

Exhibit “A”

AFFORDABLE HOUSING AGREEMENT

THIS AFFORDABLE HOUSING AGREEMENT (the “**Agreement**”) made as of the ____ day of _____, 2021 effective as of the date the Township adopts a resolution authorizing execution of this Agreement (the “**Effective Date**”) by and between

THE TOWNSHIP OF WEST ORANGE, in the County of Essex, a municipal corporation of the State of New Jersey, having its offices at 66 Main Street, West Orange, New Jersey 07052 (hereinafter referred as the “**Township**”);

AND

TOMPKINS STREET APARTMENTS URBAN RENEWAL LLC formerly known as **Tompkins Street Apartments, LLC**, a New Jersey limited liability company and an Urban Renewal Entity having its offices at One Parker Plaza, Fort Lee, New Jersey 07024 (together with its permitted successors or assigns hereinafter provided, referred to as “**Tompkins Street**”) and an affiliate of the Alpert Group, LLC (the “**Redeveloper**”), the designated redeveloper of the properties identified as: (i) Block 9, Lot 36 and Block 7, Lot 22 on the tax maps of the Township known as 18 Central Avenue (the “**Selecto-Flash Property**”); and (ii) the property identified as Block 9, Lot 32 on the official tax maps of the Township known as 8-10 Central Avenue or 4-10 Central Avenue (the “**Biddleman Property**”) (collectively the “**Redevelopment Properties**”). The Township and Tompkins Street are sometimes singularly referred to herein as a “**Party**” and collectively as “**Parties**.”

WITNESSETH

WHEREAS, on February 9, 2021, the Township adopted Resolution 33-21 which authorized the execution of Agreement of Sale and Purchase between the Township and Tompkins Street for the sale of the property identified on the Tax Maps of the Township as Block 6, Lot 36.01, commonly known as the Tompkins Street property (the “**Affordable Housing Property**”); and

WHEREAS, the Affordable Housing Property is being sold by the Township to Tompkins Street as part of the Redevelopment Agreement between the Township, the Redeveloper and Tompkins Street governing the Redevelopment Properties (the “**Redevelopment Agreement**”); and

WHEREAS, on March 23, 2021, the Township adopted Resolution 51-21 designating the Redeveloper as the redeveloper for the Redevelopment Properties and authorizing the execution of the Redevelopment Agreement; and

WHEREAS, Section 4.07(a) of the Redevelopment Agreement requires that Tompkins Street shall construct seventeen (17) units on the Affordable Housing Property as a low- and moderate-income housing development (the “**Affordable Housing Component**”). The Affordable Housing Component shall include: (i) three (3) one-bedroom units; (ii) ten (10) two-bedroom units; and (iii) four (4) three-bedroom units; and

WHEREAS, Section 4.07(b) of the Redevelopment Agreement requires that Parties enter into this Agreement which shall govern the affordability controls for the Affordable Housing Component as a material condition of the Redevelopment Agreement; and

WHEREAS, the Township has included the Affordable Housing Component in its Housing Element and Fair Share Housing Plan (the “**Housing Plan**”) approved by the Superior Court of New Jersey by entry of an Order of Judgment of Compliance and Repose dated March 17, 2021 (the “**Affordable Housing Judgment**”) entered in the Township’s declaratory judgment action captioned In the Matter of the Application of the Township of West Orange, Docket Number ESX-L-4697-15 (the “**Township’s Declaratory Judgment Action**”);

WHEREAS, the Township and Tompkins Street seek to satisfy a portion of the Township’s affordable housing obligation consistent with the Affordable Housing Judgment by constructing the Affordable Housing Component; and

WHEREAS, this Agreement is reached after due deliberation by all Parties and upon the considered judgment of all Parties, that it is in the best interest of the Parties and the public to provide through this Agreement a realistic opportunity for the construction of a substantial portion of affordable housing on the Affordable Housing Property so as to assist the Township in meeting its affordable housing obligation; and

IT IS HEREBY STIPULATED AND AGREED on this _____ day of _____, 2021 and effective as of the date Township adopts a resolution authorizing execution of this Agreement, that the Parties agree to the following terms and conditions, which shall be binding on the parties and their respective estates, heirs, successors, assigns and legal representations:

Section 1. Purpose of Agreement

1.1 The intent and purpose of this Agreement is to memorialize and set forth the restrictions governing the marketing, selection of applications, rent and affordability of the Affordable Housing Component consistent with both the Redevelopment Agreement and the Township’s Housing Plan.

Section 2. Rights and Obligations of Township

2.1 The Township shall consider the designation of the Affordable Housing Property as an Affordable Housing Site with bulk standards in order to allow the Affordable Development, hereinabove defined.

2.2 The Township shall reasonably cooperate with Tompkins Street, at Tompkins Street’s sole cost and expense, to obtain all necessary land development and utility approvals and permits, including any and all approvals and permits needed from outside agencies.

2.3 The Township shall reasonably cooperate so as to fulfill the intent and purpose of this Agreement to permit the Affordable Housing Property to be developed in accordance with this Agreement and the obligations of Tompkins Street set forth below.

2.7 If any rights-of-way and/or easements are necessary and/or appropriate for the development contemplated herein or if off-tract improvements are legally required which

necessitate the acquisition of lands, easements and/or rights-of-way owned by others and Tompkins Street is unable to acquire same at reasonable costs, after good faith efforts to do so, then the Township shall exercise its power of eminent domain to obtain any such lands, easements and/or rights-of-way, provided however, that the cost and expense of same shall be the sole responsibility of Tompkins Street or the Redeveloper. This shall include any and all off-tract easements required over lands that are owned by the Township.

2.8 The Township agrees to consider appropriate master plan amendments and/or reexaminations, to consider deviations as may be required to develop the Affordable Housing Property and to consider the vacation of any and all roads, streets, rights of way, and/or easements located on the Affordable Housing Property which Tompkins Street articulates are necessary to implement the development of the Affordable Housing Property as contemplated by this Agreement.

Section 3. Rights and Obligations of Tompkins Street

3.1 In accordance with the Redevelopment Plan and the Redevelopment Agreement governing the Redevelopment Properties, Tompkins Street shall construct the Affordable Housing Component at the Affordable Housing Property pursuant to the timetable set forth in Section 4.08(b) of the Redevelopment Agreement, including all required land use and government approvals.

3.2 Tompkins Street agrees to construct and operate the Affordable Housing Component at the Affordable Housing Properties in compliance and in accordance with the Affordable Housing Requirements set forth in Section 4 of this Agreement.

3.3 Tompkins Street agrees to exercise good faith in fulfilling the intent and purpose of this Agreement.

3.4 Tompkins Street agrees to take all necessary steps to cooperate and assist the Township to ensure that all requirements are met to maintain the Rental Affordable Units (defined below) in a manner to allow the Township to credit these units as part of affordable housing obligations consistent with its Housing Plan and the Affordable Housing Judgment.

Section 4. Affordable Housing Requirements

4.1 The Affordable Housing Component shall be a 100% affordable housing development of non-age restricted rental affordable units, (defined below) limited to low- and moderate-income families.

4.2 All affordable units required in the Affordable Housing Component shall be rental affordable units (“**Rental Affordable Units**”) which shall include (i) three (3) one-bedroom units at no less than 650 square feet; (ii) ten (10) two-bedroom units at no less than 875 square feet; and (iii) four (4) three-bedroom unit at no less than 1,150 square feet.

4.3 Eight of the seventeen Rental Affordable Units shall be affordable to households at 60 percent of median income; Seven of the seventeen Rental Affordable Units shall be affordable to households at 50 percent of median income; and two of the seventeen Rental Affordable Units shall be affordable to households at 30 percent of median income.

4.4 COAH Regulations (N.J.A.C. 5:96-1 et seq. and N.J.A.C. 5:97-1 et seq.) and the UHAC regulations of the New Jersey Housing and Mortgage Finance Agency (N.J.A.C. 5:80-26.1 et. seq.) shall govern the provision of the Rental Affordable Units, including but not limited to

bedroom mix, duration of affordability controls, income qualification, marketing and phasing of the Rental Affordable Units with market units. The Developer shall also comply with COAH regulations to ensure that the Township secures, to the extent allowed by law, rental bonuses for the Rental Affordable Units provided up to the COAH limit on a municipality's right to such rental bonuses; and

4.5 These required Rental Affordable Units on the Affordable Housing Property, as set forth herein, shall be the sole affordable housing obligation of the Redeveloper with regard to the redevelopment of the Redevelopment Properties. There shall be no affordable housing fees and/or Mount Laurel fees with regard to either the Affordable Housing Property or the redevelopment of the Redevelopment Properties.

4.6 The Parties agree that the income qualification, affordability, administration and certification of all the Rental Affordable Units shall be done by a certified qualification entity or by the Redeveloper and Tompkins Street; and that the Redeveloper and Tompkins Street shall be jointly responsible for all fees associated with such services. Either the Redeveloper or Tompkins Street shall submit a project affordable housing plan detailing the marketing and qualification protocols applicable to the Rental Affordable Units to the Township's affordable housing planner for review and approval at the time of submission of the Preliminary Application to the Township of West Orange Planning Board for the Affordable Housing Component, and compliance with such project affordable housing plan shall be a condition of all future site plan approvals. The Redeveloper or Tompkins Street shall have the right to modify the affordable housing plan as the market dictates provided that such modifications are approved by the Township's affordable housing planner which approval shall not be unreasonably withheld, conditioned, or delayed, and that the units continue to comply with UHAC and the income distributions set forth in this Agreement.

4.7 The Rental Affordable Units shall be subject to a period of at least thirty (30) years wherein these Affordable Housing Requirements shall apply (the "**Affordability Term**").

4.8 To effectuate these Affordable Housing Requirements, a Deed Restriction for the Affordability Term, in the form annexed hereto as Exhibit "A," shall be recorded with the Deed transferring title of the Affordable Housing Property from the Township to Tompkins Street pursuant to the Agreement of Sale and Purchase between the Parties.

4.9 Tompkins Street acknowledges and agrees that no Certificates of Occupancy, either temporary or permanent, shall be issued related to the Redevelopment Property until such time as the Affordable Housing Component is completed in accordance with Section 4.07 of the Redevelopment Agreement.

Section 5. Enforcement

Any party may enforce its rights under this Agreement by way of motion in aid of litigant's rights in the Superior Court of New Jersey, Law Division, Essex County or under any other available procedures. The enforcement rights granted under this section shall be in addition to and not in substitution of any other appeal, remedy and/or enforcement rights a party may have.

Section 6 Tompkins Street Stipulations:

Tompkins Street stipulates and agrees as follows:

- a. That it has conferred due authority for the execution of this Agreement upon the persons executing same on behalf of Tompkins Street; and
- b. Tompkins Street acknowledges that it has reviewed the Redevelopment Agreement as defined herein and agrees to the terms and conditions related to the Affordable Housing Element Components therein.

Section 7 Township Stipulations:

The Township stipulates and agrees as follows:

- a. That it has conferred due authority for the execution of this Agreement upon the persons executing it on behalf of the Borough.

Section 8 Miscellaneous Provisions:

8.1 This Agreement shall be effective upon the date in which the Township adopts a resolution authorizing execution of this Agreement.

- a. The Parties further stipulate and agree that full compliance with this Agreement shall be a continuing non-severable condition of any Township of West Orange Planning Board approval.
- b. The Parties agree that the forum to compel performance of this Agreement is the Superior Court of New Jersey, Essex County.
- c. This Agreement may be enforced by motion brought pursuant to Rule 1:10-3 for enforcement of litigant's rights or other appropriate procedure.

8.2 This Agreement shall inure to the benefit of and be binding upon the Parties hereto and their respective successors and assigns. Nothing in this Agreement, express or implied, is intended to confer on any person other than the parties hereto or their respective successors and assigns, any rights, remedies, obligations or liabilities.

8.3 Each party exclusively shall be responsible for all costs that they may incur in the defense of this Agreement in an action challenging the legality of this Agreement and any appeal therefrom or an action challenging the legality of Redevelopment Agreement related to the Affordable Housing Component included therein. The Parties shall cooperate and actively participate in the defense of any such challenge.

8.4 Each of the Parties waive all rights:

- a. To challenge the validity of this Agreement; and
- b. The Parties agree to cooperate in the defense of this Agreement or any aspect thereof, including but not limited to, the Redevelopment Agreement in the event of any judicial, administrative, or other challenge.

8.5

a. In the event that any appeal or other litigation filed by a third party challenges the validity of this Agreement, the Redevelopment Agreement, the Township land use ordinance, a condition or approval or any land development approval granted for the Affordable Housing Property, the Parties shall, in good faith, and at their own costs and expense, defend such litigation and undertake all reasonable measures to uphold the validity of this Agreement. In the event this Agreement and/or the above referenced documents affecting the Affordable Housing

Property are invalidated due to a procedural defect, the Township agrees to immediately correct such defect and reintroduce the affected ordinance, the affected approval or re-adopt this Agreement to cure such defect. In the event that the Township land use ordinance is challenged by a third party, Tompkins Street may, at its own risk and sole discretion, prosecute any application contemplated by this Agreement or wait until the ordinance challenge is determined in Court.

b. Nothing in this section shall preclude Tompkins Street from challenging any conditions to its preliminary or final approvals that Tompkins Street in its sole discretion deems to be unreasonable or *ultra vires*.

8.6 a. All notices, requests, demands, acceptances and other communications which are required or permitted under this Agreement shall be in writing and shall be deemed to have been duly given when delivered to the party and the attorney representing the party

(i) when delivered personally, or

(ii) when sent by email if sent on a business day prior to 5:00 p.m. local time at the place of receipt, or on the following business day if sent after 5:00 p.m. or on a non-business day, or

(iii) on the day following delivery to a courier service if sent by next day delivery via a recognized international courier service, or

(iv) five days after the date when mailed by registered or certified mail, return receipt requested, postage prepaid.

b. Notice to Tompkins Street shall also be sent to

Joseph Alpert
The Alpert Group, LLC
1 Parker Plaza
Fort Lee, New Jersey 07024

With a copy to:

William C. Sullivan, Jr., Esq.
Scarinci Hollenbeck
1100 Valley Brook Avenue
P.O. Box 790
Lyndhurst, NJ 07071

c. Notice to Township shall be also sent to

Mayor Robert D. Parisi
Township of West Orange
66 Main Street
West Orange, New Jersey 07052

With a copy to:

Richard D. Trenk, Esq., Township Attorney
Trenk Isabel P.C.
290 W. Mt. Pleasant Avenue

Building 3, Suite 2350
Livingston, New Jersey 07039

8.7 If any of the terms of this Agreement are deemed unenforceable as a matter of law, the remaining terms shall be unaffected thereby and shall remain in full force and effect.

8.8 The preamble to this Agreement is hereby incorporated as if contained in the body of same.

8.9 This Agreement has been fully negotiated, reviewed and drafted by all Parties hereto and their respective attorneys. Accordingly, the common law presumption of resolving ambiguities against the drafter shall not apply.

8.10 The Parties, and all of their respective members, officers, agents, representatives, consultants, and employees shall cooperate and conduct themselves in good faith in order to effectuate the terms and objectives of this Agreement, which is designed to create affordable housing through the development of the Affordable Housing Property that is the subject of this Agreement. Such cooperation shall include, by example, but not limited to: timely submission and review of reports and documents, timely inspections; execution of documents, or applications and cooperation and coordination with other agencies and or government entities.

8.11 The Township shall generally cooperate with Tompkins Street to fulfill the intent and purposes of this Agreement.

8.12 The interpretation and performance of this Agreement shall be governed by and construed in accordance with the laws of the State of New Jersey, without regard to such State's conflicts of law principles. Court enforcement, interpretation and/or resolution of the terms and conditions contained herein are to be resolved in the Superior Court of New Jersey, Essex County Venue without a jury.

8.13 Headings of the Sections in this Agreement are for reference purposes only and shall not be deemed to have any substantive effect.

8.14 This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same instrument.

8.15 This Agreement may not be modified, amended or terminated except in writing and signed by each party hereto.

8.16 The Parties hereto agree to advance the purposes of this Agreement in good faith and as expeditiously as possible, including the scheduling of special meetings, at Tompkins Street's sole cost and expense.

IN WITNESS WHEREOF, the Parties have executed this Affordable Housing Agreement effective as of the date the Township adopts a resolution authorizing execution of this Agreement.

ATTEST:

TOWNSHIP OF WEST ORANGE

Karen Carnevale, RMC
Township Clerk

By: _____
Name: Robert D. Parisi
Title: Mayor

WITNESS:

TOMPKINS STREET APARTMENTS
URBAN RENEWAL, LLC formerly known as
Tompkins Street Apartments, LLC



Fran Lacatena

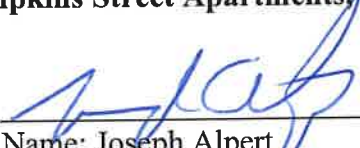
By: 
Name: Joseph Alpert
Title: Managing Member

Exhibit “A”

Deed Restriction

DEED-RESTRICTED AFFORDABLE HOUSING PROPERTY WITH RESTRICTIONS ON RESALE AND REFINANCING

To Rental Property With Covenants Restricting Rentals, Conveyance and Improvements And Requiring Notice of Foreclosure and Bankruptcy

THIS DEED RESTRICTION, entered into as of this the ____ day of _____, 2021, by and between the Township of West Orange (the "Township"), with offices at 66 Main Street, West Orange, New Jersey 07052, and Tompkins Street Apartments Urban Renewal, LLC (formerly Tompkins Street Apartments, LLC), a New Jersey limited liability company and an Urban Renewal Entity having its offices at One Parker Plaza, Fort Lee, New Jersey 07024, the developer/sponsor (the "Owner") of a residential low- or moderate-income rental project (the "Project"):

WITNESSETH

Article 1. Consideration

In consideration of benefits and/or right to develop received by the Owner from the Township regarding this rental Project, the Owner hereby agrees to abide by the covenants, terms and conditions set forth in this Deed Restriction, with respect to the land and improvements more specifically described in Article 2, hereof (the "Property").

Article 2. Description of Property

The Property consists of all of the land, and a portion of the improvements thereon, that is located in the Township of West Orange, County of Essex, State of New Jersey, and described more specifically as Block No. 6. Lot No. 36.01, and known by the street address:

the Tompkins Street property
West Orange, New Jersey 07052

More specifically designated as:

(List specific affordable units by address or apartment number.)

Article 3. Affordable Housing Covenants

The following covenants (the "Covenants") shall run with the land for the period of time (the "Control Period"), determined separately with respect for each dwelling unit, commencing upon the latter of the date hereof or the date on which the first certified household occupies the unit, and shall and expire as determined under the Uniform Controls, as defined below.

In accordance with N.J.A.C. 5:80-26.11, each restricted unit shall remain subject to the requirements of this subchapter, the "Control Period," until the municipality in which the unit is located elects to release the unit from such requirements. Prior to such a municipal election, a restricted unit must remain subject to the requirements of this subchapter for a period of at least 30 years.

- A. Sale and use of the Property is governed by regulations known as the Uniform Housing Affordability Controls, which are found in New Jersey Administrative Code at Title 5, chapter 80, subchapter 26 (N.J.A.C. 5:80-26.1, *et seq*, the "Uniform Controls").
- B. The Property shall be used solely for the purpose of providing rental dwelling units for low- or moderate-income households, and no commitment for any such dwelling unit shall be given or implied, without exception, to any person who has not been certified for that unit in writing by the Township or its designated Administrative Agent. So long as any dwelling unit remains within its Control Period, sale of the Property must be expressly subject to these Deed Restrictions, deeds of conveyance must have these Deed Restrictions appended thereto, and no sale of the Property shall be lawful, unless approved in advance and in writing by the Township or its designated Administrative Agent.
- C. No improvements may be made to the Property that would affect the bedroom configuration of any of its dwelling units, and any improvements to the Property must be approved in advance and in writing by the Township or its designated Administrative Agent.
- D. The Owner shall notify the Township and its designated Administrative Agent of any foreclosure actions filed with respect to the Property within five (5) business days of service upon Owner.
- E. The Owner shall notify the Township and its designated Administrative Agent within three (3) business days of the filing of any petition for protection from creditors or reorganization filed by or on behalf of the Owner.

Article 4. Remedies for Breach of Affordable Housing Covenants

A breach of the Covenants will cause irreparable harm to the Township and to the public, in light of the public policies set forth in the New Jersey Fair Housing Act, the Uniform Housing Affordability Control rules found at N.J.A.C. 5:80-26, and the obligation for the provision of low and moderate-income housing.

- A. In the event of a threatened breach of any of the Covenants by the Owner, or any successor in interest of the Property, the Administrative Agent and the Township shall have all remedies provided at law or equity, including the right to seek injunctive relief or specific performance.
- B. Upon the occurrence of a breach of any Covenants by the Owner, or any successor in interest or other owner of the Property, the Township shall have all remedies provided at law or equity including but not limited to forfeiture, foreclosure, acceleration of all sums due under any mortgage, recouping of any funds from a sale in violation of the Covenants, diverting of rent proceeds from illegal rentals, injunctive relief to prevent further violation of said Covenants, entry on the premises, those provided under Title 5, Chapter 80, Subchapter 26 of the New Jersey Administrative Code and specific performance.

IN WITNESS WHEREOF, the Township and the Owner have executed this Deed Restriction in triplicate as of the date first above written.

ATTEST:

TOWNSHIP OF WEST ORANGE

Karen Carnevale, RMC
Township Clerk

By: _____
Name: Robert D. Parisi
Title: Mayor

WITNESS:

**TOMPKINS STREET APARTMENTS
URBAN RENEWAL, LLC formerly known as
Tompkins Street Apartments, LLC**

Maureen Sergi
Maureen Sergi

By: [Signature]
Name: Joseph Alpert
Title: Managing Member

STATE OF NEW JERSEY :

: ss.:

COUNTY OF ESSEX :

BE IT REMEMBERED, that on this 3rd day of August, 2021 before me, the subscriber, a Notary Public of New Jersey, personally appeared Joseph Alpert, who, being by me duly sworn on his/her oath, deposes and makes proof to my satisfaction that he is the Owner of **TOMPKINS STREET APARTMENTS URBAN RENEWAL, LLC formerly known as Tompkins Street Apartments, LLC**, the entity named in the within Deed Restriction; that the execution, as well as the making of this Instrument, have been duly authorized by the entity and said Deed Restriction was signed and delivered by said Owner as and for the voluntary act and deed of said entity.

[Signature]
Notary or Attorney At Law
The State of New Jersey



STATE OF NEW JERSEY :

: ss.:

COUNTY OF ESSEX :

BE IT REMEMBERED, that on this _____ day of _____, 2021 before me, the subscriber, a Notary Public of New Jersey, personally appeared Robert D. Parisi, 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 WEST ORANGE, NEW JERSEY**, the entity named in the within Deed Restriction; that the execution, as well as the making of this Instrument, have been duly authorized by the Township of West Orange 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