

Resolution of the Demarest Governing Body

Resolution No. 104-24

May 13, 2024

Council Member	Motion	Second	Yes	No	Abstain	Absent
Jiang		✓	✓			
Fox			✓			
Marks			✓			
Slowikowski	✓		✓			
Reiss			✓			
Collins			✓			

TITLE: APPROVING AND AUTHORIZING THE EXECUTION OF A REDEVELOPMENT AGREEMENT BETWEEN THE BOROUGH OF DEMAREST AND BCUW/MADELINE HOUSING PARTNERS, LLC FOR PROPERTY LOCATED AT 127 HARDENBURGH AVENUE, ALSO KNOWN AS BLOCK 2, LOTS 13 & 14 LOCATED IN AN AREA IN NEED OF REHABILITATION FOR DEVELOPMENT OF AN AFFORDABLE HOUSING PROJECT

=====

WHEREAS, the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1, et seq., as amended and supplemented (hereinafter referred to as the “LRHL”), provides a process for municipalities to participate in the redevelopment and improvement of parcel(s) of property designated as “areas in need of rehabilitation”; and

WHEREAS, the Mayor and Council (hereinafter referred to as the “Governing Body”) of the Borough of Demarest (the “Borough”) serve as an instrumentality and agency of the Borough pursuant to the LRHL for the purpose of implementing a redevelopment plan and carrying out projects within the rehabilitation area; and

WHEREAS, the property identified as Block 2, Lots 13 and 14 also known as 127 Hardenburgh Avenue (hereinafter the "Property") has been designated as an “area in need of rehabilitation” in accordance with the LRHL; and

WHEREAS, the redevelopment of this “area in need of rehabilitation” (also known as the Hardenburgh Rehabilitation Area) was provided for in the Hardenburgh Redevelopment Plan which allows for the construction of affordable housing and such other amenities and features as are commonly associated with residential facilities; and

WHEREAS, BCUW/Madeline Housing Partners, LLC (hereinafter the “Redeveloper”) submitted a proposed project for the Property that includes the development, construction, and management of seventeen (17) units of affordable family, supportive and senior housing units, including all common areas and amenities (the “Project”); and

WHEREAS, the Property is part of the Court-approved Housing Element and Fair Share Plan as well as the Affordable Housing Settlement Agreement for the Borough; and

WHEREAS, the LRHL authorizes the Borough to designate qualified entities to serve as redevelopers of rehabilitation areas and to enter into contracts or agreements for the planning, construction or undertaking of those development projects or redevelopment work; and

WHEREAS, on March 30, 2020, the Municipality adopted a Resolution Designating the Redeveloper as such, approving the proposed affordable housing Project and authorizing the negotiation and execution of a redevelopment agreement; and

WHEREAS, the Municipality finds the proposed Project consistent with the Redevelopment Plan; and

WHEREAS, Borough has determined that the development of the Property as proposed by the Redeveloper is in the best interest of the Borough and the health, safety, morals and welfare of the residents thereof and in accordance with the public purposes and provisions of the applicable federal, State and local laws and requirements under which the Project will be undertaken and assisted; and

WHEREAS, the Borough has determined that it is in the best interests of the Borough to enter into a redevelopment agreement with the Redeveloper to set forth the principles of agreement between the Borough and Redeveloper for the redevelopment of the Property and to set forth in greater detail their respective undertakings, rights, and obligations in connection with the construction of the Project; and

WHEREAS, the Borough and Redeveloper have agreed to the terms and conditions with respect to the redevelopment of the Property, the construction of the improvements and the payment of certain costs in connection therewith.

NOW, THEREFORE BE IT RESOLVED, by the Mayor and Council of the Borough of Demarest, County of Bergen, State of New Jersey, that it hereby approves and authorizes the execution of a redevelopment agreement with BCUW/Madeline Housing Partners, LLC, 6 Forest

Avenue Suite 220, Paramus, NJ as Redeveloper for the redevelopment of 127 Hardenburgh Avenue, also known as Block 2, Lots 13 & 14 for the Project.

BE IT FURTHER RESOLVED that the Mayor and the appropriate Borough officials are hereby authorized to execute any and all documents, including the redevelopment agreement substantially consistent with the form of agreement attached hereto, to effectuate the completion and implementation of the Project, subject to final review by the Borough Attorney as to legal form and content.

BE IT FURTHER RESOLVED that this Resolution shall take effect immediately upon adoption.

APPROVED:



Brian Bernstein, Mayor

CERTIFICATION

I, Julie Falkenstern, Acting Borough Clerk, of the Borough of Demarest, in the County of Bergen and the State of New Jersey do hereby certify that the foregoing Resolution is a true copy of the original resolution duly passed and adopted by the Governing Body at the meeting on May 13, 2024.



Julie Falkenstern, Acting Borough Clerk

REDEVELOPMENT AGREEMENT

BY AND BETWEEN

THE BOROUGH OF DEMAREST
as Municipality

AND

BCUW/MADELINE HOUSING PARTNERS, LLC
as Redeveloper

Table of Contents

Recitals

Article 1 – Definitions and Interpretations

Article 2 – Description of Project

- 2.1. Purpose; Designation as Redeveloper
- 2.2. The Project
- 2.3. Development and Design Concepts
- 2.4. Development Milestones
- 2.5. Qualified Entities
- 2.6. Other Governmental Approvals

Article 3 – Property Acquisition & Easement

- 3.1. Agreement to Sell and Purchase the Property
- 3.2. The Redeveloper's Due Diligence
- 3.3. Terms and Conditions for Purchase and Sale
- 3.4. Conditions Precedent
- 3.5. Transfer of Ownership; Title
- 3.6. Physical Condition of the Property
- 3.7. Environmental Indemnification
- 3.8. Title Insurance
- 3.9. Risk of Loss
- 3.10. Brokerage Fees
- 3.11. Form 1099-B Filing
- 3.12. Closing Prorations
- 3.13. Consideration
- 3.14. Long-Term Tax Exemption

Article 4 – Construction of Project

- 4.1. Progress Reports and Progress Meetings
- 4.2. Suspension of Construction
- 4.3. Certificates of Occupancy and Certificate of Compilation
- 4.4. Public Improvements
- 4.5. Parking

Article 5 – Construction and Project Financing

- 5.1. Redeveloper's Commitment to Finance Construction of the Project
- 5.2. Project Costs and Administrative Costs
- 5.3. Municipality Contribution to Project Cost
- 5.4. Rights of Institutional Mortgagees
- 5.5. Rights of Mortgagees

5.6. Notice to Mortgagee

Article 6 – Representation and Warranties

- 6.1. Redeveloper's Representations and Warranties
- 6.2. Municipality's Representations and Warranties
- 6.3. Redeveloper's Declaration of Covenants and Relations

Article 7 – Default

- 7.1. Events of Default
- 7.2. Right to Cure upon Event of Default
- 7.3. Municipality's Remedies
- 7.4. Redeveloper's Remedies
- 7.5. Limitation of Liability
- 7.6. No Waiver of the Rights and Remedies by Delay
- 7.7. Rights and Remedies Cumulative
- 7.8. Force Majeure
- 7.9. Notice of an Event of Force Majeure
- 7.10. Effect on Obligations
- 7.11. Defense of Governmental Approvals

Article 8 – Insurance

- 8.1. Insurance Requirement
- 8.2. Insurance Pre-Condition to Commencement of Construction
- 8.3. Insurance as Primary Coverage
- 8.4. Continuation of Coverage

Article 9 – Indemnity

- 9.1. Obligation to Indemnify
- 9.2. Indemnification Coverage
- 9.3. Survival Indemnity

Article 10 – Notice and Demands

- 10.1. Notice of Provisions

Article 11 – Restrictions on Transfers

- 11.1. Restrictions on Transfer
- 11.2. Permitted Transfers
- 11.3. Conveyance to a Qualified Entry
- 11.4. Subsequent Conveyance by the Redeveloper

Article 12 – Miscellaneous

- 12.1. Term

- 12.2. No Third-Party Beneficiaries
- 12.3. Amendment Waiver
- 12.4. Consents
- 12.5. Governing Law
- 12.6. Severability
- 12.7. Binding Effect
- 12.8. Relationship of Parties
- 12.9. Counterparts
- 12.10. Prior Agreement Superseded
- 12.11. Exhibits
- 12.12. Affirmative Action
- 12.13. Non-Discrimination
- 12.14. Construction

THIS REDEVELOPMENT AGREEMENT (hereinafter the "Agreement") is entered into this ___ day of _____, by the Borough of Demarest, a municipal corporation and body politic of the State of New Jersey, having its offices at 118 Serpentine Road, Demarest, New Jersey (hereinafter the "Municipality"), and BCUW/Madeline Housing Partners, LLC, a New Jersey limited liability company authorized to conduct business within the State of New Jersey and having a principal office located at 6 Forest Avenue, Suite 220, Paramus, New Jersey (hereinafter the "Redeveloper") (the Municipality and the Redeveloper are hereinafter collectively referred to as the "Parties" and sometimes separately as the "Party").

WHEREAS, on or about July 8, 2020, the Municipality received a Final Order of Compliance and Judgment of Statutory Repose (hereinafter the "Order") concluding the Borough's Declaratory litigation filed in the Superior Court of New Jersey, Law Division-Bergen County, and captioned as In Re Petition of the Borough of Demarest, Bergen County, New Jersey and Sylco Investments, LLC, et. als. v. Borough of Demarest, et. als., BER-L-6301-15 and BER-L-6364-19, (sometimes known as 'the Litigation') that was the result of a settlement agreement by and between the parties (hereinafter the "Settlement Agreement"); and

WHEREAS, the Settlement Agreement in part calls for the designation of specific parcels of property identified as Block 23 Lots 13 and 14 also known as 127 Hardenburgh Avenue (hereinafter the "Property") as an "area in need of rehabilitation" in accordance with the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1, et seq., (hereinafter the "LRHL"); and

WHEREAS, the redevelopment of this "area in need of rehabilitation" (also known as the Hardenburgh Rehabilitation Area) was provided for in the Hardenburgh Redevelopment Plan which allows for the construction of affordable housing and such other amenities and features as are commonly associated with residential facilities; and

WHEREAS, the Redeveloper submitted a proposed project for the Property that includes the development, construction, and management of seventeen (17) units of affordable family, supportive and senior housing units, including all common areas and amenities; and

WHEREAS, the Municipality determined that the proposed improvements (hereinafter the Improvements) submitted by the Redeveloper and approved by the Court, closely reflected the goals and objectives of the Municipality with respect to this portion of the Municipality, and aligned with the Municipality's anticipated Housing Element and Fair Share Plan and would result in a residential facility that was, in the aggregate, beneficial to the community; and

WHEREAS, the Mayor and Governing Body serve as an instrumentality and agency of the Municipality pursuant to the LRHL for the purpose of implementing the Redevelopment Plan and carrying out redevelopment projects within the Municipality; and

WHEREAS, the LRHL authorizes the Municipality to designate qualified entities to serve as redevelopers of rehabilitation areas and to enter into contracts or agreements for the planning, construction or undertaking of those development projects or redevelopment work; and

WHEREAS, on March 30, 2020, the Municipality adopted a Resolution Designating the Redeveloper as such, approving the proposed affordable housing facility described above (hereinafter the "Project") and authorizing the negotiation and execution of a redevelopment agreement; and

WHEREAS, the Municipality finds the proposed Project as set forth and further described in the project drawings, architectural renderings, and site plan approval, attached and annexed hereto as **Exhibit A**, consistent with the Redevelopment Plan; and

WHEREAS, The Redeveloper has demonstrated to the Municipality its credentials, experience, and financial capability to design and construct the Project; and

WHEREAS, pursuant to the LRHL, it is the intention of the Parties to enter into this Agreement to further define and memorialize the respective obligations of the Parties hereto with regard to proceeding with the redevelopment of the Property in the manner prescribed herein.

NOW THEREFORE, for and in consideration of the mutual promises, covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each of the Parties, the Parties hereto agree as follows:

ARTICLE 1 **DEFINITIONS AND INTERPRETATIONS**

1.1 Defined Terms.

The Parties agree that, unless the context otherwise specifies or requires, in addition to the terms defined above, the following terms shall have the respective meanings specified below and such definitions shall be applicable equally to the singular and plural forms of such terms.

Affiliate - means with respect to any Person, any other Person directly or indirectly Controlling or Controlled by, or under direct or indirect common Control with, such Person.

Applicable Laws - shall mean all federal, State and local laws, ordinances, Governmental Approvals, rules, regulations and requirements applicable thereto including, but not limited to, the Local Housing and Redevelopment Law, the Long-Term Tax Exemption Law, the Municipal Land Use Law, and Environmental Laws, relevant construction codes including construction codes governing access for people with disabilities, and such zoning, sanitary, pollution and other environmental safety ordinances, laws and such rules and regulations promulgated thereunder and applicable federal and State labor standards.

Certificate of Completion- A written certificate issued by the Municipality in accordance with Section 4.3 hereof, which shall acknowledge that Redeveloper has performed all of its duties and obligations pursuant to this Agreement relative to the Project, if applicable, whose issuance shall serve to release the Project and Redeveloper from all terms, obligations and conditions contained in this Agreement.

Certificate of Occupancy- As defined in the Uniform Construction Code at N.J.A.C. 5:23-1.4, and as may be issued by the Municipality relative to a particular dwelling unit within the Project indicating that such dwelling unit has been completed in accordance with the construction permit, the Uniform Construction Code, and any other Applicable Law(s).

Claims means any and all liabilities (statutory or otherwise), obligations, claims, damages, causes of action, proceedings, costs, and expenses (including, without limitation, reasonable attorneys' fees, disbursements, and court costs), losses and injuries.

Closing means the conveyance of title to the Property by the Municipality to the Redeveloper, as set forth in Article 3 of this Agreement.

Commencement Date- Subject to the terms herein, the commencement date for construction shall be the first day of the calendar month coinciding or next following the date of receipt by the Redeveloper from the Municipality of a building permit authorizing physical construction of new development at the Property.

Completion, Complete or Completed means (i) that all work related to the Project in its entirety has been completed, acquired and installed in accordance with the terms of this Agreement, the Redevelopment Plan, and in compliance with all Applicable Laws so that the developed Property may be used and operated under the applicable provisions of this Agreement, and (ii) that all permits, licenses and approvals required for the Property are in full force and effect. Completion of the Project shall be conclusively evidenced by the issuance of a Certificate of Completion.

"Control", "Controlling", "Controlled by" and "under common Control with" shall mean with respect to any Person as defined in this Agreement, the possession, directly or indirectly, of the power to direct or cause and direct the day-to-day management policies of such Person, whether through the ownership of voting securities or by contract or otherwise. For avoidance of doubt, the fact that a Person with the power to direct or cause and direct the day-to-day management policies of another Person which may require the consent of one or more other Persons to annual operating plans, including, but not limited to operating and capital budgets, and other specified major decisions, shall not be deemed to mean that such Person does not have control.

"Day" shall mean a business day, excluding Saturday, Sunday, and any holiday upon which the New York Stock Exchange is closed.

Effective Date means the date upon which this Agreement is last executed by either the Redeveloper and/or the Municipality.

Foreclosure means that event in which a Holder forecloses its mortgage secured by the Property, or part thereof, or takes title to the Property, or part thereof, by deed-in-lieu of foreclosure or similar transaction.

“Governmental Body” shall mean any federal, State, County, or Municipal agency, department, commission, authority, court, or tribunal and any successor thereto, exercising executive, legislative, judicial, or administrative functions of or pertaining to government regulation of the construction proposed by the Redevelopment Plan, the Improvements/Project this Agreement and/or any and all Governmental Approvals.

Governmental Approvals means any approvals, authorizations, permits, licenses, or certificates required and issued or granted by any Governmental Body having jurisdiction necessary to implement and complete the Project in accordance with the Redevelopment Plan, the Applicable Law(s), and this Agreement.

Holder means a mortgagee or its affiliate or authorized servicing entity, providing financing secured by a mortgage or other lien instrument which it proposes to enter into with respect to the Project or any portion thereof.

Impositions means all taxes, payments in lieu of taxes, assessments (including, without limitation, all assessments for public improvements or benefits), water, sewer or other rents, rates and charges, connection fees, license fees, permit fees, inspection fees and other authorization fees and charges, in each case, whether general or special, which are levied upon any portion of the Property or on any of the Improvements constructed thereon.

Improvements means all buildings, structures and appurtenances including, without limitation, dwelling units, facilities and amenities, telecommunications equipment, surface parking or a structured parking facility, infrastructures, roads, fill, utilities, catch basins, curbs, site lighting, traffic striping, signage and demarcations, fire hydrants, retaining walls, sidewalks, walkways, landscaping, open space treatments and all other improvements constructed on or installed upon or within, or to be constructed on or installed upon or within, the Property and the streets immediately abutting the Property.

Infrastructure Improvements shall mean the preparation and installation on, in, under and to the Property of site work and the building foundations, on-site and off-site roads and improvements required in connection with permits and approvals for such improvements, all consistent with the requirements of the Redevelopment Plan and Applicable Laws.

Off-Tract Improvements means all Improvements not on the Property, if any, and any incidental work associated therewith, necessary for the construction of the Project or the Improvements, and/or as may be required in connection with Governmental Approvals, including, but not limited to, environmental remediation, roadways, storm drainage, sewers and utilities, wetlands mitigation, filling land, material storage and other similar ancillary off-site functions.

Person means any individual, sole proprietorship, corporation, partnership, joint venture, limited liability company or partnership, trust, unincorporated association, institution, public or Governmental Body or any other entity.

Project means the development and construction of the Improvements and the Off-Tract Improvements, as more specifically described in Section 2.2 herein and in Exhibit A to this Agreement.

Project Schedule means the schedule attached and annexed hereto as **Exhibit B** which designates the order of and timeframes for the permitting development and construction of the Improvements on the Property and approved by any and all relevant Governmental Bodies.

Public Improvements means Infrastructure Improvements and upgrades such as streets, grading, pavement, gutters, curbs, sidewalks, street lighting, surveyors' monuments, water mains, culverts, storm and sanitary sewers, drainage structures, erosion control and sedimentation devices, open space, and landscaping required under site plan approval memorialized by the Planning Board that will be dedicated to the Municipality pursuant to Applicable Law(s) or pursuant to this Agreement.

1.2 Interpretation and Construction. In this Agreement, unless the context otherwise requires:

(a) The terms "hereby", "hereof", "hereto", "herein", "hereunder" and any similar terms, as used in this Agreement, refer to this Agreement, and the term "hereafter" means after, and the term "heretofore" means before the Effective Date.

(b) Words imparting a particular gender meaning and include correlative words of every other gender and words importing the singular number mean and include the plural number and vice versa.

(c) Unless otherwise noted, the terms "include," "includes" and "including" when used in this Agreement shall be deemed to be followed by the phrase "without limitation."

(d) Any headings preceding the texts of the several Articles and Sections of this Agreement, and any table of contents or marginal notes appended to copies hereof, shall be solely for convenience of reference and shall not constitute a part of this Agreement, nor shall they affect its meaning, construction, or effect. Any references to Articles and Sections in this Agreement shall be deemed to be references to the Articles and Sections in this Agreement except or unless the context or express terms of this Agreement may otherwise provide, specify, or dictate.

(e) All notices to be given pursuant to Section 10.1 hereof and responses thereto shall be given, unless a certain number of days is specified, within a reasonable time, which shall not be less than ten (10) days nor more than thirty (30) Days, unless the context dictates otherwise.

(f) Any reference to Applicable Laws or any Applicable Law shall be read to mean as the Applicable Law as amended from time to time except where Redeveloper's obligation to comply was satisfied prior to the amendment.

(g) The Recitals contain statements of fact and/or expressions of intention and are incorporated into and made part of the substance of this Agreement.

(h) Whenever the terms of the Parties' Settlement Agreement conflict with this Agreement, the Settlement Agreement terms shall control.

ARTICLE 2 DESCRIPTION OF PROJECT

2.1 Purpose; Designation as Redeveloper. The purpose of this Agreement is to set forth the respective rights, obligations, conditions and agreements of the Municipality and the Redeveloper in connection with the redevelopment of the Property by the Redeveloper through the development and construction of the Project.

The Municipality hereby affirms and agrees that the Redeveloper was designated and appointed as the exclusive redeveloper of the Property. Further, the Municipality and the Redeveloper acknowledge and agree that said designation is effective only for the purpose of developing and constructing the Project upon the Property and thereafter making such dwelling units constructed available to qualified moderate, low and very low-income households. In connection with such designation and appointment, the Redeveloper has the exclusive right to perform and/or to have others perform any and all redevelopment activities on and about the Property as permitted in the Redevelopment Plan. Each of the Parties agrees that all redevelopment on and about the Property will only be authorized and may only be undertaken by the Redeveloper under the framework and in accordance with the terms of this Agreement and the Redevelopment Plan. Further, the Municipality agrees that for the term of this Agreement it will not negotiate for the provision of another redeveloper or developer for the Property or any portion thereof, except as may be required pursuant to Section 11.2 hereof.

2.2 The Project. As represented by the Redeveloper and approved by the Municipality, the Project shall consist of the development and construction of a residential facility containing seventeen (17) dwelling units, common areas and amenities all more particularly described in **Exhibit A** which is attached and annexed hereto. Each of the dwelling units developed and constructed shall be designated as Affordable Housing and made exclusively available to moderate, low and very low-income households.

2.3 Development and Design Concepts. It is acknowledged by the Redeveloper that it is obligated under this Agreement to construct the Project substantially in accordance with the Site Plan approval(s) previously received from the Borough's Planning Board, and in conformance with a Developer Agreement executed, or to be executed, between the Parties which details the physical and construction aspects of the approved Project and further ensures conformance with the terms of approval from the Planning Board. A copy of the subject Planning Board approval is attached and annexed hereto as **Exhibit A**. The Redeveloper shall not deviate from any aspect of the approved Project including but not limited to any specific exterior/interior elements or any specific materials without the Municipality's express written consent, which shall not be unreasonably withheld, conditioned, or delayed.

2.4 Development Milestones. The Redeveloper shall construct the Project or cause the Project to be constructed in accordance with the Project Schedule which is attached and annexed hereto as **Exhibit B**, subject to delays caused by an event(s) of Force Majeure, as this phrase is defined elsewhere in this Agreement. The Redeveloper shall have the right to accelerate the time frames set forth in the Project Schedule, upon notice given to the Municipality, should field conditions and market conditions provide the Redeveloper the opportunity to do so.

2.5 Qualified Entities

(a) By virtue of its designation as Redeveloper, BC UW/Madeline Housing Partners, LLC, has been determined to be a Qualified Entity. Notwithstanding any other provision in this Redevelopment Agreement, any transfer of the Redeveloper's rights and obligations set forth herein shall be limited to another Qualified Entity who shall thereafter assume the rights and obligations of the Redeveloper. The Project will, at the Redeveloper's option, be developed by (i) the Redeveloper; (ii) any partnership, corporation, limited liability company or other legal entity to which the Redeveloper and/or any Affiliate of the Redeveloper is the majority beneficial owner, or (iii) any partnership, corporation, limited liability company or other legal entity to which Redeveloper and/or any Affiliate of the Redeveloper are collectively the majority beneficial owners. Upon the Redeveloper's determination regarding such entity(ies), if other than the Redeveloper, the Redeveloper shall provide to the Municipality the name(s), contact person(s) and address(es) of each. In no event however shall the Redeveloper appoint any entity other than a Qualified Entity to develop the Project. Notwithstanding the foregoing, the Project will be constructed by a reputable, qualified and fully insured licensed contractor selected by the Redeveloper with whom the Redeveloper has previously worked on similar projects (the "Construction Contractor"). Upon the Redeveloper's selection of the Construction Contractor, the Redeveloper will provide the Municipality with the Construction Contractor's resumé evidencing its qualifications.

(b) The phrase "Qualified Entity" as used in this Agreement shall mean a partnership, corporation, limited liability company or other legal entity which has demonstrated to the satisfaction of the Municipality that:

- (i) It has the financial capacity to undertake the development, construction, and operation of the Property in question, including, without limitation, the capacity to obtain financing, to provide appropriate security (such as performance and completion bonds) and to otherwise satisfy its obligations with respect to the development of the Property;
- (ii) It is able to comply with and conform to all of the provisions of this Agreement and the Applicable Law(s) as they relate to the development of the Property and expressly assumes all such obligations;
- (iii) Has not filed a petition under federal bankruptcy laws or any state insolvency law or has been filed by or against, nor has a receiver, fiscal agent or similar officer been appointed by a court for the business or property of such entity, or any partnership in which such entity was or is a

general partner or any entity in which such entity was or is an officer or principal manager and the holder, directly or indirectly of an ownership interest in excess of ten (10%) percent (and, in the case of an involuntary proceeding, such proceeding has not been terminated within sixty (60) Days of its commencement) within the ten (10) years preceding the date of submission of such entity's application for consideration as a Qualified Entity;

- (iv) Such entity and its principals, directors, officers, partners, shareholders, and members, individually, have not been convicted in a criminal proceeding, and none of them are a named subject in a pending criminal proceeding, (excluding traffic violations or other similar minor offenses), and, to the best of the knowledge and belief of the principals, directors, officers, partners, shareholders, and members of such entity, is not a target of or a potential witness in a criminal investigation;
- (v) Such entity and its principals, directors, officers, partners, shareholders, and members, individually, have not been, directly or beneficially, a party to or beneficiary of any contract or agreement with the Municipality or the Redeveloper which has been terminated due to a default by such individual, partnership or entity or which is currently the subject of a dispute in which the Municipality or the Redeveloper alleges such default, nor is such individual, partnership or entity an adverse party in any currently pending litigation involving the Municipality or the Redeveloper;
- (vi) Such entity and its principals, directors, officers, partners, shareholders, and members, individually, have not been found in any civil or criminal action in or by a court or agency of competent jurisdiction to have violated any Applicable Law(s) relating to the sale of securities or commodities or been enjoined from engaging in any trade or business for any reason other than the violation of a contractual non-competition provision; and
- (vii) Such entity and its principals, directors, officers, partners, shareholders, and members, individually, have not violated any Municipality, state, or federal ethics law and entering into this Agreement will not cause any such violation or result in a conflict of interest.
- (viii) It shall comply with any other conditions that the Municipality may find reasonably necessary in order to achieve and safeguard the purposes of the Redevelopment Plan.

2.6 Other Governmental Approvals. It is acknowledged by both Parties that it may be necessary for the Redeveloper to obtain any number of other/additional Governmental Approvals from other Governmental Bodies in order to undertake the development, construction and/or operation of the Project. The Redeveloper agrees that it will take all necessary steps to prepare and apply for and proceed diligently to attempt to obtain any needed Governmental Approvals for the

Project in a timely fashion and utilizing commercially reasonable efforts. The Municipality agrees to promptly provide any pertinent information in its possession and to provide any reasonable assistance which may be required of it to enable the Redeveloper to properly apply for and obtain such Governmental Approvals in a timely fashion, including making applications in the name of the Municipality if deemed necessary for such approval or permit or if required by the Applicable Law(s). The Municipality agrees to support and endorse any applications for any Governmental Approvals required for the Project.

ARTICLE 3

PROPERTY ACQUISITION AND EASEMENTS

3.1 Agreement to Sell and Purchase the Property. Subject to the terms and conditions set forth in this Agreement, and the satisfaction or waiver of the conditions precedent set forth in Section 3.4, hereof, the Municipality agrees to transfer the Property to the Redeveloper, and the Redeveloper agrees to acquire the Property from the Municipality, in consideration of the Redeveloper's undertaking to develop and construct the Project in accordance with the provisions of this Agreement, the Redevelopment Plan and the Governmental Approvals.

3.2 The Redeveloper's Due Diligence. Pursuit of financing by Redeveloper may require environmental testing and reports satisfactory to the financial agency. The Municipality consents to Redeveloper performing tests and taking samples from the Property which may be invasive (hereinafter collectively referred to as the "**Redeveloper's Due Diligence**"). Redeveloper shall reasonably restore the Property after such testing. Redeveloper shall present proof of insurance certificates to the Municipality prior to entering upon the Property naming the Municipality as an additional insured concerning acts or omissions of the Redeveloper's employees and agents while on the Property which certificate shall be reasonably satisfactory to the Municipality's insurance consultant. Within five (5) days of this Agreement being fully executed and a copy delivered to the Redeveloper, the Municipality will provide Redeveloper all reasonably available information and reports in the possession of the Municipality related to the Property.

3.3 Terms and Conditions for Purchase and Sale. Provided that all Conditions Precedent to the Redeveloper's obligations to Close as set forth in this Agreement have been satisfied or waived, the Parties may Close upon the Property. The Closing shall occur on that date that is ten (10) Days following satisfaction of and/or waiver of each of the Conditions Precedent or upon such date and time as the Parties shall reasonably agree upon.

3.4 Conditions Precedent. The obligations of the Municipality to Close Title to the Property shall be subject to the fulfillment of all of the following conditions:

- (a) All representations and warranties of the Redeveloper contained in this Agreement shall be true and correct in all material respects as of the Closing.

- (b) The Redeveloper shall have performed and observed; in all material respects, all covenants, and agreements of this Agreement to be performed and observed by the Redeveloper.
- (c) The Redeveloper shall have obtained all necessary Governmental Approvals required for the development and construction of the Project.
- (d) The Redeveloper shall have submitted to the Municipality the Financial Package described in Section 5.2 hereof.
- (e) The Redeveloper having secured financing for the Project as described in Section 5.2 hereof; the Parties agree to cooperate so that the Closing of Title can occur simultaneously with the closing of the Redeveloper's financing commitment for the Project.

The Parties acknowledge and agree that should an Event of Default on the part of the Redeveloper occur, among its other rights and remedies set forth in Article 7 hereof, title to the Property shall revert to the Municipality.

3.5 Transfer of Ownership; Title. The Closing on the Property shall be held at the offices of the Weiner Law Group LLP, 629 Parsippany, Road, Parsippany, New Jersey 07054, or such other place as the Parties may mutually agree, and at a time that the Parties may mutually agree.

- (a) At the Closing(s), the Municipality shall tender to the Redeveloper a properly executed Bargain and Sale Deed with Covenant Against Grantor's Acts (hereinafter referred to as the "Deed"), and an adequate Affidavit of Title in a form acceptable to the Redeveloper and/or its Title Insurer; a properly executed Affidavit of Consideration or Exemption; a Residency Certification; a Bulk Sales Tax Clearance Certificate; a true copy of the Ordinance of the Municipality authorizing the sale and conveyance; a Non-Foreign Affidavit; and such other documents as may reasonably be requested by the Redeveloper and/or its Title Insurer.
- (b) At the Closing, the Redeveloper shall tender to the Municipality a prepared closing statement, one (\$1) dollar as and for consideration for the transfer and a resolution of the Redeveloper's authorizing the acceptance of title to the Property and acknowledging its obligation to develop and construct the Project.

3.6 Physical Condition of the Property. Except as otherwise explicitly provided for herein or in other documents to the contrary, the Property is being sold to the Redeveloper in "AS IS" condition. The Redeveloper recognizes and acknowledges that the Municipality is making no representation or warranty as to the condition of the Property or its fitness for the Redeveloper's intended use. At the Closing, the Municipality shall deliver possession of the Property vacant and free from tenants, occupants, or parties in possession in the same condition as it is on the Effective Date of this Agreement excepting for ordinary and reasonable usage and exposure to the elements. Prior to the Closing, the Municipality shall permit the Redeveloper, its agents, contractors and/or representatives reasonable access to the Property.

3.7 Environmental Indemnification. As of the Closing on the Property, the Redeveloper hereby agrees, at its sole cost and expense, to indemnify, defend and hold harmless

the Municipality, its employees and agents from any injuries, losses, liabilities, damages, liens, expenses (including, without limiting the generality of the foregoing, the costs of any environmental testing, remediation and the costs of reasonable attorney fees), charges, costs penalties, fines, actions, injunctions, suits, claims, judgments, or demands imposed, at any time, upon the Property and/or imposed upon, or incurred by, the Municipality, directly or indirectly, at any time: (i) as a result of or in connection with violation(s) of any or all of Applicable Laws by the Redeveloper; or (ii) sustained as a result of any environmental conditions on, in, under or migrating from the Property first arising after the Closing. This Section 3.6 shall survive the Closing on the Property and in addition to, and not instead of, the Indemnification provisions set forth in Sections 8.1 and 8.2, hereof. Notwithstanding anything to the contrary, the Redeveloper shall have no liability and no indemnity obligation with respect to any Environmental Conditions existing prior to the Closing, regardless of when discovered or any conditions caused by the Municipality or third parties prior to Closing.

3.8 Title Insurance Survey. Within sixty (60) Days of the Effective Date, the Redeveloper shall order a title commitment with respect to the Property (hereinafter the "Title Commitment"). Within sixty (60) Days of the Effective Date, the Redeveloper may order a physical survey (or an update for a previously existing survey), from a licensed surveyor, of the Property. The costs and expenses associated with the aforementioned title commitment and physical survey shall be the responsibility of the Redeveloper. The Redeveloper shall give the Municipality a specific written notice of its objection(s) to any encumbrance or other title exception, or matter reflected in the Title Commitment and any matter reflected on the physical survey that is not a Permitted Exception (hereinafter the "Title Notice") within ten (10) Days following its receipt of the Title Commitment. The Municipality shall remedy such objections promptly following receipt of the Title Notice, or in the case of matters identified in the Title Notice that require only the payment of money to satisfy those items. The Redeveloper shall be permitted to update the Title Commitment prior to the Closing and undertake the preceding title objection process with respect to matters of title and survey that have arisen since the initial search date and survey date, as the case may be.

3.9 Risk of Loss. Except as otherwise provided above with respect to the Redeveloper's activities and investigations, if any, the Municipality is responsible for any damage or loss to the Property, except for normal usage and exposure to the elements, until Closing.

3.10 Brokerage Fees. The Redeveloper and the Municipality each represent to the other that they have not dealt with or transacted any business with any broker in connection with the sale and purchase of the Property, and each agrees to indemnify, defend, and hold the other harmless from any claim of any broker may make as a result of such Party's actions inconsistent with the respective representations made herein. This representation shall survive the Closing(s) hereunder or the expiration or the termination of this Agreement.

3.11 Form 1099-S Filing. In compliance with the requirements of the Internal Revenue Code, the Redeveloper is responsible for collecting certain information from the Municipality necessary to complete and file Form 1099-S with the Internal Revenue Service. The Municipality agrees to supply all necessary information to the Redeveloper's attorney in order to facilitate such

filing and shall fully cooperate with all of the Redeveloper's reasonable requests deemed commercially necessary to fulfill this obligation.

3.12 Closing Prorations. To the extent applicable, as of the date of the Closing, the Parties shall make adjustment(s) for any items which shall be appropriate for adjustment under local closing standards and practices.

All real estate taxes, tax liens or other taxes with respect to the Property (or relevant portion thereof) shall be pro-rated as of the date of the Closing, based on an accrual basis for the calendar year in which the relevant Closing occurs.

All assessments, general or special, shall be prorated as of the date of the Closing, with the Municipality being responsible for any installments or assessments that are due and payable prior to the relevant date of the Closing and the Redeveloper being responsible for any installments or assessments that are due and payable on or after the relevant date of the Closing.

Water, electricity, sewer, gas, or other essential utility service charges, based on any final meter reading, if any, shall be satisfied by the Municipality at or before the relevant Closing.

3.13 Consideration

The Redeveloper will acquire the Property from the Municipality for one (\$1.00) dollar and shall be paid at the Closing. The Parties hereby acknowledge and agree to the sufficiency of the consideration set forth in the previous sentence.

3.14 Long-Term Tax Exemption

At its option, the Redeveloper may make application to the Municipality's Governing Body for a Long-Term Tax Exemption pursuant to N.J.S.A. 40A:20-1 et. seq. and any other Applicable Laws.

Upon its receipt of a complete application containing all information and documentation required in the Applicable Law(s), the Municipality shall reasonably review and consider the benefits and burdens associated with the approval of such long-term tax exemptions.

Upon the Redeveloper's submission of an application for a long-term tax exemption that is deemed complete, the Municipality, and its relevant staff and consultants shall review same and shall make a determination whether or not to grant the request.

Upon review of the application and confirmation by the Municipality that the benefit of such arrangement outweighs the costs, if any, the Municipality shall consider granting a Governmental Approval in the form of an Ordinance.

If the Municipality fails to approve the long-term tax exemption for the Project, the Redeveloper may terminate this Agreement and shall no longer be obligated to proceed with the Project; nor shall the Redeveloper be required to reimburse the Municipality all or any portion of the Municipal Contribution (as hereinafter defined).

ARTICLE 4

CONSTRUCTION OF PROJECT

Subject to the terms of this Agreement and any and all relevant Governmental Approvals, the Redeveloper agrees to undertake the development and construction of the Improvements necessary for the Project. The Redeveloper shall undertake the development of the Improvements, and the Infrastructure Improvements, subject to its receipt of all necessary Governmental Approvals.

The Redeveloper agrees that, notwithstanding the Applicable Law(s), it is the Redeveloper's responsibility to undertake the appropriate measures to negotiate with, acquire, extend, relocate, or otherwise address the existence of existing utilities (water, sewer, telephone, cable, electric, gas, etc.), both on and off the Property, in order to complete the Project as provided for in this Agreement and in the relevant Governmental Approvals. The Redeveloper shall exercise reasonable efforts to ensure the effective coordination for the development and construction of the Public Improvements and the Utility Infrastructure Improvements and shall reasonably cooperate with the Municipality to ensure that the implementation of the Project does not unreasonably interfere with the operation of existing utilities. The Redeveloper shall be obligated to complete the negotiation, installation, relocation and/or extension (as applicable) of the utilities to the Property by or before the issuance of a Certificate of Occupancy.

4.1 Progress Reports and Progress Meetings. The Redeveloper shall submit to the Municipality quarterly progress report in writing, concerning the actual progress of the Redeveloper with respect to the implementation and construction of the Project (hereinafter the "Progress Report"). The quarterly reports shall be due on January 1st, April 1st, July 1st and October 1st. The work and construction activities of the Redeveloper shall be subject to inspection by the Municipality at reasonable times and upon reasonable notice to the Redeveloper. Upon the request of the Municipality (which shall occur no more than once a quarter), the Redeveloper and any necessary consultants and professionals shall meet with the Municipality, its employees, professionals, consultants, and officials, to report on its progress or to address any concerns the Municipality has based upon its review of any Progress Report (hereinafter the "Progress Meeting").

4.2 Suspension of Construction. The Redeveloper shall not suspend or discontinue the performance of its obligation to construct the Project under this Agreement, other than in the manner provided for herein or the occurrence of an event of Force Majeure, as set forth in Article 6.8, hereof. If the Redeveloper shall abandon or substantially suspend construction activities on the Project for a period in excess of sixty (60) Days for reasons other than an event of Force Majeure and the suspension or abandonment is not cured, remedied or explained to the satisfaction of the Municipality in writing within ten (10) Days after written demand by the Municipality to do so, then such shall constitute an Event of Default by the Redeveloper under this Agreement and the Municipality shall have the right to seek any remedies pursuant to this Agreement and all other remedies available to the Municipality at law or in equity.

4.3 Certificates of Occupancy and Certificate of Completion.

(a) Upon Completion of the construction of the Improvements, in accordance with the Governmental Approvals, the Redeveloper may apply to the Municipality for a Certificate of Occupancy for the Project. Alternatively, the Redeveloper may apply to the Municipality for a Certificate of Occupancy for each dwelling unit constructed as part of the Project as may from time to time, be completed.

(b) Upon Completion of the Project, for purposes of releasing the restrictions referenced in this Agreement and under the Applicable Law(s), the Municipality shall 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 Agreement and has completed construction of the Project in accordance with the requirements of the Applicable Law(s), the Redevelopment Plan and this Agreement. The Certificate of Completion shall constitute a recordable conclusive determination of the satisfaction and termination of the restrictions, obligations and covenants contained in this Agreement and in the Redevelopment Plan with respect to the Redeveloper's construction of the Project.

(c) Upon issuance of a Certificate of Completion (a) the Covenants and Restrictions set forth in Section 6.3 hereof shall cease and terminate, except for those Covenants and Restrictions by provision survive the issuance of a Certificate of Completion, and (b) the conditions determined to exist at the time the Property was designated as an area in need of rehabilitation shall be deemed to no longer exist. If the Municipality shall fail or refuse to provide the Certificate of Completion within twenty (20) Days after written request by the Redeveloper, the Municipality shall provide to the Redeveloper a written statement setting forth in detail the respects in which it believes that the Redeveloper has failed to complete the Project in accordance with the provisions of this Agreement or is otherwise in default under this or any other applicable agreement and what reasonable measures or acts shall be necessary in order for the Redeveloper to be entitled to a Certificate of Completion. Upon receipt of the Certificate of Completion, the Redeveloper may record it in the Bergen County Clerk's office.

4.4 Public Improvements.

The Redeveloper shall be responsible for the construction and provision of the Improvements as well as the Public Improvements constituting the Project. The Public Improvements include any and all necessary Off-Site Infrastructure Improvements or upgrades to any pre-existing infrastructure systems required as a direct result of the Project.

4.5 Parking.

All off street parking necessary for the Project shall be provided in accordance with the Redevelopment Plan.

4.6 Affordable Housing Requirements. Pursuant to the Fair Housing Act, N.J.S.A. 52:27D-301, et seq., other Applicable Laws and whatever future Rules or Regulations are adopted by the Council on Affordable Housing (C.O.A.H.) or other relevant Governmental Body(ies), all residential units constructed on the Property, will be deed restricted for at least thirty (30) years as affordable dwelling units consistent with the Settlement Agreement, this Agreement and all relevant Governmental Approvals. These dwelling units shall consist of the very low, low and moderate income housing required under UHAC (Uniform Housing Affordability Controls) and consistent with all other agreements between the Parties.

ARTICLE 5 CONSTRUCTION AND PROJECT FINANCING

5.1 Redeveloper's Commitment to Finance Construction of the Project. The Redeveloper has represented that the estimated administrative and construction costs to develop and construct all the Improvements that are a part of the Project are approximately Eight Million Three Hundred Thousand and 00/100 (\$8,300,000.00) Dollars (hereinafter the "Project Cost Estimate"). The Redeveloper acknowledges that the Municipality has relied upon its representations that it is financially capable of carrying out its obligations to construct the Improvements and complete the Project pursuant to this Agreement, the relevant Governmental Approvals, and the Applicable Law(s). The Redeveloper represents that such financing will be a combination of municipal contribution, grant funding, and low and no interest public debt financing.

5.2 Project Costs and Administrative Costs. Based on the Project Cost Estimate set forth in Section 5.1, hereof, the Redeveloper will apply for financing from various institutional sources, including, but not limited to the New Jersey Department of Community Affairs, Bergen County HOME, Federal Home Loan Bank, and various other block grant sources. The Redeveloper acknowledges that there will be various administrative costs associated with the redevelopment of the Redevelopment Area and the Project (hereinafter the "Administrative Costs").

On or prior to the earlier to occur of (i) one hundred eighty (180) Days after the Redeveloper has obtained all Governmental Approvals, or (ii) one hundred twenty (120) Days prior to Commencement of Construction of the Project, the Redeveloper shall submit to the Municipality a financial package that the Redeveloper believes to be complete (hereinafter the "Financial Package") describing the anticipated sources of funding for the Project, including, but not limited to, a commitment or a "term sheet" for construction financing required for the Project and a representation regarding any equity capital necessary for the Commencement of Construction of the Project. If the Financial Package submitted by the Redeveloper fails to indicate that sufficient financing for all costs associated with the Project is available and the Redeveloper is therefore unable to proceed with the Project then, unless the Redeveloper requests an extension of such time setting forth the basis for its failure to timely secure financing, which request the Municipality may grant or deny in its sole but reasonable discretion, the Municipality or the Redeveloper may terminate this Agreement, in which event neither Party shall have any further rights or obligations under this Agreement except for those which expressly survive termination.

Notwithstanding the foregoing, in the event that the Redeveloper is unable to secure sufficient financing for all of the Project for any reason whatsoever by the date which is twelve (12) months from the date of this Agreement, the Municipality or the Redeveloper may terminate this Agreement and neither party shall have any further rights or obligations under this Agreement.

5.3 Municipality Contribution to Project Cost. On the basis of the Redeveloper's representation of the current Project Cost Estimate, the Municipality shall contribute a maximum of Nine Hundred Thirty Thousand and 00/100 (\$930,000.00) Dollars to defray the development and construction costs, (hereinafter the "Municipal Contribution"). A maximum of \$400,000 is attributable to the very-low income units for which \$200,000 shall be payable when the building permit is issued and \$200,000 shall be payable upon receipt of Certificate of Occupancy for said units. The Parties acknowledge that the Municipal Contribution is in addition to the market value of the Property. The Municipal Contribution sum shall be utilized to pay for administrative costs, pre-development and development costs and construction costs for the Project.

The Parties acknowledge and agree that prior to the Effective Date, the Redeveloper sought and received from the Municipality reimbursement in the amount of One Hundred Seventy-Six Thousand Two Hundred Eighty-Nine and 50/100 (\$176,289.50) Dollars. Said amount shall be deducted from the Municipal Contribution set forth in the preceding paragraph.

In no event shall the Municipality be obligated for any sums of money in excess of the Municipal Contribution set forth in this Section 5.3. Notwithstanding the foregoing, The Redeveloper shall be permitted to apply for and may be considered for additional funding in the future by the Municipality for the Project. Such additional funding shall be made available at the Municipality's sole discretion.

5.4 Rights of Institutional Mortgagee. Any financial institution or other entity lending money on the security of the Property in the Project shall be entitled to the protection of any and all Applicable Law(s) providing for notification, right to cure, right to possession, right to assume control of mortgagor, right to enter into possession of and operate premises, right to the entry of a judgment of strict foreclosure, right to recover on the underlying loan obligation without first proceeding with foreclosure, right to proceed to foreclosure, separately from or together with suit on the underlying obligation, and such other rights.

(a) This Agreement as a financial arrangement made by a Governmental Body of the State of New Jersey pursuant to the relevant Applicable Laws in connection with a project for redevelopment, renewal or rehabilitation, shall continue in full force and effect beyond any default in or foreclosure of any mortgage loan made to finance the project, as though such default or foreclosure had not occurred, subject to the provisions of this Article 5.

(b) To the extent necessary, the Municipality agrees to execute subordination and attornment documents that may reasonably be required by an institutional lender and further to make any technical, non-substantive, modifications to this Agreement that may be required by an institutional lender.

(c) Upon the request of a construction mortgage or permanent financing lender, the Municipality will subordinate a statutory right of reverter applicable to the Property as a result of the transfer in order to facilitate the construction and permanent financing. The Property shall remain subject to a use restriction limiting the use of the Property to seventeen (17) affordable family, senior, and supportive housing units for developmentally disabled persons unless the Municipality agrees to a different use of the Property.

5.5 Rights of Mortgagees. Notwithstanding any other provision of this Agreement, the Holder of any mortgage (including any such Holder who obtains title to the Property or any part thereof), or any other party who thereafter obtains title to the Property or such part from or through such Holder or any purchaser at foreclosure sale or through other court proceedings or action in lieu thereof shall in no way be obligated by the provisions of this Agreement to construct or complete the Project, except to secure and make the Project site and Property safe, or to guarantee such construction or completion; nor shall any covenant or any other provision in this Agreement or any deeds conveying the Property to Redeveloper be construed to so obligate such Holder, provided that nothing in this Agreement shall be deemed or construed to permit or authorize any such Holder to devote the Property or any part thereof to any uses, or to construct any Improvements thereon, other than those uses or Improvements provided, or permitted under the Redevelopment Plan or otherwise approved by the Municipality. Notwithstanding any other term or provision of this Agreement, in the event that the Holder of any mortgage shall acquire control of or title to the Property or any part thereof, whether by foreclosure, deed in lieu of foreclosure or otherwise, then (i) such transfer of title to the Holder shall not constitute an Event of Default under this Agreement, and (ii) in no event shall Holder have any liability under this Agreement for any costs, expenses or damages incurred by the Municipality, or any person or entity claiming by or through the Municipality, including, without limitation, any liability for Administrative Costs or for indemnification under Article 9 of this Agreement.

5.6 Notice to Mortgagee. Whenever the Municipality shall deliver any notice or demand to the Redeveloper with respect to any breach or Default by the Redeveloper of its obligations or covenants under this Agreement or under any relevant Applicable Law(s), the Municipality shall at the same time forward a copy of such notice or demand to each Holder of any mortgage at the last known address of such Holder shown in the land records of the County. Notice that such breach or Default subsequently has been cured shall also be provided by the Municipality to each such Holder of any mortgage.

ARTICLE 6 **REPRESENTATIONS AND WARRANTIES**

6.1 Redeveloper's Representations and Warranties. The Redeveloper hereby represents and warrants to, and covenants with the Municipality that:

(a) The Redeveloper has the legal capacity to enter into this Agreement, abide by each and every Applicable Law and to perform each of the undertakings set forth in a timely fashion.

This Agreement constitutes a valid and legally binding obligation of the Redeveloper enforceable in accordance with its terms, subject to the occurrence of an event of Force Majeure.

(b) The Redeveloper is a duly organized and a validly existing legal entity under the Applicable Law(s) and all necessary consents have been duly adopted to authorize the execution and delivery of this Agreement and to authorize and direct the persons executing this Agreement to do so for and on the Redeveloper's behalf.

(c) No receiver, liquidator, custodian, or trustee of the Redeveloper shall have been appointed as of the Effective Date, and no petition to reorganize the Redeveloper pursuant to the United States Bankruptcy Code or any similar statute that is applicable to the Redeveloper shall have been filed as of the Effective Date.

(d) No adjudication of bankruptcy of the Redeveloper or a filing for voluntary bankruptcy by the Redeveloper under the provisions of the United States Bankruptcy Code or any other similar statute that is applicable to the Redeveloper shall have been filed.

(e) No indictment has been returned against any officer of the Redeveloper with respect to any transaction contemplated by the terms of this Agreement.

(f) The Redeveloper's execution and delivery of this Agreement and its performance hereunder shall not constitute a violation of any operating, partnership and/or stockholder agreement of the Redeveloper or of any other agreement, mortgage, indenture, instrument, or judgment, to which the Redeveloper is a party or is the subject of.

(g) Subject to obtaining any financing in accordance with this Agreement, the Redeveloper is financially and technically capable of developing, designing, financing, constructing, operating, and maintaining the Project.

(h) To the best of the Redeveloper's knowledge, there is no action, proceeding or investigation now pending, nor any basis therefore, known or believed to exist which (i) questions the validity of this Agreement or any action or act taken or to be taken by the Redeveloper pursuant to this Agreement or (ii) is likely to result in a material adverse change in the Redeveloper's property, assets, liabilities or condition which shall materially and substantially impair its ability to perform pursuant to the terms of this Redevelopment Agreement other than those referenced in the settlement agreements in the Litigation/Lawsuits.

(i) The Redeveloper's Certificate of Formation and Certificate of Good Standing, duly certified by the Secretary of State of the state of the Redeveloper's formation, are in full force and effect.

(j) It is the intention of the Redeveloper to develop and construct the Project and thereafter operate and maintain the Project lawfully and to continuously hold the dwelling units available exclusively to low and very low-income families and seniors.

6.2 Municipality's Representations and Warranties. The Municipality hereby represents and warrants to, and covenants with the Redeveloper that:

(a) The Municipality has the legal power, right and authority to enter into this Agreement and the instruments and documents referenced herein to which the Municipality is a party, to consummate the transactions contemplated hereby, and to perform its obligations hereunder.

(b) This Agreement is duly executed by the Municipality and is valid and legally binding upon the Municipality and enforceable in accordance with its terms. The execution and delivery hereof shall not constitute a default under or violate the terms of any indenture, agreement, or other instrument to which the Municipality is a party.

(c) The designation of the Property as an “area in need of redevelopment”, the adoption of the Redevelopment Plan and any subsequent amendments thereof and the designation of the Redeveloper as such were done in conformance with the Applicable Laws, are currently in full force and effect, and the Municipality is duly and properly acting as the “redevelopment entity” for the Redevelopment Plan pursuant to the LRHL.

(d) There is no pending, or to the best of the Municipality’s knowledge, threatened litigation affecting the Property that would prevent the Municipality from performing its duties and obligations hereunder. The Municipality represents to the Redeveloper that the Litigation has been resolved and settled, and the terms of the settlement have been memorialized in the Settlement Agreement(s).

(e) The Municipality is the owner in fee simple of the Property. The Property is now and has been held in peaceable and undisturbed possession by the Municipality. The Municipality does not know of any facts by reason of which its possession or title may be disputed or any claim to any part of the Property or any interest therein adverse to the Municipality may be asserted.

(f) The Property is vacant, except for the public streets, sewer pump, infrastructure, and utility conduits, if any. Further, there are no tenants, occupants or other users occupying or holding rights to occupy any portion of the Property. The Municipality has received no notice and has no knowledge that the Property is in violation of any Applicable Laws, including any Environmental Laws. The Municipality has received no notice and has no knowledge of any fact or condition which would constitute a violation under any Applicable Laws including any Environmental Laws. To the Municipality’s knowledge, no Governmental Body has enacted or adopted or threatened or announced any intention to enact or adopt any Applicable Law(s) or impose a moratorium on development, construction or connection to any water supply or wastewater utility services, which would have a material adverse impact on the Property, the Project or occupancy of any residential Units to be constructed on the Property. The Municipality

will cooperate with the Redeveloper and oppose any such law or moratorium or Governmental Approval which would have a material adverse impact on the Property.

(g) No proceedings to take all or any part, of the Property by condemnation or right of eminent domain are pending or, to the Municipality's knowledge, threatened. The Property is not subject to any governmental assessments for on-site or Off-Site Improvements, and the Municipality has no notice or knowledge of any proposed on-site or Off-Site Improvements that would affect the Property or could result in assessments being imposed against the Property. The Property is currently exempt from real estate taxes.

(h) There are no actions, suits, proceedings, or investigations, whether administrative or judicial, or any arbitrations pending, or to the Municipality's knowledge, threatened, which may affect its execution, delivery, or performance of its obligations under this Agreement. There are no outstanding Judgments, orders, directives, or notices of violation issued by any Governmental Body against the Municipality with respect to the Property.

(i) Except for the Redevelopment Plan, this Agreement and the Settlement Agreement, there are no other outstanding agreements or contracts, oral or written, relating to the Property to which the Municipality is a party, or by which the Municipality or the Property may be bound, or which otherwise run with the Property.

(j) To the knowledge of the Municipality, there are no liens under any Applicable Law(s) which do or may result in any liens or encumbrances and the Municipality does not know of any facts by reason of which any such liens may attach to the Property.

(k) There is/are no action(s), proceeding(s) or investigation(s) now pending, nor any basis therefore, known or believed to exist, which questions the authority of the Municipality to enter into this Agreement or any action or act taken or to be taken by the Municipality pursuant to this Agreement and the Municipality has received no notice of any of the foregoing, except for the terms and provisions of the Settlement Agreement(s) with the litigants in the Litigation.

(l) The Municipality has received no notice asserting any noncompliance in any material respect by the Municipality with any Applicable Laws, including but not limited to the rulings of any Governmental Body having jurisdiction over the Property nor with respect to the transactions contemplated in and by this Agreement which would have a material adverse effect on the Municipality's ability to perform its obligations in connection with this Agreement.

(m) The Municipality represents and warrants that to the best of the Municipality's knowledge: (a) the Property is in compliance with all Applicable Laws including but not limited to all federal and state Environmental; Laws applicable to Hazardous Substances and (b) there is no pending or contemplated legal action or administrative action proceeding arising out of or related to the environmental condition of the Property.

(n) The Municipality represents and warrants to the best of the Municipality's knowledge that: (a) the Municipality and its agents, servants and employees and contractors have not discharged, deposited, or caused to be deposited any Hazardous Substance on the Property; and (b) the Municipality has no knowledge of the presence of any Hazardous Substances in, on, under or emanating from the Property.

(o) To the best of the Municipality's knowledge, there are no threatened claims or litigation by any Governmental Body with respect to the Property.

(p) The Municipality represents and warrants that to the best of the Municipality's knowledge that there is sufficient potable water and sanitary sewerage capacity for the Project.

6.3 Redeveloper Declaration of Covenants and Restrictions.

(a) The Redeveloper agrees to record, and provide a recorded copy to the Municipality, of a Declaration of Covenants and Restrictions (hereinafter the "Declaration"), with respect to the Property that shall run with the land to all subsequent holders of title, imposing upon said lands the agreements, covenants and restrictions required to be inserted in the Deed. All provisions hereinafter with respect to the insertion in or the application to the Deed of any covenants, restrictions and agreements shall apply equally to the Declaration and such covenants, restrictions and agreements shall be inserted in and apply to the Declaration, whether or not so stated in such provisions.

(b) Description of Covenants and Restrictions.

The Covenants and Restrictions to be imposed upon the Redeveloper until a Certificate of Completion is issued and recorded in the Deed and the Declaration, shall set forth that the Redeveloper and its successors, transferees and assigns shall:

- (i) Devote the Property to the uses specified in the Redevelopment Plan, as may be amended, and as agreed herein, and shall not devote the Property or any portion thereof to any other uses;
- (ii) Pursuant to the Applicable Law(s), not discriminate upon the basis of age, race, color, creed, religion, ancestry, national origin, sex, disability or marital status in the sale, lease, rental, use or occupancy of the Property or any buildings or structures erected or to be erected thereon, or any part thereof;
- (iii) In the lease or occupancy of the Property or any part thereof, not effect or execute any covenant, agreement, lease, conveyance or other instrument whereby the land or any building or structure erected or to be erected thereon is restricted upon the basis of age,

race, color, creed, religion, ancestry, national origin, sex, affectional or sexual orientation, gender identity or expression, disability or marital status, and the Redeveloper, its successors and assigns shall comply with all State and local laws prohibiting discrimination or segregation by reason of age, race, color, creed, religion, ancestry, national origin, sex, affectional or sexual orientation, gender identity or expression, disability or marital status to the extent required by the Applicable Law(s);

- (iv) Commence Construction of the Improvements within times set forth in the Project Schedule in which is attached and annexed hereto as Exhibit B provided that the Governmental Approvals are not delayed by the actions or inactions of the Municipality or any Governmental Body, or any Event of Force Majeure; and
- (v) Not sell, lease, or otherwise transfer the Property, or any part thereof, without the written consent of the Municipality, except for permitted Transfers to a Qualified Entity and/or as otherwise may be permitted pursuant to this Agreement.

(c) Effect and Term of the Covenants and Restrictions.

It is intended and agreed, and the Deed and the Declaration shall so expressly provide to the extent permitted by the Applicable Law(s), that the Covenants and Restrictions set forth in this Section 6.3 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 Municipality, its successors and assigns, and any successor in interest to the Property, or any part thereof, against the Redeveloper, its successors and assigns and every successor in interest therein, and any party in possession or occupancy of the Property or any part thereof. It is further intended and agreed that the Covenants and Restrictions set forth in this Section 6.3 shall remain in effect until the issuance by the Municipality of a Certificate of Completion, as provided in this Section 6.3, hereof, (at which time all agreements, obligations, Covenants and Restrictions shall cease and terminate), except, however, that the Covenants and Restrictions provided in Section 6.3 (i), (ii) and (iii), hereof shall remain in effect without limitation as to time; provided that, until their termination as provided above, such Covenants and Restrictions shall be binding on the Redeveloper itself, each successor in interest to the Project, the Property, or any part thereof, and each party in possession or occupancy, respectively, only for such period as the Redeveloper or such successors, transferees or party shall have title to, or an interest in, or possession or occupancy of the Property, and the Improvements constructed thereon or any part thereof.

(d) Enforcement by Municipality

In amplification, and not in restriction of the provisions of this Article 6, it is intended and agreed that the Municipality and its successors and assigns shall be deemed

beneficiaries of the Covenants and Restrictions set forth in Section 6.3(b) hereof both for and in their own right but also for the purposes of protecting the interests of the community and other parties, public or private, in whose favor or for whose benefit such agreements and covenants shall run in favor of the Municipality for the entire period during which such Covenants and Restrictions shall be in force and effect, without regard to whether the Municipality has at any time been, remains, or is an owner of any land or interest therein to or in favor of which such Covenants and Restrictions relate. The Municipality shall have the right, in the event of any breach of any such Covenants and Restrictions, to exercise all the rights and remedies and to maintain any actions or suits at law or in equity or other proper proceedings to enforce the curing of such breach of such Covenants and Restrictions, to which they or any other beneficiaries of such Covenants and Restrictions may be entitled.

ARTICLE 7 DEFAULT

7.1 **Events of Default.** Each of the following shall constitute an Event of Default (hereinafter the “Default”) by the applicable Party:

(a) Either Party’s failure to observe or perform any material, obligation, covenant, condition, representation, warranty or agreement hereunder and any other failure, act or omission by the Party designated elsewhere in this Agreement, and except as otherwise specified below, the continuance of such Default for a period of thirty (30) Days after Notice from the aggrieved Party (hereinafter the “Default Notice”) specifying the exact terms of such Default and requesting that such Default be remedied; provided, however, if the Default is one that cannot be completely remedied within thirty (30) Days after such Default Notice, it shall not be a Default until sixty (60) Days after such Default Notice, as long as the subject Party is proceeding in good faith and with due diligence to remedy said Default as soon as practicable.

(b) Any Party or its successor in interest shall violate any of its Covenants, Restrictions, Representations, Declarations, or obligations to perform under the terms of this Agreement and failure shall have continued for a period of thirty (30) Days after receipt of written Default Notice specifying such Default (or such longer or shorter time as may be specified herein), and demanding that same be remedied, to the extent not otherwise provided for herein, up to the issuance of a Certificate of Completion;

(c) The Redeveloper shall fail to implement or construct the Project pursuant to the Project Schedule attached and annexed hereto as Exhibit B, subject to the occurrence of an event of Force Majeure or the provisions of this Agreement, or shall abandon or substantially suspend construction of the Project for a continuous period in excess of sixty (60) Days, unless such suspension arises out of an event of Force Majeure, and any such Default, violation, abandonment, or suspension shall not be cured within thirty (30) Days after written demand by the aggrieved Party to do so, or such longer period if incapable of cure within such thirty (30) Day period and aggrieved Party agrees to extend such time to cure, provided that the aggrieved Party has commenced and is diligently prosecuting such cure; or

(d) There is, in violation of this Agreement, any transfer of the fee title to the Property, except for Permitted Transfers as provided in Section 13.2, and such violation shall not be cured within thirty (30) Days after written demand served upon the Redeveloper by the Municipality; or

(e) A Redeveloper default shall have occurred under any financing agreements for the Project, and the period for cure shall have elapsed after receipt by the Redeveloper of written notice under such agreements specifying the nature of such failure and requesting that such failure be remedied, without cure having been affected, and enforcement proceedings having been commenced.

(f) i) the 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 having a ninety (90) Day period to resolve same; or (iii) the Redeveloper, (1) has made a general assignment for the benefit of creditors, or (2) has filed a voluntary petition in bankruptcy or a petition or an answer seeking an arrangement with creditors.

(g) A decision or order determination by a court of competent jurisdiction that the Redeveloper has engaged in fraud in the inducement of, or willful misconduct in connection with the Project.

(h) A Municipality Default shall have occurred if the Municipality shall fail to timely perform and/or cure any of its responsibilities and obligations under this Agreement and failure shall have continued for a period of thirty (30) Days after receipt of written Default Notice specifying such Default (or such longer or shorter time as may be specified herein).

7.2 Right to Cure Upon Event of Default. Except as otherwise provided in this Agreement, in the event of any Default in any of its terms or conditions by any Party hereto or any successor to such Party, such Party (or successor) shall, within thirty (30) Days (or such longer, or shorter, period to the extent expressly provided above) of receiving written Default Notice from another, proceed to cure or remedy such Default. In case such action is not taken or diligently pursued, or the Default shall not be cured or remedied within such prescribed time, or any extension of such time granted at the discretion of the aggrieved Party, the aggrieved Party may pursue its remedies in accordance with this Agreement.

7.3 Municipality's Remedies.

If the Redeveloper shall fail to timely cure any Default by the Redeveloper as set forth in Section 7.1, hereof the Municipality shall have the right to:

(a) terminate this Agreement and to de-designate Redeveloper with respect to the Project or relevant portion of the Property which has not received a Certificate of Completion; and

(b) pursue all other remedies available to it at law or equity, including but not limited to reasonable attorney fees and costs of Court.

7.4 Redeveloper's Remedies. If the Municipality shall fail to timely cure any event of Default by the Municipality as set forth in Section 7.1, the Redeveloper shall be entitled, in its sole and absolute discretion, to terminate this Agreement and/or seek any other remedies available to it at law or equity.

7.5 Limitation of Liability. The Parties agree that in the event of any Default under this Agreement, the Parties shall look solely to the Parties hereto and their respective property interest in the Project for the recovery of any judgment or damages, and agree that no member, manager, officer, principal, employee, elected officials, representative or other person affiliated with such Party shall be personally liable for any such judgment or damages. In no event shall either Party be responsible for any consequential or punitive damages.

7.6 No Waiver of Rights and Remedies by Delay. Any delay by the aggrieved Party in instituting or prosecuting any actions or proceedings or otherwise asserting its rights under this Agreement shall not operate as a waiver of such rights and shall not deprive the aggrieved Party of or limit the aggrieved Party's rights in any way (it being the intent of this provision that the aggrieved Party should not be constrained so as to avoid the risk of being deprived or limited in the exercise of the remedies provided herein by those concepts of waiver, laches, or otherwise) to exercise such rights at a time when, the aggrieved Party may still resolve the problems by the Default involved; nor shall any waiver in fact made by the aggrieved Party with respect to any specific default by the other Party under this Agreement be considered or treated as a waiver of the rights of the aggrieved party with respect to any other Default(s) by the other party under this Agreement or with respect to the particular Default except to the extent specifically waived in writing.

7.7 Rights and Remedies Cumulative. The rights and remedies of the Parties to this Agreement, whether provided by law or by the Agreement, shall be cumulative and, except as otherwise specifically provided by this Agreement, the exercise by either Party of any one or more of such remedies shall not preclude the exercise by it, at the same or different times, of any other such remedies for the same Default or of any of its remedies for any other Default by the other party. No waiver made by either such Party with respect to the performance, or manner or time thereof, or any obligation of the other Party or any condition to its own obligation under the Agreement shall be considered a waiver of any rights of the Party making the waiver with respect to the particular obligation of the other Party or condition to its own obligation beyond those expressly waived in writing and to the extent thereof, or a waiver in any respect in regard to any other rights of the Party making the waiver or any other obligations of the other Party.

7.8 Force Majeure. For purposes of this Agreement and as otherwise used in this Agreement, "event of Force Majeure" shall mean any of the events or conditions set forth in the definition of this phrase set forth earlier herein, or any combination thereof, or other similar events or conditions that has had or may reasonably be expected to have a material and adverse effect on the ability of a party to perform its obligations (hereinafter the "Affected Party") under this Agreement:

- (a) An act of God including severe natural conditions such as landslide, lightning, earthquake, flood, hurricane, blizzard, tornado or other weather conditions, pandemic, severe sea conditions affecting delivery of materials or similar cataclysmic occurrence, nuclear catastrophe, an act of public enemy, terrorism, war, blockade, insurrection, riot, general arrest or general restraint of government and people, or any other similar act or event outside the control of the Affected Party;
- (b) The condemnation, taking, seizure, involuntary conversion, or acquisition of title to or use of the Property, or any material portion or part thereof, by the action of any federal, state, or local government or governmental agency or authority;
- (c) Delays incurred in obtaining Governmental Approvals caused solely by the relevant Governmental Body after the Affected Party has taken all required action in obtaining such Governmental Approval and the continued delay is outside and beyond the control of the Affected Party;
- (d) Delays resulting from legal challenges brought to challenge any Governmental Approval related to this Project by third parties over whom the Affected Party has no control that have a material and adverse effect upon the Affected Party's ability to perform its obligations under this Agreement;
- (e) Labor union strikes or similar labor union action by equipment manufacturers, suppliers of materials, employees, or transporters of same, to the extent that such labor union strikes relate to general labor disputes that are non-specific to the Project of Redeveloper and have a material and adverse effect upon the Affected Party's ability to perform its obligations under this Agreement;

7.9 Notice of an Event of Force Majeure. If an event of Force Majeure has occurred and is continuing, the Affected Party wishing to suspend its performance as a result of such event of Force Majeure shall provide written notice thereof to the other party as promptly as is reasonably possible under the circumstances and in all events within five (5) Days following such Party's knowledge of the occurrence of such event of Force Majeure. The party receiving such notice may contest and/or reject the claim of an event of Force Majeure in writing, setting forth its bases for such rejection and demanding that the Affected Party proceed with its obligations under this Agreement. If the Affected Party intends to continue to rely upon the condition claimed to result in an event of Force Majeure, it may request, in writing, a neutral professional review. The Parties shall then mutually select and designate a local member of the profession to which the event of Force Majeure relates and agree to permit such individual to arbitrate and decide the reasonableness of the claim an event of Force Majeure and the appropriate extension of time to be granted to the Affected Party.

7.10. Effect on Obligations.

(a) Upon the occurrence of an event of Force Majeure, the applicable deadline, obligation, or term affected by such event of Force Majeure shall be extended for a period of time equal to the delay caused by the event of Force Majeure, provided that timely notice was provided by the Affected Party.

(b) The performance, non-performance or delay in performance by the Parties or either of them of any obligation, requirement, commitment or responsibility set forth in this Agreement shall not be deemed to be an event of Default where such performance, failure of performance or delay in performance is/are the result of an event of Force Majeure, provided, however, that the event of Force Majeure (a) was not invoked in bad faith or intentionally by a Party (b) was not the result of any unlawful action or non-action of the Affected Party as justification for the performance, failure of performance or delay in performance of the subject obligation, requirement, commitment or responsibility, and (c) the Affected Party takes all reasonable efforts within its power to timely mitigate the event of Force Majeure.

(c) Each Party shall diligently and in good faith seek to mitigate the effect of such event of Force Majeure and to perform its obligations to the extent practicable notwithstanding the occurrence of an event of Force Majeure and to overcome such event of Force Majeure as soon as is possible or practicable.

(d) Reinstatement of Performance Obligations. The performance by the Parties of any obligation under this Agreement excused as aforesaid shall be recommenced as promptly as is legally and reasonably practicable after the occurrence of an event of Force Majeure and, in the case of the party not seeking to delay its performance based upon such event of Force Majeure, after receipt by such party from the Affected Party of written notice that the event of Force Majeure is no longer occurring and that such party can resume performance of its obligations under this Agreement.

7.11 Defense of Governmental Approvals. Notwithstanding any of the above, the Redeveloper shall assume the defense of any challenge to any Governmental Approval it requires in order to proceed with the Project without cost to the Municipality so as to continue to move forward with the Project.

ARTICLE 8
INSURANCE

8.1 Insurance Requirement. During the term of this Agreement, or as required prior to any construction at the Property, the Redeveloper, or its contractors, shall provide and maintain adequate insurance including the types of coverage and in amounts reflecting industry standards for adequate insurance against risk of loss and casualty in connection with the type, extent and magnitude of work to be performed under this Agreement until such work has been Completed and furnish the Municipality with a copy of certificates of insurance prior to commencement of

any site work evidencing that the Redeveloper has obtained such insurance. Such policies shall include, but not necessarily be limited to:

(a) Contractor's Comprehensive General Liability and Property Damage Insurance in the amount of Two Million and 00/100 (\$2,000,000.00) Dollars naming the Borough as an additional insured, with waiver of subrogation and indemnification and hold harmless provisions; and

(b) Builders Risk/Installation Coverage or its Equivalent, on a Replacement Cost basis in an amount equal to or exceeding the full insurable value of the Improvements, or the maximum exposure to a single occurrence; and

(c) Vehicle Liability and Property Damage Insurance in the amount of One Million and 00/100 (\$1,000,000.00) Dollars comprehensive single limit per occurrence and Five Hundred Thousand and 00/100 (\$500,000.00) Dollars property damage on all vehicles.

8.2 Insurance Pre-Condition to Commencement of Construction. The Redeveloper shall not commence site work until it has obtained the insurance required under this section. All coverage shall be with insurance carriers licensed and admitted to do business in New Jersey and reasonably acceptable to the municipality.

8.3 Insurance as Primary Coverage. This coverage shall be primary to any other policies of the Municipality Indemnified Parties and shall not be contributing with any other insurance or similar protection available to the Municipality whether other available insurance be primary, contributing, or excess.

8.4 Continuation Of Coverage. The Redeveloper shall be required to maintain the above policies during and throughout the term of this Agreement. If any of the above coverages expire during the term of this Agreement, the Redeveloper shall deliver renewal certificates and/or policies to the Municipality at least sixty (60) Days prior to the expiration date. All insurance certificates provided by the Redeveloper under this Agreement shall stipulate that the insurance will not be changed or canceled without giving at least sixty (60) Days written notice to the Municipality by certified mail.

ARTICLE 9 **INDEMNITY**

9.1 Obligation to Indemnify. The Redeveloper and the Municipality (collectively the "Parties") agree to indemnify and hold each other and their respective officials, members, agents, servants, employees and consultants (hereinafter collectively referred to as, the "Indemnified Parties") harmless from and against any and all Claims, demands, suits, actions, recoveries, judgments, and costs and expenses in connection therewith of any kind or nature, however arising, imposed by law or otherwise (including reasonable attorneys' fees and expenses and experts' fees and expenses) (hereinafter collectively referred to as, "Claims") which the Indemnified Parties may sustain, be subjected to or be caused to incur, by reason of personal injury, death or damage

to property, arising from or in connection with the condition, use, possession, conduct, management, planning, design, financing, implementation, construction or maintenance of the Project, marketing, leasing or sale of the Property or the Project or any activities of or on behalf of the Redeveloper or the Municipality within the Property, except that to the extent that any such claim or suit arises from the intentional or willful wrongful acts or omissions of the Indemnified Parties. The Redeveloper or the Municipality shall provide notice to the other Party of the subject Claims as soon as reasonably possible after their occurrence but in any case within ten (10) Days of the Redeveloper or the Municipality, as applicable, receiving actual notice of the subject Claims, provided, however, that in the event such notice is not timely received, the Redeveloper or the Municipality shall only be excused of its obligations hereunder to the extent it is prejudiced by the failure to timely receive said notice.

9.2 Indemnification Coverage. In any situation in which the Indemnified Parties are entitled to receive and desire defense and/or indemnification, the Indemnified Parties shall give prompt notice of such situation to the Redeveloper or the Municipality, as the case may be. Failure to give prompt notice shall not relieve the Redeveloper or the Municipality of any liability to indemnify the Indemnified Parties, unless such failure to give prompt notice materially impairs the Redeveloper's or the Municipality's ability to defend. Upon receipt of such notice, the Redeveloper or the Municipality shall resist and defend any action or proceeding on behalf of the Indemnified Parties, including the employment of counsel reasonably acceptable to the Redeveloper or the Municipality, the payment of all expenses and the right to negotiate and consent to settlement. The Redeveloper and the Municipality shall have the right to employ separate counsel in any such action and to participate in the defense thereof, but the fees and expenses of such separate counsel shall be at the expense of the Redeveloper or the Municipality unless the employment of such counsel is specifically authorized by the Redeveloper or the Municipality, which authorization shall not be unreasonably withheld or delayed, provided, however, that if the defense of such action is assumed by the Redeveloper's or the Municipality's insurance carrier, employment of such separate counsel by the Redeveloper or the Municipality shall be at the sole discretion of such carrier. The Redeveloper or the Municipality shall not be liable for any settlement of any such action effected without their respective consent, but if settled with the consent of the Redeveloper or the Municipality, or if there is a final judgment against the Redeveloper party or the Municipality party in any such action, the Redeveloper or the Municipality, as the case may be, shall indemnify and hold harmless the Indemnified Parties from and against any loss or liability by reason of such settlement or judgment for which the Indemnified Parties are entitled to indemnification hereunder.

9.3 Survival of Indemnity. The provisions of this Article 8 shall survive the termination of this due to an Event of Default and shall run with the land and be referenced in the Declaration until such time as the Declaration is discharged as a result of the recording of a Certificate of Completion, provided, however, that such indemnity shall be binding on each successor in interest to the Project, the Property, respectively, only for such period as the Redeveloper or such successor or party shall have title to, or an interest in, or possession of the Property, the Improvements, or any portion thereof.

ARTICLE 10 **NOTICES AND DEMANDS**

10.1 Notice Provisions. A notice, demand or other communication under this 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 national overnight courier with delivery confirmation, or by facsimile transmission (evidenced by printed confirmation of receipt specifying the receiving telephone number), or by email (evidenced by confirmation of receipt to a verified email address) or delivered personally (with written acknowledgment of receipt) to the Parties at the following respective addresses, facsimile numbers or emails:

If to the **Municipality**, to:

Julie Falkenstern, Borough Administrator (or Designee)
Borough of Demarest
118 Serpentine Road
Demarest, New Jersey 07627
Telephone: 201-768-1067
Email: boroadmin@demarestnj.gov

With a copy to:

Wendy R. Quiroga, Esq.
Weiner Law Group LLP
629 Parsippany Road
Parsippany, New Jersey 07054
Telephone: 973-403-1100
Fax: 973-403-0010
Email: wrquiroga@weiner.law

If to the **Redeveloper**, to:

Tom Toronto-President
BCUW/Madeline Housing Partners
6 Forest Avenue-Suite 220
Paramus, New Jersey 07652
Telephone: 201-291-4050
Email: ttortonto@bergenunitedway.org

with a copy to:

Brenda J. Stewart, Esq.
200 Market Street, Suite 401
Montvale, New Jersey 07645
Telephone: 201-799-2116
Fax: 201-799-2116
Email: bstewart@beattielaw.com

Either party may from time to time by written notice given to the other pursuant to the terms of this Section 9.1 change the address, facsimile number or persons to which notices shall be sent.

ARTICLE 11 RESTRICTIONS ON TRANSFERS

11.1 Restrictions on Transfer. So long as this Agreement is effective, prior to the issuance of a Certificate of Completion for the Project, pursuant to the LRHL except as otherwise permitted by this Agreement, the Redeveloper shall be without power to sell, otherwise transfer title to or ownership of the Project or any such part, without the written consent of the Municipality, which consent shall not be unreasonably withheld, delayed or conditioned. The prohibition in this Section 11.1 shall apply to any sale, transfer, pledge, or hypothecation by the Redeveloper of all or substantially all of its assets "in bulk" or all or substantially all of its membership interest in the not for profit entity to a successor, or the sale, transfer, pledge, or hypothecation of fifty (50%) percent or more of the interest of the Redeveloper; or the sale, transfer, pledge, or hypothecation of fifty (50%) percent or more of the beneficial ownership interest in the Redeveloper if the Redeveloper is a partnership, except in the event of the death of a partner or member. Any of the foregoing cases, whether or not accomplished by one or more related or unrelated transactions, constitute a prohibited assignment. The foregoing shall not apply, however, to a change of form of the Redeveloper entity, provided that there is no change in the beneficial ownership of the Redeveloper which is prohibited by the third sentence of this Section.

11.2 Permitted Transfers. Notwithstanding the foregoing, the Municipality hereby consents, without the necessity of any further approval, but subject to prior notice to the Municipality (except as to conveyances in Sections (a) and (b)), to the following conveyances:

- (a) A conveyance of driveways, roads, infrastructure, or open space.
- (b) Utility and other necessary easements.
- (c) A mortgage or mortgages or leases or leasehold or other financing and other liens and encumbrances solely for the purposes of financing costs associated with the acquisition, development, construction, and marketing of the Project.
- (d) A conveyance of the Property to the Holder of any mortgage authorized under this Agreement, whether through foreclosure, deed-in-lieu of foreclosure, or otherwise.
- (e) A transfer from the Redeveloper to an Affiliate entity as defined in Section 2.5 hereof or an urban renewal entity for tax abatement or exemption purposes.
- (f) Sale, transfer, pledge or hypothecation of any percent of stock or beneficial ownership interest so long as the original members of the Redeveloper shall maintain a Controlling management interest.

11.3 Conveyance to a Qualified Entity. Upon conveyance of all rights and obligations hereunder to a Qualified Entity, pursuant to Section 2.5 hereof, the Redeveloper shall be relieved of its right and obligations hereunder.

11.4 Subsequent Conveyance by the Redeveloper. Upon issuance of a Certificate of Completion for the Project, the Redeveloper shall have the right to sell, lease or otherwise transfer, convey, or encumber any such portion of the Project without the consent of the Municipality and free of any restrictions imposed by this Agreement.

ARTICLE 12 **MISCELLANEOUS**

12.1 Term. This Agreement shall terminate upon the sooner of Completion of the Project as evidenced by a Certificate of Completion for the Project, or ten (10) years, subject to extension based upon any events of Force Majeure or any other reasonable extension granted in the Municipality's sole discretion (hereinafter "Termination Date"). Within sixty (60) Days after the Termination Date, the Municipality shall adopt applicable resolutions and/or ordinances, pursuant to the LRHL, declaring that the Property is no longer an "area in need of redevelopment".

12.2 No Third-Party Beneficiaries. The provisions of this Agreement are for the exclusive benefit of the Parties hereto and not for the benefit of any third person, nor shall this Agreement be deemed to have conferred any rights, express or implied, upon any third person.

12.3 Amendment; Waiver. No alteration, amendment or modification of this Agreement shall be valid unless executed by an instrument in writing by the Parties hereto with the same formality as this Agreement, including approval by Resolution of the Municipality. The failure of the Municipality or the Redeveloper to insist in any one or more instances upon the strict performance of any of the covenants, agreements, terms, provisions or conditions of this Agreement or to exercise any election contained in this Agreement shall not be construed as a waiver or relinquishment for the future of such covenant, agreement, term, provision, condition, election or option, but the same shall continue and remain in full force and effect. No waiver by the Municipality 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 the Municipality or the Redeveloper.

12.4 Consents. Unless otherwise specifically provided herein, no consent or approval by the Municipality or the Redeveloper permitted or required under the terms of this Agreement shall be valid or be of any force whatsoever unless the same shall be in writing, signed by an authorized representative of the Party by or on whose behalf such consent is given.

12.5 Governing Law. This Agreement shall be governed by and construed in accordance with the Applicable Laws of the State of New Jersey, without giving effect to any principle of choice of or conflicts of laws. Any lawsuit filed by either Party to this Agreement shall

be filed in either the Superior Court of New Jersey, Bergen County, or in the United States District Court for the District of New Jersey in accordance with their respective New Jersey Court Rules.

12.6 Severability. If any article, section, subsection, term or provision of this Agreement or the application thereof to any party or circumstance shall, to any extent, be invalid or unenforceable, the remainder of the section, subsection, term or provision of this Agreement or the application of same to the Parties or circumstances other than those to which it is held invalid or unenforceable shall not be affected thereby and each remaining article, section, subsection, term or provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law, provided that no such severance shall serve to deprive either party of the enjoyment of its substantial benefits under this Agreement.

12.7 Binding Effect. Except as may otherwise be provided in this Agreement to the contrary, this Agreement and each of the provisions hereof shall be binding upon and inure to the benefit of the Redeveloper, the Municipality and their respective successors and assigns.

12.8 Relationship of Parties. Nothing contained in this Agreement shall be deemed or construed by the Parties hereto or by any third party to create the relationship of principal and agent, partnership, joint venture or any association between the Redeveloper and the Municipality, their relationship being solely as contracting parties under this Agreement.

12.9 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute, in connection with each of such agreements, one and the same instrument.

12.10 Prior Agreements Superseded. This Agreement supersedes any prior understanding or written or oral agreements (express or implied) between the Parties respecting the within subject matter. This Agreement, together with any other documents executed by the Parties contemporaneously herewith or therewith, contains the entire understanding between the Parties with respect thereto.

12.11 Exhibits. All Exhibits referred to herein shall be considered a part of this Agreement as fully and with the same force and effect as if such Exhibits had been included within the text of this Agreement in full.

12.12 Affirmative Action. Should the Redeveloper use any public funding or financing for the Project which requires compliance with affirmative action requirements set forth in P.L. 1975, C. 127 (N.J.S.A. 17:27), the Redeveloper agrees to comply with said requirements and cause its contractors and subcontractors to comply with same.

12.13 Non-Discrimination. The Redeveloper shall not discriminate against or segregate any person or a group of persons on account of race, color, religion, creed, national origin, ancestry, physical handicap, age, marital status, sex, affectional or sexual orientation, gender identity or expression in the sale, lease, sublease, rental, transfer, use, occupancy, tenure or enjoyment of the Project or the Property; nor shall the Redeveloper itself, or any person claiming under or through the Redeveloper, establish or permit any such practice or practices of discrimination or segregation,

with reference to the selection, location, number, use of occupancy of tenants, lessees, subtenants, sub lessees or vendees on the Property.

12.14 Construction. Both of the Parties acknowledge that this Agreement has been extensively negotiated with the assistance of competent counsel for each party and agree that no provision of this Agreement shall be construed in favor of or against either party by virtue of the fact that such party or its counsel have provided an initial or any subsequent draft of this Agreement.

[SIGNITURES ON NEXT PAGE]

IN WITNESS WHEREOF, the Parties have executed this Agreement to be effective as of Effective Date.

WITNESS:

BCUW/MADELINE HOUSING PARTNERS,
LLC- Redeveloper

Name: _____

TOM TORONTO Co-Manager

Title: _____

Dated: _____

SHARI DePALMA Co-Manager

WITNESS:

BOROUGH OF DEMAREST
Municipality

Acting Deputy Borough Clerk

BRIAN BERNSTEIN, Mayor

Exhibit A

Project Drawings, Architectural Renderings, and Site Plan (Preliminary)

Exhibit B

Project Schedule

DRAFT

Borough of Demarest – 127 & 129 Hardenburgh Ave
Preliminary Development Construction Timeline
Affordable Housing Project – 17 units/ 26 beds

#	Task	Finish Date	Responsibility
1	Execute Transfer & Developer Agreement	5/23	Mayor and Council
2	Engineering & Environmental Soil Testing		BCUW/Madeline – Engineer
3	Architectural Plan Development for Site Plan Submission	2/23	Architect
4	Site Plan Hearing & Approval	3/23	Attorney
5	Project Bidding	3/24	BCUW/Madeline
6	Project Financing Process	3/24	BCUW/Madeline
7	Construction Contract Award	3/24	
8	Submission to Borough’s Building Department & Engineering Department for Permits	10/24	General Contractor
9	Construction Begins	1/25	General Contractor
10	Certificate of Occupancy Granted	2/26	Building Department
11	Tax Exempt Application	2/26	BCUW/Madeline – Tax Assessor