

Record and Return to:

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**THIS REDEVELOPMENT PROJECT COVENANT** (the “**Project Covenant**”) is made this [\_\_\_\_\_] day of [\_\_\_\_\_, \_\_\_\_\_], by **KRE ACQUISITION CORP.**, a corporation formed under the laws of the State of New Jersey, with offices at 515 Marin Blvd., Jersey City, New Jersey 07302, and its successors and assigns (the “**Redeveloper**”).

**W-I-T-N-E-S-S-E-T-H:**

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

**WHEREAS**, under the Redevelopment Law, the Mayor and Council (the “**Mayor and Council**”) of the Township of Ewing, New Jersey (the “**Township**”), adopted Resolution No. 11R-154 on July 26, 2011, designating the properties located at Block 343, Lot 1.01, Block 374, Lot 4.02 and Block 365, Lot 9 on the Township’s tax map (collectively, the “**Original Parkway Avenue Redevelopment Area**”) as an area in need of redevelopment and authorizing and directing the Township’s Planning Board (the “**Planning Board**”) to prepare a redevelopment plan for the Parkway Avenue Redevelopment Area; and

**WHEREAS**, the Planning Board thereafter caused the preparation of a redevelopment plan for the Original Parkway Avenue Redevelopment Area (the “**Original Redevelopment Plan**”), and on January 3, 2013, adopted a resolution finding the Original Redevelopment Plan is not inconsistent with the Master Plan and recommending that the Mayor and Council adopt the Original Redevelopment Plan; and

**WHEREAS**, on January 29, 2013, the Mayor and Council adopted Ordinance No. 13-02 approving and adopting the Original Redevelopment Plan; and

**WHEREAS**, on \_\_\_\_\_, 2018, the Mayor and Council adopted Resolution No. \_\_\_\_\_, designating the properties located at Block 374, Lot 3 and 365, Lot 21 as an area in need of redevelopment and adding them to the Original Parkway Avenue Redevelopment Area (the “**Parkway Avenue Redevelopment Area**”); and

**WHEREAS**, the Original Redevelopment Plan was amended (as amended, the “**Redevelopment Plan**”), and on February 3, 2022, the Planning Board adopted a resolution finding the Redevelopment Plan is not inconsistent with the Master Plan and recommending that the Mayor and Council adopt the Redevelopment Plan; and

**WHEREAS**, on March 8, 2022, the Mayor and Council adopted Ordinance No. 22-06

approving and adopting the Redevelopment Plan; and

**WHEREAS**, in accordance with Section 65 of the Township Code, the Ewing Township Redevelopment Agency (the “**Agency**”) is the redevelopment entity responsible for implementing the Redevelopment Plan; and

**WHEREAS**, the Redeveloper is the contract purchaser of the portion of the Parkway Avenue Redevelopment Area designated as Block 374, Lot 4.02 on the Township’s official tax map and known as 1500 Parkway Avenue (the “**Property**”) and the Redeveloper proposes to redevelop same together with the adjacent parcel designated as Block 374, Lot 3 on the Township’s official tax map (the “**Adjacent Parcel**” and together with the Property, the “**Project Area**”); and

**WHEREAS**, on November 3, 2021, the Agency adopted a resolution (the “**Designating Resolution**”) conditionally designating the Redeveloper as the redeveloper of the Property, for a period of one hundred-twenty (120) days; and

**WHEREAS**, on December 20, 2021, the Parties executed an Interim Costs Agreement; and

**WHEREAS**, in order to set forth the terms and conditions under which the Parties shall carry out their respective obligations with respect to the construction of the Redevelopment Project (as such term is defined in Section 1.01 in the Redevelopment Agreement (as defined herein)), and to ensure that the redevelopment occurs in a manner that corrects the conditions of the Project Area that led to the determination by the Township that it constituted an area in need of redevelopment, the Agency and the Redeveloper have determined to execute a redevelopment agreement pursuant to the provisions of the Redevelopment Plan and Redevelopment Law authorizing and directing such Redevelopment Agreement (as defined herein); and

**WHEREAS**, on \_\_\_\_\_, 2022, the Agency adopted a resolution designating the Redeveloper as the redeveloper for the Project Area and authorizing the execution of a redevelopment agreement.

**WHEREAS**, on [\_\_\_\_\_], 2022, the Agency and the Redeveloper executed that certain redevelopment agreement (the “**Redevelopment Agreement**”) setting forth the terms and conditions under which the Redeveloper will construct the Redevelopment Project on the Project Area; and

**WHEREAS**, at such time as the Redevelopment Project is completed in accordance with the terms of the Redevelopment Plan and the Redevelopment Agreement, this Project Covenant and the existing conditions which rendered the Project Area an area in need of redevelopment, will no longer exist.

**NOW, THEREFORE**, the Redeveloper, intending to be legally bound hereby and to bind its successors and assigns, does promise, covenant, and declare as follows:

The Redeveloper hereby declares and covenants that the Project Area shall be used only for the uses allowed under the Redevelopment Plan, and subject to and in accordance with the covenants and restrictions herein, which covenants and restrictions shall, subject to the terms hereof, run with the Project Area and shall be binding upon the Redeveloper, and its successors and assigns and, to the extent applicable, to all future lessees and occupants of all or any portion of the Project Area including, without limitation, the rights or easements appurtenant thereto.

1. **Terms and Definitions.** Capitalized terms used but not defined herein shall be afforded the meanings provided in the Redevelopment Agreement.

2. **Applicable Laws.** The Redeveloper's development, construction, use, operation, and maintenance of the Project Area and all improvements thereon and thereto, as provided in the Redevelopment Plan and the Redevelopment Agreement shall be undertaken and carried out in accordance with all Applicable Laws, including without limitation, the Redevelopment Plan, as it may be amended from time to time by the agreement of the Redeveloper and the Agency.

3. **Redeveloper Covenants.**

3.1. The Redeveloper covenants and agrees as follows, provided, however that all such covenants and agreements shall be subject to the terms of the Redevelopment Agreement and that in case of a conflict between the Redevelopment Agreement and this Project Covenant, the terms of the Redevelopment Agreement shall control:

(a) The Redeveloper shall use reasonable diligent efforts to obtain all Applicable Government Approvals necessary for the construction and development of the Redevelopment Project. To the extent Uncontrollable Circumstances exist that in Redeveloper's reasonable business judgment would cause delay in securing all Governmental Approvals, Redeveloper may toll prosecution of any Governmental Approvals until the Uncontrollable Circumstance has been resolved. The Redeveloper shall construct, improve, operate, and maintain the Redevelopment Project in compliance with all Governmental Approvals, and Applicable Law.

(b) The Redeveloper shall use reasonable diligent efforts to (i) obtain financing for the Redevelopment Project, (ii) construct and develop the Redevelopment Project with reasonable due diligence, and (iii) subject to the terms and conditions of this Redevelopment Agreement, use reasonable efforts to Commence Construction of and Complete construction of the Redevelopment Project in accordance with the Redevelopment Project Schedule, on or prior to the applicable date set forth in the Redevelopment Project Schedule or any extensions thereof (and for those items for which commencement dates only are given, such items shall be completed in a commercially-reasonable period). All activities performed under this Redevelopment Agreement shall be performed in accordance with the level of skill and care ordinarily exercised by reputable developers of similar developments of the character, scope, and composition of the Redevelopment Project.

(c) The Redeveloper shall construct, or cause same to be constructed, the Redevelopment Project in accordance with the material terms of this Redevelopment Agreement, the Redevelopment Law, the Redevelopment Plan, and all other Applicable Laws. The Redeveloper

and the Agency acknowledge that each Party has relied on the proposed Redevelopment Project Schedule in entering into its obligations under this Redevelopment Agreement.

(d) The Redeveloper shall use reasonable efforts to fulfill its material obligations under any and all agreements it enters into with third parties with respect to the acquisition, construction, leasing, sale, financing and other matters relating to the Redevelopment Project; provided, however, that this covenant is not intended to prevent the Redeveloper from contesting the scope or nature of such obligations as and to the extent provided in such agreements or as otherwise may be available at law or in equity.

(e) The Redeveloper shall use reasonable efforts to Complete, or cause same to be Completed, the Redevelopment Project, on or prior to the date set forth in the Redevelopment Project Schedule, or any extension thereof, at its sole cost and expense, subject to receipt of any Funding Sources that may be available. In the event that moneys made available pursuant to any outside source are not sufficient to pay the costs necessary to Complete the Redevelopment Project, the Redeveloper shall nonetheless be responsible for Completion of the Redevelopment Project (except for any obligation for costs associated with the remediation of environmental matters that are the responsibility of the Department of the Navy) at its expense and shall not be entitled to any reimbursement therefor from the Agency, except to the extent otherwise expressly provided in this Redevelopment Agreement or the Financial Agreement. The Redeveloper shall have three (3) years from the Effective Date to secure additional financing for the Redevelopment Project from Funding Sources.

(f) Upon Completion of Construction of any portion of the Redevelopment Project, the Redeveloper shall use reasonable efforts to obtain Certificates of Occupancy authorizing the occupancy and uses of the Redevelopment Project for the purposes contemplated hereby.

(g) The Redeveloper shall not discriminate against or segregate any person, or group of persons, on account of race, color, religion, creed, national origin, ancestry, physical handicap, age, marital status, affectional preference or gender in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Redevelopment Project, nor shall the Redeveloper itself, or any Person claiming under or through the Redeveloper, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use and occupancy of tenants, lessees, subtenants, sublessees, or vendees of the Redevelopment Project.

(h) The Redeveloper shall immediately notify the Agency of any material change in its financial condition from the information provided to the Agency by the Redeveloper that would adversely affect the Redeveloper's financial capability to develop, finance and construct the Redevelopment Project as provided herein, in furtherance of the Agency's consideration in designating it as the Redeveloper.

(i) The ownership structure of the Redeveloper is set forth in **Exhibit D** to the Redevelopment Agreement. Once created, the Redeveloper may assign the Redevelopment Agreement to an Urban Renewal Entity and shall provide a description of the ownership structure of the Urban Renewal Entity upon its creation. The Redeveloper shall, at such times as the Agency

may reasonably request, furnish the Agency with a complete statement subscribed and sworn to by the managing member(s) of the Redeveloper, and/or the Urban Renewal Entity, setting forth all of the ownership interests of the Redeveloper and/or the Urban Renewal Entity, or other owners of equity interests of the Redeveloper and/or the Urban Renewal Entity and the extent of their respective holdings, and in the event any other parties have a beneficial interest of greater than ten percent (10%) in the Redeveloper and/or the Urban Renewal Entity, their names and the extent of such interest(s).

(j) The Redeveloper shall not use the Project Area, the Redevelopment Project, or any part thereof, in a manner that is inconsistent with the Redevelopment Plan and this Redevelopment Agreement.

(k) The Redeveloper will cooperate with the Agency, the Township and Mercer County, as necessary, to facilitate the design, financing and construction of the Bypass Improvements including, but not limited to, participation in meetings regarding such issues and consideration of participation in such design, financing, and construction.

3.2. **Effect and Duration of the Redeveloper Covenants.** The covenants set forth in Section 3.1 hereof shall be covenants running with the Project Area until the Redevelopment Project is Completed, all in accordance with the Redevelopment Agreement, and they shall, and except only as otherwise specifically provided in the Redevelopment Agreement, be binding to the fullest extent permitted by Applicable Law and equity, for the benefit and in favor of, and enforceable by, the Agency, its successors and assigns, and any successor in interest to the Project, or any part thereof, against the Redeveloper, its successors and assigns and every successor in interest therein.

3.3. **Enforcement of the Covenants.** The Agency and its successors and assigns shall be deemed beneficiaries of the agreements and covenants contained in this Project Covenant, both for and in their own right, and 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 have been provided. Such agreements and covenants shall run in favor of the Agency for the entire period during which such agreements and covenants shall be in force and effect, without regard to whether the Agency has at any time been, remains, or is an owner of any land or interest therein, or in favor of which such agreements and covenants relate. The Agency shall have the right, in the event of any breach of any such agreement or covenant, to exercise all the rights and remedies and to maintain any actions or suits at law or in equity or other proper proceedings to enforce the curing of such breach of agreement or covenant, to which it or any other beneficiaries of such agreement or covenant may be entitled.

3.4. **Completion of Project.** Upon redevelopment of the Project Area and completion of the Redevelopment Project, the conditions that were found and determined to exist at the time the Project Area was determined to be in need of redevelopment shall be deemed to no longer exist, the land and improvements thereon shall no longer be subject to eminent domain as a result and the conditions and requirements of *N.J.S.A. 40A:12A-9* shall be deemed to have been satisfied with respect to the Project or any applicable portion thereof. The covenants contained herein shall terminate and this Project Covenant will be discharged of record upon

Redeveloper's receipt of a Certificate of Completion and termination of the Redevelopment Agreement pursuant to Section 4.15 thereof for the Redevelopment Project or, alternatively, upon the lawful termination by either party of the Redevelopment Agreement; provided, however, that the Redeveloper's indemnity, defense and hold harmless obligations provided under Section 9.01 of the Redevelopment Agreement shall survive the termination of the Redevelopment Agreement.

**[Signature page follows.]**



**Exhibit A**  
**LEGAL DESCRIPTION**