

TOWNSHIP OF MAPLEWOOD



RESOLUTION NO. 71-15

RESOLUTION DESIGNATING MAPLEWOOD URBAN RENEWAL, LLC AS REDEVELOPER AND AUTHORIZING THE EXECUTION OF A REDEVELOPMENT AGREEMENT FOR BLOCK 44.02, LOT 2

WHEREAS, on September 17, 2013 by Resolution 170-13, the Township Committee (the “**Committee**”) of the Township of Maplewood (the “**Township**”) pursuant to and in accordance with the requirements of the *Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq.* (the “**LRHL**”) designated an “area in need of redevelopment” (as defined in the LRHL) consisting of approximately 3.86 acres comprising the former Public Service Electric & Gas site located at 186-238 Boyden Avenue and identified as **Block 44.02, Lot 2** on the tax maps of the Township (the “**Redevelopment Area**” or the “**Property**”); and

WHEREAS, on December 17, 2013 the Committee duly adopted the “*PSE&G Site Redevelopment Plan*” for the Redevelopment Area pursuant to Ordinance 2738-13 (the “**Redevelopment Plan**”); and

WHEREAS, pursuant to *N.J.S.A. 40A:12-4*, the Township has determined to act as the “redevelopment entity” (as such term is defined at *N.J.S.A. 40A:12A-3* of the LRHL) for the Redevelopment Area; and

WHEREAS, Maplewood Urban Renewal, LLC (“**Redeveloper**”) is the contract purchaser of the Property; and

WHEREAS, Redeveloper submitted a concept plan to the Township to construct (i) approximately 235 multi-family rental housing units (6 of which shall be affordable units); (ii) approximately 353 parking spaces; and (iii) other amenities and related site improvements in the Redevelopment Area to be known as “Avalon at Maplewood” (the “**Project**”), and requested that it be designated by the Township as “redeveloper” (as defined in the LRHL) of the Redevelopment Area; and

WHEREAS, the Township has determined that the Redeveloper possesses the proper qualifications, financial resources and capacity to implement and complete the Project in accordance with the Redevelopment Plan, and all other applicable laws, ordinances and regulations; and

WHEREAS, in order to implement the development, financing, construction, operation and management of the Project, the Committee has determined to enter into a redevelopment agreement with the Redeveloper (the “**Redevelopment Agreement**,” in the form attached hereto as *Exhibit A*), which Redevelopment Agreement designates Redeveloper as the “redeveloper” of the Project as that term is defined in the LRHL, and which specifies the respective rights and responsibilities of the Township and the Redeveloper with respect to the Project; and

WHEREAS, as additional inducement to the Township to enter the Redevelopment Agreement, AvalonBay Communities, Inc., the parent company of Redeveloper, shall guaranty the obligations of Redeveloper under the Redevelopment Agreement, as provided for therein.

NOW, THEREFORE, BE IT RESOLVED by the Township Committee of the Township of Maplewood, in the County of Essex, New Jersey as follows:

1. The above mentioned recitals are hereby incorporated as if set forth at length.
2. The Mayor is hereby authorized to execute the Redevelopment Agreement substantially in the form as attached hereto as *Exhibit A*, subject to such additions, deletions, modifications or amendments deemed necessary by the Mayor in his discretion in consultation with counsel, which additions, deletions, modifications or amendments do not alter the substantive rights and obligations of the parties thereto, and to take all other necessary and appropriate action to effectuate the Redevelopment Agreement.
3. Upon execution of the Redevelopment Agreement, and so long as the Redevelopment Agreement remains in full force and effect, the Redeveloper is hereby designated as redeveloper for the Project on the Property.
4. This Resolution shall take effect immediately.

NOW, THEREFORE, BE IT RESOLVED, by the Township Committee of the Township of Maplewood, County of Essex, State of New Jersey as follows:

I, Elizabeth J. Fritzen, Township Clerk of the Township of Maplewood, in the County of Essex and State of New Jersey, do hereby certify that the foregoing is a true and correct copy of a Resolution adopted by the Township Committee of the Township of Maplewood, County of Essex, State of New Jersey, at a regular meeting of said Committee held on March 17, 2015.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Township of Maplewood in the County of Essex and State of New Jersey, on this 17th day of March 2015.

ELIZABETH J. FRITZEN, R.M.C.
Township Clerk

EXHIBIT A

Redevelopment A

REDEVELOPMENT AGREEMENT

By and Among

THE TOWNSHIP OF MAPLEWOOD

As Redevelopment Entity

and

MAPLEWOOD URBAN RENEWAL, LLC

as Redeveloper

and

AVALONBAY COMMUNITIES, INC.,

as Guarantor

Dated: _____, 2015

THIS REDEVELOPMENT AGREEMENT (“Redevelopment Agreement”) made this _____ day of _____, 2015 among:

THE TOWNSHIP OF MAPLEWOOD, a municipal corporation of the State of New Jersey, having its offices at 574 Valley Street, Maplewood, New Jersey 07040 in its capacity as a “redevelopment entity” pursuant to *N.J.S.A. 40A:12A-4(c)* (hereinafter referred to as the “**Township**”);

AND

MAPLEWOOD URBAN RENEWAL, LLC, a Delaware limited liability company, having its offices at 517 Route One South, Fifth Floor - Suite 5500, Iselin, New Jersey 08830, Attention: Ronald S. Ladell, Senior Vice President of Development (together with permitted successors or assigns as hereinafter provided, referred to as the “**Redeveloper**”)

AND

AVALONBAY COMMUNITIES, INC., having its offices at 517 Route One South, Fifth Floor – Suite 5500, Iselin, New Jersey 08830 Attention: Ronald S. Ladell, Senior Vice President of Development (hereinafter referred to as the “**Guarantor**”). The Township, the Redeveloper and the Guarantor are sometimes collectively referred to as the “**Parties**”.

WITNESSETH

WHEREAS, on September 17, 2013 by Resolution No. 170-13, the Township Committee of the Township of Maplewood (the “**Committee**”) pursuant to and in accordance with the requirements of the *Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq.* (the “**LRHL**”) heretofore designated an area in need of redevelopment consisting of approximately 3.86 acres comprising the former Public Service Electric & Gas site located at 186-238 Boyden Avenue and identified as **Block 44.02, Lot 2** on the tax maps of the Township and more particularly described on **Exhibit A** annexed hereto (the “**Redevelopment Area**” or the “**Property**”); and

WHEREAS, on December 17, 2013 the Committee duly adopted the “*PSE&G Site Redevelopment Plan*” for the Redevelopment Area pursuant to Ordinance 2738-13 (the “**Redevelopment Plan**”); and

WHEREAS, pursuant to *N.J.S.A. 40A:12-4*, the Township has determined to act as the “redevelopment entity” (as such term is defined at *N.J.S.A. 40A:12A-3* of the LRHL) for the Redevelopment Area; and

WHEREAS, the Redeveloper is contract purchaser of the Property; and

WHEREAS, Redeveloper submitted a concept plan to the Township to construct (i) approximately 235 multi-family rental housing units (6 of which shall be “Affordable Units” as

hereinafter defined); (ii) approximately 353 parking spaces; and (iii) other amenities and related site improvements in the Redevelopment Area to be known as "Avalon at Maplewood" (the "**Project**"), and requested that it be designated by the Township as "redeveloper" of the Redevelopment Area; and

WHEREAS, the Township has determined that the Redeveloper possesses the proper qualifications, financial resources and capacity to implement and complete the Project in accordance with the Redevelopment Plan, and all other applicable laws, ordinances and regulations; and

WHEREAS, in order to implement the development, financing, construction, operation and management of the Project, the Committee has determined to enter into this Redevelopment Agreement with the Redeveloper, which Redevelopment Agreement designates Redeveloper as the "redeveloper" of the Project as that term is defined in the LRHL, and which specifies the respective rights and responsibilities of the Township and the Redeveloper with respect to the Project.

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

ARTICLE 1

DEFINITIONS

1.01. Definitions. As used in this Redevelopment Agreement the following terms shall have the meanings ascribed to such terms below. Terms listed below in the singular form shall include the plural and words listed in the plural shall include the singular. Whenever the context may require, any pronoun that is used in this Redevelopment Agreement shall include the corresponding masculine, feminine and neuter. All references to Sections, Articles or Exhibits shall refer to Sections, Articles or Exhibits in this Redevelopment Agreement unless otherwise specified.

(a) The following terms shall have the meanings ascribed to them in the Recitals to this Redevelopment Agreement:

Committee
LRHL
Parties
Property
Project
Redeveloper
Redevelopment Agreement
Redevelopment Area
Redevelopment Plan
Township

(b) The following terms shall have the definitions ascribed to them herein:

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

“Affordable Units” is defined in Section 4.06.

“Appeal Period” shall mean the period of time specified by statute or court rule within which an appeal may be taken by any party from the grant of any Governmental Approval.

“Applicable Laws” means all federal, state and local laws, ordinances, approvals, rules, regulations and requirements applicable thereto including, but not limited to, the LRHL, the MLUL, relevant construction codes including construction codes governing access for people with disabilities, and such other applicable zoning, sanitary, pollution and other environmental safety ordinances, laws and such rules and regulations promulgated thereunder, and all applicable environmental laws and applicable federal and state labor standards.

“Bond” is defined in Section 4.05(b).

“Building Permit” means a building permit issued by or on behalf of the Township for construction of the Project, excluding a demolition permit but including a footings and foundation permit.

“Business Days” means all days except Saturdays, Sundays and the days observed as public holidays by the Township.

“Certificate of Completion” means written acknowledgement by the Township in recordable form that the Redeveloper has Completed Construction of the Project in accordance with the requirements of this Redevelopment Agreement, substantially in the form annexed hereto as **Exhibit D**.

“Certificate of Occupancy” means a temporary or permanent certificate of occupancy as defined in the applicable ordinances of the Township and the applicable provisions of the Uniform Construction Code.

“COAH” means The Council on Affordable Housing of the State established by the *Fair Housing Act of 1985*, as the same may be amended from time to time.

“Commencement”, “Commence Construction”, “Commencement of Construction”, or “Commencement Date” means the undertaking of any actual physical construction of any portion of the Project, including site preparation, environmental remediation, construction of Improvements or construction or upgrading of infrastructure.

“Completion”, “Completion of Construction”, “Complete Construction”, or “Completion Date” means the completion of construction of the Project in accordance with the

Redevelopment Plan and this Redevelopment Agreement, sufficient for issuance of a final Certificate of Occupancy.

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

“Construction Event of Default” means if Redeveloper (i) fails to Commence Construction within the time frame specified in this Agreement (as same may be modified pursuant to the terms hereof and subject to Force Majeure); or (ii) abandons the Project or substantially suspends construction work after obtaining a Building Permit without the prior knowledge and consent of the Township for more than 180 days (unless such suspension arises out of a Force Majeure Event), and any such failure, abandonment or suspension under clauses (i) or (ii) shall not be cured, ended, or remedied within sixty (60) days after receipt by the Redeveloper of notice of such failure, abandonment or suspension; provided, however, that if the failure, abandonment or suspension is one that cannot be completely cured within sixty (60) days after receipt of such notice, it shall not be a Construction Event of Default as long as the Redeveloper promptly began to take actions to correct the failure, abandonment or suspension upon its receipt of notice thereof and is proceeding with due diligence to remedy the failure, abandonment or suspension as soon as reasonably practicable.

“Control” (including the correlative meanings of the terms “controlled by” and “under common control with”), as used with respect to the Redeveloper, the power, directly or indirectly, to direct or cause the direction of the management policies of the Redeveloper, whether through the ownership of an interest in the Redeveloper, or by contract or otherwise.

“County” means Essex County, New Jersey.

“Declaration of Covenants and Restrictions” or **“Declaration of Restrictions”** means a written instrument to be executed by Redeveloper and recorded in the Office of the Essex County Register, substantially in the form annexed hereto as **Exhibit B**, intended to encumber the Property and to run with the land until a Certificate of Completion has been issued for the Project, except as otherwise expressly provided therein, setting forth certain statutory and contractual undertakings of and restrictions applicable to Redeveloper and its permitted successors and assigns in connection with the ownership, redevelopment or rehabilitation of the Project, all as more particularly described in Article 3.

“Effective Date” means the date this Redevelopment Agreement has been executed by the Township, the Redeveloper and the Guarantor.

“Escrow Account” is defined in Section 8.02(a).

“Escrow Deposit” is defined in Section 8.02(a).

“Estoppel Certificate” is defined in Section 6.12.

“**Event of Default**” is defined in Section 5.01.

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

“**Force Majeure Event**” means causes that are beyond the reasonable control and not substantially due to the fault or negligence of the party seeking to excuse delay or failure of performance of an obligation hereunder by reason thereof, including, but not limited to, third-party litigation that enjoins implementation of the Project; declarations of public emergency; acts of nature (as to weather-related events, limited to severe and unusual events or natural occurrences such as hurricanes, tornadoes, earthquakes, and floods); acts of the public enemy; acts of terrorism; acts of war; fire; epidemics; quarantine restrictions; blackouts, power failures, or energy shortages; governmental embargoes; strikes or similar labor action by equipment or material suppliers or transporters, or unavailability of necessary building materials; and severe economic, financial or market conditions affecting the region (and not unique to the Project) that inhibits the procurement of financing for the Project or that renders the development and marketing of the Project on the terms set forth in the Redevelopment Agreement economically infeasible (*provided* that Redeveloper has no commercially reasonable alternatives to avoid the impact thereof on the progress of the Project.)

“**Foreclosure**” is defined in Section 7.03(b).

“**Governmental Approvals**” means all governmental approvals required for the Commencement of Construction, Completion of Construction, and use and occupancy of the Project, including, without limitation, site plan approval by the Planning Board; County planning board approvals, if and to the extent required; Building Permits; environmental permits, approvals, consents or authorizations from NJDEP and any other applicable governmental agencies; sewerage capacity approvals, utilities-related permits and any and all other necessary governmental permits, licenses, consents and approvals.

“**Guarantor**” means AvalonBay Communities, Inc.

“**Improvements**” shall mean all improvements constructed as part of the Project.

“**Institution**” shall mean any savings and loan association, savings bank, commercial bank or trust company (whether acting individually or in any fiduciary capacity), an insurance company, a real estate investment trust, an educational institution or a state, municipal or similar public employee’s welfare, pension or retirement system or any corporation or entity subject to supervision and regulation by the insurance or banking departments of the State or of the United States Treasury, or any successor department or departments hereafter exercising the same functions as said departments, or any Affiliate of the foregoing.

“**LEED**” means the Leadership in Energy and Environmental Design (LEED) Green Building Rating System™ of the U.S. Green Building Council.

“**MLUL**” means the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq.

“**Mortgage**” means any security interest, evidenced by a written instrument, encumbering the Property, or any portion thereof, that secures the performance of obligations or the payment of debt, including, without limitation, any grant of, pledge of, or security interest in, any collateral, or any grant, directly or indirectly, of any deed of trust, mortgage or similar instrument or any other security whatsoever.

“**Mortgagee**” Shall mean the holder of any Mortgage and any Affiliate(s) of such holder, including entities affiliated with such holder that own or exercise control over real property.

“**Notice**” is defined in Section 6.08.

“**Permitted Transfers**” is defined in Section 3.05(B).

“**Person**” means any individual, sole proprietorship, corporation, partnership, joint venture, limited liability company, trust, unincorporated association, urban renewal entity, institution, or any other entity.

“**Planning Board**” means the Planning Board of the Township.

“**Redevelopment Entity**” means the Township acting in its capacity as a redevelopment entity pursuant to the LRHL and any permitted successors or assigns.

“**State**” means the State of New Jersey.

“**Township Costs**” shall mean, from October 7, 2014 (the date of Resolution 195-14) forward, (i) all reasonable outside professional and consultant fees, out of pocket costs or expenses incurred by the Township arising out of or in connection with the preparation, performance, administration, or enforcement of this Redevelopment Agreement or arising out of or in connection with the Project, after the date of this Agreement; (ii) subject to Redeveloper’s termination rights pursuant to Section 5.07 herein, litigation costs arising out of or in connection with a dispute with a third party with respect to this Redevelopment Agreement or the Project; and (iii) any other out of pocket fee, cost or expense reasonably incurred by the Township, after the date of this Agreement, to satisfy its obligations under this Agreement or in furtherance of the Project, but shall not include any and all costs incurred in connection with Redeveloper’s site plan application to the Planning Board and governed by the escrow deposited by Redeveloper in connection with such application in accordance with the MLUL.

“**Township Construction Official**” means Robert J. Mittermaier, or his successor or designee.

“**Township Engineer**” means Thomas Malavasi, P.E., P.P., C.M.E., or his successor or designee.

“**Transfer**” means prior to Completion of the Project (i) a sale or re-conveyance of all or any portion of the Property or Project by Redeveloper to any other Person; (ii) a sale, pledge, joint venture, equity investment, or any other act or transaction involving or resulting in a change in Control of Redeveloper as it exists on the date of this Redevelopment Agreement, (iii) a transfer of 10% or more of the membership interest in Redeveloper to a Person other than an Institution, or (iv) any assignment of this Redevelopment Agreement to any other Person.

“**UHAC**” means the Uniform Housing Affordability Controls, N.J.A.C. 5:80-26.1 et. seq., as same may be amended, or any successor laws or regulations.

SECTION 1.02. Interpretation and Construction. In this Redevelopment Agreement, unless the context otherwise requires:

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

(b) 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.

(c) Words importing 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.

(d) Any headings preceding the texts of the several Articles and Sections of this Redevelopment 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 Redevelopment Agreement, nor shall they affect its meaning, construction or effect.

(e) Unless otherwise 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.

ARTICLE 2

REPRESENTATIONS AND WARRANTIES

2.01. Designation as Redeveloper. The Township hereby designates and appoints the Redeveloper as redeveloper of the Project on the Property. For so long as this Redevelopment Agreement and the designation hereunder remain in effect, Redeveloper shall have the exclusive right to redevelop the Property in accordance with the Redevelopment Plan, the Governmental Approvals, the LRHL and all other Applicable Laws, and the terms and conditions of this Redevelopment Agreement.

2.02. Representations and Warranties of the Township. The Township hereby makes the following representations and warranties:

(a) The Redevelopment Plan has been duly adopted in compliance with all Applicable Laws and is currently in full force and effect.

(b) The Township is a municipal corporation, duly organized and existing under the laws of the State, that has the legal power, right and authority pursuant to the LRHL to enter into this Redevelopment Agreement and the instruments and documents referenced herein to which the Township is a party, to consummate the transactions contemplated hereby, to take any steps or actions contemplated hereby, and to perform its obligations hereunder, and has duly executed this Redevelopment Agreement.

(c) All requisite action has been taken by the Township and all requisite consents have been obtained in connection with the entering into this Redevelopment Agreement and the instruments and documents referenced herein to which the Township is a party, and the consummation of the transactions contemplated hereby, and to the best of the Township's knowledge and belief are authorized by all Applicable Laws.

(d) To the best knowledge of the Township there are no writs, injunctions, orders or decrees of any court or governmental body that would be violated by the Township entering into or performing its obligations under this Redevelopment Agreement.

(e) This Redevelopment Agreement has been duly executed by the Township, and is valid and legally binding upon the Township and enforceable in accordance with its terms on the basis of laws presently in effect and the execution and delivery thereof shall not, with due effect and the execution and delivery thereof shall not, with due notice or the passage of time, constitute a default under or violate the terms of any indenture, agreement or other instrument to which the Township is a party.

(f) The Township represents that, to the best of its knowledge and belief, after diligent inquiry, there is no action, proceeding or investigation now pending, nor any basis therefore, known or believed to exist which questions the validity of the Redevelopment Plan or this Redevelopment Agreement or any action or act taken or to be taken by the Township pursuant to the Redevelopment Plan or Redevelopment Agreement.

(g) The uses of the Property, as contemplated by this Redevelopment Agreement, are authorized by the LRHL, Applicable Laws and the Redevelopment Plan.

2.03. Representations and Warranties of Redeveloper. Redeveloper hereby makes the following representations and warranties:

(a) Redeveloper has the legal capacity to enter into this Redevelopment Agreement and perform each of the undertakings set forth herein and in the Redevelopment Plan as of the date of this Redevelopment Agreement.

(b) Redeveloper is a duly organized and a validly existing legal entity under the laws of Delaware and all necessary consents have been duly adopted to authorize the execution and

delivery of this Redevelopment Agreement and to authorize and direct the persons executing this Redevelopment Agreement to do so for and on the Redeveloper's behalf.

(c) No receiver, liquidator, custodian or trustee of 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 the Redeveloper shall have been filed as of the Effective Date;

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

(e) No indictment has been returned against Redeveloper or any officer or shareholder of Redeveloper;

(f) Redeveloper's execution and delivery of this Redevelopment 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;

(g) Subject to obtaining construction financing, Redeveloper is financially and technically capable of developing, designing, financing, constructing, operating, and maintaining the Project;

(h) To the best of Redeveloper's knowledge and belief, after diligent inquiry, there is no action, proceeding or investigation now pending, nor any basis therefore, known or believed to exist which (i) questions the validity of this Redevelopment Agreement or any action or act taken or to be taken by Redeveloper pursuant to this Redevelopment Agreement; or (ii) is likely to result in a material adverse change in Redeveloper's property, assets, liabilities or condition which will materially and substantially impair its ability to perform pursuant to the terms of this Redevelopment Agreement.

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

(j) To the best of Redeveloper's knowledge and belief after diligent inquiry all information and statements included in any information submitted to the Township and its agents, including but not limited to, McManimon, Scotland & Baumann, LLC, are true and correct in all respects. Redeveloper acknowledges that the facts and representations contained in the information, submitted by Redeveloper are a material factor in the decision of the Township to enter into this Redevelopment Agreement.

(k) To the best of their knowledge after diligent inquiry, Redeveloper is not delinquent with respect to any taxes, payments in lieu of tax, service charge, or similar obligations owed to the Township for any property situated in the Township.

(l) Redeveloper has the right to acquire the Property from Parke Place at Maplewood, LLC, upon the acquisition of same by Parke Place at Maplewood, LLC, pursuant to a purchase and sale agreement between Redeveloper and Parke Place at Maplewood, LLC, such purchase and sale agreement is in full force and effect as of the date hereof, and Redeveloper is not aware of any existing defaults thereunder or of any facts that upon the giving of notice or passage of time or both would entitle the seller to terminate the purchase and sale agreement pursuant to its terms.

2.04. Representations and Warranties of Guarantor. AvalonBay Communities, Inc., in its capacity as Guarantor, hereby makes the following representations and warranties:

(a) Guarantor has the legal capacity to give, if and as required under this Redevelopment Agreement, the Guaranty of performance hereunder and of the undertakings set forth herein.

(b) Guarantor 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 the Guaranty as set forth in this Redevelopment Agreement, and to authorize and direct the persons executing this Redevelopment Agreement to do so for and on Guarantor's behalf.

(c) To the best of Guarantor's knowledge and belief, after diligent inquiry, there is no action, proceeding or investigation now pending, nor any basis therefor, known or believed to exist which (i) questions the validity of this Redevelopment Agreement or the Guaranty, or any action or act taken or to be taken by Redeveloper or Guarantor pursuant to this Redevelopment Agreement; or (ii) is likely to result in a material adverse change in Guarantor's property, assets, liabilities or condition which will materially and substantially impair its ability to Guaranty Redeveloper's performance pursuant to the terms of this Redevelopment Agreement.

(d) Guarantor's execution and delivery of this Redevelopment Agreement and its Guaranty of Redeveloper's performance hereunder will not constitute a violation of any operating, partnership, shareholder and/or similar agreement of Guarantor or of any agreement, mortgage, indenture, instrument, other guaranty, or judgment to which Guarantor is a party.

(e) To the best of Guarantor's knowledge and belief after diligent inquiry all information and statements included in any information submitted to the Township and its agents by Redeveloper or Guarantor, including but not limited to, confidential information provided to McManimon, Scotland & Baumann, LLC. in its capacity as redevelopment counsel to the Township, are true and correct in all respects. Guarantor acknowledges that the facts and representations contained in the information, submitted by Redeveloper and Guarantor are being relied upon by the Township and are a material factor in the decision of the Township to enter into this Redevelopment Agreement.

(f) Neither Guarantor nor any affiliate of Guarantor is delinquent with respect to any taxes, payments in lieu of tax, service charge, or similar obligations owed to the Township for any property situated in the Township.

(g) The Redeveloper's Representations and Warranties in Section 2.03 are known to Guarantor to be in all respects accurate as of the date hereof.

(h) No indictment has been returned against Guarantor or any officer of Guarantor.

ARTICLE 3

COVENANTS AND RESTRICTIONS

3.01. Covenants and Restrictions. Redeveloper agrees to record the Declaration of Restrictions in the office of the Essex County Register immediately upon acquiring title to the Property.

3.02. Description of Covenants. The following covenants and restrictions are imposed upon Redeveloper, its successors and assigns, and are intended to run with the land until a Certificate of Completion has been issued for the Project, except as otherwise provided. They shall be recorded substantially in the form of a Declaration of Covenants and Restrictions annexed hereto as **Exhibit B**, upon Redeveloper's acquisition of title to the Property:

(a) Redeveloper shall construct the Project on the Property in accordance with, and subject to the terms of, the Redevelopment Plan, this Redevelopment Agreement, and all Applicable Laws and Governmental Approvals.

(b) Except for Permitted Transfers, and subject to the terms hereof, prior to the issuance of a Certificate of Completion, Redeveloper shall not effect a Transfer without the written consent of the Township, which shall not be unreasonably withheld, conditioned or delayed.

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

(d) Subject to and in accordance with the terms hereof, Redeveloper shall, upon Completion of Construction, obtain a Certificate of Occupancy and all other Government Approvals required for the occupancy and uses of the Property for the purposes contemplated hereby.

(e) Subject to and in accordance with the terms hereof, Redeveloper shall cause the Project to be developed, financed, constructed, operated and maintained at its sole cost and expense.

(f) Subject to and in accordance with the terms hereof, Redeveloper shall develop, finance, construct, operate and maintain the Project consistent with Applicable Laws, Government Approvals, the Redevelopment Plan, and this Redevelopment Agreement including the obligation to use commercially reasonable efforts to meet all deadlines and timeframes set forth

in this Redevelopment Agreement.

(g) Prior to the issuance of a Certificate of Completion, Redeveloper shall not encumber, hypothecate or otherwise use the Property, or any part thereof as collateral for any transaction unrelated to the Project.

(h) Redeveloper will promptly pay any and all taxes, service charges, SID special assessments or similar obligations when owed with respect to the Property and any other property owned by Redeveloper situated in the Township.

3.03. Effect and Duration of Covenants. It is intended and agreed that the covenants and restrictions set forth in Section 3.02 shall be covenants running with the land. All covenants in Section 3.02, in any event, and without regard to technical classification or designation, legal or otherwise, and except only as otherwise specifically provided in this Redevelopment Agreement, shall be binding, to the fullest extent permitted by law and equity, for the benefit and in favor of, and enforceable by the Township and its successors and assigns, and any successor in interest to the Property, or any part thereof, against Redeveloper, its successors and assigns and every successor in interest therein, and any party in possession or occupancy of the Property or any part thereof. Notwithstanding the foregoing, the agreements and covenants set for in Article 3.02 shall cease and terminate upon the issuance of a Certificate of Completion, substantially in the form annexed hereto as **Exhibit D**, provided however, that the covenants in Section 3.02(c) shall remain in effect without limitation as to time.

3.04. Enforcement by Township. In amplification, and not in restriction of the provisions of this Article 3, it is intended and agreed that the Township and its successors and assigns shall be deemed beneficiaries of the agreements and covenants set forth in Section 3.02 both for and in their own right but also for the purposes of protecting the interests of the community and other parties, public or private, in whose favor or for whose benefit such agreements and covenants shall run in favor of the Township for the entire period during which such agreements and covenants shall be in force and effect, without regard to whether the Township has at any time been, remains, or is an owner of any land or interest therein to or in favor of which such agreements and covenants relate.

3.05 Prohibition Against Transfers of Interests in Redeveloper. (A) Redeveloper recognizes the importance of the Redevelopment Project to the general welfare of the community and that the identity of the Redeveloper and its qualifications are critical to the Township in entering into this Redevelopment Agreement. The Township considers that a change of Control in Redeveloper, or the transfer of 10% or more of the ownership interest in Redeveloper to any Person other than an Institution, is for practical purposes a Transfer or disposition of the Project. Redeveloper recognizes that it is because of such qualifications and identity that the Township is entering into this Redevelopment Agreement with Redeveloper, and, in so doing, the Township is relying on the obligations of Redeveloper and not some other Person for the faithful performance of all undertakings and covenants to be performed by Redeveloper hereunder.

As a result, except for Permitted Transfers, prior to Completion of the Project as evidenced by the issuance of a Certificate of Completion, and without the prior written approval

of the Township, which shall not be unreasonably withheld, conditioned or delayed, Redeveloper agrees for itself and all successors in interest that there shall be no change in Control of Redeveloper, nor shall there be any transfer of 10% or more of the ownership interest in Redeveloper to any Person other than an Institution.

(B) Consent to Permitted Transfers. The Township hereby consents, without the necessity of further approvals from any entity, to the following Transfers (each, a “**Permitted Transfer**”):

(i) A Mortgage or related security granted by Redeveloper to a Mortgagee for the purpose of obtaining the financing necessary to enable Redeveloper to perform its obligations under this Redevelopment Agreement, including any Mortgage or Mortgages and other liens and encumbrances granted by Redeveloper to a Mortgagee for the purpose of financing costs associated with the acquisition, development, construction, or marketing of the Project and not any transaction or project unrelated to the Project; *provided, however,* that Redeveloper shall give the Township at least fifteen (15) days prior written notice of such Permitted Transfer, including a description of the nature of such Transfer, and the name(s) and address(es) of the Mortgagee; or

(ii) Transfers of easements or dedications of portions or interests in the Property as may be required for utilities for the Project or otherwise as conditions of Governmental Approvals;

(iii) environmental covenants and restrictions imposed by a regulatory agency as a condition of any permit or approval;

(iv) a lease to a tenant or end user of the Project;

(v) a Transfer to an Affiliate of the Redeveloper controlled by AvalonBay Communities, Inc.;

(vi) a Transfer pursuant to a Foreclosure, and any Transfer by any Mortgagee or any Mortgagee’s successor and/or assigns after Foreclosure; and

(vii) any contract or agreement with respect to any of the foregoing.

(C) Automatic Approval of Transfer. Notwithstanding anything to the contrary contained herein, with respect to any Transfer that requires the Township’s consent pursuant to the terms of this Section 3.05, the Township shall not unreasonably withhold, condition or delay its consent to such Transfer. The Township shall notify the Redeveloper in writing whether the Township consents to a Transfer within thirty (30) days after Redeveloper’s written request to the Township for such consent. If the Township does not deliver a written response to the Redeveloper’s request within said thirty (30) day period, then the Redeveloper may deliver a second written request to the Township for consent to the Transfer and the Township shall be deemed to have consented to such requested Transfer if the Township does not deliver a written response to the Redeveloper within thirty (30) days after Redeveloper’s

second request to the Township for such consent. The Township shall not withhold, condition or delay its consent to any Transfer to a transferee that has the same or greater experience and technical capability to carry out the Project as Redeveloper, and has the same or greater wherewithal to obtain financing for the Project as Redeveloper.

3.06 Township Covenants. The Township hereby covenants and agrees that:

(a) The Township shall fully cooperate with the Redeveloper to ensure that all Governmental Approvals are obtained for the Project. Furthermore, the Township agrees to support any applications for Governmental Approvals that are consistent with the terms of the Redevelopment Plan and this Agreement, and to execute and deliver any documents required to obtain such approvals and otherwise to cooperate with the Redeveloper with respect to the Governmental Approvals; provided that nothing contained in this Section 3.06(a) shall be deemed: (i) to constitute an approval of all or any portion of the Project for which applications have been submitted or are required or (ii) a waiver of the ability of any Governmental Authority, to exercise its statutorily authorized responsibilities with respect to such applications or Governmental Approvals. Without limiting the generality of the foregoing, the Township shall (A) request that all agencies of the Township having jurisdiction over any of the Governmental Approvals expedite the processing of all applications for Governmental Approvals, (B) schedule, convene and conclude all required public hearings in an expeditious manner consistent with Applicable Laws, and (C) cause all of the planners, engineers and other consultants engaged by the Township to review and comment on all submittals by Redeveloper in an expeditious manner and request that all planners, engineers and other consultants engaged by the Township or any of its agencies review and comment on all submittals by Redeveloper in an expeditious manner.

(b) The Township shall undertake and complete, with due diligence, all of its obligations under this Agreement.

(c) The Township shall not amend or cause the amendment of the Redevelopment Plan in a manner that materially, adversely affects Redeveloper or the Project during the term of this Agreement without the prior written consent of the Redeveloper.

~~(d) The Township shall not exercise its power of eminent domain to condemn the Property during the term of this Agreement.~~

(e) The Redeveloper has been designated as the exclusive redeveloper of the Property and shall have the exclusive right and obligation to redevelop the Property and implement the Project in accordance with the terms and conditions of this Agreement.

ARTICLE 4

PROJECT DETAILS

4.01. Acquisition of the Property. It is understood and agreed by and between the Parties that upon acquisition of the Property Redeveloper shall have the right to develop the Property consistent with the terms of the Government Approvals, the Redevelopment Plan, Applicable Laws, and this Redevelopment Agreement.

4.02. Timeline and Construction of Project.

(a) **Project Timeline.**

(i) One (1) informal public presentation of the Project has been made;

(ii) The Maplewood Village Special Improvement District has granted approval of the Project;

(iii) The Planning Board granted preliminary and final site plan approval for the Project on March 24, 2014, which approval was memorialized by resolution adopted by the Planning Board on May 13, 2014;

(iv) Within ninety (90) days of the execution of this Agreement, Redeveloper will submit an application for amended preliminary and final site plan approval to the Planning Board, and will diligently prosecute such application;

(v) Redeveloper shall use commercially reasonable efforts to obtain all other final and unappealable Governmental Approvals on or before the 180th day after Redeveloper has obtained final and unappealable site plan approval. To the extent reasonably requested by the Redeveloper, and to the extent applicable, the Township shall provide assistance and support to the Redeveloper in connection with any applications for any Governmental Approvals required to be obtained for or with respect to the Project;

(vi) Redeveloper will use reasonable best efforts to acquire the Property no later than forty-five (45) days after Redeveloper has obtained all final and unappealable Governmental Approvals for the Project, provided that the seller has complied with the conditions and obligations of the purchase and sale contract;

(vii) Redeveloper agrees to use commercially reasonable efforts to Commence Construction of the Project within 60 days after the later to occur of (x) the date that Redeveloper acquires the Property, or (y) issuance of a Building Permit for the Project. The occurrence of inclement or extreme weather shall be a factor in determining whether the Redeveloper's efforts are commercially reasonable;

(viii) Redeveloper agrees to use commercially reasonable efforts to Complete Construction of the Project on or before thirty-six (36) months after issuance of a Building Permit for the Project.

(b) If, subject to the provisions of this Agreement, the Redeveloper fails, or determines that it will fail, to meet any relevant date for the completion of a task set forth in the Project time line set forth above, for any reason, the Redeveloper shall promptly provide notice to the Township stating: (i) the reason for the failure or anticipated failure, (ii) the Redeveloper's proposed method for correcting such failure, (iii) the Redeveloper's proposal for revising the time line and (iv) the method or methods by which the Redeveloper proposes to achieve subsequent tasks by the relevant dates set forth in the revised Project time line. Redeveloper's proposed revisions to the Project time line shall be subject to the Townships' approval, which shall not be unreasonably withheld, conditioned or delayed.

(c) In the event that Redeveloper does not obtain all necessary Governmental Approvals for the Project on terms and conditions acceptable to Redeveloper in its sole discretion, or if Redeveloper determines that the Governmental Approvals for the Project cannot be obtained on terms and conditions acceptable to Redeveloper in its sole discretion, then Redeveloper shall have the right to terminate this Agreement upon written notice to the Township. No Governmental Approval shall be deemed to have been obtained (i) until the Appeal Period relating thereto has expired and no appeal has been taken, or (ii) if an appeal is filed within the applicable Appeal Period, until such appeal shall have been finally resolved in a manner sustaining the challenged Governmental Approval. If this Agreement is terminated pursuant to the terms of this Section 4.02(c) then except as expressly set forth herein to the contrary, this Agreement shall be of no further force and effect and the Parties hereto shall have no further rights, liabilities and/or obligations hereunder.

(d) In the event that Redeveloper is unable to close title on the Property, then Redeveloper shall have the right to terminate this Agreement upon written notice to the Township. If this Agreement is terminated pursuant to the terms of this Section 4.02(c) then except as expressly set forth herein to the contrary, this Agreement shall be of no further force and effect and the Parties hereto shall have no further rights, liabilities and/or obligations hereunder.

(e) To the extent reasonably requested by the Redeveloper and, to the extent permitted by Applicable Law (and without violating its obligations as a governmental entity or regulatory body having competent jurisdiction over the Project), the Township shall provide its support and assistance to the Redeveloper in facilitating the review of all plans, issuance of all permits, request for inspections and the conduct of such inspections through the appropriate Township board, body or department, as applicable.

4.03. Construction of the Project.

(a) **Construction Hours.** Construction practices and hours shall be in accordance with Township Ordinances, which are available at the Township Building Department or through the Township Clerk.

(b) **Maintenance.** The Property will be cleaned on a regular basis by Redeveloper; *provided, however,* that Redeveloper agrees to clean up the Property as promptly as possible after a specific, reasonable request by the Township that Redeveloper do so or the close of the following Business Day, whichever is later. Should Redeveloper fail to comply with this obligation after reasonable written notice, the Township will undertake street cleaning and charge Redeveloper for the costs of same. The Redeveloper shall repair, at Redeveloper's cost, any damage to the streets or sidewalks caused by Redeveloper during the construction of the Project.

(c) **Pedestrian Access and Safety.** The Township acknowledges that for safety reasons, the sidewalks adjacent to the Property may need to be closed from time to time during construction of the Project. Notwithstanding the foregoing, Redeveloper will provide appropriate signage and crosswalks to ensure the continued flow of pedestrian traffic. Redeveloper shall supply to the Township Building Department plans and specifications providing for pedestrian safety at and across the Property as applicable. The Redeveloper shall keep the sidewalks abutting the Property clean and free of debris, ice and snow during the construction of the Project.

(d) **Construction Parking.** The Redeveloper shall make arrangements with the Township Construction Official and the Township Police Department for off-street parking for construction vehicles and construction worker's vehicles, if such vehicles cannot be parked on the Project site itself. Such parking arrangements with the Township may include utilization of the pool parking lot, on such terms and conditions as directed by the Township, including with respect to the hours and days of use. Construction vehicles and construction worker's vehicles may not be parked on the adjacent street, which is subject to permit parking for Township residents. The Township agrees to place from time to time temporary "emergency, no parking" signs on the adjacent street as reasonably requested by Redeveloper to accommodate Redeveloper's construction activities.

(e) **Preconstruction Meeting.** There shall be a preconstruction meeting held at least seven (7) days prior to the commencement of demolition, which meeting shall include the Township Construction Official, the Township Engineer, a representative from the Township Police Department, a representative from the Township Fire Department and representatives from the various utility companies.

(f) **LEED Construction.** The Project shall be LEED certified. LEED certification may be obtained as a punch list item after issuance of a Certificate of Completion, provided Redeveloper delivers a certification from the Project Architect or other LEED accredited professional working on the Project that, to the best of such professional's knowledge information and belief, the Project meets the requirements necessary to qualify for LEED certification. If, thereafter, the United States Green Building Council notifies Redeveloper that further action is required for the Project to receive LEED certification, then, subject to Redeveloper's appeal rights under the LEED, Redeveloper shall undertake such actions.

4.04. Certificates of Occupancy and Certificates of Completion. (a) Upon Completion of Construction, Redeveloper shall apply to Township Construction Code Official for a Certificate of Occupancy.

(b) Following Completion of the Project, the Township agrees to issue a Certificate of Completion upon receipt of a Completion Notice from Redeveloper. The Certificate of Completion shall constitute a recordable, conclusive determination of the satisfaction and termination of the agreements and covenants with respect to the Project in this Redevelopment Agreement and the Redevelopment Plan. Within thirty (30) days after receipt of the Completion Notice, the Township shall provide Redeveloper with the Certificate of Completion or a written statement setting forth in detail the reasons why it believes that Redeveloper has failed to Complete the Project in accordance with the provisions of this Agreement or is otherwise in default hereunder and what reasonable measures or acts will be necessary in the reasonable opinion of the Township in order for Redeveloper to be entitled to the Certificate of Completion.

4.05. Project Costs, Financing and Performance and Maintenance Guarantees. (a) Redeveloper agrees that the costs and financing for the Project are the sole responsibility of the Redeveloper, not the Township.

(b) Redeveloper shall post performance and maintenance guarantees and review escrows in accordance with the provisions of *N.J.S.A. 40:55D-53 et seq.* of the MLUL and all Applicable Laws (collectively, the "**Bond**"), in the following manner:

(i) Prior to the Commencement of Construction, a performance bond or irrevocable letter of credit (or such other form of guarantee allowed in accordance with the MLUL) for those Improvements for which a performance guarantee may be required pursuant to the MLUL and as may be required pursuant to the approved site plan and Planning Board resolution, in an amount to be determined by the Township Engineer pursuant to the MLUL.

(ii) A maintenance guarantee in respect of those Improvements required to be bonded in accordance with the MLUL, in the form of a surety bond (or such other form of guarantee allowed in accordance with the MLUL) for a period not to exceed two (2) years after final acceptance of the Improvement, in an amount not to exceed 15% of the cost of the Improvement, which cost shall be determined by the Township Engineer according to the method of calculation set forth in *N.J.S.A. 40:55D-53*.

(iii) If applicable, the Bond must name the Township as an obligee and Redeveloper shall deliver a copy of the Bond to the Township prior to Commencement of Construction. To the extent that a surety bond is provided, it shall be provided by a company licensed by the New Jersey Department of Banking and Insurance or otherwise authorized by the New Jersey Department of Banking and Insurance to do business in the State. In the event any insurance company, financial institution or other entity issuing a performance guarantee herein, shall be insolvent or shall declare bankruptcy or otherwise be subject to reorganization, rehabilitation, or other action, whereby state or federal agencies have taken over the management of the entity, within thirty (30) days after notice from the Township, Redeveloper shall replace the Bond.

(iv) In the event any Bond should lapse, be canceled or withdrawn, or otherwise not remain in full force and effect as a result of any act or omission by Redeveloper, then until an approved replacement of the lapsed Bond has been deposited with the Township, the Township may require Redeveloper to cease and desist any and all work on the Project, unless the Improvements required to be bonded have been completed and approved by the Township. In the event any Bond should lapse, be canceled or withdrawn, or otherwise not remain in full force and effect through no act or omission of Redeveloper, then unless Redeveloper fails to replace the Bond within ten business (10) days of notice given to Redeveloper by the Township, the Township may require Redeveloper to cease and desist work on the Project unless the Improvements required to be bonded have been completed and approved by the Township.

4.06. Affordable Housing Obligation. Six (6) of the residential rental units to be constructed shall be maintained as affordable housing in accordance with the requirements of UHAC (the “Affordable Units”), which the Township agrees to apply towards satisfaction of the Township’s obligations under the Fair Housing Act, whether under the rules of COAH or otherwise. Three (3) of these six (6) Affordable Units shall qualify as affordable to families of “moderate” income, as established by UHAC, and the remaining three (3) of these six (6) Affordable Units shall qualify as affordable to families of “low” income, as established by UHAC. Additionally, the Redeveloper shall make a contribution in the amount of \$340,000 to the Township’s Affordable Housing Trust Fund established under Chapter 107 of the Township’s Ordinances, Section 107-7. Pursuant to Section 107-6(H) of the Township’s Ordinance, fifty percent (50%) of the affordable housing contribution shall be paid at the time of issuance of the Building Permit and the remaining fifty percent (50%) shall be paid at the issuance of the Certificate of Occupancy. Redeveloper shall have no obligation with respect to affordable housing except as set forth in this Section 4.06.

4.07 Open Space Obligation. (a) Redeveloper shall make a contribution to the Township in the amount of \$100,000 for the maintenance, operation and improvement of the public pool facility owned by the Township across Boyden Avenue from the Project. One Hundred Percent (100%) of this contribution shall be paid at the issuance of the final Certificate of Occupancy for the Project, which final Certificate of Occupancy will be diligently pursued by the Redeveloper.

(b) Redeveloper shall make a contribution to the Township in the amount of \$10,000 for the maintenance of the landscaping on the island at the intersection of Boyden Avenue and Springfield Avenue. One Hundred Percent (100%) of this contribution shall be paid at the issuance of the final Certificate of Occupancy for the Project, which final Certificate of Occupancy will be diligently pursued by the Redeveloper.

4.08 First Source Employment. Redeveloper shall make good faith efforts, and shall provide in its contracts with its contractors and subcontractors that they must make good faith efforts, to employ Township residents and patronize Township businesses if possible in the implementation and construction of the Project, on economically competitive terms and consistent with the Project budget. Redeveloper shall notify local residents of the pendency of the Project by way of advertisements or stories in local publications, which shall contain contact

information in the event any local residents or businesses wish to apply or bid for work connected to the Project.

ARTICLE 5

EVENTS OF DEFAULT; TERMINATION

5.01. Events of Default. Any one or more of the following shall constitute an “Event of Default” hereunder, subject to Force Majeure Extension and tolling as provided elsewhere in this Redevelopment Agreement:

(a) If at any time Redeveloper or Guarantor shall: (i) generally not pay its debts as such debts become due, within the meaning of such phrase under Title 11 of the United States Code (or any successor to such statute), or admit in writing that it is unable to pay its debts as such debts become due; or (ii) make an assignment for the benefit of creditors; or (iii) file a voluntary petition under Title 11 of the United States Code, as the same may be amended, or any successor to such statute; or (iv) file any petition or answer seeking, consenting to or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future federal bankruptcy code or any other present or future applicable federal or state or other statute or law; or (v) seek or consent to or acquiesce in the appointment of any custodian, trustee, receiver, sequestrator, liquidator or other similar official of Redeveloper (or Guarantor) or of all or any substantial part of its property or of the Property or any interest of Redeveloper (or Guarantor) therein; or (vi) take any corporate action in furtherance of any action described in this subsection or (vii) if at any time any proceeding against Redeveloper (or Guarantor) seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future applicable federal or state or other statute or law shall not be dismissed within ninety (90) days after the commencement thereof, or if, within ninety (90) days after the appointment without the consent of Redeveloper (or Guarantor) of any custodian, trustee, receiver, sequestrator, liquidator or any other similar official of Redeveloper (or Guarantor), or of all or any substantial part of its properties or of the Property or any interest of Redeveloper (or Guarantor) therein, such appointment shall not have been vacated or stayed on appeal or otherwise, or if any such appointment shall not have been vacated within forty five (45) days after the expiration of any such stay.

(b) Redeveloper’s failure to pay or delinquency in the payment of real property taxes or assessments, which failure or delinquency is not cured within thirty (30) days after Notice by the Township.

(c) Cancellation or termination by reason of any act or omission of Redeveloper of any insurance policy, performance or completion bond, letter of credit, guaranty or other surety required hereunder to be provided by Redeveloper for the benefit of the Township, which failure or delinquency is not cured within thirty (30) days after Notice by the Township.

(d) Any Transfer (except for Permitted Transfers), without the approval (or deemed

approval pursuant to Section 3.05(c)) of the Township.

(e) Any other default or breach by Redeveloper or the Township in the observance or performance of any covenant, condition, representation, warranty or agreement hereunder and, except as otherwise specified below, the continuance of such default or breach for a period of thirty (30) days after Notice from the non-defaulting party specifying the nature of such default or breach and requesting that such default or breach be remedied; *provided, however*, with respect to any non-monetary default or breach, if the default or breach is one that cannot be completely remedied within thirty (30) days after such Notice, it shall not be an Event of Default as long as the defaulting party is proceeding in good faith and with due diligence to remedy the same as soon as practicable, but in no event later than one hundred (120) days after such Notice unless this Redevelopment Agreement specifically provides otherwise.

5.02. Remedies Upon Event of Default of Redeveloper. Whenever any Event of Default of Redeveloper shall have occurred, the Township may, on written notice to Redeveloper and Guarantor (after applicable Notice and cure periods shall have expired) (a “**Termination Notice**”) terminate this Redevelopment Agreement and Redeveloper’s designation as Redeveloper hereunder upon which, except as expressly provided herein, this Agreement shall be void and of no further force and effect and neither Party shall have any further rights, liability and/or obligations hereunder. In addition, if Redeveloper fails to pay any Township Costs in accordance with the requirements of this Agreement, the Township may file legal action seeking payment of the Township Costs.

5.03. Remedies Upon Event of Default by the Township. If an Event of Default by the Township occurs, then the Redeveloper may take whatever action at law or in equity as Redeveloper may deem necessary or desirable to enforce the performance or observance of any rights or remedies of Redeveloper, or any obligations, agreements, or covenants of the Township under this Redevelopment Agreement, including an action for specific performance and/or actual, compensatory damages (but specifically excluding consequential or punitive damages). ~~Further, but subject to any cure provisions afforded the Township hereunder, the Redeveloper shall have the right, in its sole and absolute discretion, on written notice to the Township (after applicable Notice and cure period shall have expired), to terminate this Redevelopment Agreement upon which, except as expressly provided for herein, this Agreement shall be void and of no further force and effect and neither Party shall have any further rights, liabilities and/or obligations hereunder.~~

5.04. Force Majeure Extension. For the purposes of this Redevelopment Agreement, neither the Township nor Redeveloper shall be considered in breach or in default with respect to its obligations hereunder because of a delay in performance arising from a Force Majeure Event. It is the purpose and intent of this provision that in the event of the occurrence of any such delay, the time or times for performance of the obligations of the Township or Redeveloper shall be extended for the period of the delay; *provided, however*, that such delay is actually caused by or

results from the Force Majeure Event. The time for completion of any specified obligation hereunder shall be tolled for a period of time up to but not exceeding the period of delay resulting from the occurrence of a Force Majeure Event. During any Force Majeure Event that affects only a portion of a Project, Redeveloper shall to the maximum extent feasible continue to perform its obligations for the balance of the Project unaffected by the Force Majeure Event. The existence of an event or occurrence of Force Majeure Event shall not prevent the Township or Redeveloper from declaring a default or the occurrence of an Event of Default by the other party if the event that is the basis of the Event of Default is not a result of the Force Majeure Event.

5.05 No Waiver. Except as otherwise expressly provided in this Redevelopment Agreement, any failure or delay by either party hereunder in asserting any of its rights or remedies as to any default by the other party, shall not operate as a waiver of such default, or of any such rights or remedies, or to deprive the Township or the Redeveloper, as the case may be, of its right to institute and maintain any actions or proceedings in accordance with this Agreement, which it may deem necessary to protect, assert or enforce any such rights or remedies.

5.06 Remedies Cumulative. No remedy conferred by any of the provisions of this Redevelopment Agreement is intended to be exclusive of any other remedy and each and every remedy shall be cumulative and shall be in addition to every other remedy given hereunder.

5.07 Termination Rights Related to Litigation. If third party litigation is commenced challenging the validity of (i) the designation of the Redevelopment Area, (ii) the Redevelopment Plan, or (iii) execution of this Redevelopment Agreement by the Township, the commencement of such litigation shall be a Force Majeure Event effective as of the date of the filing of the summons and complaint if Redeveloper invokes the Force Majeure provisions this Redevelopment Agreement; *provided, however,* that (a) Redeveloper may terminate this Agreement pursuant to Section 4.02(c) hereof, at any time, and (b) if such litigation is finally determined in favor of the plaintiff with no further opportunity for appeal, then either Party may terminate this Redevelopment Agreement by written notice to the other. Upon such termination, this Agreement shall be void and of no further force and effect and neither Party hereto shall have any rights, liabilities and/or obligations hereunder.

ARTICLE 6

MISCELLANEOUS

6.01. No Consideration for Agreement. Redeveloper warrants it has not paid or given, and will not pay or give, any third person any money or other consideration for obtaining this Redevelopment Agreement, other than normal costs of conducting business and costs of professional services such as architects, engineers, financial consultants and attorneys. Redeveloper further warrants it has not paid or incurred any obligation to pay any officer or official of the Township, any money or other consideration for or in connection with this Redevelopment Agreement.

6.02. Non-Liability of Officials and Employees. (a) No member, official or employee of the Township shall be personally liable to Redeveloper, or any successor in interest, in the event of any default or breach by the Township, or for any amount which may become due to Redeveloper or its successor, or on any obligation under the terms of this Redevelopment Agreement.

(b) No member, officer, shareholder, director, partner or employee of the Redeveloper shall be personally liable to the Township, or any successor in interest, in the event of any default or breach by the Redeveloper or for any amount which may become due to the Township, or their successors, on any obligation under the terms of this Redevelopment Agreement.

6.03. Modification of Agreement. No modification, waiver, amendment, discharge, or change of this Redevelopment Agreement shall be valid unless the same is in writing, duly authorized, and signed by Redeveloper and the Township.

6.04. Recitals and Exhibits. The Recitals and all Exhibits annexed to this Redevelopment Agreement are hereby made a part of this Redevelopment Agreement by this reference thereto.

6.05. Entire Agreement. This Redevelopment Agreement constitutes the entire agreement between the parties hereto and supersedes all prior oral and written agreements between the parties with respect to the subject matter hereof.

6.06. Severability. The validity of any Articles and Section, clause or provision of this Redevelopment Agreement shall not affect the validity of the remaining Articles and Section, clauses or provisions hereof.

6.07. Indemnification. Redeveloper, for itself and its successors and assigns, covenants and agrees, at its sole cost and expense to indemnify, defend and hold harmless the Township, its governing body, their respective officers, employees, agents, attorneys and consultants, representatives and employees, agents, attorneys and consultants, representatives and employees and respective successors and assigns from any third party claims, liabilities, losses, costs, damages, penalties and expenses (including reasonable attorney's fees) resulting from or in connection with the acts or omissions of Redeveloper or of Redeveloper's agents, employees, or consultants in connection with the development, financing, design, construction, operation, or maintenance of the Project, provided, however, that no indemnification shall be required pursuant to this Section 6.07 in the event that the indemnification otherwise due pursuant to this Section 6.07 is attributable to the negligence or willful misconduct of the Township, its governing body, or any agency of the Township or any of their respective officers, employees, agents, attorneys, consultants, representatives and employees. This Section shall survive termination of this Agreement.

6.08. Notices. A notice, demand or other communication required to be given under this Redevelopment Agreement by any Party to the other ("**Notice**") shall be in writing and shall

be sufficiently given or delivered if dispatched by United States Registered or Certified Mail, postage prepaid and return receipt requested, or delivered by overnight courier or delivered personally (with receipt acknowledged), or by facsimile transmission (with a hard copy and a transmission confirmation sent by a recognized overnight national carrier service for next business day delivery) to the parties at their respective addresses set forth herein, or at such other address or addresses with respect to the parties or their counsel as any party may, from time to time, designate in writing and forward to the others as provided in this Section.

As to the Township:

Township of Maplewood
574 Valley Street
Maplewood, New Jersey 07040
ATTN: Mayor and Business Administrator
Fax: (973) 762-3645

With a copy to:

Roger Desiderio, Esq.
Bendit Weinstock
80 Main Street
West Orange, New Jersey 07052
Fax: (973) 325-3115

and:

Glenn F. Scotland, Esq.
McManimon, Scotland & Baumann, L.L.C.
75 Livingston Avenue, 2nd Floor
Roseland, New Jersey 07068
Fax: (973) 622-7333

As to the Redeveloper:

Maplewood Urban Renewal, L.L.C.
517 Route One South, Fifth Floor - Suite 5500
Iselin, New Jersey 08830
Attention: Ronald S. Ladell, Senior Vice President of Development
Fax: (732) 283-9101

With a copy to:

Carl Kempf
6 Hampshire CT
Springfield, New Jersey 07081

crkemp@gmail.com

And with a copy to Guarantor:

AvalonBay Communities, Inc.
51 Sleeper St., Suite 750
Boston, MA 02210
Attention: William McLaughlin, Executive Vice President

AvalonBay Communities, Inc.
Ballston Tower
671 N. Glebe Road, Suite 800
Arlington, Virginia 22203
Attention: General Counsel

From time to time either Party may designate a different person or address for all the purposes of this Notice provision by giving the other party no less than ten (10) days Notice in advance of such change of address in accordance with the provisions hereof. Notices shall be effective upon the earlier of receipt or rejection of delivery by the addressee, provided, that any notice delivered by telecopy shall be deemed to have been received by such party at the time of transmission, provided that a hard copy and transmission confirmation is simultaneously sent by a recognized overnight national carrier service for next business day delivery. Any notice given by an attorney for a party shall be effective for all purposes.

6.09 Further Assurances/Cooperation. The Parties shall reasonably cooperate with each other as reasonably necessary to effectuate the Project. From time to time at the request of either Redeveloper or the Township, the other party shall execute, acknowledge and deliver such other and further documents as the requesting party may reasonably request to better effectuate the provisions of this Redevelopment Agreement.

6.10. Governing Law. This Redevelopment Agreement shall be construed and enforced in accordance with the internal laws of the State of New Jersey, without giving effect to the principles of conflicts of law.

6.11. Counterparts. This Redevelopment Agreement may be executed in one or more counterparts (which may be copies delivered electronically or by facsimile), each of which shall be deemed to be an original, but all of which taken together shall constitute one and the same Agreement.

6.12 Estoppel Certificates. Within fourteen (14) days following written request therefore by a Party hereto (which request may be on behalf of any Mortgagee, purchaser, tenant or other party having an interest in the Property), the other party shall issue a signed certificate ("**Estoppel Certificate**") stating that (i) this Redevelopment Agreement is in full force and effect, (ii) there is no Event of Default under this Redevelopment Agreement (nor any event which, with the passage of time and the giving of notice would result in an Event of Default under this Redevelopment Agreement), or stating the nature of the Event of Default or other such event, if any, and (iii) any other matter reasonably requested. In the event the Estoppel

Certificate discloses an Event of Default or other event, it shall also state the manner in which such default, breach and/or event may be cured. No more than three (3) Estoppel Certificates per year may be requested by each Party.

**ARTICLE 7
FINANCING**

7.01. Mortgage Financing. (a) During the term of this Agreement, the Redeveloper shall not engage in any financing or any other transaction creating any Mortgage on the Project in excess of 90 percent of the cost of acquiring the Property and developing the Project (including designing, permitting and constructing the Project), except as may be approved by the Township (which approval shall not be unreasonably withheld) for the purpose of obtaining funds in connection with the construction of the Project.

(b) In the event that the Redeveloper is unable to obtain financing for the Project on terms and conditions acceptable to Redeveloper in its sole discretion, or if Redeveloper determines that financing for the Project cannot be obtained on terms and conditions acceptable to Redeveloper in its sole discretion, then Redeveloper shall have the right to terminate this Agreement upon written notice to the Township.

(c) If this Agreement is terminated pursuant to the terms of this Section 7.01 then, except as expressly set forth herein to the contrary and upon full payment of all Township Costs accruing until the date of such termination, this Agreement (including, without limitation, all the covenants contained herein) shall be of no further force and effect and the Parties hereto shall have no further rights, liabilities and/or obligations hereunder.

(d) If the Mortgagee reasonably requires any change(s) or modification(s) to the terms of this Redevelopment Agreement, the Township shall reasonably cooperate with the Mortgagee and the Redeveloper in reviewing and approving such proposed change(s) or modification(s); provided, however, that any such proposed change or modification shall not materially and adversely alter or modify the rights and obligations of the Redeveloper or the Township, as provided in this Redevelopment Agreement.

(e) To the extent reasonably requested by the Redeveloper, the Township shall execute such other agreements and/or documents (to the extent same are in form and content reasonably acceptable to the Township) as may be requested or required by any Mortgagee (or any equity participant of the Redeveloper); provided, however, that any such agreement or document shall not materially and adversely alter any of the rights, liabilities or obligations of the Redeveloper or the Township under this Redevelopment Agreement.

7.02. Notice of Default to the Mortgagee and Right to Cure. (a) Whenever the Township shall deliver any notice or demand to the Redeveloper with respect to any breach or default by the Redeveloper under this Redevelopment Agreement, the Township shall at the same time deliver to each Mortgagee a copy of such notice or demand; provided that the Redeveloper has delivered to the Township a written notice of the name and address of such Mortgagee. Each such Mortgagee shall (insofar as the rights of the Township are concerned)

have the right at its option within sixty (60) days after the receipt of such notice (and the expiration of all applicable cure periods), to cure or remedy, or to commence to cure or remedy, any such default which is subject to being cured and to add the cost thereof to the debt and the lien which it holds. The Township shall not seek to enforce any of its remedies under this Agreement during the period in which any such Mortgagee is proceeding diligently and in good faith to cure a Redeveloper Event of Default. If the Mortgagee elects to cure the Event of Default within such 60 day period shall, but has not completed such cure, then not later than every 60 days thereafter until such Event of Default is cured, Redeveloper shall inform the Township that the Mortgagee is proceeding diligently to cure the Redevelopment Event of Default, and briefly describing the course of action being pursued to effectuate such cure. Notwithstanding the foregoing, the Township may seek to enforce any of its remedies under this Agreement with respect to a monetary Event of Default if such monetary Event of Default is not cured within such sixty (60) day period after notice thereof. If possession of the Property is necessary to cure any default or breach, any Mortgagee will be allowed to complete any proceedings required to obtain possession of the Property.

7.03. No Guarantee of Construction or Completion by Mortgagee. (a) A Mortgagee shall in no manner be obligated by the provisions of this Redevelopment Agreement to construct or complete the Project, or to guarantee such construction or completion; nor shall any covenant or any other provisions be construed so to obligate a Mortgagee. Nothing contained in this Redevelopment Agreement shall be deemed to permit or authorize such Mortgagee to undertake or continue the construction or completion of the Project (beyond the extent necessary to conserve or protect the Mortgagee's security, including the improvements or construction already made) without the Mortgagee or Affiliate of Mortgagee first having expressly assumed the Redeveloper's obligations to the Township with respect to the Project by written agreement reasonably satisfactory to the Township.

(b) If a Mortgagee forecloses its Mortgage secured by the Project, or takes title (in its name or the name of an Affiliate) to the Project by deed-in-lieu of foreclosure or similar transaction (collectively a "**Foreclosure**"), the Mortgagee or its Affiliate shall have the option to either (i) sell the Project to any Person, provided Mortgagee gives the Township notice of such sale at least 20 days prior to closing and provided such Person assumes the obligations of the Redeveloper under this Redevelopment Agreement in accordance with Applicable Law, and/or (ii) assume the obligations of the Redeveloper under this Redevelopment Agreement in accordance with Applicable Law. The Mortgagee, or the entity assuming the obligations of the Redeveloper, in that event must agree to complete the Project in accordance with the terms of this Redevelopment Agreement, but subject to reasonable extensions of any deadlines hereunder. Any such Mortgagee, or other entity assuming such obligations of the Redeveloper, upon completing the Project shall be entitled, upon written request made to the Township, to a Certificate of Completion in accordance with the terms of this Agreement. Nothing in this Redevelopment Agreement shall be construed or deemed to permit or to authorize any Mortgagee, or such other entity assuming such obligations of the Redeveloper, to devote the Property, or any part thereof, to any uses, or to construct any improvements thereon, other than those uses or improvements provided for or authorized by this Redevelopment Agreement and the Redevelopment Plan. The Mortgagee or such other entity that assumes the obligations of the Redeveloper shall be entitled to develop the Property or Project in accordance herewith.

7.04 Township's Option To Pay Mortgage Debt. The Township shall have the right to pay the Mortgage Debt of any Mortgagee, if subsequent to a Construction Event of Default under the terms of this Agreement, any Mortgagee fails to exercise, its rights, pursuant to, and in accordance with, Section 7.02 and 7.03 of this Agreement, and such failure continues for a period of sixty (60) days after such Mortgagee has been notified of the occurrence of the Construction Event of Default; *provided, however,* that under no circumstances shall the Township have the right to pay the Mortgage Debt of any Mortgagee pursuant to this Section at any time after such Mortgagee has exercised its rights pursuant to and in accordance with Section 7.02 and 7.03 of this Agreement unless such Construction Event of Default shall not have been cured within sixty (60) days after written demand by the Township to do so unless such Construction Event of Default cannot be cured by the payment of money and cannot with due diligence be wholly cured within such sixty (60) days in which case such Mortgagee shall have such longer period as shall be necessary to cure such default, so long as such Mortgagee prosecutes such cure to completion with due diligence and advises the Township of the actions being taken and the progress being made. If the Township pays the Mortgage Debt of a Mortgagee pursuant to the terms of this Section, the Mortgagee shall discharge its Mortgage encumbering the Property. For the purposes hereof, the term "Mortgage Debt" shall mean an amount equal to the sum of: (i) the outstanding Mortgage debt at the time of the Township's acquisition (less all appropriate credits, including those resulting from collection and application of rentals or other income received by Mortgagee); (ii) all expenses with respect to foreclosure; (iii) the net expense, if any (exclusive of general overhead), incurred by Mortgagee in and as a direct result of the subsequent management of the Property or relevant portion thereof; (iv) the costs of any Improvements made by Mortgagee; (v) all fees, penalties and other charges due and owing under the Mortgage; (vi) an amount equivalent to the interest that would have accrued on the aggregate of items (i) through (v) had all such amounts become part of the mortgage debt and such debt had continued in existence to maturity.

ARTICLE 8

PILOT & FINANCIAL AGREEMENT

8.01. PILOT Contingency & Financial Agreement. Redeveloper intends to apply to the Township for approval of a financial agreement (the "**Financial Agreement**") providing for, among other things, payments in lieu of taxes pursuant to *N.J.S.A. 40A:20-1 et seq.* ("**PILOT**"). If and to the extent available under Applicable Laws, and as requested by Redeveloper, the Township agrees to consider Redeveloper's PILOT application in good faith, but Redeveloper acknowledges that the Township retains full discretion whether to grant the PILOT. In the event that the Township fails to duly approve and execute a Financial Agreement in the form of **Exhibit E** annexed hereto **on or prior to the Effective Date**, then Redeveloper may elect to terminate this Redevelopment Agreement by providing Notice to that effect to the Township (the "**PILOT Contingency**"). Upon such termination, this Agreement shall be void and of no further force and effect and neither Party hereto shall have any rights, liabilities and/or obligations hereunder.

8.02. Escrow Account to Cover Township Costs. (a) Redeveloper has established with the Township an escrow account (the "**Escrow Account**") having an initial balance of

TWENTY FIVE THOUSAND and 00/100 (\$25,000) DOLLARS to cover Township Costs (the “**Escrow Deposit**”). Attached to this Agreement as “**Exhibit C**” is a description of the agreed upon procedure to be utilized in establishing, funding and replenishing the Escrow Account and in making disbursements therefrom.

(b) The Parties make reference to the Escrow Agreement between them dated as of October 7, 2015, which established an escrow account to pay certain costs of the Township prior to the date of this Agreement (the “Interim Cost Agreement”). To the extent there is any balance in that escrow account as of the date hereof, such balance shall be transferred to the Escrow Account and shall be credited against the initial required balance set forth above. To the extent there is a deficiency in that escrow account to pay for such costs incurred prior to the date of this Agreement that are required to be paid in accordance with the terms of the Interim Cost Agreement, then such costs shall be paid from the funds in the Escrow Account in accordance with the terms hereof. The Interim Costs Agreement is hereby terminated. Notwithstanding anything to the contrary contained herein, if the Township retains a different professional or consultant in the place of any professional originally responsible for any aspect of the project, the Township shall be responsible for all time and expenses of the new professional to become familiar with the project and the Township shall not bill Redeveloper or charge the escrow account for any such services.

ARTICLE 9

GUARANTY

9.01. Guaranty. The Guarantor hereby guarantees to the Township (i) Redeveloper’s performance of Redeveloper’s obligations under this Redevelopment Agreement, and (ii) Redeveloper’s payment of all sums which may hereafter become due from Redeveloper to the Township under this Redevelopment Agreement (collectively, the “Guarantor Obligations”).

(a) The Guarantor acknowledges and consents to all terms, covenants and conditions which are set forth in this Redevelopment Agreement.

(b) In the event that the Redeveloper fails to duly and properly perform and satisfy all of the Redeveloper obligations contained herein, the Guarantor will, upon written demand of the Township setting forth the specific failure, cause the performance and satisfaction of the Guarantor Obligations set forth in such demand.

(c) Upon performance under the terms of this Guaranty, the Guarantor shall be entitled to all of the contractual protections under the Agreement to which the Redeveloper is entitled, to the extent permitted by Applicable Laws. However, this Guaranty shall be fully enforceable despite the Redeveloper’s discharge in bankruptcy or adjustment of the debts or obligations of the Redeveloper (incurred on or after the Effective Date) in insolvency proceedings or pursuant to some other compromise with creditors.

(d) If a demand is made upon the Guarantor, as provided in Paragraph (1) above, and the Guarantor duly and properly performs the Guarantor Obligations as set forth in such demand,

then (A) the Guarantor shall be subrogated to the rights of the Redeveloper against the Township, if any, and (B) the Township shall suspend the pursuit of any remedy against the Redeveloper relating to or arising out of the occurrence of such failure to perform by the Redeveloper.

9.02. Termination of Guaranty. Notwithstanding anything contained herein to the contrary, it is expressly understood that upon (i) the issuance by the Township of a Certificate of Completion for the Project, or (ii) upon termination of this Redevelopment Agreement in accordance with the terms hereof for reasons other than an Event of Default by Redeveloper, this Guaranty shall be deemed irreversibly terminated, null, void and of no further force and effect, except as to Redeveloper obligations which by the express terms of this Redevelopment Agreement survive termination.

The balance of this page intentionally left blank; signature page follows.

IN WITNESS WHEREOF, the parties have executed this Redevelopment Agreement effective as of the latest date of the signatures affixed hereto.

Attest:

TOWNSHIP OF MAPLEWOOD

Township Clerk

By: _____
Victor De Luca, Mayor

SEAL

Dated: _____

**MAPLEWOOD URBAN
RENEWAL, LLC**

By: **AvalonBay Communities, Inc.,
its sole member**

Dated: _____

By: _____
Name: Ronald S. Ladell
Title: Senior Vice President

**AVALONBAY COMMUNITIES, INC.,
as Guarantor**

Dated: _____

By: _____
Name: Ronald S. Ladell
Title: Senior Vice President

EXHIBIT A
LEGAL DESCRIPTION OF
THE PROPERTY

EXHIBIT B

FORM DECLARATION OF COVENANTS AND RESTRICTIONS

Record and Return to:

Prepared by:

**DECLARATION OF COVENANTS AND RESTRICTIONS
Block 44.02, Lot 2 in the Township of Maplewood, New Jersey (the "Property")**

This Declaration of Restrictions is made this _____ day of _____, 20__ by and between the **TOWNSHIP OF MAPLEWOOD** (the "**Township**"), a municipal corporation of the State of New Jersey having its offices at 574 Valley Street, Maplewood, New Jersey 07040, in its capacity as redevelopment entity pursuant to *N.J.S.A. 40A:12A-4(c)*;

and

MAPLEWOOD URBAN RENEWAL, LLC, a limited liability corporation, having its offices at AvalonBay Communities, Inc., 517 Route One South, Fifth Floor - Suite 5500, Iselin, New Jersey 08830, Attention: Ronald S. Ladell, Senior Vice President of Development (together with permitted successors or assigns hereinafter provided, referred to as the "**Redeveloper**").

WITNESSETH

WHEREAS, the *Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1, et seq.*, as amended and supplemented (the "**LRHL**"), provides a process for municipalities to participate in the development and improvement of areas in need of redevelopment; and

WHEREAS, on September 17, 2013 by Resolution No. 170-13, the Township Committee of the Township of Maplewood (the "**Committee**") pursuant to and in accordance with the requirements of the LRHL heretofore designated an area in need of redevelopment consisting of approximately 3.86 acres comprising the former Public Service Electric & Gas site located at 186-238 Boyden Avenue and identified as **Block 44.02, Lot 2** on the tax maps of the Township and more particularly described on **Exhibit A** annexed hereto (the "**Redevelopment Area**" or the "**Property**"); and

WHEREAS, on December 17, 2013 the Committee duly adopted the "*PSE&G Site Redevelopment Plan*" for the Redevelopment Area pursuant to Ordinance 2738-13 (the "**Redevelopment Plan**"); and

WHEREAS, in order to implement the development, financing, construction, operation and management of the Project, the Committee by duly adopted resolution authorized the execution of a redevelopment agreement with the Redeveloper dated _____ (the “**Redevelopment Agreement**”) in accordance with *N.J.S.A. 40A:12A-8(f)* of the LRHL; and

WHEREAS, *N.J.S.A. 40A:12A-9(a)* of the LRHL requires that all agreements, leases, deeds and other instruments between a municipality and a redeveloper shall contain a covenant running with the land requiring, among other things, that “. . . the owner shall construct only the uses established in the current redevelopment plan . . .”; and

WHEREAS, the Redevelopment Agreement contains such a covenant by the Redeveloper and its successor or assigns for as long as the Redevelopment Agreement remains in effect, as well as one (1) perpetual covenant by the Redeveloper and its successor or assigns not to unlawfully discriminate upon the basis of age, race color creed, religion, ancestry, national origin, sex or familial status in the sale, lease, rental, use or occupancy of the Redevelopment Area or any building or structures erected thereon; and

WHEREAS, the Redevelopment Agreement also provides that the Property, the Redevelopment Agreement, and Redeveloper’s interest therein shall not be transferable, subject to certain conditions, prior to the issuance of a Certificate of Completion and further provides certain remedies to the Township for violations of the covenants and defaults under the Redevelopment Agreement; and

WHEREAS, the Redevelopment Agreement requires that such covenants be memorialized in a Declaration of Restrictions and said declaration be recorded in the office of the Essex County Register.

NOW THEREFORE, IT IS AGREED AS FOLLOWS:

Section 1. Defined terms not otherwise defined herein shall have the meaning assigned to such terms in the Redevelopment Agreement.

Section 2. Redeveloper covenants and agrees that, subject to the terms of the Redevelopment Agreement:

(a) Redeveloper shall construct the Project on the Property in accordance with, and subject to the terms of, the Redevelopment Plan, this Redevelopment Agreement, and all Applicable Laws and Governmental Approvals.

(b) Except for Permitted Transfers, and subject to the terms hereof, prior to the issuance of a Certificate of Completion, Redeveloper shall not effect a Transfer without the written consent of the Township, which shall not be unreasonably withheld, conditioned or delayed.

(c) In connection with its use or occupancy of the Project, Redeveloper shall not effect or execute any covenant, agreement, lease, conveyance or other instrument whereby the Property is restricted upon the basis of age, race, color, creed, religion, ancestry, national origin, sexual orientation, sex or familial status, and Redeveloper, its successors and assigns, shall comply with

all Applicable Laws prohibiting discrimination or segregation by reason of age, race, color, creed, religion, ancestry, national origin, sexual orientation, sex or familial status.

(d) Redeveloper shall, upon Completion of Construction, obtain a Certificate of Occupancy and all other Government Approvals required for the occupancy and uses of the Property for the purposes contemplated hereby.

(e) Redeveloper shall cause the Project to be developed, financed, constructed, operated and maintained at its sole cost and expense.

(f) Redeveloper shall develop, finance, construct, operate and maintain the Project consistent with Applicable Laws, Government Approvals, the Redevelopment Plan, and this Redevelopment Agreement including the obligation to use commercially reasonable efforts to meet all deadlines and timeframes set forth in this Redevelopment Agreement.

(g) Prior to the issuance of a Certificate of Completion, Redeveloper shall not encumber, hypothecate or otherwise use the Property, or any part thereof as collateral for any transaction unrelated to the Project.

(h) Redeveloper will promptly pay and any and all taxes, service charges, SID special assessments or similar obligations when owed with respect to the Property and any other property owned by Redeveloper situated in the Township.

(i) Redeveloper recognizes the importance of the Redevelopment Project to the general welfare of the community and that the identity of the Redeveloper and its qualifications were critical to the Township in entering into the Redevelopment Agreement. The Township considers that a change of Control in Redeveloper, or the transfer of 10% or more of the ownership interest in Redeveloper to any Person other than an Institution, is for practical purposes a Transfer or disposition of the Project. Redeveloper recognizes that it is because of such qualifications and identity that the Township entered into the Redevelopment Agreement with Redeveloper, and, in so doing, the Township relied on the obligations of Redeveloper and not some other Person for the faithful performance of all undertakings and covenants to be performed by Redeveloper under the Redevelopment Agreement. As a result, except for Permitted Transfers, prior to Completion of the Project as evidenced by the issuance of a Certificate of Completion, and without the prior written approval of the Township, which shall not be unreasonably withheld, conditioned or delayed, Redeveloper agrees for itself and all successors in interest that there shall be no change in Control of Redeveloper, nor shall there be any transfer of 10% or more of the ownership interest in Redeveloper to any Person other than an Institution.

Section 3. It is intended and agreed that the covenants and restrictions set forth in Section 2 shall be covenants running with the land. All covenants in Section 2, in any event, and without regard to technical classification or designation, legal or otherwise, and except only as otherwise specifically provided in this Redevelopment Agreement, shall be binding, to the fullest extent permitted by law and equity, for the benefit and in favor of, and enforceable by the Township and its successors and assigns, and any successor in interest to the Property, or any

part thereof, against Redeveloper, its successors and assigns and every successor in interest therein, and any party in possession or occupancy of the Property or any part thereof. Notwithstanding the foregoing, the agreements and covenants set for in Section 2 shall cease and terminate upon the issuance of a Certificate of Completion for such improvements, provided however, that the covenants in 2(c) shall remain in effect without limitation as to time.

Section 4. It is intended and agreed that the Township and its successors and assigns shall be deemed beneficiaries of the agreements and covenants set forth in Section 2 both for and in their own right but also for the purposes of protecting the interests of the community and other parties, public or private, in whose favor or for whose benefit such agreements and covenants shall run in favor of the Township for the entire period during which such agreements and covenants shall be in force and effect, without regard to whether the Township has at any time been, remains, or is an owner of any land or interest therein to or in favor of which such agreements and covenants relate.

IN WITNESS WHEREOF, the parties hereto have caused this **Declaration of Covenants and Restrictions** to be executed in their names by their duly authorized officials or managers, as the case may be, and their corporate seals to be hereunto affixed attested to by their duly authorized officers all as of the date first written above.

Attest:

TOWNSHIP OF MAPLEWOOD,

Township Clerk

By: _____
Hon. Victor De Luca, Mayor

WITNESS:

**MAPLEWOOD URBAN
RENEWAL, LLC**

By: AvalonBay Communities, Inc., its sole member

Name: Ronald S. Ladell
Title: Senior Vice President

ACKNOWLEDGEMENT

STATE OF NEW JERSEY :
: ss.:
COUNTY OF ESSEX :

BE IT REMEMBERED, that on this ___ day of _____, 201__ before me, the subscriber, a Notary Public of New Jersey, personally appeared Hon. Victor De Luca, who, being by me duly sworn on his oath, deposes and makes proof to my satisfaction that he is the Mayor of the **TOWNSHIP OF MAPLEWOOD, NEW JERSEY**, the entity named in the within Instrument; that the execution, as well as the making of this Instrument, have been duly authorized by the Township of Maplewood and said Instrument was signed and delivered by said Mayor as and for the voluntary act and deed of said entity.

Notary or Attorney At Law
The State of New Jersey

EXHIBIT C

ESCROW PROCEDURES

1. **Escrow Deposit.** The Escrow Deposit is separate from and in addition to all other application fees and escrow deposits that may be required by the Township pursuant to the terms of the Redevelopment Agreement, including any applications for land use approvals that may be needed to implement the Redevelopment Plan. Additions to the Escrow Deposit may subsequently become necessary to cover all reimbursable expenses incurred by the Township, as "Escrowee", pursuant to the terms of this Agreement.

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

3. **Payments from the Escrow Funds.** (a) The Escrowee shall use the Escrow Deposit and all additions thereto to pay Township Costs in accordance with the provisions of the Redevelopment Agreement.

(b) Each payment for professional services charged to the Escrow Account shall be pursuant to a voucher from the professional or consultant, identifying the personnel performing services, each date the services were performed, the hours spent in not greater than one-tenth (1/10) hour increments, the hourly rate, and specifying the services performed. All professionals shall submit the required vouchers or statements to the Escrowee on a monthly basis in accordance with the schedule and procedures established by the Escrowee. The professionals or the Escrowee shall simultaneously send an informational copy of each voucher or statement submitted to the Escrowee to the Redeveloper; *provided*, that each such informational voucher or statement may be redacted if and as necessary to prevent disclosure of privileged or otherwise confidential matters. Annexed hereto as Schedule 1 is a schedule of rates to be charged by outside professionals and consultants retained by the Township as of the date of this Agreement.

4. **Accounting and Additional Deposits.** Within three (3) business days after a written request by the Redeveloper is received by the Township Attorney, the Escrowee shall prepare and send to the Redeveloper a statement which shall include an accounting of funds listing all deposits, disbursements and the cumulative balance of the Escrow Account. If at any time the balance in the Escrow Account is less than **SEVEN THOUSAND FIVE HUNDRED and 00/100 (\$7,500.00) DOLLARS**, the Escrowee shall provide the Redeveloper with a notice of the insufficient Escrow Account balance. Redeveloper shall deposit to the Escrow

Account additional funds such that the total amount on deposit shall be not less than **TWENTY-FIVE THOUSAND and 00/100 (\$25,000.00) DOLLARS**, such deposit to be made within five (5) Business Days after the Escrowee's notice, failing which the Escrowee may unilaterally cease work without liability to the Redeveloper.

5. **Close Out Procedures.** Upon the issuance of a Certificate of Completion or other termination of this Agreement, the Redeveloper shall send written Notice by certified mail to the Escrowee requesting that the remaining balance of the Escrow Account be refunded, or otherwise applied in accordance with the provisions of this Agreement. After receipt of such notice, the professional(s) shall render a final bill to Escrowee within 30 days, and shall send an informational copy simultaneously to the Redeveloper. Within 30 days after receipt of the final bill the Escrowee shall pay all outstanding bills and render a written final accounting to the Redeveloper. The Redeveloper will not be responsible for any additional charges once the final accounting has been rendered by the Escrowee in accordance with this section. This Section shall survive issuance of a Certificate of Completion or other termination of this Agreement.

6. **Disputed Charges.** (a) The Redeveloper may dispute the propriety or reasonableness of Township Costs paid out of the Escrow Account by written Notice to the Escrowee. A copy of such Notice shall be sent simultaneously to the professional(s) whose charges or estimated costs are the subject of the dispute. Such written Notice of a disputed charge shall be given within 30 days after the Redeveloper's receipt of the informational copy of the professional's voucher, invoice, statement or bill, except that if the professional has not supplied the Redeveloper with an informational copy of the voucher, invoice, statement or bill, then the Redeveloper shall send Notice within 30 days after receipt of the first statement of activity against the Escrow Account containing the disputed charge. Failure to dispute a charge in writing within the prescribed time shall constitute the Redeveloper's acceptance of the charge and a waiver by the Redeveloper of all objections to the charge and to payment thereof out of the Escrow Account. The terms of this Section shall survive termination of this Agreement

(b) If the Escrowee and the Redeveloper cannot agree on the resolution of a disputed charge, the parties agree to arbitrate the matter, with a retired judge mutually agreeable to the parties acting as arbitrator. During the pendency of a dispute, the Escrowee shall not pay the disputed charges out of the escrow account, but may continue to pay undisputed charges out of the escrow account.

7. The terms of this exhibit shall survive termination of this Agreement.

SCHEDULE 1

Redevelopment Counsel – McManimon, Scotland & Baumann LLC

“Blended” rate of three hundred twenty-five dollars (\$325) per hour for all attorneys.

The firm will also be entitled to reimbursement of all reasonable and customary out-of-pocket fees and disbursements, including but not limited to photocopying, travel, mail service, express mail/Federal Express, and messenger service.

Redevelopment Planner – Phillips Preiss Grygiel LLC

Principal – one hundred forty-five dollars (\$145) per hour

Planner – ninety five dollars (\$95) per hour

The firm will also be entitled to reimbursement of all reasonable and customary out-of-pocket fees and disbursements, including but not limited to photocopying, mail service, express mail/Federal Express, and messenger service.

EXHIBIT D

FORM OF CERTIFICATE OF COMPLETION

Record and Return to:

Prepared by:

CERTIFICATE OF COMPLETION

[Date]

Maplewood Urban Renewal, LLC
c/o AvalonBay Communities, Inc.
517 Route One South, Fifth Floor - Suite 5500
Iselin, New Jersey 08830
Attention: Ronald S. Ladell, Senior Vice President of Development

RE: Certificate of Completion

Gentlemen:

In accordance with Section 3.03 of the agreement entered into by the Township of Maplewood (the "**Township**") and Maplewood Urban Renewal, LLC (the "**Redeveloper**"), dated as of [___], 2015 entitled "*Redevelopment Agreement Between The Township of Maplewood and Maplewood Urban Renewal, LLC*" (the "**Agreement**"), this letter shall serve as acknowledgment that Redeveloper has performed all of its duties and obligations with respect to the Project (as such term is defined in the Agreement) under the Agreement and has completed construction of the Project in accordance with the requirements of the Agreement.

This Certificate of Completion shall constitute a recordable conclusive determination of the satisfaction and termination of the Redeveloper's obligations, responsibilities and covenants under the Agreement, except for Section 3.02(c) thereof, Declaration section 2(c), which by the terms of the Agreement shall survive such termination. The conditions that were found and determined to exist with respect to the Property (as defined in the Agreement) at the time the

Property was determined to be in need of redevelopment shall be deemed to no longer exist and the Property shall no longer be subject to the possibility of eminent domain as a result of those determinations.

The Declaration recorded in the office of the Essex County Register on [_____] in deed book [____], page [____] is hereby discharged of record and is void and of no further force and effect.

Very truly yours,
TOWNSHIP OF MAPLEWOOD

By: _____
Name:
Title:

EXHIBIT E

FORM OF FINANCIAL AGREEMENT