Section 4.9(b)

**“Force Majeure Event”** means causes beyond the reasonable control and not substantially due to the fault or negligence of the party seeking to excuse delay or failure of performance of an obligation hereunder by reason thereof including, but not limited to declarations of public emergency; acts of nature (as to weather-related events, limited to severe and unusual events or natural occurrences such as hurricanes, tornadoes, earthquakes, and floods not reasonably foreseeable at the time the Construction Schedule is approved by the Director); acts of the public enemy; acts of war; fire; epidemics; quarantine restrictions; blackouts; power failures or energy shortages; governmental embargoes; or strikes or similar labor action by equipment or material suppliers or transporters. During any Force Majeure Event that affects only a portion of the Project, the Redeveloper shall to the maximum extent reasonably feasible continue to perform its obligations for the balance of the Project unaffected by the Force Majeure Event. The existence of a Force Majeure Event shall not prevent the Township from issuing a Notice of Default with respect to an Event of Default by the Redeveloper if such Event of Default is not related, in whole or in part, to such Force Majeure Event.

**“General Development Plan”** shall mean the General Development Plan submitted to, and approved by, the Planning Board for the development of the Original Project, as amended by the General Development Plan approved by the Planning Board with respect to the revised Project contemplated herein, all in accordance with the Redevelopment Plan.

**“Governmental Approvals”** means, with respect to any Phase, all final and unappealable local, county, state and federal governmental approvals necessary or appropriate for

implementation and completion of such Phase in accordance with the terms of this Agreement, including without limitation preliminary and final site plan approval; preliminary and final subdivision approval, if and as applicable; environmental permits, including but not limited to storm water drainage permits; utilities-related permits, including permits related to water supply and sewer service; and all other necessary permits, licenses, consents, permissions or approvals from or required by governmental agencies.

**“HUD”** means the U.S. Department of Housing and Urban Development.

**“Improvements”** means buildings, infrastructure and other structures or site improvements constructed on or installed on or at the Project Area, (including, but not limited to, utility lines and structures, sidewalks, curbs, street repaving, drainage facilities, and the like), as a part of or in connection with the Project and in accordance with Governmental Approvals and the Concept Plan.

**“LIHTC” or “Low Income Housing Tax Credit”** or means a credit against federal income tax pursuant to 26 U.S.C. § 42 and the regulations duly promulgated thereunder as administered by the State of New Jersey.

**“LIHTC Application”** means an application to the appropriate department of the State of New Jersey for Low Income Housing Tax Credits in connection with the Project or any Phase thereof.

**“Loan Closing”** means, with respect to any Phase, the closing of all loans and LIHTC financing described in the Project Budget for such Phase.

**“Material Amendment”** shall be as set forth in Section 14.7

**“Minority Business Enterprise”** shall be as defined by the New Jersey Department of Labor.

**“NJHMFA”** shall mean the New Jersey Housing and Mortgage Finance Agency.

**“Notice of Default”** shall have the meaning set forth in Section 9.2(b) of this Agreement.

**“Permitted Transfer”** shall be as defined in Section 7.3. **“Permitted Mortgagee”** shall be as defined in Section 8.2

**“Phase”** means a portion of the Project developed in accordance with this Agreement, as more particularly described in Sections 2.4 and 2.5 of this Agreement.

**“Planning Board”** shall mean the Planning Board of the Township.

**“Plans and Specifications”** shall mean, with respect to any Phase, all plans, drawings, specifications and related documents needed to implement and to complete construction of such Phase in accordance with this Agreement, the Concept Plan, the General Development Plan and all applicable Governmental Approvals.

**“Progress Meeting”** shall be as defined in Section 4.5(b)(i).

**“Progress Report”** shall be as defined in Section 4.5(b) (ii).

**“Project”** means the development of the Project Area as described in Section 2.4 of this Agreement and as further provided in the Concept Plan and the General Development Plan.

**“Project Budget”** shall mean the budget for the Project detailing all the projected Project costs by Phase, including a description of the proposed financing for each Phase and a detailed list of sources and uses for each Phase as approved by the Township Administration.

**“Project Entity”** means a special purpose entity formed by Redeveloper to acquire, finance, construct, own and operate a Phase of the Project, which shall be (i) wholly-owned by Redeveloper; (ii) an Affiliate of Redeveloper, which Redeveloper serves as a general partner or managing member with a controlling interest and such Affiliate was created to syndicate tax credits; or (iii) an entity to be formed, inclusive of the Redeveloper or the managing members of

the Redeveloper as co-managing members and which ownership shall be disclosed to the Township Administration upon creation thereof.

**“Rehabilitation Area”** shall mean the UEZ Rehabilitation Area designated an area in need of rehabilitation by the Township Council in accordance with the Redevelopment Law.

**“Remediation”** or **“Remediate”** means all necessary actions required under Environmental Laws or any other Applicable Law to investigate and clean up, remove, or otherwise respond to the known or suspected presence or threatened discharge of hazardous substances or hazardous wastes on or migrating from the Property, including, as necessary, preliminary assessment, site investigation, remedial investigation, and remedial action.

**“State”** shall mean the State of New Jersey.

**“Termination Notice”** shall have the meaning set forth within Section 9.3 of this Agreement.

**“Township Administration”** shall mean the Township Business Administrator, the Township Director of Community Development and Planning, and the Mayor of the Township

**“Township Costs”** shall mean all reasonable and necessary costs and expenses of the Township incurred in negotiation and implementation of this Redevelopment Agreement, which includes but is not limited to reasonable outside legal engineering, and any planning professionals. “Township Costs” shall not include charges for services performed in the ordinary course of employment by Township employees.

**“Township Costs Escrow”** shall have the meaning set forth in Section 4.8(a)(ii).

**“Transfer”** means: (i) a sale, sublease or conveyance of all or any portion of the Project Area (except for any residential or commercial space leases) or all or any portion of the Project by Redeveloper to a third party prior to Completion of Construction of the entire Project, except that a conveyance to a Project Entity or the sale or conveyance of a portion of the Project Area following completion of the Phase located on such portion of the Project Area shall not constitute a "Transfer" hereunder; (ii) a sale, pledge, joint venture, equity investment or other act or transaction involving or resulting in a change in the ownership or control of Redeveloper or a Project Entity as it exists on the date of this Agreement, including but not limited to any change in the identity of the parties in control of Redeveloper or a Project Entity, except that neither the admission of a non-managing investor member nor the sale or assignment of equity interests in a Project Entity following completion of the Phase owned by such Project Entity shall constitute a “Transfer” hereunder; or (iii) any assignment or other conveyance, voluntary or involuntary, of this Agreement to a third party without the consent of the Township.

**“Transferee”** A permitted, *bona fide* third-party transferee of Redeveloper as successor redeveloper, including but not limited to a Project Entity.

## ARTICLE 2

### **REDEVELOPER DESIGNATION; TERM OF AGREEMENT; THE PROJECT**

**2.1 Redeveloper Designation.** The Township hereby designates and appoints the Redeveloper as the exclusive redeveloper of the Project Area. In connection with such designation and appointment, the Redeveloper has the exclusive right and obligation to perform development and redevelopment activities on the Project Area, under the framework and in accordance with and subject to the terms of this Agreement, the Redevelopment Plan, the approved Concept Plan, the General Development Plan and Applicable Laws.

**2.2 Redeveloper's Scope of Undertaking.** The services and responsibilities undertaken by the Redeveloper shall include environmental remediation of the Project Area required by applicable law, all aspects of the design, development, site preparation, construction and operation of the Project, including, without limitation, engineering, permitting and administrative aspects, the performance of or contracting for and administration and supervision of all construction required in connection with the Project; arrangement for interim and final inspections and any other actions required to satisfy the requirements of all Governmental Approvals necessary to develop the Project Area, all aspects of the funding of the Project, including equity funding and construction, interim and permanent financing, and the ongoing maintenance of the Project Area.

**2.3 Term of Agreement.** This Agreement shall commence on the Effective Date and shall expire upon the issuance of a Certificate of Completion for the entire Project except with regard to those provisions which expressly survive the issuance of a Certificate of Completion, and unless earlier terminated in accordance with the terms hereof.

**2.4 The Project.** The Project to be undertaken on the Project Area shall consist of the multi-phase development of approximately 620 units of multi-family and senior housing with approximately 3,600 square feet of commercial space, a childcare center and associated parking. More specifically, the Project will be constructed in multiple Phases, with each Phase to be developed on a distinct portion of the Project Area as follows:

Phase	Lot(s)	Description
Phase Two	1.05	Six (6) story senior housing complex with approximately ninety-six (96) residential units, a parking garage with approximately one hundred two (102) parking spaces, four (4) additional outdoor surface parking spaces and associated site improvements
Phase Three	1.02	Six (6) story building with approximately -eighty-eight (88) residential units with associated parking and site improvements
Phase Four	1.07	Six (6) story building with approximately eighty-eight (88) residential units with associated parking and site improvements
Phase Five	1.03	Ten (10) story building with approximately two-hundred twenty-five residential units with associated parking and site

		improvements
Phase Six	1.06	Eighteen (18) two-family duplex units with associated parking and site improvements
Phase Seven	1.01	One (1) story, approximately 3,600 sq. ft restaurant with associated parking and site improvements

All Improvements constructed as part of the Project shall be constructed in accordance with the design and construction requirements established by the Township in its Redevelopment Plan and the General Development Plan. Plans and Specifications for the Improvements included within each Phase must be reviewed and approved by the Township Administration, as hereinafter provided, prior to the Commencement of Construction of such Phase, which approval will not be unreasonably withheld, delayed or conditioned provided that such submission is consistent with the Concept Plan, the General Development Plan and the Redevelopment Plan.

**2.5 Project Phases.** The Project will be developed in seven (7) Phases, each located on a distinct portion of the Project Area. The Township acknowledges and agrees that the phasing order set forth in Section 2.4 is the Redeveloper's current best estimate of the order in which the Phases will be developed and is based upon current market conditions and other factors which are likely to change over time. Notwithstanding anything to the contrary in Section 2.4 or elsewhere in this Agreement, the Redeveloper shall have the right to determine the order in which the Phases are developed in its sole and absolute discretion, provided that Phase Two shall be developed first. The Redeveloper may assign its rights hereunder with respect to each Phase to a separate Project Entity, and upon the issuance of a Certificate of Occupancy of any Phase the Redeveloper may sell or transfer the Redeveloper's direct or indirect interest in such Phase to a third party without the consent or approval of the Township Administration.

### ARTICLE 3

#### **PURCHASE AND SALE OF PROPERTY**

**3.1 Purchase and Sale of the Property.** The Parties acknowledge that the Property was transferred from the Township to Hilltop MM on December 26, 2013.

### ARTICLE 4

#### **IMPLEMENTATION OF PROJECT**

**4.1 Implementation of the Project.** For so long as this Agreement and Redeveloper's designation as Redeveloper hereunder shall remain in effect, Redeveloper shall have the exclusive right and obligation to redevelop or rehabilitate the Project Area. The Redeveloper agrees to redevelop or rehabilitate the Project Area in accordance with the terms and conditions of this Agreement, the Redevelopment Plan, the Concept Plan, Applicable Laws, and all Governmental Approvals applicable thereto. All redevelopment activities performed under this Agreement shall be performed timely and diligently and provided in accordance with the level of skill and care ordinarily exercised by developers of comparable developments.

**4.2 Pre-Development and Government Approvals**

(a) **Scope of Governmental Approvals.** The Redeveloper represents that it will cause to be prepared and filed, at Redeveloper's sole cost and expense, all Applications necessary and appropriate for obtaining all Governmental Approvals required to implement each Phase of the Project consistent with the Construction Schedule. All of the Applications shall be in conformity with the Redevelopment Plan, the Concept Plan, the General Development Plan, this Redevelopment Agreement and Applicable Laws. Redeveloper shall provide the Township with a copy of each Application at the same time the Applications are submitted to the governmental agency having jurisdiction over the same and shall have a continuing obligation to promptly provide the Township with copies of all correspondence to and from each governmental agency relating to each Application. Township agrees to support said Applications and assist in the processing of same, so as to avoid any unnecessary delays. Township further agrees to work with Redeveloper in obtaining all necessary approvals consistent with Applicable Law, including but not limited to site plan approvals. Nothing in this Section 4.2(b) shall be construed as restraining the Planning Board from exercising any

legal rights it may have with respect to site plan approval. Failure of the Redeveloper to provide copies of such Applications concurrently to the Township shall not be a material default hereunder if, upon request, Redeveloper provides copies thereof to Township.

- (b) **Diligent Pursuit of Governmental Approvals.** Redeveloper agrees to prosecute all of Redeveloper's Applications diligently and in good faith. Subject to the requirements of Applicable Laws and unless expressly provided otherwise in this Agreement, Redeveloper shall determine when and in what order to file each specific Application. At Redeveloper's reasonable request, the Township will, in its reasonable judgment, sign consents or other documents required in connection with the Applications and will supply information which is in the Township's possession. The Township will, in its reasonable judgment, otherwise cooperate with and support the Redeveloper in connection with the Applications as the Redeveloper and the Redeveloper's counsel may reasonably request. Redeveloper shall apply for final Governmental Approvals for each Phase within twelve (12) months of the issuance of a Certificate of Occupancy for the immediately preceding Phase. Failure to diligently pursue the receipt of any Governmental Approvals shall constitute a Default by the Redeveloper in the performance of its obligations hereunder.
- (c) **Appeals.** If (i) one or more of the Redeveloper's Applications is denied, or approved with conditions that the Redeveloper in its commercially reasonable judgment deems unacceptable, or (ii) anyone contests or challenges the grant of such Governmental Approval to the Redeveloper, then unless the Township consents in advance to a different course of action, and provided Redeveloper reasonably determines that such appeal would be successful, the Redeveloper shall appeal or defend against such action, and during the pendency of the appeal proceeding otherwise continue as the Redeveloper deems appropriate to seek the remaining Governmental Approvals.
- (d) **Application for "Building Permits".** Within twelve (12) months of the receipt of preliminary and final site plan approval from the Planning Board, the Redeveloper shall promptly and in a commercially reasonable manner, submit applications for Building Permits and use commercially reasonable efforts to diligently prosecute the applications to conclusion. Notwithstanding the foregoing, Applications for Building Permits for each Phase must be submitted within ninety (90) days of the expiration of the appeal period applicable to the Governmental Approvals for such Phase.
- (e) **Concept Plan and Plans and Specifications.**
  - (i) The current Concept Plan is attached hereto as Exhibit A. The Concept Plan shall serve as the basis for the Plans and Specifications used by the Redeveloper in seeking Government Approvals.
  - (ii) **Plans and Specifications**
    - (A) The deadline by which the Redeveloper shall submit preliminary Plans and Specifications for the Project to the Township Administration is sixty (60) days after the execution of this Agreement.
    - (B) If the Township Administration provides comments or requires revisions to the Redeveloper's preliminary Plans and Specifications, the Redeveloper shall submit revised Plans and Specifications to the Township Administration within thirty (30) days after the Redeveloper's receipt of such comments or required revisions.
    - (C) Provided the revised Plans and Specifications submitted by the Redeveloper are in accordance with the Township Administration's comments and required



revisions, the Township Administration shall notify the Redeveloper in writing of its acceptance thereof.

(D) Notwithstanding the foregoing, the Township Administration shall be deemed to have approved the preliminary or revised Plans and Specifications, as the case may be, if the same are compliant with the Concept Plan and the Redevelopment Plan, and submitted by the Redeveloper, if the Township Administration fails to provide any written comments or required revisions within thirty (30) days after the Township Administration's receipt of such preliminary or revised Plans and Specifications.

(f) **Project Budget.** The Redeveloper shall submit an updated proposed Project Budget to the Township within sixty (60) days after the execution of this Agreement. The proposed Project Budget shall reflect any phasing proposed by the Redeveloper and shall be in a format and shall provide such detail as deemed appropriate by the Township Administration. With the proposed Project Budget, Redeveloper shall also submit a summary of its proposed sources and uses for financing the in an amount not less than the proposed Project Budget. The Township will review the proposed Project Budget submitted by the Redeveloper and shall either accept it or require it to be revised. If the Township reasonably requires revisions, the Redeveloper shall submit a revised Project Budget within ten (10) days of its receipt of the Township's comments. Once the Township Administration receives an acceptable proposed project budget, it shall so notify the Redeveloper in writing, and that Project Budget shall be the Project Budget. Provided the Redeveloper diligently cooperates with the Township in making any requested revisions, the Township shall make a good faith effort to provide written approval within thirty (30) days of the Redeveloper's submission of a proposed Project Budget.

(g) **Project Financing.**

(i) **Evidence of Financing.** Not less than seven (7) days prior to the projected date of Commencement of Construction for any Phase of the Project, the Redeveloper shall provide the Township with proof that the Redeveloper has secured adequate debt and equity financing to complete and operate such Phase.

(ii) **Applications for Financing.** Redeveloper shall submit a LIHTC Application in such amount as is necessary for each Phase of the Project as reflected on the Project Budget for such Phase, on or before the deadline for the submission of such an Application to NJHMFA and shall diligently and in good faith pursue approval of such Application. Township agrees to provide Redeveloper with any and all supportive documentation required for the LIHTC Application, including letters of support, Resolution of Need, and copies of other Resolutions and/or Ordinances obtained by the Redeveloper in connection with this Application. Notwithstanding the foregoing, Redeveloper acknowledges the Township Council must approve any and all resolutions and/or ordinances and retains full discretion as to whether to adopt the same. If such Application is rejected, Redeveloper shall diligently and in good faith pursue the next round of 9% LIHTC round financing, or in the alternative, 4% LIHTC financing. If no LIHTC financing is obtained, Redeveloper shall use best efforts to obtain conventional financing.

**4.3 Community Benefits.** The Redeveloper, in support of the Township's art initiatives, shall make a contribution to the Township in the amount of ONE HUNDRED THOUSAND and 00/100 (\$100,000) DOLLARS. The contribution will be made annually, in five (5) equal installments of TWENTY THOUSAND and 00/100 (\$20,000) DOLLARS. The first contribution

shall be payable upon submission of the first Building Permit application for Phase Two of the Project, with each successive installment payable on each anniversary thereafter. It is the intent of the Township to use such contribution for municipal programs and initiatives benefitting the development and advancement of the Township's art initiative. However, said contribution shall be used, in the sole discretion of the Township, for any lawful purpose. The provisions of this Section 4.3 shall survive the issuance of a Certificate of Completion.

**4.4 Commencement and Completion of Construction.** The Redeveloper shall Commence Construction of each Phase within thirty (30) days of receipt of all necessary building and construction permits, and shall work diligently to complete construction of such Phase within twenty-four (24) months, subject to any Force Majeure Events and provided that all inspections by the Township are performed in accordance with Applicable Law; provided, however, any material change in the scope of the Project, material changes or updates to the Construction Schedule or Project Budget, or extension of the projected Completion Date of the Project shall require the Township Administration's prior written approval, which shall be granted or denied in the Township's sole but reasonable discretion based upon the Redeveloper's demonstration of good cause for such change or extension. If Redeveloper's construction lender approves any of such changes, then the Township Administration shall not unreasonably withhold its consent thereto. Redeveloper agrees to simultaneously provide to the Township copies of all Construction Schedules and Project Budgets that Redeveloper submits to potential lenders or investors in connection with the financing of each Phase of the Project.

**4.5 Work to be Performed.**

- (a) The Redeveloper, at its sole cost and expense, shall perform or cause to be performed, all environmental remediation, site preparation, construction, operation, administration and management of the Project pursuant to the terms of this Agreement. Redeveloper hereby agrees that following an Event of Default, the Township and anyone acting on the Township's behalf shall be entitled to use the Redeveloper's Plans and Specifications, Applications, and Governmental Approvals to complete the Project, without cost to or liability of the Township and all agreements between the Redeveloper and its contractors and consultants shall so provide. In addition, all performance or completion bonds provided by the Redeveloper's contractors shall name the Township as an intended beneficiary thereof, as its interests may appear.
- (b) **Progress Reports and Project Oversight by the Township.** From the Commencement of Construction until the date that the Certificate of Completion is issued, the Redeveloper shall make quarterly reports to the Township Administration detailing the actual progress of the Redeveloper with respect to the construction of the Project which shall include, among other things, a description of activities completed, milestones achieved, status of the Project with respect to the Construction Schedule, activities to be undertaken prior to the next regularly scheduled Progress Report, and any unanticipated problems or delays and the explanation therefor. If so requested by the Township, Redeveloper agrees to attend quarterly progress meetings during the period of implementation of the Project, as follows:
  - (i) Progress Meetings. Redeveloper shall attend and participate in periodic progress meetings ("**Progress Meetings**") as called by the Township based on reasonable need therefore (as determined by the Township in its sole discretion) to report on the status of the Project and to review the progress under the Construction Schedule.
  - (ii) Progress Reports. At each Progress Meeting, and at such other times as may be reasonably requested by the Township, the Redeveloper shall submit to the Township

a detailed written progress report (“**Progress Report**”) which shall include, among other things, a description of activities completed, milestones achieved, status of the Project with respect to the Construction Schedule, activities to be undertaken prior to the next regularly scheduled Progress Report, and any unanticipated problems or delays and the explanation therefore. This Section shall not in any way be construed as entitling Redeveloper to an extension of the Completion Date or modification of the Construction Schedule or Project Budget, absent the Township Administration’s prior written consent.

**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 the Project, 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 for the Project, and the satisfaction of the terms and conditions of this Agreement with respect to the Project, 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 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 Project in accordance with the provisions of this Redevelopment Agreement or is otherwise in Default under this Agreement, 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. 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 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 Project and the Project Area; 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 in accordance with the provisions of this Redevelopment Agreement, then (a) Redeveloper shall be deemed to have Completed 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.

**4.7 Estoppel Certificates (Prior to Issuance of Certificate of Completion)**. At any time upon reasonable request, and from time to time prior to the issuance of a Certificate of Completion, the Township shall, within ninety (90) Days of its receipt of a written request by the Redeveloper, execute and deliver to (a) the Redeveloper, or (b) a third party (e.g., a prospective lender, purchaser, LIHTC investor, tenant, etc.) designated by the Redeveloper, an instrument in which

the Township (i) certifies that this Agreement is unmodified and in full force and effect as to the Project (excepting only modifications which shall be set forth), (ii) states whether to the best knowledge of the Township the Redeveloper is in Default under this Agreement, and, if so, specifying each such Default of which the Township shall have knowledge; and (iii) confirms such other factual matters within the Township's knowledge or control pertinent to this Agreement, as the same relate to, or might affect, the Project or the Project Area. The Redeveloper shall not request, and the Township shall not be required to issue more than two (2) estoppel certificates in any calendar year.

#### **4.8 Township Costs.**

##### **(a) Township Costs Generally.**

- (i) The Redeveloper shall be solely responsible to pay all reasonable costs and expenses incurred by the Township in connection with this Agreement, the conveyance of the Property, or the Project, including but not limited to the reasonable attorney's fees, engineering fees, or planner professional fees (but specifically excluding compensation to the Township for work performed internally by Township employees) incurred by the Township relating to the drafting and negotiation of this Agreement, the implementation of the Project or to the defense of any litigation challenging the validity of the Project or of any governmental action taken by the Township to effectuate the Project, including but not limited to the Township's entry into this Agreement, the Township's transfer of the Property to the Redeveloper in accordance with the Prior Redevelopment Agreement, and the Township's provision to the Redeveloper of any of the financial incentives described within Article 13 of this Agreement (the "**Township Costs**").
- (ii) Redeveloper has established an escrow with the Township having a balance of \$ \_\_\_\_\_ on the date of execution hereof (the "Township Costs Escrow"). These monies are to be utilized by the Township to pay for the Township Costs incurred following the Effective Date. Upon the earlier of (A) issuance of Certificate of Completion or (B) termination of the Agreement, any funds remaining in the Township Costs Escrow shall be first utilized to fully satisfy any qualified Township Costs, and then any remaining funds shall be promptly returned by the Township to the Redeveloper.

##### **(b) Township Costs Escrow Procedures:**

- (i) Township Costs Escrow. The Township Costs Escrow is separate from and in addition to all other Application fees and escrow deposits that may be required by the Township in connection with Applications for land use approvals to implement the Project. Additions to the Township Costs Escrow may subsequently become necessary to cover all reimbursable expenses incurred by the Township pursuant to the terms of this Agreement.
- (ii) Deposit and Administration of Township Costs Escrow Funds. The Township Costs Escrow 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.
- (iii) Payments from the Township Costs Escrow.
  - (A) The Township shall use the Township Costs Escrow and all additions thereto to pay Township Costs in accordance with the provisions of this Redevelopment Agreement.
  - (B) Township Costs paid out of the Township Costs Escrow shall include all Township Costs as defined in this Redevelopment Agreement.

- (C) Township Costs shall be limited to the actual rates charged to the Township by these professionals pursuant to an agreement with the Township existing as of the Effective Date or to be subsequently executed with no mark-up.
- (D) Each payment for professional services charged to the Township Costs Escrow shall be pursuant to a voucher from the professional identifying the personnel performing the reimbursable service, each date the services were performed, the hours spent in not greater than one-tenth (1/10) hour increments, the hourly rate, and specifying properly reimbursable expenses. All professionals shall submit the vouchers or statements to the Township in accordance with the schedule and procedures established by the Township. The professional shall simultaneously send an informational copy of each voucher or statement submitted to the Township to the Redeveloper.
- (iv) Accounting and Additional Deposits. At least annually during the term of the Redevelopment Agreement, or as reasonably requested by the Redeveloper (but not more often than quarterly), Township shall prepare and send to the Redeveloper a statement which shall include an accounting of funds listing all deposits, disbursements and the cumulative balance of the Township Costs Escrow. If at any time the balance in the Escrow Account is less than five thousand (\$5,000.00) dollars, or if the Township Costs Escrow Account in the Township's reasonable estimation for good cause shown otherwise contains insufficient funds to enable the Township to continue performance of its obligations under the Redevelopment Agreement, the Township shall provide Redeveloper with a notice of the insufficient Township Costs Escrow balance and the amount of additional funds required. Redeveloper's failure to replenish the Township Costs escrow to the full amount of fifteen thousand (\$15,000.00) dollars within fifteen (15) days or to pay any other amount into the Township Costs Escrow which, in the Township's reasonable estimation for good cause shown, is necessary in order to enable the Township to continue performance of its obligations under the Redevelopment Agreement shall constitute an Event of Default.
- (v) Close Out Procedures. Upon the issuance of a Certificate of Completion for the Project, the Redeveloper shall send written notice by certified mail to the Township requesting that the remaining balance of the Township Costs Escrow be refunded or otherwise applied in accordance with the provisions of the Redevelopment Agreement. After receipt of such notice, and within thirty (30) days of Township's receipt of all outstanding invoices for Township Costs, if any, the Township shall pay all outstanding Township Costs and shall render a written final accounting to the Redeveloper along with a check for any unexpended funds remaining in the Township Costs Escrow.
- (vi) Disputed Charges.
  - (A) Redeveloper may dispute the propriety or reasonableness of Township Costs paid out of the Escrow Deposit by written notice to the Township. A copy of such notice shall be sent simultaneously to any the entity(ies) whose charges or estimated costs are the subject of the dispute. Such written notice of a disputed charge shall be given within 30 days from Redeveloper's receipt of the informational copy of a voucher or invoice, statement, bill or invoice, except that if Redeveloper has not received an informational copy then the Redeveloper shall send notice within 60 days from receipt of the first statement of activity against the Township Costs Escrow containing the disputed charge. Failure to dispute a charge in writing within the prescribed time shall constitute Redeveloper's

acceptance of the charge and a waiver by Redeveloper of all objections to the charge and to payment thereof out of the Township Costs Escrow.

- (B) During the pendency of a dispute about any charge, the Township may continue to pay undisputed charges out of the Township Costs Escrow. If a dispute over a charge is resolved in Redeveloper's favor after having been paid, the Township shall reimburse the Township Costs Escrow in the amount determined to be properly disputed.

#### **4.9 Affordable Housing**

**(a) Affordable Housing Units.** Redeveloper shall maintain and deed-restrict as affordable, approximately seventy-three percent (73%) of the residential units of Phase Two of the Project. The Affordable Housing Units shall be reserved for Township residents with a household income at or below 80% of AMI for a period of forty-five (45) years from the issuance of the certificate of occupancy, in accordance with the Fair Housing Act. Approximately ten percent (7 units) of the Affordable Housing Units will be set aside for residents with a household income at or below 30% AMI, and approximately nine (9) of these set-aside units shall be reserved for special needs individuals.

**(b) Affordability Controls.** Redeveloper acknowledges and agrees that the restrictions governing the marketing, selection of applications, rent and affordability of the Affordable Housing Unit shall be governed by and consistent with those utilized and approved by the Township of Irvington, Department Of Economic Development And Grants Oversight, Department of Community Development and Planning or such other department or division of the Township as may be designated in implementing the Township's affordable housing programs. Redeveloper does hereby covenant and agree to comply with all regulations, restrictions and controls as may be required and to execute any affordable housing agreement(s) or other documents which may be required by the Township in order to maintain the aforementioned Affordability Controls, which shall include recording a deed restriction that restricts the rent or use of the units as Affordable Housing Units, for a term which shall be forty-five (45) years. Redeveloper agrees that the rents for each Affordable Housing Unit shall under no circumstances exceed the Fair Market Rents ("FMR") established annually by HUD for the relevant bedroom size.

### **ARTICLE 5**

#### **REPRESENTATIONS AND WARRANTIES**

**5.1 Representations and Warranties by the Redeveloper.** The Redeveloper makes the following representations and warranties:

- (a) Redeveloper has the legal capacity to enter into this Redevelopment Agreement and perform each of the undertakings set forth herein and in the Redevelopment Plan as of the date of this Redevelopment Agreement.
- (b) Redeveloper is duly organized and a validly existing legal entity under the laws of the State of New Jersey and all necessary resolutions or authorizations have been duly adopted to authorize the execution and delivery of this Redevelopment Agreement and to authorize and direct the persons executing this Redevelopment Agreement to do so for and on the Redeveloper's behalf.
- (c) No receiver, liquidator, custodian or trustee of the Redeveloper or any Affiliate has been appointed or is contemplated as of the date of this Redevelopment Agreement, and no petition

to reorganize Redeveloper or any Affiliate pursuant to the United States Bankruptcy Code or any similar statute that is applicable to the Redeveloper or any Affiliate has been filed or is contemplated as of the Effective Date.

- (d) No indictment has been returned against any member, manager or officer of the Redeveloper or any Affiliate.
- (e) To the best of the 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 Redevelopment Agreement, Redeveloper's execution hereof, or any action or act taken or to be taken by the Redeveloper pursuant to this Redevelopment Agreement; or (ii) is likely to result in a material adverse change in the Redeveloper's (or any Affiliate's) property, assets, liabilities or condition which will materially and substantially impair the Redeveloper's ability to perform the Project under this Agreement.
- (f) Redeveloper's execution and delivery of this Redevelopment Agreement and its performance hereunder will not constitute a violation of any operating agreement of the Redeveloper or of any other agreement, mortgage, indenture, instrument or judgment to which the Redeveloper is a party.
- (g) All information and statements included in any information submitted by Redeveloper to the Township and its agents (including but not limited to McManimon, Scotland & Baumann, LLC and NW Financial, LLC) are complete, true and accurate in all material respects. Redeveloper acknowledges that the facts and representations contained in the information submitted by Redeveloper, incorporated herein by reference, are being relied upon by the Township and are a material factor in the decision of the Township to enter into this Redevelopment Agreement.
- (h) Redeveloper is financially and technically capable of developing, designing, financing, constructing, operating and maintaining the Project.
- (i) The party or parties signing the Redevelopment Agreement on behalf of the Redeveloper is or are fully authorized to sign on behalf of the current members of the Redeveloper and to bind them with respect thereto.

**5.2 Representations and Warranties by the Township.** The Township hereby makes the following representations and warranties:

- (a) The Township has the legal power, right and authority 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 their obligations hereunder.
- (b) This Agreement is 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 Applicable Laws currently in 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.
- (c) To the best of the Township's knowledge there is no action, proceeding or investigation now pending nor any basis therefore, known or believed to exist which questions the validity of this Agreement or any action or act taken or to be taken by the Township pursuant to this Agreement.
- (d) To the best of the Township's knowledge there is no pending litigation which affects the Rehabilitation Area designation or the Redevelopment Plan.

**5.3     No Warranty of Suitability or Environmental Condition.** The Redeveloper specifically acknowledges that the Township makes no representation or warranty, expressed, implied or otherwise, as to the Project or as to the Project Area's suitability for the Project or for any other purpose. Moreover, the Township makes no representation or warranty as to the environmental condition of the Project Area (or the structures located thereon) and, the Township has no obligation to Redeveloper with respect to the investigation or remediation of environmental conditions on the Project Area (or the structures located thereon). The Redeveloper expressly acknowledges and agrees that the Township shall not be liable to the Redeveloper, its successors and/or assigns, whatsoever for any pre-existing environmental conditions on, at or under the Project Area. In the event Redeveloper chooses to pursue an action, at any time, against any prior owner and/or operators and/or tenants of the Project Area, for any and all non-consequential damages; cleanup and removal costs; all costs associated with damage or injury to natural resources including but not limited to restoration costs; and all costs and expenses incurred by the Township, Redeveloper expressly agrees to defend, indemnify and hold harmless the Township from any all claims resulting therefore, including but not limited to claims for subrogation. The provisions of this paragraph shall survive both delivery of the deed to the Property and issuance of a Certificate of Completion.

## ARTICLE 6

### COVENANTS AND RESTRICTIONS

**6.1     Description of Redeveloper Covenants.** The Redeveloper hereby covenants that it shall:

- (a) in connection with its use or occupancy of the Project, not effect or execute any covenant, agreement, lease, conveyance or other instrument whereby the Project Area or the Project is restricted upon the basis of age, race, color, creed, religion, ancestry, national origin, sex or familial status, and the 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, sex or familial status.
- (b) comply with the applicable provisions and public purposes of the Redevelopment Law and all obligations under this Agreement and shall at all times develop, design, finance and construct the Project or cause the Project to be developed, designed, financed and constructed and operated pursuant to the conditions and requirements of Applicable Laws, Governmental Approvals, this Agreement and the Redevelopment Plan and for a period of thirty (30) years from the issuance of a Certificate of Completion shall construct no other use except that Project contemplated by this Agreement, provided however, that Redeveloper shall not be deemed to be in breach if Redeveloper diligently contests, in good faith and by appropriate proceedings, such compliance with any of the aforesaid Applicable Laws. All uses to which the Project may be devoted are controlled by the Redevelopment Plan, the Governmental Approvals, Applicable Laws and this Redevelopment Agreement and that under no circumstances can the Redeveloper undertake any construction or development of the Project not in accordance with the Redevelopment Plan, the Governmental Approvals, Applicable Laws and this Redevelopment Agreement without the prior written consent of the Township.
- (c) in order to effectuate the purposes of this Agreement, make, execute, acknowledge and deliver any contracts, orders, receipts, writings and instructions with any other persons, firms or



entities and in general do all things which may be requisite or proper for the construction and development of the Project in accordance with the Redevelopment Agreement, the Redevelopment Plan, Governmental Approvals and Applicable Laws, provided however, that Redeveloper shall not be deemed to be in breach of this covenant if the Redeveloper diligently contests, in good faith and by appropriate proceedings, such compliance with any of the aforesaid Applicable Laws.

- (d) use diligent efforts to (i) obtain all Governmental Approvals requisite to the construction and development of the Project including evidence satisfactory to the Township that the Redeveloper's use of the Project is in compliance with this Agreement, the Redevelopment Plan and all Applicable Laws, and (ii) ensure Completion of Construction of the Project within the time period specified in the Construction Schedule.
- (e) use diligent efforts to obtain all Governmental Approvals authorizing the occupancy and uses of the Project for the purposes contemplated herein. Redeveloper and/or each Project Entity shall enter into such other agreements with respect to its development, financing, construction and management and operation of the Project, containing such provisions as may be required by Applicable Law and such other provisions as may reasonably be requested by the Township or as may reasonably be required by Governmental Approvals.
- (f) except as otherwise permitted hereunder in the case of a Force Majeure Event, not suspend or discontinue the performance of its obligations under this Redevelopment Agreement (other than in the manner provided for herein) for any reason, including, without limiting the generality of the foregoing, any acts or circumstances that may constitute failure of consideration, commercial frustration of purpose, or any damage to or destruction of the Project.
- (g) diligently undertake the construction and development of the Project (and if applicable, of each individual component) throughout the Construction Period and use commercially reasonable efforts to complete each component of the Project on or before the applicable Completion Date.
- (h) not encumber, hypothecate or otherwise use the Project, or any part thereof, as collateral for an unrelated transaction.
- (i) during construction of the Project, keep debris and/or waste materials containerized and/or stored and disposed of within normal industry standards.
- (j) cause the Project to be developed, designed, financed and constructed at its sole cost and expense, except as otherwise set forth in this Agreement.
- (k) immediately notify the Township of any material change in its financial condition from the information provided to the Township by the Redeveloper, or any other material change in Redeveloper's (and any Affiliate's) financial capability to design, develop, finance, construct and operate the Project in furtherance of the Township's consideration in executing this Agreement with the Redeveloper if such change will materially impair the Redeveloper's ability to perform its obligations pursuant to the terms of this Agreement.
- (l) keep and maintain in good condition any improvements required under the Governmental Approvals, including but not limited to any landscaping required to be planted or cause an entity in control of the Project (i.e. condominium or homeowner association) to maintain such improvements.
- (m) use best efforts to secure the Project Area which measures may include, but shall not be limited to, installation of a fence, security cameras and/or a security system and shall be maintained until Completion of Construction.
- (n) Redeveloper shall comply with all obligations of Redeveloper under Section 4.06 of the Redevelopment Agreement.

- (o) Redeveloper shall manage, operate and restrict the rental of the Affordable Housing Units in accordance with the Affordability Controls established in Section 4.9(b) of the Redevelopment Agreement.

**6.2 Effect and Duration of Redeveloper Covenants.** It is intended and agreed that the agreements and covenants set forth in this Agreement shall be covenants running with the land and that they shall, in any event, and without regard to technical classification or designation, legal or otherwise, and except only as otherwise specifically provided in this Agreement, be binding, to the fullest extent permitted by law and equity, for the benefit and in favor of, and enforceable by, the Township, its successors and assigns, against the Redeveloper, its successors and assigns and every successor in interest therein, and any party in possession or occupancy of the Project or any part thereof. These covenants and restrictions shall be contained in the Declaration of Covenants and Restrictions. The covenants shall cease and terminate when a Certificate of Completion for such improvements has been issued, provided however, that the Redeveloper or Project Entity, as may be applicable, shall agree that the covenant in Section 6.1(n) shall remain in effect in accordance with the terms of Section 4.3 of this Agreement, the covenant in Section 6.1(o) shall remain in effect in accordance with the terms of Section 4.9(b) of this Agreement and that the Declaration of Covenants and Restrictions shall provide that the covenants in Sections 6.1(a), (b) and (l) shall remain in effect without limitation as to time.

## ARTICLE 7

### **PROHIBITION AGAINST ASSIGNMENT AND TRANSFER**

**7.1 Prohibition Against Transfers of Interests in Redeveloper, the Agreement or the Property.** Redeveloper recognizes the importance of the Project Area to the general welfare of the community and that the identity of the Redeveloper and its qualifications are critical to the Township in entering into this Agreement. Redeveloper recognizes that it is because of such qualifications and identity that the Township is entering into this Agreement with Redeveloper, and, in so doing, the Township is relying on the obligations of Redeveloper and not some other person or entity for the faithful performance of all undertakings and covenants to be performed by Redeveloper hereunder.

As a result, prior to completion of the Project as evidenced by the issuance of a Certificate of Completion, except with the express prior written consent of the Township, Redeveloper agrees for itself and all successors in interest that there shall be no Transfer of (a) the Project Area (other than to a Project Entity, upon written approval by the Township as contemplated herein); (b) any equity interest in the Redeveloper, nor any direct or indirect change in control of the Redeveloper as it exists on the Effective Date, whether by changes in capitalization, merger, or otherwise; or (c) the Agreement. With respect to this provision, the Redeveloper and the Party or Parties signing the Redevelopment Agreement on behalf of the Redeveloper represent that each has authority to agree to this provision on behalf of the current members of the Redeveloper and to bind them with respect thereto. A collateral pledge of an interest in the Redeveloper or the Project Entity as security for a loan or equity contribution shall not be violative of this Section 7.1.

**7.2 Exemption from Prohibited Transfers.** Notwithstanding the foregoing, with prior knowledge of the Township by written notice from the Redeveloper, the following shall not constitute a prohibited Transfer, for purposes of Section 7.1:

Conveyance of the Project Area, or any portion thereof, or an interest therein and/or assignment by the Redeveloper of its rights under this Redevelopment Agreement, to a Project Entity, but only upon the following conditions: (a) such conveyance or assignment must be to a Project Entity that is an Affiliate or an entity controlling, controlled by, or under common control of the Redeveloper, limited to an urban renewal entity formed by Redeveloper pursuant to N.J.S.A. 40A:20-4 or an entity formed for the purpose of syndicating low income tax credits; (b) the successor and assignee of the Redeveloper shall assume all of the obligations of the Redeveloper hereunder, the Redeveloper shall remain liable for the performance of the obligations hereunder until a Certification of Completion is issued; (c) a copy of the written instrument of conveyance and assignment and assumption of this Redevelopment Agreement shall be delivered to the Township for its review and approval prior to execution, and once approved and executed, fully executed copies provided to the Township promptly; and (d) such conveyance or assignment does not violate any of the Government Approvals.

**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 costs, that any mortgage, lien or other encumbrance for such costs shall not attach until after that portion of the construction is completed; (b) easements necessary for the development of the Project; (c) the sale and/or lease of residential units, commercial space, retail space and/or a childcare center consistent with the Concept Plan and; (d) the admission of investors with a non-managing interest to the Project Entity following notice to the Township (each a “**Permitted Transfer**”).

**7.4 Prohibition Against Speculative Development.** Because of the importance of the development of the Project Area to the general welfare of the community, the Redeveloper represents and agrees that its acquisition of the Project Area and the Redeveloper’s undertakings pursuant to this Redevelopment Agreement are, and will be used, for the purpose of the redevelopment or rehabilitation of the Project Area as provided herein, and not for speculation in land holding.

**7.5 Information as to Ownership of Redeveloper.** In order to assist in the effectuation of the purpose of this Article 7, within seven (7) days of the Effective Date the Redeveloper shall submit to the Township an incumbency certificate of the Redeveloper as of the Effective Date, subscribed and sworn to by a manager or managing member of the Redeveloper, setting forth the name(s) and address(es) of all entities owning at least a 10% interest in the Redeveloper, and, as to each such entity, all entities owning at least a 10% interest therein, such disclosure being intended to be the same disclosure that the Redeveloper will be required to make in connection with its Governmental

Applications for land use approvals pursuant to N.J.S.A. 40:55D-48.2 and as is required under N.J.S.A. 52:25-24.2.

(a) At least annually during the period between the Effective Date and Completion of the Project as evidenced by the issuance of a Certificate of Completion, and at such other times as reasonably requested by the Township, Redeveloper will submit to the Township an updated incumbency certificate and keep same current.

(b) Redeveloper will immediately notify the Township in writing of any and all changes whatsoever in the ownership of the Redeveloper, legal or beneficial, or of any other act or transaction involving or resulting in any change in such ownership or in the relative distribution thereof, or with respect to the identity of the parties in control of the Redeveloper or the degree thereof, of which it or any of its officers or members have been notified or otherwise have knowledge or information.

(c) Redeveloper shall, at such time or times as the Township may request, furnish the Township with a complete statement subscribed and sworn to by managing member of Redeveloper, setting forth all of managing members, or other owners of equity interests of Redeveloper and the extent of their respective holdings, and in the event any other parties have a beneficial interest in Redeveloper's entity, their names and the extent of such interest.

(d)

## **ARTICLE 8**

### **MORTGAGE FINANCING**

**8.1 Mortgages, Liens, or Other Encumbrances.** Prior to the issuance of a Certificate of Completion, the Redeveloper shall promptly notify the Township of any encumbrance or lien that has been created on or attached to the Project, by mortgage or involuntary act of the Redeveloper or others, upon obtaining knowledge or notice of same.

**8.2 Obligations of Mortgagee.** Notwithstanding any of the provisions 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 Project Area 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 Project Area 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 Project Area 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.

**8.3 Notice of Default to Mortgagee and Right to Cure.**

(a) 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 (i) the Permitted Mortgagee; and (ii) 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.

- (b) The 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 Project Area or any improvements thereon or any other rights or remedies of the Township under this Agreement if:

- (i) In the case of a Default that is curable without possession of the Project Area, 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 In the case of a Default where possession of the Project Area 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 the 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 the 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 Project Area and, upon obtaining title to and possession of the Project Area, 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.

- (c) It is agreed that if proceedings relating to an Enforcement Action shall be commenced or there shall be a transfer of title to the Project Area 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 Project Area via a foreclosure or a deed in lieu of foreclosure or otherwise, then, regardless of whether any prior owner of the Project Area shall have previously commenced any construction on the Project Area, (i) the Permitted Mortgagee shall have a period of nine (9) months after the date of its acquisition of title to the Project Area to commence the initial construction of the Project Area, or if construction shall have been previously commenced by a prior owner of such Project Area, to re-commence construction of such Project Area, 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.

## **ARTICLE 9**

### **EVENTS OF DEFAULT**

**9.1 Default Related to Conveyance of the Property.**

(a) Intentionally Omitted.

**9.2 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) Intentionally Omitted.

(b) Failure of the Redeveloper or the Township to observe or perform any covenant, condition, representation, warranty or agreement hereunder, and any act or omission of the Redeveloper characterized elsewhere in this Agreement as a Default, and the continuance of such failure, act or omission for a period of ten (10) Days after receipt by the defaulting party of written notice from the non-defaulting party specifying the nature of such failure and requesting that such failure, act or omission be remedied (a “**Notice of Default**”); provided, however, that if the Default is one that cannot be completely cured within ten (10) Days after receipt of the Notice of Default, it shall not be an Event of Default as long as the defaulting party promptly begins to take actions to correct the Default upon its receipt of notice thereof and is proceeding with due diligence to remedy the Default as soon as practicable, but in no event longer than sixty (60) Days unless the non-defaulting party consents, in writing, to an extension of time to cure.

(c) 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 the Redeveloper; (iii) Redeveloper, (A) has made a general assignment for the benefit of creditors, or (B) 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; (iv) Redeveloper has filed an answer admitting the material allegations of a petition in any bankruptcy or insolvency proceeding; or (v) Redeveloper shall take any action for the purpose of effecting any of the foregoing; (vi) a petition in bankruptcy shall have been filed against the Redeveloper, and shall not have been dismissed for a period of ninety (90) consecutive Days; (vii) an Order for Relief shall have been entered with respect to or for the benefit of Redeveloper, under the Bankruptcy Code; (viii) an Order, judgment or decree shall have been entered, without the application, approval or consent of the Redeveloper, by any court of competent jurisdiction appointing a receiver, trustee, custodian or liquidator of Redeveloper, or a substantial part of its assets and such order, judgment or decree shall have continued unstayed and in effect for any period of ninety (90) consecutive Days; (ix) Redeveloper shall have suspended the transaction of its usual business.

(d) Redeveloper: (i) fails to perform its obligations with respect to the implementation of the Project in accordance with this Agreement and the Construction Schedule, the Redevelopment Plan, Governmental Approvals or Applicable Laws, including but not limited to failure to Commence Construction or Complete Construction in accordance with the Construction Schedule; or (ii) abandons the Project or substantially suspends construction work without the prior knowledge and consent of the Township (unless such suspension arises out of a Force Majeure Event), and any such failure, abandonment or suspension shall not be cured, ended, or remedied within twenty (20) Days after receipt by the Redeveloper of a Notice of Default; provided, however, that if the Default is one that cannot be completely cured within twenty (20) Days after receipt of the Notice of Default, it shall not be an Event of Default as long as the Redeveloper promptly began to take actions to correct the Default upon its receipt of notice thereof and is proceeding with due diligence to remedy the Default as soon as practicable. 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.

- (e) There is a prohibited Transfer.
- (f) Material breach of any warranty or representation made by the Redeveloper.
- (g) Violation by the Redeveloper of any covenant or restriction contained in the Declaration of Covenants and Restrictions, which violation is not cured within forty-five (45) Days after receipt by the Redeveloper of a Notice of Default from the Township; provided, however, that if the Default is one that cannot be completely cured within forty-five (45) Days after receipt of the Notice of Default, it shall not be an Event of Default as long as the Redeveloper promptly began to take actions to correct the Default upon its receipt of notice thereof and is proceeding with due diligence to remedy the Default as soon as practicable.
- (h) Redeveloper's failure to pay or delinquency in the payment of real property taxes or assessments applicable to the Property, which violation is not cured within ten (10) Days after receipt by the Redeveloper of a Notice of Default from the Township.
- (i) Redeveloper's failure to refresh the Township Costs Escrow or to reimburse the Township for properly reimbursable Township Costs which is not cured within thirty (30) business Days of written notice by the Township.

**9.3 Remedies Upon Event of Default.** Whenever any Event of Default of Redeveloper shall have occurred, the Township may, except as set forth herein, on written notice to Redeveloper (a "**Termination Notice**"), terminate this Agreement and the Redeveloper's designation as the exclusive redeveloper for the Project Area thereunder 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 the Redeveloper under this Agreement. In addition, Redeveloper shall be responsible for any and all costs or expenses incurred by the Township, including reasonable attorney's fees, incurred in connection with the termination of this Agreement, the termination of Redeveloper's designation, and any and all other action take at law or in equity by the Township to enforce the terms of this Agreement. Notwithstanding anything to the contrary, Redeveloper shall not be liable for any consequential or special damages as it exclusively relates to the completion of the Project, however, the Township specifically reserves this right with respect to the acquisition of the Property. Whenever any Event of Default of the Township shall have occurred, the Redeveloper, after issuance of a Termination Notice to the Township, may take whatever 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 the Redeveloper under this Agreement, provided however, under no circumstances shall the Township be liable for consequential, indirect or special damages of any kind.

**9.4 Force Majeure Extension.** For the purposes of this Agreement, neither the Township nor the 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 the 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. To invoke the tolling provisions hereunder, the Party invoking the provisions hereof must give written notice to the other Party of the occurrence of a Force Majeure Event as soon as practicable but in no event more than ninety (90) Days or such longer period as is reasonably necessary after the occurrence thereof.

**9.5 No Waiver.** Except as otherwise expressly provided in this Redevelopment Agreement, any failure or delay by the Township or Redeveloper in asserting any of its rights or remedies as to any Default by Redeveloper or the Township, as the case may be, shall not operate as a waiver of such Default, or of any such rights or remedies, or to deprive the Township, or the Redeveloper as the case may be, 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.

**9.6 Remedies Cumulative.** No remedy conferred by any of the provisions of this Redevelopment 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, unless this Agreement precludes alternative remedies.

**9.7 Failure or Delay by Either Party.** Except as otherwise expressly provided in this Redevelopment Agreement, any failure or delay by either Party in asserting any of its rights or remedies as to any Default, shall not operate as a waiver of any Default, or any such rights or remedies, or deprive either such Party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies as established by this Agreement.

**9.8 Township's Right of Reverter.** If, prior to the issuance of the Certificate of Occupancy for the Improvements to be constructed as part of any particular Phase, the Redeveloper shall fail to Commence, diligently pursue and complete construction of such Phase substantially in accordance with the terms of this Agreement, and such failure continues after the notice and cure rights herein set forth, upon sixty (60) Days prior written notice by the Township (the "**Declaration of Reverter**") to the Redeveloper (and where applicable, to the Mortgagee), ownership of any portion of the Property which, as of the date of the Declaration of Reverter, has not received a Certificate of Occupancy (other than as a result of a breach of this Agreement by the Township) shall revert to the Township pursuant to a reverter clause, which shall be included in such conveyance documents, without any further act on the Township's part and the estate conveyed by the Township by deed to the Redeveloper shall immediately (after expiration of the aforesaid notice period) terminate and revert in the Township. However, any reversion of title as a result of the aforementioned termination due to Default shall always be subject to and limited by, and shall not defeat, render invalid or limit in any way (a) the lien of any mortgage authorized by this Agreement; and (b) any rights or interest provided in this Agreement for the protection of Mortgagees or other lienholders. The right of the Township to declare such a reversion of title is not intended as a waiver by the Redeveloper of its right to challenge the validity of such Declaration of Reverter or otherwise contest the same in any manner if the Redeveloper believes such right has been improperly exercised and/or is otherwise defective, improper or disputable for any reason.

**9.9 Replacement of Redeveloper.** Upon termination of this Agreement by the Township due to an Event of Default by the Redeveloper subsequent to the Redeveloper's acquisition of title to the Property but prior to the issuance of a Certificate of Completion for the Project, the Township shall, pursuant to its responsibilities under Applicable Law, use reasonable efforts to designate a replacement redeveloper for the Project. Such replacement redeveloper shall be designated as soon



and in such a manner as the Township shall find feasible and consistent with the objectives of the Applicable Law and of the Redevelopment Plan. The Redeveloper shall deliver to the Township originals of all Project documents to the extent in the possession and control of the Redeveloper or its consultants, contractors, engineers, architects or agents, and shall upon request execute assignments of all Project documents and other rights and agreements pertaining to the Project in favor of the Township. Any proceeds resulting from the designation of the replacement redeveloper shall be applied as follows:

- (a) First, to reimburse the Redeveloper, its successors or Transferees up to the amount equal to the purchase price paid for the Property at the time of its initial transfer from the Township as set forth in the Prior Redevelopment Agreement, minus any outstanding Township Costs; and
- (b) Any remaining balance after such reimbursements shall be remitted to the Township.
- (c)

## **ARTICLE 10**

### **INSURANCE**

**10.1 Insurance – General Requirements.** Upon the execution of this Agreement by the Redeveloper, and at all times thereafter until a Certificate of Completion is entered hereunder, the Redeveloper shall maintain, or cause to be maintained by its contractors, who shall name the Township as an additional named insured and provide proof of same, insurance for the mutual benefit of the Township and the Redeveloper as their interests may appear:

- (a) Loss or damage by fire, and such other risks as may be included in the standard form of extended coverage insurance from time to time available, in amounts sufficient to prevent the Township or Redeveloper from becoming a co-insurer within the terms of the applicable policies, and in any event, in amounts not less than 100% of the then full insurable value (as hereinafter defined) of the Project;
- (b) All claims for bodily injury and property damage, under a policy of comprehensive general public liability insurance, with such limits as may reasonably be required by the Township from time to time, but not less than \$1 million per occurrence in respect of injury or death and \$2 million per occurrence for property damage;
- (c) Workers compensation insurance in an amount not less than \$1,000,000.00 or as statutorily may be required under Applicable Laws for employees of Redeveloper and the Contractors;
- (d) Builder's risk insurance;
- (e) Environmental insurance coverage to defend and indemnify the Township during the course of any Remediation work to be performed by the Redeveloper, should such coverage be commercially available based upon the anticipated cost of said Remediation work, to be posted in the event such Remediation costs exceed \$5 million dollars;
- (f) Such coverage may be maintained through policies obtained by contractors retained by the Redeveloper so long as such policies identify Redeveloper and the Township as additional insureds thereunder.

The Redeveloper's obligation to provide insurance or to arrange for its contractors to provide insurance, as to the Project shall cease upon the issuance of a Certificate of Occupancy as to the Completion of Construction undertaken by the Redeveloper.

The Redeveloper shall furnish the Township with satisfactory proof that it has obtained all applicable insurance as described in this Section from insurance companies or underwriters reasonably satisfactory to the Township. The Redeveloper shall furnish to the Township certificates

of the preceding types of insurance showing the type, amount, and class of operations insured and the effective and expiration dates of the policies. The certificates shall be submitted promptly prior to the date that the Redeveloper enters onto the Township Property pursuant to the license granted under Section 3.3 of this Agreement and the Redeveloper shall not be entitled to enter onto the Township Property or to exercise any other rights hereunder until the certificate has been received and verified. Until construction of the Project is completed and a Certificate of Completion issued, the Redeveloper shall, on an annual basis, provide the Township with proof that the aforesaid insurance policies are being maintained.

**10.2 Insurance – Restrictions.** All insurance provided for under this Agreement will be reasonably effected under valid enforceable policies issued by insurers rated “A” or better by A.M. Best and reasonably acceptable to the Township. On or before the Closing Date, a certificate procured by Redeveloper pursuant to Section 10.1 (or certificates thereof) will be delivered to the Township. At least thirty (30) days prior to the expiration date of any policy, the original renewal policy (or certificates thereof) for such insurance will be delivered by the Redeveloper to the Township as aforesaid, together with satisfactory evidence of payment of the premium thereon. All policies referred to in Section 10.1 will, to the extent then generally obtainable, contain agreements by the insurers that (a) any loss will be payable to the Township, notwithstanding any act or negligence of the Redeveloper which might otherwise result in forfeiture of said insurance, (b) such policies may not be canceled except upon thirty (30) days prior written notice to each named insured and loss payee, and (c) the coverage afforded thereby must not be affected by the performance of any work in or about the Project Premises.

**10.3 Township as Insured.** All policies of insurance required herein shall name the Township as an insured, as its interests may appear.

**10.4 Additional Insurance.** Nothing in this Article shall prevent the Redeveloper from taking out insurance of the kind and in the amounts and with companies provided for under Section 10.1 or 10.2 under a blanket insurance policy or policies which can cover other properties as well as the Project Area; provided, however, that any such policy of insurance provided for under Section 10.1 must (a) specify therein, or the Redeveloper shall furnish the Township with a written statement from the insurers under such policies specifying the amount of the total insurance allocated to the Project, which amount will not be less than the amount required by Section 10.1 to be carried, and (b) not contain any clause which would result in the insured thereunder being required to carry insurance with respect to the property covered thereby in an amount equal to a minimum specified percentage of the full insurable value of such property in order to prevent the insured therein named from becoming a co-insurer of any loss with insurer under such policy.

**10.5 Deductibles.** All insurance provided under this Article 10 may contain loss deductible clauses in such maximum amounts as the Township approves in its reasonable discretion.

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

## **ARTICLE 11**

### **COMMUNITY INITIATIVES**

**11.1 Equal Employment Opportunity.** Redeveloper agrees that during construction of the Project:

(1) Redeveloper will not discriminate against any employee of Redeveloper or applicant for employment because of race, color, religion, sex, or national origin. Redeveloper will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Redeveloper agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause and any such notices provided by the Township that are consistent therewith.

(2) Redeveloper will, in all solicitations or advertisements for employees placed by or on behalf of Redeveloper, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.

(3) Subcontractors and suppliers to the Project shall include qualified and certified Minority Business Enterprises.

(4) The obligations contained in this Article shall be binding on all contractors and subcontractors to the extent that any work is done by any contractor or subcontractor, and any contract entered into by Redeveloper shall so provide.

**11.2 First Source Employment.** Redeveloper shall comply with the Township's First Source Employment Linkage Program as set forth in Chapter 15 of the Township Municipal Code.

## **ARTICLE 12**

### **PILOT AND OTHER FINANCIAL INCENTIVES**

**12.1 PILOT Contingency and Other Financial Incentives.** The Redeveloper may apply to the Township for approval of a Financial Agreement providing for a tax exemption and payment in lieu of taxes pursuant to the Long Term Tax Exemption Law, N.J.S.A. 40A:20-1 et seq. or the New Jersey Housing and Mortgage Finance Agency Law, N.J.S.A. 55:14K-1 et seq. (a "**PILOT**") in connection with each Phase of the Project. The Township agrees to consider the Redeveloper's PILOT application for any Phase in good faith and in accordance with the applicable criteria set forth in the Applicable Laws, but Redeveloper recognizes and acknowledges that the Township has and at all times hereunder shall retain full discretion under Applicable Law as to whether to grant or deny Redeveloper's request for a PILOT for any such Phase.

**12.2 Redeveloper's Defense and Indemnification of Township.** In the event the Township does enter into a financial agreement providing for a PILOT with the Redeveloper and litigation is subsequently instituted challenging the PILOT or any Township actions to effectuate same, the Redeveloper shall indemnify and hold the Township harmless from any liability in such litigation as provided under Section 13.1 of this Agreement and shall reimburse the Township for Township Costs incurred in defending such litigation in the manner required under Section 4.8 of this Agreement.

ARTICLE 13

**OTHER REDEVELOPER OBLIGATIONS**

**13.1 Defense/Indemnification.**

- (a) The Redeveloper agrees to indemnify and hold the Township and its agents, employees and/or representatives harmless against any litigation filed against the Township and its agents, employees and/or representatives challenging the validity of the Project or of any governmental action taken by the Township to effectuate the Project, including but not limited to the Township's entry into this Agreement, the Township's transfer of the Property to the Redeveloper in accordance with the Prior Redevelopment Agreement, and the Township's provision to the Redeveloper of any of the financial incentives described within Article 12 of this Agreement, unless a court of competent jurisdiction finds that the challenged Township action was grossly negligent or the result of intentional misconduct. If such litigation is filed, the Township shall retain control over the defense of such litigation and shall appoint counsel of its choice to defend the Township in such litigation. The Redeveloper shall reimburse the Township for the Township Costs incurred in defending such litigation through the Township Costs Escrow in the manner set forth within Section 4.8 of this Agreement and shall indemnify and hold the Township harmless against any monetary judgment entered against the Township in such litigation. The Township shall promptly inform the Redeveloper of the filing of any litigation challenging the validity of the Project or of any governmental action taken by the Township to effectuate the Project and shall have a continuing obligation to keep the Redeveloper apprised of the status of such litigation until the litigation is concluded. Notwithstanding the foregoing, should any litigation be filed triggering the defense and indemnification obligations of this Section 13.1(a), in lieu of providing such defense and indemnity, Redeveloper may terminate this agreement by providing the Township with written notice of such election within seven (7) days of the Township's provision of notice of the institution of such litigation.
- (b) Using Redeveloper's counsel or such other counsel as designated by the Redeveloper or the Redeveloper's insurers, the Redeveloper agrees to indemnify and hold harmless the Township and its agents, employees and or/representatives, against, and the Redeveloper shall pay any and all liability, loss, cost, damage, claims, judgment, or expenses, of any and all kinds or nature and however arising, imposed by law, which the Township may sustain, be subject to or be caused to incur by reason of any claim, suit or action based upon personal injury, death or damage to property, whether real, personal or mixed, relating to the Redeveloper's activities in constructing the Project or based upon or arising out of contracts entered into by Redeveloper which relate to the construction of the Project, whether as a result of Redeveloper's Default or out of the Redeveloper's acquisition, construction or installation of the Project, including but not limited to any all claims by workmen, employees or agents of the Redeveloper and unrelated third parties, which claims arise from the construction of the Project, the maintenance and functioning of improvements installed pursuant to the Project, or any other activities of Redeveloper during the construction of the Project and any breach of this Agreement by Redeveloper. The Parties agree that neither the Township nor its directors, officers, agents, servants or employees shall be liable in any event for any action performed under this Agreement and that Redeveloper shall save the Township and its directors, officers, agents, servants or employees harmless from any claim or suit by a third party in connection with

Redeveloper's obligations under this Agreement, except for any claim arising from the intentional or willful acts of the Township.

- (c) Redeveloper, at its own cost and expense, shall defend any and all claims, suits and actions, as described more fully within Section 13.1 (b), which may be brought or asserted against the Township and its directors, officers, agents, servants or employees; but this provision shall not be deemed to relieve any insurance company which has issued a policy of insurance which may be provided for in this Agreement from its obligation to defend Redeveloper, the Township, and any other insured named in such policy of insurance in connection with claims, suits or actions covered by such policy.
- (d) The Redeveloper releases the Township from, agrees that the Township shall not be liable to Redeveloper for any expenses or damage resulting from, and agrees to hold the Township harmless against any expense or damages incurred because of any litigation commenced as a result of any action taken by the Township in good faith with respect to this Agreement and the Project.
- (e) Upon the commencement of any litigation referred to in this Section, or if and when the Township incurs any costs, expenses or damages described in this Section, the Township shall give the Redeveloper prompt written notice thereof.
- (f) All covenants, stipulations, promises, agreements and obligations of the Township contained in this Agreement shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the Township and not of any member, officer or employee of the Township in his or her individual capacity and no recourse shall be had for any claim based hereunder against any member, officer or employee of the Township or any natural person executing this Agreement.
- (g) The covenants and other provisions of this Section shall survive the termination of this Agreement as to claims arising prior its termination.

**13.2 Annual Redevelopment Fee.** On January 1<sup>st</sup> of each year, until the last Certificate of Occupancy is issued for the final Phase, Redeveloper shall make payments to the Township in the amount of \$45,000 per year (the “**Annual Redevelopment Fee**”) to defray the costs of investments made by the Township to encourage the redevelopment of the Property.

## **ARTICLE 14**

### **MISCELLANEOUS**

**14.1 Cooperation.** The Parties hereto agree to cooperate with each other and to provide all necessary and reasonable documentation, certificates, consents in order to satisfy the terms and conditions hereof and the terms and conditions of this Agreement. The Township further agrees to cooperate as may be reasonably requested by Redeveloper, the NJHMFA, HUD, any mortgagee, tax credit investor and/or Project Entity in connection with obtaining financing for the Project; provided, however, that all costs and expenses of such cooperation by the Township shall constitute Township Costs. The Township further agrees to promptly take all actions reasonably requested by Redeveloper to expedite the Project, including without limitation designating Township staff liaisons to assist the Redeveloper in interacting with Township departments, commissions, boards, authorities and the like and granting of special meetings and other expedited processing of Redeveloper's applications, submissions and the like to the extent authorized under Applicable Law. In any approval, consent

or other determination by any party required under this Agreement, unless otherwise expressly stated herein, such party shall act reasonably, in good faith and in a timely manner.

**14.2 Conflict of Interest.** No member, official or employee of the Township shall have any direct or indirect interest in this Redevelopment Agreement or the Project, nor participate in any decision relating to the Redevelopment Agreement or the Project which is prohibited by law.

**14.3 No Consideration for Agreement.** The 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 Redevelopment Agreement, other than normal costs of conducting business and costs of professional services such as architects, engineers, financial consultants and attorneys. The 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 Redevelopment Agreement.

**14.4 Non-Liability of Officials and Employees of the Township.** No member, official or employee of the Township shall be personally liable to the 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 the Redeveloper or its successor, or on any obligation under the terms of this Redevelopment Agreement.

**14.5 Non-Liability of Officials and Employees of the Redeveloper.** Unless otherwise obligated hereunder as a Guarantor, no member, officer, shareholders, director, partner or employee of the Redeveloper, and no member, officer, shareholders, director, partner or employee of the members of the Redeveloper or the members of the Redeveloper shall be personally liable to the Township, or any successor in interest, in the event of any Default or breach by the Redeveloper or for any amount which may become due to the Township, or their successors, on any obligation under the terms of this Redevelopment Agreement.

**14.6 Inspection of Books and Records.**

- (a) The Township shall have the right, upon reasonable written notice to the Redeveloper, to inspect the books and records of the Redeveloper pertinent to the purposes of this Redevelopment Agreement.
- (b) The Redeveloper shall have the right, upon reasonable written notice to the Township, to inspect the books and records of the Township pertinent to the purposes of this Redevelopment Agreement.
- (c) Such inspections must be for a legitimate business purpose affecting the material interest of the party seeking the inspection.

- (d) Such inspections must be performed at a time and in a manner so as to not unreasonably interfere with the business operations of the party whose books and records are being inspected.

**14.7 Modification of Agreement.** This Agreement represents the entire agreement by and between the Parties with respect to the development of the Project, the construction of the Project and the conveyance of the Project Area. No amendment to this Agreement shall be considered binding on either of the Parties unless such amendment is in writing and specifically recites that it is being entered into by and between the Township and Redeveloper with the specific intention to modify the terms of this Agreement. In the event that any such amendment is agreed to by the Parties, such amendment shall not modify, change or amend any portion of this Agreement except those specific

portions that are recited in such amendment as being modified by such amendment. All other portions of this Agreement not so specifically amended in writing shall remain in full force and effect. No waiver by the Township or the Redeveloper of any covenant, agreement, term, provision or condition of this agreement shall be deemed to have been made unless expressed in writing and signed by an appropriate official on behalf of both the Township and the Redeveloper. Notwithstanding the foregoing, any amendment to this Agreement must be approved as to form and legality by the Township's Corporation Counsel and attested to and acknowledged by the Township Clerk and all Material Amendments to this Agreement must be approved by Irvington Township Council of the Township of Irvington. A "**Material Amendment**" shall include, but not be limited to, any amendment to the Parties, identity or use of the Project Area to be rehabilitated and/or sold, or any change that would adversely affect the interests of the Township of Irvington or constitute an unlawful delegation of legislative authority.

**14.8 Notices and Demands.** A notice, demand or other communication under this Redevelopment Agreement by any Party to the other shall be sufficiently given or delivered if dispatched by United States Registered or Certified Mail, postage prepaid and return receipt requested, or delivered by overnight courier or delivered personally (with receipt acknowledged), or by facsimile transmission (with receipt acknowledged) to the Parties at their respective addresses set forth herein, or at such other address or addresses with respect to the Parties or their counsel as any Party may, from time to time, designate in writing and forward to the others as provided in this Section.

**As to the Township:**

To Township: Township of Irvington  
Attn: Musa A. Malik, Esq., Business Administrator  
1 Civic Square  
Irvington, New Jersey 07111

With copies to: Township of Irvington  
Attn: Kyana Woolridge, Esq., Director  
Department of Community Development  
660 Stuyvesant Avenue  
Irvington, New Jersey 07111  
and  
McManimon, Scotland & Baumann, LLC  
Attn: Glenn F. Scotland, Esq.  
75 Livingston Avenue, Second Floor  
Roseland, New Jersey 07068

To Redeveloper: Hilltop Partners Redeveloper, LLC  
334-336 East 110<sup>th</sup> Street  
New York, New York 10029

With copies to: Connell Foley LLP  
Attn: Jennifer M. Carrillo-Perez, Esq.  
Harborside 5  
185 Hudson Street, Suite 2510  
Jersey City, New Jersey 07311

From time to time either party may designate a different person or address for all the purposes of this Notice provision by giving the other Party no less than ten (10) Days' notice in advance of such change of address in accordance with the provisions hereof.

**14.9 Titles of Articles and Sections.** The titles of the several Articles and Sections of this Redevelopment Agreement, as set forth at the heads of said Articles and Sections, are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

**14.10 Severability.** The validity of any Articles and Sections, clauses or provisions of this Redevelopment Agreement shall not affect the validity of the remaining Articles and Sections, clauses or provisions hereof.

**14.11 Successors Bound.** This Redevelopment Agreement shall be binding upon the respective Parties hereto and their permitted successors and assigns.

**14.12 Governing Law; Jurisdiction and Venue, Waiver of Trial by Jury.** This Redevelopment Agreement shall be governed by and construed and enforced pursuant to the laws of the State of New Jersey, without regard to its conflict 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 Redeveloper hereby waives all objections to such venue. Notwithstanding the above, the Parties may, upon mutual written consent, pursue alternate dispute resolution (such as mediation or binding arbitration) to attempt to resolve any issues or disputes arising from this Agreement. The parties hereto, having been advised by counsel, hereby waive their right to trial by jury in any action arising hereunder or related hereto.

**14.13 Counterparts.** This Redevelopment Agreement may be executed in counterparts. All such counterparts shall be deemed to be originals and together shall constitute but one and the same instrument.

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

**14.15 Entire Agreement.** This Redevelopment 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.

**14.16 Waiver.** No waiver made by any party with respect to any obligation of any other party under this Redevelopment Agreement shall be considered a waiver of any other rights of the party making the waiver beyond those expressly waived in writing and to the extent thereof.

**14.17 Non-Merger.** None of the provisions of this Agreement are intended to or shall be merged with any of the terms and conditions of any deed transferring title of the Property from the Township to the Redeveloper or any successor in interests, and any such deed(s) shall not be deemed to affect or impair the provisions and covenants of this Agreement; provided however, unless this Agreement expressly provides for same to survive, upon issuance of a Certificate of Completion, as the case may be, the terms of this Agreement shall merge into such deed.

[SIGNATURE PAGE TO FOLLOW]



IN WITNESS WHEREOF, the Parties hereto have caused this Redevelopment Agreement to be properly executed and their corporate seals affixed and attested as of the date first written above.

**ATTEST:**

**TOWNSHIP OF IRVINGTON**

\_\_\_\_\_  
Harold Wiener, Township Clerk  
(Seal)

\_\_\_\_\_  
Hon. Tony Vauss, Mayor

Date: \_\_\_\_\_

WITNESS:

**HILLTOP PARTNERS REDEVELOPER, LLC**

By: \_\_\_\_\_

Corporate Secretary or Notary  
(Affix Corporate Seal Here)

Date: \_\_\_\_\_

**EXHIBIT A**  
**CONCEPT PLAN**

**EXHIBIT A**  
**PHASE II**

Adopted  
Absent: Beasley

Hudley - Cox

2. Ratify Professional Services Contract For Legal Services in the Matter of Ajax Mortgage Loan Trust 202A v. Arnold Dennis et al. – Eric M. Bernstein & Associates, LLC – Not To Exceed \$2,500.00

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

WHEREAS, resolution number TA 20-1109-32 qualified seventeen firms to provide litigation/defense counsel services for the Township of Irvington from November 01, 2020 until October 31, 2021; and

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

WHEREAS, the Township Attorney has determined that Eric M. Bernstein & Associates, LLC has the most experience to defend the Township of Irvington in the matter of Ajax Mortgage Loan Trust 202A v. Arnold Dennis, et al, Docket No. F-001331-21; and

WHEREAS, the Township Attorney has recommended that a contract be awarded to Eric M. Bernstein & Associates, LLC, 34 Mountain Blvd., Bldg. A, P.O. Box 4922, Warren, NJ, 07059; and

NOW THEREFORE, BE IT RESOLVED BY THE MUNICIPAL COUNCIL OF THE TOWNSHIP OF IRVINGTON that a contract for Litigation/Defense counsel services be awarded to Eric M. Bernstein & Associates, LLC, 34 Mountain Blvd., Bldg. A, P.O. Box 4922, Warren, NJ, 07059 for a contract amount not to exceed \$2,500.00. The billing rate for this contract is \$150.00 per hour; and

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

BE IT FURTHER RESOLVED, that funds for this service will paid from the Insurance fund for a contract amount not to exceed \$2,500.00. The billing rate for this contract is \$150.00 per hour.

Adopted  
Absent: Beasley

Burgess - Hudley

3. Ratify Professional Services Contract For Legal Services in the Matter of Al-Tarik Moore v. Segundo M. Quito et al. – Ruderman & Roth, LLC – Not To Exceed \$5,500.00

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

WHEREAS, resolution number TA 20-1109-32 qualified seventeen firms to provide litigation/defense counsel services for the Township of Irvington from November 01, 2020 until October 31, 2021; and

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

WHEREAS, the Township Attorney has determined that Ruderman & Roth, LLC has the most experience to defend the Township of Irvington in the matter of Al-Tarik Moore v. Segundo M. Quito et als, Docket No: ESX-L-002840-21; and

WHEREAS, the Township Attorney has recommended that a contract be awarded to Ruderman & Roth, LLC, 150 Morris Avenue, Suite 303, Springfield, NJ, 07081; and

NOW THEREFORE, BE IT RESOLVED BY THE MUNICIPAL COUNCIL OF THE TOWNSHIP OF IRVINGTON that a contract for Litigation/Defense counsel services be awarded to Ruderman & Roth, LLC, 150 Morris Avenue, Suite 303, Springfield, NJ, 07081 for a contract amount not to exceed \$5,000.00. The billing rate for this contract is \$150.00 per hour; and

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

BE IT FURTHER RESOLVED, that funds for this service will paid from the Insurance fund for a contract amount not to exceed \$5,000.00. The billing rate for this contract is \$150.00 per hour.

Adopted  
Absent: Beasley

Beasley – Frederic

4. Commendation – Dante Bell - Civilian Actions Taken During A Public

**Safety Emergency Involving A House Fire**

**COMMENDING THE COURAGE AND HEROIC MEASURES OF  
DAUNTE BELL**

WHEREAS, on April 5, 2021 the Township of Irvington Department of Public Safety responded to an alarm of fire at approximately 14:57 hours (2:57 p.m.); and

WHEREAS, upon arrival, crews discovered an occupied 2 story multiple dwelling Type V construction (wood frame) with heavy fire venting out of the 2nd floor window, "B" side rear; and

WHEREAS, Daunte Bell, 20 years old who resides at 23 Campfield Street in the township was in the vicinity of Mill Road when the fire broke out; and

WHEREAS, Daunte is disabled, however, he took it upon himself to divert traffic at the intersection of Mill Road and Union Place for approximately 2 hours while crews worked to extinguish the fire; and

WHEREAS, Daunte's service to community and good deed, should not go unnoticed:

NOW, THEREFORE, BE IT RESOLVED BY THE MUNICIPAL COUNCIL OF THE TOWNSHIP OF IRVINGTON that Daunte Bell is hereby commended for his courageous act of heroism given beyond measure in which he demonstrated by providing his assistance on April 5, 2021:

BE IT FURTHER RESOLVED that copies of this resolution be spread upon the minutes of the Irvington Municipal Council.

Adopted  
Absent: Beasley

Hudley - Frederic

5. Authorize Purchase of Proprietary Software Technology for Document Management in the Public Safety Department – Power DMS, Inc. – \$7,959.00

**RESOLUTION TO PURCHASE PROPRIETARY SOFTWARE TECHNOLOGY FOR THE  
PUBLIC SAFETY DEPARTMENT**

WHEREAS, the Public Safety Department is required to use a document management program to distribute administration polices, general orders, memos and other vital documents to all members; and

WHEREAS, the technology and maintenance are proprietary software for Power DMS Incorporated; and

WHEREAS, the total cost of this software will exceed the quote threshold; and

WHEREAS, under New Jersey Local Public Contract (NJSA 40A:11-5dd), the Township may award a contract for proprietary software in lieu of bidding; and

**MINUTES - REGULAR COUNCIL MEETING – MAY 10, 2021 – PAGE 44**

WHEREAS, the Township would like to take advantage of provisions of NJSA 40:11-5 (dd) and award a service contract to Power DMS, INC for the total sum of \$7,959.00

NOW, THEREFORE, BE IT RESOLVED BY THE MUNICIPAL COUNCIL OF THE TOWNSHIP OF IRVINGTON hereby authorizes a service contract to for Power DMS Incorporated, 101 South Garland Ave, Suite 300, Orlando, FL 32801 under provisions of NJSA 40:11-5dd to purchase proprietary software for the total sum of \$7,959.00; and

BE IT FURTHER RESOLVED, that the Township Attorney is directed to prepare the appropriate contract for such goods and services and the Mayor and Municipal Clerk is authorized to sign the same; and

BE IT FURTHER RESOLVED that the required availability of funds C2100012 in the amount of \$7,959.00 has been obtained from the Chief Financial Officer, charged to budget account number 1-01-25-240-240-262.

Adopted  
Absent: Beasley

Cox – Hudley

6. Extend Private Debt Collection Service Contract with First Credit Services - July 11, 2021 until July 10, 2021 - Amount Not To Exceed Seventeen Point Five Percent (17.5%) of the Total Amount Collected by the Fifteenth of the Following Month of Collections

**RESOLUTION TO EXTEND PRIVATE DEBT COLLECTION SERVICE CONTRACT**

WHEREAS, resolution number MCT 18-0622-1 authorized a private debt collection service contract which expires on July 10, 2020; and

WHEREAS, resolution number MCT 20-0622-1 extended the private debt collection service contract until July 12, 2021; and

WHEREAS, the original specifications included language that allowed for the extension up to two additional one year contract at the existing terms and conditions if mutually accepted to the vendor and Township; and

WHEREAS, the vendor has agreed to extend the existing agreement for one year; and

WHEREAS, it would be in the Township's best interest to extend the existing agreement for one year as recommended by the Municipal Court; and

NOW, BE IT HEREBY RESOLVED by the Township of Irvington, Essex County, New Jersey that the following contract be extended for one year, starting on July 11, 2021 until July 10, 2022 with First Credit Services, 371 Hoes Lane, Piscataway, NJ 08854

BE IT FURTHER RESOLVED that all payments by the debtors will be collected by the Municipal Court of the Township of Irvington and the vendor (First Credit Services) will receive an amount not to exceed seventeen point five percent (17.5%) of the total amount collected by the fifteenth of the following month

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of collections. Payment will be forwarded by the Municipal Court Director pursuant to rules governing the Courts.

BE IT FURTHER RESOLVED that the Township Attorney is directed to prepare the appropriate contracts and the Mayor and the Township Clerk be and the same are hereby authorized to execute said contract with the above listed company.

Adopted  
Absent: Beasley

Cox - Hudley                      7. Authorize Reimbursement to Employee For Purchase of Zoom Video Conferencing Software – \$2,872.50

**RESOLUTION TO REIMBURSE MUNICIPAL EMPLOYEE \$2,872.54.00 FOR PAYMENT OF ZOOM MEETING ACCOUNT**

WHEREAS, all purchases of goods and services must be procured using a purchase order; and

WHEREAS, N.J.S.A 40A:5A-1 et eq, requires that all purchases of goods and services must be encumbered prior to the issuance of said service; and

WHEREAS, N.J.S.A. 40A:11-5(5)(a)(i) requires that all purchases must be procured in a fair, open and competitive manner; and

WHEREAS, N.J.S.A. 54A:7-1.2. requires all vendors that are paid with taxpayers funds are required to have a New Jersey Business Registration Certificate and W-9 form on file with the Municipality for tax and audit purposes; and

WHEREAS, on April 02, 2020 – April 21, 2021, Honorable Mayor Anthony Vauss opted to pay for Zoom meeting software; and

WHEREAS, Honorable Mayor Anthony Vauss has submitted a request to be reimbursed for this service, which he paid with a credit card for an amount of \$2,872.50; and

NOW, THEREFORE, BE IT RESOLVED BY THE MUNICIPAL COUNCIL OF THE TOWNSHIP OF IRVINGTON authorize the Qualified Purchasing Agent to reimburse, Honorable Mayor Anthony Vauss the total sum of \$2,872.50 for Zoom Meeting software; and

BE IT RESOLVED that the required certification of availability of funds C2-100069 in the amount of \$2,872.50 from account number 1-01-20-110-110-116 has been obtained from the Chief Financial Officer.

Adopted  
Absent: Beasley

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Cox – Burgess

8. Authorize Fair and Open Professional Services Contract for Planner Services for the Redevelopment Plan and Zoning Ordinance – Nishuane Group LLC – May 10, 2021 to May 9, 2022 - Amount of \$100,000.00

**A RESOLUTION AWARDING A FAIR AND OPEN CONTRACT TO NISHUANE GROUP LLC AS THE TOWNSHIP PLANNER FOR REDEVELOPMENT PLAN AND ZONING ORDINANCE**

WHEREAS, the Request for Proposals for professional Planner Services for the Redevelopment plan and Zoning Ordinance was publicly advertised in the New Jersey Star Ledger on March 08, 2021 with a deadline for proposals to be submitted on March 31, 2021;and

WHEREAS, one qualification was received and publicly opened by the Purchasing Agent and Assistant Municipal Clerk; and

WHEREAS, said qualification was referred to the Community Development and Planning Director; and

WHEREAS, the Community Development and Planning Director has recommended award should be made to the following firm:

Nishuane Group LLC,  
105 Grove Street, Suite 1,  
Montclair, NJ 07042

NOW THEREFORE, BE IT RESOLVED BY THE MUNICIPAL COUNCIL OF THE TOWNSHIP OF IRVINGTON that a contract for Professional Planner for Redevelopment plan and Zoning Ordinance be awarded to Nishuane Group LLC., of 105 Grove Street, Suite 1, Montclair, NJ 07042, on the basis of their response to the request for proposal selection criteria and qualifications, for an annual amount of \$100,000.00 for one year starting on May 10, 2021 until May 9, 2022

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

BE IT RESOLVED that the required certification of availability of funds C2000063 in the amount of \$5,000.00 from account number 1-01-21-180-185-299 has been obtained from the Chief Financial Officer for the first month payment and the remaining balance will be certified upon the adoption of the 2021 budget and escrow funds.

Adopted  
Absent: Beasley

Frederic - Cox

9. Authorize Emergency Contract to Repair Coit Street Garage Roof – Dajon Associates - \$74,300.00

**RESOLUTION TO AWARD AN EMERGENCY CONTRACT FOR COIT STREET GARAGE ROOF**

WHEREAS, a large portion of Coit Street garage roof collapsed on April 28, 2021; and

WHEREAS, the work needed to repair the roof is beyond the current capabilities of the Department of Public Works and it is not practical for the Department of Public Works, and

WHEREAS, this situation constitutes a threat to public health, safety and welfare and the Director of Public Works has declared an emergency, and

WHEREAS, Dajon Associates Inc. was contacted and completed the requested repairs in the amount of \$74,300.00

WHEREAS, the Mayor has concurred with the amount and recommends that an emergency contract be awarded to Dajon Associates Inc., 12 Dyatt Place, Hackensack, NJ 07601 for a total amount of \$74,300.00, and

NOW, THEREFORE, BE IT RESOLVED BY THE MUNICIPAL COUNCIL OF THE TOWNSHIP OF IRVINGTON that it ratifies the decision of the Director of Public Works and the Mayor to authorize an emergency contract in the amount of \$74,300.00 to Dajon Associates., 12 Dyatt Place, Hackensack, NJ 07601 to repair collapsed roof on April 28, 2021.

BE IT FURTHER RESOLVED that the required certification of availability of funds C2100065 in the amount of \$74,300.00 from account number C-04-56-852-019-903 has been obtained from the Chief Financial Officer.

Adopted  
Absent: Beasley

Burgess - Vick                      10. Award Professional Engineering Services Contract For a Drainage Study in the Area of South 21<sup>st</sup> Street Based on Quotations – Greenman – Pederson, Inc. – Total Cost Not To Exceed \$16,400.00

**RESOLUTION TO AWARD A PROFESSIONAL SERVICES CONTRACT FOR  
A DRAINAGE STUDY IN THE AREA OF S. 20<sup>TH</sup> STREET**

WHEREAS, there currently exists a situation where certain areas along South 20<sup>th</sup> Street and Buffington Street experience localized flooding during rainfall events, causing damage to the properties in this area; and

WHEREAS, in order to resolve this problem, the Township Engineer, acting at the direction of the Township Administrator, and as the scope of the project is beyond the capabilities of the current township staff, prepared a Request for Quotes and transmitted that to the seven engineering consultants that are listed on our current annual list of engineering firm that was adopted by resolution of the Municipal Council on November 12, 2019; and

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WHEREAS, the Township Engineer received two proposals from these consultants to whom this Request for Quotes was mailed and, in a memorandum dated August 20, 2020, reviewed these proposals and found that the lowest responsible quote for this work was from Greenman –Pedersen, Inc., at their quoted price of \$ 16,400.00 (\$4,800.00 for the Phase 1 portion of this project which includes \$ 4,800.00 for engineering review and analysis and a cost not to exceed \$ 11,600.00 for a sewer cleaning and television inspection company); and

WHEREAS, the Township Engineer has recommended that a professional services contract for Phase 1 of this project be awarded to Greenman –Pedersen, Inc. at their quoted price of \$ 16,400.00 ; and

NOW, THEREFORE, BE IT RESOLVED BY MUNICIPAL COUNCIL OF THE TOWNSHIP OF IRVINGTON that a professional services contract for a Drainage Study of the S. 20<sup>th</sup> Street area be awarded to Greenman –Pedersen, Inc. , Morris Plains, NJ at their quoted price of \$ 16,400.00; and

BE IT FURTHER RESOLVED that pursuant to N.J.A.C. 5:34-5.2, the required Certificate of Availability of Funds No. C2100053 for the above has been obtained from the Chief Financial Officer of the Township of Irvington and the appropriation to be charged for this expenditure is in the amount of \$ 16,400.00 is Account No. C-04-56-853-021-901.

Adopted  
Absent: Beasley

Hudley – Burgess

11. Authorize Application for Grant Funding in Conjunction With the Irvington Library – New Jersey Library Construction Bond Act – \$5,000,000.00

**RESOLUTION II**

**RESOLUTION AUTHORIZING THE IRVINGTON PUBLIC LIBRARY TO APPLY FOR GRANT FUNDS TO EXTEND THE BUILDING**

WHEREAS, on April 29, 2021, the Irvington Library Board passed resolution number 020/21 to apply for a grant entitled the New Jersey Library Construction Bond Act for the purposes of extending the Irvington Public Library building located at 5 Civic Square; and

WHEREAS, the application requires the Irvington Mayor and Municipal Council to authorize the application of said grant; and

NOW, THEREFORE, BE IT RESLOVED, that the Mayor and Municipal Council of the Township of Irvington hereby authorizes the Irvington Library to apply for the New Jersey Library Construction Bond Act Grant.

BE IT RESLOVED,

The Township of Irvington and the Irvington Public Library hereby certify that permission has been granted to apply for the project entitled the New Jersey Library Construction Bond Act, in the amount of: \$5,000,000.00



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The filing of this application was authorized at the official meeting of the governing body of the Municipality held on May 10, 2021.

**For the Municipality:**

_____ Signature <u>Anthony Vauss/Mayor</u>	_____ Certification Signature <u>Faheem J. Ra'Oof/ CFO</u>
_____ Typed Name and Title	_____ Typed Name and Title
_____ Date	_____ Date

**For the Library/Non-Profit Agency:**

_____ Signature <u>Jeanetta Singleton/ Director</u>	_____ Certification Signature <u>Ronald Brown/BA</u>
_____ Typed Name and Title	_____ Typed Name and Title
_____ Date	_____ Date

Adopted  
Absent: Beasley

~~12. Authorize Policies and Procedures for the Use Procurement Cards (P-Cards)~~ **[REMOVED AT CAUCUS MEETING - REMANDED TO FINANCE COMMITTEE]**

Cox - Vick

13. Authorize Issuance of Tax Anticipation Notes – CY 2021 – \$15,000,000.00

**RESOLUTION AUTHORIZING THE ISSUANCE OF NOT EXCEEDING \$15,000,000 TAX ANTICIPATION NOTES OF CY 2021  
OF THE TOWNSHIP OF IRVINGTON, IN THE COUNTY OF ESSEX, NEW JERSEY.**

BE IT RESOLVED BY THE TOWNSHIP COUNCIL OF THE TOWNSHIP OF IRVINGTON, IN THE COUNTY OF ESSEX, NEW JERSEY (not less than the majority of the full membership of the governing body) AS FOLLOWS:

Section 1. In anticipation of the collection of taxes during the current fiscal year, we are hereby authorized to be issued tax anticipation notes of the Township, each to be known as "Tax Anticipation Note of CY-2021," in amounts not exceeding \$15,000,000.00. The proceeds of such notes shall be applied only to purposes provided for in the budget or for which taxes are levied for the current year.

Section 2. The following certificate has been prepared by the Chief Financial Officer and is filed in the office of the Township Clerk:

**CERTIFICATE WITH RESPECT TO TAX ANTICIPATION NOTES**

I, Faheem J. Ra'Oof, Chief Financial Officer of the Township of Irvington, in the County of Essex, New Jersey HEREBY CERTIFY as follows:

1. The gross borrowing power in respect to tax anticipation notes for the calendar fiscal year of 2021, being 30 percent of the tax levy for all purposes of the calendar fiscal year of 2020, plus 30 percent of the amount of miscellaneous revenues realized in cash during the calendar fiscal year of 2020, is \$42,435,351.92.
2. The amount of notes outstanding in anticipation of the collection of taxes of the calendar fiscal year of 2020, except such notes as will be renewed by or paid from the proceeds of the notes to be issued, is \$ -0-.
3. The net borrowing power, being the excess of the first over the second of the two above amounts, is \$42,435,351.92.
4. This certificate is made with respect to \$15,000,000.00 Tax Anticipation Notes of CY-2020 about to be authorized by the Township Council of the Township of Irvington.

IN WITNESS WHEREOF, I have hereunto set my hand this 10th day of May, 2021.

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Faheem J. Ra'Oof, Chief Financial Officer

Section 3. The following matters in connection with the notes are hereby determined:

- (a) All notes issued hereunder shall mature at such times as may be determined by the Chief Financial Officer, provided that no note shall mature later than 120 days following the end of the calendar fiscal year.
- (b) All notes issued hereunder shall bear interest at such rate or rates as may be determined by the Chief Financial Officer.
- (c) All notes shall be in the form prescribed by the Local Budget Law and otherwise as determined by the Chief Financial Officer and such officer's signature upon the notes shall be conclusive as to such determination;
- (d) Notes issued hereunder may be renewed from time to time, provided, however, that no renewal note shall be issued later than the last day of the fiscal year.
- (e) All notes shall be executed by the Mayor and the Chief Financial Officer and attested by the Township Clerk.

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Section 4. The Chief Financial Officer is authorized and directed to determine all matters in connection with the notes not determined by this or by a subsequent resolution and such officer's signature upon the notes shall be conclusive as to such determination.

Section 5. The Chief Financial Officer is hereby authorized to sell the notes from time to time at public or private sale in such amounts as such officer may determine at not less than par and to deliver them from time to time to the purchasers thereof upon receipt of payment of the purchase price plus accrued interest from their dates to the date of delivery thereof and payment therefore.

Section 6. Any instrument issued pursuant to this resolution shall be a general obligation of the Township, and the full faith and credit of the Township are hereby pledged to the punctual payment of the principal of and the interest on the obligations.

Section 7. The Chief Financial Officer is authorized and is directed to report in writing to the Township Council at the meeting next succeeding the date when any sale or delivery of the notes pursuant to this resolution is made, such report to include the amount, the description, the interest rate and the maturity of the notes sold, the price obtained and the name of the purchaser.

Section 8. The Chief Financial Officer, in connection with other professionals of the Township acting under his direction, is hereby authorized to prepare and to update from time to time as necessary a financial disclosure document for the Township, as it may be so updated from time to time, to be distributed in connection with the sale of obligations of the Township. The Chief Financial Officer is hereby authorized to execute such disclosure document on behalf of the Township.

Section 9. (a) Solely for purposes of complying with Rule 15c2-12 of the Securities and Exchange Commission (the "Rule"), and provided that an issue of notes authorized by this resolution is not exempt from the Rule and provided that an issue of notes is not exempt from the following requirements in accordance with paragraph (d) of the Rule, for so long as an issue of notes of the Issuer remains outstanding (other than an issue of notes which has been wholly defeased), the Township shall provide in a timely manner to each nationally recognized municipal securities information repository ("National Repositories") or to the Municipal Securities Rulemaking Board, and to the appropriate State information depository, if any, ("State Depository," and together with the National Repositories, the "Repositories") notice of the following events with respect to an issue of notes, if material (herein "Material Events"):

- (1) Principal and interest payment delinquencies;
- (2) Non-payment related defaults;
- (3) Unscheduled draws on debt service reserves reflecting financial difficulties;
- (4) Unscheduled draws on credit enhancements reflecting financial difficulties;
- (5) Substitution of credit or liquidity providers, or their failure to perform;
- (6) Adverse tax opinions or events affecting the tax-exempt status of the security;
- (7) Modifications to rights of security holders;
- (8) Bond calls;
- (9) Defeasances;
- (10) Release, substitution, or sale of property securing repayment of the securities; and
- (11) Rating changes.

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(b) The covenants and undertakings contained in this Section are made for the benefit of the holders or beneficial owners of the notes issued under this resolution.

(c) The Chief Financial Officer shall determine, in consultation with Bond Counsel, the application of the Rule or the exemption from the Rule for each issue of notes prior to their offering. Such officer is hereby authorized to enter into written contracts or undertaking to implement this resolution and is further authorized to amend such contracts or undertakings as needed to comply with the Rule or upon the advice of Bond Counsel.

(d) In the event that the Township fails to comply with this resolution or the written contract or undertaking, the Township shall not be liable for monetary damages, remedy of the holders or beneficial owners of the notes being hereby specifically limited to specific performance of the covenants contained in this resolution or the written contract or undertaking.

Section 10. This resolution shall take effect immediately.

**CERTIFICATE**

I, Harold E. Wiener, Clerk of the Township of Irvington, in the County of Essex, State of New Jersey, HEREBY CERTIFY that the foregoing annexed extract from the minutes of a meeting of the governing body of the Township duly called and held on May 10, 2021 has been compared by me with the original minutes as officially recorded in my office in the Minute Book of the governing body and is a true, complete and correct copy thereof and of the whole of the original minutes so far as they relate to the subject matters referred to in the extract.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of the Township this 10th day of May, 2021.

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Harold E. Wiener, Clerk

(SEAL)

Adopted  
Absent: Beasley

~~14. Anticipate Miscellaneous Revenues In The 2021 Budget Using The  
Three Year Average Of Realized Revenues From The Prior Three Years~~  
**[REMOVED AT CAUCUS MEETING - REMANDED TO FINANCE  
COMMITTEE]**

Beasley – Burgess

15. Establish Handicapped Parking Spaces in Front of 36 Cumming Street  
and 102 Grace Street

WHEREAS, N.J.S.A. 39:4-197.5 provides that a Municipality may by resolution provide for restricted parking space(s) in front of residence(s) for use by any person who has been issued a special vehicle identification card pursuant to the provisions of N.J.S.A. 39:4-205, when using a motor vehicle on which

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is displayed a certificate, for which a special vehicle identification card has been issued pursuant to N.J.S.A. 39:4-206; and

WHEREAS, request(s) have been made for restricted parking space(s) in front of **102 GRACE STREET, 36 CUMMINGS STREET**:

NOW, THEREFORE BE IT RESOLVED BY THE MUNICIPAL COUNCIL OF THE TOWNSHIP OF IRVINGTON that a parking space restricted for use by any person who has been issued a special vehicle identification card pursuant to the provisions of N.J.S.A. 39:4-205, when using a motor vehicle on which is displayed a certificate, for which a special vehicle identification card has been issued pursuant to N.J.S.A. 39:4-206, be established in front of **102 GRACE STREET, 36 CUMMINGS STREET**; and

BE IT FURTHER RESOLVED that the Department of Public Works is directed to place signs designating said handicapped parking spaces.

Adopted  
Absent: Beasley

Frederic- Cox 16. Commemorate Haitian Flag Day, 2021

RESOLUTION OF COMMEMORATION  
HAITIAN FLAG DAY  
MAY 18, 2021

WHEREAS, HAITI's history dates back to thousands of years. The western half of the island of Hispaniola, it was first inhabited by the Taino natives. Christopher Columbus was the first European to visit the island, doing so in 1492, founding the settlement of La Navidad. France and Spain divided Hispaniola between them in 1697, France receiving the western half, importing African slaves and imposing racial codes; and

WHEREAS, HAITIAN natives fought for their independence, under former slave Toussaint L'Ouverture, in the late 1700s and early 1800s. On January 1, 1804, HAITI proclaimed its independence from France, and withstood French and other nations' attempts to conquer them. HAITI is the second-oldest independent nation in the Americas; and

WHEREAS, For a country's citizens, the national flag is indisputably a symbol of general pride. They would consider any offense to their flag to be an offense to their country. Beyond being an icon though, a flag's origin can often say a lot about a nation's social makeup or history. Haitians feel no different and even reserve a special day to honor it, that day is May 18, 2021 and

WHEREAS, In Haiti, Flag Day is a major national holiday celebrated with great fanfare on the grounds of the national palace. Flag Day is also observed by Haitians in the Diaspora. In the United States Haitians give homage to the blue and red by carrying it around. Haiti's flag's origin is tightly linked to a history of struggle for freedom; and

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WHEREAS, Toussaint Louverture and the army of revolted slaves fought successively for the Spanish against the French (1793-1794), for the French against Spain and England (1794-1802) and ultimately against France; and

WHEREAS, The leaders of the free slaves and the men of color had decided to fight for the creation of an independent nation. On May 18, 1803, in the city of Arcahaie, not far from Port-au-Prince, the newly appointed revolutionary leader Jean-Jacques Dessalines created the flag by taking a French tricolor and ripping out the white center. He then asked Catherine Flon to sew the remaining bands together; and

NOW, THEREFORE, BE IT RESOLVED BY THE MUNICIPAL COUNCIL OF THE TOWNSHIP OF IRVINGTON that it hereby recognizes May 18, 2021 as Haitian Flag Day and honors this country's citizens and their ancestors who so bravely fought for their freedom from slavery.

BE IT FURTHER RESOLVED that a copy of this resolution be spread upon the minutes of this governing body in lasting tribute to Haitian Flag Day.

Adopted  
Absent: Beasley

Burgess – Hudley

17. Remove Handicapped Parking Space in Front of 71 Sheridan Street-  
Handicapped Resident Deceased

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

WHEREAS, a restricted handicapped parking space has been previously established at **71 SHERIDAN STREET**; and

WHEREAS, the Police Department has determined that the handicapped resident for which the restricted handicapped parking space in front of **71 SHERIDAN STREET** is **DECEASED** and will no longer reside at that address and that there is no longer any need to for the restricted handicapped parking space in front of **71 SHERIDAN STREET**:

NOW, THEREFORE, BE IT RESOLVED BY THE MUNICIPAL COUNCIL OF THE TOWNSHIP OF IRVINGTON that the restricted handicapped parking space heretofore established in front **71 SHERIDAN STREET** be and the same is hereby rescinded; and

BE IT FURTHER RESOLVED that the Department of Public Works is directed to remove the restricted handicapped parking sign located in front of **71 SHERIDAN STREET**.

Adopted

Hudley - Frederic

18. Amendment To Resolution Da 21-0111-8 Adopted On January 11,

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2021 - Accept Funding From Community Services Block Grant  
(CSBG)

AMENDMENT TO RESOLUTION DA 21-0111-8 ADOPTED ON January 11, 2021.  
RESOLUTION ACCEPTING FUNDING FROM COMMUNITY SERVICES BLOCK GRANT  
(CSBG)

WHEREAS, Irvington Neighborhood Improvement Corporation seeks to amend resolution number DA 21-0111-8 due to an increase in funding.

WHEREAS, The County of Essex, acting through its Department of Citizens Services, Division of Community Action through the Community Services Block Grant (CSBG) proposes to enter into a sub grant agreement with Irvington Neighborhood Improvement Corporation to service the low-income poverty constituents of Essex County for the contract price of \$62,100.00 during the 2021 program year of January 1, 2021– December 31, 2021 which has been amended to \$292,100.00

WHEREAS, said grant agreement has been negotiated and approved by the County Executive of Essex County and to the Board of Chosen Freeholders; and

NOW, THEREFORE, BE IT RESOLVED BY THE MUNICIPAL COUNCIL OF THE TOWNSHIP OF IRVINGTON that the Township of Irvington be and hereby authorized to execute a Grant Agreement with the Essex County Division of Community Action as sub-recipient of Community Services Block Grant funds in the amount of \$292,100.00.

BE IT FURTHER RESOLVED that the Township of Irvington does hereby accept the award of \$292,100.00 for such activities.

Adopted  
Absent: Beasley

Frederic – Hudley

19. Authorize Submission Of A Strategic Plan For The Irvington  
Municipal Alliance Grant For Fiscal Year 2021-2022

**Governor's Council on Alcoholism and Drug Abuse  
Fiscal Grant Cycle July 1, 2021-June 30, 2022**

**WHEREAS**, the Governor's Council on Alcoholism and Drug Abuse established the Municipal Alliances for the Prevention of Alcoholism and Drug Abuse in 1989 to educate and engage residents, local government and law enforcement officials, schools, nonprofit organizations, the faith community, parents, youth and other allies in efforts to prevent alcoholism and drug abuse in communities throughout New Jersey.

**WHEREAS**, Irvington Municipal Council of the Township of Irvington of, County of Essex, State of New Jersey recognizes that the abuse of alcohol and drugs is a serious problem in our society amongst persons of all ages; and,

**WHEREAS**, the Irvington Municipal Council further recognizes that it is incumbent upon not only public officials but upon the entire community to take action to prevent such abuses in our community; and,

**WHEREAS**, the Irvington Municipal Council has applied for funding to the Governor’s Council on Alcoholism and Drug Abuse through the County of Essex;

**NOW, THEREFORE, BE IT RESOLVED** by the Township of Irvington, County of Essex, State of New Jersey hereby recognizes the following:

1. The Township of Irvington Council does hereby authorize submission of a strategic plan for the Irvington Municipal Alliance grant for fiscal year 2021-2022 in the amount of:  

DEDR	\$17,332.00
Cash Match	\$4,333.00
In-Kind	\$12,999.00
2. The Township of Irvington Council acknowledges the terms and conditions for administering the Municipal Alliance grant, including the administrative compliance and audit requirements.

Adopted  
Absent: Beasley

Frederic - Cox

20. Commendation in Commemoration of Haitian Flag Day – G. Alexandre

**GERARD ALEXANDRE  
RESOLUTION OF COMMENDATION  
IN COMMEMORATION OF HAITIAN FLAG DAY, 2021**

WHEREAS, HAITI’s history dates back to thousands of years. For a country’s citizens, the national flag is indisputably a symbol of general pride. They would consider any offense to their flag to be an offense to their country. Beyond being an icon though, a flag’s origin can often say a lot about a nation’s social makeup or history. Haitians feel no different and even reserve a special day to honor it, that day is May 18, 1803; and

WHEREAS, in commemoration of Haitian Flag Day 2021, the Irvington Municipal Council would like to honor, Gerard Alexandre who has provided a vast array of accomplishments, community contributions and success;

WHEREAS, originally born in Desdunes, Haiti, Gerald was educated in Newark, NJ, graduating Central High School in 1978; and

WHEREAS, Gerard continued his education at Bloomfield College in 1980 and Essex County College in 1982; and



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WHEREAS, Gerard earned an Associate's degree in Business Administration and Marketing; and

WHEREAS, Gerard worked as a Supervisor for Magruder Color Company of Elizabeth, NJ; and

WHEREAS, in 1993 he began his employ with Essex Laundromat, located at 673 Sanford Avenue in Newark NJ; and

WHEREAS, in 1999, Gerard also was involved with Family Auto Cab of Newark, NJ; and

WHEREAS, in 2009 Gerard became a part of Radio Gamma Internationale:

NOW, THEREFORE, BE IT RESOLVED BY THE MUNICIPAL COUNCIL OF THE TOWNSHIP OF IRVINGTON that it hereby applauds the many achievements of Gerard Alexandre and celebrates Haitian Flag Day to honor this country's citizens and their ancestors who so bravely fought for their freedom from slavery; and

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

Adopted

10. Communication and Petitions

A. Communications

1. Planning Board - Resolution Approving an Amended East Ward-East Springfield Avenue Redevelopment Plan

11. Pending Business

None

12. Miscellaneous

A. General Hearing of Citizens and Council Members limited to three minutes per person (MUST SIGN UP IN ADVANCE OF MEETING)

Charlisse Jones, 120 Maple Avenue  
Dorothy Sherrill, 35 Augusta Street  
Roslyn Glliard, 239 – 40<sup>th</sup> Street  
Lauren Shears, Essex County Public Information Officer

President Burgess responded to the concerns raised by the above referenced citizens.

13. Adjournment

There being no further business, the meeting was adjourned at

P.M.

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Renee C. Burgess, Council President

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Harold E Wiener, Municipal Clerk