

RESOLUTION OF THE TOWNSHIP OF IRVINGTON, NJ

No. **OCDP 19-0708-12**

Date of Adoption **JULY 8, 2019**

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

Legislative Research Officer

PRESENTED BY COUNCIL MEMBER **BURGESS**

SECONDED BY **BEASLEY**

RESOLUTION OF THE TOWNSHIP OF IRVINGTON AUTHORIZING THE EXECUTION OF AN ESCROW AND FUNDING AGREEMENT WITH REDEVELOPMENT CAPITAL PARTNERS, LLC

WHEREAS, the Local Redevelopment and Housing Law, *N.J.S.A. 40A:12A-1 et seq.* (the "**Redevelopment Law**") authorizes municipalities to determine whether certain parcels of land located therein constitute areas in need of redevelopment or rehabilitation and to create redevelopment plans which provide development controls for any area so designated; and

WHEREAS, in accordance with the Redevelopment Law, on June 23, 2015, by resolution No. UEZ 15-0623-9, the Municipal Council of the Township of Irvington (the "**Township Council**") adopted a resolution designating the entire Township as an "area in need of rehabilitation" (the "**Rehabilitation Area**"); and

WHEREAS, on August 11, 2015, the Township Council duly adopted Ordinance MC. 3549, enacting a redevelopment plan for the Rehabilitation Area entitled the *Township-Wide Area in need of Rehabilitation Redevelopment Plan*, pursuant to the Redevelopment Law and in accordance with the procedures set forth therein; and

WHEREAS, to realize the redevelopment of Rehabilitation Area, the Township determined to exercise the powers of redevelopment and serve as the "redevelopment entity" responsible for carrying out redevelopment projects in accordance with the Redevelopment Law; and

WHEREAS, the Township is the owner of certain property located within the Rehabilitation Area identified in the Township tax records and on the official tax maps of the Township as:

Block	Lot	Property Location
131	24	715 Grove St.
136	24	35-39 22nd St.
136	29	21-23 22nd St.
137	11	36-38 22nd St.
141	17	127 22nd St.
142	7	130 22nd St.
144	1	332 21st St.
148	23	95 22nd St.
162	23	413 21st St.
162	17	759 Springfield Ave.
162	16	761 Springfield Ave.
207	31	103 Ellis Ave.

(collectively, the "**Property**"); and

WHEREAS, Redevelopment Capital Partners, LLC (the "**Proposed Redeveloper**") proposes to acquire the Property and to redevelop same by constructing thereon Residential Units (the "**Project**"); and

WHEREAS, the Proposed Redeveloper has requested that the Township, in its capacity as redevelopment entity, enter into negotiations for a Redevelopment Agreement and/or Financial Agreement, as may be applicable or appropriate for the redevelopment of the Property (each, an "**Agreement**"); and

WHEREAS, the Proposed Redeveloper has agreed to defray certain costs incurred by or on behalf of the Township arising out of or in connection with the redevelopment of the Property; and

WHEREAS, the Township and the Proposed Redeveloper wish to enter into an escrow and funding agreement establishing the mechanism for the deposit and disposition of funds to cover the Township's costs,

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

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

Section 2. Execution of Agreement. The Township Council hereby authorizes the Mayor to execute the escrow and funding agreement substantially in the form attached hereto as Exhibit A, with such changes, deletions, and modifications in

consultation with counsel as may be necessary or desirable to effect the transaction contemplated by this resolution. However, neither the adoption of this resolution, nor the execution of the escrow and funding agreement authorized hereby, shall be construed in any way to bind the Township to execute one or more definitive agreements with respect to the Project.

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

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

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

RECORD OF COUNCIL VOTE

X = Indicates Vote N.V. = No Vote A.B. = Absent

COUNCIL MEMBER	YES	NO	N.V.	A.B.	COUNCIL MEMBER	YES	NO	N.V.	A.B.
BEASLEY	X				DR. HUDLEY	X			
BURGESS, 1ST VICE PRESIDENT	X				INMAN	X			
COX				X	LYONS, PRESIDENT				X
FREDERIC	X								

ACTING

PRESIDENT OF COUNCIL

MUNICIPAL CLERK

DATE July 8, 2019

I hereby certify that the foregoing is a true copy of a Resolution duly adopted by the Municipal Council. In witness whereof I have hereunto set my hand and the Corporate Seal of the Township of Irvington.

MUNICIPAL CLERK

DATE 7/8/19

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

Exhibit A

ESCROW AGREEMENT

THIS ESCROW AGREEMENT (“**Escrow Agreement**”) is made as of the ____ day of _____, 2019 by and between **REDEVELOPMENT Capital PARTNERS, LLC**, (the “**Proposed Redeveloper**”), with an address of 494 Broad Street, Suite 206, Newark, New Jersey 07102 and **THE TOWNSHIP OF IRVINGTON**, a body corporate and politic of the State of New Jersey, (the “**Township**”), with an address of Municipal Building, Civic Square, Irvington, New Jersey 07111.

WITNESSETH:

WHEREAS, the Local Redevelopment and Housing Law, *N.J.S.A. 40A:12A-1 et seq.* (the “**Redevelopment Law**”) authorizes municipalities to determine whether certain parcels of land located therein constitute areas in need of redevelopment or areas in need of rehabilitation; and

WHEREAS, in accordance with the Redevelopment Law, on June 23, 2015, by resolution No. UEZ 15-0623-9, the Municipal Council of the Township of Irvington (the “**Township Council**”) adopted a resolution designating the entire Township as an “area in need of rehabilitation” (the “**Rehabilitation Area**”) upon the recommendation of the Planning Board of the Township (the “**Planning Board**”) and review of a report of the Township Engineer; and

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

WHEREAS, the Redevelopment Law authorizes municipalities to adopt a redevelopment plan for an area designated as an “area in need of rehabilitation” pursuant to which redevelopment projects are to be undertaken; and

WHEREAS, by Ordinance MC No. 3549 dated August 11, 2015, the Township Council duly adopted a redevelopment plan for the Rehabilitation Area entitled the *Township-Wide Area in need of Rehabilitation Redevelopment Plan* (the “**Redevelopment Plan**”), in accordance with *N.J.S.A. 40A:12A-7*; and

WHEREAS, pursuant to *N.J.S.A. 40A:12A-15*, with respect to a redevelopment project in an area in need of rehabilitation, the municipality or redevelopment entity, upon the adoption of a redevelopment plan for the area, may perform any of the actions set forth in *N.J.S.A. 40A:12A-8(g)*, specifically “convey property or improvements to any other party pursuant to this section, without public bidding and at such prices and upon such terms as it deems reasonable, provided that the lease or conveyance is made in conjunction with a redevelopment plan...”

WHEREAS, the Township is the owner of certain property located within the Rehabilitation Area identified in the Township tax records and on the official tax maps of the Township as:

Block	Lot	Property Location
131	24	715 Grove St.

136	24	35-39 22nd St.
136	29	21-23 22nd St.
137	11	36-38 22nd St.
141	17	127 22nd St.
142	7	130 22nd St.
144	1	332 21st St.
148	23	95 22nd St.
162	23	413 21st St.
162	17	759 Springfield Ave.
162	16	761 Springfield Ave.
207	31	103 Ellis Ave.

(collectively, the “**Property**”); and

WHEREAS, the Redeveloper proposes to acquire the Property and to redevelop same by constructing thereon Residential Units (the “**Project**”)

WHEREAS, the Proposed Redeveloper and the Township, in its capacity as redevelopment entity, intend to negotiate a Redevelopment Agreement and/or Financial Agreement (each, an “**Agreement**”), with respect to the designation of the Proposed Redeveloper as “redeveloper” under the Redevelopment Law to provide for (i) the redevelopment of the Property and/or (ii) a tax exemption for improvements to be made to the Property pursuant to the *Long Term Tax Exemption Law, N.J.S.A. 40A:20-1 et seq*; and

WHEREAS, as an inducement to the Township to engage in such negotiations, and as a precondition thereto, the Proposed Redeveloper has agreed to deposit with the Township the initial amount of **TEN THOUSAND and 00/100 (\$10,000.00) DOLLARS** (the “**Escrow Deposit**”), to be deposited in an escrow account and disbursed in accordance with the provisions of this Escrow Agreement to defray certain costs incurred by or on behalf of the Township arising out of or in connection with the selection and designation of the Proposed Redeveloper as redeveloper and the negotiation and preparation of the Agreement.

NOW THEREFORE, in consideration of the foregoing, and for other good and valuable consideration, and intending to be legally bound hereby, the parties hereto agree as follows:

- 1. Escrow Deposit.** The initial Escrow Deposit is separate from and in addition to all other application fees and escrow deposits that may be required by the Township pursuant to the terms of the Agreement, if the parties are successful in their negotiations and one is executed, including any applications for land use approvals that may be needed to implement the Redevelopment Plan. Additions to the Escrow Deposit may subsequently become necessary to cover all reimbursable expenses incurred by the Township pursuant to the terms of this Escrow Agreement.
- 2. Scope of Reimbursable Services.** (a) The Township shall be entitled to be reimbursed for all professional charges incurred in connection with the selection and designation of the Proposed Redeveloper as redeveloper, and the negotiation

and preparation of the Agreement; the preparation and review of all related documents and materials, including but not limited to correspondence, meetings and all communications (including by telephone and e-mail) with the Proposed Redeveloper, its professionals, Township staff or retained professional(s) in the negotiation and preparation of such Agreement and related documents or materials (collectively, the **“Reimbursable Activities”**). **Reimbursement may include charges incurred in connection with Reimbursable Activities prior to the date of this Escrow Agreement, and is not contingent upon the outcome of the negotiations or execution of an Agreement.**

(b) Properly reimbursable professional charges shall be reasonable and necessary and shall relate to Reimbursable Activities performed by outside consultants and professionals.

(c) In addition to professional and consultant fees and expenses, properly reimbursable charges shall include a charge for each special meeting of a municipal board held at the request of or with the consent of the Proposed Redeveloper, at a cost of **\$1,000.00 per meeting**.

3. Deposit and Administration of Escrow Funds. The Escrow Deposit and all additions thereto shall be held by the Township in a banking institution or savings and loan association in the State of New Jersey insured by an agency of the federal government, or in any other fund or depository approved for such deposits by the State of New Jersey, in a segregated, non-interest bearing account referenced to this Escrow Agreement.

4. Payments from the Escrow Funds. (a) The Township shall use such funds to pay reimbursable professional charges or the charges for special meetings.

(b) Professional charges paid out of the escrow account shall include professional charges in connection with the Reimbursable Activities. The Proposed Redeveloper shall not be charged for any costs and expenses not associated with the Reimbursable Activities. The only costs that shall be added shall be actual out-of-pocket expenses of such professionals or outside consultants, including normal and typical expenses incurred in connection with such Reimbursable Activities.

(c) Each payment for professional services charged to the escrow account shall be pursuant to a voucher from the professional, identifying the personnel performing the Reimbursable Activities, each date the services were performed, the hours spent in not greater than one-quarter (1/4) hour increments, the hourly rate, and specifying properly reimbursable expenses. All professionals shall submit the required vouchers or statement to the Township on a periodic basis in accordance with the schedule and procedures established by the Township. Copies of all vouchers and statements shall be delivered to the Proposed Redeveloper; *provided*, that each such informational voucher or statement may be redacted if and as necessary to prevent disclosure of privileged or otherwise confidential matters.

5. Accounting and Additional Deposits. Upon the execution of an Agreement, termination of negotiations, or as reasonably requested by the Proposed Redeveloper, the Township shall prepare and send to the Proposed Redeveloper a statement which

shall include an accounting of funds listing all deposits, disbursements and the cumulative balance of the escrow account. If at any time the balance in the escrow account is less than **FIVE THOUSAND and 00/100 (\$5,000.00) DOLLARS**, or if the escrow account otherwise contains insufficient funds to enable the Township to continue with the negotiations or document preparation, the Township shall provide the Proposed Redeveloper with a notice of the insufficient escrow deposit balance. The Proposed Redeveloper shall deposit to the escrow account additional funds such that the total amount on deposit shall be not less than **TEN THOUSAND and 00/100 (\$10,000.00) DOLLARS**, such deposit to be made within five (5) business days of the Township's notice, failing which the Township may unilaterally cease work without liability to the Proposed Redeveloper.

6. **Close Out Procedures.** Upon termination of negotiations without an Agreement being executed, or upon the execution of an Agreement, and unless otherwise provided in the Agreement, the Proposed Redeveloper shall send written notice by certified mail to the Township, the Township and to the relevant municipal professional(s), requesting that the remaining balance of the Escrow Deposit be refunded, or otherwise applied as agreed to pursuant to the terms of the executed Agreement. After receipt of such notice, the professional(s) shall render a final bill to the Township within 30 days, and if so requested shall send an informational copy simultaneously to the Proposed Redeveloper. Within 30 days of receipt of the final bill the Township shall pay all outstanding bills and render a written final accounting to the Proposed Redeveloper detailing the uses to which the escrow funds were put. The Proposed Redeveloper will not be responsible for any additional charges once the final accounting has been rendered by the Township in accordance with this section. If an Agreement is executed and the Proposed Redeveloper so requests, the Township agrees to apply any balance remaining in the Escrow Deposit towards the funding of any escrow deposits that may be required to be posted pursuant to the terms of the executed Agreement.
7. **Disputed Charges.** (a) The Proposed Redeveloper may dispute the propriety or reasonableness of professional charges paid out of the Escrow Deposit by written notice to the Township. A copy of such notice shall be sent simultaneously to the professional(s) whose charges or estimated costs are the subject of the dispute. Such written notice of a disputed charge shall be given within 45 days from the Proposed Redeveloper's receipt of the informational copy of the professional's voucher, except that if the professional has not supplied the Proposed Redeveloper with an informational copy of the voucher, then the Proposed Redeveloper shall send notice within 60 days from receipt of the first statement of activity against the escrow account containing the disputed charge. Failure to dispute a charge in writing within the prescribed time shall constitute the Proposed Redeveloper's acceptance of the charge and a waiver by the Proposed Redeveloper of all objections to the charge and to payment thereof out of the escrow account.

(b) During the pendency of a dispute the Township may continue to pay undisputed charges out of the escrow account. If a dispute over a charge is resolved in the Proposed Redeveloper's favor after having been paid, the Township shall reimburse the escrow account in the amount determined to be properly disputed.

8. **Governing Law.** This Escrow Agreement shall be governed, construed and enforced according to the laws of the State of New Jersey, without regard to its conflicts of laws principles. Any action hereunder shall be brought exclusively in a court of the State of New Jersey or in a United States Court having jurisdiction in

the District of New Jersey, in either case sitting in Essex County, New Jersey, and the Proposed Redeveloper hereby waives all objections to such venue.

9. **Successors and Assigns.** This Escrow Agreement shall be binding upon, and inure to the benefit of, the parties hereto and upon each party's successors and assigns.
10. **Entire Agreement; No Modification Unless in Writing.** This Escrow Agreement contains the entire agreement of the parties relative to the subject matter hereof any amendment hereto or modification or variation hereof shall be ineffective unless in writing signed by each of the parties hereto.
11. **Effective Date.** This Escrow Agreement shall not become effective unless and until the initial Escrow Deposit is made.

The balance of this page intentionally left blank; signatures appear on next page.

IN WITNESS WHEREOF, the parties have executed this Agreement the date and year first above written.

Witness or Attest:

TOWNSHIP OF IRVINGTON

Name:
Title:

By: _____
Name: Tony Vauss
Title: Mayor

Witness or Attest:

**REDEVELOPMENT CAPITAL PARTNERS,
LLC**

Name:
Title:

By: _____
Name:
Title: