



**BOROUGH OF CALDWELL
NEW JERSEY**



SPECIAL COUNCIL BUSINESS / CONFERENCE MEETING

June 29, 2021

Borough of Caldwell
1 Provost Square
Caldwell, New Jersey 07006
7:15PM



BOROUGH OF CALDWELL

Resolution No: 6-161
Date of Adoption: June 29, 2021

TITLE:

**RESOLUTION AUTHORIZING AN EXECUTIVE SESSION FROM WHICH THE PUBLIC IS EXCLUDED
For the Meeting of June 29, 2021**

Recommended for approval by:

Approved as to form and legality by:

Thomas Banker, Administrator

Title:

WHEREAS, The Borough of Caldwell (the "Borough" or the "public body" has been duly created and is validly existing as a public body corporate and politic of the State of New Jersey pursuant to applicable laws of the State of New Jersey; and

WHEREAS, The Borough constitutes a "public body" as such term is defined in the New Jersey Open Public Meetings Act, constituting Chapter 231 of the Pamphlet Laws of 1975 of the State of New Jersey, N.J.S.A. 10:4-6 et seq. and the acts amendatory thereof and supplemental thereto (the "Open Public Meetings Act"); and

WHEREAS, the Open Public Meetings Act permits a public body, as such term is defined therein, to exclude members of the public from portions of any "meeting", as such term is defined therein including N.J.S.A. 10:4-12(b) et seq., under certain limited circumstances which include, but are not limited to, (a) a discussion of pending or anticipated litigation in which the public body is or may become a party, or (b) a discussion of any matters which fall within the attorney-client privilege, or (c) a discussion of a collective bargaining agreement including the negotiation of the terms and conditions thereof, or (d) a discussion regarding the purchase, acquisition or lease of real property with public funds or (e) a discussion of involving the employment, appointment or termination of employment of an existing or prospective public officer or employee; and

WHEREAS, the governing body of the Borough has determined that and is of the opinion that such circumstances presently exist that permit the governing body of the Borough to discuss the matters set forth in this Resolution in executive session; and

WHEREAS, the matters set forth in this Resolution are within the exceptions and the limited circumstances set forth in N.J.S.A. 10:4-12(b) et seq., the governing body of the Borough desires to conduct a portion of the meeting in an executive session from which members of the public will be excluded.

NOW THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE BOROUGH OF CALDWELL, in accordance with the provisions of The Open Public Meetings Act, that the governing body of the Borough hereby determines to conduct a portion of the meeting in an executive session from which members of the public will be excluded in accordance with the provisions of Open Public Meetings Act; and

BE IT FURTHER RESOLVED, that the aforementioned executive session will be limited to matters relating to the following items and which matters involve, as applicable, pending and anticipated litigation involving or expected to involve the Borough, matters which fall within the attorney-client privilege, matters regarding the discussion of a collective bargaining agreement, matters relating to purchase, acquisition or lease of real property with public funds or matters relating to personnel.

BE IT FURTHER RESOLVED, that the minutes of each executive session will be prepared and maintained by the Township and with regard to each of the matters discussed in executive session; and

BE IT FURTHER RESOLVED, that the minutes relating to a particular matter discussed will be made available to members of the public - (a) at such time as the matter no longer requires confidentiality as permitted by applicable laws, (b) upon the completion of a pending or anticipated litigation, or (c) upon such matter no longer falling within the attorney-client privilege, (d) upon the completion of a collective bargaining agreement including the negotiation of the terms and conditions thereof, or (e) upon the completion of a purchase, acquisition or lease of real property with public funds, or (f) as such disclosure may otherwise may be required by the Open Public Meetings Act.

It is hereby certified that at a regular meeting of the Mayor and Council of the Borough of Caldwell, New Jersey being held on the date of June 29, 2021, the foregoing Resolution was duly adopted.

Borough Deputy Clerk

The foregoing Resolution, having been duly presented to me on June 29, 2021 I hereby approve the same.

Mayor

RECORD OF COUNCIL VOTE

_____ presented the following resolution - Seconded by _____

COUNCILMAN Yes No Absent Abstain COUNCILMAN Yes No Absent Abstain

Schmidt						Lace				
Rodgers						DePalma-Iozzi				
Cole						Gates				

Brittany Heun, Deputy Clerk

John Kelley, Mayor

This resolution, when adopted, must remain in the possession of the Municipal Clerk. Certified copies are available.



**BOROUGH OF CALDWELL
NEW JERSEY**

Resolution No: 6-152

Date of Adoption: June 29, 2021

TITLE:

**STATE OF NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION GREEN ACRES
ENABLING RESOLUTION**

Recommended for approval by:

Approved as to form and legality by:

Thomas Banker, Administrator

Title:

WHEREAS, the New Jersey Department of Environmental Protection, Green Acres Program ("State"), provides loans and/or grants to municipal and county governments and grants to nonprofit organizations for assistance in the acquisition, development, and stewardship of lands for outdoor recreation and conservation purposes; and

WHEREAS, the Borough of Caldwell desires to further the public interest by obtaining funding in the amount of \$250,000 from the State to fund the following project(s): Borough of Caldwell Open Space and Recreation Plan Update at a cost of \$500,000;

NOW, THEREFORE, the governing body resolves that Thomas Banker or the successor of the office of Borough Administrator is hereby authorized to:

- (a) make application for such a loan and/or such a grant,
- (b) provide additional application information and furnish such documents as may be required, and
- (c) act as the authorized correspondent of the above-named applicant; and

WHEREAS, the State shall determine if the application is complete and in conformance with the scope and intent of the Green Acres Program, and notify the applicant of the amount of the funding award; and

WHEREAS, the applicant is willing to use the State's funds in accordance with such rules, regulations and applicable statutes, and is willing to enter into an agreement with the State for the above-named project;

NOW, THEREFORE, BE IT FURTHER RESOLVED BY THE BOROUGH COUNCIL

1. That the Borough Administrator of the above-named body is hereby authorized to execute an agreement and any amendment thereto with the State known as Open Space and Recreation Plan Update;
2. That the applicant has its matching share of the project, if a match is required, in the amount of \$250,000
3. That, in the event the State's funds are less than the total project cost specified above, the applicant has the balance of funding necessary to complete the project;
4. That the applicant agrees to comply with all applicable federal, state, and local laws, rules, and regulations in its performance of the project; and
5. That this resolution shall take effect immediately.

CERTIFICATION

I, Brittany Heun do hereby certify that the foregoing is a true copy of a resolution adopted by the Borough Council of the Borough of Caldwell, at a meeting held on the 29th of June, 2021.

IN WITNESS WHEREOF, I have hereunder set my hand and the official seal of this body, this ____ day of June, 2021.

Brittany Heun, Deputy Municipal Clerk

RECORD OF COUNCIL VOTE

_____ presented the following resolution - Seconded by: _____

COUNCIL MEMBER Yes No Absent Abstain COUNCIL MEMBER Yes No Absent Abstain

Schmidt						Lace				
Rodgers						DePalma-Iozzi				
Cole						Gates				

Brittany Heun, Deputy Clerk

John Kelley, Mayor

This resolution, when adopted, must remain in the possession of the Municipal Clerk. Certified copies are available.



**BOROUGH OF CALDWELL
NEW JERSEY**

Resolution No: 6-163

Date of Adoption: June 29, 2021

TITLE:

RESOLUTION DESIGNATING S&S CALDWELL VILLAGE, LLC AS REDEVELOPER FOR A REDEVELOPMENT PROJECT TO BE LOCATED ON LOTS 2, 3, 3.01, & 4 IN BLOCK 41 IN THE BOROUGH OF CALDWELL, NJ AND AUTHORIZING THE EXECUTION OF A REDEVELOPMENT AGREEMENT BETWEEN S&S AND THE BOROUGH REGARDING THAT PROJECT

Recommended for approval by:

Approved as to form and legality by:

Thomas Banker, Administrator

Title:

Whereas, the Borough of Caldwell, NJ (the "Borough") has adopted a redevelopment plan (the "Plan") for a significant part of the Borough in order to encourage investment in and improvement of the real property located within the redevelopment area designated in the Plan (the "Area"); and

Whereas, Tax Block 41, which is bounded in part by Lane Avenue is included within the Area: and

Whereas, S&S Caldwell Village, LLC ("S&S") has made a proposal to redevelop lots 2, 3, 3.01 and 4 within block 41, also known as 4-18 Lane Avenue, for multi-family residential purposes (the "Project"); and

Whereas, the Project will also include a minimum of 23 units of housing which will meet the standards for affordability established by the State of New Jersey (the Affordable Housing Units); and

Whereas, the Affordable Housing Units will help the Borough to meet its obligations for the provision of Affordable Housing as set forth in the Borough's Affordable Housing Plan, now pending final approval before the New Jersey Superior Court; and

Whereas, the proposal has been reviewed by the professionals assigned by the Borough to perform such reviews (the "Professional Reviewers") and

Whereas, those reviews have found that the Project is substantially in compliance with the terms of the Plan, with all remaining concerns able to be included as conditions to the redevelopment agreement between the Borough and S&S regarding the implementation of the Project (the "Redevelopment Agreement"); and

Whereas, the Redevelopment Agreement will include the requirement that all remaining conditions identified by the Professional Reviewers be met to the satisfaction of the Borough Planning Board as part of the site plan review for the Project;

Now Therefore, be it Resolved by the Mayor and Council of the Borough of Caldwell, New Jersey that:

1. S&S is hereby designated as the redeveloper for the Project located at 4-18 Lane Avenue in Caldwell, NJ; and
2. The Borough Administrator, working in conjunction with the Borough Attorney, is hereby authorized to execute the Redevelopment Agreement for the Project in substantially the form as is attached hereto; and
3. The designation of S&S as the redeveloper is strictly conditioned on the satisfaction of the conditions outlined by the Professional Reviewers, as referenced within the Redevelopment Agreement; and
4. The Deputy Borough Clerk is hereby authorized and directed to provide such notices and publications regarding this matter as may be required by law.

RECORD OF COUNCIL VOTE

_____ presented the following resolution - Seconded by: _____

COUNCIL MEMBER Yes No Absent Abstain COUNCIL MEMBER Yes No Absent Abstain

Schmidt						Lace				
Rodgers						DePalma-Iozzi				
Cole						Gates				

Brittany Heun, Deputy Clerk

John Kelley, Mayor

This resolution, when adopted, must remain in the possession of the Municipal Clerk. Certified copies are available.

Redevelopment Agreement

For

**A Portion of the Redevelopment Area in the Borough of Caldwell, Essex County, New
Jersey**

By and Between

The Borough of Caldwell

And

Name of Entity

Dated:

Record And Return To:

**Brittany Heun, Deputy Clerk
Borough of Caldwell
1 Provost Square
Caldwell, NJ 07006**

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This Redevelopment Agreement (the “Agreement” or “Redevelopment Agreement”) made this ____ day of _____, 2021 by and between

The Borough of Caldwell (“Caldwell” or the “Borough”), acting as the Redevelopment Entity for the Borough of Caldwell pursuant to N.J.S.A. 40A:12A-4(c), a body corporate and politic of the State of New Jersey, whose address is 1 Provost Square, Caldwell, New Jersey 07006;

AND

_____ (the “Redeveloper”), an entity created under the law of the State of New Jersey, having offices at _____, New Jersey (collectively, the “Parties”).

PREAMBLE

WHEREAS, the Local Redevelopment and Housing Law, N.J.S.A. 40A-12A-1 et seq. (the “Redevelopment Law”) provides a process for municipalities to participate in the redevelopment and improvement of parcels of property that have been designated as “areas in need of redevelopment;” and

WHEREAS, in furtherance of its goals and objectives, including the elimination of surface parking areas that adversely affected its property tax base, the Borough of Caldwell adopted a Redevelopment Plan in 2020, (the “Redevelopment Plan”) pursuant to, and as defined in, the Redevelopment Law; and

WHEREAS, pursuant to the process set forth in the Redevelopment Law, Caldwell has established a Redevelopment Area in accordance with the Redevelopment Plan; and

WHEREAS, Caldwell has chosen to act on its own behalf as the redevelopment entity for the purposes of implementing the Plan; and

WHEREAS, the Redevelopment Law authorizes Caldwell contract with a redeveloper for the planning, construction or undertaking of any project or redevelopment work in an area designated as an area in need of redevelopment; and

WHEREAS, Caldwell has adopted a resolution authorizing the execution of a Redevelopment Agreement with the Redeveloper; and

WHEREAS, Caldwell and the Redeveloper desire to set forth in this Agreement their respective undertakings, rights and obligations in connection with the construction of the Project on the Project Site in accordance with the Redevelopment Plan, applicable law and the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the promises, the mutual obligations contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each of the Parties, and further, to implement the purposes of the Local Redevelopment and Housing Law, the Redevelopment Plan and the Redevelopment Agreement, the Parties hereto agree as follows:

ARTICLE I: TERM OF THIS AGREEMENT.

1.01 Exclusive Right Of Redeveloper To Carry Out The Project

(A) The term of this Agreement (“Term”) shall extend for 5 years from the date hereof unless sooner terminated by the Agency pursuant to the terms hereof. During this Term the Redeveloper shall have the exclusive right to carry out the Project on the Property. The Agency shall not designate any other person or entity as a redeveloper for the Property during the Term. The Term is absolute and may not be deemed to be changed or extended for any reason (including Force Majeure), except by written agreement executed by Caldwell and the Redeveloper. Following expiration of the Term, unless the Project has been substantially completed, Caldwell shall have the right to designate any person or entity as a redeveloper thereof pursuant to the Redevelopment Law.

ARTICLE 2: PREAMBLE/INTERPRETATIONS/DEFINITIONS

2.01 Preamble Incorporated

(A) All statements in the Preamble are hereby repeated in their entirety as if set forth at length herein.

2.02 Interpretation & Construction

In this Agreement, unless the context otherwise requires:

(A) The terms "hereby", "hereof", "hereto", "herein", "hereunder" and any similar terms, as used in this Agreement, refer to this Agreement.

(B) The term "hereafter" means after the Effective Date and the term "heretofore" means before the Effective Date.

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

(D) Words importing a person or persons mean and include firms, associations, partnerships (including limited partnerships), trusts, corporations, limited liability companies and other legal entities, including public or governmental bodies, as well as natural persons.

(E) Any headings preceding the texts of the several Articles and Sections of this Agreement, and any table of contents or marginal notes appended to copies hereof, shall be solely for convenience

of reference and shall not constitute a part of this Agreement, nor shall they affect its meaning, construction or effect.

(F) Unless otherwise explicitly indicated, all approvals, consents and acceptances required to be given or made by any person or party hereunder shall not be unreasonably withheld, conditioned, or delayed.

(G) All notices to be given hereunder and responses thereto shall be given, unless a certain number of days is specified, within a reasonable time.

(H) Unless otherwise explicitly indicated, any “fees and expenses” shall be required to be customary and reasonable.

(I) This Agreement shall become effective as of the Effective Date and shall remain in full force and effect until: (i) the Project has been implemented and completed, as evidenced by the issuance of the Certificate of Completion; or (ii) the Agreement is terminated by one the Parties in accordance with the terms of this Agreement (“Default and Termination”); or (iii) upon expiration of the Term specified in Article 1.

2.03 Defined Terms

(A) The parties hereto agree that unless the context otherwise specifies or requires, the following terms shall have the meanings specified below, such definitions to be applicable equally to the singular and plural forms of such terms, but only to the use of the upper case initial letter of each word contained in such terms.

Applicable Laws: All Federal, State and local laws, ordinances, approvals, rules, regulations and requirements applicable thereto including, but not limited to, the Redevelopment and Housing Law (N.J.S.A. 40A:12A-1 et seq.) (the “Act”), the Five Year Exemption and Abatement Law (N.J.S.A. 40A 21-1 et seq.) (the “Five Year Abatement Law”), the Long Term Tax Exemption Law (N.J.S.A. 40A:20-1 et seq) (the “Tax Exemption Law”), relevant construction codes including construction codes governing access for people with disabilities, and such zoning, sanitary, pollution and other environmental safety ordinances, laws and such rules and regulations thereunder, including all applicable Environmental Laws, applicable federal and State labor standards and all applicable laws or regulations.

Borough: The Borough of Caldwell, NJ, which is a Party to this Agreement

Caldwell: The Borough of Caldwell, NJ, which is a Party to this Agreement.

Caldwell Official Action: Any authorizing resolution or resolutions of Caldwell with respect to designating Redeveloper as redeveloper, all other resolutions of Caldwell that constitute a condition precedent to the Redeveloper performing its obligations this Agreement, or any other action of Caldwell that is contemplated by this Agreement.

Certificate of Completion: A written document to be issued by Caldwell when (i) all work related to the Project in its entirety (or a portion thereof, if applicable), or any other work or

actions required of the Redeveloper, has been substantially completed, acquired and/or installed in accordance with the Plan, this Agreement and in compliance with Applicable Laws, so that (a) the Project in its entirety (or the portion thereof that has been completed, if applicable) may, in all respects, be used and operated in accordance with the terms of this Agreement, or (b) with respect to any other work or action required of the Redeveloper, that the intended purpose of such work or action has been substantially completed; and (ii) all permits, licenses and approvals that are required in order that such certificate can be issued for the Project in its entirety (or a portion thereof that has been completed, if applicable), or such other work or action required of the Redeveloper, are in full force and effect.

Certificate of Occupancy: A temporary or permanent certificate of occupancy as defined in the regulations promulgated by the State of New Jersey regarding such certificates at N.J.S.A. 52:27D-121 and N.J.A.C. 5:23-1 *et seq.*

Cleared and Cleaned Condition: Property for which the responsible party has paid all costs of, and taken all actions in connection with (i) the demolition or other removal of all improvements on such property; (ii) the grading of such property to a condition that will permit the intended use of such property pursuant to the Plan and this Agreement; (iii) the environmental cleanup of such property to the standard required by NJDEP for the intended use of such property pursuant to the Redevelopment Plan and this Agreement, including full settlement of all natural resources damages, together with, if such property required or requires an environmental cleanup, the receipt of a NFA letter from the NJDEP or a Response Action Outcome (“RAO”) from a Licensed Site Remediation Professional (“LSRP”).

Concept Plan: The drawing or drawings attached as Exhibit B-2 of this Agreement.

Construction Code Official: An individual with appropriate qualifications who has been engaged by the Caldwell either as an employee or contractor to discharge the duties of such position as they are set forth within the Uniform Construction Code and the regulations promulgated pursuant thereto.

Diligently Pursue: In regard to construction activity, shall mean to have personnel and equipment working at the Property on all normal business days after the start of construction, with the level of personnel and work activity equal to that which would cause the Project to be completed in the shortest possible time without requiring the payment of rate premiums associated with working at certain times of day or on certain days of the week or certain holidays.

Effective Date: The date of execution and delivery of this Agreement, as set forth on the title page of this Agreement.

Eminent Domain: The utilization of condemnation the Caldwell to acquire real property, pursuant to N.J.S.A. 20:3-1 *et seq.*

Environmental Laws: Any and all Federal, State, regional, and local laws, statutes, ordinances, regulations, rules, codes, consent decrees, judicial or administrative orders or decrees, directives or judgments relating to pollution, damage to or protection of the environment, environmental conditions, or the use, handling, processing, distribution, generation, treatment,

storage, disposal, manufacture or transport of Hazardous Substances, presently in effect or hereafter amended, modified, or adopted including, but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act (“CERCLA”) (42 U.S.C. sect. 9601-9675); the Resource Conservation and Recovery Act of 1976 (“RCRA”) (42 U.S.C. sect. 6901, *et seq.*); the Clean Water Act (33 U.S.C. sect. 1251, *et seq.*); the New Jersey Spill Compensation and Control Act (the “Spill Act”) (N.J.S.A. 58:10-23.11, *et seq.*); the Industrial Site Recovery Act, as amended (“ISRA”) (N.J.S.A. 13:1K-6, *et seq.*); the New Jersey Underground Storage of Hazardous Substances Act (N.J.S.A. 58:10A-21, *et seq.*), the New Jersey Water Pollution Control Act (N.J.S.A. 58:10A-1 *et seq.*); the New Jersey Environmental Rights Act (N.J.S.A. 2A:35A-1, *et seq.*); and the rules and regulations promulgated thereunder.

Fair Market Value: The amount determined as that which would be paid by a willing buyer to a willing seller for a parcel of real estate, where neither party is compelled to act and both parties have equal access to all pertinent information that would affect the value of the parcel.

Governmental Applications: The applications including all plans, drawings, documentation and presentations necessary and appropriate for the purpose of obtaining any and all Governmental Approvals required to complete the Project.

Governmental Approvals: Any non-appealable final approvals, authorizations, permits, licenses and certificates needed from governmental or quasi-governmental authorities having jurisdiction, whether Federal, State, county or local, to allow the implementation of the Project, including, without limitation, site plan approval from the Planning Boards; building and other permits required pursuant to the Uniform Construction Code; environmental approvals; sewage treatment capacity approvals and any and all other necessary permits, licenses, consents and approvals.

Hazardous Substances: Any substance, material or waste, whether liquid, gaseous or solid, and any pollutant or contaminant, that is toxic, hazardous, explosive, corrosive or radioactive, or that is defined, listed or regulated under any Environmental Laws.

Improvements: All new or rehabilitated buildings, structures and appurtenances, parking facilities, fencing and all other improvements or other ancillary facilities constructed on or installed in the Redeveloper Property as part of the Project in accordance with the Plan, this Agreement and such construction plans and specifications as were approved by the Planning Board and Caldwell.

Indemnified Parties: The Borough of Caldwell.

Infrastructure Improvements: All on-site and off-site structures necessary to enable the Project to be constructed and/or to sustain the operation of the project after its completion which are not part of the facilities expected to be occupied by the owners or tenants of the Project, including, without limitation, water, sanitary sewer, storm sewer, electric, natural gas, telephone and cable utility systems; streets, curbs and sidewalks; street lighting, street furniture, street trees and landscaping, traffic control devices, fire hydrants, etc.

Mayor: The Mayor of Caldwell.

Mayor and Council: The governing body of Caldwell.

NFA: A no further action letter issued by NJDEP or such equivalent document issued either by NJDEP or a Licensed Site Remediation Professional, acting on behalf of NJDEP pursuant to NJ State statute.

NJDEP: New Jersey Department of Environmental Protection, and any successors in interest.

NJEDA: New Jersey Economic Development Authority and any successors in interest.

NJDOT: New Jersey Department of Transportation and any successors in interest.

NJRA: New Jersey Redevelopment Authority and any successors in interest.

NJ Transit: New Jersey Transit Corporation and any successors in interest.

Other Redevelopers: Any entity that has been designated by the Caldwell as a redeveloper for any part of the Area other than that which is the subject of this Agreement.

Parties: Caldwell and Redeveloper.

Planning Board: The Caldwell Planning Board.

Project: The Redevelopment Project.

Redeveloper: The entity named as the party to this Agreement that is not Caldwell, or the successors or assignees of that entity.

Redeveloper Property: One or more parcels of real property upon which Redeveloper shall implement the Project within the Area pursuant to the Plan in accordance with this Agreement, as further described in Exhibit A of this Agreement.

Redevelopment Area (or the Area): The real property that is the subject of the Redevelopment Plan.

Redevelopment Project: The project described in Exhibits B-5 and B-6 of this Agreement.

Total Eligible Redeveloper Development: The sum of the following, expressed in aggregate square footage:

(i) For all Redeveloper Property upon which permanent Improvements have been constructed and for which a Certificate of Occupancy has issued, one hundred percent (100%) of the gross square footage of the Improvements, including without limitation, areas devoted to servicing the operation of such improved areas, such basements, mechanical systems and common

areas, but excluding any parking areas in excess of the minimum required by the Plan. In the event a fire or other calamity has temporarily reduced the gross square footage of the Improvements, gross square footage shall be measured as of the day immediately prior to any such calamity. In the event of condemnation of any of the Improvements, gross square footage shall be measured as of the day immediately prior to any such taking; and

(ii) For any Redeveloper Property utilized for dedicated public open space purposes, such as parks, landscaping, plazas or walkways, that are permitted by the Plan and this Agreement and which have received a Certificate of Occupancy, one hundred percent (100%) of the gross square footage of such area as is devoted to such open space use.

WRAP: Workable Relocation Assistance Program as defined by the New Jersey Relocation Assistance Law of 1967, N.J.S.A. 52:31B-5 *et. seq.*

ARTICLE 3: THE REDEVELOPMENT PROJECT

3.01 Conditions Precedent

(A) To the extent that the actions of Caldwell in authorizing this Agreement have been conditioned upon the need for other entities to take actions outside of the control of Caldwell, those elements of this Agreement that could not be authorized without those actions shall not be considered in force or effect unless and until those actions have been taken by the bodies authorized to do so. Consistent with such limitation, all affected elements of this Agreement shall not be in force and effect unless and until the actions set forth in Exhibit B-1 of this Agreement have been fully approved by the appropriate bodies. If any such action is not fully approved by the date for such approval that is set forth in Exhibit B-1, this Agreement shall be terminated as of that date, without any action by either Party.

3.02 Permitted Interim Uses

(A) The Redevelopment Property may only be developed for the interim uses set forth in Exhibit B-2 of this Agreement, provided that such interim uses are permitted by the Plan.

3.03 Permitted Permanent Uses

(A) The Redevelopment Property may only be developed for the permanent uses set forth in Exhibit B-3 of this Agreement, provided that such permanent uses are permitted by the Plan.

3.04 Maximum Height, Bulk and Parking

(A) The Redevelopment Property may only be developed to the maximum and minimum heights and bulks set forth in Exhibit B-4 of this Agreement, provided that they are within the minimum and maximum heights and bulks set forth in the Plan.

(B) The Redevelopment Property shall contain the minimum parking required by the Plan, but in no event shall the number of parking spaces exceed 120% of the minimum parking required by the Plan.

3.05 Project Description

(A) The Project that is the subject of this Agreement is described in detail in Exhibits B-5 (Narrative Description) and B-6 (Concept Plan) of this Agreement.

3.06 Development Schedule

(A) The Project shall be constructed in accordance with the schedule for development that is set forth in Exhibit C of this Agreement.

(B) Compliance with the Development Schedule is a material obligation of the Redeveloper. Failure to achieve any of the required milestones within the timeframes required by this Agreement shall be sufficient for Caldwell to determine that the Redeveloper is in default of its obligations under this Agreement, subject to appropriate notice and opportunity to cure as set forth in Article 9 of this Agreement.

ARTICLE 4: OBLIGATIONS OF THE REDEVELOPER

4.01 Agreement to Develop

(A) The Redeveloper agrees to construct the Project in accordance with the terms of this Agreement in accordance with schedule for development set forth herein.

4.02 Duties of Redeveloper

Redeveloper shall perform the following duties as part of its obligations under this Agreement:

(A) Retain various professionals, who have, among other things, reviewed the needs and estimates of the Project.

(B) Conduct environmental reviews and tests on the Area.

(C) Acquire properties not already owned by Redeveloper to complete the assemblage of the Redeveloper Property at the times and otherwise in accordance with the terms hereof, and to acquire further real estate beyond the Redeveloper Property, if necessary for the completion of the Project. To the extent that Redeveloper is unable to acquire necessary property, it shall request that Caldwell acquire any non-residential property by Eminent Domain if Caldwell is legally able to do so and is not prohibited by this Agreement.

(D) Cause to be prepared and filed such Governmental Application as may be necessary and appropriate for the purpose of obtaining any and all Governmental Approvals required to complete the Project. All of the Governmental Applications shall be in conformity with the Plan, this Agreement, and any and all Federal, State, County, and municipal statutes, laws, ordinances, rules and regulations applicable thereto.

(E) Undertake Improvements as set forth herein.

(F) Cooperate with and assist in the formation of one or more written agreements and such other endeavors Caldwell deems prudent with the NJDEP, NJ Transit, NJDOT, Other Redevelopers and any other necessary parties required to effectuate the Project.

(G) Assist with and participate in a coordinated defense in the event of litigation against the Project, the Area, or the Plan, and in connection therewith make such corrections or additions to this Agreement as are necessary for that defense.

(H) Upon completion of the Project, take action to cause the provisions of N.J.S.A. 39:5A-1 et seq, entitled *Motor Vehicle and Traffic Regulation*, be made applicable to the private roads, streets and driveways within the Project thereby vesting in Caldwell the police power to enforce such laws and regulations as applicable thereto.

(I) Work cooperatively with the Other Redevelopers to cause redevelopment in the Area.

4.03 Representations and Warranties by Redeveloper

Redeveloper hereby makes the following representations and warranties:

(A) Redeveloper has the legal capacity to enter into this Agreement and perform each of the undertakings set forth herein with respect to implementing the Project pursuant to the Redevelopment Plan as of the date of this Agreement.

(B) Redeveloper is duly organized and a validly existing legal entity under the laws of the State, and all necessary resolutions have been duly adopted to authorize the execution and delivery of this Agreement and to authorize and direct the persons executing this Agreement to do so for and on Redeveloper's behalf. Disclosure of the organizational structure, owners of an interest in the Redeveloper of 10% or more and of the persons responsible for management of Redeveloper is set forth in Exhibit D of this Agreement (Redeveloper Structure and Ownership).

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

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

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

(F) There is no action, proceeding or investigation now pending, nor any basis therefor, known or believed by Redeveloper to exist, (i) which questions the authority of Redeveloper to enter into this Agreement or relating to any action taken or to be taken by Redeveloper pursuant to this Agreement; or (ii) is likely to result in a material adverse change in Redeveloper's property, assets, liabilities or condition that will materially and substantially impair its ability to perform its

obligations under, or would otherwise materially affect any of Redeveloper's representations or warranties made, all pursuant to the terms of this Agreement.

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

(H) All material information submitted by Redeveloper to Caldwell and its agents, is true and correct in all material respects. Redeveloper acknowledges that the facts and representations contained in the information submitted by Redeveloper to Caldwell constitute a material factor in the decision of Caldwell to enter into this Agreement.

(I) Redeveloper is financially and technically capable of developing, designing, financing and constructing the Project.

(J) Redeveloper will continue to work cooperatively with the Other Redevelopers to fulfill the terms of this Agreement and the Other Redevelopment Agreements and to cause the redevelopment of the Area in accordance with the Plan.

4.04 Redeveloper Covenants

The covenants imposed upon Redeveloper, including its successors and assigns, until a Certificate of Completion issues, are:

(A) In connection with its use or occupancy of the Project, not effect or execute any covenant, agreement, lease, conveyance or other instrument whereby the Area 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 familial status, and Redeveloper, including its successors and assigns, shall comply with all Applicable Laws prohibiting discrimination or segregation by reason of age, race, color, creed, religion, ancestry, national origin, sex or familial status.

(B) Comply with the applicable provisions and public purposes of the Act and all obligations under this Agreement and at all times develop, design, finance, construct and operate the Project or cause the Project to be developed, designed, financed, constructed and operated pursuant to the conditions and requirements of Applicable Laws, Governmental Approvals, this Agreement and the Plan, and shall construct no other use except that established in the Plan.

(C) In order to effectuate the purposes of this Agreement, make, execute, acknowledge and deliver any contracts, orders, receipts, writings and instructions with any other persons, firms or corporations and in general do all things which may be requisite or proper for the construction and development of the Project in accordance with this Agreement, the Plan, Governmental Approvals and Applicable Laws.

(D) Use diligent efforts to obtain all Governmental Approvals requisite to the construction and development of the Project.

(E) Upon completion of the development and construction of the Project, use diligent efforts to obtain all Governmental Approvals authorizing the occupancy and uses of the Project for the purposes contemplated herein.

(F) Not suspend or discontinue the performance of its obligations under this Agreement (other than in the manner provided for herein) for any reason, including, without limitation, any acts or circumstances that may constitute failure of consideration, commercial frustration of purpose, or any damage to or destruction of the Project.

(G) Undertake and diligently pursue on a continuous basis the construction and development of the Project.

(H) Not encumber, hypothecate or otherwise use the Project, or any part thereof, as collateral for an unrelated transaction without the express written consent of Caldwell.

(I) During construction of the Project, keep debris and/or waste materials containerized and/or stored and disposed of within normal industry standards.

(J) Cause the Project to be developed, designed, financed and constructed at Redeveloper's sole cost and expense.

(K) Immediately notify Caldwell of any material change in its financial condition from the information provided to Caldwell if such change will materially impair Redeveloper's ability to perform its obligations pursuant to the terms of this Agreement.

(L) Make all payments in satisfaction of Redeveloper's financial obligations as set forth in this Agreement.

(M) Keep and maintain in good condition any Improvements or Infrastructure Improvements required under the Governmental Approvals, including but not limited to any landscaping required to be planted.

4.05 Effect and Duration of Redeveloper Covenants

(A) It is intended and agreed that the agreements and covenants set forth in Article 4 of this Agreement shall be covenants running with the land and that they shall, in any event, and without regard to technical classification or designation, legal or otherwise, and except only as otherwise specifically provided in this Agreement, be binding, to the fullest extent permitted by law and equity, for the benefit and in favor of, and enforceable by, Caldwell or Caldwell's successors and assigns, against Redeveloper, and Redeveloper's successors and assigns and every successor in interest therein, and against any party in possession or occupancy of the Project or any part thereof.

4.06 Fees and Charges

(A) In consideration of the actions required to be taken by Caldwell in the furtherance of the development expected as a result of this Agreement, the Redeveloper agrees to pay an annual Redevelopment Fee (the "Fee") to Caldwell as set forth in Exhibit E of this Agreement. For 2021,

the Fee shall be based on an annual charge of _____ per square foot of land area for which the Redeveloper has been designated by this Agreement, as set forth in Exhibit A-1. For each year after 2021, the annual rate of the Fee shall increase by 3.15%. Such Fee shall be payable to the Caldwell in advance in annual installments no later than January 10 of each year. The Fee for the year in which this Agreement is executed shall be payable in full on the Effective Date. If the Redeveloper had paid an administrative fee pursuant to a prior redeveloper agreement between the Caldwell and the Redeveloper, the Fee for the year in which this Agreement is executed shall be reduced by the application of a credit for that portion of the prior administrative fee as was applicable to the year in which this Agreement was executed.

During the term of this Agreement, the Fee shall be reduced at the rate per square foot as is then in effect for the Fee for all land area on which the final permanent development required by this Agreement has been completed. Fee payments shall be prorated to reflect the actual dates at which the completed development receives both a Certificate of Occupancy and a Certificate of Completion.

(B) To the extent that the Redeveloper seeks to transfer or assign ownership of the Project to another entity, the Redeveloper agrees to pay to the Caldwell a Transfer Fee in an amount equal to the annual Redevelopment Fee then in effect for the Project with such cost to be payable to Caldwell at the time of the request for such transfer or assignment. Such Transfer Fee shall be payable in addition to the payment of the normal annual Redevelopment Fee for the Project, and shall be payable whether or not Caldwell consents to the requested transfer or assignment.

(C) (i) In addition to the foregoing, the Redeveloper shall reimburse Caldwell for any and all out-of-pocket costs of whatever nature which may be incurred by the Caldwell in connection with the Property and/ or the Project (the "Caldwell Costs"). The Caldwell Costs shall include, but not be limited to consultants' fees (including but not limited to fiscal impact, planning, traffic, real estate and environmental consultants) in connection with the designation of the Redeveloper as redeveloper of the Property, the preparation and negotiation of this Agreement, the master planning and coordination of traffic, parking or other studies affecting all or any portion of the Redevelopment Area, the Planning Board and any other governmental approval process (excluding any fees paid from Planning Board escrows), all work associated with modifications to the Redevelopment Plan as necessary to meet requirements imposed by the Federal, state or county governments and all work associated with the provision of public open space serving the Redevelopment Area.

(ii) The Caldwell Costs also include but are not limited to (a) the reasonable fees and expenses of the Caldwell's attorneys; (b) the reasonable fees and expenses of Caldwell's policy advisor, and (c) the reasonable fees and expenses of Caldwell's planning consultant.

(iii) All costs incurred by or on behalf of Caldwell in connection with the Project and/or the Property shall be paid to Caldwell within 30 calendar days after Redeveloper's receipt of an invoice from Caldwell detailing the amount and the basis therefor.

(iv) To the extent any of the foregoing expenses (such as the cost of a traffic study) relate to the Property and other properties in the Redevelopment Area, Redeveloper shall pay a pro rata

share based upon the acreage of the Property as it relates to the acreage of all properties affected by the particular Caldwell action.

(D) In order to insure the prompt payment of all reimbursements arising from the terms of section 4.06(C) above, the Redeveloper shall, at the time of the execution of this Agreement, deposit with Caldwell the initial amount set forth on the attached Exhibit H (“Escrow Fund”). Caldwell shall be authorized to draw such sums as are payable pursuant to section 4.06(C) in accordance with the terms of Exhibit H. The Redeveloper further agrees that the Redeveloper shall make payment to Caldwell of an amount that is sufficient to replenish the escrow account at such times and in such amounts as are set forth in Exhibit H. Failure to replenish the escrow account in a timely manner shall be an event of default under this agreement.

(E) The Redeveloper agrees that Caldwell shall have a lien on the Redeveloper Property for any fees or expenses that are due from the Redeveloper under this Agreement, which lien shall be of no further force or effect as to any portion of the Redeveloper Property for which a Certificate of Completion has been issued pursuant to Article 10 of this Agreement.

4.07 Affordable Housing

(A) To the extent the Project undertaken by Redeveloper under this Agreement results in a legal obligation on the Caldwell to provide affordable housing units under any statute, regulation or otherwise, including but not limited to the regulations of the New Jersey Department of Community Affairs (hereinafter, the “Affordable Housing Laws”) Redeveloper shall, at its sole cost and expense, provide such affordable housing units within Caldwell within the time required by the Affordable Housing Laws or, at the option of Caldwell, pay to Caldwell such sum as may be needed to provide such affordable housing.

(B) To the extent the Project undertaken by Redeveloper under this Agreement does not result in a legal obligation on the Caldwell to provide affordable housing units under any statute, regulation or otherwise, including but not limited to the regulations of the New Jersey Department of Community Affairs (hereinafter, the “Affordable Housing Laws”) the Redeveloper shall make a payment to the Caldwell Affordable Housing Trust Fund. Such payment shall be in the amount which is determined in accordance with the ordinance of the Borough as in is effect as of the time of the execution of this Agreement.

4.08 No Public Actions for Delinquent Project

(A) At any time that any action by Caldwell is requested by the Redeveloper or is required by the Project, including, without limitation, such actions as the approval or amendment of a Redeveloper Agreement, a Financial Agreement, a site plan, a zoning variance or a grant application, or the issuance of any bonds or notes or of any permit or license, the Chief Financial

Officers of Caldwell shall certify that the Redeveloper is current in the payment of all of its financial obligations for the project, including, without limitation, the payment of taxes, payments in-lieu of tax, water or sewer charges, license or permit fees, Redevelopment Fees, reimbursements for professional fees or any other fee or charge due to Caldwell. To the extent that such certifications cannot be made because of the presence of an outstanding obligation of any type, Caldwell shall not take any action as requested or required until such time as the obligations are satisfied and the appropriate certifications are issued. Such refusal to act shall not be the sole remedy available under this Agreement, but rather shall be in addition to any other actions available at law or in equity to Caldwell.

ARTICLE 5: OBLIGATIONS OF CALDWELL

5.01 Designation and Authorization of Redeveloper

Caldwell hereby designates the Redeveloper as the redeveloper for the Project and authorizes the Redeveloper to take all actions as are contemplated by this Agreement

5.02 Duties of Caldwell

Caldwell has performed and shall, under this Agreement, continue to perform the following duties in furtherance of carrying out the Plan and in assisting Redeveloper in carrying out its Project:

(A) Where legally possible, exercise the powers of Eminent Domain as necessary to acquire non-residential properties within the Area to the extent Redeveloper is unable to reach agreement to purchase property to complete the assemblage of the Redeveloper Property. In connection with all such property, Caldwell shall retain appraisers and other professionals to assist in such acquisitions at the expense of the Redeveloper. To the extent that Redeveloper cannot acquire any part of the required property within the time required to permit the Project to be completed on schedule, and Caldwell determines, in its sole discretion, that it is not able to acquire the property by Eminent Domain, Caldwell may choose to terminate the Agreement by notice given in accordance with Section 14.01 of this Agreement.

(B) Assist in relocation of owners and tenants on behalf of Redeveloper on Redeveloper Property, pursuant to a WRAP in accordance with the Act.

(C) Support the Redeveloper in connection with requests to expedite the review and approval by the Planning Board, of specific site plans for the Project provided that such site plans (i) conform to the guidelines of the Plan and this Agreement and (ii) are first conceptually approved by the Caldwell.

(D) Jointly with Redeveloper apply for, develop and negotiate agreements with the NJDEP for grants and necessary approvals of projects related to the Project but only to the extent that (i) Caldwell is required to join in such applications or agreements in order for such grants or approvals to be obtained, and (ii) such grants or approvals do not impose any obligation or cost on Caldwell.

(E) Jointly with Redeveloper apply for, develop and negotiate agreements with the NJDOT for

grants and necessary approvals of projects related to the Project, but only to the extent that (i) Caldwell is required to join in such applications or agreements in order for such grants or agreements to be obtained, and (ii) such grants or approvals do not impose any obligation or cost on Caldwell.

(F) Support the Redeveloper's efforts to have Caldwell issue permits and cooperate with outside agencies requiring Caldwell's consent for the construction and rehabilitation of the Improvements or Infrastructure Improvements to be undertaken by Redeveloper within the Area as part of the Project, provided that such Improvements or Infrastructure Improvements do not require any contributions from Caldwell.

(G) Refrain from designating any entity other than Redeveloper as redeveloper for any portion of the Redeveloper Property unless explicitly authorized to do so by the terms of this Agreement.

(H) Assist with and participate in a coordinated defense, and/or corrections or additions to, any challenge to the Plan, the Project, the Area, or this Agreement.

5.03 Representations and Warranties by Caldwell

Caldwell hereby makes the following representations and warranties:

(A) Caldwell has the full legal power, right and authority to enter into this Agreement and the instruments and documents referenced herein to which Caldwell is a party, to consummate the transactions contemplated hereby, including without limitation all actions as Redevelopment Entity, to take any steps or actions contemplated hereby, and to perform their obligations hereunder, and all Caldwell Official Actions necessary therefor have been duly adopted by CALDWELL and remains in full force and effect.

(B) This Agreement has been duly executed and delivered by Caldwell, and is valid and legally binding upon Caldwell and enforceable in accordance with its terms on the basis of Applicable Laws currently in effect, and the execution and delivery thereof shall not, with due notice or the passage of time, constitute a default under or violate the terms of any indenture, agreement or other instrument to which Caldwell is a party or Applicable Laws to which it or its properties are subject.

(C) No proceedings have been filed under the provisions of the United States Bankruptcy Code or other similar statute applicable to Caldwell, and no indictment has been returned against any official of Caldwell with respect to any transaction contemplated by the terms of this Agreement.

(D) There is no action, proceeding or investigation now pending, nor any basis therefore, known or believed by Caldwell to exist, (i) which questions the authority of Caldwell to enter into this Agreement or relating to any action taken or to be taken by Caldwell pursuant to this Agreement; or (ii) that will materially and substantially impair the ability of Caldwell to perform its obligations under, or would otherwise materially affect any of Caldwell's representations or warranties made, all pursuant to the terms of this Agreement.

(E) All material information submitted by Caldwell to Redeveloper and its agents is true and correct in all material respects.

(F) Caldwell will continue to work cooperatively with the Other Redevelopers to fulfill the terms of this Agreement and the Other Redevelopment Agreements and cause the redevelopment of the Area in accordance with the Plan.

ARTICLE 6: DEVELOPMENT DENSITY OBLIGATIONS

6.01 Development Density Requirements

For purposes of this Agreement, this Article is intentionally left blank and is of no force or effect.

ARTICLE 7: INSURANCE AND INDEMNIFICATION

7.01 Insurance Requirements

(A) At all times during construction of the Project, and until the Project is available for its intended use and Certificates of Occupancy are issued in accordance with the provisions herein, Redeveloper shall maintain at its own cost and expense the following kinds and amounts of insurance with respect to the Project, with such variations as may reasonably be required to conform to customary insurance practice and which insurance at Redeveloper's option may be issued in "blanket coverage" format:

(i) Builder's Risk Insurance for the benefit of Redeveloper, Caldwell, 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, 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; and

(ii) Commercial General Liability Insurance (including coverage for any construction on or about each lot, plot, parcel or part of the Redeveloper Property) against claims for bodily injury, death or property damage occurring on, in or about the Redeveloper Property and the adjacent streets, sidewalks and passageways, in amounts not less than \$10,000,000 for each claim with respect to any bodily injury or death, \$10,000,000 with respect to any one occurrence and \$2,000,000 with respect to all claims for property damage relating to any one occurrence; and

(iii) Comprehensive Automobile Liability Insurance covering all owned, hired and non-owned vehicles with at least the following limits of liability: Bodily Injury Liability and Property Damage Liability - \$1,000,000 combined single limit per occurrence; and

(iv) Worker's compensation insurance coverage in the amount of the full statutory liability of Redevelopment; and

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

7.02 Proof of Insurance

(A) Redeveloper shall submit to Caldwell proof of all applicable insurance. The policies of insurance required to be maintained by Redeveloper shall name as the insured parties (except for worker's compensation insurance) Redeveloper, Caldwell, as their respective interests may appear, and shall be reasonably satisfactory to Caldwell. Redeveloper shall also furnish or cause to be furnished to Caldwell evidence satisfactory to the Caldwell that Redeveloper and any contractor with whom it has contracted for the construction of the Project carries workers' compensation insurance as required by law, and an employer's liability insurance endorsement with customary limits, and shall be endorsed with a waiver of subrogation clause for Caldwell.

7.03 Insurance Company Requirements

(A) All insurance policies required by this Section shall be obtained from insurance companies licensed in the State of New Jersey and rated at least A and a financial size rating of at least VIII, each in Best's Insurance Guide.

7.04 Other Insurance Requirements

(A) All insurance policies required hereunder shall be kept in force until a Certificate of Completion is issued.

(B) All insurance policies required by this Section shall be non-assessable and shall contain language to the effect that (i) the policies are primary and noncontributing with any insurance that may be carried by Caldwell, (ii) the policies cannot be canceled or materially changed except after thirty (30) days written notice by the insurer to Caldwell, (iii) Caldwell shall not be liable for any premiums or assessments (iv) any loss will be payable to Caldwell, notwithstanding any act or negligence of Redeveloper which might otherwise result in forfeiture of said insurance, and (v) the coverage afforded thereby must not be affected by the performance of any work in or about Redeveloper Property.

(C) All such insurance shall have deductibility limits satisfactory to Caldwell. Redeveloper shall be responsible to pay any deductible amount under all insurance policies.

7.05 Blanket Policies

(A) Nothing in this Article shall prevent Redeveloper from purchasing insurance of the kind and in the amounts and with companies provided for this Article 7 under a blanket insurance policy or policies which can cover other properties as well as the Property; provided, however, that any such policy of insurance (i) specify therein, or Redeveloper shall furnish Caldwell with a written statement from the insurers under such policies specifying the amount of the total insurance allocated to the Project, which amount will not be less than the amount required by this Article, and (ii) not contain any clause which would result in the insured thereunder being required to carry

insurance with respect to the property covered thereby in an amount equal to a minimum specified percentage of the full insurable value of such property in order to prevent the insured therein named from becoming a co-insurer of any loss with insurer under such policy.

7.06 Indemnification

(A) Redeveloper covenants and agrees, at its expense, to pay and to indemnify, protect, defend and hold the Indemnified Parties harmless from and against all liability, losses, damages, demands, costs, claims, lawsuits, administrative proceedings, fines, penalties, and expenses (including reasonable attorneys' fees and court costs) of every kind, character and nature resulting, wholly or partially, from (i) the condition, use, possession, conduct, management, planning, design, acquisition, construction, installation, financing, leasing or sale of the Redeveloper Property or any improvements thereon and/or (ii) the performance or any failure or delay of performance of this Agreement, any of which is the result of action or inaction by the Redevelopment, its agents, servants, employees or contractors including but not limited to, (a) the death of any person or any accident, injury, loss, and damage whatsoever to any person or to the property of any person that shall occur on or adjacent to the Redeveloper Property and that results, wholly or partially, from any negligence or willful misconduct of the Redevelopment, its agents, servants, employees or contractors, or (b) any lawsuit or other proceeding commenced by any Person, except Redeveloper, because of action(s) or omissions of Caldwell, their commissioners, employees, agents, representatives and elected officials taken in good faith in fulfillment of their responsibilities in connection with the Project or this Agreement.

(B) Redeveloper shall defend, indemnify and hold harmless the Indemnified Parties and their officers, agents, employees, contractors, and consultants from any liability, losses, damages, demands, costs, claims, lawsuits, administrative proceedings, fines, penalties, and expenses (including attorneys' fees and court costs) of every kind, character and nature resulting, wholly or partially, from any failure to comply with Environmental Laws by Redeveloper and/or its agents, servants, employees or contractors at the Redeveloper Property or elsewhere and from any release or releases of any Hazardous Substance on, in, under or from the Redeveloper Property during or after the term of this Agreement resulting from any improper performance or non-performance of Redeveloper's obligations under this Redevelopment Agreement by Redeveloper, its agents, servants, employees, or contractors.

(C) In any situation in which a Indemnified Party is entitled to receive and desires the indemnification by the Redeveloper, the Redeveloper shall resist and defend any action or proceeding on behalf of the Indemnified Party, including the employment of counsel reasonably acceptable to the Indemnified Party and the payment of all expenses. These obligations of Redeveloper may be performed by an insurer of Redeveloper to the extent coverage has been acquired. The Indemnified Party shall have the right to consent to any settlement negotiated by Redeveloper. Notwithstanding that right of consent, Redeveloper shall have the right to settle any such action on terms it solely deems appropriate provided that a full release of the Indemnified Party is obtained and no admission of liability by the Indemnified Party is required.

7.07 Survival of Indemnity

(A) This indemnity shall survive the termination of this Redevelopment Agreement if same is terminated prior to the expiration of the survival period, and shall run with the land.

ARTICLE 8: PUBLIC IMPROVEMENTS, UTILITIES AND INFRASTRUCTURE IMPROVEMENTS

8.01 Endorsement of Applications

(A) Caldwell shall endorse any and all applications, permits, or similar documents as may be required by Caldwell, the county, the State, or any agency, entity, governing body, or other municipality having jurisdiction over Infrastructure Improvements, if any, not later than thirty (30) days after receipt of such documents by Caldwell for endorsement, provided that such documents are acceptable to Caldwell in both form and substance.

8.02 Permits

(A) Redeveloper shall obtain all required permits from the Caldwell and any other governmental agency with jurisdiction over such work before commencement of the Infrastructure Improvements. Redeveloper, where applicable, will cause its contractors, vendors and/or utility companies to post bonds and/or payment and performance guarantees, sufficient to ensure completion of the work, as well as maintenance bonds for such periods as required by the agency or agencies issuing such permits. The bonds and performance guarantees shall provide that the contractor(s) undertaking work shall name Caldwell as a third-party beneficiary. Performance bonds should remain in force until the completion of all construction. Maintenance bonds shall be in effect for a period of at least two years, commencing on the later of the date the Infrastructure Improvements are accepted in writing as complete from the Redeveloper or the date on which such Infrastructure Improvements are approved by the Caldwell.

8.03 Traffic and Safety

(A) Redeveloper shall implement traffic and safety controls and measures during construction of Infrastructure Improvements. When necessary, Redeveloper shall secure the services of police personnel for traffic control during construction, the costs of which shall be borne solely by the Redeveloper.

8.04 Notice to Affected Parties

(A) Redeveloper shall provide proper notice to all property owners or other parties that may, in any way, be affected during construction of the Infrastructure Improvements, whether directly, such as by the temporary loss of utilities, or indirectly such as inconvenience to access to a property during construction periods.

8.05 Coordination of Activities

(A) Redeveloper shall coordinate the involvement of and collaborate with any governmental bodies, authorities, utility companies, federal, State or county agencies, or the like which may have jurisdiction over the Infrastructure Improvements, as well as with the Other Redevelopers who

may be affected by the construction or operation of the Infrastructure Improvements.

ARTICLE 9: DEFAULT AND TERMINATION

9.01 Termination for Failure to Achieve Conditions Precedent

(A) To the extent that the conditions precedent set forth in Section 3.01 have not been met as of the deadline for that to occur, this Agreement shall be terminated automatically, without the need for any action by either Party.

9.02 Events of Default

(A) Any one or more of the following shall constitute an Event of Default hereunder, subject to Force Majeure and tolling as provided elsewhere in this Agreement:

(i) Failure of Redeveloper to meet the deadline for the accomplishment of any of the milestones required pursuant to Section 3.06 of this Agreement

(ii) Failure of the Redeveloper to meet its Development Density obligations as set forth in Article 6 of this Agreement.

(iii) Failure of Redeveloper or Caldwell to observe and perform any other covenant, condition, representation, warranty or agreement (other than those specifically provided for elsewhere in this Agreement) hereunder, and continuance of such failure for a period of thirty (30) days, after receipt by the defaulting party of written notice from the non-defaulting party specifying the nature of such failure and requesting that such failure be remedied; provided, however, if the breach of any such covenant, condition or agreement is one which cannot be completely remedied within the thirty (30) days after such written notice has been given, it shall not be an Event of Default as long as the defaulting party is proceeding with due diligence to remedy the same as soon as practicable but in no event later than one hundred twenty (120) days after such written notice.

(iv) Any of the following have occurred:

(a) Redeveloper shall have applied for or consented to the appointment of a custodian, receiver, trustee or liquidator of all or a substantial part of its assets;

(b) a custodian shall have been legally appointed with or without consent of Redeveloper;

(c) Redeveloper, has made a general assignment for the benefit of creditors; or has filed a voluntary petition in bankruptcy or a petition or an answer seeking an arrangement with creditors or has taken advantage of any insolvency law;

(d) Redeveloper has filed an answer admitting the material allegations of a petition in any bankruptcy or insolvency proceeding;

(e) Redeveloper shall take any action for the purpose of effecting any of the foregoing;

(f) a petition in bankruptcy shall have been filed against Redeveloper, and shall not have been dismissed for a period of ninety (90) consecutive days;

- (g) an Order for Relief shall have been entered with respect to or for the benefit of Redeveloper, under the Bankruptcy Code;
- (h) an Order, Judgment or Decree shall have been entered, without the application, approval or consent of Redeveloper, by any court of competent jurisdiction appointing a receiver, trustee, custodian or liquidator of Redeveloper, or a substantial part of its assets and such order, judgment or decree shall have continued unstayed and in effect for any period of ninety (90) consecutive days;
- (i) Redeveloper shall have suspended the transaction of its usual business or
- (j) Caldwell shall have been involved in any proceeding regarding Caldwell under the United States Bankruptcy Code or other similar statute.

(v) Redeveloper shall fail to pay any real estate taxes, assessment, or as applicable and in lieu thereof, PILOT, when due; or Redeveloper shall fail to pay any other payments required under this Agreement or any agreement executed in connection herewith, or either of Redeveloper or Caldwell shall place on Redeveloper Property any encumbrance or lien unauthorized by this Redevelopment Agreement, or shall suffer any levy or attachment to be made thereon, or any material men's or mechanics' lien to be made thereon, and such real estate taxes or assessments, or PILOT, or other payment, as applicable, shall not have been paid, or the encumbrance or lien removed or discharged or provision made in a manner satisfactory to the non-defaulting Party for such payment, removal, or discharge, within sixty (60) days after written demand by the non-defaulting Party to do so.

(vi) There is, in violation of this Redevelopment Agreement (i.e., unless specifically permitted, which if the case, shall not give rise to an Event of Default under any circumstances), a transfer or assignment of the rights, duties and obligations of the Parties hereunder, as prohibited by Article 12 hereof.

9.03 Remedies Upon Event of Default

(A) Upon the occurrence of an Event of Default for failure to meet its Development Density obligations, Caldwell shall have the remedies as set forth in Article 6 of this Agreement, as well as those set forth in the other parts of this Section 9.2.

(B) Upon the occurrence of an Event of Default for any reason, including for failure to meet its Development Density obligations:

(i) Whenever any Event of Default of Redeveloper shall have occurred and be continuing, Caldwell may terminate this Agreement and revoke Redeveloper's designation as redeveloper for all or a portion of the Redeveloper Property, or take whatever action at law or in equity as may appear necessary or desirable to enforce the performance or observance of any rights, or remedies of CALDWELL, or any obligations, agreements, or covenants of Redeveloper under this Redevelopment Agreement. Such termination shall not relieve the Redeveloper of any of its obligations to make payments to the Caldwell or the Caldwell as may exist as of the time of the termination.

(ii) Whenever any Event of Default of Caldwell shall have occurred and be continuing, Redeveloper may terminate this Agreement or take whatever action at law or in equity as may

appear necessary or desirable to enforce the performance or observance of any rights, or remedies of Redeveloper, or any obligations, agreements, or covenants of Caldwell under this Redevelopment Agreement.

(C) Specific Performance

(i) If so desired by the non-defaulting Party, the non-defaulting Party shall have the right to cause a court of competent jurisdiction to order the defaulting Party to specifically perform the action or actions which gave rise to the Event of Default.

(D) Use of Documents - Redeveloper hereby agrees that Caldwell may use all documents filed or prepared by Redeveloper in support of the Project, including but not limited to the Governmental Applications, to complete the Project following an Event of Default caused by Redeveloper, without cost to or liability to Caldwell.

9.04 No Waiver Due To Failure or Delay in Exercising Rights

(A) Except as otherwise expressly provided in this Agreement, any failure or delay by either party in asserting any of its rights or remedies as to any default, shall not operate as a waiver of any default, or any such rights or remedies, or deprive either such party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

9.05 Remedies Cumulative

(A) No remedy conferred by any of the provisions of this Agreement is intended to be exclusive of any other remedy and each and every remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. The election of any one or more remedies shall not constitute a waiver of the right to pursue other available remedies.

ARTICLE 10: COMPLETION OF PROJECTS

10.01 Completion of Projects (Or Phases Thereof)

(A) The Parties acknowledge that the implementation of the Project on a development parcel larger than five acres may be done in multiple phases. References to a “phase” of a Project, shall mean a portion of the Project which is capable of independent operation (vis-à-vis the remainder of the Project). Redeveloper agrees that the expeditious completion of each phase is of critical concern to Caldwell, and Redeveloper agrees to abide by the Development Density obligations set forth in Article 6, if applicable to this Project.

10.02 Certificate of Occupancy and Certificate of Completion

(A) A Certificate of Occupancy for the Project or any phase thereof can be obtained regardless of whether Caldwell shall have issued a Certificate of Completion for such Project or phase so long as such Project or such phase thereof shall meet Caldwell’s requirements for the issuance of the

Certificate of Occupancy.

10.03 After Completion of the Project (Or a Phase Thereof)

(A) Upon the completion of the Project or any phase in accordance with the provisions of this Agreement, Caldwell will furnish Redeveloper a Certificate of Completion. Caldwell's issuance of a Certificate of Completion shall be deemed a conclusive determination by Caldwell that the obligations of Redeveloper under this Agreement as to such Project or phase shall have been satisfied in all material respects.

10.04 Effect of Certificate of Completion

(A) Upon the issuance of a Certificate of Completion by Caldwell for the Project or phase, the provisions of this Agreement shall no longer encumber the Redeveloper Property upon which the Project or phase is constructed. Accordingly, subject to the limitations that may be imposed by all other documents affecting the Redeveloper Property, including without limitation deeds and the covenants therein, declarations, certifications, financial agreements, bond documents, etc., Redeveloper shall have the right to transfer any interest in the portion of the Redeveloper Property for which the Certificate of Completion was issued, including any Improvements thereon, without any limitations as may have been created by this Agreement.

(B) Caldwell, at any time after its issuance of a Certificate of Completion for the Project or phase, shall within thirty (30) days following receipt of a written request by Redeveloper, execute and deliver to Redeveloper and/or a third party designated by Redeveloper an instrument in which it affirms that the Certificate of Completion has been issued.

10.05 Estoppel Certificates

(A) Caldwell, at any time prior to its issuance of a Certificate of Completion for the Project or phase shall within thirty (30) days following receipt of a written request by Redeveloper, execute and deliver to Redeveloper and/or a third party designated by Redeveloper, an instrument in which it (i) certifies the then current terms of this Agreement and that those terms are in full force and effect; and (ii) states whether to the best of the knowledge of Caldwell, Redeveloper is in default of any of its obligations under this Agreement and specifying any such default or defaults of which Caldwell has knowledge; and (iii) confirms such other factual matters pertinent to this Agreement, as Redeveloper may reasonably request to be confirmed in order to enable Redeveloper to take actions related to the completion of the Project.

ARTICLE 11: EMPLOYMENT AND CONTRACTING REQUIREMENTS

11.01 Equal Employment Opportunity

(A) Redeveloper agrees that during construction of the Project, Redeveloper and all contractors and/or subcontractors engaged by the Redeveloper shall comply with the principles of equal employment opportunity as are set forth in Exhibit G of this Agreement.

11.02 First Source Employment

(A) Redeveloper shall make good faith efforts to employ and shall provide in its contracts with its contractors and subcontractors that they must make good faith efforts to employ residents of Caldwell in the construction of the Project. To the greatest extent feasible, Redeveloper shall ensure that residents of Caldwell are employed in the construction and operation of the Project. Redeveloper agrees to cooperate with Caldwell or its designee in developing a plan to coordinate training programs and employment recruitment efforts for Caldwell residents. Redeveloper will cooperate with efforts to recruit Caldwell residents for all employment opportunities in connection with the Project, including participation in Caldwell job fairs or similar events. Redeveloper agrees to meet with appropriate Caldwell officials to determine the status of recruitment and training efforts, and to plan future employment training and recruitment activities. All contracts entered into by Redeveloper for the construction of the Project shall contain appropriate language to effectuate this provision. Redeveloper shall submit quarterly reports to Caldwell regarding compliance with this Section. In addition, Redeveloper agrees that it shall include within its contracts with contractors and subcontractors the right for Redeveloper to terminate such contracts if the contractors and subcontractors are not in compliance with this Section.

11.03 Affirmative Action

(A) In addition to the requirements stated earlier in this Article, Redeveloper, during the construction of the Project covenants that it will comply with, and shall provide in its contracts with its contractors and subcontractors, the following:

(i) When hiring workers in each construction trade, or when engaging contractors, Redeveloper agrees to use its good faith efforts to employ Caldwell residents at a rate of 20% of all construction jobs. With respect to all permanent jobs created by the Project, Redeveloper agrees to use its good faith efforts to employ Caldwell residents at a rate of 20% of all jobs created.

(ii) Redeveloper will undertake a program of local preference to facilitate entering into contracts with and/or purchasing good and services from local merchants and businesses located within Caldwell.

(iii) Redeveloper shall at all times conform to the laws, regulations, policies of the Federal government, the State Government, and other governmental bodies with jurisdiction with respect to affirmative action and equal employment opportunities requirements.

11.04 Reporting

(A) Redeveloper and its contractors and subcontractors shall submit periodic reports regarding their compliance with this Article as Caldwell may reasonably require.

ARTICLE 12: ROHIBITION AGAINST ASSIGNMENT AND TRANSFER

12.01 Prohibition Against Transfers of Interests

(A) Redeveloper recognizes the importance of the Project to the general welfare of Caldwell and

that the identity of Redeveloper and its qualifications are critical to Caldwell in entering into this Agreement, particularly in view of the public assistance that has been or will be made available for the purpose of making such redevelopment possible. Caldwell considers that a transfer in full of the ownership in Redeveloper or of a substantial part thereof, or any other act or transaction involving or resulting in a significant change in the degree of ownership of or the identity of the parties in control of Redeveloper, unless specifically authorized by this Agreement, is for practical purposes a transfer or disposition of the Project then owned by Redeveloper. Redeveloper recognizes that it is because of its specific qualifications and identity that Caldwell is entering into this Agreement with Redeveloper, and, in so doing, Caldwell is relying on the capability of Redeveloper and not some other person or entity for the faithful performance of all undertakings and covenants to be performed by Redeveloper hereunder.

As a result, prior to completion of the Project as evidenced by the issuance of a Certificate of Completion, and without the prior written approval of Caldwell, unless specifically authorized elsewhere herein, Redeveloper agrees for itself and any successor in interest that:

(i) There shall be no transfer by any one or more owner of a controlling interest in Redeveloper, or by any successor in interest of such owner(s), of any interest in Redeveloper except due to death, in which case transfers to then existing Redeveloper officers, or family members of the deceased party are permissible;

(ii) No owner of Redeveloper or successor in interest shall make, or suffer to be made, any other change in the ownership of any equity interest in Redeveloper except as hereinabove provided, or with respect to the identity of the parties in control of Redeveloper or the relative degrees of their control, by any other method or means, whether by increased capitalization, merger with another corporate, partnership or limited liability entity, or otherwise. With respect to this provision, Redeveloper and the party(ies) signing this Agreement on behalf of Redeveloper represent that each party has authorization from all of its owners to agree to this provision on their behalf and to bind them with respect thereto. For the purpose of this Agreement, the term "owners" is defined to include the general partners of a partnership, the stockholders of a corporation or the members of a limited liability company.

12.02 Transfer of Redevelopment Agreement

(A) Redeveloper agrees for itself, its successors and assigns, that prior to the completion of the Project or any portion thereof, as evidenced by the issuance of a Certificate of Completion it will not make or create, or suffer to be made or created, any sale, assignment, conveyance, lease or transfer in any other mode or form (collectively, the "Transfers") of its interests in the Project or its interest in this Agreement, without the prior written approval of Caldwell, except as expressly provided herein.

12.03 Consent to Permitted Transfers

(A) Caldwell hereby consents, without the necessity of further approvals, to the following permitted transfers:

(i) To an urban renewal corporation duly formed in accordance with the Tax Exemption Law and controlled by Redeveloper; or

(ii) To a mortgage or related security granted by Redeveloper for the purpose of obtaining the financing necessary to enable Redeveloper to perform its obligations under this Agreement with respect to implementation of the Project; or

(iii) For any other liens or encumbrances granted by Redeveloper for the purpose of financing costs associated with the development, construction, and marketing of the Project. With respect to any of the transfers listed in this Section 12.03, Redeveloper shall provide to Caldwell written notice at least fifteen (15) days prior to such transfer, which notice shall include a description of the nature of such transfer, and the name(s) and address(es) of the transferee(s) and any parties, individuals and/or entities that are party to such transfer.

12.04 Prohibition Against Speculative Development

Because of the importance of the development of the Project to the general welfare of the Caldwell, Redeveloper represents and agrees that Redeveloper's undertakings pursuant to this Agreement are, and will be used, for the purpose of the implementation of the Project and not for speculation or any other purpose.

12.05 Information As To Ownership Of Redeveloper

(A) In order to assist in the effectuation of the purpose of this Article 12, Redeveloper agrees that during the period between the execution of this Agreement and the completion of the Project as evidenced by the issuance of a Certificate of Completion:

(i) Redeveloper will notify Caldwell in writing of any and all changes whatsoever in the ownership of any interest in Redeveloper, legal or beneficial, or of any other act or transaction involving or resulting in any change in such ownership or in the relative distribution thereof, or with respect to the identity of the parties in control of Redeveloper or the degree thereof, of which it or any of its officers or members have been notified or otherwise have knowledge or information, with such notice to be provided within seven (7) days after the time that the change took place; and

(ii) Redeveloper shall, at such time or times as Caldwell may reasonably request, but not more than once per quarter, furnish Caldwell with a complete statement subscribed and sworn to by a managing member of Redeveloper, setting forth a list of all owners of equity interests of Redeveloper and the extent of their respective holdings, and in the event any other parties have a beneficial interest in Redeveloper's entity, their names and the extent of such interest.

12.06 Approval Of Mortgages

(A) At any time that Redeveloper proposes to enter into a mortgage that would encumber the Redeveloper Property in any way, Redeveloper shall request approval of such action by the Caldwell in writing in advance of the execution of such mortgage. Caldwell agrees that its approval shall not be unreasonably withheld. Execution of any mortgage by the Redeveloper that

would encumber the Redeveloper Property without prior written Caldwell approval shall constitute a breach of this Agreement.

12.07 Notice Of Liens And Encumbrances

(A) If at any time, the Redeveloper becomes aware that any encumbrance or lien upon the Property has been created, whether by voluntary or involuntary act of the Redeveloper or by act of any other party, Redeveloper shall immediately notify Caldwell of such encumbrance or lien.

12.08 Obligations Of Mortgagee

(A) 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 the terms of this Agreement, including any such holder who obtains title to the Redeveloper Property or any part thereof as a result of foreclosure proceedings or action in lieu of foreclosure, 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, unless such obligations are specifically assumed in writing by such entity. 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 Redeveloper Property or any part thereof to any uses other than those uses permitted under the Plan, all Governmental Approvals and Applicable Law.

(B) The protections against the terms of this Agreement indicated in Section 12.08 (A) above shall only apply to the actual holders of a mortgage obtained directly from the Redeveloper and not to any other party who thereafter obtains title to Redeveloper Property or such part from or through any such actual holder or to any other purchaser at foreclosure sale of any of the rights of the actual mortgage holder.

12.09 Notice Of Default To Mortgagee And Right To Cure

Whenever Caldwell shall deliver any notice or demand to Redeveloper with respect to any breach or default by Redeveloper under this Agreement, Caldwell shall at the same time deliver to each lender and equity participant in Redeveloper a copy of such notice or demand, provided that Redeveloper has previously delivered to CALDWELL a written notice of the name and address of such lender and equity participant. Each such lender shall have the right after the receipt of such notice to the same amount of time to cure the breach or default as is provided to the Redeveloper by the terms of this Agreement for that portion of the Project which is being financed by such lender and which is subject to being cured.

12.10 Transfers Void Without Approval

(A) Any transfer of Redeveloper's interest in violation of this Agreement shall be an Event of Default by Redeveloper and shall be null and void ab initio. Such Event of Default shall entitle the Caldwell to seek all remedies available under the terms hereof, and those available pursuant to law or equity, including termination of this Agreement. In the absence of authorization pursuant to the terms of this agreement or pursuant to specific written consent by Caldwell, no sale, transfer, conveyance or assignment of the ownership of Redeveloper or of the Redeveloper Property, shall

be deemed to relieve Redeveloper from any obligations under this Agreement. In addition, in the event of any attempted sale, transfer, conveyance or assignment of the ownership of Redeveloper or of the Redeveloper Property in violation of the restrictions in this Agreement, Caldwell shall be entitled to the ex parte issuance of an injunction restraining such sale, transfer, conveyance or assignment, and the award of legal fees and related expenses of Caldwell in connection with any such legal action.

ARTICLE 13: FORCE MAJEURE

13.01 Force Majeure

(A) Neither Caldwell nor the Redeveloper shall be considered in breach of, or in default of, its obligations in the event any delay in the performance of such obligations is because of (i) delays in the issuance of any Federal or State Governmental Approvals needed for the Project not due to the actions or inactions of the Redeveloper, (ii) litigation filed by unaffiliated third parties challenging any Governmental Approvals issued for the Project, and (iii) acts of God, acts of the public enemy, fires, floods, epidemics, strikes, energy shortages, embargoes, severe weather, or delays of subcontractors because of any of the foregoing causes. In the event of the occurrence of any such delay, the time or times for performance of the obligations of Caldwell or the Redeveloper shall be extended by the period of the delay.

ARTICLE 14: NOTICES AND DEMANDS

14.01 Notices And Demands

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

(I) Notice To Caldwell:

Borough of Caldwell
1 Provost Square
Caldwell, NJ 07006
Attn: Brittany Heun, Deputy Clerk

With copies to :

Borough Attorney
XXX
YYY

(ii) Notice To Redeveloper:

Redeveloper name
Address
City, state zip
Attn:

with copies to:

Law firm name
Address
City, state zip
Attn:

ARTICLE 15: ADDITIONAL PROVISIONS

15.01 Entire Agreement

(A) This Agreement constitutes the entire agreement between the Parties hereto and supersedes all prior oral and written agreements between the Parties with respect to the subject matter hereof.

15.02 Paragraph Headings

(A) The headings and numbering of the articles and sections of this Agreement are set forth for ease of reference only and are not to be construed or considered to impart meaning to any provision of this Agreement.

15.03 Governing Law

(A) This Agreement shall be governed by and construed under the laws of the State of New Jersey and any litigation relating to this Agreement shall be brought in the Superior Court of the State in the Essex County vicinage.

15.04 Amendments To Agreement

(A) This Agreement represents the entire agreement by and between the Parties with respect to the development of the Project, the construction of the Project and the conveyance of the Project parcels. No amendment to this Agreement shall be considered binding on either of the Parties unless such amendment is in writing and specifically recites that it is being entered into by and between Caldwell and Redeveloper with the specific intention to modify the terms of this Agreement. In the event that any such amendment is agreed to by the Parties, such amendment shall not modify, change or amend any portion of this Agreement except those specific portions that are recited in such amendment as being modified by such amendment. All other portions of this Agreement not so specifically amended in writing shall remain in full force and effect.

15.05 Severability

(A) Should any provision, term, paragraph or other portion or portions of this Agreement be held by any court of competent jurisdiction to be in violation of any applicable law, or against public policy or held to be null and void for any reason whatsoever, such portion shall be deemed severable, so that such determination, unless it prohibits the conveyance of the Project parcels to Redeveloper or development of the Project, shall not affect the validity of any other provisions of this Agreement, and all other provisions shall be deemed to be in full force and effect and binding on the Parties unless amended in accordance with provisions of this Agreement.

15.06 Successors Bound

(A) This Agreement shall be binding upon the respective Parties hereto and their successors and assigns.

15.07 Non-Liability Of Officials And Employees Of Caldwell

(A) No member, official or employee of CALDWELL shall be personally liable to Redeveloper, or any successor in interest, in the event of any default or breach by Caldwell, or for any amount which may become due to Redeveloper or its successor, or on any obligation under the terms of this Agreement.

15.08 Non-Liability Of Officials And Employees Of Redeveloper

(A) Except for fraudulent acts, no member, officer, shareholders, director, partner or employee of Redeveloper, and no member, officer, shareholders, director, partner or employee of the members of Redeveloper or the members of Redeveloper shall be personally liable to Caldwell, or any successor in interest, in the event of any default or breach by Redeveloper or for any amount which may become due to Caldwell, or their successors, on any obligation under the terms of this Agreement.

15.09 Exhibits

(A) All Exhibits annexed to this Agreement are hereby made a part of this Agreement by this reference thereto. All such Exhibits are referenced within the body of this Agreement, with a complete list attached to this Agreement immediately following the signature page of this Agreement.

15.10 Review By Counsel

(A) This Agreement shall be construed and enforced in accordance with the laws of the State of New Jersey without regard to or any presumption or other rule requiring construction against the party drawing or causing this Agreement to be drawn since counsel for both Redeveloper and Caldwell have combined in their review and approval of same.

15.11 No Consideration For Agreement

(A) Redeveloper warrants it has not paid or given, and will not pay or give, any third person any money or other consideration for obtaining this Agreement, other than normal costs of conducting

business and costs of professional services such as architects, engineers, financial consultants and attorneys. Redeveloper further warrants it has not paid or incurred any obligation to pay any officer or official of Caldwell, any money or other consideration for or in connection with this Agreement.

15.12 Conflict Of Interest

(A) No member, official or employee of Caldwell shall have any direct or indirect interest in this Agreement, nor participate in any decision relating to the Agreement that is prohibited by law.

15.13 Recordation

(A) This Agreement, and any modifications thereof or additions thereto, shall be duly recorded by Redeveloper in the Book of Deeds of the County of Essex and the cost of such recordation and the cost of any and all federal revenue stamps, which are required to be attached to such papers, shall be paid by Redeveloper.

15.14 Other Redevelopment Agreements Required

(A) Any redevelopment of any site other than Redeveloper Property whether by Redeveloper or any other entity, is subject to the designation of Redeveloper or such other entity as redeveloper for such additional property by Caldwell, and further, is the subject of a separate redevelopment agreement, none of which is contemplated by this Agreement.

ARTICLE 16: MISCELLANEOUS PROVISIONS

16.01 Access

(A) Pursuant to and to the extent of its rights under the Act, Caldwell agrees to arrange to provide to Redeveloper, its agents or designees, access to any portion of the Area to which access will be furnished in accordance with law, at any time during the term of this Agreement for the purpose of making soundings or test borings, conducting investigations, surveys, engineering, environmental, or architectural studies or tests, or preparing engineering, environmental, or architectural data and appraisals, provided Redeveloper furnishes Caldwell reasonable written notice in advance of any such entry setting forth Redeveloper's intent to enter any portion of the Area, and with satisfactory evidence of liability insurance as set forth in Article 7 insuring Redeveloper and Caldwell against claims for bodily injury, death and property damage arising from or attributable to such entry. Redeveloper agrees to request its initial access no less than ten (10) business days before requiring access.

16.02 Inspection Of Books And Records

(A) Caldwell shall have the right at all reasonable times to inspect the books and records of Redeveloper pertinent to the purposes of this Agreement, including but not limited to construction contracts, books and records, leases, insurance policies, and agreements.

(B) Redeveloper shall have the right at all reasonable times to inspect the public books and public records of Caldwell pertinent to the purposes of this Redevelopment Agreement.

(C) Such inspections by either Party must be performed at a time and in a manner as to not unreasonably interfere with the business operations of the Party whose books and records are being inspected and be for a legitimate business purpose affecting the material interest of the Party seeking the inspection.

16.03 Caldwell Consultants Reports And Services

(A) Caldwell makes no representations to Redeveloper with respect to the accuracy or validity of any reports, data or documents or services rendered by any of Caldwell's consultants, advisors or experts.

16.04 Commissions

(A) The Parties agree that no commissions to any broker, agent, or any other intermediary is due hereunder, and further agree to indemnify, defend and save harmless the other Party in the event of any claim whatsoever for any commission or other remuneration payable or alleged to be payable by any broker, agent or other intermediary.

16.05 Cooperation In Defense Of Litigation

(A) In the event that a third party commences litigation or otherwise challenges the validity or legality of this Agreement and its terms or the development of the Project as provided herein, Caldwell agrees, without cost or expense to Caldwell other than payroll and internal administrative costs, that it will fully cooperate with and give full assistance to Redeveloper in the defense or handling of such litigation or challenge, including, but not limited to, cooperation with Redeveloper's attorneys, consultants or other agents engaged to represent Redeveloper in such action. In the event Caldwell is required to engage outside counsel in the defense or handling of such litigation, Redeveloper agrees to reimburse Caldwell for the reasonable costs and attorneys' fees Caldwell incurs as a result of engaging outside counsel. Any outside counsel so engaged by Caldwell is likewise bound by the cooperation provisions of this paragraph.

16.06 Lien On Property For All Fees

(A) The Redeveloper agrees that Caldwell shall have a lien on the Redeveloper Property for any fees or expenses that are due from the Redeveloper under this Agreement, which lien shall be of no further force or effect as to any portion of the Redeveloper Property for which a Certificate of Completion has been issued pursuant to Article 10 of this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement effective on the date appearing on the cover page hereof.

For Caldwell

(Seal)

By: _____
John Kelley
Mayor

Attest:

By: _____
[Name], [Title]

For Redeveloper:

(Seal)

By: _____
[Name]
[Title]

Attest:

By: _____
[Name]
[Title]

[Attach Acknowledgements For Recordation]

TABLE OF EXHIBITS

EXHIBIT A-1	Redeveloper Property
EXHIBITS A-2	Metes and Bounds Descriptions
EXHIBIT B-1	Conditions Precedent
EXHIBIT B-2	Permitted Interim Uses
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EXHIBIT B-6	Concept Plan
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EXHIBIT E	Redevelopment Fees
EXHIBIT F	Development Density Obligations
EXHIBIT G	Equal Opportunity Employment
EXHIBIT H	Form of Escrow Agreement

Exhibit A-1

REDEVELOPER PROPERTY

The list below is the real property which is the subject of this Agreement and on which the Project is to be developed:

<u>Redevelopment Parcel Designation</u>	<u>Metes and Bounds Exhibit</u>	<u>Other Identification (Address and Block and Lot,</u>	<u>Land Area</u>
(EXAMPLE)			
Parcel A	Exhibit A-2	B 12, L 17, aka 123 Main Street	1.38 ac.

Exhibit A-2

PARCEL A
METES AND BOUNDS DESCRIPTION

EXHIBIT B-1

CONDITIONS PRECEDENT

(This should list the events that are required and the deadlines for such events to take place)

Exhibit B-2

PERMITTED INTERIM USES

(This should recite what interim uses are permitted, the duration for which they may be in place and any other restrictions that are necessary. This may be more restrictive than the Plan.)

EXHIBIT B-3

PERMITTED PERMANENT USES

(This should list the permanent uses permitted, which may be more restrictive than the Plan.)

EXHIBIT B-4

MAXIMUM HEIGHT AND BULK

(This should set forth the maximum permitted height and bulk, which may be less than permitted by the Plan.)

EXHIBIT B-5

NARRATIVE PROJECT DESCRIPTION

(This should provide essential data regarding the Project, including bulk, expressed in total area and/or number of units, height in stories and/or feet, included land uses, parking quantities and type of parking facilities and other pertinent information)

EXHIBIT B-6

CONCEPT PLAN

(This should consist of a drawing or drawings depicting the expected character of the Project.)

EXHIBIT C

DEVELOPMENT SCHEDULE

Milestone

Start Date

Completion Date

EXHIBIT D

REDEVELOPER STRUCTURE AND OWNERSHIP

1. The legal name of the Redeveloper is _____

2. The Redeveloper is an entity that is structured as:

___ A Limited Liability Corporation

___ A Corporation

___ A Partnership

___ A Sole Proprietorship

___ Other (specify) _____

3. The Redeveloper has been approved to operate as an "urban renewal entity", pursuant to the terms of N.J.S.A. 40A:20-5;

___ Yes

___ No

4. Ownership: (List all persons with an ownership interest)

<u>Name</u>	<u>Home Address</u>	<u>%Owned</u>
-------------	---------------------	---------------

_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

EXHIBIT E

REDEVELOPMENT FEES

<u>Parcel</u>	<u>Land Area (SF)</u>	<u>Rate per SF</u>	<u>Annual Fee</u>
---------------	-----------------------	--------------------	-------------------

EXHIBIT F

DEVELOPMENT DENSITY OBLIGATIONS

<u>Required Development Density</u>	<u>Milestone</u>	<u>Date for Completion</u>
	Site Plan Approval	
	All Governmental Approvals	
	Commencement of Construction	
	Certificate of Occupancy	

EXHIBIT G

EQUAL OPPORTUNITY EMPLOYMENT

For purposes of this Exhibit, the Redeveloper or any contractor or sub-contractor engaged by the Redeveloper, shall be referred to by the term "Contractor".

During the performance of the Contract, the Contractor agrees as follows:

The Contractor or subcontractor, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, sex, affectional or sexual orientation. The contractor will take affirmative action to ensure that such applicants are recruited and employed, and that employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, sex, affectional or sexual orientation. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Public Agency Compliance Officer setting forth provisions of this nondiscrimination clause;

The Contractor or subcontractor, where applicable will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status, sex, affectional or sexual orientation;

The Contractor or subcontractor, where applicable, will send to each labor union or representative or workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer advising the labor union or workers' representative of the contractor's commitments under this act and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

The Contractor or subcontractor, where applicable, will comply with the regulations promulgated by the Department of the Treasury (the "Treasury") pursuant to P.L. 1975, c. 127, as amended and supplemented from time to time and the Americans With Disabilities Act.

The Contractor or subcontractor agrees to attempt in good faith to schedule minority and female workers consistent with the applicable county employment goals prescribed by N.J.A.C. 17:27-5.2 promulgated by the Treasury pursuant to P.L. 1975, c. 127, as amended and supplemented from time to time or in accordance with a binding determination of the applicable county employment goals determined by the Affirmative Action Office pursuant to N.J.A.C. 17:27-5.2 promulgated by the Treasurer pursuant to P.L. 1975, c. 127, as amended and supplemented from time to time.

The Contractor or subcontractor agrees to inform in writing appropriate recruitment agencies in the area, including employment agencies, placement bureaus, colleges, universities and labor unions, that it does not discriminate on the basis of age, creed, color, national origin, ancestry, marital status, sex, affectional or sexual orientation and that it will discontinue the use of any recruitment agency which engages in direct or indirect discriminatory practices.

The Contractor or subcontractor agrees to revise any of its testing procedures, if necessary, to assure that all personnel testing conforms with the principles of job-related testing, as established by the statutes and court decisions of the State of New Jersey and as established by applicable Federal law and applicable Federal court decisions.

The Contractor or subcontractor agrees to review all procedures relating to transfer, upgrading, downgrading and layoff to ensure that all such actions are taken without regard to age, creed, color, national origin, ancestry, marital status, sex, affectional or sexual orientation, and conform with the applicable employment goals, consistent with the statutes and court decisions of the State of New Jersey, and applicable Federal law and applicable Federal court decisions.

The Contractor or subcontractor shall furnish such reports or other documents to the Affirmative Action Office as may be requested by the office from time to time in order to carry out the purposes of these regulations, and public agencies shall furnish such information as may be requested by the Affirmative Action Office for conducting a compliance investigation pursuant to Subchapter 10 of the Administrative Code (N.J.A.C. 17:27).

EXHIBIT H

ESCROW FUND

Escrow Fund. As of the date of the execution of this Agreement, the Redeveloper shall deposit the amount equal to the greater of _____ per square foot of land area of the Redevelopment Property pursuant to this Agreement or \$25,000 (the "Original Escrow Amount"), as set forth in Exhibit A-1 hereof with Caldwell (hereinafter referred to as the "Escrow Fund"). The Escrow Fund shall be maintained by Caldwell in a separate, interest bearing escrow account and shall be drawn down upon by Caldwell for the payment of professional fees including, but not limited to, attorneys, financial consultants or any other experts deemed necessary by Caldwell in its sole discretion hired by Caldwell and serving Caldwell in connection with this Agreement and the Project. Use of the proceeds of the Escrow Fund shall be subject to the same standards set forth in *N.J.S.A. 40:55D-53.2* with respect to escrows under the New Jersey Municipal Land Use Law.

Caldwell shall deposit all escrow monies 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 laws of the State of New Jersey for public entities. Caldwell shall not be required to refund an amount of interest paid on a deposit which does not exceed \$100.00 for the year. If the amount of interest exceeds \$100.00, that entire amount shall belong the Redeveloper and shall be refunded by Caldwell annually or at the time the deposit is repaid or applied to the purposes for which it was deposited, as the case may be; except that Caldwell may retain for administrative expenses a sum equivalent to no more than 33 1/3% of that entire amount, which shall be in lieu of all other administrative and custodial expenses.

Replenishment of the Escrow Fund. If the Escrow Fund drops below fifty per cent (50%) of the amount initially deposited at the time of the execution of this Agreement, Caldwell shall notify the Redeveloper in writing and the Redeveloper shall replenish the Escrow Fund to the Original Escrow Amount, within ten (10) business days of the request made in writing by Caldwell. Such notice of request shall simultaneously be made upon the Redeveloper and Principal at the address set forth in the preamble to this Agreement.

Reporting of Fees Paid. Every thirty (30) days Caldwell shall provide the Redeveloper with a statement of those fees paid from the Escrow Fund. Any failure on part of Caldwell to affirmatively provide the Redeveloper with statement(s) of the fees and/or invoices for same as set forth above shall not prevent Caldwell from drawing down upon the Escrow Fund in order to pay for the subject fees.



BOROUGH OF CALDWELL

Resolution No: 6-164

Date of Adoption: June 29, 2021

TITLE:

RESOLUTION DESIGNATING MEJIA PROPERTIES, LLC AS REDEVELOPER FOR A REDEVELOPMENT PROJECT TO BE LOCATED ON LOT 9.02 IN BLOCK 23 IN THE BOROUGH OF CALDWELL NJ, AND AUTHORIZING THE EXECUTION OF A REDEVELOPMENT AGREEMENT BETWEEN MEJIA AND THE BOROUGH REGARDING THAT PROJECT

Recommended for approval by:

Approved as to form and legality by:

Thomas Banker, Administrator

Title:

Whereas, the Borough of Caldwell, NJ (the "Borough") has adopted a redevelopment plan (the "Plan") for a significant part of the Borough in order to encourage investment in and improvement of the real property located within the redevelopment area designated in the Plan (the "Area"); and

Whereas, Tax Block 23, which is bounded in part by Lane Avenue is included within the Area: and

Whereas, Mejia Properties LLC ("Mejia") has made a proposal to redevelop lot 9.02 within block 23, also known as 16 Park Avenue, for mixed use purposes including retail and residential uses (the "Project"); and

Whereas, the Project will allow the Borough to retain a popular retail business that has operated for more than 25 years within the downtown area; and

Whereas, the Project will further a goal of the redevelopment plan to enhance the vitality of the business district; and

Whereas, the proposal has been reviewed by the professionals assigned by the Borough to perform such reviews (the "Professional Reviewers") and

Whereas, those reviews have found that the Project is substantially in compliance with the terms of the Plan, with all remaining concerns able to be included as conditions to the redevelopment agreement between the Borough and Mejia regarding the implementation of the Project (the "Redevelopment Agreement"); and

Whereas, the Redevelopment Agreement will include the requirement that all remaining conditions identified by the Professional Reviewers be met to the satisfaction of the Borough Planning Board as part of the site plan review for the Project;

Now Therefore, be it Resolved by the Mayor and Council of the Borough of Caldwell, New Jersey that:

1. Mejia is hereby designated as the redeveloper for the Project located at 16 Park Avenue in Caldwell, NJ; and
2. The Borough Administrator, working in conjunction with the Borough Attorney, is hereby authorized to execute the Redevelopment Agreement for the Project in substantially the form as is attached hereto.
3. The designation of Mejia as the redeveloper is strictly conditioned on the satisfaction of the conditions outlined by the Professional Reviewers, as referenced within the Redevelopment Agreement.
4. The Deputy Borough Clerk is hereby authorized and directed to provide such notices and publications regarding this matter as may be required by law.

RECORD OF COUNCIL VOTE

_____ presented the following resolution - Seconded by: _____

COUNCIL MEMBER Yes No Absent Abstain COUNCIL MEMBER Yes No Absent Abstain

Schmidt						Lace				
Rodgers						DePalma-Iozzi				
Cole						Gates				

Brittany Heun, Deputy Clerk

John Kelley, Mayor

This resolution, when adopted, must remain in the possession of the Municipal Clerk. Certified copies are available.

Redevelopment Agreement

For

**A Portion of the Redevelopment Area in the Borough of Caldwell, Essex County, New
Jersey**

By and Between

The Borough of Caldwell

And

Name of Entity

Dated:

Record And Return To:

**Brittany Heun, Deputy Clerk
Borough of Caldwell
1 Provost Square
Caldwell, NJ 07006**

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This Redevelopment Agreement (the “Agreement” or “Redevelopment Agreement”) made this ____ day of _____, 2021 by and between

The Borough of Caldwell (“Caldwell” or the “Borough”), acting as the Redevelopment Entity for the Borough of Caldwell pursuant to N.J.S.A. 40A:12A-4(c), a body corporate and politic of the State of New Jersey, whose address is 1 Provost Square, Caldwell, New Jersey 07006;

AND

_____ (the “Redeveloper”), an entity created under the law of the State of New Jersey, having offices at _____, New Jersey (collectively, the “Parties”).

PREAMBLE

WHEREAS, the Local Redevelopment and Housing Law, N.J.S.A. 40A-12A-1 et seq. (the “Redevelopment Law”) provides a process for municipalities to participate in the redevelopment and improvement of parcels of property that have been designated as “areas in need of redevelopment;” and

WHEREAS, in furtherance of its goals and objectives, including the elimination of surface parking areas that adversely affected its property tax base, the Borough of Caldwell adopted a Redevelopment Plan in 2020, (the “Redevelopment Plan”) pursuant to, and as defined in, the Redevelopment Law; and

WHEREAS, pursuant to the process set forth in the Redevelopment Law, Caldwell has established a Redevelopment Area in accordance with the Redevelopment Plan; and

WHEREAS, Caldwell has chosen to act on its own behalf as the redevelopment entity for the purposes of implementing the Plan; and

WHEREAS, the Redevelopment Law authorizes Caldwell contract with a redeveloper for the planning, construction or undertaking of any project or redevelopment work in an area designated as an area in need of redevelopment; and

WHEREAS, Caldwell has adopted a resolution authorizing the execution of a Redevelopment Agreement with the Redeveloper; and

WHEREAS, Caldwell and the Redeveloper desire to set forth in this Agreement their respective undertakings, rights and obligations in connection with the construction of the Project on the Project Site in accordance with the Redevelopment Plan, applicable law and the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the promises, the mutual obligations contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each of the Parties, and further, to implement the purposes of the Local Redevelopment and Housing Law, the Redevelopment Plan and the Redevelopment Agreement, the Parties hereto agree as follows:

ARTICLE I: TERM OF THIS AGREEMENT.

1.01 Exclusive Right Of Redeveloper To Carry Out The Project

(A) The term of this Agreement (“Term”) shall extend for 5 years from the date hereof unless sooner terminated by the Agency pursuant to the terms hereof. During this Term the Redeveloper shall have the exclusive right to carry out the Project on the Property. The Agency shall not designate any other person or entity as a redeveloper for the Property during the Term. The Term is absolute and may not be deemed to be changed or extended for any reason (including Force Majeure), except by written agreement executed by Caldwell and the Redeveloper. Following expiration of the Term, unless the Project has been substantially completed, Caldwell shall have the right to designate any person or entity as a redeveloper thereof pursuant to the Redevelopment Law.

ARTICLE 2: PREAMBLE/INTERPRETATIONS/DEFINITIONS

2.01 Preamble Incorporated

(A) All statements in the Preamble are hereby repeated in their entirety as if set forth at length herein.

2.02 Interpretation & Construction

In this Agreement, unless the context otherwise requires:

(A) The terms "hereby", "hereof", "hereto", "herein", "hereunder" and any similar terms, as used in this Agreement, refer to this Agreement.

(B) The term "hereafter" means after the Effective Date and the term "heretofore" means before the Effective Date.

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

(D) Words importing a person or persons mean and include firms, associations, partnerships (including limited partnerships), trusts, corporations, limited liability companies and other legal entities, including public or governmental bodies, as well as natural persons.

(E) Any headings preceding the texts of the several Articles and Sections of this Agreement, and any table of contents or marginal notes appended to copies hereof, shall be solely for convenience

of reference and shall not constitute a part of this Agreement, nor shall they affect its meaning, construction or effect.

(F) Unless otherwise explicitly indicated, all approvals, consents and acceptances required to be given or made by any person or party hereunder shall not be unreasonably withheld, conditioned, or delayed.

(G) All notices to be given hereunder and responses thereto shall be given, unless a certain number of days is specified, within a reasonable time.

(H) Unless otherwise explicitly indicated, any “fees and expenses” shall be required to be customary and reasonable.

(I) This Agreement shall become effective as of the Effective Date and shall remain in full force and effect until: (i) the Project has been implemented and completed, as evidenced by the issuance of the Certificate of Completion; or (ii) the Agreement is terminated by one the Parties in accordance with the terms of this Agreement (“Default and Termination”); or (iii) upon expiration of the Term specified in Article 1.

2.03 Defined Terms

(A) The parties hereto agree that unless the context otherwise specifies or requires, the following terms shall have the meanings specified below, such definitions to be applicable equally to the singular and plural forms of such terms, but only to the use of the upper case initial letter of each word contained in such terms.

Applicable Laws: All Federal, State and local laws, ordinances, approvals, rules, regulations and requirements applicable thereto including, but not limited to, the Redevelopment and Housing Law (N.J.S.A. 40A:12A-1 et seq.) (the “Act”), the Five Year Exemption and Abatement Law (N.J.S.A. 40A 21-1 et seq.) (the “Five Year Abatement Law”), the Long Term Tax Exemption Law (N.J.S.A. 40A:20-1 et seq) (the “Tax Exemption Law”), relevant construction codes including construction codes governing access for people with disabilities, and such zoning, sanitary, pollution and other environmental safety ordinances, laws and such rules and regulations thereunder, including all applicable Environmental Laws, applicable federal and State labor standards and all applicable laws or regulations.

Borough: The Borough of Caldwell, NJ, which is a Party to this Agreement

Caldwell: The Borough of Caldwell, NJ, which is a Party to this Agreement.

Caldwell Official Action: Any authorizing resolution or resolutions of Caldwell with respect to designating Redeveloper as redeveloper, all other resolutions of Caldwell that constitute a condition precedent to the Redeveloper performing its obligations this Agreement, or any other action of Caldwell that is contemplated by this Agreement.

Certificate of Completion: A written document to be issued by Caldwell when (i) all work related to the Project in its entirety (or a portion thereof, if applicable), or any other work or

actions required of the Redeveloper, has been substantially completed, acquired and/or installed in accordance with the Plan, this Agreement and in compliance with Applicable Laws, so that (a) the Project in its entirety (or the portion thereof that has been completed, if applicable) may, in all respects, be used and operated in accordance with the terms of this Agreement, or (b) with respect to any other work or action required of the Redeveloper, that the intended purpose of such work or action has been substantially completed; and (ii) all permits, licenses and approvals that are required in order that such certificate can be issued for the Project in its entirety (or a portion thereof that has been completed, if applicable), or such other work or action required of the Redeveloper, are in full force and effect.

Certificate of Occupancy: A temporary or permanent certificate of occupancy as defined in the regulations promulgated by the State of New Jersey regarding such certificates at N.J.S.A. 52:27D-121 and N.J.A.C. 5:23-1 et seq.

Cleared and Cleaned Condition: Property for which the responsible party has paid all costs of, and taken all actions in connection with (i) the demolition or other removal of all improvements on such property; (ii) the grading of such property to a condition that will permit the intended use of such property pursuant to the Plan and this Agreement; (iii) the environmental cleanup of such property to the standard required by NJDEP for the intended use of such property pursuant to the Redevelopment Plan and this Agreement, including full settlement of all natural resources damages, together with, if such property required or requires an environmental cleanup, the receipt of a NFA letter from the NJDEP or a Response Action Outcome (“RAO”) from a Licensed Site Remediation Professional (“LSRP”).

Concept Plan: The drawing or drawings attached as Exhibit B-2 of this Agreement.

Construction Code Official: An individual with appropriate qualifications who has been engaged by the Caldwell either as an employee or contractor to discharge the duties of such position as they are set forth within the Uniform Construction Code and the regulations promulgated pursuant thereto.

Diligently Pursue: In regard to construction activity, shall mean to have personnel and equipment working at the Property on all normal business days after the start of construction, with the level of personnel and work activity equal to that which would cause the Project to be completed in the shortest possible time without requiring the payment of rate premiums associated with working at certain times of day or on certain days of the week or certain holidays.

Effective Date: The date of execution and delivery of this Agreement, as set forth on the title page of this Agreement.

Eminent Domain: The utilization of condemnation the Caldwell to acquire real property, pursuant to N.J.S.A. 20:3-1 et seq.

Environmental Laws: Any and all Federal, State, regional, and local laws, statutes, ordinances, regulations, rules, codes, consent decrees, judicial or administrative orders or decrees, directives or judgments relating to pollution, damage to or protection of the environment, environmental conditions, or the use, handling, processing, distribution, generation, treatment,

storage, disposal, manufacture or transport of Hazardous Substances, presently in effect or hereafter amended, modified, or adopted including, but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act (“CERCLA”) (42 U.S.C. sect. 9601-9675); the Resource Conservation and Recovery Act of 1976 (“RCRA”) (42 U.S.C. sect. 6901, *et seq.*); the Clean Water Act (33 U.S.C. sect. 1251, *et seq.*); the New Jersey Spill Compensation and Control Act (the “Spill Act”) (N.J.S.A. 58:10-23.11, *et seq.*); the Industrial Site Recovery Act, as amended (“ISRA”) (N.J.S.A. 13:1K-6, *et seq.*); the New Jersey Underground Storage of Hazardous Substances Act (N.J.S.A. 58:10A-21, *et seq.*), the New Jersey Water Pollution Control Act (N.J.S.A. 58:10A-1 *et seq.*); the New Jersey Environmental Rights Act (N.J.S.A. 2A:35A-1, *et seq.*); and the rules and regulations promulgated thereunder.

Fair Market Value: The amount determined as that which would be paid by a willing buyer to a willing seller for a parcel of real estate, where neither party is compelled to act and both parties have equal access to all pertinent information that would affect the value of the parcel.

Governmental Applications: The applications including all plans, drawings, documentation and presentations necessary and appropriate for the purpose of obtaining any and all Governmental Approvals required to complete the Project.

Governmental Approvals: Any non-appealable final approvals, authorizations, permits, licenses and certificates needed from governmental or quasi-governmental authorities having jurisdiction, whether Federal, State, county or local, to allow the implementation of the Project, including, without limitation, site plan approval from the Planning Boards; building and other permits required pursuant to the Uniform Construction Code; environmental approvals; sewage treatment capacity approvals and any and all other necessary permits, licenses, consents and approvals.

Hazardous Substances: Any substance, material or waste, whether liquid, gaseous or solid, and any pollutant or contaminant, that is toxic, hazardous, explosive, corrosive or radioactive, or that is defined, listed or regulated under any Environmental Laws.

Improvements: All new or rehabilitated buildings, structures and appurtenances, parking facilities, fencing and all other improvements or other ancillary facilities constructed on or installed in the Redeveloper Property as part of the Project in accordance with the Plan, this Agreement and such construction plans and specifications as were approved by the Planning Board and Caldwell.

Indemnified Parties: The Borough of Caldwell.

Infrastructure Improvements: All on-site and off-site structures necessary to enable the Project to be constructed and/or to sustain the operation of the project after its completion which are not part of the facilities expected to be occupied by the owners or tenants of the Project, including, without limitation, water, sanitary sewer, storm sewer, electric, natural gas, telephone and cable utility systems; streets, curbs and sidewalks; street lighting, street furniture, street trees and landscaping, traffic control devices, fire hydrants, etc.

Mayor: The Mayor of Caldwell.

Mayor and Council: The governing body of Caldwell.

NFA: A no further action letter issued by NJDEP or such equivalent document issued either by NJDEP or a Licensed Site Remediation Professional, acting on behalf of NJDEP pursuant to NJ State statute.

NJDEP: New Jersey Department of Environmental Protection, and any successors in interest.

NJEDA: New Jersey Economic Development Authority and any successors in interest.

NJDOT: New Jersey Department of Transportation and any successors in interest.

NJRA: New Jersey Redevelopment Authority and any successors in interest.

NJ Transit: New Jersey Transit Corporation and any successors in interest.

Other Redevelopers: Any entity that has been designated by the Caldwell as a redeveloper for any part of the Area other than that which is the subject of this Agreement.

Parties: Caldwell and Redeveloper.

Planning Board: The Caldwell Planning Board.

Project: The Redevelopment Project.

Redeveloper: The entity named as the party to this Agreement that is not Caldwell, or the successors or assignees of that entity.

Redeveloper Property: One or more parcels of real property upon which Redeveloper shall implement the Project within the Area pursuant to the Plan in accordance with this Agreement, as further described in Exhibit A of this Agreement.

Redevelopment Area (or the Area): The real property that is the subject of the Redevelopment Plan.

Redevelopment Project: The project described in Exhibits B-5 and B-6 of this Agreement.

Total Eligible Redeveloper Development: The sum of the following, expressed in aggregate square footage:

(i) For all Redeveloper Property upon which permanent Improvements have been constructed and for which a Certificate of Occupancy has issued, one hundred percent (100%) of the gross square footage of the Improvements, including without limitation, areas devoted to servicing the operation of such improved areas, such basements, mechanical systems and common

areas, but excluding any parking areas in excess of the minimum required by the Plan. In the event a fire or other calamity has temporarily reduced the gross square footage of the Improvements, gross square footage shall be measured as of the day immediately prior to any such calamity. In the event of condemnation of any of the Improvements, gross square footage shall be measured as of the day immediately prior to any such taking; and

(ii) For any Redeveloper Property utilized for dedicated public open space purposes, such as parks, landscaping, plazas or walkways, that are permitted by the Plan and this Agreement and which have received a Certificate of Occupancy, one hundred percent (100%) of the gross square footage of such area as is devoted to such open space use.

WRAP: Workable Relocation Assistance Program as defined by the New Jersey Relocation Assistance Law of 1967, N.J.S.A. 52:31B-5 *et. seq.*

ARTICLE 3: THE REDEVELOPMENT PROJECT

3.01 Conditions Precedent

(A) To the extent that the actions of Caldwell in authorizing this Agreement have been conditioned upon the need for other entities to take actions outside of the control of Caldwell, those elements of this Agreement that could not be authorized without those actions shall not be considered in force or effect unless and until those actions have been taken by the bodies authorized to do so. Consistent with such limitation, all affected elements of this Agreement shall not be in force and effect unless and until the actions set forth in Exhibit B-1 of this Agreement have been fully approved by the appropriate bodies. If any such action is not fully approved by the date for such approval that is set forth in Exhibit B-1, this Agreement shall be terminated as of that date, without any action by either Party.

3.02 Permitted Interim Uses

(A) The Redevelopment Property may only be developed for the interim uses set forth in Exhibit B-2 of this Agreement, provided that such interim uses are permitted by the Plan.

3.03 Permitted Permanent Uses

(A) The Redevelopment Property may only be developed for the permanent uses set forth in Exhibit B-3 of this Agreement, provided that such permanent uses are permitted by the Plan.

3.04 Maximum Height, Bulk and Parking

(A) The Redevelopment Property may only be developed to the maximum and minimum heights and bulks set forth in Exhibit B-4 of this Agreement, provided that they are within the minimum and maximum heights and bulks set forth in the Plan.

(B) The Redevelopment Property shall contain the minimum parking required by the Plan, but in no event shall the number of parking spaces exceed 120% of the minimum parking required by the Plan.

3.05 Project Description

(A) The Project that is the subject of this Agreement is described in detail in Exhibits B-5 (Narrative Description) and B-6 (Concept Plan) of this Agreement.

3.06 Development Schedule

(A) The Project shall be constructed in accordance with the schedule for development that is set forth in Exhibit C of this Agreement.

(B) Compliance with the Development Schedule is a material obligation of the Redeveloper. Failure to achieve any of the required milestones within the timeframes required by this Agreement shall be sufficient for Caldwell to determine that the Redeveloper is in default of its obligations under this Agreement, subject to appropriate notice and opportunity to cure as set forth in Article 9 of this Agreement.

ARTICLE 4: OBLIGATIONS OF THE REDEVELOPER

4.01 Agreement to Develop

(A) The Redeveloper agrees to construct the Project in accordance with the terms of this Agreement in accordance with schedule for development set forth herein.

4.02 Duties of Redeveloper

Redeveloper shall perform the following duties as part of its obligations under this Agreement:

(A) Retain various professionals, who have, among other things, reviewed the needs and estimates of the Project.

(B) Conduct environmental reviews and tests on the Area.

(C) Acquire properties not already owned by Redeveloper to complete the assemblage of the Redeveloper Property at the times and otherwise in accordance with the terms hereof, and to acquire further real estate beyond the Redeveloper Property, if necessary for the completion of the Project. To the extent that Redeveloper is unable to acquire necessary property, it shall request that Caldwell acquire any non-residential property by Eminent Domain if Caldwell is legally able to do so and is not prohibited by this Agreement.

(D) Cause to be prepared and filed such Governmental Application as may be necessary and appropriate for the purpose of obtaining any and all Governmental Approvals required to complete the Project. All of the Governmental Applications shall be in conformity with the Plan, this Agreement, and any and all Federal, State, County, and municipal statutes, laws, ordinances, rules and regulations applicable thereto.

(E) Undertake Improvements as set forth herein.

(F) Cooperate with and assist in the formation of one or more written agreements and such other endeavors Caldwell deems prudent with the NJDEP, NJ Transit, NJDOT, Other Redevelopers and any other necessary parties required to effectuate the Project.

(G) Assist with and participate in a coordinated defense in the event of litigation against the Project, the Area, or the Plan, and in connection therewith make such corrections or additions to this Agreement as are necessary for that defense.

(H) Upon completion of the Project, take action to cause the provisions of N.J.S.A. 39:5A-1 et seq, entitled *Motor Vehicle and Traffic Regulation*, be made applicable to the private roads, streets and driveways within the Project thereby vesting in Caldwell the police power to enforce such laws and regulations as applicable thereto.

(I) Work cooperatively with the Other Redevelopers to cause redevelopment in the Area.

4.03 Representations and Warranties by Redeveloper

Redeveloper hereby makes the following representations and warranties:

(A) Redeveloper has the legal capacity to enter into this Agreement and perform each of the undertakings set forth herein with respect to implementing the Project pursuant to the Redevelopment Plan as of the date of this Agreement.

(B) Redeveloper is duly organized and a validly existing legal entity under the laws of the State, and all necessary resolutions have been duly adopted to authorize the execution and delivery of this Agreement and to authorize and direct the persons executing this Agreement to do so for and on Redeveloper's behalf. Disclosure of the organizational structure, owners of an interest in the Redeveloper of 10% or more and of the persons responsible for management of Redeveloper is set forth in Exhibit D of this Agreement (Redeveloper Structure and Ownership).

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

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

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

(F) There is no action, proceeding or investigation now pending, nor any basis therefor, known or believed by Redeveloper to exist, (i) which questions the authority of Redeveloper to enter into this Agreement or relating to any action taken or to be taken by Redeveloper pursuant to this Agreement; or (ii) is likely to result in a material adverse change in Redeveloper's property, assets, liabilities or condition that will materially and substantially impair its ability to perform its

obligations under, or would otherwise materially affect any of Redeveloper's representations or warranties made, all pursuant to the terms of this Agreement.

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

(H) All material information submitted by Redeveloper to Caldwell and its agents, is true and correct in all material respects. Redeveloper acknowledges that the facts and representations contained in the information submitted by Redeveloper to Caldwell constitute a material factor in the decision of Caldwell to enter into this Agreement.

(I) Redeveloper is financially and technically capable of developing, designing, financing and constructing the Project.

(J) Redeveloper will continue to work cooperatively with the Other Redevelopers to fulfill the terms of this Agreement and the Other Redevelopment Agreements and to cause the redevelopment of the Area in accordance with the Plan.

4.04 Redeveloper Covenants

The covenants imposed upon Redeveloper, including its successors and assigns, until a Certificate of Completion issues, are:

(A) In connection with its use or occupancy of the Project, not effect or execute any covenant, agreement, lease, conveyance or other instrument whereby the Area 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 familial status, and Redeveloper, including its successors and assigns, shall comply with all Applicable Laws prohibiting discrimination or segregation by reason of age, race, color, creed, religion, ancestry, national origin, sex or familial status.

(B) Comply with the applicable provisions and public purposes of the Act and all obligations under this Agreement and at all times develop, design, finance, construct and operate the Project or cause the Project to be developed, designed, financed, constructed and operated pursuant to the conditions and requirements of Applicable Laws, Governmental Approvals, this Agreement and the Plan, and shall construct no other use except that established in the Plan.

(C) In order to effectuate the purposes of this Agreement, make, execute, acknowledge and deliver any contracts, orders, receipts, writings and instructions with any other persons, firms or corporations and in general do all things which may be requisite or proper for the construction and development of the Project in accordance with this Agreement, the Plan, Governmental Approvals and Applicable Laws.

(D) Use diligent efforts to obtain all Governmental Approvals requisite to the construction and development of the Project.

(E) Upon completion of the development and construction of the Project, use diligent efforts to obtain all Governmental Approvals authorizing the occupancy and uses of the Project for the purposes contemplated herein.

(F) Not suspend or discontinue the performance of its obligations under this Agreement (other than in the manner provided for herein) for any reason, including, without limitation, any acts or circumstances that may constitute failure of consideration, commercial frustration of purpose, or any damage to or destruction of the Project.

(G) Undertake and diligently pursue on a continuous basis the construction and development of the Project.

(H) Not encumber, hypothecate or otherwise use the Project, or any part thereof, as collateral for an unrelated transaction without the express written consent of Caldwell.

(I) During construction of the Project, keep debris and/or waste materials containerized and/or stored and disposed of within normal industry standards.

(J) Cause the Project to be developed, designed, financed and constructed at Redeveloper's sole cost and expense.

(K) Immediately notify Caldwell of any material change in its financial condition from the information provided to Caldwell if such change will materially impair Redeveloper's ability to perform its obligations pursuant to the terms of this Agreement.

(L) Make all payments in satisfaction of Redeveloper's financial obligations as set forth in this Agreement.

(M) Keep and maintain in good condition any Improvements or Infrastructure Improvements required under the Governmental Approvals, including but not limited to any landscaping required to be planted.

4.05 Effect and Duration of Redeveloper Covenants

(A) It is intended and agreed that the agreements and covenants set forth in Article 4 of this Agreement shall be covenants running with the land and that they shall, in any event, and without regard to technical classification or designation, legal or otherwise, and except only as otherwise specifically provided in this Agreement, be binding, to the fullest extent permitted by law and equity, for the benefit and in favor of, and enforceable by, Caldwell or Caldwell's successors and assigns, against Redeveloper, and Redeveloper's successors and assigns and every successor in interest therein, and against any party in possession or occupancy of the Project or any part thereof.

4.06 Fees and Charges

(A) In consideration of the actions required to be taken by Caldwell in the furtherance of the development expected as a result of this Agreement, the Redeveloper agrees to pay an annual Redevelopment Fee (the "Fee") to Caldwell as set forth in Exhibit E of this Agreement. For 2021,

the Fee shall be based on an annual charge of _____ per square foot of land area for which the Redeveloper has been designated by this Agreement, as set forth in Exhibit A-1. For each year after 2021, the annual rate of the Fee shall increase by 3.15%. Such Fee shall be payable to the Caldwell in advance in annual installments no later than January 10 of each year. The Fee for the year in which this Agreement is executed shall be payable in full on the Effective Date. If the Redeveloper had paid an administrative fee pursuant to a prior redeveloper agreement between the Caldwell and the Redeveloper, the Fee for the year in which this Agreement is executed shall be reduced by the application of a credit for that portion of the prior administrative fee as was applicable to the year in which this Agreement was executed.

During the term of this Agreement, the Fee shall be reduced at the rate per square foot as is then in effect for the Fee for all land area on which the final permanent development required by this Agreement has been completed. Fee payments shall be prorated to reflect the actual dates at which the completed development receives both a Certificate of Occupancy and a Certificate of Completion.

(B) To the extent that the Redeveloper seeks to transfer or assign ownership of the Project to another entity, the Redeveloper agrees to pay to the Caldwell a Transfer Fee in an amount equal to the annual Redevelopment Fee then in effect for the Project with such cost to be payable to Caldwell at the time of the request for such transfer or assignment. Such Transfer Fee shall be payable in addition to the payment of the normal annual Redevelopment Fee for the Project, and shall be payable whether or not Caldwell consents to the requested transfer or assignment.

(C) (i) In addition to the foregoing, the Redeveloper shall reimburse Caldwell for any and all out-of-pocket costs of whatever nature which may be incurred by the Caldwell in connection with the Property and/ or the Project (the "Caldwell Costs"). The Caldwell Costs shall include, but not be limited to consultants' fees (including but not limited to fiscal impact, planning, traffic, real estate and environmental consultants) in connection with the designation of the Redeveloper as redeveloper of the Property, the preparation and negotiation of this Agreement, the master planning and coordination of traffic, parking or other studies affecting all or any portion of the Redevelopment Area, the Planning Board and any other governmental approval process (excluding any fees paid from Planning Board escrows), all work associated with modifications to the Redevelopment Plan as necessary to meet requirements imposed by the Federal, state or county governments and all work associated with the provision of public open space serving the Redevelopment Area.

(ii) The Caldwell Costs also include but are not limited to (a) the reasonable fees and expenses of the Caldwell's attorneys; (b) the reasonable fees and expenses of Caldwell's policy advisor, and (c) the reasonable fees and expenses of Caldwell's planning consultant.

(iii) All costs incurred by or on behalf of Caldwell in connection with the Project and/or the Property shall be paid to Caldwell within 30 calendar days after Redeveloper's receipt of an invoice from Caldwell detailing the amount and the basis therefor.

(iv) To the extent any of the foregoing expenses (such as the cost of a traffic study) relate to the Property and other properties in the Redevelopment Area, Redeveloper shall pay a pro rata

share based upon the acreage of the Property as it relates to the acreage of all properties affected by the particular Caldwell action.

(D) In order to insure the prompt payment of all reimbursements arising from the terms of section 4.06(C) above, the Redeveloper shall, at the time of the execution of this Agreement, deposit with Caldwell the initial amount set forth on the attached Exhibit H (“Escrow Fund”). Caldwell shall be authorized to draw such sums as are payable pursuant to section 4.06(C) in accordance with the terms of Exhibit H. The Redeveloper further agrees that the Redeveloper shall make payment to Caldwell of an amount that is sufficient to replenish the escrow account at such times and in such amounts as are set forth in Exhibit H. Failure to replenish the escrow account in a timely manner shall be an event of default under this agreement.

(E) The Redeveloper agrees that Caldwell shall have a lien on the Redeveloper Property for any fees or expenses that are due from the Redeveloper under this Agreement, which lien shall be of no further force or effect as to any portion of the Redeveloper Property for which a Certificate of Completion has been issued pursuant to Article 10 of this Agreement.

4.07 Affordable Housing

(A) To the extent the Project undertaken by Redeveloper under this Agreement results in a legal obligation on the Caldwell to provide affordable housing units under any statute, regulation or otherwise, including but not limited to the regulations of the New Jersey Department of Community Affairs (hereinafter, the “Affordable Housing Laws”) Redeveloper shall, at its sole cost and expense, provide such affordable housing units within Caldwell within the time required by the Affordable Housing Laws or, at the option of Caldwell, pay to Caldwell such sum as may be needed to provide such affordable housing.

(B) To the extent the Project undertaken by Redeveloper under this Agreement does not result in a legal obligation on the Caldwell to provide affordable housing units under any statute, regulation or otherwise, including but not limited to the regulations of the New Jersey Department of Community Affairs (hereinafter, the “Affordable Housing Laws”) the Redeveloper shall make a payment to the Caldwell Affordable Housing Trust Fund. Such payment shall be in the amount which is determined in accordance with the ordinance of the Borough as in is effect as of the time of the execution of this Agreement.

4.08 No Public Actions for Delinquent Project

(A) At any time that any action by Caldwell is requested by the Redeveloper or is required by the Project, including, without limitation, such actions as the approval or amendment of a Redeveloper Agreement, a Financial Agreement, a site plan, a zoning variance or a grant application, or the issuance of any bonds or notes or of any permit or license, the Chief Financial

Officers of Caldwell shall certify that the Redeveloper is current in the payment of all of its financial obligations for the project, including, without limitation, the payment of taxes, payments in-lieu of tax, water or sewer charges, license or permit fees, Redevelopment Fees, reimbursements for professional fees or any other fee or charge due to Caldwell. To the extent that such certifications cannot be made because of the presence of an outstanding obligation of any type, Caldwell shall not take any action as requested or required until such time as the obligations are satisfied and the appropriate certifications are issued. Such refusal to act shall not be the sole remedy available under this Agreement, but rather shall be in addition to any other actions available at law or in equity to Caldwell.

ARTICLE 5: OBLIGATIONS OF CALDWELL

5.01 Designation and Authorization of Redeveloper

Caldwell hereby designates the Redeveloper as the redeveloper for the Project and authorizes the Redeveloper to take all actions as are contemplated by this Agreement

5.02 Duties of Caldwell

Caldwell has performed and shall, under this Agreement, continue to perform the following duties in furtherance of carrying out the Plan and in assisting Redeveloper in carrying out its Project:

(A) Where legally possible, exercise the powers of Eminent Domain as necessary to acquire non-residential properties within the Area to the extent Redeveloper is unable to reach agreement to purchase property to complete the assemblage of the Redeveloper Property. In connection with all such property, Caldwell shall retain appraisers and other professionals to assist in such acquisitions at the expense of the Redeveloper. To the extent that Redeveloper cannot acquire any part of the required property within the time required to permit the Project to be completed on schedule, and Caldwell determines, in its sole discretion, that it is not able to acquire the property by Eminent Domain, Caldwell may choose to terminate the Agreement by notice given in accordance with Section 14.01 of this Agreement.

(B) Assist in relocation of owners and tenants on behalf of Redeveloper on Redeveloper Property, pursuant to a WRAP in accordance with the Act.

(C) Support the Redeveloper in connection with requests to expedite the review and approval by the Planning Board, of specific site plans for the Project provided that such site plans (i) conform to the guidelines of the Plan and this Agreement and (ii) are first conceptually approved by the Caldwell.

(D) Jointly with Redeveloper apply for, develop and negotiate agreements with the NJDEP for grants and necessary approvals of projects related to the Project but only to the extent that (i) Caldwell is required to join in such applications or agreements in order for such grants or approvals to be obtained, and (ii) such grants or approvals do not impose any obligation or cost on Caldwell.

(E) Jointly with Redeveloper apply for, develop and negotiate agreements with the NJDOT for

grants and necessary approvals of projects related to the Project, but only to the extent that (i) Caldwell is required to join in such applications or agreements in order for such grants or agreements to be obtained, and (ii) such grants or approvals do not impose any obligation or cost on Caldwell.

(F) Support the Redeveloper's efforts to have Caldwell issue permits and cooperate with outside agencies requiring Caldwell's consent for the construction and rehabilitation of the Improvements or Infrastructure Improvements to be undertaken by Redeveloper within the Area as part of the Project, provided that such Improvements or Infrastructure Improvements do not require any contributions from Caldwell.

(G) Refrain from designating any entity other than Redeveloper as redeveloper for any portion of the Redeveloper Property unless explicitly authorized to do so by the terms of this Agreement.

(H) Assist with and participate in a coordinated defense, and/or corrections or additions to, any challenge to the Plan, the Project, the Area, or this Agreement.

5.03 Representations and Warranties by Caldwell

Caldwell hereby makes the following representations and warranties:

(A) Caldwell has the full legal power, right and authority to enter into this Agreement and the instruments and documents referenced herein to which Caldwell is a party, to consummate the transactions contemplated hereby, including without limitation all actions as Redevelopment Entity, to take any steps or actions contemplated hereby, and to perform their obligations hereunder, and all Caldwell Official Actions necessary therefor have been duly adopted by CALDWELL and remains in full force and effect.

(B) This Agreement has been duly executed and delivered by Caldwell, and is valid and legally binding upon Caldwell and enforceable in accordance with its terms on the basis of Applicable Laws currently in effect, and the execution and delivery thereof shall not, with due notice or the passage of time, constitute a default under or violate the terms of any indenture, agreement or other instrument to which Caldwell is a party or Applicable Laws to which it or its properties are subject.

(C) No proceedings have been filed under the provisions of the United States Bankruptcy Code or other similar statute applicable to Caldwell, and no indictment has been returned against any official of Caldwell with respect to any transaction contemplated by the terms of this Agreement.

(D) There is no action, proceeding or investigation now pending, nor any basis therefore, known or believed by Caldwell to exist, (i) which questions the authority of Caldwell to enter into this Agreement or relating to any action taken or to be taken by Caldwell pursuant to this Agreement; or (ii) that will materially and substantially impair the ability of Caldwell to perform its obligations under, or would otherwise materially affect any of Caldwell's representations or warranties made, all pursuant to the terms of this Agreement.

(E) All material information submitted by Caldwell to Redeveloper and its agents is true and correct in all material respects.

(F) Caldwell will continue to work cooperatively with the Other Redevelopers to fulfill the terms of this Agreement and the Other Redevelopment Agreements and cause the redevelopment of the Area in accordance with the Plan.

ARTICLE 6: DEVELOPMENT DENSITY OBLIGATIONS

6.01 Development Density Requirements

For purposes of this Agreement, this Article is intentionally left blank and is of no force or effect.

ARTICLE 7: INSURANCE AND INDEMNIFICATION

7.01 Insurance Requirements

(A) At all times during construction of the Project, and until the Project is available for its intended use and Certificates of Occupancy are issued in accordance with the provisions herein, Redeveloper shall maintain at its own cost and expense the following kinds and amounts of insurance with respect to the Project, with such variations as may reasonably be required to conform to customary insurance practice and which insurance at Redeveloper's option may be issued in "blanket coverage" format:

(i) Builder's Risk Insurance for the benefit of Redeveloper, Caldwell, 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, 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; and

(ii) Commercial General Liability Insurance (including coverage for any construction on or about each lot, plot, parcel or part of the Redeveloper Property) against claims for bodily injury, death or property damage occurring on, in or about the Redeveloper Property and the adjacent streets, sidewalks and passageways, in amounts not less than \$10,000,000 for each claim with respect to any bodily injury or death, \$10,000,000 with respect to any one occurrence and \$2,000,000 with respect to all claims for property damage relating to any one occurrence; and

(iii) Comprehensive Automobile Liability Insurance covering all owned, hired and non-owned vehicles with at least the following limits of liability: Bodily Injury Liability and Property Damage Liability - \$1,000,000 combined single limit per occurrence; and

(iv) Worker's compensation insurance coverage in the amount of the full statutory liability of Redevelopment; and

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

7.02 Proof of Insurance

(A) Redeveloper shall submit to Caldwell proof of all applicable insurance. The policies of insurance required to be maintained by Redeveloper shall name as the insured parties (except for worker's compensation insurance) Redeveloper, Caldwell, as their respective interests may appear, and shall be reasonably satisfactory to Caldwell. Redeveloper shall also furnish or cause to be furnished to Caldwell evidence satisfactory to the Caldwell that Redeveloper and any contractor with whom it has contracted for the construction of the Project carries workers' compensation insurance as required by law, and an employer's liability insurance endorsement with customary limits, and shall be endorsed with a waiver of subrogation clause for Caldwell.

7.03 Insurance Company Requirements

(A) All insurance policies required by this Section shall be obtained from insurance companies licensed in the State of New Jersey and rated at least A and a financial size rating of at least VIII, each in Best's Insurance Guide.

7.04 Other Insurance Requirements

(A) All insurance policies required hereunder shall be kept in force until a Certificate of Completion is issued.

(B) All insurance policies required by this Section shall be non-assessable and shall contain language to the effect that (i) the policies are primary and noncontributing with any insurance that may be carried by Caldwell, (ii) the policies cannot be canceled or materially changed except after thirty (30) days written notice by the insurer to Caldwell, (iii) Caldwell shall not be liable for any premiums or assessments (iv) any loss will be payable to Caldwell, notwithstanding any act or negligence of Redeveloper which might otherwise result in forfeiture of said insurance, and (v) the coverage afforded thereby must not be affected by the performance of any work in or about Redeveloper Property.

(C) All such insurance shall have deductibility limits satisfactory to Caldwell. Redeveloper shall be responsible to pay any deductible amount under all insurance policies.

7.05 Blanket Policies

(A) Nothing in this Article shall prevent Redeveloper from purchasing insurance of the kind and in the amounts and with companies provided for this Article 7 under a blanket insurance policy or policies which can cover other properties as well as the Property; provided, however, that any such policy of insurance (i) specify therein, or Redeveloper shall furnish Caldwell with a written statement from the insurers under such policies specifying the amount of the total insurance allocated to the Project, which amount will not be less than the amount required by this Article, and (ii) not contain any clause which would result in the insured thereunder being required to carry

insurance with respect to the property covered thereby in an amount equal to a minimum specified percentage of the full insurable value of such property in order to prevent the insured therein named from becoming a co-insurer of any loss with insurer under such policy.

7.06 Indemnification

(A) Redeveloper covenants and agrees, at its expense, to pay and to indemnify, protect, defend and hold the Indemnified Parties harmless from and against all liability, losses, damages, demands, costs, claims, lawsuits, administrative proceedings, fines, penalties, and expenses (including reasonable attorneys' fees and court costs) of every kind, character and nature resulting, wholly or partially, from (i) the condition, use, possession, conduct, management, planning, design, acquisition, construction, installation, financing, leasing or sale of the Redeveloper Property or any improvements thereon and/or (ii) the performance or any failure or delay of performance of this Agreement, any of which is the result of action or inaction by the Redevelopment, its agents, servants, employees or contractors including but not limited to, (a) the death of any person or any accident, injury, loss, and damage whatsoever to any person or to the property of any person that shall occur on or adjacent to the Redeveloper Property and that results, wholly or partially, from any negligence or willful misconduct of the Redevelopment, its agents, servants, employees or contractors, or (b) any lawsuit or other proceeding commenced by any Person, except Redeveloper, because of action(s) or omissions of Caldwell, their commissioners, employees, agents, representatives and elected officials taken in good faith in fulfillment of their responsibilities in connection with the Project or this Agreement.

(B) Redeveloper shall defend, indemnify and hold harmless the Indemnified Parties and their officers, agents, employees, contractors, and consultants from any liability, losses, damages, demands, costs, claims, lawsuits, administrative proceedings, fines, penalties, and expenses (including attorneys' fees and court costs) of every kind, character and nature resulting, wholly or partially, from any failure to comply with Environmental Laws by Redeveloper and/or its agents, servants, employees or contractors at the Redeveloper Property or elsewhere and from any release or releases of any Hazardous Substance on, in, under or from the Redeveloper Property during or after the term of this Agreement resulting from any improper performance or non-performance of Redeveloper's obligations under this Redevelopment Agreement by Redeveloper, its agents, servants, employees, or contractors.

(C) In any situation in which a Indemnified Party is entitled to receive and desires the indemnification by the Redeveloper, the Redeveloper shall resist and defend any action or proceeding on behalf of the Indemnified Party, including the employment of counsel reasonably acceptable to the Indemnified Party and the payment of all expenses. These obligations of Redeveloper may be performed by an insurer of Redeveloper to the extent coverage has been acquired. The Indemnified Party shall have the right to consent to any settlement negotiated by Redeveloper. Notwithstanding that right of consent, Redeveloper shall have the right to settle any such action on terms it solely deems appropriate provided that a full release of the Indemnified Party is obtained and no admission of liability by the Indemnified Party is required.

7.07 Survival of Indemnity

(A) This indemnity shall survive the termination of this Redevelopment Agreement if same is terminated prior to the expiration of the survival period, and shall run with the land.

ARTICLE 8: PUBLIC IMPROVEMENTS, UTILITIES AND INFRASTRUCTURE IMPROVEMENTS

8.01 Endorsement of Applications

(A) Caldwell shall endorse any and all applications, permits, or similar documents as may be required by Caldwell, the county, the State, or any agency, entity, governing body, or other municipality having jurisdiction over Infrastructure Improvements, if any, not later than thirty (30) days after receipt of such documents by Caldwell for endorsement, provided that such documents are acceptable to Caldwell in both form and substance.

8.02 Permits

(A) Redeveloper shall obtain all required permits from the Caldwell and any other governmental agency with jurisdiction over such work before commencement of the Infrastructure Improvements. Redeveloper, where applicable, will cause its contractors, vendors and/or utility companies to post bonds and/or payment and performance guarantees, sufficient to ensure completion of the work, as well as maintenance bonds for such periods as required by the agency or agencies issuing such permits. The bonds and performance guarantees shall provide that the contractor(s) undertaking work shall name Caldwell as a third-party beneficiary. Performance bonds should remain in force until the completion of all construction. Maintenance bonds shall be in effect for a period of at least two years, commencing on the later of the date the Infrastructure Improvements are accepted in writing as complete from the Redeveloper or the date on which such Infrastructure Improvements are approved by the Caldwell.

8.03 Traffic and Safety

(A) Redeveloper shall implement traffic and safety controls and measures during construction of Infrastructure Improvements. When necessary, Redeveloper shall secure the services of police personnel for traffic control during construction, the costs of which shall be borne solely by the Redeveloper.

8.04 Notice to Affected Parties

(A) Redeveloper shall provide proper notice to all property owners or other parties that may, in any way, be affected during construction of the Infrastructure Improvements, whether directly, such as by the temporary loss of utilities, or indirectly such as inconvenience to access to a property during construction periods.

8.05 Coordination of Activities

(A) Redeveloper shall coordinate the involvement of and collaborate with any governmental bodies, authorities, utility companies, federal, State or county agencies, or the like which may have jurisdiction over the Infrastructure Improvements, as well as with the Other Redevelopers who

may be affected by the construction or operation of the Infrastructure Improvements.

ARTICLE 9: DEFAULT AND TERMINATION

9.01 Termination for Failure to Achieve Conditions Precedent

(A) To the extent that the conditions precedent set forth in Section 3.01 have not been met as of the deadline for that to occur, this Agreement shall be terminated automatically, without the need for any action by either Party.

9.02 Events of Default

(A) Any one or more of the following shall constitute an Event of Default hereunder, subject to Force Majeure and tolling as provided elsewhere in this Agreement:

(i) Failure of Redeveloper to meet the deadline for the accomplishment of any of the milestones required pursuant to Section 3.06 of this Agreement

(ii) Failure of the Redeveloper to meet its Development Density obligations as set forth in Article 6 of this Agreement.

(iii) Failure of Redeveloper or Caldwell to observe and perform any other covenant, condition, representation, warranty or agreement (other than those specifically provided for elsewhere in this Agreement) hereunder, and continuance of such failure for a period of thirty (30) days, after receipt by the defaulting party of written notice from the non-defaulting party specifying the nature of such failure and requesting that such failure be remedied; provided, however, if the breach of any such covenant, condition or agreement is one which cannot be completely remedied within the thirty (30) days after such written notice has been given, it shall not be an Event of Default as long as the defaulting party is proceeding with due diligence to remedy the same as soon as practicable but in no event later than one hundred twenty (120) days after such written notice.

(iv) Any of the following have occurred:

(a) Redeveloper shall have applied for or consented to the appointment of a custodian, receiver, trustee or liquidator of all or a substantial part of its assets;

(b) a custodian shall have been legally appointed with or without consent of Redeveloper;

(c) Redeveloper, has made a general assignment for the benefit of creditors; or has filed a voluntary petition in bankruptcy or a petition or an answer seeking an arrangement with creditors or has taken advantage of any insolvency law;

(d) Redeveloper has filed an answer admitting the material allegations of a petition in any bankruptcy or insolvency proceeding;

(e) Redeveloper shall take any action for the purpose of effecting any of the foregoing;

(f) a petition in bankruptcy shall have been filed against Redeveloper, and shall not have been dismissed for a period of ninety (90) consecutive days;

- (g) an Order for Relief shall have been entered with respect to or for the benefit of Redeveloper, under the Bankruptcy Code;
- (h) an Order, Judgment or Decree shall have been entered, without the application, approval or consent of Redeveloper, by any court of competent jurisdiction appointing a receiver, trustee, custodian or liquidator of Redeveloper, or a substantial part of its assets and such order, judgment or decree shall have continued unstayed and in effect for any period of ninety (90) consecutive days;
- (i) Redeveloper shall have suspended the transaction of its usual business or
- (j) Caldwell shall have be involved in any proceeding regarding Caldwell under the United States Bankruptcy Code or other similar statute.

(v) Redeveloper shall fail to pay any real estate taxes, assessment, or as applicable and in lieu thereof, PILOT, when due; or Redeveloper shall fail to pay any other payments required under this Agreement or any agreement executed in connection herewith, or either of Redeveloper or Caldwell shall place on Redeveloper Property any encumbrance or lien unauthorized by this Redevelopment Agreement, or shall suffer any levy or attachment to be made thereon, or any material men's or mechanics' lien to be made thereon, and such real estate taxes or assessments, or PILOT, or other payment, as applicable, shall not have been paid, or the encumbrance or lien removed or discharged or provision made in a manner satisfactory to the non-defaulting Party for such payment, removal, or discharge, within sixty (60) days after written demand by the non-defaulting Party to do so.

(vi) There is, in violation of this Redevelopment Agreement (i.e., unless specifically permitted, which if the case, shall not give rise to an Event of Default under any circumstances), a transfer or assignment of the rights, duties and obligations of the Parties hereunder, as prohibited by Article 12 hereof.

9.03 Remedies Upon Event of Default

(A) Upon the occurrence of an Event of Default for failure to meet its Development Density obligations, Caldwell shall have the remedies as set forth in Article 6 of this Agreement, as well as those set forth in the other parts of this Section 9.2.

(B) Upon the occurrence of an Event of Default for any reason, including for failure to meet its Development Density obligations:

(i) Whenever any Event of Default of Redeveloper shall have occurred and be continuing, Caldwell may terminate this Agreement and revoke Redeveloper's designation as redeveloper for all or a portion of the Redeveloper Property, or take whatever action at law or in equity as may appear necessary or desirable to enforce the performance or observance of any rights, or remedies of CALDWELL, or any obligations, agreements, or covenants of Redeveloper under this Redevelopment Agreement. Such termination shall not relieve the Redeveloper of any of its obligations to make payments to the Caldwell or the Caldwell as may exist as of the time of the termination.

(ii) Whenever any Event of Default of Caldwell shall have occurred and be continuing, Redeveloper may terminate this Agreement or take whatever action at law or in equity as may

appear necessary or desirable to enforce the performance or observance of any rights, or remedies of Redeveloper, or any obligations, agreements, or covenants of Caldwell under this Redevelopment Agreement.

(C) Specific Performance

(i) If so desired by the non-defaulting Party, the non-defaulting Party shall have the right to cause a court of competent jurisdiction to order the defaulting Party to specifically perform the action or actions which gave rise to the Event of Default.

(D) Use of Documents - Redeveloper hereby agrees that Caldwell may use all documents filed or prepared by Redeveloper in support of the Project, including but not limited to the Governmental Applications, to complete the Project following an Event of Default caused by Redeveloper, without cost to or liability to Caldwell.

9.04 No Waiver Due To Failure or Delay in Exercising Rights

(A) Except as otherwise expressly provided in this Agreement, any failure or delay by either party in asserting any of its rights or remedies as to any default, shall not operate as a waiver of any default, or any such rights or remedies, or deprive either such party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

9.05 Remedies Cumulative

(A) No remedy conferred by any of the provisions of this Agreement is intended to be exclusive of any other remedy and each and every remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. The election of any one or more remedies shall not constitute a waiver of the right to pursue other available remedies.

ARTICLE 10: COMPLETION OF PROJECTS

10.01 Completion of Projects (Or Phases Thereof)

(A) The Parties acknowledge that the implementation of the Project on a development parcel larger than five acres may be done in multiple phases. References to a “phase” of a Project, shall mean a portion of the Project which is capable of independent operation (vis-à-vis the remainder of the Project). Redeveloper agrees that the expeditious completion of each phase is of critical concern to Caldwell, and Redeveloper agrees to abide by the Development Density obligations set forth in Article 6, if applicable to this Project.

10.02 Certificate of Occupancy and Certificate of Completion

(A) A Certificate of Occupancy for the Project or any phase thereof can be obtained regardless of whether Caldwell shall have issued a Certificate of Completion for such Project or phase so long as such Project or such phase thereof shall meet Caldwell’s requirements for the issuance of the

Certificate of Occupancy.

10.03 After Completion of the Project (Or a Phase Thereof)

(A) Upon the completion of the Project or any phase in accordance with the provisions of this Agreement, Caldwell will furnish Redeveloper a Certificate of Completion. Caldwell's issuance of a Certificate of Completion shall be deemed a conclusive determination by Caldwell that the obligations of Redeveloper under this Agreement as to such Project or phase shall have been satisfied in all material respects.

10.04 Effect of Certificate of Completion

(A) Upon the issuance of a Certificate of Completion by Caldwell for the Project or phase, the provisions of this Agreement shall no longer encumber the Redeveloper Property upon which the Project or phase is constructed. Accordingly, subject to the limitations that may be imposed by all other documents affecting the Redeveloper Property, including without limitation deeds and the covenants therein, declarations, certifications, financial agreements, bond documents, etc., Redeveloper shall have the right to transfer any interest in the portion of the Redeveloper Property for which the Certificate of Completion was issued, including any Improvements thereon, without any limitations as may have been created by this Agreement.

(B) Caldwell, at any time after its issuance of a Certificate of Completion for the Project or phase, shall within thirty (30) days following receipt of a written request by Redeveloper, execute and deliver to Redeveloper and/or a third party designated by Redeveloper an instrument in which it affirms that the Certificate of Completion has been issued.

10.05 Estoppel Certificates

(A) Caldwell, at any time prior to its issuance of a Certificate of Completion for the Project or phase shall within thirty (30) days following receipt of a written request by Redeveloper, execute and deliver to Redeveloper and/or a third party designated by Redeveloper, an instrument in which it (i) certifies the then current terms of this Agreement and that those terms are in full force and effect; and (ii) states whether to the best of the knowledge of Caldwell, Redeveloper is in default of any of its obligations under this Agreement and specifying any such default or defaults of which Caldwell has knowledge; and (iii) confirms such other factual matters pertinent to this Agreement, as Redeveloper may reasonably request to be confirmed in order to enable Redeveloper to take actions related to the completion of the Project.

ARTICLE 11: EMPLOYMENT AND CONTRACTING REQUIREMENTS

11.01 Equal Employment Opportunity

(A) Redeveloper agrees that during construction of the Project, Redeveloper and all contractors and/or subcontractors engaged by the Redeveloper shall comply with the principles of equal employment opportunity as are set forth in Exhibit G of this Agreement.

11.02 First Source Employment

(A) Redeveloper shall make good faith efforts to employ and shall provide in its contracts with its contractors and subcontractors that they must make good faith efforts to employ residents of Caldwell in the construction of the Project. To the greatest extent feasible, Redeveloper shall ensure that residents of Caldwell are employed in the construction and operation of the Project. Redeveloper agrees to cooperate with Caldwell or its designee in developing a plan to coordinate training programs and employment recruitment efforts for Caldwell residents. Redeveloper will cooperate with efforts to recruit Caldwell residents for all employment opportunities in connection with the Project, including participation in Caldwell job fairs or similar events. Redeveloper agrees to meet with appropriate Caldwell officials to determine the status of recruitment and training efforts, and to plan future employment training and recruitment activities. All contracts entered into by Redeveloper for the construction of the Project shall contain appropriate language to effectuate this provision. Redeveloper shall submit quarterly reports to Caldwell regarding compliance with this Section. In addition, Redeveloper agrees that it shall include within its contracts with contractors and subcontractors the right for Redeveloper to terminate such contracts if the contractors and subcontractors are not in compliance with this Section.

11.03 Affirmative Action

(A) In addition to the requirements stated earlier in this Article, Redeveloper, during the construction of the Project covenants that it will comply with, and shall provide in its contracts with its contractors and subcontractors, the following:

(i) When hiring workers in each construction trade, or when engaging contractors, Redeveloper agrees to use its good faith efforts to employ Caldwell residents at a rate of 20% of all construction jobs. With respect to all permanent jobs created by the Project, Redeveloper agrees to use its good faith efforts to employ Caldwell residents at a rate of 20% of all jobs created.

(ii) Redeveloper will undertake a program of local preference to facilitate entering into contracts with and/or purchasing good and services from local merchants and businesses located within Caldwell.

(iii) Redeveloper shall at all times conform to the laws, regulations, policies of the Federal government, the State Government, and other governmental bodies with jurisdiction with respect to affirmative action and equal employment opportunities requirements.

11.04 Reporting

(A) Redeveloper and its contractors and subcontractors shall submit periodic reports regarding their compliance with this Article as Caldwell may reasonably require.

ARTICLE 12: ROHIBITION AGAINST ASSIGNMENT AND TRANSFER

12.01 Prohibition Against Transfers of Interests

(A) Redeveloper recognizes the importance of the Project to the general welfare of Caldwell and

that the identity of Redeveloper and its qualifications are critical to Caldwell in entering into this Agreement, particularly in view of the public assistance that has been or will be made available for the purpose of making such redevelopment possible. Caldwell considers that a transfer in full of the ownership in Redeveloper or of a substantial part thereof, or any other act or transaction involving or resulting in a significant change in the degree of ownership of or the identity of the parties in control of Redeveloper, unless specifically authorized by this Agreement, is for practical purposes a transfer or disposition of the Project then owned by Redeveloper. Redeveloper recognizes that it is because of its specific qualifications and identity that Caldwell is entering into this Agreement with Redeveloper, and, in so doing, Caldwell is relying on the capability of Redeveloper and not some other person or entity for the faithful performance of all undertakings and covenants to be performed by Redeveloper hereunder.

As a result, prior to completion of the Project as evidenced by the issuance of a Certificate of Completion, and without the prior written approval of Caldwell, unless specifically authorized elsewhere herein, Redeveloper agrees for itself and any successor in interest that:

(i) There shall be no transfer by any one or more owner of a controlling interest in Redeveloper, or by any successor in interest of such owner(s), of any interest in Redeveloper except due to death, in which case transfers to then existing Redeveloper officers, or family members of the deceased party are permissible;

(ii) No owner of Redeveloper or successor in interest shall make, or suffer to be made, any other change in the ownership of any equity interest in Redeveloper except as hereinabove provided, or with respect to the identity of the parties in control of Redeveloper or the relative degrees of their control, by any other method or means, whether by increased capitalization, merger with another corporate, partnership or limited liability entity, or otherwise. With respect to this provision, Redeveloper and the party(ies) signing this Agreement on behalf of Redeveloper represent that each party has authorization from all of its owners to agree to this provision on their behalf and to bind them with respect thereto. For the purpose of this Agreement, the term "owners" is defined to include the general partners of a partnership, the stockholders of a corporation or the members of a limited liability company.

12.02 Transfer of Redevelopment Agreement

(A) Redeveloper agrees for itself, its successors and assigns, that prior to the completion of the Project or any portion thereof, as evidenced by the issuance of a Certificate of Completion it will not make or create, or suffer to be made or created, any sale, assignment, conveyance, lease or transfer in any other mode or form (collectively, the "Transfers") of its interests in the Project or its interest in this Agreement, without the prior written approval of Caldwell, except as expressly provided herein.

12.03 Consent to Permitted Transfers

(A) Caldwell hereby consents, without the necessity of further approvals, to the following permitted transfers:

(i) To an urban renewal corporation duly formed in accordance with the Tax Exemption Law and controlled by Redeveloper; or

(ii) To a mortgage or related security granted by Redeveloper for the purpose of obtaining the financing necessary to enable Redeveloper to perform its obligations under this Agreement with respect to implementation of the Project; or

(iii) For any other liens or encumbrances granted by Redeveloper for the purpose of financing costs associated with the development, construction, and marketing of the Project. With respect to any of the transfers listed in this Section 12.03, Redeveloper shall provide to Caldwell written notice at least fifteen (15) days prior to such transfer, which notice shall include a description of the nature of such transfer, and the name(s) and address(es) of the transferee(s) and any parties, individuals and/or entities that are party to such transfer.

12.04 Prohibition Against Speculative Development

Because of the importance of the development of the Project to the general welfare of the Caldwell, Redeveloper represents and agrees that Redeveloper's undertakings pursuant to this Agreement are, and will be used, for the purpose of the implementation of the Project and not for speculation or any other purpose.

12.05 Information As To Ownership Of Redeveloper

(A) In order to assist in the effectuation of the purpose of this Article 12, Redeveloper agrees that during the period between the execution of this Agreement and the completion of the Project as evidenced by the issuance of a Certificate of Completion:

(i) Redeveloper will notify Caldwell in writing of any and all changes whatsoever in the ownership of any interest in Redeveloper, legal or beneficial, or of any other act or transaction involving or resulting in any change in such ownership or in the relative distribution thereof, or with respect to the identity of the parties in control of Redeveloper or the degree thereof, of which it or any of its officers or members have been notified or otherwise have knowledge or information, with such notice to be provided within seven (7) days after the time that the change took place; and

(ii) Redeveloper shall, at such time or times as Caldwell may reasonably request, but not more than once per quarter, furnish Caldwell with a complete statement subscribed and sworn to by a managing member of Redeveloper, setting forth a list of all owners of equity interests of Redeveloper and the extent of their respective holdings, and in the event any other parties have a beneficial interest in Redeveloper's entity, their names and the extent of such interest.

12.06 Approval Of Mortgages

(A) At any time that Redeveloper proposes to enter into a mortgage that would encumber the Redeveloper Property in any way, Redeveloper shall request approval of such action by the Caldwell in writing in advance of the execution of such mortgage. Caldwell agrees that its approval shall not be unreasonably withheld. Execution of any mortgage by the Redeveloper that

would encumber the Redeveloper Property without prior written Caldwell approval shall constitute a breach of this Agreement.

12.07 Notice Of Liens And Encumbrances

(A) If at any time, the Redeveloper becomes aware that any encumbrance or lien upon the Property has been created, whether by voluntary or involuntary act of the Redeveloper or by act of any other party, Redeveloper shall immediately notify Caldwell of such encumbrance or lien.

12.08 Obligations Of Mortgagee

(A) 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 the terms of this Agreement, including any such holder who obtains title to the Redeveloper Property or any part thereof as a result of foreclosure proceedings or action in lieu of foreclosure, 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, unless such obligations are specifically assumed in writing by such entity. 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 Redeveloper Property or any part thereof to any uses other than those uses permitted under the Plan, all Governmental Approvals and Applicable Law.

(B) The protections against the terms of this Agreement indicated in Section 12.08 (A) above shall only apply to the actual holders of a mortgage obtained directly from the Redeveloper and not to any other party who thereafter obtains title to Redeveloper Property or such part from or through any such actual holder or to any other purchaser at foreclosure sale of any of the rights of the actual mortgage holder.

12.09 Notice Of Default To Mortgagee And Right To Cure

Whenever Caldwell shall deliver any notice or demand to Redeveloper with respect to any breach or default by Redeveloper under this Agreement, Caldwell shall at the same time deliver to each lender and equity participant in Redeveloper a copy of such notice or demand, provided that Redeveloper has previously delivered to CALDWELL a written notice of the name and address of such lender and equity participant. Each such lender shall have the right after the receipt of such notice to the same amount of time to cure the breach or default as is provided to the Redeveloper by the terms of this Agreement for that portion of the Project which is being financed by such lender and which is subject to being cured.

12.10 Transfers Void Without Approval

(A) Any transfer of Redeveloper's interest in violation of this Agreement shall be an Event of Default by Redeveloper and shall be null and void ab initio. Such Event of Default shall entitle the Caldwell to seek all remedies available under the terms hereof, and those available pursuant to law or equity, including termination of this Agreement. In the absence of authorization pursuant to the terms of this agreement or pursuant to specific written consent by Caldwell, no sale, transfer, conveyance or assignment of the ownership of Redeveloper or of the Redeveloper Property, shall

be deemed to relieve Redeveloper from any obligations under this Agreement. In addition, in the event of any attempted sale, transfer, conveyance or assignment of the ownership of Redeveloper or of the Redeveloper Property in violation of the restrictions in this Agreement, Caldwell shall be entitled to the ex parte issuance of an injunction restraining such sale, transfer, conveyance or assignment, and the award of legal fees and related expenses of Caldwell in connection with any such legal action.

ARTICLE 13: FORCE MAJEURE

13.01 Force Majeure

(A) Neither Caldwell nor the Redeveloper shall be considered in breach of, or in default of, its obligations in the event any delay in the performance of such obligations is because of (i) delays in the issuance of any Federal or State Governmental Approvals needed for the Project not due to the actions or inactions of the Redeveloper, (ii) litigation filed by unaffiliated third parties challenging any Governmental Approvals issued for the Project, and (iii) acts of God, acts of the public enemy, fires, floods, epidemics, strikes, energy shortages, embargoes, severe weather, or delays of subcontractors because of any of the foregoing causes. In the event of the occurrence of any such delay, the time or times for performance of the obligations of Caldwell or the Redeveloper shall be extended by the period of the delay.

ARTICLE 14: NOTICES AND DEMANDS

14.01 Notices And Demands

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

(I) Notice To Caldwell:

Borough of Caldwell
1 Provost Square
Caldwell, NJ 07006
Attn: Brittany Heun, Deputy Clerk

With copies to :

Borough Attorney
XXX
YYY

(ii) Notice To Redeveloper:

Redeveloper name
Address
City, state zip
Attn:

with copies to:

Law firm name
Address
City, state zip
Attn:

ARTICLE 15: ADDITIONAL PROVISIONS

15.01 Entire Agreement

(A) This Agreement constitutes the entire agreement between the Parties hereto and supersedes all prior oral and written agreements between the Parties with respect to the subject matter hereof.

15.02 Paragraph Headings

(A) The headings and numbering of the articles and sections of this Agreement are set forth for ease of reference only and are not to be construed or considered to impart meaning to any provision of this Agreement.

15.03 Governing Law

(A) This Agreement shall be governed by and construed under the laws of the State of New Jersey and any litigation relating to this Agreement shall be brought in the Superior Court of the State in the Essex County vicinage.

15.04 Amendments To Agreement

(A) This Agreement represents the entire agreement by and between the Parties with respect to the development of the Project, the construction of the Project and the conveyance of the Project parcels. No amendment to this Agreement shall be considered binding on either of the Parties unless such amendment is in writing and specifically recites that it is being entered into by and between Caldwell and Redeveloper with the specific intention to modify the terms of this Agreement. In the event that any such amendment is agreed to by the Parties, such amendment shall not modify, change or amend any portion of this Agreement except those specific portions that are recited in such amendment as being modified by such amendment. All other portions of this Agreement not so specifically amended in writing shall remain in full force and effect.

15.05 Severability

(A) Should any provision, term, paragraph or other portion or portions of this Agreement be held by any court of competent jurisdiction to be in violation of any applicable law, or against public policy or held to be null and void for any reason whatsoever, such portion shall be deemed severable, so that such determination, unless it prohibits the conveyance of the Project parcels to Redeveloper or development of the Project, shall not affect the validity of any other provisions of this Agreement, and all other provisions shall be deemed to be in full force and effect and binding on the Parties unless amended in accordance with provisions of this Agreement.

15.06 Successors Bound

(A) This Agreement shall be binding upon the respective Parties hereto and their successors and assigns.

15.07 Non-Liability Of Officials And Employees Of Caldwell

(A) No member, official or employee of CALDWELL shall be personally liable to Redeveloper, or any successor in interest, in the event of any default or breach by Caldwell, or for any amount which may become due to Redeveloper or its successor, or on any obligation under the terms of this Agreement.

15.08 Non-Liability Of Officials And Employees Of Redeveloper

(A) Except for fraudulent acts, no member, officer, shareholders, director, partner or employee of Redeveloper, and no member, officer, shareholders, director, partner or employee of the members of Redeveloper or the members of Redeveloper shall be personally liable to Caldwell, or any successor in interest, in the event of any default or breach by Redeveloper or for any amount which may become due to Caldwell, or their successors, on any obligation under the terms of this Agreement.

15.09 Exhibits

(A) All Exhibits annexed to this Agreement are hereby made a part of this Agreement by this reference thereto. All such Exhibits are referenced within the body of this Agreement, with a complete list attached to this Agreement immediately following the signature page of this Agreement.

15.10 Review By Counsel

(A) This Agreement shall be construed and enforced in accordance with the laws of the State of New Jersey without regard to or any presumption or other rule requiring construction against the party drawing or causing this Agreement to be drawn since counsel for both Redeveloper and Caldwell have combined in their review and approval of same.

15.11 No Consideration For Agreement

(A) Redeveloper warrants it has not paid or given, and will not pay or give, any third person any money or other consideration for obtaining this Agreement, other than normal costs of conducting

business and costs of professional services such as architects, engineers, financial consultants and attorneys. Redeveloper further warrants it has not paid or incurred any obligation to pay any officer or official of Caldwell, any money or other consideration for or in connection with this Agreement.

15.12 Conflict Of Interest

(A) No member, official or employee of Caldwell shall have any direct or indirect interest in this Agreement, nor participate in any decision relating to the Agreement that is prohibited by law.

15.13 Recordation

(A) This Agreement, and any modifications thereof or additions thereto, shall be duly recorded by Redeveloper in the Book of Deeds of the County of Essex and the cost of such recordation and the cost of any and all federal revenue stamps, which are required to be attached to such papers, shall be paid by Redeveloper.

15.14 Other Redevelopment Agreements Required

(A) Any redevelopment of any site other than Redeveloper Property whether by Redeveloper or any other entity, is subject to the designation of Redeveloper or such other entity as redeveloper for such additional property by Caldwell, and further, is the subject of a separate redevelopment agreement, none of which is contemplated by this Agreement.

ARTICLE 16: MISCELLANEOUS PROVISIONS

16.01 Access

(A) Pursuant to and to the extent of its rights under the Act, Caldwell agrees to arrange to provide to Redeveloper, its agents or designees, access to any portion of the Area to which access will be furnished in accordance with law, at any time during the term of this Agreement for the purpose of making soundings or test borings, conducting investigations, surveys, engineering, environmental, or architectural studies or tests, or preparing engineering, environmental, or architectural data and appraisals, provided Redeveloper furnishes Caldwell reasonable written notice in advance of any such entry setting forth Redeveloper's intent to enter any portion of the Area, and with satisfactory evidence of liability insurance as set forth in Article 7 insuring Redeveloper and Caldwell against claims for bodily injury, death and property damage arising from or attributable to such entry. Redeveloper agrees to request its initial access no less than ten (10) business days before requiring access.

16.02 Inspection Of Books And Records

(A) Caldwell shall have the right at all reasonable times to inspect the books and records of Redeveloper pertinent to the purposes of this Agreement, including but not limited to construction contracts, books and records, leases, insurance policies, and agreements.

(B) Redeveloper shall have the right at all reasonable times to inspect the public books and public records of Caldwell pertinent to the purposes of this Redevelopment Agreement.

(C) Such inspections by either Party must be performed at a time and in a manner as to not unreasonably interfere with the business operations of the Party whose books and records are being inspected and be for a legitimate business purpose affecting the material interest of the Party seeking the inspection.

16.03 Caldwell Consultants Reports And Services

(A) Caldwell makes no representations to Redeveloper with respect to the accuracy or validity of any reports, data or documents or services rendered by any of Caldwell's consultants, advisors or experts.

16.04 Commissions

(A) The Parties agree that no commissions to any broker, agent, or any other intermediary is due hereunder, and further agree to indemnify, defend and save harmless the other Party in the event of any claim whatsoever for any commission or other remuneration payable or alleged to be payable by any broker, agent or other intermediary.

16.05 Cooperation In Defense Of Litigation

(A) In the event that a third party commences litigation or otherwise challenges the validity or legality of this Agreement and its terms or the development of the Project as provided herein, Caldwell agrees, without cost or expense to Caldwell other than payroll and internal administrative costs, that it will fully cooperate with and give full assistance to Redeveloper in the defense or handling of such litigation or challenge, including, but not limited to, cooperation with Redeveloper's attorneys, consultants or other agents engaged to represent Redeveloper in such action. In the event Caldwell is required to engage outside counsel in the defense or handling of such litigation, Redeveloper agrees to reimburse Caldwell for the reasonable costs and attorneys' fees Caldwell incurs as a result of engaging outside counsel. Any outside counsel so engaged by Caldwell is likewise bound by the cooperation provisions of this paragraph.

16.06 Lien On Property For All Fees

(A) The Redeveloper agrees that Caldwell shall have a lien on the Redeveloper Property for any fees or expenses that are due from the Redeveloper under this Agreement, which lien shall be of no further force or effect as to any portion of the Redeveloper Property for which a Certificate of Completion has been issued pursuant to Article 10 of this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement effective on the date appearing on the cover page hereof.

For Caldwell

(Seal)

By: _____
John Kelley
Mayor

Attest:

By: _____
[Name],
[Title]

For Redeveloper:

(Seal)

By: _____
[Name]
[Title]

Attest:

By: _____
[Name]
[Title]

[Attach Acknowledgements For Recordation]

TABLE OF EXHIBITS

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Exhibit A-1

REDEVELOPER PROPERTY

The list below is the real property which is the subject of this Agreement and on which the Project is to be developed:

<u>Redevelopment Parcel Designation</u>	<u>Metes and Bounds Exhibit</u>	<u>Other Identification (Address and Block and Lot,</u>	<u>Land Area</u>
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(EXAMPLE)

Parcel A	Exhibit A-2	B 12, L 17, aka 123 Main Street	1.38 ac.
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Exhibit A-2

PARCEL A
METES AND BOUNDS DESCRIPTION

EXHIBIT B-1

CONDITIONS PRECEDENT

(This should list the events that are required and the deadlines for such events to take place)

Exhibit B-2

PERMITTED INTERIM USES

(This should recite what interim uses are permitted, the duration for which they may be in place and any other restrictions that are necessary. This may be more restrictive than the Plan.)

EXHIBIT B-3

PERMITTED PERMANENT USES

(This should list the permanent uses permitted, which may be more restrictive than the Plan.)

EXHIBIT B-4

MAXIMUM HEIGHT AND BULK

(This should set forth the maximum permitted height and bulk, which may be less than permitted by the Plan.)

EXHIBIT B-5

NARRATIVE PROJECT DESCRIPTION

(This should provide essential data regarding the Project, including bulk, expressed in total area and/or number of units, height in stories and/or feet, included land uses, parking quantities and type of parking facilities and other pertinent information)

EXHIBIT B-6

CONCEPT PLAN

(This should consist of a drawing or drawings depicting the expected character of the Project.)

EXHIBIT C

DEVELOPMENT SCHEDULE

Milestone

Start Date

Completion Date

EXHIBIT D

REDEVELOPER STRUCTURE AND OWNERSHIP

1. The legal name of the Redeveloper is _____

2. The Redeveloper is an entity that is structured as:

A Limited Liability Corporation

A Corporation

A Partnership

A Sole Proprietorship

Other (specify) _____

3. The Redeveloper has been approved to operate as an “urban renewal entity”, pursuant to the terms of N.J.S.A. 40A:20-5;

Yes

No

4. Ownership: (List all persons with an ownership interest)

Name

Home Address

%Owned

EXHIBIT E

REDEVELOPMENT FEES

<u>Parcel</u>	<u>Land Area (SF)</u>	<u>Rate per SF</u>	<u>Annual Fee</u>
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EXHIBIT F

DEVELOPMENT DENSITY OBLIGATIONS

Required Development
Density

Milestone

Date for Completion

Site Plan Approval

All Governmental Approvals

Commencement of Construction

Certificate of Occupancy

EXHIBIT G

EQUAL OPPORTUNITY EMPLOYMENT

For purposes of this Exhibit, the Redeveloper or any contractor or sub-contractor engaged by the Redeveloper, shall be referred to by the term "Contractor".

During the performance of the Contract, the Contractor agrees as follows:

The Contractor or subcontractor, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, sex, affectional or sexual orientation. The contractor will take affirmative action to ensure that such applicants are recruited and employed, and that employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, sex, affectional or sexual orientation. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Public Agency Compliance Officer setting forth provisions of this nondiscrimination clause;

The Contractor or subcontractor, where applicable will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status, sex, affectional or sexual orientation;

The Contractor or subcontractor, where applicable, will send to each labor union or representative or workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer advising the labor union or workers' representative of the contractor's commitments under this act and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

The Contractor or subcontractor, where applicable, will comply with the regulations promulgated by the Department of the Treasury (the "Treasury") pursuant to P.L. 1975, c. 127, as amended and supplemented from time to time and the Americans With Disabilities Act.

The Contractor or subcontractor agrees to attempt in good faith to schedule minority and female workers consistent with the applicable county employment goals prescribed by N.J.A.C. 17:27-5.2 promulgated by the Treasury pursuant to P.L. 1975, c. 127, as amended and supplemented from time to time or in accordance with a binding determination of the applicable county employment goals determined by the Affirmative Action Office pursuant to N.J.A.C. 17:27-5.2 promulgated by the Treasurer pursuant to P.L. 1975, c. 127, as amended and supplemented from time to time.

The Contractor or subcontractor agrees to inform in writing appropriate recruitment agencies in the area, including employment agencies, placement bureaus, colleges, universities and labor unions, that it does not discriminate on the basis of age, creed, color, national origin, ancestry, marital status, sex, affectional or sexual orientation and that it will discontinue the use of any recruitment agency which engages in direct or indirect discriminatory practices.

The Contractor or subcontractor agrees to revise any of its testing procedures, if necessary, to assure that all personnel testing conforms with the principles of job-related testing, as established by the statutes and court decisions of the State of New Jersey and as established by applicable Federal law and applicable Federal court decisions.

The Contractor or subcontractor agrees to review all procedures relating to transfer, upgrading, downgrading and layoff to ensure that all such actions are taken without regard to age, creed, color, national origin, ancestry, marital status, sex, affectional or sexual orientation, and conform with the applicable employment goals, consistent with the statutes and court decisions of the State of New Jersey, and applicable Federal law and applicable Federal court decisions.

The Contractor or subcontractor shall furnish such reports or other documents to the Affirmative Action Office as may be requested by the office from time to time in order to carry out the purposes of these regulations, and public agencies shall furnish such information as may be requested by the Affirmative Action Office for conducting a compliance investigation pursuant to Subchapter 10 of the Administrative Code (N.J.A.C. 17:27).

EXHIBIT H

ESCROW FUND

Escrow Fund. As of the date of the execution of this Agreement, the Redeveloper shall deposit the amount equal to the greater of _____ per square foot of land area of the Redevelopment Property pursuant to this Agreement or \$25,000 (the "Original Escrow Amount"), as set forth in Exhibit A-1 hereof with Caldwell (hereinafter referred to as the "Escrow Fund"). The Escrow Fund shall be maintained by Caldwell in a separate, interest bearing escrow account and shall be drawn down upon by Caldwell for the payment of professional fees including, but not limited to, attorneys, financial consultants or any other experts deemed necessary by Caldwell in its sole discretion hired by Caldwell and serving Caldwell in connection with this Agreement and the Project. Use of the proceeds of the Escrow Fund shall be subject to the same standards set forth in *N.J.S.A. 40:55D-53.2* with respect to escrows under the New Jersey Municipal Land Use Law.

Caldwell shall deposit all escrow monies 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 laws of the State of New Jersey for public entities. Caldwell shall not be required to refund an amount of interest paid on a deposit which does not exceed \$100.00 for the year. If the amount of interest exceeds \$100.00, that entire amount shall belong the Redeveloper and shall be refunded by Caldwell annually or at the time the deposit is repaid or applied to the purposes for which it was deposited, as the case may be; except that Caldwell may retain for administrative expenses a sum equivalent to no more than 33 1/3% of that entire amount, which shall be in lieu of all other administrative and custodial expenses.

Replenishment of the Escrow Fund. If the Escrow Fund drops below fifty per cent (50%) of the amount initially deposited at the time of the execution of this Agreement, Caldwell shall notify the Redeveloper in writing and the Redeveloper shall replenish the Escrow Fund to the Original Escrow Amount, within ten (10) business days of the request made in writing by Caldwell. Such notice of request shall simultaneously be made upon the Redeveloper and Principal at the address set forth in the preamble to this Agreement.

Reporting of Fees Paid. Every thirty (30) days Caldwell shall provide the Redeveloper with a statement of those fees paid from the Escrow Fund. Any failure on part of Caldwell to affirmatively provide the Redeveloper with statement(s) of the fees and/or invoices for same as set forth above shall not prevent Caldwell from drawing down upon the Escrow Fund in order to pay for the subject fees.