

REDEVELOPMENT AGREEMENT

By and Between

THE TOWNSHIP OF WEST ORANGE

as Redevelopment Entity

and

DGP URBAN RENEWAL LLC,

as Redeveloper

Dated as of _____, 2015

This Redevelopment Agreement (the “**Agreement**”) entered into this _____ day of _____, 2015 by and between **THE TOWNSHIP OF WEST ORANGE, NEW JERSEY** (the “**Township**”), a public body corporate and politic of the State of New Jersey having its offices at 66 Main Street, West Orange, New Jersey 07052, in its capacity as redevelopment entity pursuant to *N.J.S.A. 40A: 12A-4(c)*, and **DGP URBAN RENEWAL LLC**, a limited liability company of the State of New Jersey, having offices at c/o DREF III Edison LLC, 623 Fifth Avenue, 30th Floor, New York, New York 10019 (together with its permitted successors or assigns as hereinafter provided, the “**Redeveloper**”).

W I T N E S S E T H

WHEREAS, in 2002, following a recommendation of the West Orange Planning Board (the “**Planning Board**”), the Mayor and Township Council (the “**Governing Body**”) adopted a Resolution designating as an “area in need of redevelopment” certain areas within the West Orange downtown area (the “**Downtown Redevelopment Area**” or “**Redevelopment Area**”) pursuant to *N.J.S.A. 40A:12A-5* of the Local Redevelopment and Housing Law, *N.J.S.A. 40A:12A-1 et seq.* (the “**Redevelopment Law**”); and

WHEREAS, the Downtown Redevelopment Area includes all of the lots in Blocks 64, 66, 115, 116, 116.02, and some of the lots in Blocks 89, 114, and 117, all as identified on the Official Tax Maps of the Township, including among other sites the site of the historically significant Edison Storage Battery Building, and is generally bounded by the City of Orange to the southeast, Park Avenue to the southwest, Llewellyn Park to the northwest, and Kling Street to the northeast; and

WHEREAS, in accordance with the procedures and standards set forth in the Redevelopment Law, on February 9, 2003, the Township Council finally adopted an ordinance approving a redevelopment plan for the Downtown Redevelopment Area, as such plan was amended by ordinances adopted on August, 15, 2006, March 6, 2007 and March 8, 2011 (collectively, the “**Plan**” or the “**Redevelopment Plan**”); and

WHEREAS, in furtherance of its objective to spark redevelopment efforts within the Downtown Redevelopment Area, the Township is willing to consider making certain statutorily authorized financial assistance and tax exemptions available to Redeveloper in connection with the redevelopment of that portion of the Redevelopment Area which is subject to this Agreement; and

WHEREAS, Redeveloper acknowledges that the Township retains full discretion under applicable law whether to grant the financial assistance or the tax exemptions; and

WHEREAS, among other things the Redevelopment Plan establishes permitted uses and development standards for redevelopment within the Downtown Redevelopment Area, and identifies, among others, the following parcels of land for possible acquisition:

Block 64, Lots 3, 3.02, 21, 22, 23, 25, 27, 28, 29, 30, 31, 32, 33, 34, 34.01, 38, 40, 41, 42, 42.01, 44, 44.01, 45, 46, 47, 48, 49, 49.01, 50 and 51;

Block 66, Lots 1, 5, and 7;

Block 115, Lots 15, 16, 16.01, 17 and 51;

Block 116.02, Lots 1.01, 6, 8, 10, 12, 13, 14, 16, and 18

(collectively, the “**Acquisition Parcels**” and each one individually an “**Acquisition Parcel**”); and

WHEREAS, the Township and Prism Green Associates IV, LLC entered into that certain Redevelopment Agreement by and between the Township of West Orange, as Redevelopment Entity and Prism Green Associates IV, LLC, as Redeveloper (hereinafter “**Prism**”) dated as of December 20, 2006, as amended and supplemented by letter agreement on May 8, 2007, June 21, 2007, September 11, 2007, and October 27, 2009 governing the redevelopment of the Downtown Redevelopment Area including the Acquisition Parcels (hereinafter the “**Original Redevelopment Agreement**”); and

WHEREAS, the Original Redevelopment Agreement defined the “Project or Redevelopment Project” as “the construction or rehabilitation of a total of 609 residential units comprising approximately 538 “for sale” market rate residential units and uses attendant and necessary thereto; up to 71 low and moderate income affordable and residential units pursuant to the applicable regulations of the NJ Council on Affordable Housing (“COAH”) and the Township’s growth share obligations thereunder; together with up to approximately 50,200 square feet of commercial space and other amenity support space; a parking structure containing not less than 590 spaces (the “Parking Deck”) and such other parking areas as may be approved by the Planning Board in accordance with the provision of the Redevelopment Plan to accommodate parking for residential and retail uses as hereinafter provided; public infrastructure and improvements, including utilities, roadways, pathways, sidewalks, public rights of way and open space”; and

WHEREAS, the Original Redevelopment Agreement authorized Prism to redevelop those certain properties including but not limited to Block 66, Lots 1, 5 and 7 (collectively, the “**Edison Battery Parcels**”) in accordance with the terms thereof; and

WHEREAS, the Edison Battery Parcels are improved with a structure commonly known as the Edison Storage Battery Building (hereinafter the “**Edison Battery Building**”) which is in need of redevelopment and rehabilitation; and

WHEREAS, the Original Redevelopment Agreement defined “Phase 1” of the Project in relevant part as “the redevelopment of the Edison Battery Building, retail development and construction of the Parking Deck, and includ[ing] the construction of approximately 300 residential units.” (collectively, the “**Original Phase 1 Project**”); and

WHEREAS, due to certain financial market conditions, the Township and Prism desired to revise the Original Phase 1 Project so that the first phase would contain: (i) approximately 333

residential rental units; (ii) approximately 18,500 square feet of commercial retail space; (iii) approximately 31,700 square feet of other amenity support space; (iv) a parking structure containing approximately 635 spaces (the “**Parking Deck**”); and (v) such other parking areas as may be approved by the Planning Board in accordance with the provisions of the Redevelopment Plan to accommodate parking for residential and retail uses as hereinafter provided; together with certain public infrastructure and improvements relating thereto, including utilities, roadways, pathways, sidewalks, public rights of way and open space, as identified in the Phase 1 Infrastructure Construction Agreement attached hereto, and other amenities on the Edison Battery Parcels (collectively, hereinafter the “**Phase 1 Project**”), and to modify the Original Redevelopment Agreement with respect to the Phase 1 Project; and

WHEREAS, in furtherance of the foregoing, the Township and Prism entered into that certain Modification Agreement by and between the Township of West Orange, as Redevelopment Entity and Prism Green Associates IV, LLC, as Redeveloper dated August 8, 2014 for the Phase 1 Project (hereinafter the “**Modification Agreement**”); and

WHEREAS, in accordance with the Modification Agreement, and as part of the Phase 1 Project, the Township and Prism entered into that certain infrastructure improvement agreement which, among other things, described within it those certain public infrastructure and improvements relating thereto, including utilities, roadways, pathways, sidewalks, and public rights of way (hereinafter the “**Phase 1 Infrastructure Improvements**”) and set forth the terms, conditions, and specifications pertaining to Prism’s obligation to construct or install, or cause to be constructed or installed the Phase 1 Infrastructure Improvements as a part of the Phase 1 Project; and

WHEREAS, in order to assist with the undertaking of the Phase 1 Infrastructure Improvements, environmental remediation and public parking improvements, Prism requested and the Township agreed to consider, subject to Satisfactory Resolution of the Pending Litigation (as defined below), the issuance of not to exceed \$6,300,000 general obligation bonds on such terms and conditions as set forth in the Modification Agreement; and

WHEREAS, Prism’s affiliate GP 177 Main Urban Renewal, LLC, an urban renewal entity formed in accordance with the provisions of the Long Term Tax Exemption Act, N.J.S.A. 40A:20-1 et seq. (the “**Tax Exemption Act**”) (hereinafter “**GP 177**”) became the fee title owner of the Edison Battery Parcels; and

WHEREAS, in connection with the Phase 1 Project, GP 177 applied for a long term tax exemption under the Tax Exemption Act with respect to the Phase 1 Project with the Township on March 18, 2008, as updated and supplemented on January 30, 2009 and January 18, 2012; and

WHEREAS, in order to enhance the economic viability of and opportunity for the success of the Phase 1 Project, the Township granted GP 177 a long term tax exemption for the Phase 1 Project as described in that certain financial agreement by and between the Township of West Orange and GP 177 Main Urban Renewal, L.L.C. dated as of August 8, 2014 for the Phase 1 Project (hereinafter the “**Phase 1 Financial Agreement**”); and

WHEREAS, the Township believes the Phase 1 Project to be in the vital and best interests of the Township, and that it promotes the health, safety, morals and welfare of the Township's residents; and

WHEREAS, on July 15, 2015, the Redeveloper proposed to the Township, among other things, that the Township authorize Redeveloper to take ownership of and develop the Phase 1 Project as the designated redeveloper thereof, and filed an application with the Mayor of the Township and the Township Council requesting the Township's consent to an assignment of the Phase 1 Financial Agreement to Redeveloper and an amendment of the Phase 1 Financial Agreement to clarify and confirm the Township's agreement to certain aspects of the tax exemption including, but not limited to the project construction schedule and the estimated total project cost for the Phase 1 Project as those terms are defined under the Tax Exemption Act; and confirm that there are no defaults under the Phase 1 Financial Agreement; and

WHEREAS, after reviewing the Redeveloper's proposal and related submissions, the Township determined that the Redeveloper possesses the proper qualifications, financial resources and capacity to implement and complete the Phase 1 Project in accordance with the Redevelopment Plan, and all other applicable laws, ordinances and regulations; and

WHEREAS, after reviewing the Redeveloper's proposal and related submissions the Township determined that it was in the Township's best interests to, among other things, authorize GP 177 to convey title to the Edison Battery Parcels to Redeveloper, as the designated redeveloper of the Phase 1 Project; terminate the Modification Agreement; enter into a separate redevelopment agreement with Redeveloper for the Phase 1 Project; amend the Initial Redevelopment Agreement to exclude the Phase 1 Project therefrom; and establish a new Construction Schedule for the Phase 1 Project; and

WHEREAS, in furtherance of the foregoing, and in accordance with the Local Redevelopment and Housing Law, on _____, 2015 the Township adopted Resolution #_____ and Resolution # _____ to, among other things, authorize GP 177 to convey title to the Edison Battery Parcels to Redeveloper; name Redeveloper as the designated redeveloper of the Phase 1 Project; terminate the Modification Agreement; enter into a separate redevelopment agreement with Redeveloper for the planning, construction and undertaking of the Phase 1 Project in accordance with the Downtown Plan; amend the Original Redevelopment Agreement to exclude the Phase 1 Project therefrom; provide for the assignment of the Infrastructure Construction Agreement to the Redeveloper; and establish a new Construction Schedule for the Phase 1 Project; and

WHEREAS, in furtherance of the foregoing, and in accordance with the Tax Exemption Act, on _____, 2015 the Township adopted Ordinance #_____ to, among other things, authorize GP 177 to convey title to the Edison Battery Parcels to Redeveloper; assign the Phase 1 Financial Agreement to Redeveloper; amend the Phase 1 Financial Agreement to clarify and confirm certain aspects of the tax exemption including, but not limited to the project construction schedule and the estimated total project cost for the Phase 1 Project as those terms are defined under the Tax Exemption Act; and confirm that there are no defaults under the Phase 1 Financial Agreement; and

WHEREAS, as of the date hereof, Redeveloper has become the owner of the Edison Battery Parcels commonly known as 177 Main Street, West Orange, and described on the West Orange Tax Collector’s Map as Block 66, Lots 1, 5, and 7; and

WHEREAS, Redeveloper will construct and install the Phase 1 Infrastructure Improvements as a part of the Phase 1 Project; and

WHEREAS, in order to assist with the undertaking of the Phase 1 Infrastructure Improvements, environmental remediation and public parking improvements, Redeveloper requested and the Township agreed to consider, subject to Satisfactory Resolution of the Pending Litigation (as defined below), the issuance of not to exceed \$6,300,000 general obligation bonds as part of the Phase 1 Project on such terms and conditions as set forth herein; and

WHEREAS, in order to enhance the economic viability of and opportunity for the success of the Phase 1 Project, the Township and Redeveloper entered into an Amendment, Assignment and Assumption of the Phase 1 Financial Agreement for the Phase 1 Project; and

WHEREAS, the Township and Prism have entered into an amendment to the Original Redevelopment Agreement to exclude the Phase 1 Project therefrom; and

WHEREAS, the Township and the Redeveloper desire to enter into this Agreement to confirm that the Redeveloper shall be developing the Phase 1 Project and to set forth their respective undertakings, rights and obligations in connection with the development of the Phase 1 Project in accordance with the Redevelopment Plan and the terms and conditions of the Agreement as hereinafter set forth.

WHEREAS, for the purposes of facilitating the Phase 1 Project, the Parties now wish to enter into this Modification Agreement,

NOW, THEREFORE, the Parties hereby agree as follows:

**ARTICLE I
DEFINITIONS AND CONSTRUCTION**

1.1. Defined Terms. The Parties agree that the defined capitalized terms used in this Agreement shall have the meaning specified in the Recitals above (each of which is hereby incorporated into and made part of this Agreement) or as set forth in the list below, or as may be expressly ascribed to such capitalized terms elsewhere in this Agreement, such definitions to be applicable equally to the singular and plural forms of such terms unless otherwise specified:

“Applicable Laws” means all federal, state and local laws, ordinances, approvals, rules, regulations statutes, permits, resolutions, judgments, orders, decrees, directives, interpretations, standards, licenses and other similar requirements applicable thereto, including but not limited to, the Redevelopment Law; the Municipal Land Use Law, *N.J.S.A. 40:55D-1 et seq.*; the *Zoning*

Ordinance of the Township of West Orange, as and to the extent applicable pursuant to the terms of the Redevelopment Plan; relevant construction codes including construction codes governing access for people with disabilities; and all other applicable federal, state or local zoning, land use, environmental, health and safety laws, ordinances, rules and regulations, and federal and state labor standards or regulations, if any, including but not limited to the *Prevailing Wage Law*.

“Application” or “Government Application” means any application for Governmental Approval submitted by or on behalf of Redeveloper, including all plans, drawings, documentation and presentations necessary and appropriate for the purpose of obtaining any and all Governmental Approvals required to implement and Complete Construction of the Phase 1 Project.

“Certificate of Completion” means written instrument signed by the Township in recordable form that the Redeveloper has completed construction of the Phase 1 Project and Improvements in accordance with the requirements of this Agreement; and that, in accordance with the provisions of *N.J.S.A. 40A:12A-9* of the Redevelopment Law, the conditions determined to exist at the time the Redevelopment Area was determined to be in need of redevelopment no longer exist with respect to the Edison Battery Parcels; and that the Edison Battery Parcels and Improvements thereon which are the subject of the Certificate of Completion shall no longer be subject to eminent domain as a result of those determinations.

“Certificate of Occupancy” shall be as defined in the Township’s Municipal Code and in the applicable provisions of the Uniform Construction Code.

“Commence Construction”, “Commencement of Construction”, or “Commencement Date” shall mean the date on which the construction force and machinery is mobilized for construction of the Phase 1 Project in accordance with Governmental Approvals.

“Completion of Construction”, “Complete Construction” or “Completion Date” means the date on which the Redeveloper receives a Certificate of Completion for the Phase 1 Project.

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

“Construction Period” means the period beginning on the Commencement Date and ending on the Completion Date.

“Construction Schedule” means the agreed upon timetable and performance milestones for design, obtaining Governmental Approvals, Environmental Remediation, site preparation, and Completion of Construction of the Phase 1 Project attached hereto as Exhibit D, as may be modified or adjusted from time to time in accordance with the provisions of this Agreement.

“Declaration of Covenants and Restrictions” or “Declaration of Restrictions” means a written instrument intended to be executed by Redeveloper, as owner of the Edison Battery Parcels, to be recorded in the Office of the Essex County Register and to encumber the Edison

Battery Parcels and to run with the land, 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 Phase 1 Project, a form of which is attached at Exhibit E hereto.

“Default” means a condition or event which constitutes or would constitute, after notice or lapse of time or both, an Event of Default as more particularly defined in Article X.

“DREF Member” means either DREF III Edison LLC or DREF III Edison II LLC, collectively the “DREF Members”.

“Effective Date” means the date of complete execution of this Agreement by Redeveloper and the Township (except as may be tolled as provided elsewhere in this Agreement).

“Environmental Laws” means all federal, state, regional, and local laws, statutes, ordinances, regulations, rules, codes, consent decrees, judicial or administrative orders or decrees, directives or judgments relating to environmental contamination, damage to or protection of the environment, environmental conditions, or the use, handling, processing, distribution, generation, treatment, storage, disposal, manufacture or transport of Hazardous Substances materials or wastes, including, but not limited to, the *Comprehensive Environmental Response, Compensation and Liability Act* (“CERCLA”) (42 U.S.C. §§ 9601-9675); the *Resource Conservation and Recovery Act of 1976* (“RCRA”) (42 U.S.C. §§ 6901, et seq.); the *Clean Water Act* (33 U.S.C. §§ 1251, et seq.); the *New Jersey Spill Compensation and Control Act* (the “*Spill Act*”) (N.J.S.A. 58:10-23.11, et seq.); the *Industrial Site Recovery Act*, as amended (“ISRA”) (N.J.S.A. 13:1K-6, et seq.); the *New Jersey Underground Storage of Hazardous Substances Act* (N.J.S.A. 58:10A-21, et seq.), the *New Jersey Water Pollution Control Act* (N.J.S.A. 58:10A-1 et seq.); the *New Jersey Environmental Rights Act* (N.J.S.A. 2A:35A-1, et seq.); the *Site Remediation Reform Act* (N.J.S.A. 58:10C-1, et seq.); and the rules and regulations promulgated thereunder, including but not limited to the *Technical Requirements for Site Remediation* (N.J.A.C. 7:26E et seq.).

“Escrow Account” means the escrow account established for the payment of Township costs and expenses as referenced in Section 4.6 hereof.

“Event of Default” means any of those events of default defined in Article X hereof.

“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 any third-party litigation (other than the Pending Litigation) that: enjoins implementation of the Phase 1 Project or portion thereof; materially interferes with the ability of Redeveloper to obtain Market Rate Financing for the Phase 1 Project, as more particularly described in Section 10.3 hereof; seeks a declaration, decision, order or judgment that those certain resolutions or ordinances adopted by the Township establishing the Redevelopment Area, the Redevelopment Plan or any amendments thereto, naming this Redeveloper as designated redeveloper for the Phase 1 Project,

authorizing this Agreement, the Financial Agreement or the Amendment to the Financial Agreement, or any Phase 1 Project approval are arbitrary and capricious, invalid or unlawful for any reason; 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 not reasonably foreseeable at the time the Construction Schedule is agreed to); acts of the public enemy; acts of terrorism; acts of war; fire; epidemics; quarantine restrictions; blackouts, power failures, or energy shortages; governmental embargoes; interruptions in the free flow of capital markets or other instances of illiquidity in global or U.S. capital markets that have a material and adverse effect on Redeveloper's ability to finance and construct the Phase 1 Project; and strikes or similar labor action by equipment or material suppliers or transporters, or unavailability of necessary building materials (*provided* that Redeveloper has no commercially reasonable alternatives to avoid the impact thereof on the progress of the Phase 1 Project.) The existence of an event or occurrence of Force Majeure Event shall not prevent the Township from declaring a default or the occurrence of an Event of Default by the Redeveloper if the event that is the basis of the Event of Default is not a result of the Force Majeure Event.

“Governmental Approvals” means all final and unappealable local, state or federal government approvals necessary for implementation and completion of the Phase 1 Project in accordance with the terms of this Agreement, including without limitation preliminary and final site plan approval; preliminary and final subdivision approval, if and as applicable; environmental permits, including but not limited to wetlands and storm water drainage permits; permits, consents, permissions or approvals relating to historic preservation matters; utilities-related permits, including permits related to water supply and sewer service; and all other necessary permits, licenses, consents, permissions or approvals from or required by governmental agencies.

“Greenfield Member” means GF Edison, LLC.

“Improvements” means the construction, installation, repair, rehabilitation or reconstruction of all buildings, structures or improvements existing upon, or constructed on or installed as part of the Phase 1 Project, including without limitation, the Phase 1 Infrastructure Improvements, and the provision of any performance bonds, or maintenance bonds, completion guarantees or any other performance assurances in connection therewith.

“LFB” means the Local Finance Board in the Department of Local Government Services of the State Department of Community Affairs.

“Market Rate Financing” means financing for the Commencement of the Phase 1 Project, including but not limited to one or more of equity participations, “mezzanine” debt, or other financing arrangements in addition to a Mortgage, at interest rates and on terms and conditions that are substantially similar to those generally available for similar projects under generally prevailing industry standards and market conditions.

“Minority” means a person who is a citizen or lawful permanent resident of the United States and who is either one or a combination of: (i) African American (a person having origins

in any of the black racial groups of Africa), (ii) Alaskan Native and/or American Indian (a person having origins in any of the original peoples of North America), (iii) Asian American (a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, Hawaii or the Pacific Islands), (iv) Hispanic (a person of Mexican, Puerto Rican, Cuban, or South American, or other Spanish culture or origin, regardless of race), or (v) Female (a person of the female gender).

“Mortgage” means a permitted mortgage or related security, in connection with financing necessary for Redeveloper to perform its obligations under this Agreement, including financing associated with the acquisition, development, construction, or marketing of the Phase 1 Project.

“Mortgagee” means the holder of a Mortgage.

“Notice” means a notice delivered in accordance with Section 14.9 hereof.

“Operating Agreement” means the Operating Agreement of DGP Edison LLC, a Delaware limited liability company, by and among the Prism Member, the Greenfield Member and the DREF Members, as supplied to the Township by Redeveloper.

“Party” means the Township or the Redeveloper, and their permitted successors and assigns. **“Parties”** means the Township and Redeveloper and their permitted successors and assigns.

“Pending Litigation” means *In re: Petition for Referendum to Repeal Ordinance 2354-12 of the Township of West Orange*, pending before the New Jersey Supreme Court as docket number 073069, on appeal from the decision of the Appellate Division in docket number A-006181-11T3, which reviewed the decision of the Law Division in docket number ESX-L-3587-12.

“Phase 1 Bonds” means the not to exceed \$6,300,000 general obligation bonds or notes, with net proceeds of or about \$6,000,000, which may be issued by the Township, subject to, among other things, to Satisfactory Resolution of the Pending Litigation, to finance certain costs of the Phase 1 Infrastructure Improvements, environmental remediation, public parking improvements, and the costs of issuance of the bonds, subject to the terms and conditions set forth at Section 13.2 hereof.

“Phase 1 Infrastructure Construction Agreement” means a construction agreement to be entered into by the Township and Redeveloper, a form of which is attached hereto as Exhibit B, with respect to the Redeveloper’s obligation hereunder to construct, among other things, the Phase 1 Infrastructure Obligations and to convey ownership of all or a portion thereof to the Township or other applicable public body for public use in accordance with the terms and conditions thereof.

“Phase 1 Infrastructure Obligations” means the obligations defined in Section 4.1(c).

“Phase 1 Infrastructure Improvements” means those infrastructure improvements required to be constructed by Redeveloper in connection with the Phase 1 Project as more particularly set forth at Exhibit C of the Phase 1 Infrastructure Construction Agreement.

“Phase 1 Property” means, collectively, the real property known as Block 66, Lots 1, 5 and 7, as may be further subdivided, also referred to herein as the Edison Battery Parcels.

“PILOT” is defined in Section 13.1.

“Plans and Specifications” mean all plans, drawings, specifications and related documents needed to obtain Governmental Approvals and to implement and Complete Construction of the Phase 1 Project in accordance with this Agreement and all applicable Governmental Approvals.

“Prevailing Wage Law” means *N.J.S.A. 34:11-56.26*.

“Prism Member” means Prism Venture VI, LLC.

“Redeveloper Protections” means the provisions of Article V of this Agreement.

“Redevelopment Entity” means the Township of West Orange, New Jersey or its successors or assigns acting in the capacity of “redevelopment entity” for purposes of the *LRHL*.

“Remediation” or **“Remediate”** means demolition, removal, site clearance, disposition and related processing and other costs and charges regarding existing improvements, the land and any groundwater thereunder, and all necessary actions required under Environmental Laws or any other Applicable Law to investigate and clean up, remove, or otherwise respond to the known or suspected presence or threatened discharge of hazardous substances or hazardous wastes, including, as necessary, preliminary assessment, site investigation, remedial investigation, and remedial action, including as to both demolition and Remediation “soft costs” such as professional fees, site audit costs, agency processing and the like, but specifically excluding fees paid to Redeveloper or to any affiliate of Redeveloper.

“Satisfactory Resolution of the Pending Litigation” means either a) a final and unappealable decision of the New Jersey Supreme Court with respect to the Pending Litigation, finding that 1) Plaintiffs’ action challenging Ordinance 2354-12 was time barred, or 2) if it was not time barred, that Ordinance 2354-12 is nonetheless valid as a matter of law, or b) a final and unappealable decision with respect to the Pending Litigation of a lower court on remand from the New Jersey Supreme Court, finding that 1) Plaintiffs’ action challenging Ordinance 2354-12 was time barred, or 2) if it was not time barred, that Ordinance 2354-12 is nonetheless valid as a matter of law.

“Township Costs” means (i) all outside professional and consultant fees, costs or expenses reasonably incurred by the Township arising out of or in connection with the performance, administration, or enforcement of this Agreement; (ii) Litigation Costs arising out of or in connection with litigation or dispute resolution in connection therewith as more

particularly set forth in Article XIII below; (iii) any costs or fees due to the Township from the Redeveloper pursuant to the Agreement, (iv) any other fee, cost or expense reasonably incurred by the Township in furtherance of the Phase 1 Project or in connection with this Agreement; and (v) a charge for each special meeting of a municipal board held at the request of or with the consent of Redeveloper, at a current cost of \$1,700 per meeting, which charge shall be adjusted from year to year during the Term of this Agreement to remain equal to the generally applicable charges of the Township for such special meetings. "Township Costs" shall not include charges for services performed in the ordinary course of their employment by Township employees or the Township attorney.

"Transfer" means a direct or indirect change in ownership or control, or an assignment.

"Trust Agreement" means that certain trust agreement, to be dated as of the date of the issuance of the Phase 1 Bonds, by and between the Township and a corporate trust institution, as acknowledged by the Redeveloper, governing the delivery, deposit, application, investment, requisition, disbursement and withdrawal of proceeds of the Phase 1 Bonds.

"Urban Renewal Entity" means DGP Urban Renewal, LLC, created in conformance with the requirements of the Tax Exemption Act in order to be eligible for the benefits of financial assistance conferred thereunder.

1.2 Relationship of Redevelopment Agreement and Other Phases.

(a) This Agreement supersedes, supplants, and replaces the Original Redevelopment Agreement and the Modification Agreement in all respects with respect to the Phase 1 Project. It is hereby acknowledged by the Township that as of the Effective Date, the Original Redevelopment Agreement and Modification Agreement no longer apply to the Phase 1 Project and shall have no force and effect or applicability to the Phase 1 Project, except as expressly set forth herein.

(b) The Parties agree and acknowledge that as of the Effective Date, the terms of the remaining components of the Redevelopment Project are not interrelated with the Phase 1 Project for any purposes and that this Agreement and the Phase 1 Project are wholly independent from the remainder of the Redevelopment Project.

(c) The Township hereby expressly agrees and covenants that an Event of Default under the Original Redevelopment Agreement for non-construction of the portions of the Redevelopment Project other than the Phase 1 Project or for any other reason shall have no relation to any of the Redeveloper's obligations under this Agreement. The Parties hereto agree and acknowledge that in an Event of Default by the Redeveloper under this Agreement, shall have no relation to any of the Prism's obligations under the Original Redevelopment Agreement.

ARTICLE II
REDEVELOPER DESIGNATION; TERM OF AGREEMENT

2.1 Redeveloper Designation. The Township hereby reconfirms its designation and appointment of the Redeveloper as the exclusive redeveloper for the Phase 1 Project on the Edison Battery Parcels. As a result, and subject to the terms of this Agreement, the Redeveloper (or other permitted assignees as defined in Article VIII below) shall have the exclusive right to perform development and redevelopment activities in connection with the Phase 1 Project, and to retain the profits derived therefrom, under the framework and in accordance with the terms of this Agreement, the Redevelopment Plan, and all Applicable Laws.

2.2 Redeveloper's Scope of Undertaking. The services and responsibilities undertaken by the Redeveloper, as more particularly set forth in this Agreement, shall include all aspects of the acquisition, design, development, Environmental Remediation, site preparation, and construction of the Phase 1 Project and all Phase 1 Infrastructure Improvements, including, without limitation, engineering, permitting and administrative aspects, the performance of or contracting for and administration and supervision of all construction of Improvements (including but not limited to the Phase 1 Infrastructure Obligations) required in connection with the Phase 1 Project, including the provision of any performance bonds, maintenance bonds, completion guarantees or any other performance assurances in connection therewith, whether required as a result of Governmental Approvals or pursuant to the terms of this Agreement; arrangement for interim and final inspections and any other actions required to satisfy the requirements of all Governmental Approvals necessary to develop and use the Phase 1 Project; marketing, sales and the administration, operation and management of the Phase 1 Project; and all aspects of the funding of the Phase 1 Project, including equity funding and construction, interim and permanent financing.

2.3 Term of Agreement. This Agreement shall commence on the Effective Date and shall expire upon the issuance of a final Certificate of Completion coinciding with Completion of Construction of the entire Phase 1 Project, unless earlier terminated in accordance with the provisions hereof.

ARTICLE III
ANNUAL SEWERAGE CHARGES DURING CONSTRUCTION

3.1 Adjustment and Abatement of Annual Sewer Charges During Construction. In furtherance of and to facilitate the redevelopment of the Edison Battery Building, the Township agrees that the annual sewer charge payable pursuant to Chapter XIX, Section 19-10 of the *Ordinances of the Township of West Orange* for such building shall be adjusted and abated, as follows:

(a) The Township acknowledges and agrees that all annual sewer charges payable pursuant to Chapter XIX, Section 19-10 of the Ordinances of the Township of West Orange applicable to such building have been paid in full through 2014 and that no further sewer charges of any kind including interest are due and owing to the Township through 2014.

(b) Effective as of January 1, 2015, and continuing until the issuance of the first Certificate of Occupancy for a residential unit within Edison Battery Building, the annual sewer charge to be paid by Redeveloper shall be **TEN (10%) PERCENT** of the annual sewer charge that otherwise would be due from the Edison Battery Building absent redevelopment thereof.

(c) Upon the issuance the first Certificate of Occupancy for a residential unit within the Edison Battery Building, annual sewer charges shall be charged to and paid by the owner of the Edison Battery Parcels, in lieu of the 10% sewer charge.

(d) Annual sewer charges for retail units or other residential or non-residential units within the Phase 1 Project shall recommence upon the issuance of a Certificate of Occupancy for such unit.

(e) Nothing herein is intended or shall be construed to vary or eliminate the requirements for sewer permit fees, bonds, or connection fees pursuant to any other Section of Chapter XIX of the Ordinances of the Township of West Orange.

ARTICLE IV IMPLEMENTATION OF PHASE 1 PROJECT

4.1(a) Phase 1 Project Implementation. (i) Generally. For so long as this Agreement and Redeveloper's designation as Redeveloper hereunder remain in effect, Redeveloper shall have the exclusive right to redevelop the Edison Battery Parcels. The Redeveloper agrees to implement the Phase 1 Project in accordance with the applicable terms and conditions of this Agreement, the Redevelopment Plan, Applicable Laws, and all Governmental Approvals. All redevelopment activities performed under this Agreement shall be performed timely and diligently, and provided in accordance with the level of skill and care ordinarily exercised by developers of comparable first class residential and commercial developments. Redeveloper's unexcused failure to adhere to the Construction Schedule (as the same may be adjusted from time to time with the consent of the Township as hereinafter provided) shall constitute a Default.

Unless otherwise tolled or adjusted as provided for in this Agreement, Commencement of Construction of the Phase 1 Project will commence by September 30, 2015 and Completion of Construction of Phase 1 Project will take place by September 30, 2017.

(ii) Phase 1 Financial Agreement; Amendment, Assignment and Assumption Agreement. Redeveloper has represented to the Township that it will undertake the Phase 1 Project and has made application to the Township for an amendment, assignment and assumption of the Phase 1 Financial Agreement and the Township has adopted Ordinance # _____ dated _____, 2015, which, among other things, authorize an assignment the Phase 1 Financial Agreement to Redeveloper; an amendment of the Phase 1 Financial Agreement to clarify and confirm the Township's agreement to certain aspects of the tax exemption including, but not limited to the project construction schedule and the estimated total project cost for the Phase 1 Project as those terms are defined under the Tax Exemption Act; and confirming that there are no defaults under

the Phase 1 Financial Agreement. The assignment of the Phase 1 Financial Agreement is conditioned upon the execution of an Amendment, Assignment and Assumption Agreement substantially in the form attached hereto as Exhibit H.

(iii) Phase 1 Infrastructure Construction Agreement. As part of the implementation of the Phase 1 Project, the Redeveloper will enter into the Phase 1 Infrastructure Construction Agreement described in Section 4.1(c) hereof in connection with the performance of the Phase 1 Infrastructure Obligations described therein.

(iv) Special Assessment Agreement. As a necessary but not sufficient condition to the issuance of the Phase 1 Bonds, Redeveloper shall enter into a special assessment agreement with the Township in substantially the form attached hereto as Exhibit I, as further described at Section 13.2 hereof.

(v) Execution of Agreements. As a necessary but not sufficient condition to the issuance of any Phase 1 Bonds, Redeveloper shall execute all of the agreements set forth at this Section 4.1(a).

4.1 (b) Standards for Construction for Phase 1 Residential Units. All Phase 1 Project residential units, regardless of the fact that they may be constructed as rental units under the terms of this Agreement, will nevertheless be constructed in a high quality manner with such building standards and unit finishes as are appropriate for a class-A, luxury residential rental project constructed in Northern New Jersey after January 1, 2000.

4.1(c) Phase 1 Infrastructure Construction Agreement and Infrastructure Obligations. Redeveloper shall enter into the Phase 1 Infrastructure Construction Agreement with the Township, which agreement is attached hereto as Exhibit B in substantially final form. Redeveloper, at Redeveloper's cost and expense, shall undertake or cause to be undertaken the Phase 1 Infrastructure Improvements within the timeframe and in accordance with the specifications (the "**Phase 1 Infrastructure Obligations**") as set forth in Exhibit C to the Phase 1 Infrastructure Construction Agreement. The Phase 1 Bonds, as further described in and subject to the conditions set forth in Article XIII hereof, will in part provide proceeds for a portion of the cost of construction of the Phase 1 Infrastructure Improvements, on terms and conditions as more particularly set forth in the Phase 1 Infrastructure Construction Agreement and Section 13.2 hereof.

4.2 Governmental Approvals. Redeveloper shall file and diligently pursue all required Governmental Approvals consistent with and as required for timely implementation of the Construction Schedule.

4.2(a) Applications for Site Plan Approval. Each Governmental Application submitted by or on behalf of the Redeveloper in connection with the Phase 1 Project shall conform in all material respects to the Redevelopment Plan and all Applicable Laws; *provided, however*, that nothing herein shall be construed as limiting the Redeveloper's ability to apply for reasonable bulk or area variances or waivers as may necessary or appropriate under the circumstances and in accordance with the applicable provisions of the Redevelopment Plan. The

Township and the Redeveloper each hereby acknowledge that a major final site plan approval for the Original Phase 1 Project was granted by the Township's Planning Board on September 5, 2007 and that amended major final site approval for the Phase 1 Project was granted by the Planning Board on September 5, 2012.

4.2(b) Scope of Governmental Approvals. The Redeveloper represents that it will cause to be prepared and filed, at Redeveloper's sole cost and expense, all Governmental Applications as may be necessary and appropriate for the purpose of obtaining all Governmental Approvals required to implement the Phase 1 Project consistent with the Construction Schedule. All of the Governmental Applications shall be in conformity with the applicable provisions of the Redevelopment Plan, this Agreement and Applicable Laws. Redeveloper shall provide the Township with a copy of each Governmental Application at the same time those applications are submitted to the governmental agency having jurisdiction over the same.

4.2(c) Diligent Pursuit of Governmental Approvals. Redeveloper agrees to prosecute all of Redeveloper's applications for Governmental Approvals diligently and in good faith, and in accordance with Construction Schedule. Subject to the requirements of Applicable Law, Redeveloper shall determine when and in what order to file each specific application. At Redeveloper's reasonable request, the Township will, in its reasonable judgment, sign consents or other documents reasonably required in connection with Redeveloper's applications for Governmental Approvals and will supply information which is in the Township's possession. The Township will, in its reasonable judgment, otherwise cooperate with and support Redeveloper in connection with the applications for Governmental Approvals as Redeveloper and Redeveloper's counsel may reasonably request.

4.2(d) Appeals. If (i) one or more of Redeveloper's Applications for Governmental Approvals is denied, or approved with conditions that Redeveloper in its commercially reasonable judgment deems unacceptable, or (ii) anyone contests or challenges the grant of such Governmental Approval to Redeveloper, then unless the Township consents in advance to a different course of action Redeveloper shall appeal or defend against such action, and during the pendency of the appeal proceeding otherwise continue as Redeveloper deems appropriate to seek the remaining Governmental Approvals.

4.2(e) Demolition. The Redeveloper hereby represents that all permits for the demolition necessary to undertake the Phase 1 Project have been issued and that the demolition has Commenced.

4.2(f) Application for Building Permits. Within not more than 180 days following the receipt of Governmental Approvals required for the construction of the Phase 1 Project, Redeveloper shall submit applications for building permits and use commercially reasonable efforts to diligently prosecute the applications to conclusion.

4.3 Commencement and Completion Schedule. Unless otherwise tolled or adjusted as provided for in this Agreement, the Redeveloper agrees to Commence Construction and diligently Complete Construction of the Phase 1 Project in accordance with the Construction Schedule attached hereto as Exhibit D, and failure to do so shall be a Default by Redeveloper.

Subject to the provisions of this Agreement, any material change in the scope of the Phase 1 Project (including changes in the Phase 1 Project budget if relevant to the calculation of the PILOT, as defined below), changes or updates to the Construction Schedule, or extension of the projected Completion Date, shall require the Township's prior written approval, which the Township will not unreasonably withhold. Redeveloper agrees to simultaneously provide to the Township copies of all project *pro formas*, construction schedules and budgets that Redeveloper submits to actual or potential lenders or investors in connection with the financing of the Phase 1 Project, provided however, the Redeveloper shall not be required to provide such information, such as projected rents or operating expenses related to the Phase 1 Project, to the extent that the disclosure of such information would cause a competitive disadvantage to the Redeveloper or otherwise hinder the ability to lease any or all of the Phase 1 Project, in the Redeveloper's reasonable determination. Notwithstanding the provisions set forth in the preceding sentence, however, Redeveloper shall have the obligation to provide to the Township all financial information (including, without limitation, rent and operating expense information) that the Township may deem necessary, in its sole discretion, to undertake necessary due diligence, reviews and calculations, to evaluate Redeveloper's performance of its obligations, and to otherwise preserve or enforce its rights under the provisions of law, including the Tax Exemption Act and the Redevelopment Area Bond Financing Law, and shall submit to the Township any financial information which materially differs from the information set forth in the application for long term tax exemption submitted to the Township by GP 177 on March 18, 2008, as updated and supplemented on January 30, 2009 and January 18, 2012; and as updated and supplemented by Redeveloper on July 15, 2015. The Redeveloper understands that the Township will require Redeveloper's adherence to the schedule for Commencement of Construction and Completion of Construction, interim deadlines or milestones and time periods for the various activities and actions to be taken by the Redeveloper hereunder, subject only to the occurrence of a Force Majeure Event or other tolling provisions set forth in this Agreement.

4.3(a) Work to be Performed by Redeveloper; Plans and Specifications. The Redeveloper at its sole cost and expense shall perform or cause to be performed all Remediation, site preparation, construction, operation, administration and management of the Phase 1 Project. Redeveloper hereby agrees that following an Event of Default the Township and anyone acting on the Township's behalf shall have an irrevocable license to use Redeveloper's Plans and Specifications, Governmental Applications, and Governmental Approvals to complete the Phase 1 Project, without cost to or liability of the Township (other than for actual services rendered to the Township subsequent to the Event of Default) and agrees to use best efforts to ensure that all agreements between Redeveloper and its contractors and consultants shall so provide. Redeveloper shall be compensated for such Plans and Specifications as provided in Section 10.7 hereof. In addition, all performance or completion bonds provided by Redeveloper's contractors shall name the Township as an intended beneficiary thereof, as its interests may appear, unless Redeveloper's construction lender objects in writing and for good cause to the inclusion of the Township.

4.3(b) Progress Reports and Phase 1 Project Oversight by the Township. During the construction of the Phase 1 Project, the Redeveloper shall make periodic reports, in such detail and at such times as may reasonably be requested by the Township, as to the actual progress of Redeveloper with respect to such construction. If so requested by the Township,

Redeveloper agrees to attend periodic progress meetings during the period of implementation of the Phase 1 Project, as follows:

4.3(b)(i) Progress Meetings. Redeveloper shall attend and participate in periodic progress meetings as reasonably called by the Township, but in no event more than quarterly, to report on the status of the Phase 1 Project and to review the progress under the Construction Schedule.

4.3(b)(ii) Progress Reports. At each Progress Meeting, and at such other times as may be reasonably requested by the Township, the Redeveloper shall submit to the Township a detailed written progress report which shall include, among other things, a description of activities completed, milestones achieved, status of the Phase 1 Project with respect to the Construction Schedule, activities to be undertaken prior to the next regularly scheduled Progress Report, and any unanticipated problems or delays and the explanation therefor. If Redeveloper fails to meet a milestone or completion date set out in the Construction Schedule and is notified of same in writing by the Township, or if Redeveloper conclusively determines between Progress Meetings that it will fail to meet a milestone or completion date on the Construction Schedule, Redeveloper shall promptly provide written notice to Township stating: (a) the reason for the failure to complete the applicable task, (b) Redeveloper's proposed method for correcting such failure, (c) Redeveloper's schedule for completing such task, and (d) the method or methods by which Redeveloper proposes to achieve subsequent tasks by the Completion Date. This Section shall not in any way be construed as entitling Redeveloper to an extension of the Completion Date, Construction Schedule or Project budget, absent the Township's prior written consent.

4.4 Certificate of Occupancy and Certificate of Completion. Redeveloper shall apply to the appropriate governmental officer or body for a Certificate of Occupancy, as required under Applicable Laws. Following the issuance of all required Certificates of Occupancy and the satisfaction of the terms and conditions of this Agreement with respect to the Phase 1 Project by Redeveloper, and upon receipt of a Notice of Completion from Redeveloper, the Township agrees to issue a Certificate of Completion, in proper form for recording, which shall acknowledge that the Redeveloper has performed all of its duties and obligations under this Agreement and has completed construction of the Phase 1 Project in accordance with the requirements of this Agreement. Within 30 days after receipt of the Notice of Completion from the Redeveloper, the Township shall provide the 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 Phase 1 Project in accordance with the provisions of this Agreement or is otherwise in default under this Agreement, and what reasonable measures or acts will be necessary in the opinion of the Township in order for the Redeveloper to be entitled to the Certificate of Completion. When issued the Certificate of Completion shall constitute a recordable, conclusive determination of the satisfaction and termination of the agreements and covenants (as limited herein) in this Agreement and the Redevelopment Plan with respect to the obligations of the Redeveloper to construct the Phase 1 Project, as well as a determination by the Township that the conditions that were found and determined to exist at the time the Redevelopment Area was determined to be in need of redevelopment shall be deemed to no longer exist as to the Edison Battery Parcels and the conditions and requirements of *N.J.S.A.*

40A:12A-9 shall be deemed to have been satisfied with respect to the Edison Battery Parcels. Unless otherwise required by the Phase 1 Financial Agreement, Governmental Approval or Applicable Law, upon the issuance of Certificate of Completion the provisions of this Agreement shall no longer encumber the Phase 1 Project; *provided, however*, that any other documents theretofore delivered pursuant to this Agreement that by their terms are intended to survive Completion of Construction (including, without limitation and by of example only, any deed restrictions, the Declaration of Restrictions, tax abatement agreements, *etc.*) shall not be affected by delivery of the Certificate of Completion except as otherwise expressly provided therein.

4.5 Estoppel Certificates (Prior to Certificate of Completion).

At any time and from time to time prior to the issuance of a Certificate of Completion, the Township shall, within thirty (30) days following a written request by Redeveloper, execute and deliver to (a) Redeveloper, or (b) a third party (*e.g.*, a prospective lender, purchaser, investor, tenant, *etc.*) designated by Redeveloper, an instrument in which the Township (i) certifies that this Agreement is unmodified and in full force and effect as to the Phase 1 Project (excepting only modifications which shall be set forth), (ii) states whether to the best knowledge of the Township, Redeveloper is in Default under this Agreement, and, if so, specifying each such Default of which the Township shall have knowledge; and (iii) confirms such other factual matters within the Township's knowledge or control pertinent to this Agreement, as the same relate to, or might affect, the Phase 1 Project.

4.6 Escrow Account to Cover Township Costs. The Redeveloper covenants and represents that it will make timely payment or reimbursement to the Township for all Township Costs. Redeveloper has established with the Township an escrow account (the "**Escrow Account**") having a cash balance as of _____, 2015 of \$_____to cover Township Costs. From time to time during the implementation of the Phase 1 Project and until issuance of a final Certificate of Completion the Redeveloper agrees to replenish the Escrow Account upon the written request of the Township, to provide for a sufficient balance, as determined by the Township in its reasonable judgment, to cover anticipated Township Costs. Attached to this Agreement as Exhibit F is a description of the agreed upon procedures to be utilized in establishing, funding and replenishing the Escrow Account and in making disbursements therefrom.

4.7 Affordable Housing Obligations. The provision of affordable housing for the Project as contemplated by the 2006 Redevelopment Agreement is the obligation of Prism thereunder. The Township hereby expressly agrees and acknowledges that Redeveloper shall have no obligation to include any affordable housing units within the Phase 1 Project or on the Phase 1 Property. However, Redeveloper will make payment of a non-residential development fee in accordance with N.J.S.A. 40:55D-8.1 et seq. (the "Non Residential Development Fee"), but only in the event and to the extent that such fee applies at the time of issuance of the Certificate of Occupancy for the non-residential portion of the Project.

**ARTICLE V
REDEVELOPER PROTECTIONS**

5.1 Impossibility of Performance; Changed Market Conditions. Redeveloper's failure or refusal to develop the Phase 1 Project shall not constitute a Default by Redeveloper in the performance of its obligations hereunder if such failure or refusal is for the following reasons and on the following terms and conditions:

5.1(a) Physical Impossibility or Economic Infeasibility as a Result of Property-Specific Matters. Subject to the provisions of Section 5.1(c) below, Redeveloper's failure or refusal to develop Phase 1 Project shall not constitute a default hereunder if due to physical impossibility of performance or economic infeasibility due to the condition of the property or to regulatory restrictions relating to the condition of the property.

By way of example, "physical impossibility of performance" would be an irremediable environmental condition. An example of "economic infeasibility" would be a cost of Remediation of an environmental condition that would significantly and adversely affect the anticipated return of the Phase 1 Project as reflected on the Phase 1 Project *pro forma* supplied to the Township by Redeveloper, in either case such that redevelopment of the Phase 1 Project on the terms and conditions set forth herein becomes economically irrational or infeasible.

5.1(b) Changed Market Conditions. Subject to the provisions of Section 5.1(c) below, Redeveloper's failure or refusal to develop the Phase 1 Project shall not constitute a Default if such failure or refusal is the result of changed market conditions encompassing market or economic phenomena or conditions that are not unique to the Phase 1 Project, which changed market conditions render the development and marketing of the Phase 1 Project based upon the product type and financial assumptions currently proposed by Redeveloper economically infeasible or remote.

5.1(c) Applicable Procedures; Ramifications for Redevelopment Plan Amendments. In order to invoke the protections of Section 5.1(a) or (b), Redeveloper shall provide Notice to the Township of Redeveloper's intention to invoke such protections, which Notice shall include a detailed description of the facts and circumstances relied upon by Redeveloper in support of its position, as well as the commercially reasonable steps Redeveloper has taken to overcome or mitigate the impacts of those facts and circumstances.

5.1(c)(i) If Redeveloper's failure or refusal to develop the Phase 1 Project in accordance with the terms and conditions of this Agreement is excused by reason of physical impossibility of performance as provided in Section 5.1(a) above, then such failure or refusal shall not constitute a Default hereunder if Redeveloper relinquishes its designation as redeveloper for the Phase 1 Project, and all rights to develop the Phase 1 Project under the terms of this Agreement. In such case, the Township shall have the right (but not the obligation) to amend the Redevelopment Plan to facilitate redevelopment by a third party redeveloper.

5.1(c)(ii) If Redeveloper's failure or refusal to develop is excused by reason of economic infeasibility or changed market conditions as provided in Section 5.1(b)

above, then such failure or refusal shall not constitute a Default hereunder if Redeveloper by Notice to the Township requests to renegotiate, in good faith and within the time periods hereinafter set forth, with the objective of redefining a mutually acceptable and economically feasible project. Such negotiations could include, by way of example, consideration of modifications to this Agreement or to the use and density requirements under the Redevelopment Plan.

The Township agrees that Redeveloper's obligations hereunder with respect to the Commencement or Completion of Construction as to the Phase 1 Project shall be tolled during a period of up to twelve (12) months from the date of the Notice, and that the Parties shall renegotiate in good faith with the objective of redefining a mutually acceptable and economically feasible project. Redeveloper may request one extension of such period, which extension shall not exceed six (6) months.

During the tolling/renegotiation period, Redeveloper and the Township will attempt in good faith to renegotiate a revised redevelopment proposal that would overcome the economic barriers or adverse market conditions inhibiting the redevelopment effort. If at the end of such period the Parties do not agree, then either the Township or Redeveloper by Notice to the other may terminate Redeveloper's rights with respect to the Phase 1 Project and Redeveloper would have no further rights to develop the Phase 1 Project under the terms of this Agreement; provided however that no such termination shall operate to relieve Redeveloper of the consequences of any unrelated Event of Default or uncured Default under the terms of the Redevelopment Agreement as of the date of termination. Upon such termination, the Township shall have the right (but not the obligation): (i) to purchase the Edison Battery Parcels from Redeveloper for an amount equal to the purchase price paid for the Edison Battery Parcels, plus architectural, engineering, demolition and construction costs (in the case of architectural and engineering costs, however, the Township will reimburse Redeveloper for such costs only if the Township elects to utilize the work product), and any charges incurred by Redeveloper to investigate and remediate or otherwise respond to known or suspected environmental conditions, and including soft costs such as professional fees, and site audit costs, but specifically excluding fees paid to Redeveloper or to any affiliate of Redeveloper, and in all events less any unpaid amounts due and owing to the Township by Redeveloper pursuant to the terms of this Agreement at the time the right is exercised; and (ii) to seek proposals from other developers and to amend the Redevelopment Plan if necessary or desirable to do so (which amendments might include changes in use, density or other plan provisions affecting the redevelopment of the parcels); *provided, however*, that any such amendments or terms agreed to by the Township shall not be more favorable to the new developer than terms Redeveloper proposed during the tolling/renegotiation period but which the Township rejected; and *provided further*, that in the event more favorable terms or amendments are negotiated nothing herein shall prevent the Township from utilizing such terms or amendments to solicit bids for the redevelopment of the parcels, so long as Redeveloper is among those whose bid is solicited. Nothing herein shall prohibit the Redeveloper from conveying the Phase 1 Project to another developer subject to Section 8.1 of this Agreement.

5.1(c)(iii) Prior to invoking the protections and provisions of this Section 5.1, Redeveloper shall have used commercially reasonable efforts to mitigate the impacts of the facts and circumstances claimed to result in project infeasibility. The protections and

provisions of this Section 5.1 shall not apply if Redeveloper's inability to proceed with the Project could have been overcome but for Redeveloper's own acts or omissions. By way of example only, Redeveloper may not claim economic infeasibility based upon unforeseen Remediation costs if Redeveloper has failed or refused to take advantage of a known economic opportunity to defray such Remediation costs, such as, *e.g.*, available grant funding.

ARTICLE VI REPRESENTATIONS AND WARRANTIES

6.1 Representations and Warranties by the Redeveloper. The Redeveloper makes the following representations and warranties:

(A) Redeveloper represents that it has obtained or can obtain and will commit the requisite equity and debt financing in an amount necessary to perform Redeveloper's obligations hereunder.

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

(C) Redeveloper is duly organized and a validly existing legal entity under the laws of the State of Delaware, authorized to do business in the State of New Jersey and all necessary resolutions or authorizations have been duly adopted to authorize the execution and delivery of this Agreement and to authorize and direct the persons executing this Agreement to do so for and on the Redeveloper's behalf.

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

(E) No indictment has been returned against any member, manager or officer of Redeveloper.

(F) As of the Effective Date, 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 Agreement, Redeveloper's execution hereof, or any action or act taken or to be taken by the Redeveloper pursuant to this Agreement; or (ii) is likely to result in a material adverse change in the Redeveloper's property, assets, liabilities or condition which will materially and substantially impair Redeveloper's ability to perform its obligations pursuant to the terms of this Agreement.

(G) Redeveloper's execution and delivery of this Agreement and its performance hereunder will not constitute a violation of any operating agreement of the Redeveloper or of any other agreement, mortgage, indenture, instrument or judgment to which

the Redeveloper is a party.

(H) All factual information and statements submitted by Redeveloper or its affiliates to the Township and its agents, including, but not limited to, NW Financial and McManimon, Scotland and Baumann, LLC (collectively, the “Redeveloper Submissions”) were as of the date of such submissions, complete, true and accurate in all material respects. To the extent that any information contained therein has materially changed, the Redeveloper has and will continue to inform the Township of such material changes. Redeveloper acknowledges that the facts and representations contained in the Redeveloper Submissions, as may have been supplemented, are incorporated herein by reference, are being relied upon by the Township, and are a material factor in the decision of the Township to enter into this Agreement with Redeveloper.

(I) To the best of Redeveloper’s knowledge and belief, at the time of submission thereof to the Township all projections, estimates, *pro formas* and other information submitted by Redeveloper to the Township and its agents, including, but not limited to, NW Financial and McManimon, Scotland and Baumann, LLC, were materially correct and Redeveloper had no reason to believe any such information to be inaccurate or misleading in any material respect.

(J) Redeveloper is financially and technically capable of developing, designing, financing, constructing, operating and maintaining the Phase 1 Project.

(K) The party or parties signing the Agreement on behalf of Redeveloper is or are fully authorized to sign on behalf of the current members of Redeveloper and to bind them with respect thereto.

(L) As of the Effective Date the respective interests of the Greenfield Member, the Prism member and the DREF Member are as set forth in the Operating Agreement of DGP Edison LLC, a true and complete copy of which has been supplied to the Township, with the incumbency certificate attached hereto as Exhibit G.

Redeveloper’s representations and warranties are intended to and shall survive the execution and delivery of this Agreement.

6.2 Representations and Warranties by the Township. The Township hereby makes the following representations and warranties:

(A) The Township has the legal power, right and authority to enter into this Agreement and the instruments and documents referenced herein to which the Township is a party, and (with respect to the authorization and issuance of the Phase 1 Bonds and any obligation of the Township related thereto or materially impacted thereby, subject to the Satisfactory Resolution of the Pending Litigation) to consummate the transactions contemplated hereby, to take any steps or actions contemplated hereby, and to perform their obligations hereunder, and as of the Effective Date the Township has taken all action and is in receipt of all Governmental Approvals required to consummate the transactions contemplated hereunder and

to perform its obligations hereunder.

(B) This Agreement is duly executed by the Township, and (with respect to the authorization and issuance of the Phase 1 Bonds and any obligation of the Township related thereto or materially impacted thereby, subject to the Satisfactory Resolution of the Pending Litigation) is valid and legally binding upon the Township and enforceable in accordance with its terms on the basis of Applicable Laws currently in effect and the execution and delivery thereof shall not, with due notice or the passage of time, constitute a default under or violate the terms of any indenture, agreement or other instrument to which the Township is a party.

(C) Except for the Pending Litigation, as of the Effective Date, to the best of the Township's knowledge there is no action, proceeding or investigation now pending nor any basis therefor, known or believed to exist which questions the validity of this Agreement or any action or act taken or to be taken by the Township pursuant to this Agreement.

(D) To the best of the Township's knowledge, except for the Pending Litigation there is no pending litigation which affects the Downtown Redevelopment Area designation or the Redevelopment Plan.

(E) Other than the allegations in the Pending Litigation, the Township is not aware of any challenge to the validity of the Redevelopment Plan or this Agreement. Other than the allegations in the Pending Litigation, the Township knows of no statement, act or omission on the part of the Township or its employees or agents that as a matter of law would provide a basis for invalidating or nullifying the Redevelopment Plan or this Agreement.

(F) All Township Costs including but not limited to Litigation Costs, Township fees and other charges owed by GP 177 and/or Prism have been paid in full through the Effective Date. The cash balance in the Escrow Account as of the Effective Date shall be used only to pay for Township Costs incurred by the Township after the Effective Date.

(G) All representations and warranties of the Township set forth in the Redevelopment Agreement and this Agreement with respect to the authorization and issuance of the Phase 1 Bonds and any obligation of the Township related thereto or materially impacted thereby are expressly subject to the Satisfactory Resolution of the Pending Litigation defined herein.

The Township's representations and warranties are intended to and shall survive the execution delivery of this Agreement.

ARTICLE VII COVENANTS AND RESTRICTIONS

7.1 Description of Covenants. The covenants to be imposed upon Redeveloper, its successors and assigns are set forth below, and shall be recorded in the form of a Declaration of Covenants and Restrictions attached hereto as Exhibit E against the Edison Battery Parcels as of

the Commencement of Construction with respect thereto, with the covenants and restrictions to remain in effect for the period set forth in Section 7.2 below:

(A) in connection with its use or occupancy of the Phase 1 Project, not effect or execute any covenant, agreement, lease, conveyance or other instrument whereby any portion of the Phase 1 Project is restricted upon the basis of age (except as may be permitted pursuant to 42 USC 3607(b)(2)(C), the federal *Fair Housing Act* for age-restricted residential units), race, color, creed, religion, ancestry, national origin, 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, sex or familial status.

(B) comply with the applicable provisions and public purposes of the Redevelopment Law and all obligations under this Agreement and shall at all times develop, design, finance, construct and operate the Phase 1 Project or cause the Phase 1 Project to be developed, designed, financed, constructed and operated pursuant to the conditions and requirements of Applicable Laws, Governmental Approvals, this Agreement and the Redevelopment Plan and for a period of thirty (30) years from the issuance of a Certificate of Completion shall construct no other use except that established in the Redevelopment Plan, *provided however*, that Redeveloper shall not be deemed to be in breach if Redeveloper diligently contests, in good faith and by appropriate proceedings, such compliance with any of the aforesaid Applicable Laws. All uses to which the Phase 1 Project may be devoted are controlled by the Redevelopment Plan, the Governmental Approvals, Applicable Laws and this Agreement and that under no circumstances can the Redeveloper undertake any construction or development of the Phase 1 Project not in accordance with the Redevelopment Plan, the Governmental Approvals, Applicable Laws and this Agreement.

(C) in order to effectuate the purposes of this Agreement, make, execute, acknowledge and deliver any contracts, orders, receipts, writings and instructions with any other persons, firms or the Township and in general do all things which may be requisite or proper for the construction and development of the Project in accordance with this Agreement, the Redevelopment Plan, Governmental Approvals and Applicable Laws, provided however, that Redeveloper shall not be deemed to be in breach of this covenant if Redeveloper diligently contests, in good faith and by appropriate proceedings, such compliance with any of the aforesaid Applicable Laws.

(D) use diligent efforts to obtain all Governmental Approvals requisite to the construction and development of the Phase 1 Project including evidence satisfactory to the Township that its use of the Phase 1 Project is in compliance with this Agreement, the Redevelopment Plan and all Applicable Laws, and use diligent and commercially reasonable efforts to ensure timely performance of its obligations hereunder, including but not limited to Completion of Construction of the Phase 1 Project within the time periods specified in the Construction Schedule.

(E) to use diligent efforts to obtain all Governmental Approvals authorizing the occupancy and uses of the Phase 1 Project for the purposes contemplated herein. Redeveloper shall enter into such other commercially reasonable agreements with respect to its development,

financing, construction and management and operation of the Phase 1 Project, containing such provisions as may be required by Applicable Law or as may reasonably be required by Governmental Approvals.

(F) except as otherwise permitted hereunder, not suspend or discontinue the performance of its obligations under this Agreement (other than in the manner provided for herein) for any reason, including, without limiting the generality of the foregoing, any acts or circumstances that may constitute failure of consideration, commercial frustration of purpose, or any damage to or destruction of the Phase 1 Project.

(G) diligently undertake the construction and development of each individual component of the Phase 1 Project throughout the Construction Period and to use commercially reasonable efforts to complete each component of the Phase 1 Project on or before the applicable Completion Date.

(H) not encumber, hypothecate or otherwise use the Phase 1 Project, or any part thereof, as collateral for an unrelated transaction; nor sell, lease or otherwise transfer all or any portion of a Phase 1 Project without the Township's consent, except as otherwise specifically set forth in this Agreement.

(I) during construction of the Phase 1 Project, take commercially reasonable steps to minimize or mitigate impacts on the surrounding neighborhood (such as, for example, noise and dust controls), and keep debris and/or waste materials containerized and/or stored and disposed of, all within normal industry standards.

(J) cause the Phase 1 Project to be developed, designed, financed and constructed at its sole cost and expense, except as otherwise set forth in this Agreement.

(K) immediately notify the Township of any material adverse change in its financial condition from the information provided to the Township by the Redeveloper, including any material adverse change in Redeveloper's financial capability to design, develop, finance, construct and operate the Phase 1 Project in furtherance of the Township's consideration in executing this Agreement with Redeveloper if such change will materially impair Redeveloper's ability to perform its obligations pursuant to the terms of this Agreement.

(L) keep and maintain in good condition any improvements required under the Governmental Approvals, including but not limited to any landscaping required to be planted or cause an entity in control of the Phase 1 Project to maintain such improvements.

7.2 Effect and Duration of Covenants. It is intended and agreed that the agreements and covenants set forth in this Article shall be covenants running with the land and that they shall, in any event, and without regard to technical classification or designation, legal or otherwise, and except only as otherwise specifically provided in this Agreement, be binding, to the fullest extent permitted by law and equity, for the benefit and in favor of, and enforceable by, the Township, their successors and assigns, against the Redeveloper, its successors and assigns and every successor in interest therein, and any party in possession or occupancy of the Phase 1 Project or any part thereof. The covenants shall cease and terminate when a Certificate of Completion for such improvements has been issued, provided however, that the covenants in Sections 7.1(A), (B), and (L) shall remain in effect without limitation as to time.

**ARTICLE VIII
PROHIBITION AGAINST ASSIGNMENT AND TRANSFER**

8.1 Prohibition Against Transfers of Interests in Redeveloper. Redeveloper recognizes the importance of the Phase 1 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 Agreement, particularly in view of the public aids that have been or will be made available for the purpose of making such redevelopment possible. The Township considers that a Transfer of the ownership in Redeveloper or of a substantial part thereof, or any other act or transaction involving or resulting in a significant change in the ownership of or with respect to the parties in control of the Redeveloper or the degree thereof, is for practical purposes a Transfer or disposition of the Phase 1 Project. Redeveloper recognizes that it is because of such qualifications and identity that the Township is entering into this Agreement with Redeveloper, and in so doing, the Township is relying on the obligations of Redeveloper and not some other person or entity for the faithful performance of all undertakings and covenants to be performed by Redeveloper hereunder.

As a result, except as provided herein including as provided in Section 8.2 hereof, prior to the completion of the Phase 1 Project as evidenced by the issuance of a Certificate of Completion, and without the prior written approval of the Township (which approval shall not be unreasonably withheld) Redeveloper agrees for itself and all successors in interest that there shall be no Transfer of (i) any equity interest in Redeveloper, nor (ii) any direct or indirect change in control of Redeveloper as it exists on the Effective Date, whether by changes in capitalization, merger or otherwise. The Township recognizes that implementation of the Phase 1 Project is likely to involve one or more joint venture arrangements between Redeveloper and other developers having particular development expertise and financial capabilities. The Township agrees to consider such joint venture arrangements in good faith, and will not unreasonably withhold its consent to any such arrangement provided (A) that such joint venture entity assumes all of the obligations of Redeveloper under the terms of this Agreement and under all applicable Governmental Approvals as to the applicable component of the Phase 1 Project, provided that Redeveloper shall not be released from and shall remain liable for the performance of Redeveloper's and the joint venture's obligations; (B) that the creation and existence of the joint venture does not materially and negatively affect the Township's ability to enforce its rights under this Agreement; and (C) that the proposed joint venture partner and structure is acceptable to the Township, in its reasonable discretion. With respect to this provision, Redeveloper and the party or parties signing this Agreement on behalf of Redeveloper represent that each has authority to agree to this provision on behalf of the current members of Redeveloper and to bind them with respect thereto.

8.2 Exemption from Prohibited Transfers. Notwithstanding the foregoing, the following shall not constitute a prohibited Transfer for purposes of Section 8.1:

(A) the Transfer or Transfers of interests in the Prism Member so long as the Prism Member is controlled by Eugene Diaz or Ed Cohen; or

(B) the Transfer or Transfers of interests in the Greenfield Member so long as the Greenfield Member is controlled by Greenfield Acquisition Partners IV, LP; or

(C) the Transfer or Transfers of (direct or indirect) interests in the DREF Member so long as the DREF Member is controlled (directly or indirectly) by (x) Dune Real Estate Partners III LLC, a Delaware limited liability company (“DREP”), or (y) an affiliate of DREP; or

(D) the death or incapacity of a principal of a DREF Member, the Prism Member, or the Greenfield Member, including related transfers as a result thereof which comply with Section 8.2(A), (B) or (C), above; or

(E) (i) with seven (7) days’ prior written notice to the Township, the Transfer or Transfers of management or other control rights in DGP Edison LLC among the DREF Member, the Greenfield Member and the Prism Member, so long as the Redeveloper is controlled (directly or indirectly) by (x) DREF Member or its affiliates, (y) Greenfield Member or its affiliates or (z) a combination of any of the foregoing parties; and (ii) with fourteen (14) days’ prior written notice to the Township, without limiting subsections (A) through (C) above, the Transfer or Transfers of ownership interests in DGP Edison LLC among the DREF Member, the Greenfield Member and the Prism Member, so long as not more than ten percent (10%) of the direct or indirect beneficial ownership of Redeveloper is so Transferred; and (iii) without limiting subsections (A) through (C) above, with the consent of the Township, the Transfer or Transfers of more than ten percent (10%) of the direct or indirect beneficial ownership of Redeveloper among the DREF Member, the Greenfield Member and the Prism Member.

8.3 Prohibition of Transfer of Agreement. Redeveloper further agrees for itself, its successors and assigns, that prior to the Completion of the Phase 1 Project, as evidenced by the issuance of a Certificate of Completion, Redeveloper will not make or create, or suffer to be made or created, any assignment or other Transfer of its interests in this Agreement, without the prior written approval of the Township, except as provided in Section 8.1 above, Section 8.2 above or Section 8.4 below (including a Transfer as a result of a foreclosure or a deed in lieu given to a lender).

8.4 Consent to Permitted Transfers. The Township hereby consents, without the necessity of further approvals from any entity, to the following Transfers each hereinafter 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 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 Phase 1 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 and any parties, individuals or entities involved in such Permitted Transfer; and *provided further*, that Redeveloper shall simultaneously provide to the Township

true and complete copies of all construction schedules and project budgets submitted to such Mortgagee; or

(ii) an equity interest or other interest granted by Redeveloper to a historic preservation tax credit investor in order to facilitate historic tax credit financing, *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 transferee and any parties, individuals or entities involved in such Permitted Transfer; and *provided further,* that Redeveloper shall simultaneously provide to the Township true and complete copies of all construction schedules and project budgets submitted to such investor; or

(iii) Transfers of easements or dedications of property as may be required as conditions of Governmental Approvals; or

(iv) Sale of individual units to the extent that all, or a portion of, the Phase 1 Project shall be converted to “for sale”; or

(v) a pledge of membership interests of the Redeveloper, DGP Edison LLC, or related security interest granted by Redeveloper, DGP Edison LLC, to a lender for the purpose of obtaining the financing necessary to enable Redeveloper to perform its obligations under this Agreement, including any liens and encumbrances granted by Redeveloper, DGP Edison LLC, to a lender for the purpose of financing costs associated with the acquisition, development, construction, or marketing of the Phase 1 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 lender and any parties, individuals or entities involved in such Permitted Transfer; and provided further, that Redeveloper shall simultaneously provide to the Township true and complete copies of all construction schedules and project budgets submitted to such lender; or

(vi) Any Transfers permitted pursuant to the provisions of Section 8.2 hereof.

The Township recognizes and acknowledges that financing of the Phase 1 Project is likely to include one or more of equity participations, “mezzanine” debt, and other financing arrangements in addition to a Mortgage and/or the historic preservation tax credits described above. The Township agrees to consider such financing arrangements in good faith and, unless such transfer is already permitted by Section 8.2 (in which case the Township’s consent is not required) will not unreasonably withhold or delay its consent to such arrangements if they do not result in a change in control of Redeveloper or materially and negatively affect the Township’s ability to enforce its rights under this Agreement.

8.5 Prohibition Against Speculative Investment. Because of the importance of the Project to the general welfare of the community, Redeveloper represents and agrees that its acquisition of the Edison Battery Parcels and Redeveloper’s undertakings pursuant to this Agreement are, and will be used, for the purpose of the Phase 1 Project and redevelopment of the Downtown Redevelopment Area as provided herein, and not for speculation in land holding.

8.6 Information as to Ownership of Redeveloper. In order to assist in the effectuation of the purpose of this Article VIII, Redeveloper represents that the certificate attached to this Agreement as Exhibit G is an incumbency certificate of Redeveloper as of the Effective Date, subscribed and sworn to by a manager or authorized member of Redeveloper, setting forth the name(s) and address(es) of all entities owning at least a 10% interest in Redeveloper (it being acknowledged and agreed that in no event shall Redeveloper be required to disclose any owners of any interests in a DREF Member, the Greenfield Member or the Prism Member).

(A) Subject to subparagraph (D), below, at least annually during the period between the Effective Date and Completion of the Phase 1 Project as evidenced by the issuance of a Certificate of Completion, and at such other times as reasonably requested by the Township, Redeveloper will update the incumbency certificate and keep Exhibit G current as to Redeveloper.

(B) Subject to subparagraph (D), below, Redeveloper will immediately notify the Township in writing of any and all changes whatsoever in the ownership of Redeveloper resulting in any change in such ownership or in the relative distribution thereof, or with respect to the identity of the parties in control of Redeveloper or the degree thereof, of which it or any of its officers or members have been notified or otherwise have knowledge or information.

(C) Subject to subparagraph (D), below, Redeveloper shall, at such time or times as the Township may request, furnish the Township with a complete statement subscribed and sworn to by managing member of Redeveloper, setting forth the names of all of managing members, or other owners of equity interests of Redeveloper, and the extent of their respective holdings.

(D) Notwithstanding the provisions of Section 8.6 (A), (B) and (C) or anything in this Agreement to the contrary, Redeveloper shall not be required to disclose the identities or interests of investors, including but not limited to limited partners, in the Greenfield Member, the Prism Member or a DREF Member pursuant to this Agreement.

8.7 Transfer or Assignment Fee. Any reasonable costs incurred by the Township in connection with a request made by the Redeveloper for the Township's consent to transfer or assign this Agreement shall constitute a Township Cost for purposes of this Agreement.

ARTICLE IX MORTGAGE FINANCING

9.1 Mortgages, Liens, or other Encumbrances. Prior to the issuance of a Certificate of Completion Redeveloper shall promptly notify the Township of any encumbrance or lien that has been created on or attached to the Phase 1 Project, by mortgage, membership interest pledge, or involuntary act of the Redeveloper or others, upon obtaining knowledge or notice of same. Within ten (10) days of the Township's receipt of a written request from the Redeveloper or a

lender offering Redeveloper financing that is permitted under Article VIII, Section 8.4 (i) the Township will issue to such lender a written certificate acknowledging that it has received notice of such mortgage, lien or encumbrance.

9.2 Obligations of Mortgagee. Notwithstanding any of the provisions of this Agreement, including but not limited to those which are or are intended to be covenants running with the land, the holder of any mortgage or membership interests (including but not limited to any such holder who obtains title to one or more of the Edison Battery Parcels, the membership interests of the Redeveloper, DGP Edison LLC, or to any part thereof as a result of foreclosure proceedings, or action in lieu thereof, but not including (a) any other party who thereafter obtains title from or through any such holder or (b) any other purchaser at foreclosure sale, other than the holder of the mortgage or membership interest pledge itself) shall in no way be obligated by the provisions of this Agreement to construct or complete the Phase 1 Project or to guarantee such construction or completion; *provided* that nothing in this Article or any other Article or provision of this Agreement shall be deemed or construed to permit or authorize any such holder to devote the Edison Battery Parcels or any part thereof to any uses, or to construct any project thereon, other than those uses provided or permitted under this Agreement, the Redevelopment Plan, Governmental Approvals and Applicable Laws.

9.3 Notice of Default to Mortgagee and Right to Cure. Subject to *N.J.S.A. 55:17-1 et seq.*, whenever the Township shall deliver any notice or demand to the Redeveloper with respect to any breach or default by the Redeveloper under this Agreement, the Township shall at the same time deliver to each lender (or equity participant in Redeveloper) a copy of such notice or demand, provided that the Redeveloper has delivered to the Township a written notice in accordance with Section 14.9 hereof setting forth the name and address of such lender and equity participant. Each such lender shall (insofar as the rights of the Township are concerned) have the right at its option within ninety (90) days after the receipt of such notice, to cure or remedy, or to commence to cure or remedy, any such default with respect to that portion of the Phase 1 Project which is being financed by such lender and which is subject to being cured and to add the cost thereof to the debt and the lien which it holds, or to the obligations of the lessees under any lease-back or of the guarantor under any other conveyance for financing.

9.4 Estoppel Certificate; Mortgagee Request for Modifications. (i) Within thirty (30) days following written request by the Redeveloper, or of any Mortgagee, lender, purchaser, tenant or other party having an interest in the Phase 1 Project, the Township shall issue a signed estoppel certificate stating (i) that this Agreement is unmodified and in full force and effect as to the Phase 1 Project (excepting only modifications which shall be set forth), (ii) whether to the best knowledge of the Township Redeveloper is in default under this Agreement, and, if so, specifying each such default of which the Township shall have knowledge; and (iii) confirming such other factual matters within the Township's knowledge or control pertinent to this Agreement, as the same relate to, or might affect, the Phase 1 Project. In the event the estoppel certificate discloses such a default, breach or event, it shall also state the manner in which such default, breach or event may be cured. No more than a reasonable number of estoppel certificates may be requested per year.

(ii) In the event that a permitted Mortgagee reasonably requests changes to

this Agreement in order to make the same acceptable to the Mortgagee, the Township agrees to consider such changes in good faith and to consent to such changes if they do not materially and adversely affect the Township's rights nor increase the Township's obligations, which consent will not be unreasonably withheld, conditioned or delayed.

ARTICLE X EVENTS OF DEFAULT; TERMINATION

10.1 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 Agreement:

10.1(a) Redeveloper Events of Default. (i) Failure of Redeveloper to observe or perform any covenant, condition, representation, warranty or agreement hereunder and any other failure, act or omission by Redeveloper designated elsewhere in this Agreement as a “Default” or a “default”, and except as otherwise specified below the continuance of such Default for a period of thirty (30) days after Notice from the Township specifying the nature of such Default and requesting that such Default be remedied; *provided, however*, if the Default 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 Redeveloper is proceeding in good faith and with due diligence to remedy the same as soon as practicable, but in no event later than ninety (90) days after such Notice unless this Agreement specifically provides otherwise.

(ii) Redeveloper's failure or refusal to make any payment or deposit of funds required hereunder as and when required, and the failure to make such payment or deposit within fifteen (15) business days after Notice from the Township, including but not limited to any failure or refusal to pay the Township Costs in accordance herewith or to refresh the Escrow Account or to reimburse the Township for properly reimbursable Township Costs not cured within fifteen (15) business days of Notice by the Township.

(iii) (A) Redeveloper shall have applied for or consented to the appointment of a custodian, receiver, trustee or liquidator of all or a substantial part of its assets; (B) a custodian shall have been legally appointed with or without consent of Redeveloper; (C) Redeveloper, (1) has made a general assignment for the benefit of creditors, or (2) has filed a voluntary petition in bankruptcy or a petition or an answer seeking an arrangement with creditors or has taken advantage of any insolvency law; (D) Redeveloper has filed an answer admitting the material allegations of a petition in any bankruptcy or insolvency proceeding; or (E) Redeveloper shall take any action for the purpose of effecting any of the foregoing; (F) a petition in bankruptcy shall have been filed against Redeveloper, and shall not have been dismissed for a period of ninety (90) consecutive days; (G) an Order for Relief shall have been entered with respect to or for the benefit of Redeveloper, under the Bankruptcy Code; (H) an Order, judgment or decree shall have been entered, without the application, approval or consent of Redeveloper, by any court of competent jurisdiction appointing a receiver, trustee, custodian or liquidator of Redeveloper, or a substantial part of its assets and such order, judgment or decree shall have continued unstayed and in effect for any period of ninety (90) consecutive days; or (I)

Redeveloper shall have suspended the transaction of its usual business.

(iv) Redeveloper (A) except as otherwise permitted hereunder fails to perform its obligations with respect to the implementation of the Phase 1 Project in accordance with this Agreement and the Construction Schedule, the Redevelopment Plan, Governmental Approvals or Applicable Laws, including but not limited to failure to Commence Construction or Complete Construction in accordance with the Construction Schedule; or (B) abandons the Phase 1 Project or suspends construction work for three (3) consecutive months without the prior knowledge and consent of the Township (unless such suspension arises out of a Force Majeure Event or other tolling provision as provided for in this Agreement), and any such failure, abandonment or suspension shall not be cured, ended, or remedied within thirty (30) days after Notice by the Township; *provided, however*, if the Default is one that cannot be completely remedied within thirty (30) days after such Notice has been given, it shall not be an Event of Default as long as the Redeveloper is proceeding in good faith and with due diligence to remedy the same as soon as practicable, but in no event later than ninety (90) days after such Notice.

(v) There is a prohibited Transfer, immediately upon such Transfer with no Notice or opportunity to cure.

(vi) Material breach of any warranty or representation made by Redeveloper.

(vii) Violation by Redeveloper of any covenant or restriction contained in the Declaration of Covenants and Restrictions.

(viii) 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 of Notice by the Township.

(x) Cancellation or termination by reason of any act or omission of Redeveloper of any insurance policy, performance or completion, letter of credit, guaranty or other surety required hereunder to be provided by Redeveloper for the benefit of the Township, immediately upon cancellation or termination thereof if not replaced with no resulting gaps in coverage.

10.1(b) Township Events of Default. (i) Failure of the Township to reimburse Redeveloper for Litigation Costs as provided in Section 13.5, and the continuance of such Default for a period of forty-five (45) days after the Township's receipt of written notice from Redeveloper specifying the Default and requesting that such Default be remedied;

(ii) Failure of the Township to perform its obligations with respect to Redeveloper Protections as set forth in Article V, and the continuance of such Default for a period of thirty (30) days after Notice from the Redeveloper specifying the nature of such Default and requesting that such Default be remedied; *provided, however*, if the Default 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 Township is proceeding in good faith and with due diligence to

remedy the same as soon as practicable, but in no event later than ninety (90) days after such Notice unless this Agreement specifically provides otherwise.

(ii) Material breach of any warranty or representation made by the Township and the continuance thereof for a period of thirty (30) days after Notice from the Redeveloper specifying the nature of such Default and requesting that such Default be remedied; *provided, however,* if the Default 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 Township is proceeding in good faith and with due diligence to remedy the same as soon as practicable, but in no event later than ninety (90) days after such Notice unless this Agreement specifically provides otherwise.

10.2 Remedies Upon Event of Default. Whenever any Event of Default of Redeveloper shall have occurred, the Township may, on written notice to Redeveloper (a “**Termination Notice**”) terminate this Agreement and Redeveloper’s designation as Redeveloper for the Phase 1 Project hereunder, and take whatever other action at law or in equity as may appear necessary or desirable to enforce the performance or observance of any rights, remedies, obligations, agreements, or covenants of Redeveloper under this Agreement. Whenever any Event of Default of the Township shall have occurred, Redeveloper may take whatever action at law or in equity may be available to enforce the performance or observance of any rights, remedies, obligations, agreements, or covenants of the Township under this Agreement. The Township shall also be entitled to terminate the Redeveloper’s designation as Redeveloper for any other Phases of the Redevelopment Project as defined and pursuant to the Redevelopment Agreement, so long as the Redeveloper has not entered into a Mortgage (as defined in the Redevelopment Agreement) with respect to such Phase or has otherwise Commenced Construction of such Phase in accordance with the terms of the Redevelopment Agreement.

Neither the Township nor the Redeveloper shall be liable for indirect, consequential or special damages of any kind. In the event of a finally adjudicated dispute regarding an Event of Default or Termination Notice, then in addition to damages and other relief the prevailing Party shall be entitled to recover its reasonable attorney’s fees from the other Party.

10.3 Force Majeure Extension. For the purposes of this 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 plus a reasonable period of time not to exceed sixty (60) days, or such other period of time which may be agreed to by the Township and the Redeveloper, for Redeveloper to re-mobilize its contractors and agents to complete the Project or affected Phase thereof, and Redeveloper’s non-performance of such obligation during any such period of time shall not be deemed a default by Redeveloper of its obligations under this Agreement. To invoke the tolling provisions hereunder the party invoking the provisions hereof must give Notice to the other party of the occurrence of a Force Majeure Event as soon as

practicable. The tolling period shall be calculated from the date of the Notice. In the event the Force Majeure Event is third party litigation, any and all time frames, deadlines, and periods set forth in this Agreement including the Construction Schedule attached hereto as Exhibit D and the Construction Schedule attached to the Amendment to the Phase 1 Financial Agreement as Schedule 1.1 shall be tolled indefinitely until the date of the Final Adjudication of such action. A “Final Adjudication” shall have occurred upon the passing of 10 days from the expiration date of any applicable appeal period of any final judgment entered by a court of competent jurisdiction with no further appeal have been filed with the court.

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

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

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

10.7 Replacement of Redeveloper. Upon termination of this Agreement by the Township due to an Event of Default by the Redeveloper, the Township shall, pursuant to their responsibilities under Applicable Law, use reasonable efforts to designate a replacement developer for the Phase 1 Project. Such replacement redeveloper shall be designated as soon and in such a manner as the Township shall find feasible and consistent with the objectives of the Applicable Law and of the Redevelopment Plan. Consistent with Section 4.3(a), Redeveloper shall deliver to the Township originals of all Plans and Specifications and other Phase 1 Project documents to the extent in the possession and control of the Redeveloper or its consultants, contractors, engineers, architects or agents, and shall upon request execute assignments of all Phase 1 Project documents and other rights and agreements pertaining to the Phase 1 Project in favor of the Township. Any proceeds resulting from the designation of the replacement redeveloper shall be applied as follows:

- (1) First, to all Township Costs;
- (2) Second, to reimburse the Redeveloper, its successors or transferees up to the amount equal to the Redeveloper’s actual costs (exclusive of profit and development or management fees paid to Redeveloper or its affiliates) associated

with the Phase 1 Project, for land acquisition, engineering, site improvement, development costs and other costs expressly required by this Agreement; and

- (3) Any remaining balance after such reimbursements shall be remitted to the Township.

10.8 Termination Rights Related to Litigation. If third party litigation other than the Pending Litigation is commenced challenging the validity of (i) the designation of the Redevelopment Area, (ii) the Redevelopment Plan, or (iii) the execution of this 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 of Section 10.3; *provided, however,* that (a) if such litigation (other than the Pending Litigation), is finally determined in favor of the plaintiff with no further opportunity for appeal, then either Party may terminate this Agreement by written notice to the other, and (b) if such litigation is not finally determined (inclusive of the expiration of any applicable appeal period) but the Force Majeure Extension has been in effect for at least eighteen (18) months from the date the complaint was filed, either Party may elect to terminate this Agreement by Notice to the other.

10.9 Event of Default Specific to Phase. The Parties hereby expressly acknowledge and agree that in accordance with this Agreement, the Phase 1 Project will be undertaken by Redeveloper. In an Event of Default by the Redeveloper with respect to the Phase 1 Project, the Township shall have the right to exercise its remedies as enumerated at Section 10.2 hereof. The Township agrees that in the event of a default by a another redeveloper on another phase of, or part of, the Project, such default shall not constitute an Event of Default under this Agreement even if the Prism Member, the Greenfield Member or DREF Member is a member of such other redeveloper.

ARTICLE XI INSURANCE

11.1 Insurance – General Requirements. At all times during the term of this Agreement the Redeveloper shall maintain, or cause to be maintained, insurance for the mutual benefit of the Township and Redeveloper as their interests may appear:

(A) Loss or damage by fire, and such other risks as may be included in the standard form of extended coverage insurance from time to time available, in amounts sufficient to prevent the Township or Redeveloper from becoming a co-insurer within the terms of the applicable policies, and in any event, in amounts not less than 100% of the then full insurable value of the Phase 1 Project;

(B) War risks, when and to the extent that such insurance is generally obtainable from the United States Government or an agency thereof, in an amount sufficient to prevent the Township or Redeveloper from becoming a co-insurer within the terms of the applicable policy, and, in any event, in an amount not less than 100% of the then full such lesser amount as insurable value of either the Phase 1 Project or the amount that the United States Government or

an agency thereof limits the insured to obtaining;

(C) All claims for bodily injury and property damage, under a policy of comprehensive general public liability insurance, with such limits as may reasonably be required by the Township from time to time, but not less than \$1 million per occurrence in respect of injury or death and \$2 million per occurrence for property damage, plus excess (“umbrella”) liability policies with coverage of not less than \$10 million.

(D) Workers compensation insurance in an amount not less than \$1,000,000 or such greater amount as may be required under Applicable Laws for employees of Redeveloper and contractors.

(E) Such other hazards and in such amounts as the Township may reasonably require provided that such insurance is then customarily maintained in buildings of similar construction, use and class in the area in which the Edison Battery Parcels are located.

11.2 Insurance – Restrictions. All insurance provided for under this Agreement will be reasonably effected under valid enforceable policies issued by insurers rated “A” or better by A.M. Best and reasonably acceptable to the Township; *provided, however*, that if such insurance is not commercially available Redeveloper’s failure to procure such insurance shall not constitute a Default hereunder. On or before the Commencement Date, a certificate procured by Redeveloper pursuant to Article 11.1 (or certificates thereof) will be delivered to the Township. At least 30 days prior to the expiration date of any policy, the original renewal policy (or certificates thereof) for such insurance will be delivered by the Redeveloper to the Township as aforesaid, together with satisfactory evidence of payment of the premium thereon. All policies referred to in Article 11.1 will, to the extent then generally obtainable, contain agreements by the insurers that (a) any loss will be payable to the Township, notwithstanding any act or negligence of the Redeveloper which might otherwise result in forfeiture of said insurance, (b) such policies may not be canceled except upon 30 days prior written notice to each named insured and loss payee, and (c) the coverage afforded thereby must not be affected by the performance of any work in or about the Edison Battery Parcels.

11.3 Township as Insured. Each policy of insurance required herein shall name the Township as an insured or as an additional insured, as its interests may appear.

11.4 Additional Insurance. Nothing in this Article shall prevent the Redeveloper from taking out insurance of the kind and in the amounts and with companies provided for under Article 11.1 or 11.2 under a blanket insurance policy or policies which can cover other properties as well as the Edison Battery Parcels; provided, however, that any such policy of insurance provided for under Article 11.1 must (a) specify therein, or the Redeveloper shall furnish the Township with a written statement from the insurers under such policies specifying the amount of the total insurance allocated to the Phase 1 Project, which amount will not be less than the amount required by Article 11.1 to be carried, and (b) not contain any clause which would result in the insured thereunder being required to carry insurance with respect to the property covered thereby in an amount equal to a minimum specified percentage of the full insurable value of such property in order to prevent the insured therein named from becoming a co-insurer of any loss

with insurer under such policy.

11.5 Deductibles. All insurance provided under this Article XI may contain loss deductible clauses in such maximum amounts as the Township approves in its reasonable discretion.

11.6 Subrogation. All insurance policies obtained pursuant to this Article must include waivers of subrogation against the Township and Redeveloper.

ARTICLE XII COMMUNITY INITIATIVES

12.1 Equal Employment Opportunity. Redeveloper agrees that during construction of the Project:

(1) Redeveloper will not discriminate against any employee of Redeveloper or applicant for employment because of race, color, religion, sex, or national origin. Redeveloper will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Redeveloper agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause and any such notices provided by the Township that are consistent therewith.

(2) Redeveloper will, in all solicitations or advertisements for employees placed by or on behalf of Redeveloper, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.

(3) Subcontractors and suppliers to the Project shall include qualified and certified minority enterprises, to the extent qualified subcontractors and suppliers are available consistent with the Construction Schedule.

(4) The obligations contained in this Article shall be binding on all contractors and subcontractors to the extent that any work is done by any contractor or subcontractor, and any contract entered into by Redeveloper shall so provide.

12.2 First Source Employment. The Redeveloper shall make good faith efforts to employ and shall provide in its contracts with its contractors and subcontractors that they must make good faith and commercially reasonable efforts to employ qualified residents of Township in the construction of the Phase 1 Project, consistent with market wages and the financial success of the Phase 1 Project. If so requested by the Township, Redeveloper agrees (i) to cooperate with the Township or its designee in developing a plan to coordinate training programs and employment recruitment efforts for Township residents; (ii) to cooperate with efforts to recruit

Township residents for all employment opportunities in connection with the Phase 1 Project, including participation in Township job fairs or similar events; and (iii) to meet with appropriate Township officials to determine the status of recruitment and training efforts, and to plan future employment training and recruitment activities.

12.3 Affirmative Action. Redeveloper during the construction of the Phase 1 Project covenants that it will comply with, and shall provide in its contracts with its contractors and subcontractors, the following:

(1) When hiring workers in each construction trade, or when engaging contractors, Redeveloper agrees to use its good faith efforts to employ Minority workers and Township residents.

(2) Redeveloper will undertake a program of local preference to facilitate entering into contracts with and/or purchasing good and services from local merchants and businesses located within the Township, including preferences for local retail and restaurant businesses;

(3) Where applicable, Redeveloper will at all times conform to the laws, regulations, policies of the State, the Federal government, and other governmental bodies with respect to affirmative action and equal employment opportunities requirements, and particularly those which are imposed as a condition to receipt of any government sponsored funding for the Phase 1 Project, notwithstanding any other provision of this Agreement to the contrary.

12.4 Reporting and Enforcement.

(1) All contracts entered into by the Redeveloper for the construction of the Phase 1 Project shall contain appropriate language to effectuate this Article.

(2) If and as reasonably requested by the Township, or if otherwise required by Applicable Law, Redeveloper and its contractors and subcontractors shall submit periodic reports regarding their compliance with this Article.

(3) Redeveloper covenants to enforce its contracts with its contractors and subcontractors if such parties are not in compliance with this Article.

**ARTICLE XIII
FINANCIAL AGREEMENT; PHASE 1 BONDS;
BOND CONTINGENCY; LITIGATION COSTS**

13.1 Phase 1 Financial Agreement. The Redeveloper has applied for, and the Township has approved, an assignment, assumption and amendment of the Phase 1 Financial Agreement. A copy of the Phase 1 Financial Agreement is attached hereto as Exhibit C and a copy of the Assignment, Assumption and Amendment is attached hereto as Exhibit H.

13.2 Phase 1 Bonds. (a) Subject to the Satisfactory Resolution of the Pending Litigation, the Township agrees to pursue in good faith, and in accordance with the procedures set forth in the Applicable Laws, the issuance of the Phase 1 Bonds as general obligation municipal bonds pursuant to the Local Bond Law, *N.J.S.A. 40A:2-1 et seq.*, in a total par amount of not to exceed \$6,300,000, at such rate or rates of interest as are deemed reasonable by the Township, in its sole discretion. Such Phase 1 Bonds shall be issued to provide funds for costs of the Phase 1 Infrastructure Improvements, environmental remediation and public parking improvements pursuant to Section 4.1(c) hereof, as well as the costs of issuing the Phase 1 Bonds, and shall be utilized by the Redeveloper on behalf of the Township at the times and in the manner set forth in the Trust Agreement and the Phase 1 Infrastructure Construction Agreement, as applicable, along with the funding of the costs of issuing the Phase 1 Bonds.

(b) The Redeveloper hereby agrees and acknowledges that the conditions precedent to the issuance of the Phase 1 Bonds by the Township shall be as follows:

(i) Satisfactory Resolution of the Pending Litigation, or the Township has undertaken a separate authorization for the issuance of the Phase 1 Bonds (“Substitute Phase 1 Bonds”), which authorization shall not have been the subject of a legal challenge, or if challenged, such challenge shall have been resolved in a manner that, in the opinion of counsel to the Township, does not adversely affect the Township’s ability to issue the Substitute Phase 1 Bonds;

(ii) forty-five days shall have elapsed from the execution of this Agreement and either no litigation with respect hereto shall have been filed, or the Redeveloper shall have waived its right pursuant to Section 10.8 hereof to terminate this Agreement as a result thereof;

(iii) Redeveloper shall have entered into a special assessment agreement with the Township, a form of which is attached hereto as Exhibit I, providing for a special assessment in an amount equal to 50% of the debt service on the Phase 1 Bonds, the term of which agreement shall be coterminous with the term of the Phase 1 Bonds, including any notes issued in anticipation thereof, provided however, that if there shall be insufficient qualified costs to support a special assessment in an amount equal to 50% of the debt service of the Phase 1 Bonds, then the Redeveloper hereby agrees to make payments to the Township of an amount equal to the difference between the amount of the special assessment and 50% of the debt service on the Phase 1 Bonds;

(iv) the Redeveloper shall have provided a letter of credit, other liquid security or a guaranty from a credit worthy entity, reasonably acceptable to the Township, naming the Township as the beneficiary thereunder, that secures the repayment of that portion of the debt service on the Phase 1 Bonds not offset by the special assessment, for the period commencing as of the date of issuance of the Phase 1 Bonds and continuing through the later of (x) the date that the Phase 1 Project shall have received a Certificate of Occupancy; or (y) the completion of the work financed with the Phase 1 Bonds, provided that, in the event that the portion of the debt service on the Phase 1 Bonds not offset by the special assessment shall be in excess of fifty percent, such security shall continue in force and effect during the life of the Phase 1 Bonds in such an amount that when combined with the portion of debt service offset by the special

assessment shall equal fifty percent of the debt service on the Phase 1 Bonds, notwithstanding that the events set forth at (x) and (y) above may have occurred;

(v) the Redeveloper, for the purpose of financing the construction of the Phase 1 Project, shall have entered into a binding loan agreement with an institutional lender, or some other agreement, which other agreement shall be acceptable to the Township in its sole discretion; and

(vi) the Redeveloper shall have provided evidence or assurances reasonably acceptable to the Township that Redeveloper equity will be expended prior to the use of proceeds of the Phase 1 Bonds.

13.3 Bond Contingency. Subject to the Satisfactory Resolution of the Pending Litigation, the Township agrees to pursue the issuance of the Phase 1 Bonds in good faith, provided however, the Redeveloper acknowledges that market conditions may adversely impact the Township's ability to issue the Phase 1 Bonds within the parameters set forth in Section 13.2 above. If the Township shall be unable to issue the Phase 1 Bonds whether due to the Pending Litigation or market conditions, it will use its best efforts to pursue any other funding alternative in a gross amount not to exceed \$3,150,000 (the "**Funding Alternative**"), provided however, that: (i) the Township shall not be obligated to pursue the Funding Alternative until resolution of the Pending Litigation shall be final and non-appealable (including proceedings resulting from a remand of the Pending Litigation by the New Jersey Supreme Court); and (ii) the payments to be made by the Township pursuant to the Funding Alternative shall be on terms no less favorable to the Township that those set forth in Exhibit J hereto.

Notwithstanding anything contained herein to the contrary, but subject to the Satisfactory Resolution of the Pending Litigation, in the event that the Redeveloper, or any third party, including without limitation, an underwriter or other bond purchaser, shall agree to purchase the Phase 1 Bonds on terms and parameters that are customary and reasonable in the reasonable judgment of the Township, together with its financial advisor, with respect to the municipal bond market as of such date, the Township shall issue the Phase 1 Bonds and take such other actions and issue such other instruments, certificates, documents, agreements and opinions as may be necessary, reasonable or customary in connection thereto. Subject to the Pending Litigation, failure of the Township to issue the Phase 1 Bonds in accordance with the terms hereof shall constitute an Event of Default hereunder.

13.4 Importance of Tax Exemption and Phase 1 Bonds. The Parties hereto each hereby expressly acknowledge, represent, understand and agree that the Redeveloper would not undertake the Phase 1 Project but for the tax exemption that is the subject of the Phase 1 Financial Agreement attached hereto as Exhibit C, the Assignment, Assumption and Amendment thereof attached hereto as Exhibit H, and Township's commitment, as specified in Sections 13.2 and 13.3 above, to undertake the issuance of the Phase 1 Bonds or the Funding Alternative as set forth therein.

13.5 Litigation Costs. (a) All litigation costs incurred by the Township arising out of or in connection with third party litigation challenging this Agreement or the Phase 1 Bonds, the

PILOT or the Phase 1 Financial Agreement and the Assignment, Assumption and Amendment thereof hereunder or implementation thereof (including but not limited to reasonable attorneys' fees and other reasonable out of pocket costs incurred in the defense of such litigation or dispute resolution in connection therewith, "**Litigation Costs**") shall constitute Township Costs that Redeveloper is obligated to pay pursuant to the terms of this Agreement. The Township agrees to cooperate with Redeveloper in the defense of such litigation.

(b) With respect to third party litigation challenging (i) execution of this Agreement or the designation hereunder of Redeveloper by the Township; (ii) designation of the Redevelopment Area as an area in need of redevelopment; or (iii) the Redevelopment Plan, then from time to time during the pendency of such litigation and as requested by the Township Redeveloper shall deposit into the Escrow Account an amount reasonably estimated by the Township to cover one half (1/2) of the Litigation Costs in connection therewith. If such litigation is finally and conclusively resolved in favor of the Township, Redeveloper shall reimburse the Township for the Township's share of the Litigation Costs. If such litigation is finally and conclusively adversely resolved, the Township shall reimburse Redeveloper for Redeveloper's share of the Litigation Costs. The reimbursement obligations of the Parties pursuant to this Section 13.5 shall survive termination of this Agreement.

13.6 Redeveloper's Indemnification of Township. In amplification and not limitation of the definition of Township Costs and any other indemnity obligation pursuant to this Agreement, and except as otherwise set forth above in Section 13.5 with regard to certain Litigation Costs, Redeveloper hereby agrees to indemnify and shall pay, protect and hold the Township harmless from and against all liabilities, losses, claims, demands, costs, expenses (including reasonable attorneys' fees and expenses) and judgments of any nature arising, or alleged to arise, from or in connection with this Agreement; *provided, however*, that such liability, loss, claim, demand, cost or expense is not the result of gross negligence or willful misconduct of the Township or its officers, employees, agents or representatives. Redeveloper's obligation to indemnify the Township pursuant to this Section shall survive any termination of this Agreement.

ARTICLE XIV MISCELLANEOUS

14.1 Cooperation. The Parties hereto agree to cooperate with each other and to provide all necessary and reasonable documentation, certificates, consents in order to satisfy the terms and conditions hereof and the terms and conditions of this Agreement. The Township further agrees to cooperate as may be reasonably requested by any mortgagee of the Redeveloper in connection with obtaining financing for the Phase 1 Project; *provided, however*, that all costs and expenses of such cooperation by the Township shall constitute Township Costs.

14.2 Conflict of Interest. No member, official or employee of the Township shall have any direct or indirect interest in this Agreement or the Phase 1 Project, nor participate in any decision relating to the Agreement or the Phase 1 Project which is prohibited by law.

14.3 No Improper Consideration For Agreement. The Redeveloper warrants it has not paid or given, and will not pay or give, any third person any money or other consideration for obtaining this Agreement, other than normal costs of conducting business and costs of professional services such as architects, engineers, financial consultants and attorneys. The 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 Agreement.

14.4 Non-Liability of Officials and Employees of the Township. No member, official or employee of the Township shall be personally liable to the 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 the Redeveloper or its successor, or on any obligation under the terms of this Agreement.

14.5 Non-Liability of Officials and Employees of the Redeveloper. No member, officer, shareholders, director, partner or employee of the Redeveloper, and no member, officer, shareholders, director, partner or employee of the members of the Redeveloper or the members 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 Agreement.

14.6 Inspection of Books and Records.

(a) The Township shall have the right upon reasonable request and at all reasonable times to inspect the books and records of the Redeveloper pertinent to the purposes of this Agreement.

(b) The Redeveloper shall have the right at all reasonable times to inspect the books and records of the Township pertinent to the purposes of this Agreement.

(c) Such inspections must be for a legitimate business purpose affecting the material interest of the party seeking the inspection.

(c) Such inspections must be performed at a time and in a manner as to not unreasonably interfere with the business operations of the party whose books and records are being inspected.

14.7 Time of the Essence. Any other provision of this Agreement notwithstanding, the Township reserves its right to serve a “time of the essence” notice as permitted under and in accordance with Applicable Law.

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

14.9 Notices. A notice, demand or other communication required to be given under this 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 receipt acknowledged) 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 West Orange
66 Main Street
West Orange, New Jersey 07052-5313
ATTN: Mayor Robert Parisi and John Sayers, Business Administrator

With a copy to:

Glenn F. Scotland, Esq.
McManimon, Scotland & Baumann, LLC
75 Livingston Avenue
Roseland, New Jersey 07068

As to the Redeveloper:

Prism Green Associates IV, LLC
c/o Prism Capital Partners, LLC
200 Broadacres Drive, Suite 180
Bloomfield, NJ 07003
ATTN: Eugene Diaz

DREF III Edison LLC
623 Fifth Avenue, 30th Floor
New York, New York 10019

With a copy to:

Matthew C. Karrenberg, Esq.
DeCotiis, FitzPatrick & Cole, LLP
500 Frank W. Burr Boulevard, Suite 31
Teaneck, New Jersey 07666

and

Barry Marcus
Senior Vice-President

Greenfield Partners
50 North Water Street
South Norwalk, CT 06854

and

James C. McCann, Esq.
Connell Foley LLP
Harborside Financial Center
2510 Plaza Five
Jersey City, NJ 07311

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 receipt or rejection of delivery by the addressee.

14.10 Titles of Articles and Sections. The titles of the several Articles and Sections of this Agreement, as set forth in the Table of Contents or at the heads of said Articles and Sections, are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

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

14.12 Successors Bound. This Agreement shall be binding upon the respective parties hereto and their permitted successors and assigns.

14.13 Governing Law; Jurisdiction and Venue; Jury Trial Waiver. This Agreement shall be governed by and construed and enforced pursuant to the laws of the State of New Jersey, without regard to its conflict of laws principles. Any action hereunder shall be brought exclusively in a court of the State of New Jersey or in a United States Court having jurisdiction in the District of New Jersey, in either case sitting in Essex County, New Jersey, and Redeveloper hereby waives all objections to such venue. Redeveloper and the Township, for themselves and their successors and assigns, hereby waive trial by jury in any action arising out of or in connection with this agreement.

14.14 Counterparts. This Agreement may be executed in counterparts. All such counterparts shall be deemed to be originals and together shall constitute but one and the same instrument.

14.15 Exhibits. Any and all Exhibits annexed to this Agreement are hereby made a part of this Agreement by this reference thereto.

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

14.17 Waiver. No waiver made by any party with respect to any obligation of any other party under this Agreement shall be considered a waiver of any other rights of the party making the waiver beyond those expressly waived in writing and to the extent thereof.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be properly executed and their corporate seals affixed and attested as of the date first written above.

**TOWNSHIP OF WEST ORANGE,
NEW JERSEY**

Attest

By: _____

Witness:

DGP URBAN RENEWAL LLC

By: _____

Exhibit A

Reserved

Exhibit B

Phase 1 Infrastructure Construction Agreement

Exhibit C

Phase 1 Financial Agreement

Exhibit D

Construction Schedule

Certain demolition, remediation and site work originally commenced in 2009. Construction of the Phase 1 Project is scheduled to commence no later than September 30, 2015 with an anticipated substantial completion date of on or about September 30, 2017.

Exhibit E

Declaration of Covenants and Restrictions

Exhibit F

Escrow Procedures

Exhibit G

Incumbency Certificate

Exhibit H

Amendment, Assignment and Assumption of Financial Agreement

Exhibit I

Special Assessment Agreement

Exhibit J

Funding Alternative Parameters

The Funding Alternative shall be on terms no less favorable to the Township than the following:

- Level debt service;
- Debt service in each year not to exceed \$175,000;
- For a term not to exceed thirty (30) years.