

City Clerk File No. Ord. 09-128

Agenda No. 3.A 1st Reading

Agenda No. _____ 2nd Reading & Final Passage



ORDINANCE OF JERSEY CITY, N.J.

COUNCIL AS A WHOLE
offered and moved adoption of the following ordinance:

CITY ORDINANCE 09-128

TITLE:

ORDINANCE AUTHORIZING THE CONVEYANCE OF 90 VIRGINIA AVENUE TO THE JERSEY CITY COMMUNITY HOUSING CORPORATION, A NON PROFIT CORPORATION, TO REHABILITATE THE PROPERTY AS FOURTEEN UNITS OF LOW AND MODERATE INCOME CONDOMINIUM UNITS

THE MUNICIPAL COUNCIL OF THE CITY OF JERSEY CITY DOES ORDAIN:

WHEREAS, the City of Jersey City (City) is the owner of a four-story building located within Block 1978, Lot 41.99, more commonly known by the street address of 90 Virginia Avenue; and

WHEREAS, this property is not needed for any municipal purposes; and

WHEREAS, the Jersey City Community Housing Corporation is a non profit, 501(c)3 corporation organized for the purpose of rehabilitating and operating property for families and persons of low and moderate income; and

WHEREAS, pursuant to N.J.S.A. 52:27D-301 et seq., the Fair Housing Act, the City may authorize the private sale of City property for the rehabilitation of affordable housing for nominal consideration, provided the property is sold to and remains occupied by families or persons of low and moderate income for a minimum period of thirty (30) years; and

WHEREAS, the Jersey City Community Housing Corporation has proposed to rehabilitate fourteen (14) units of low and moderate income housing and to commence construction no later than March 1, 2011 and complete the rehabilitation no later than November 1, 2012, all in accordance with the Developers Agreement attached hereto; and

WHEREAS, the Jersey City Community Housing Corporation agrees to maintain the housing as affordable within the meaning of the Fair Housing Act for a minimum period of thirty (30) years.

NOW, THEREFORE BE IT ORDAINED, by the Municipal Council of the City of Jersey City that:

1. The Mayor or Business Administrator is hereby authorized to execute a Developer's Agreement, Contract of Sale, Deed and any other documents appropriate or necessary to effectuate the transfer of Block 1978, Lot 41.99 more commonly known by the street address of 90 Virginia Avenue to the Jersey City Community Housing Corporation pursuant to the Fair Housing Act, N.J.S.A. 52:27D-301 et seq., provided the property remains affordable to families of low and moderate income for a minimum period of thirty (30) years.
2. The Developer's Agreement shall be in substantially the form attached, and subject to such modifications as Corporation Counsel or the Business Administrators deems appropriate or necessary.

- A. All ordinances and parts of ordinances inconsistent herewith are hereby repealed.
- B. This ordinance shall be a part of the Jersey City Code as though codified and fully set forth therein. The City shall have this ordinance codified and incorporated in the official copies of the Jersey City Code.
- C. This ordinance shall take effect in the manner as prescribed by law.
- D. The City Clerk and the Corporation Counsel be and they are hereby authorized and directed to change any chapter numbers, article numbers and section numbers in the event that the codification of this ordinance reveals that there is a conflict between those numbers and the existing code, in order to avoid confusion and possible accidental repealers of existing provisions.

NOTE: All new material is underlined; words in ~~{brackets}~~ are omitted. For purposes of advertising only, new matter is indicated by **boldface** and repealed matter by *italic*.

RR/cw

APPROVED AS TO LEGAL FORM

APPROVED: _____

Corporation Counsel

APPROVED: _____
Business Administrator

Certification Required
Not Required

DEVELOPMENT AGREEMENT

THIS AGREEMENT, entered into this ____ day of _____, 2009, (Agreement) between the **CITY OF JERSEY CITY**, a public body corporate having its principal offices at 280 Grove Street, Jersey City, New Jersey 07302, [City] and _____, a corporation of the State of New Jersey with offices at _____, Jersey City, New Jersey 07305 [Developer].

WITNESSETH:

WHEREAS, the Developer is a non profit entity organized for the purpose of providing for the rehabilitation and operation of affordable low and moderate income housing within Jersey City and is recognized as a non profit entity pursuant to Section 501(c)(3) of the IRC; and

WHEREAS, the City of Jersey City, the owner of _____, desires to convey title to the Developer to enable the immediate [construction/rehabilitation] for _____ units of affordable housing [Property]; and

WHEREAS, pursuant to N.J.S.A. 52:27D-301 et seq of the Fair Housing Act, the City of Jersey City may authorize the private sale of City property for the [construction/rehabilitation] of affordable housing , provided the property is occupied by families or persons of low or moderate income at affordable rents, for a minimum period of 30 years; and

WHEREAS, Developer has submitted a proposal to the City to rehabilitate Project Premises in accordance with the terms of this Agreement; and

WHEREAS, the City has reviewed the proposal and have determined that it is in the city's best interests to select the Developer as the designated Developer for the Project Premises; and

WHEREAS, by Ordinance _____ adopted on _____, the City approved the conveyance of the Property to the Developer and the execution of this Agreement.

NOW, THEREFORE, for and in consideration of the mutual promises, covenants and agreements contained herein, and other good and valuable consideration, the parties hereto agree as follows:

DEFINITIONS

Agreement: This Agreement between the City and the Developer for the rehabilitation of the Property.

Applicable Law: Any and all federal, state and local laws, rules, regulations, statutes and ordinances applicable to the Property or Project.

Certificate of Occupancy: Document, whether temporary or permanent, issued by the City authorizing occupancy of a building, in whole or in part, pursuant to N.J.S.A. 52:27D-133 and as defined in the New Jersey Administrative Code.

Construction Plans: All plans, drawings, specifications and related documents, including a construction progress schedule, in sufficient completeness and detail to obtain construction permits and to show that the Improvements to be constructed by Developer on the Property and the construction thereof will be in accordance with this Agreement.

Construction Timetable: That schedule appended hereto as Schedule C which designates the order and deadlines of acquisition, necessary approvals and development of the Project.

Days: Whenever the word "days" is used to denote time, it shall mean calendar days.

Deeds: Any deed of conveyance from the City to the Developer conveying any of the Property pursuant to this Agreement.

Effective Date: The date this Agreement is last executed by the City.

Events of Default: Defined in Section 8.01 herein.

Fair Housing Act, N.J.S.A. 52:27D-301 et seq.

Financial Institution: A bank, savings bank, savings and loan association, mortgage lender or insurance company, pension fund, real estate investment trust, investment bank or similarly recognized reputable source of construction and permanent financing for the Project chartered under the laws of the United States of America, or any State thereof.

Force Majeure: As used herein **force majeure** shall mean acts of God, fire, earthquake, explosion, the elements, war, riots, mob violence, terrorism, or civil disturbance, inability to procure or a general shortage of labor, equipment or facilities, energy, materials or supplies in the open market, failure of transportation, strikes, walkouts, actions of labor unions, court orders, laws, rules, regulations or orders of governmental or public agencies, bodies and authorities, or any other similar cause not within the control of the Developer.

Governmental Approvals: Any approvals, authorizations, permits, licenses and certificates needed from governmental authorities having jurisdiction, whether federal, state, county or local, to the extent necessary to implement the Project in accordance with this Agreement.

Impositions: All taxes, assessments (including, without limitation, all assessments for public improvements or benefits), water, sewer or other rents, rates and charges, 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 conveyed to the Developer or on any of the improvements constructed thereon.

Improvements: Consists of the project as more particularly described in Schedule B hereto and all other improvements constructed on or installed upon the Property in accordance with the approved Construction Plans, including all facilities and amenities, shown in such approved Construction Plans and approved if appropriate by the Planning Board as being on the Project Premises and used or to be used in connection with the buildings, including any parking or ancillary facilities. Improvements also comprise any and all facilities, amenities, on and off street parking, landscaping and fencing and enhancements required to be made to the Project Premises and the streets abutting and surrounding the Premises.

Insurance Requirements: All requirements set forth in the terms of any insurance policy(ies) covering or applicable to all or any part of the Project Premises or applicable to any Improvements thereon, or with respect to any portion of the Project Premises, all requirements of the issuer of any such policy, and all orders, rules, regulations and other requirements of the National Board of Fire Underwriters (or any other body exercising similar functions) applicable to or affecting all or any portion of the Project Premises, the Improvements thereon or the use or condition thereof.

NJDEP: The New Jersey Department of Environmental Protection.

Permitted Exceptions: Defined in Section 9.02 herein.

Planning Board: The City of Jersey City Planning Board and any successor thereto exercising similar functions in accordance with the Municipal Land Use Law. N.J.S.A. 40:55D-1 et seq.

Project Premises: Those certain parcels of property more particularly described on Schedule A, which include the City Parcel to be conveyed to Developer.

Survey: Defined in Section 2.05 herein.

Transfer: Any transaction by which a Transferee obtains an interest in the Project Premises, or in this Agreement by means of methods which include, but are not limited to, conveyance, transfer, lease, encumbrance, acquisition or assignment through sale, merger, consolidation, reorganization, foreclosure or otherwise, including the appointment of a trustee in bankruptcy or assignee for the benefit of creditors.

Transferee: Any party to whom an interest in the Project Premises, or rights in or under this Agreement is conveyed, transferred, leased, encumbered, acquired or assigned, by sale, merger, consolidation, reorganization, assignment, foreclosure or otherwise, including a trustee in bankruptcy or assignee for the benefit of creditors.

ARTICLE I
SALE & CONVEYANCE OF PROPERTY

1.01. Consideration. For and in consideration of the Price (defined below in Section 1.02), to be paid and satisfied as stipulated herein, and also in consideration of the covenants and agreements herein contained and to be performed by the Developer be and upon satisfaction of the additional contingencies to close title enumerated under Article XI, hereof, the City agrees to convey to the Developer, subject to the terms and provisions of this Agreement, the Project Premises as more particularly defined in Schedule "A."

1.02 Price and Payment Terms. The purchase price to be paid by the Developer to the City for conveyance of the Property at the Closing shall be _____ and the good and valuable consideration set forth herein.

1.03 Deed. Subject to the provisions of this Agreement, title to the Project Premises shall be conveyed to the Developer at the Closing by a Deed of Bargain and Sale with covenants against Grantor's Acts (Deed) which shall contain a metes and bounds description provided in accordance with the provisions of Section 2.05 hereof. The Deed shall contain such restrictions, covenants and conditions are required by the Fair Housing Act N.J.S.A. 52:27D-301 et seq., and this Agreement and the condition of said title so conveyed will be in accordance with the requirements of this Agreement. Rider(s) shall be attached to the Deed enunciating the covenants and restrictions that this Agreement imposes upon the land and said Riders shall be recorded as part of and simultaneously with the recording of the Deed. Developer's signature will be required on the Deed and any Riders thereto in acknowledgment thereof. The City further agrees to provide Developer an Affidavit of Title and other documentation normally required by a title insurance company.

1.04 Closing. The closing of title to the Project Premises (Closing) shall take place in accordance with the timetable set forth in Schedule "C", attached hereto, subject to the provisions of this Agreement. The Closing shall occur at a mutually agreeable time at the principal offices of the City identified in the recitals of this Agreement or at such other location as shall be mutually agreeable to the City and Developer.

1.05 Impositions. Unless otherwise set forth in this Agreement, Developer shall be responsible for any and all Impositions assessed against the Project Premises, upon from and after the date of closing of title to the Project Premises to Developer.

1.06 Provisions Not Merged with Deed. The City and the Developer acknowledge and agree that none of the provisions of the Agreement are intended to or shall be merged by reason of any Deed(s) transferring title to the Project Premises or portions thereof from the City to the Developer or any successor in interest, and any such deed shall not be deemed to affect or impair the provisions and covenants of the Agreement.

1.07 Recordation of Documents. Upon the Closing, Developer shall file the Deed and any other related documents as determined by the City for recordation among the land records of the place in which the Project Premises is situate. The Deed(s) shall be by its terms expressly subject and subordinate to the provisions of this Agreement. The Developer shall pay all costs of such recordation and shall supply evidence of such recordation to the City.

ARTICLE II
DEVELOPER'S RESPONSIBILITIES

2.01 Developer's Costs. The Developer shall be responsible for all costs incurred by the Developer in implementing the Project, and satisfying its obligations under this Agreement.

2.02 Acquisition Costs. The Developer further agrees to be fully responsible for and obligated to reimburse the City for all of the City's costs, if any, associated with the conveyance of the Property (Acquisition Costs). The Acquisition Costs shall include, without limitation, the following:

(a) legal fees, survey costs, title search and premium fees, appraisal fees (including fees of appraisers arising from their participation in preparation of a fair market disposition appraisal and other expenses related to the transfer of the City Parcel;

(b) any costs incurred by the City as a result of compliance with any environmental laws or regulations;

(c) costs of the City, if any, relating to any Developer financing of the Project; and

(d) any additional out-of-pocket third-party costs associated with the Project.

The Developer agrees to reimburse the City for all Acquisition Costs upon fourteen (14) days written notice from the City (complete with the presentation of itemized invoices, if any, and receipts therefor, if any) to the Developer given in accordance with the notice provisions of this Agreement. The City agrees that with respect to the Acquisition Costs referenced herein, in an effort to inform the Developer in advance of such costs the City shall provide to the Developer an estimated budget for contemplated Acquisition Costs and to the extent such costs may exceed the reported budget amounts, the City shall use its best and reasonable efforts to provide the

Developer with advance written notification of any change in a reported budget item. As to the reimbursement obligation, the Developer further acknowledges and agrees that the obligation to reimburse the City for all Acquisition Costs shall apply to all such costs incurred, whether prior to or subsequent to the termination of this Agreement, provided that with respect to such Acquisition Costs incurred after the termination of this Agreement, such costs are incurred in connection with actions undertaken by the City pursuant to this Agreement. The Developer's obligations pursuant to this Section 2.03 shall survive the termination of this Agreement.

2.04 Project Financing. Developer shall obtain and provide the City with written proof of financing and sufficient equity capital necessary to fund the balance of the Project budget as further required by Article IV hereof.

2.05 Survey. The Project Premises or smaller parcels thereof shall be conveyed by a metes and bounds description derived from Project Premises boundary and topographic surveys showing Project Premises lines of any properties being conveyed to Developer, existing grades, easements and utilities in and of the Project Premises to be conveyed and in and of the streets surrounding same. The survey(s) shall be ordered by the Developer and prepared at Developer's sole expense by a reputable land surveyor licensed in the State of New Jersey selected by the Developer (Survey). The Survey and the legal descriptions prepared therefrom shall be certified by the surveyor to the City and Developer and one reproducible and three copies of the Survey shall be delivered to each party hereto within thirty (30) days from the Effective Date of this Agreement.

2.06. Environmental Compliance and Remediation. The Developer agrees that with respect to the Project Premises, the Developer shall conduct such soils analyses, site investigations and other environmental evaluations necessary to determine the condition of the buildings, soils and subsurface conditions and the presence of hazardous wastes or substances (Environmental Due Diligence). Pursuant to and to the extent of its rights under the Law, the City agrees to furnish the Developer, its agents or designees, with access to any portion of the Project Premises, at any time and from time to time during the term of this Agreement for purposes of conducting Environmental Due Diligence should the need arise, provided the Developer furnished the City with reasonable written notice in advance of any such entry setting forth the Developer's intent to enter any portion of the Project Premises and with satisfactory evidence of liability insurance as required pursuant to Section 2.15 herein, insuring the Developer, the City and the City against claims for bodily injury, death and property damage arising from or attributable to such entry. To the extent the Environmental Due Diligence discloses the existence of environmental conditions on the Project Premises which require remediation or any governmental City with jurisdiction over the Project Premises requires or recommends any mitigation or remediation as a condition to the sale or development of the Project Premises, the Developer shall have thirty (30) days from the Effective Date of this Agreement to notify the City in writing of the Developer's intention to

provide the required remediation or to terminate this Agreement. This period may be extended within the reasonable discretion of the City at the request of the Developer.

2.07. Remediation of the Project Premises. The Developer shall have the sole obligation of satisfying all legal requirements of any governmental entity having jurisdiction concerning remedial action on the Project Premises and of complying with all regulations and standards regarding the remediation of the Project Premises. Upon acquisition of the Project Premises, Developer will perform the environmental cleanup, remediation and mitigation of the Project Premises at the Developer's sole cost and expense, and will obtain all environmental approvals from the agencies with jurisdiction in accordance with all applicable environmental laws, and will enter into whatever agreements are necessary to obtain such environmental approvals. The City and Developer understand and agree that the City shall be under no obligation to mitigate any environmental contamination on the Project Premises, which shall be conveyed by the City strictly "AS IS."

2.08. Professional Services and Administrative Fee. With respect to any legal work required by the City in connection with this Agreement and the Project, Developer agrees that the City shall be entitled to appoint an attorney or attorneys to act as counsel to perform such work for the City and that Developer will reimburse the City in full for the reasonable fees and costs incurred by the City for all services rendered by the City's counsel which are necessary to or associated with the completion of the Project (the "Professional Services Fee"). The Developer agrees to reimburse the City for these legal fees upon fourteen (14) days written notice from the City (complete with the presentation of itemized invoices) to the Developer given in accordance with the notice provisions of this Agreement.

2.09. Governmental Approval Process. The Developer has caused or will cause to be prepared such plans, drawings, documentation, presentations and applications ["Governmental Applications"] as may be necessary and appropriate for the purpose of obtaining any and all Governmental Approvals for the Improvements on the Project Premises and the construction of the Project. All of the Governmental Applications shall be in conformity with the Law and this Agreement and any and all federal, state, county, and municipal statutes, laws, ordinances, rules and regulations applicable thereto. The receipt of the Governmental Approvals by the Developer shall be achieved in sufficient time and manner so as to enable the Developer to conform to the relevant provisions of this Agreement, including but not limited to the construction schedules incorporated herein and set forth in Schedule C. Unless otherwise extended as provided for in this Agreement, the Developer shall obtain all Governmental Approvals needed for construction of all Improvements on the Project Premises, excluding building permits, within sixty (60) days after receiving approval of the City of the Preliminary Site Plan. The City may, in its sole and absolute discretion, extend the dates for performance by the Developer in the event the Developer is denied any of the Governmental Approvals required to commence construction of the Improvement,

provided that the Developer has diligently pursued and prosecuted the Governmental Applications necessary to implement the Project.

2.10. Construction of the Project. The construction of the Project and the obtaining by the Developer of all necessary Governmental Approval shall be commenced by the date and in the manner set forth in the attached Schedule C [Construction Timetable], and, except as otherwise provided in this Agreement, all Improvements shall be completed within twenty-four (24) months after the time stated for the start of construction, all as shown in the Construction Timetable. The preparation of all necessary plans and specifications and the timing for approval of the same shall be as more particularly set forth in Article XII herein.

2.11. Covenant to Build. Developer covenants, warrants, represents, and agrees to construct the Improvements on the Project Premises together with all ancillary uses as indicated in and on the Governmental Approvals, the Preliminary Site Plan and the Construction Plans. All Improvements must be constructed in accordance with all restrictions and controls contained in the Law. All Improvements on the Project Premises shall be installed by the Developer at its sole cost and expense as the various stages of construction of the Project require.

2.12. Report on Progress. The Developer shall make, in such detail and at such times as may be reasonably required by the City, a report in writing concerning the actual progress of the Developer with respect to such construction. The work and construction activities of the Developer shall be subject to inspection by the City.

2.13. Suspension of Construction. Subject to the Developer's rights as set forth in Section 16.02 herein, if the Developer shall abandon or suspend construction activities for a period of ninety (90) consecutive days during the aforementioned construction periods and the suspension or abandonment is not cured, ended or remedied within thirty (30) calendar days after written demand by the City to do so, then the City shall have the right to declare the Developer in default under this Agreement and to seek all remedies available to the City under this Agreement or at law or in equity.

2.14. Insurance. At all times during construction of the Project, and until the Project is available for its intended use and a Certificate of Occupancy is issued in accordance with the provisions of Section 2.17 herein, the Developer shall maintain or cause to be maintained at its own cost and expense, with responsible insurers, the following kinds and the following amounts of insurance with respect to the Project, with such variations as shall reasonably be required to conform to customary insurance practice:

(a) Builder's Risk Insurance for the benefit of Developer and the City, as their interests may appear, during the term of construction which will protect against loss or damage resulting from fire and lightning, the standard extended coverage perils, and vandalism and malicious mischief.

The limits of liability will be equal to one hundred percent (100%) of the insurable value of the Project, including items of labor and materials connected therewith, whether in or adjacent to the structure insured, and materials in place or to be used as part of the permanent construction.

(b) Comprehensive General Liability Insurance (including coverage for any construction on or about each lot, plot, parcel or part of the Project Premises) against claims for bodily injury, death or property damage occurring on, in or about the Project Premises and the adjoining streets, sidewalks and passageways, in amounts not less than \$2,000,000.00 for each claim with respect to any bodily injury or death, 2,000,000.00 with respect to any one occurrence and \$2,000,000.00 with respect to all claims for property damage relating to any one occurrence;

(c) Worker's compensation insurance coverage in the amount of the full statutory liability of Developer;

(d) Such other insurance, in such amounts and against such risks, as is customarily maintained by Developer with respect to other similar properties owned or leased by it, including automobile insurance.

Prior to being given access to any portion of the Project Premises in accordance with the provisions of Section 2.06 herein, or prior to the commencement of construction of the Project, whichever date is the first to occur, Developer shall submit to City proof of all applicable insurance. Thereafter, upon each anniversary date of this Agreement, Developer shall submit the aforementioned proofs of insurance, for the succeeding year. The policies of insurance required to be maintained by Developer pursuant to this Section 2.15 shall name as the insured parties (except for worker's compensation insurance) Developer, the City, the City, as their respective interests may appear, and shall be satisfactory to the City.

The types and amounts of insurance may be modified by the parties, only with the consent of the City and the prior written approval of the City Risk Manager.

2.15. Indemnification. The Developer agrees to indemnify and hold harmless the City against, and Developer shall pay any and all liability, loss, cost, damage, claims, judgments or expenses, of any and all kinds or nature and however arising, imposed by law, which the City may sustain, be subject to or be caused to incur by reason of any claim, suit or action based upon personal injury, death, or damage to property, whether real, personal or mixed, relating to the Developer's activities in constructing the Project or based upon or arising out of contracts entered into by the Developer which relate to construction of the Project, or arising solely because of the City's ownership of portions of the Project Premises, or out of the acquisition, construction or installation of the Project, including but not limited to any and all claims by workmen, employees and agents of the Developer and unrelated third parties, which claims arise from the construction of the Project, the maintenance and functioning of the Project Improvements, or any other activities

of Developer within the Project Premises. It is mutually agreed by Developer and the City that neither the City, the City, nor their directors, officers, agents, servants or employees shall be liable in any event for any action performed under this Agreement and that Developer shall save the City, the City, their directors, officers, agents and employees harmless from any claim or suit in connection with the Developer's obligations under this Agreement, except for any claim or suit arising from the intentional, willful or unlawful acts of the City. The Developer, at its own cost and expense, shall defend any and all such claims, suits and actions, as described in this Section 2.16, which may be brought or asserted against the City or the City, their directors, officers, agents, servants or employees; but this provision shall not be deemed to relieve any insurance company which has issued a policy of insurance as may be provided for in this Agreement from its obligation to defend Developer, the City and any other insured named in such policy of insurance in connection with claims, suits or actions covered by such policy. Any cost for reasonable attorneys' fees in situations where it is necessary for the City to engage its own attorneys, experts' testimony costs and all costs to defend the City or any of its directors, officers, agents, servants, or employees shall be reimbursed to it by the Developer in connection with such indemnification claim.

2.16. Certificates of Occupancy. Upon completion of the construction of the Project in accordance with the Governmental Approvals, the Developer shall obtain a Certificate of Occupancy for the Improvements constituting the Project. The Certificate of Occupancy, when issued, shall constitute evidence that the Developer has fully performed its obligations to construct the Project.

ARTICLE III CITY RESPONSIBILITIES

3.01. Title to the Project Premises. The City shall convey good and marketable title to the Project Premises, insurable at regular rates and without special premium by the title insurer, subject only to the Permitted Exceptions.

3.02. Developer's Loss of Rights. From and after that date upon which this Agreement may be terminated as to the Project Premises, or any part or parcel thereof, pursuant to any applicable provision hereof, the City shall be under no obligation to convey to Developer and the Developer shall have no obligation to take title to the Project Premises, or any such part or parcel thereof, and further the City may convey the Project Premises to any third party.

3.03. Environmental Compliance. With respect to the Project Premises, the City shall not be responsible for any environmental assessment or cleanup costs all of which shall be the responsibility of the Developer.

3.04. Access To Project Premises. Prior to the conveyance of any portion of the Project Premises by the City to the Developer, the City shall permit representatives of the Developer to have access to any part of the Project Premises as to which the City holds title, at all reasonable times for the purpose of obtaining data and making various tests concerning the Project Premises necessary to carry out the provisions of this Agreement. After the conveyance of the Project Premises by the City to the Developer, the Developer shall permit the representatives of the City and the City access to the Project Premises at all reasonable times which any of them deems necessary for the purposes of assuring or ascertaining compliance with the terms of this Agreement, including, but not limited to, inspection of all work being performed in connection with the construction of the Improvements. No compensation shall be payable nor shall any charge be made in any form by the Developer or the City for the access provided for in this Section 3.04.

3.05. Cooperation. The City shall cooperate fully in the preparation and prosecution of any applications for Governmental Approvals required for the Project as well as in the processing of applications to Financial Institutions for financing for the Project.

ARTICLE IV **PROJECT FINANCING**

4.01. Financing and Equity Capital. The Developer estimates that the construction costs for the Project shall be approximately _____ dollars. The Developer represents that it either has obtained or will use commercially reasonable efforts to obtain financing for the Project, which financing will be a combination of debt financing and an equity contribution of the Developer. This Agreement and any conveyances of Project Premises hereunder are subject to the Developer securing the necessary interim construction and permanent mortgage financing sufficient to undertake the construction of the Project as detailed in the Preliminary Site Plan and the Construction Plans and in the sequences, phases and timetables described in the attached Schedule C. The Developer shall submit to the City evidence of firm commitments for mortgage financing, grant funds and any equity capital necessary to commence the construction of Improvements constituting the Project, not later than three (3) days prior to the date scheduled for closing title. The City agrees to accept a letter, in form and substance acceptable to the City, from one or more Financial Institution(s) which evidences a firm commitment by same to provide mortgage financing for the construction of the Improvements in such time and manner so as to enable Developer to adhere to the Construction Timetable.

ARTICLE V **MORTGAGE FINANCING AND RIGHTS OF MORTGAGEE**

5.01. Notice to City. Prior to the completion of the Project, as certified by the City, neither the Developer nor any successor in interest to the Project Premises or any part thereof shall engage

in any financing or any other transaction creating any mortgage or other encumbrance or lien upon the Project Premises, whether by express agreement or operation of law, or suffer any encumbrance or lien to be made on or attach to the Project Premises, except for the purpose of obtaining funds in connection with the Project. The Developer or its successor in interest shall notify the City in advance of any financing, secured by mortgage or other lien instrument, which it proposes to enter into with respect to the Project Premises or any part thereof and, in any event, the Developer shall promptly notify the City of any encumbrance or lien that has been created on or attached to the Project Premises, whether by voluntary act of the Developer or otherwise, upon obtaining knowledge or notice of same.

5.02 Completion of Project. Notwithstanding any of the provisions of this Agreement, including but not limited to those which are or are intended to be covenants running with the land, the holder of any mortgage authorized by this Agreement (including any such holder who obtains title to the Project Premises or any part thereof as a result of foreclosure proceedings, or action in lieu thereof, but not including (a) any other party who thereafter obtains title to the Project Premises or such part from or through such holder or (b) any purchaser at foreclosure sale other than the holder of the mortgage itself) shall in no way be obligated by the provisions of this Agreement to construct or complete the Project or to guarantee such construction or completion; nor shall any covenant or any other provision in the Deed be construed to so obligate such holder. Except as otherwise provided in Section 5.04 herein, nothing in this Article or any other Article or provision of this Agreement shall be deemed or construed to permit or authorize any such holder to devote the Project Premises or any part thereof to any uses, or to construct any improvements thereon, other than those uses or improvements provided or permitted under the Law and this Agreement.

5.03. Notice to Mortgagee. Whenever the City shall deliver any notice or demand to the Developer with respect to any breach or default by the Developer of its obligations or covenants under this Agreement, the City shall at the same time forward a copy of such notice or demand to each holder of any mortgage authorized by this Agreement at the last known address of such holder shown in the records of the City.

5.04. Mortgagee's Right to Cure Default and Assume Developer's Obligations. After any breach or default referred to in Section 5.03 above, each holder shall (insofar as the rights of the City are concerned) have the right, at its option, to cure or remedy such breach or default and to add the cost thereof to the mortgage, provided that, if the breach or default is with respect to construction of the Project, nothing contained in this Article or any other Article of this Agreement shall be deemed to permit or authorize such holder, either before or after foreclosure or action in lieu thereof, to undertake or continue the construction or completion of the Project (beyond the extent necessary to conserve or protect the holder's security, including the improvements or construction already begun) without first having expressly assumed the obligation to the City, by written agreement satisfactory to the City, to complete, in the manner provided in this Agreement,

the Project on the Project Premises or the part thereof to which the lien or title of such holder relates. Any such holder who shall properly complete the Project or applicable part thereof shall be entitled, upon written request made to the City, to receive the individual Certificates of Occupancy for the individual residential units or commercial structures, the overall Certificate of Occupancy for the entire Project.

5.05. City's Option To Pay Mortgage Debt or Purchase Project Premises. In any case, where, subsequent to default or breach by the Developer (or any successor in interest) under the terms of this Agreement, the holder of any mortgage on the Project Premises or part thereof (a) has, but does not exercise, the option to construct or complete the Project relating to the Project Premises or part thereof, covered by its mortgage or to which such holder has obtained title, and such failure continues for a period of sixty (60) days after the holder has been notified or informed of the default or breach; or (b) undertakes construction or completion of the Project but does not complete such construction within the period as agreed upon by the City and such holder (which period shall in any event be at least as long as the period prescribed for such construction or completion in the Agreement), and such default shall not have been cured within sixty (60) days after written demand by the City so to do, the City shall (and every mortgage instrument made prior to completion of the Project with respect to the Project Premises by the Developer or successor in interest shall so provide) have the option of paying to the holder the amount of the mortgage debt and securing an assignment of the mortgage and the debt secured thereby, or, in the event ownership of the Project Premises (or part thereof) has vested in such holder by way of foreclosure or action in lieu thereof, the City shall be entitled, at its option, to a conveyance to the City of the Project Premises or part thereof (as the case may be) upon payment to such holder of an amount equal to the sum of: (i) the mortgage debt at the time of foreclosure or action in lieu thereof (less all appropriate credits, including those resulting from collection and application of rentals or condominium unit sales and other income received during foreclosure proceedings); (ii) all expenses with respect to the foreclosure; (iii) the net expense, if any (exclusive of general overhead), incurred by such holder in and as a direct result of the subsequent management of the Project Premises; (iv) the costs of any Improvements made by such holder; and (v) an amount equivalent to the interest that would have accrued on the aggregate of such amounts had all such amounts become part of the mortgage debt and such debt had continued in existence.

5.06. City's Option To Cure Mortgage Default. In the event of a default or breach prior to the completion of the Project by the Developer, or any successor in interest, in or of any of its obligations under, and, to the holder of, any mortgage or other instrument creating an encumbrance or lien upon the Project Premises or part thereof, the City may at its option cure such default or breach, in which case the City shall be entitled, in addition to and without limitation upon any other rights or remedies to which it shall be entitled by the Agreement, operation of law, or otherwise, to reimbursement from the Developer or successor in interest of all costs and expenses incurred by the City in curing such default or breach and to a lien upon the Project Premises (or the part thereof to which the mortgage, encumbrance, or lien relates) for such

reimbursement, provided, that any such lien shall be subject always to the lien of (including any lien contemplated, because of advances yet to be made, by) any then existing mortgages on the Project Premises authorized by the Agreement.

ARTICLE VI
COVENANTS AND RESTRICTIONS

6.01. Declaration of Covenants and Restrictions. The Developer agrees for itself, its successors and assigns that the Deed(s) from the City to the Developer shall contain the covenants set forth in Section 5.02 and Article VI of this Agreement, to be observed by the Developer, its successors and assigns.

6.02. Description of Covenants. The covenants to be imposed upon the Developer, its successors and assigns, and recorded in the Deed(s) shall set forth that the Developer and its successors and assigns shall:

(a) Devote the Project Premises to the uses specified in the Law, specifically, occupancy by families or persons of low and moderate income, at rents affordable to such persons, within the meaning of the Fair Housing Act, N.J.S.A. 52:27D-301 *et seq.*, as it may be amended, and regulations promulgated thereunder, shall not devote the Project Premises to any other use(s):

(b) Not discriminate upon the basis of age, race, color, creed, religion, ancestry, national origin, sex or marital status in the sale, lease, rental, use or occupancy of the Project Premises or any buildings or structures erected or to be erected thereon, or any part thereof; and

(c) In the sale, lease or occupancy of the Project, not effect or execute any covenant, agreement, lease, conveyance or other instrument whereby the Project Premises 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 or marital status, and the Developer, 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 or marital status.

6.03. Effect and Term of Covenants. It is intended and agreed, and the Deeds shall so expressly provide, that the agreements and covenants set forth in Section 6.02 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 City, its successors and assigns, and any successor in interest to the Project Premises, or any part thereof, against the Developer, its successors and assigns and every successor in interest therein, and any party in possession or occupancy of the Project Premises or any part thereof. It is further intended and agreed that the agreements and covenants set forth in Section 6.02(a) shall remain in effect for a minimum period of 30 years (at which time

such agreements and covenants shall cease and terminate) and that the agreements and the covenants provided in Sections 6.02(b) and shall remain in effect without limitation as to time; provided that such agreements and covenants shall be binding on the Developer, each successor in interest to the Project, the Project Premises, or any part thereof, and each party in possession or occupancy, respectively, only for such period as Developer or such successor or party shall have title to, or an interest in, or possession or occupancy of the Project Premises, the buildings and structures thereon or any part thereof.

6.04. Enforcement by the City. In amplification, and not in restriction of the provisions of this Article VI, it is intended and agreed that the City and its successors and assigns shall be deemed beneficiaries of the agreements and covenants set forth in Section 6.02 both for and in their own right but also for the purposes of protecting the interests of the community and other parties, public or private, in whose favor or for whose benefit such agreements and covenants shall run in favor of the City for the entire period during which such agreements and covenants shall be in force and effect, without regard to whether the City has at any time been, remains, or is an owner of any land or interest therein to or in favor of which such agreements and covenants relate. The City shall have the right, in the event of any breach of any such agreement or covenant, to exercise all the rights and remedies and to maintain any actions or suits at law or in equity or other proper proceedings to cure any such breach of agreement or covenant, to which they or any other beneficiaries of such agreement or covenant may be entitled.

ARTICLE VII

PROHIBITIONS AGAINST ASSIGNMENT AND TRANSFER

7.01. Prohibition Against Speculative Development. Due to the importance of the development of the Project Premises to the general welfare of the community and the public aids that have been made available by law for the purpose of making such development possible, the Developer represents and agrees that its acquisition of the Project Premises, and its other undertakings pursuant to this Agreement are, and will be used for the purpose of the redevelopment of the Project Premises as provided herein and not for speculation in land holding.

7.02. Prohibition Against Transfers. The Developer further represents and agrees for itself, its successors and assigns, that except only by way of security for and only for the purpose of obtaining the financing necessary to enable the Developer or any successor in interest to acquire and construct the Project Premises, or any part thereof, to perform its obligations with respect to completing the Project and any other purpose authorized by this Agreement, that the Developer has not made or created, and that it will not, prior to the completion of the Project make or create, or suffer to be made or created, any sale, conveyance or transfer in any other mode or form of the Project Premises, or any building or structure thereon or any part thereof or any interest therein, without the prior written approval of the City, excepting the transfers identified in Section 7.03 hereof.

7.03. Permitted Transfers. The following transfers are exceptions to the prohibition set forth in Section 7.02 and shall not require prior approval by the City: (a) a public offering statement filing with and approval by the State Department of Community Affairs; (b) utility and other development easements; (c) conveyances and/or leases to the ultimate purchasers/tenants of the individual residential or commercial units within the Project; and (d) any contract or agreement with respect to any of the foregoing exceptions.

7.04. Restraints Against Transfers. The Deeds shall contain a restriction against transfers as set forth in Section 7.02 and, in addition, shall provide that in the event of any attempted transfer in violation of the restriction in Section 7.02, the City shall be entitled to the ex parte issuance of an injunction restraining such transfer, and the recovery of legal fees and related expenses of the City in connection with any such legal action. Upon the recording of the Deeds in the Office of the Hudson County Register of Mortgages and Deeds, the provision affording such injunctive relief shall have the same force and effect as a Notice of Lis Pendens. The City acknowledges that upon the issuance of the Certificate of Occupancy as referenced in Section 2.17 herein, the prohibitions against transfers set forth in this Article VII shall be of no further force and effect with respect to the Project Premises.

7.05. Conditions of Transfer. Except as otherwise provided in this Agreement, and except with respect to transfers permitted under Section 7.03, the City shall be entitled to require, as conditions to any such approval of any Transfer provided for in Section 7.02 that:

(a) Any proposed transferee shall have the qualifications and financial responsibility, as reasonably determined by the City, necessary and adequate to fulfill the obligations undertaken in this Agreement by the Developer; and

(b) Any proposed transferee, by instrument in writing satisfactory to the City and in recordable form, shall, for itself and its successors and assigns, and expressly for the benefit of the City, have expressly assumed all of the obligations of the Developer under this Agreement and agreed to be subject to all the conditions and restrictions to which the Developer is subject; and

(c) All instruments and other legal documents involved in effecting any transfer shall be submitted to the City for review and, if approved by the City, approval shall be indicated to the Developer in writing; and

(d) Any transfer approved by the City shall release the Developer from any further obligation under this Agreement from and after the closing of the approved transfer, except as to any liability or obligation of the Developer incurred prior to such Transfer and except as otherwise provided in this Agreement or in the written approval by the City; and

(e) The Developer and its transferees shall comply with any other reasonable conditions that the City may find necessary in order to achieve and safeguard the purposes of the Law.

ARTICLE VIII

DEFAULT

8.01. Events of Default. Prior to completion of the Project as certified by the City, each of the following shall constitute an event of default (Event of Default):

(a) If default shall be in the payment of any portion of the Purchase Price or any other sum payable to the City hereunder, when as the same shall become due and payable, and such default shall have continued for a period of ten (10) days after notice specifying such default and demanding that same be remedied shall have been given to the Developer by or on behalf of the City; or

(b) If the Developer fails to take title to the Project Premises at the times required by this Agreement; or

(c) Developer or its successor in interest shall default in or violate its obligations with respect to the construction of the Project in a material respect (including the dates for the beginning and completion thereof), or shall abandon or substantially suspend construction work (unless such suspension arises out of a Force Majeure or other sanctioned delay set forth in this Agreement), and any such default, violation, abandonment, or suspension shall not be cured, ended, or remedied within three (3) months (six (6) months if the default is with respect to the date for completion of the Improvements) after written demand by the City to do so or such longer period if incapable of cure within such three (3) or six (6) month period, provided that Developer has commenced and is diligently prosecuting such cure; or

(d) Developer or its successor in interest shall fail to pay any Impositions when due, or shall place thereon any encumbrance or lien unauthorized by this Agreement, or shall suffer any levy or attachment to be made, or any materialmen's or mechanics' lien, or any other unauthorized encumbrance or lien to attach and such Imposition shall not have been paid, or the encumbrance or lien removed or discharged or provision satisfactory to the City made for such payment, removal, or discharge, within ninety (90) days after written demand by the City to do so; or

(e) There is, in violation of this Agreement, any transfer of the fee title to the Project Premises or a portion thereof and such violation shall not be cured within thirty (30) days after written demand served upon Developer by the City, unless extended in writing.

(f) If the Developer be dissolved, or shall file a voluntary petition in bankruptcy or for reorganization or for an arrangement pursuant to the Bankruptcy Act or any similar law, federal or state, now or hereafter in effect, or shall make an assignment for the benefit of creditors, or shall admit in writing its inability to pay its debts as they become due, or shall suspend payment of its obligations, or shall take any action in furtherance of the foregoing; or if Developer shall consent to the appointment of a receiver, or an answer proposing the adjudication of Developer as a bankrupt or its reorganization pursuant to the Bankruptcy Act or any similar law, federal or state, now or hereafter in effect, shall be filed in and approved by a court of competent jurisdiction and the order approving the same shall not be vacated or set aside or stayed within sixty (60) days from entry thereof, or if the Developer shall consent to the filing of such petition or answer.

(g) If the Developer shall default under or breach any of the terms or conditions of any grant agreements entered into with the City, State or federal government providing subsidies to the Project or should Developer breach the affordability controls placed upon the Project by reason of said grant commitments and agreements, it shall be considered a default and/or breach of this Agreement.

8.02. Initial Remedy Upon Default. Except as otherwise provided in this Agreement, in the event of any default in or breach of this Agreement or 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 of receiving written notice from another, proceed to commence to cure or remedy such default or breach. In case such action is not taken or not diligently pursued, or the default or breach shall not be cured or remedied within the time periods for cure set forth in this Agreement, or if there is no designated time for cure, within a reasonable time, the aggrieved party may, in addition to such other rights as specified in this Agreement, institute such proceedings as may be necessary or desirable in its opinion to cure and remedy such default or breach.

8.03. Remedies in the Event of Termination of the Agreement. In the event that, prior to the conveyance of the Project Premises to the Developer and in violation of this Agreement, the Developer (or any successor in interest) assigns or attempts to assign this Agreement or any rights in the Project or the Project Premises, contrary to the provisions of this Agreement, or does not accept the Deed to the Project Premises upon tender thereof by the City pursuant to this Agreement, and if any default or failure referred to in this Section 8.03 shall not be cured within thirty (30) days after the date of written demand by the City, then this Agreement, and any rights of the Developer or its assignee or transferee in this Agreement, or arising therefrom with respect to the City or the Project Premises, shall, at the option of the City, be terminated and there shall be no further rights or obligations of the parties, except as expressly set forth in this Article VIII. In the event of such termination, the City shall terminate the Developer's designation as the Developer of the Project and shall have the right to withdraw, to the extent possible, from a purchase agreement or condemnation proceeding heretofore undertaken. The Developer shall pay over to the City all costs and/or damages (including reasonable counsel fees) incurred by the City

on account of the default of the Developer and/or arising out of or resulting from the withdrawal of the City from any purchase agreement and/or condemnation proceeding. The City shall have the right to apply to the aforementioned costs or damages incurred by the City as aforesaid, any funds of the Developer in the hands of the City at the time of such default and termination or returned to the City as the result of the City's termination or withdrawal from any condemnation action or purchase agreement entered into in connection therewith. In the event of a termination of this Agreement pursuant to this Section 8.03, upon the resale of those portions of the Project Premises, the proceeds from the sale of such Project Premises, as well as the consideration, if any, received by the City for those other portions of the Project Premises, shall be applied as follows:

(a) First, to all reasonable costs and expenses incurred by the City, including but not limited to legal fees, salaries of personnel, and related expenses incurred by the City in connection with the acquisition, possession, management and resale of the Project Premises; all taxes, assessments, and water and sewer charges with respect to the Project Premises or any part thereof; any expenditures made or obligations incurred with respect to the acquisition, ownership and sale of the Project Premises or any part thereof; and any amounts otherwise owed to the City by Developer and its successors or transferees in accordance with the terms of this Agreement; and

(b) Second, to reimburse the Developer, its successor or transferee, up to the amount equal to the Developer's payment of the Purchase Price associated with the Project Premises. Any balance remaining after such reimbursements shall be retained by the City as its property.

8.04. City's Remedies. Upon the occurrence of any Event of Default subsequent to the conveyance of the Project Premises to the Developer and prior to the completion of the Project, subject to the rights of any mortgage holder as set forth in Sections 7.04 and 7.05 herein the City shall have the right at its sole and absolute opinion upon ninety (90) days' notice to Developer and any mortgagee of the Developer, to enter and take possession of the uncompleted portions of the Project and the Project Premises (Uncompleted Portion). At the same time that the City enters onto and takes possession of the Uncompleted Portion, Developer shall execute and deliver a deed to the City for the Uncompleted Portion subject to the rights of any mortgage holder as set forth in Article V herein. Upon the occurrence of any such conveyance, this Agreement shall be deemed terminated and there shall be no further rights or obligations of the parties except for those rights reserved to a mortgage holder or as otherwise expressly set forth in this Article VIII. This provision shall be entered in the Deeds. Any vesting of title in the City under this Section 8.04 shall always be subject to and limited by, and shall not defeat, render invalid, or limit in any way, the lien of any mortgage permitted by this Agreement for the protection of the holders of such mortgage.

8.05. Resale of Uncompleted Portion. Upon the vesting in the City of the title to the Uncompleted Portion as provided in Section 8.04, the City shall, pursuant to its responsibilities under New Jersey law, use its best efforts to resell the Uncompleted Portion (subject to such

permitted mortgage liens as may exist against the Uncompleted Portion). Such sale shall be made, as soon and in such manner as the City shall find feasible and consistent with the objectives of the Law, to a qualified and responsible party or parties, as determined by the City, who will assume the obligation of completing the Project or such other Improvements as shall be satisfactory to the City and in accordance with the uses specified for the Project Premises in this Agreement and the Law. Upon any resale of the Uncompleted Portion, the proceeds thereof shall be applied:

(a) First, to all reasonable costs and expenses incurred by the City, including but not limited to legal fees, salaries of personnel, and related expenses incurred by the City in connection with the possession, management and resale of the Uncompleted Portion; all taxes, assessments, and water and sewer charges with respect to the Uncompleted Portion or any part thereof; any payments made or necessary to be made to discharge any encumbrances or liens existing on the Uncompleted Portion at the time of the vesting of title thereto in the City or to discharge or prevent from attaching, or being made, any subsequent encumbrances or liens due to obligations, defaults, or acts of Developer, its successors or transferees; any expenditures made or obligations incurred with respect to the completion of the Project or any part thereof on the Uncompleted Portion or any part thereof; and any amounts otherwise owed to the City by Developer and its successors or transferees in accordance with the terms of this Agreement; and

(b) Second, to reimburse the Developer, its successor or transferee, up to the amount equal to the Developer's actual costs associated with the Project, including land acquisition, engineering, planning, site improvement, marketing and other project development costs, plus the reasonable value of all improvements constructed and paid for by the Developer. Any balance remaining after such reimbursements shall be retained by the City as its property.

8.06. No Waiver of Rights and Remedies by Delay. Any delay by the City 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 or shall not deprive the City of or limit the City's rights in any way (it being the intent of this provision that the City 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 City may still hope otherwise to resolve the problems created by the default involved); nor shall any waiver in fact made by the City with respect to any specific default by the Developer under this Agreement be considered or treated as a waiver of the rights of the City with respect to any other defaults by the Developer under this Agreement or with respect to the particular default except to the extent specifically waived in writing.

8.07. Rights and Remedies Cumulative. The rights and remedies of the parties to the Agreement, whether provided by law or by the Agreement, shall be cumulative, and 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 breach or of any of its

remedies for any other default or breach 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.

ARTICLE IX
QUALITY OF TITLE

9.01. Marketable Title. In conveying the title to the Project Premises by Deed to the Developer at the closing, the City shall convey such title as the Title Insurer will approve and insure at its regular premium and without special premium, subject to Permitted Exceptions defined in Section 9.02 herein.

9.02. Permitted Exceptions. The following are not objections to title, but rather, permitted title encumbrances (Permitted Exceptions) with respect to the Project Premises:

- (a) Covenants, conditions, building and use restrictions required by this Agreement or as specified in the Law, as they relate to the Project Premises;
- (b) Any facts disclosed by the Survey provided the same do not materially or adversely affect the ability of the Developer to construct, operate and maintain the Improvements on the Project Premises as contemplated by the Law;
- (c) Title exceptions according to this Agreement;
- (d) Present and future statutes, laws, ordinances, regulations, restrictions, legal requirements and orders of any federal, state, county or municipal government or other public authority relating to the Project Premises or use thereof, provided same do not prohibit the development of the Project Premises in the manner contemplated by the Law;
- (e) Statutory liens for real estate taxes not due and payable;
- (f) Applicable local building and zoning laws and regulations;
- (g) Covenants and restrictions of record and such further title defects not disclosed by an instrument of record as will not materially and adversely affect the ability of the Developer to construct, operate, and maintain the Project as contemplated by the Law;

(h) Surface conditions observable by a visible inspection of the Project Premises and subsurface conditions affecting the Project Premises not visible by inspection;

(i) The conditions, covenants and restrictions set forth or referred to elsewhere in this Agreement;

(j) The provisions of the Law;

(k) Such other title exceptions as may be consented to or approved by Developer, or the Title Insurer in writing;

(l) The rights of utility companies to maintain pipes, poles, cables and wires over, on and under the street, the parts of the Project Premises next to the street or running to any building, house, structure or other improvement to the Project Premises;

(m) The fact that some or all of the Project Premises does not have access to or adjoin existing public rights-of-way, thoroughfares and/or streets;

(n) The statutory rights of any condemnee formerly holding an interest in and to the Project Premises or any portion thereof; and

(o) Any riparian rights or interest of the State of New Jersey requiring a riparian grant or conveyance of riparian rights to the Project Premises, and any other legal requirements of the State of New Jersey.

ARTICLE X REPRESENTATIONS

10.01. Representations of Developer. Developer represents and warrants to the City that this Agreement has been duly authorized, executed and delivered by Developer and, on the Effective Date will constitute a legal, valid and binding obligation of Developer enforceable in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, reorganization or similar laws affecting creditor's rights generally and subject to the availability of equitable remedies; and the execution and delivery of this Agreement by Developer and consummation of the transactions contemplated hereby does not violate, conflict with or constitute a default under the provisions of any agreement, understanding or arrangement to which Developer is a party or by which it is bound or the certificate of incorporation, by-laws, certificate of formation, operating agreement or partnership agreement of Developer, or any statute, rule, regulation, ordinance, order or decree in force as of the date hereof. Developer represents and warrants that it has obtained all necessary licenses, certifications and further that it will be qualified to do business in New Jersey on or after the Effective Date.

10.02. Representation of the City: The City represents and warrants to Developer that this Agreement has been duly authorized by virtue of a certain Ordinance, executed and delivered by the City and, on the Effective Date, will constitute a legal, valid and binding obligation of the City enforceable in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, reorganization or similar laws affecting creditors' rights and subject to the availability of equitable remedies; and the execution and delivery of this Agreement by the City and consummation of the transactions contemplated hereby does not violate, conflict with or constitute a default under the provisions of any agreement, understanding or arrangement to which the City is a party or by which it is bound or any statute, rule, regulation, ordinance, order or decree in force as of the date hereof. In the event of a final non-appealable determination of a court of competent jurisdiction preventing the City from conveying the Project Premises, or any portion thereof, to Developer, the Developer's sole remedy is the right of termination.

ARTICLE XI

ADDITIONAL CONTINGENCIES TO THE OBLIGATIONS TO CLOSE TITLE

11.01. Conditions to City's Obligation. In addition to those contingencies stated elsewhere in this Agreement, the obligations of the City to convey fee simple title to the Project Premises shall be subject to satisfaction of the following conditions:

- (a) Developer shall have delivered to City that portion of the Purchase Price attributable to the conveyance of the Project Premises;
- (b) Developer shall have satisfied the requirements of the Agreement documenting to the City's satisfaction that all financing and/or equity funding required for the construction of the Project has been obtained;
- (c) All of the representations and warranties of the Developer contained in this Agreement shall have been true and correct in all material respects when made, and shall be true and correct in all material respects as of the date of the conveyance of the Project Premises as if made at and as of that date;
- (d) Developer shall have performed and complied in all material respects with the covenants and agreements required by this Agreement to be performed or complied with prior to the conveyance of the Project Premises;
- (e) Developer shall have received the Governmental Approvals required by this Agreement for the construction of the Project;
- (f) With respect to any additional funds needed for the City's performance under this Agreement which are not provided by the Developer, the City shall have complied with

all legal requirements for the allocation of such funds to the City by appropriate governmental authorities, and it is understood by Developer that the City's obligation to convey the Project Premises is subject to and contingent upon the availability of such funds in accordance with applicable legal requirements; and

(g) There shall not exist at the date of conveyance of the Project Premises any temporary restraining order, preliminary or final injunction, writ, decree, final order, ruling or decision of a court of competent jurisdiction or governmental authority restraining or preventing the consummation of any of the transactions contemplated hereby.

ARTICLE XII
PREPARATION AND APPROVAL OF
PLANS AND SPECIFICATIONS FOR DEVELOPMENT

12.01. Approval of Construction Plans. Within **thirty (30)** days after receiving the effective date of the Agreement, Developer shall, at its own cost, cause to be prepared and submitted to the City the final Construction Plans of the Project for construction of the Improvements thereon. The City shall have a period of fifteen (15) days after receipt thereof to review and approve the final Construction Plans as being in conformity with the Law and this Agreement, and as being appropriate, in the City's reasonable exercise of judgment, in terms of building orientations, their placement on the Project Premises and architectural styling and building materials to be used for the Improvements, and facilities for parking and structured parking as well as the locations on the Project Premises, or to furnish to Developer in writing notice of any changes or modifications, and the reasons therefor, required to be made in order to render the same in conformity with the Law and this Agreement. The City shall, if the final Construction Plans originally submitted conform to the provisions of the Law and this Agreement, approve in writing such Construction Plans, and no further filing by the Developer or approval by the City thereof shall be required except with respect to any change. Such Construction Plans shall, in any event, be deemed approved unless rejection thereof in writing by the City, in whole or in part, setting forth in detail the reasons therefor, shall be sent Developer within thirty (30) days after the date of their receipt by the City. If the City so rejects the final Construction Plans in whole or in part as not being in conformity with the Law or this Agreement, the Developer shall submit new or corrected final Construction Plans which are in conformity with the Law and this Agreement within thirty (30) days after receipt of written notification to the Developer of the rejection. The provisions of this Section 12.04 relating to approval, rejection, and resubmission of corrected Construction Plans herein above provided

for with respect to the original Construction Plans shall continue to apply until the Construction Plans have been approved by the City; provided, that in any event the Developer shall submit final Construction Plans for the Project which are in conformity with the Law and this Agreement.

12.02. Other Plans to be Submitted. The Developer shall, to the extent required, submit the following plans to the City for its review and acceptance:

(a) A plan showing the building, the site and site improvements, parking facility(ies), all elevations of the building(s), the exterior treatment of the building including color, type and texture of material(s) to be used, and a sample of the actual construction materials being used on all facades.

(b) A lighting plan demonstrating that all "on site" walkways, parking areas, and other areas accessible to pedestrians during the hours of darkness will be adequately lighted to insure pedestrian safety. Such plan will demonstrate the amount, placement, type and construction of the lighting.

(c) A staging of improvements plan, to the extent applicable, showing the order of proposed construction, including any temporary or interim construction or operating arrangements. This plan shall include the Developer's estimate for the timing any soil or environmental remediations and/or engineering and institutional controls of final site preparations, foundations, construction, landscaping, installation of drives, sidewalks, and completion of construction, and should furnish such information and data necessary to enable the City and the City to schedule any public improvements required.

(d) A plan showing the construction of all on-site roadways and streets and related facilities required by the Law, as amended, this Agreement as approved by the City or by the City in the reasonable exercise of its discretion.

(e) Such other plans as the City may from time to time reasonably require to promote the orderly redevelopment of the Project Premises.

The plans and drawings, specifications and proposed construction schedule referred to in this Article XII are hereinafter collectively called "Construction Plans."

12.03. Time for Submission of Corrected Construction Plans.

(a) Except as provided in subparagraph (b) of this Section 12.06, the time within which the Developer shall submit any new or corrected Construction Plans shall not be later than thirty (30) days after the date Developer receives written notice from the City of rejection of Construction Plans referred to in the last such notice.

(b) The time within which the Developer shall submit corrected Construction Plans conforming to the City's requirements and stipulations as made by the latter upon its rejection, in whole or in part, of Developer's initial and/or subsequently revised Construction Plans

shall be no later than thirty (30) days prior to the planned conveyance date established in Schedule C. The City approved Construction Plans must be on file and approved by the City Division of Buildings Office of the Construction Official or its successor before construction of the improvements by the Developer on the Project Premises or any portion thereof.

12.04. Time for City Action in Change in Construction Plans. The time within which the City may decline to approve any change to the Construction Plans proposed by Developer, shall be fifteen (15) days after the date of the City's receipt of notice of such change and a copy of the revised plan or plans.

12.05. Changes in Improvements to be Constructed. The Developer shall not be permitted to construct any Improvements on the Project Premises other than those set forth as shown on the Construction Plans, nor shall the Developer be permitted to make any additions, changes, alterations, substitutions of the Improvements to be constructed, other than field changes authorized by the City's Building Department which do not require further Planning Department approval or notation, without the prior written consent of the City after review and approval by the City of the revised construction plans showing such changes, alterations, substitutions or modifications.

ARTICLE XIII DEPOSIT

13.01. Amount. The Developer shall prior to or within seven (7) days of approval by the City of the Construction Plans as required by Section 12.04 and 12.06 deliver to the City a good faith deposit of \$_____ ("Deposit") as security for the performance of the obligations of the Developer to be performed prior to the return of the Deposit to the Developer, or its retention by the City as liquidated damages in the event of a default by Developer, or its application on account of the Acquisition Costs, as the case may be, in accordance with the Agreement. The Deposit shall be deposited in an account of the City in a bank, trust company or other financial institution selected by it.

13.02. Interest. The City shall be under no obligation to pay or earn interest to the benefit of the Developer on the Deposit or on any other sum of money paid to the City pursuant to this Agreement.

13.03. Application to Acquisition Costs. In the event the Developer is not otherwise entitled to return of the Deposit pursuant to Section 13.05, the amount of the Deposit if paid in cash or by certified check may, at the option of the City, be applied on account of the Acquisition Costs.

13.04. Retention by City. Upon termination of the Agreement, the Deposit or the proceeds of the Deposit, if not theretofore returned to the Developer pursuant to Section 13.05, after such termination, shall be retained by the City as provided in this Agreement

13.05. Return to Developer. Upon termination of the Agreement, the Deposit shall be returned to the Developer by the City as provided in this Agreement. In the event this Agreement is not canceled by the Developer, the Deposit shall be returned upon the Developer's receipt of a Certificate of Completion pursuant to this Agreement.

ARTICLE XIV
PROJECT EMPLOYMENT AGREEMENT

14.01. Binding Agreements. The Developer and all agents and contractors associated with same shall enter into contracts with the City and comply with the Project Employment and Contracting Agreement and other Affirmative Action Policies as currently in effect, and as same may be amended from time to time.

ARTICLE XV
NOTICES AND DEMANDS

15.01. Manner of Notice. A notice, demand, or other communication required under this Agreement by either party to the other shall be considered given and delivered if it is dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered personally at the addresses listed below for each party.

- (a) In the case of the Developer, addressed to

- (b) In the case of the City, addressed to the:
Business Administrator of the City of Jersey City
280 Grove Street,
Jersey City, New Jersey 07302.

- (c) At such other addresses a party may, from time to time, designate in writing and mail to the other as provided herein.

ARTICLE XVI
MISCELLANEOUS

16.01. City's Right to Engineering and Architectural Data. Upon termination of this Agreement pursuant to any provisions hereof, Developer shall furnish to the City without charge or fee, reproducible copies of all surveys, engineering and architectural studies, drawings, reports including those obtained by Developer through having performed soils testing and analysis in accordance with Section 2.06 hereof, and other data prepared by or for Developer with respect to the Project Premises and the contemplated development thereof.

16.02. Force Majeure. It is agreed that the deadline stated herein for construction may be extended upon the written consent of the City, in its sole discretion and it shall be extended if completion of the construction of the Improvements is prevented by an event of force majeure, as defined hereunder, in which case any unexpired deadline shall be extended for the period of the enforced delay, as reasonably determined by the City provided that the Developer undertaking the improvement who seeks the benefit of this provision on force majeure shall, within ten (10) days after the beginning of any such enforced delay, have notified the City in writing, and of the cause or causes thereof, and has requested an extension for the period of the enforced delay. Compliance with municipal laws regulating land use and construction, any Legal requirements under any applicable environmental laws, as well as known NJDEP clearances, approvals, or permits typical of the development process and referred to in this Agreement, shall not be considered or construed as events of force majeure.

16.03. Right of Entry For Utility Service. The City reserves for itself, the City, and any public utility company, as may be appropriate, the unqualified right to enter upon the Project Premises at any reasonable time for the purpose of reconstructing, maintaining, repairing, or servicing the public utilities located within the Project Premises boundary lines.

16.04. Developer Not To Construct Over Utility Easements. The Developer shall not construct any building or other structure or improvement on, over, or within the boundary lines of any easement for public utilities described or referred to in Section 16.03 herein, unless such construction is provided for in such easement or has been approved by City and the City. If approval for such construction is requested by the Developer, the City shall use its best efforts to assure that such approval shall not be withheld unreasonably.

16.05. Maintenance. The Developer shall be responsible for maintenance and security of the Project Premises subject to this Agreement subsequent to the City acquiring title to same until such time as Developer no longer owns or leases the Project Premises on parts thereof.

16.06. Equal Employment Opportunity. The Developer agrees that during the construction of Improvements:

(a) The Developer will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Developer will take