

Exhibit A

Redevelopment Agreement

REDEVELOPMENT AGREEMENT

By and Between

THE TOWNSHIP OF WEST ORANGE

as Redevelopment Entity

and

PRISM GREEN ASSOCIATES IV, LLC,

as Redeveloper

Dated as of December 20, 2006

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This Redevelopment Agreement (the “**Agreement**” or “**Redevelopment Agreement**”) dated this ^{20th} day of December, 2006 entered into 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 **PRISM GREEN ASSOCIATES IV, LLC**, a limited liability company of the State of Delaware authorized to do business in the State of New Jersey, having offices at c/o Prism Capital Partners, LLC, 50 Grand Avenue, Englewood, New Jersey 07631-3506 (together with its permitted successors or assigns as hereinafter provided, the “**Redeveloper**”).

WITNESSETH

WHEREAS, on March 14, 2000, as amended on September 6, 2000, the Mayor and Council (the “**Governing Body**”) of the Township adopted a Resolution authorizing the Planning Board of the Township of West Orange (the “**Planning Board**”) to undertake a preliminary investigation pursuant to *N.J.S.A. 40A:12A-6(a)* to determine whether areas within the West Orange downtown area (the “**Downtown Redevelopment Area**”) met the criteria of *N.J.S.A. 40A:12A-5* of the *Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq.* (the “*LRHL*”) for designation as an “area in need of redevelopment”; and

WHEREAS, the Planning Board held public hearings at which evidence obtained in its investigation regarding the Downtown Redevelopment Area was presented, and the Planning Board determined that the conditions within the Downtown Redevelopment Area established that such area was an “area in need of redevelopment” pursuant to *N.J.S.A. 40A:12A-5* of the *LRHL*, and the Planning Board adopted a resolution recommending that the Governing Body declare the Downtown Redevelopment Area to be an “area in need of redevelopment”; and

WHEREAS, following such recommendation the Governing Body duly adopted a resolution determining that the Downtown Redevelopment Area was an “area in need of redevelopment” in accordance with *N.J.S.A. 40A:12A-6* of the *LRHL*; 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 (the “**Edison 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 *N.J.S.A. 40A:12A-7* of the *LRHL* the Governing Body subsequently directed the Planning Board to develop, prepare and obtain public input with respect to a redevelopment plan for the Downtown Redevelopment Area; and

WHEREAS, the Planning Board developed and prepared a proposed redevelopment plan, held public hearings and received public comment on February 7, 2002, September 25, 2002, and December 11, 2002 with respect to the proposed redevelopment plan, and transmitted

the record established by the Planning Board to the Governing Body to assist the Governing Body with its consideration of the proposed redevelopment plan; and

WHEREAS, after giving due consideration to the record transmitted by the Planning Board and the proposed redevelopment plan, on February 9, 2003 the Governing Body adopted by ordinance a redevelopment plan superseding the provisions of the Township Zoning Ordinance for the Downtown Redevelopment Area (as adopted, the "**Initial Redevelopment Plan**"); and

WHEREAS, redevelopment of the Downtown Redevelopment Area was not undertaken or accomplished as originally intended since the adoption of the Initial Redevelopment Plan; and

WHEREAS, the Governing Body determined to take further steps to spark the redevelopment of the Downtown Redevelopment Area; and

WHEREAS, in furtherance of that objective, on April 13, 2006 the Governing Body issued a Request for Qualifications and Concept Plans ("**RFQ**") to procure submissions from private developers for redevelopment of the Downtown Redevelopment Area for consideration by the Governing Body, in which the Township expressed a willingness to consider additional residential units, as well as some modification to the site layout and originally proposed parking structure; and

WHEREAS, on May 15, 2006, the Township received six (6) responses to the RFQ, including a submission from Redeveloper; and

WHEREAS, following a thorough review of all proposals by the Township's Redevelopment Advisory Subcommittee (the "**Committee**"), the Committee determined that the proposal submitted by the Redeveloper contained the most fully developed concept plan and vision for redevelopment of the Downtown Redevelopment Area that met the intent and objectives of the RFQ and of the Township's Master Plan; and

WHEREAS, after the presentation of concept plans by Redeveloper and others to the Township Council on May 23, 2006, and after giving due consideration to factors such as previous development experience, design criteria and amenities to be supplied by each proposed redeveloper, the Township Council, upon the advice of the Committee, authorized the negotiation of a redevelopment agreement with Redeveloper; and

WHEREAS, as part of its submission Redeveloper requested that the Governing Body consider certain proposed amendments to the Initial Redevelopment Plan (the "**Proposed Amendments**") and the Governing Body was willing to consider the Proposed Amendments and by resolution adopted June 27, 2006 referred the Proposed Amendments to the Planning Board for its review and comment in accordance with *N.J.S.A. 40A:12A-7* of the *LRHL*; and

WHEREAS, during this negotiation period the Township undertook extensive due diligence in financial and project-related matters, and held a number of negotiation sessions with Redeveloper to satisfy itself as to (i) the consistency of the Redeveloper's concept and vision

with the vision and objectives of the Township, and the best interests of the citizens and taxpayers of West Orange; (ii) the desirability of the Proposed Amendments; and (iii) the Redeveloper's qualifications, experience and financial ability to undertake and see redevelopment of the Downtown Redevelopment Area through to completion; and

WHEREAS, at a public meeting on July 12, 2006 and in accordance with the procedures and standards set out in the *LRHL*, the Planning Board evaluated the Proposed Amendments with such modifications and revisions thereto as were recommended by the Township's planning consultant and Redevelopment Advisory Committee, and adopted a resolution recommending the adoption of the Proposed Amendments as so modified and revised (as recommended by the Planning Board, the "**Amendments**"); and

WHEREAS, in accordance with the procedures and standards set out in the *LRHL* the Township Council adopted the Amendments by ordinance on August 15, 2006 (the Initial Redevelopment Plan as amended by the Amendments hereinafter being referred to as the "**Redevelopment Plan**"); and

WHEREAS, also 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 Project; 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 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 is the owner of certain parcels of real property within the boundaries of the Redevelopment Area, identified on the Official Tax Map of the Township as Block 115, Lots 16 and 51, together with all improvements thereon (the "**Township-Owned Property**"); and

WHEREAS, the Township has determined that by reason of the matters agreed to and upon the performance or satisfaction of certain terms and conditions set forth herein the Township-Owned Property will no longer be needed for public use, and that the redevelopment thereof in accordance with the applicable provisions of the Redevelopment Plan will contribute to the rehabilitation and reinvigoration of the Township and to the social and economic improvement of the Township in accordance with the legislative intent, goals and objectives of the *LRHL*; and

WHEREAS, the Redeveloper heretofore has entered into agreements to purchase certain of the Acquisition Parcels, including, among others, the “**Edison Battery Parcels**”, (Block 66 Lots 1 and 7, and Block 64, Lots 22, 23, 28, 29, 30, 32, 33, 34 and 34.01) and the parcels commonly referred to as the “**CVS Parcels**” (Block 116.02, Lots 1.01, 6, 8 and 10), acquisition of which by Redeveloper, (either directly or through the exercise of the Township’s power of eminent domain, as hereinafter provided) is hereinafter made a condition of this Agreement; and

WHEREAS, the Redeveloper also seeks the opportunity to purchase the Township-Owned Property for the purpose of demolishing the existing improvements and redeveloping the site, and the Township has proposed to sell the Township-Owned Property to Redeveloper on the terms and conditions hereinafter set forth in this Agreement for consideration of **TWO MILLION SIX HUNDRED FIFTY-ONE THOUSAND and 00/100 (\$2,651,000) DOLLARS** (the “**Purchase Price**”); and

WHEREAS, the Township is willing to sell the Township-Owned Property to Redeveloper and Redeveloper is willing to acquire the Township-Owned Property for the Purchase Price and on the terms and conditions in this Agreement; and

WHEREAS, the Township in its capacity as redevelopment entity is willing to cooperate with Redeveloper on the terms and conditions set forth in this Agreement and in accordance with the powers and procedures enumerated in the *LRHL* to acquire, whether by negotiated purchase and sale agreements or through the exercise of the power of eminent domain, and at Redeveloper’s cost and expense, those Acquisition Parcels that Redeveloper is unable to acquire through voluntary negotiations with the current property owners, and to convey such Acquisition Parcels to Redeveloper for redevelopment on the terms and conditions set forth herein; and

WHEREAS, contingent upon satisfaction of the Contingencies (including but not limited to the PILOT Contingency and the Acquisitions Contingency) on or before the Contingency Satisfaction Deadline, the Redeveloper proposes to rehabilitate certain structures existing on certain Acquisition Parcels, and to construct new improvements on the other Acquisition Parcels and on Township-Owned Property, resulting in the construction or rehabilitation of a total of 609 residential units comprising approximately 538 “for sale” market rate residential units and uses attendant and accessory thereto; up to 71 low- and moderate-income affordable 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 retail 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 provisions 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 (collectively, the "Redevelopment Project" or the "Project");

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

WHEREAS, the Township believes the Redevelopment 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;

NOW, THEREFORE, the Parties hereby agree as follows:

ARTICLE I DEFINITIONS

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:

"**Acquisition Contingency**" means, with respect to the Edison Battery Parcels and the CVS Parcels, either (i) Redeveloper's acquisition of fee title, or (ii) Redeveloper's giving of an Acquisition Notice and making an irrevocable Condemnation Deposit in respect of the purchase thereof on or before the Contingency Satisfaction Deadline, such that Redeveloper shall have a minimum investment in the Project (including the Condemnation Deposits) of not less than \$22,500,000 on or before the Contingency Satisfaction Deadline.

"**Acquisition Notice**" is defined in Section 3.3(b).

"**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 *LRHL*; *COAH*; the *Municipal Land Use Law, N.J.S.A. 40:55D -1 et seq.*; the *Redevelopment Bond Area Financing Law, N.J.S.A. 40A:12A-64 et seq.*; the *Eminent Domain Act, N.J.S.A. 20:3-1 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 the Project.

“Appraised Value” means the fair market value of a Designated Acquisition Parcel, as determined by a written appraisal prepared by an MAI-appraiser engaged by the Township at Redeveloper’s cost and expense.

“Certificate of Completion” means written acknowledgment by the Township in recordable form that the Redeveloper has completed construction of the Project (or relevant Phase or portion thereof) and Improvements in accordance with the requirements of this Redevelopment Agreement; and that, in accordance with the provisions of *N.J.S.A. 40A:12A-9* of the *LRHL* the conditions determined to exist at the time the area was determined to be in need of redevelopment no longer exist and the Project Parcel(s) and Improvements thereon that 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.

“Closing” means the conveyance of title to the Township-Owned Property to Redeveloper by the Township.

“Closing Date” means the date on which title to the Township-Owned Property is conveyed by the Township to the Redeveloper.

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

“COAH Regulations” means the third round substantive rules (*N.J.A.C. 5:94*) and procedural rules (*N.J.A.C. 5:95*) which became effective on December 20, 2004.

“COAH Units” means low and moderate income housing units required to be built pursuant to COAH Regulations to satisfy the Township’s growth share obligation resulting from construction of the Redevelopment Project .

“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 Project in accordance with Governmental Approvals.

“Competition District” means the geographic area of potential market competition with the Project, bounded by Main Street frontage to the west, Park Avenue on the south, the West Orange border and Watchung Avenue on the east, and Washington Street on the north.

“Completion of Construction”, “Complete Construction” or “Completion Date” means the date on which the Redeveloper receives a Certificate of Completion for the Project (or relevant Phase or portion thereof).

“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.

“Condemnation Costs” means the costs and expenses incurred by the Township in connection with (a) the acquisition, ownership and possession of any Designated Acquisition Parcel, or any interest therein, whether by negotiated purchase and sale or by the exercise of the Township’s power of eminent domain; or (b) the elimination of any rights or interests in any Designated Acquisition Parcel to the extent that such interests are inconsistent with the Redevelopment Project. Condemnation Costs shall include, without limitation: (i) all reasonable costs arising out of or in connection with the actual or threatened exercise of the power of eminent domain by the Township, whether or not an action is commenced, a declaration of taking is recorded, or title is actually acquired by the Township; (ii) all reasonable costs and expenses of the Township (including but not limited to reasonable attorneys’ fees) arising out of or in connection with site inspection, good faith negotiations, title investigation, survey, environmental investigation and Remediation, appraisal, litigation, or relocation; (iii) without limiting the generality of the foregoing, the price paid or to be paid to Designated Acquisition Parcel owners, which shall be the just compensation value determined by the condemnation process either in *bona fide* negotiations with the Designated Acquisition Parcel owner or as a result of the proceedings before the condemnation commissioners or the court; (iv) the amount paid to compromise or settle any claim for just compensation (as to which the Township agrees that the Township will not settle or compromise any claim without the Redeveloper’s consent, which consent shall not be unreasonably withheld or delayed); (v) title insurance costs; (vi) insurance premiums for the period in which the Township holds title to the Designated Acquisition Parcel; (vii) all relocation costs, including the costs of obtaining any required approval of or amendment to the WRAP; and (viii) all reasonable out-of-pocket costs and professional fees incurred in complying with *N.J.S.A. 40A:12A-8(c)* and *N.J.S.A. 20:3-18*, including, but not limited to, professional services, attorneys fees, expert fees, inspections, appraisals, environmental investigations, court deposits (required by *N.J.S.A. 20:3-18*) and court costs and fees associated with bona-fide negotiations, commissioner’s hearings, court proceedings and challenges to the condemnation.

“Condemnation Costs Account” means a dedicated, interest-bearing escrow account established and maintained by the Township in which Redeveloper shall from time to time deposit funds to cover Condemnation Costs and other Condemnation Costs for disbursement as set forth in this Redevelopment Agreement.

“Condemnation Deposit” means the Initial Condemnation Deposit and the Subsequent Condemnation Deposit.

“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 Project as contained in the Phasing Plan, as may be modified or adjusted from time to time in accordance with the provisions of this Agreement.

“Contingencies” means the Acquisition Contingency, the PILOT Contingency, the Plan Amendment Contingency, and the Infrastructure Construction Agreement Contingency.

“Contingency Satisfaction Date” means the date on which all Contingencies hereunder have been satisfied, but not later than the Contingency Satisfaction Deadline.

“Contingency Satisfaction Deadline” means March 31, 2007; *provided, however*, that if as of March 31, 2007, and notwithstanding the diligent and good faith efforts of the Parties, the PILOT Contingency has not been satisfied because required State approvals that have been applied for have not yet been obtained, then either Party by Notice to the other Party may elect to extend the Contingency Satisfaction Deadline until April 30, 2007. In the event all Contingencies are not satisfied by the Contingency Satisfaction Deadline the Parties may elect to terminate this Agreement as hereinafter provided; *provided, however*, that upon such termination the Parties shall have no further liability to each other under this Agreement except as otherwise expressly provided to the contrary herein; *and provided further*, that in the event of any such termination the Township shall not be obligated to reimburse Redeveloper for any monies expended by Redeveloper in connection with this Agreement, the Project or the performance of Redeveloper’s obligations hereunder.

“Declaration of Covenants and Restrictions” or **“Declaration of Restrictions”** means a written instrument intended to be executed by Redeveloper, to be recorded in the Office of the Essex County Clerk and to encumber the Project 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 Project, all as more particularly described in Article VII.

“Deed” is defined in Section 3.2(d)(i).

“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.

“Designated Acquisition Parcel” is defined in Section 3.3(b).

“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).

“Eminent Domain” means the utilization of condemnation by the Township pursuant to the procedures set forth in *N.J.S.A. 20:3-1 et seq.* and the rules and regulations promulgated thereunder, the *“Eminent Domain Act.”*

“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.); and the rules and regulations promulgated thereunder.

“Escrow Account” is defined in Section 4.6.

“Event of Default” is defined in Section 10.2.

“Extension Fee” is defined in Section 3.2(c).

“Financial Agreement” is defined in Section 13.1.

“Force Majeure Event” means causes that are beyond the reasonable control and not substantially due to the fault or negligence of the party seeking to excuse delay or failure of performance of an obligation hereunder by reason thereof, including, but not limited to, third-party litigation that enjoins implementation of the Project or the relevant Phase or portion thereof or materially interferes with the ability of Redeveloper to obtain Market Rate Financing for the Project, as more particularly described in Section 10.4 below; 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 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 Project.*) During any Force Majeure Event that affects only a portion of a Project, Redeveloper shall to the maximum extent feasible continue to perform its obligations for the balance of the Project unaffected by the Force Majeure Event. The existence of an event or occurrence of Force Majeure Event shall not prevent the Township 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.

“Gap Title Defects” is defined in Section 3.2(d)(ii).

“Governmental Approvals” means all final and unappealable local, state or federal government approvals necessary for implementation and completion of the 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.

“GMP” means “Guaranteed Maximum Price”.

“Greenfield Member” means Greenfield Prism IV, 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 Redevelopment Project, including without limitation, Infrastructure Obligations, and the provision of any performance bonds, or maintenance bonds, completion guarantees or any other performance assurances in connection therewith.

“Infrastructure Construction Agreement” means a construction agreement to be entered into by the Township and Redeveloper on or before the Contingency Satisfaction Deadline, setting forth the terms, conditions, specifications, and performance guarantees pertaining to Redeveloper’s obligation hereunder to construct the Infrastructure Obligations at a Guaranteed Maximum Price and to convey ownership thereof to the Township in accordance with the terms and conditions of this Agreement.

“Infrastructure Construction Agreement Contingency” is defined in Section 4.1(b).

“Infrastructure Obligations” is defined in Section 4.1(b).

“Initial Condemnation Deposit” is a deposit of funds into the Condemnation Costs Account by the Redeveloper at the time Redeveloper delivers the Acquisition Notice, in an amount equal to the Township’s reasonably estimated costs, expenses and professional fees to be incurred in connection with the site investigation and valuation of a Designated Acquisition Parcel. “Initial Condemnation Deposit” shall also be deemed to include all subsequent postings or deposits by Redeveloper of additional funds as may be required from time to time in order to cover actual Condemnation Costs incurred by the Township prior to the Subsequent Condemnation Deposit.

“Litigation Costs” is defined in Section 13.2.

“Market Rate Financing” means financing for the Commencement of the Project or relevant Phase thereof, 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 Redevelopment Agreement, including financing associated with the acquisition, development, construction, or marketing of the Project.

“Mortgagee” means the holder of a Mortgage.

“Notice” is defined in Section 14.9.

“Operating Agreement” means the Operating Agreement of Prism Green Associates IV, LLC 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.

“Permitted Exceptions” is defined in Section 3.2(d).

“Pending Litigation” means the actions and proceedings listed in Exhibit “E”.

“Phase” means a discrete phase of the Project as described by Redeveloper in the Phasing Plan.

“Phase 1” means the initial phase of the Redevelopment Project, including the redevelopment of the Edison Battery Building, and construction of the Parking Deck (and such other parking areas as may be approved by the Planning Board in accordance with the provisions of the Redevelopment Plan) on the Edison Battery Building site. Upon satisfaction of the Contingencies, and except as otherwise subject to tolling as hereinafter provided Redeveloper’s obligation to Commence Construction and Complete Construction of Phase 1 shall be absolute and unconditional, and Redeveloper’s failure to do so shall constitute a Default.

“Phasing Plan” is defined in Section 4.1(a) and in Exhibit “C”.

“PILOT” is defined in Section 13.1.

“PILOT Contingency” is defined in Section 13.1.

“Plan Amendments” is defined in Section 2.6.

“Plan Amendment Contingency” is defined in Section 2.6.

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

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

“Project” is defined in the Preamble.

“Project Parcels” means the parcels of land upon which Redeveloper will construct the Redevelopment Project in accordance with this Agreement and the Redevelopment Plan, including but not limited to the Designated Acquisition Parcels once acquired by Redeveloper.

“Purchase Price” is defined in Section 3.2(a).

“RAB” is defined in Section 13.1.

“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*.

“Redevelopment Project” means the Project.

“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.

“Subsequent Condemnation Deposit” means a cash deposit by Redeveloper into the Condemnation Costs Account, or with the Township’s prior consent which shall not be unreasonably withheld or conditioned the posting of an irrevocable letter of credit in form, substance and issued by an underwriter acceptable to the Township in its sole discretion, in either

case an amount equal to 150% of the Appraised Value of a Designated Acquisition Parcel unless for good cause shown a lesser amount is deemed acceptable by the Township in its sole discretion. "Subsequent Condemnation Deposit" shall also be deemed to include all subsequent postings or deposits by Redeveloper of additional funds as may be required from time to time in order to cover actual Condemnation Costs incurred by the Township in connection with the acquisition of a Designated Acquisition Parcel.

"Termination Notice" is defined in Section 10.3.

"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 (including but not limited to the conveyance of the Township-Owned Property to Redeveloper); (ii) Litigation Costs arising out of or in connection with litigation or dispute resolution in connection therewith as more particularly set forth in Section 13.2 below; (iii) Condemnation Costs, and any other fee, cost or expense reasonably incurred by the Township in furtherance of the Project or in connection with this Agreement; (iv) 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; and (v) \$20,000, representing Redeveloper's allocated share of redevelopment costs heretofore incurred by the Township from January 1, 2006 through May 14, 2006 in connection with the redevelopment of the Downtown Redevelopment Area. "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.

"Use and Occupancy Agreement" is defined in Section 3.2(e)(iv).

"WRAP" means "Workable Relocation Assistance Program" as defined in *N.J.S.A. 52:31B-5 et seq.* and as applicable pursuant to the *Relocation Assistance Act, N.J.S.A. 20:4-1*.

ARTICLE II REDEVELOPER DESIGNATION; TERM OF AGREEMENT

2.1 Redeveloper Designation. The Township hereby conditionally designates and appoints the Redeveloper as the exclusive redeveloper of the Township-Owned Property and of the Acquisition Parcels. Upon satisfaction of the Acquisition Contingency, the PILOT Contingency, and the Infrastructure Construction Agreement Contingency, the Redeveloper (acting directly or through one or more urban renewal entities 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 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 Project and all 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 Infrastructure Obligations) required in connection with the Redevelopment 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 Redevelopment Project; marketing, sales and the administration, operation and management of the Project; and all aspects of the funding of the Project, including equity funding and construction, interim and permanent financing.

2.3 COAH Housing Obligation. Redeveloper understands that construction of the Project will result in an affordable housing obligation under applicable COAH Regulations. Redeveloper shall have the obligation to satisfy the growth share obligations of the Township arising as a result of the construction of the Redevelopment Project, as follows.

2.3(a) The Township's growth share obligation arising as a result of the construction of the entire Redevelopment Project has been preliminarily calculated at a total of 71 COAH Units assuming the use of appropriate credits and reductions as a result of the demolition and or conversion of existing structures. In partial satisfaction of the Township's growth share obligation Redeveloper shall construct 48 of the 71 COAH units as part of the Redevelopment Project, in conformity with the COAH Regulations and all other Applicable Laws and as such amount may be modified in accordance with Section 2.3(b) hereof. In addition, at the Township's election as provided in Section 2.3(b), the Township shall have the right to require Redeveloper to construct up to an additional 23 COAH units (as such amount may be modified in accordance with Section 2.3(b) hereof) in satisfaction of the balance of the Township's growth share obligation arising as a result of the construction of the Redevelopment Project, on terms and conditions to be set forth in the Financial Agreement and/or such other necessary or appropriate agreements or documents negotiated between the parties. Such terms and conditions at a minimum shall provide that an amount or amounts not to exceed **FIVE MILLION SEVEN HUNDRED THOUSAND (\$5,700,000) DOLLARS** in total be allocated out of the RAB proceeds, to be utilized by the Township as a source of funding to satisfy the balance of its growth share obligations under the COAH Regulations resulting from construction of the Project, including but not limited to a per unit subsidy to the Redeveloper in respect of each additional COAH unit above the 48 units that the Redeveloper is obligated to construct as part of the Project.

2.3(b) The 71 COAH Unit obligation is premised upon (i) a total buildout of the Project yielding 538 market rate units and the above-mentioned 71 COAH units for a combined total of 609 Units and (ii) the appropriate calculation of credits and reductions allowable under the COAH Regulations. The provisions of paragraph 2.3(a) notwithstanding, if as a result of

Governmental Approvals or otherwise as permitted under the terms of this Agreement (i) the number of market rate units in the Project decreases, and or (ii) the calculation of allowable credits and reductions changes, both Redeveloper's obligation to build the 48 COAH Units and the Township's ability to require Redeveloper to build the additional 23 COAH Units and to subsidize such additional COAH Units shall be adjusted ratably, so that at no time shall Redeveloper be required to construct more than the actual growth share obligation resulting from the construction of the Redevelopment Project. By way of example only, if as a result of permitted reductions in the scope of the Project the Township's total growth share obligation were reduced to 60 COAH Units, Redeveloper would be obligated to construct the first 40 of those Units and the Township could then require the Redeveloper to construct up to an additional 20 on the terms and conditions to be set forth in the Financial Agreement and such other necessary or appropriate agreements or documents to be negotiated.

2.3(c) The requirement to construct COAH Units and the construction thereof will be tracked on an ongoing basis as Governmental Approvals are obtained and construction of the Project is implemented. As Redeveloper implements the Project, from time to time and at such times as Redeveloper may reasonably request, the Township agrees to work with Redeveloper to verify both the total growth share obligation and to determine the number and types of COAH Units to be accommodated in a particular site plan so as to enable Redeveloper to make provision for such COAH Units as such site plans are prepared. Nothing contained herein is intended to contradict or supersede applicable COAH Regulations regarding the phasing or timing of the provision of COAH Units in satisfaction of the Township's growth share obligation or impose upon Redeveloper the obligation to construct more than the actual required number of COAH Units to meet the Township's growth share obligations generated directly from the construction of the entire Redevelopment Project..

2.4 **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 Project, unless earlier terminated in accordance with the provisions hereof.

2.5 **Acquisitions Contingency.** In order to demonstrate Redeveloper's financial commitment to the Project, and in addition to any other contingency or condition contained in this Agreement, Redeveloper shall satisfy the Acquisitions Contingency on or before the Contingency Satisfaction Date. In the event such acquisitions and equity investment do not occur, the Township in its sole discretion may terminate this Agreement and the designation of Redeveloper hereunder. In case of such termination under no circumstances shall the Township be obligated to reimburse Redeveloper for any monies expended by Redeveloper in connection with this Agreement, the Project or the performance of Redeveloper's obligations hereunder.

2.6 **Plan Amendment Contingency.** Redeveloper's obligations hereunder are contingent upon the Township adopting Redevelopment Plan amendments consistent with and necessary for implementation of the Project (the "**Plan Amendments**") on or before the Contingency Satisfaction Deadline (the "**Plan Amendment Contingency**"). In the event the Plan Amendments have not been adopted by Township on or before the Contingency Satisfaction Deadline, Redeveloper may terminate this Agreement on Notice to the Township, in

which case this Agreement shall terminate as of the date of the Notice, and Redeveloper's designation hereunder as exclusive redeveloper of the Township-Owned Properties and the Acquisition Parcels shall expire and be of no further force or effect.

ARTICLE III

PURCHASE AND SALE OF TOWNSHIP-OWNED PROPERTY; ACQUISITION AND CONVEYANCE OF DESIGNATED ACQUISITION PARCELS

3.1 Agreement to Sell and Purchase the Township-Owned Property. Subject to the terms, conditions and contingencies herein, the Township agrees to sell the Township-Owned Property to Redeveloper, and Redeveloper agrees to purchase the Township-Owned Property from the Township, in consideration of Redeveloper's undertaking to construct the Project in accordance with the provisions of this Agreement and on the additional terms and conditions below.

3.2 Terms and Conditions of Purchase and Sale.

3.2(a) Purchase Price. The agreed upon purchase price for the Township-Owned Property is **TWO MILLION SIX HUNDRED FIFTY-ONE THOUSAND and 00/100 (\$2,651,000) DOLLARS** (the "Purchase Price"), to be paid at Closing by certified or bank check or wire transfer.

3.2(b) Conditions to Closing. The following are conditions precedent to the Redeveloper's obligation to purchase and the Township's obligation to sell the Township-Owned Property to Redeveloper:

- (A) Acquisition by the Township or Redeveloper of the Acquisition Parcels commonly known as the "Barton Press Site", Block 115, lots 15, 16 and 17;
- (B) Approval by the Municipal Council of this Agreement and of the sale of the Township-Owned Property on the terms and conditions set forth herein;
- (C) Satisfaction of all Contingencies;
- (D) Commencement of Construction of Phase 1 by Redeveloper; and
- (E) No Event of Default under this Agreement.

3.2(c) Time and Place of Closing of Title; Extension of Closing Date. Closing on the Township-Owned Property shall occur on or before December 31, 2007, at a time to be mutually agreed upon by the Parties (the "Closing Date"). The Closing shall be held at the offices of McManimon & Scotland, L.L.C. or such other place as the Redeveloper and the Township may mutually agree. Redeveloper may elect to extend the Closing Date to on or before December 31, 2008, upon Notice to the Township and upon payment to the Township of a nonrefundable extension fee of \$151,000 on or before December 31, 2007 (the "Extension Fee"). The Extension Fee shall be nonrefundable, but shall be applied towards the Purchase Price at Closing.

3.2(d) Transfer of Ownership; Title. (i) At Closing, the Township shall give the Redeveloper a properly executed Bargain and Sale Deed with Covenants Against Grantor's Acts (the "**Deed**") and an adequate affidavit of title, a properly executed Affidavit of Consideration or Exemption, a true copy of the Resolution of the Municipal Council authorizing the sale and conveyance, and such other documentation as may reasonably be requested by Redeveloper's title insurance company. The Deed will contain a limited right of reverter to the Township, which the Township may but is not obligated to exercise in the event this Agreement is terminated by reason of an Event of Default attributable to Redeveloper's acts or omissions after conveyance of the Township-Owned Property to Redeveloper. Such right of reverter shall be subordinate to any Mortgage on the property. Upon the exercise of such right the Township will reimburse to the Redeveloper or the Mortgagee, as the case may be, the Purchase Price 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 the known or suspected environmental conditions (including "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); 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.

(ii) The Township shall transfer and convey to the Redeveloper clear and marketable title to the Township-Owned Property, defined for purposes of this Agreement as insurable by a title insurance company licensed to do business in the State of New Jersey at regular rates free of all claims and rights of others, except for: (a) normal utility easements servicing the Township-Owned Property which do not interfere with Redeveloper's intended use thereof, development, construction or operation of the Project; (b) ALTA 1992 preprinted exceptions; and (c) any Permitted Exceptions (as hereinafter defined). As soon as possible following the Contingency Satisfaction Date Redeveloper shall order a title report and title insurance commitment (the "**Title Commitment**"). Redeveloper shall provide the Township with a copy of the Title Commitment and shall notify the Township in writing of any objection to title within thirty (30) days following Redeveloper's receipt of the Title Commitment. Failure to notify the Township of an objection to title within such thirty (30) day period shall be deemed a waiver by Redeveloper of all objections to any lien, encumbrances or other exception revealed by the Title Commitment (as waived, or as otherwise deemed acceptable by Redeveloper, "**Permitted Exceptions**"). In the event Redeveloper does raise title objections, the Township shall have thirty (30) days from the date of receipt of Redeveloper's written objections in which to decide whether to remedy the title defect(s) identified in such objection; *provided, however*, that if the defect is one that can be remedied by the Township's exercise of its power of eminent domain and Redeveloper by Acquisition Notice to the Township so requests, the Township agrees to utilize its power of eminent domain to clear the defect in accordance with the provisions of Section 3.3 below. If the Township does undertake to remedy the title defect(s) the Township shall be entitled to postpone the Closing Date for a reasonable period of time in order to effectuate such remedy, or in the case of liens or other unpermitted exceptions outstanding against the Township-Owned Property as of the Closing Date for which Township is responsible and which involve only the payment of money, to elect to apply any portion of the Purchase Price to pay and satisfy those items. In the event the Township is unable to remedy such title

defect(s), then Redeveloper may either (i) waive the objection and proceed to Closing without an adjustment in the Purchase Price; or (ii) terminate this Agreement with respect to the Township-Owned Property, in which case Redeveloper's designation as Redeveloper of the Township-Owned Property shall simultaneously and automatically terminate. Notwithstanding anything contrary in the foregoing, Redeveloper may, at its option, at or prior to Closing, notify the Township of any objections to title raised by Redeveloper, the title company or the surveyor from a new or different state of facts relating to the title first arising between the conclusion of Redeveloper's review of the Title Commitment and survey and the Closing Date ("**Gap Title Defects**"). With respect to any such Gap Title Defects, the Township shall have the obligation to cure and Redeveloper shall have the same options if the Township fails to cure as set forth above. The Closing Date shall be extended as necessary as a result of such Gap Title Defects.

3.2(e) Physical Condition of the Property. (i) The Township-Owned Property is being sold to Redeveloper in "AS IS" condition. Redeveloper recognizes and acknowledges that the Township is making no representation or warranty as to the condition of the Township-Owned Property or its fitness for Redeveloper's intended use. Redeveloper further acknowledges that as of the Effective Date the Township is in the process of investigating environmental conditions at the Township-Owned Property, and that it is likely that there are environmental conditions on the Township-Owned Property that will require some degree of Remediation. Prior to Closing the Township will continue to pursue its investigations and Remediation, as necessary, and will keep Redeveloper apprised of the status thereof and provide to Redeveloper copies of non-privileged reports and correspondence relating thereto. At Closing the Township shall deliver possession of the Township-Owned Property vacant (except as otherwise provided in Sections 3.2(e)(iv) and (v) below) and in the same condition as it is on the date of this Agreement, deterioration from ordinary and reasonable usage and exposure to the elements excepted, and except as may otherwise be affected by the Township's investigative and Remediation activities. Without limiting the effect of the foregoing, Redeveloper and Township agree to reasonably cooperate with each other, if requested to do so, in filing and pursuing applications for potentially available State or Federal governmental funding in connection with Remediation activities required at the Township-Owned Property. To the extent permitted under Applicable Laws, Redeveloper agrees to assume responsibility for ongoing investigation and Remediation as of the Closing Date, and to reimburse the Township at Closing for the Township's unreimbursed costs of investigation and Remediation. Nothing herein shall be construed to preclude Redeveloper from invoking the provisions and protections of Section 5.3 based upon impossibility of performance, if it is determined prior to Closing that the Township-Owned Property is not developable as planned by reason of environmental conditions or regulatory requirements.

(ii) At any time prior to Closing Redeveloper and Redeveloper's agents, representatives and employees shall have the continuing right, on reasonable prior notice to the Township and at reasonable times, to enter the Township-Owned Property to carry out or perform any inspections, tests, investigations and studies of the Township-Owned Property which Redeveloper deems necessary or appropriate for purposes of ascertaining the physical feasibility of redeveloping, or to survey, the Township-Owned Property. The Township agrees to reasonably cooperate with Redeveloper and Redeveloper's professionals and consultants in making the Township-Owned Property available for such investigations and activities.

(iii) Redeveloper shall provide to the Township evidence of insurance coverage in types and amounts reasonably acceptable to Township, prior to gaining access to the Township-Owned Property or conducting any tests or investigations thereon. All such insurance policies shall name the Township as an additional insured. Redeveloper agrees to indemnify and hold the Township harmless against all damages, liability, claims, costs, expenses (including reasonable attorneys' fees) and judgments incurred by or asserted against Township or the Township-Owned Property arising out of or in connection with Redeveloper's due diligence activities at or on the Township-Owned Property, excluding, however, liability, claims, costs, or expenses arising out of existing violations of Environmental Laws or other Applicable Laws identified or discovered at the Township-Owned Property during the course of Redeveloper's investigations but not caused by Redeveloper, and further excluding any damage, liability, claims, costs, or expenses caused by the Township's own negligent or willful act or omission. Redeveloper shall further be responsible for restoring the Township-Owned Property following any intrusive testing, sampling or similar activity. Redeveloper's obligations under this Section shall survive delivery of the Deed or any termination of this Agreement.

(iv) The Township and Redeveloper agree to enter into a use and occupancy agreement (the "**Use and Occupancy Agreement**") with respect to the Township-Owned Property, if requested by the Township, on terms and conditions (including but not limited to a timetable for turning possession of the Township-Owned Property over to Redeveloper) to be mutually agreed upon, but which if so requested shall include at a minimum the following: The Use and Occupancy Agreement will permit the Township to continue in occupancy after conveying title to Redeveloper, free of charge except as otherwise provided below, until a date certain to be agreed upon. During the period of use and occupancy the Township (i) will continue to be responsible for all costs of operation and maintenance of the Township-Owned Property, and will retain all liability in connection therewith (except as to matters arising out of or in connection with Redeveloper's own negligent or willful act or omission); (ii) if conveyance of fee title to Redeveloper subjects the Township-Owned Property to real property taxation, the Township will pay to Redeveloper, as consideration for the continued use and occupancy and on a periodic basis to be agreed upon, an amount equal to the real property taxes that Redeveloper is obligated to during the period of use and occupancy.

(v) As of the date of this Agreement a portion of the Township-Owned Property is devoted to use as an animal shelter. If so requested by the Township, the Use and Occupancy Agreement will permit the continued operation of the animal shelter at the Township-Owned Property, pending relocation thereof by the Township. The Township agrees to relocate the animal shelter prior to turning possession of Township-Owned Property over to Redeveloper.

3.2(f) Building and Zoning Laws. The Township-Owned Property is being sold subject to the Redevelopment Plan and all other Applicable Laws.

3.2(g) Risk of Loss. Except as otherwise provided above with respect to Redeveloper's activities and investigations, if any, the Township is responsible for any damage

or loss to the Township-Owned Property, except for normal wear and tear, until Closing; *provided, however*, that the Township shall not be required to repair any damage to the existing improvements on the Township-Owned Property except to the extent necessary for public safety or as may be required under Applicable Laws, it being Redeveloper's intention to demolish those improvements as part of the Project.

3.2(h) Brokerage Fees. The Redeveloper and the Township each represent that concerning the purchase of the Township-Owned Property they have not dealt with or transacted any business with any broker, and each agrees to indemnify, defend and hold the other harmless from any claim of any broker made as a result of such Party's actions inconsistent with the representations made herein.

3.2(i) Non-Foreign Affidavit. The Township shall provide to the Redeveloper at Closing an adequate Non-Foreign Affidavit stating the inapplicability of 26 U.S.C. § 1445 to the sale of the Township-Owned Property.

3.2(j) Form 1099-B Filing. In compliance with the requirements of the Internal Revenue Code, the Redeveloper's attorney is responsible for collecting certain information from the Township necessary to complete and file Form 1099-B with the Internal Revenue Service. The Township agrees to supply all necessary information to the Redeveloper's attorney in order to facilitate such filing.

3.2(k) Closing Prorations. The following adjustments are to be made at the Closing as of 12:00 midnight of the day preceding the Closing Date: (i) water charges; (ii) sewer rents; (iii) gas; (iv) electric; (v) fuel (at the Township's cost therefor); and (vi) any other items which shall be appropriate for adjustment under local closing standards and practices.

3.3 ACQUISITION AND CONVEYANCE OF DESIGNATED ACQUISITION PARCELS

3.3(a) Acquisition by Redeveloper. Redeveloper agrees to use commercially reasonable efforts to acquire title to the Acquisition Parcels in an arm's length transaction between Redeveloper and the current owners of such properties.

3.3(b) Acquisition by the Township. Upon receipt of written notice from Redeveloper identifying the parcel(s) and the interest(s) therein to be acquired (an "**Acquisition Notice**"), and at the sole cost and expense of Redeveloper, the Township agrees to diligently pursue acquisition of the designated parcels or the designated interest therein (the "**Designated Acquisition Parcels**").

3.3(b)(i) The Designated Acquisition Parcels shall be acquired by the Township pursuant to and in accordance with the *LRHL*, either through a negotiated purchase and sale or through exercise by the Township of its powers of eminent domain in accordance with the applicable provisions of the *Eminent Domain Act*. Following receipt of an Acquisition Notice, the Township will determine and inform Redeveloper of the anticipated amount of the Initial Condemnation Deposit. Upon Redeveloper's deposit into the Condemnation Costs

Account of the Initial Condemnation Deposit, the Township in accordance with the applicable provisions of and procedures under the *Eminent Domain Act* will order appraisals and physical inspections to ascertain the Appraised Value and physical conditions of each Designated Acquisition Parcel.

3.3(b)(ii) Following the determination of the Appraised Value of the Designated Acquisition Parcel, and as a condition precedent to the Township commencing acquisition activities, Redeveloper shall make the Subsequent Condemnation Deposit into the Condemnation Costs Account. The Redeveloper shall be responsible for payment of all Condemnation Costs notwithstanding that the purchase price may ultimately be determined to exceed the Appraised Value of the Property or that the Condemnation Costs exceed the amount of the initial Acquisition Deposit, and Redeveloper's failure to do so shall constitute a Default hereunder. If an Event of Default occurs as a result thereof and such Event of Default occurs prior to the filing of a declaration of taking, Redeveloper shall be liable to the Township for all Township Costs and damages incurred by the Township arising out of or in connection with such Event of Default. If an Event of Default occurs as a result thereof and such Event of Default occurs subsequent to the filing of a declaration of taking, then in addition to all other rights and remedies provided hereunder (including but not limited to termination of this Agreement) the Township shall be entitled to retain the full amount of the Condemnation Deposit as liquidated damages.

3.3(b)(iii) Upon deposit of the Subsequent Condemnation Deposit by Redeveloper into the Condemnation Costs Account, the Township shall proceed as follows:

(A) enter into *bona fide* negotiations with the owner of the Designated Acquisition Parcel. Such negotiations shall include an offer in writing to the owner of the Designated Acquisition Parcel, identifying the property and the interest therein to be acquired, the compensation offered to be paid, and a reasonable disclosure of the manner in which the amount of such offered compensation has been calculated. In no event shall such offer be less than the Appraised Value;

(B) if necessary, commence and pursue the process for obtaining approval of the WRAP;

(C) if the owner of the Designated Acquisition Parcel rejects the offer or fails to accept the offer in writing within the period fixed in the written offer, which shall in no case be less than fourteen (14) days nor more than thirty (30) days from the mailing of the offer, the Township shall provide written notice to Redeveloper that possession of the Designated Acquisition Parcel cannot be acquired through negotiations;

(D) within fifteen (15) business days of notice from the Township Redeveloper must deposit into the Condemnation Costs Account any additional Subsequent Condemnation Deposit (if any) reasonably requested by the Township to cover anticipated Condemnation Costs. Upon the deposit by Redeveloper of such additional Subsequent Condemnation Deposit (if any), the Township will institute the condemnation action by the filing of a verified complaint;

(E) after the service of process in conjunction with the filing of the complaint, and with prior notice to and in consultation with the Redeveloper, the Township will file in the recording office a declaration of taking and simultaneously deposit with the Clerk of the Court the amount of the estimated compensation that must be paid for the Designated Acquisition Parcel. The Township, in consideration of the Condemnation Deposit, agrees to keep Redeveloper fully apprised of the progress of the condemnation litigation, and to the extent feasible and consistent with the requirements of the *Eminent Domain Law* will endeavor to coordinate the filing of the declaration of taking and the timing thereof with Redeveloper;

(F) a copy of the declaration of taking and notice of the filing thereof and of the making of the aforesaid deposit, shall be served upon the owner of the Designated Acquisition Parcel and any other parties required to be served under the *Eminent Domain Act* and all other Applicable Laws, and proof of such service filed in the action; and

(G) any required relocation of owners, tenants or occupants will be undertaken in accordance with the WRAP.

At that point the Township would have clear and marketable title to the Designated Acquisition Parcel.

3.3(b)(iv) Redeveloper recognizes and acknowledges that the Township is obligated under the provisions of the *Eminent Domain Law* to negotiate in good faith to purchase a Designated Acquisition Parcel, and that the Township retains the discretion to conduct such negotiations and to enter into agreements with potential condemnees without further authorization or consent of the Redeveloper. The Township, in consideration of the Condemnation Deposit, agrees to keep Redeveloper fully apprised of the progress of such negotiations, and to the extent feasible and consistent with good faith negotiations will endeavor to maintain such offers within 130% of the Appraised Value and to limit good faith deposits to no more than ten percent (10%) of the purchase price. If the Township's offer is accepted by the seller, the Township will enter into a purchase and sale agreement for the purchase of the Designated Acquisition Parcel at the agreed upon price and on the agreed upon terms and conditions.

(A) The purchase and sale agreement shall be substantially similar in form and content to the "Form of Purchase and Sale Agreement" attached hereto as **Exhibit B**. The Township shall provide a copy of each such purchase and sale agreement to the Redeveloper for its review and comments prior to its execution. The Redeveloper shall provide comments, if any, to the Township and shall deposit any additional Subsequent Condemnation Deposit as may be reasonably requested by the Township into the Condemnation Costs Account within fifteen (15) business days of Redeveloper's receipt of the proposed purchase and sale agreement. The Township shall provide a copy of the final purchase and sale agreement to the Redeveloper within three (3) days after its execution by both the Township and the seller. In consideration of the Subsequent Condemnation Deposit and in recognition of Redeveloper's obligation to pay all Condemnation Costs, the Township will not terminate or agree to modify any such fully

executed purchase and sale agreement without Redeveloper's prior knowledge and consent, which consent shall not be unreasonably withheld, delayed or conditioned.

(B) In the event that the Township believes the purchase price for acquiring a Designated Acquisition Parcel will exceed 130% of the Appraised Value the Township shall (i) consult with the Redeveloper concerning such acquisition; (ii) review with the Redeveloper the proposed purchase price to be offered by the Township; and (iii) if the Redeveloper does not agree with the purchase price proposed by the Township, the Redeveloper may suggest in writing an alternative purchase price amount, which the Township shall take into consideration and utilize if and to the extent consistent with the Township's obligation to negotiate in good faith. The Township shall promptly advise the Redeveloper as to whether the proposed purchase price was accepted by the owner of the Property.

3.3(b)(v) With respect to any condemnation proceedings instituted by the Township and with respect to any other legal work required by the Township relating to the Project, the Redeveloper agrees that the Township shall be entitled to appoint and retain an attorney or attorneys to act as special counsel to conduct said condemnation proceedings and related work for the Township ("**Condemnation Counsel**"), whose reasonable fees shall be considered Condemnation Costs. In addition, the Township shall have the right to hire appraisers, surveyors, and such other professionals as may reasonably be required in connection with such condemnation proceedings, the reasonable costs of which will be considered Condemnation Costs. The selection of Condemnation Counsel, appraisers, surveyors and such other professionals shall be at the Township's reasonable discretion, with the consent of the Redeveloper which consent may not be unreasonably withheld, conditioned or delayed. The Township agrees that it will cause the Condemnation Counsel to inform the Redeveloper and its professionals periodically concerning the status of all negotiations and any condemnation proceedings and the strategies such counsel proposes, including settlement limits.

3.3(c) **Remediation Cost Recovery.** (i) The Designated Acquisition Parcels may be environmentally contaminated and the owner or other parties may be responsible for Remediation. In such event the Township shall reserve the right to seek cost recovery from the prior owner or responsible party. Such reservation of rights for recovery shall be included in the offer and negotiated purchase and sale agreement, and in the condemnation complaint and the declaration of taking, if a Designated Acquisition Parcel cannot be acquired through negotiations. Following the recording of the declaration of taking (or execution of a final judgment by the court determining that the Township properly exercised its power of eminent domain, in the case of a challenge to that authority), the Township and the Redeveloper shall mutually determine whether seeking an order compelling such parties to Remediate the Designated Acquisition Parcel shall be brought and prosecuted by the Township, or by Redeveloper following conveyance of the Designated Acquisition Parcel to the Redeveloper. Any such action, regardless of when commenced, shall be at the Redeveloper's sole cost and expense, and such costs and expenses shall be Condemnation Costs for the purposes of this Agreement. Provided that Redeveloper has paid all Condemnation Costs and is not otherwise in default of its obligations under this Agreement, all sums recovered under such an action, or savings achieved thereby, shall be the property of the Redeveloper. The Township and the Redeveloper agree to cooperate as necessary to assist in the prosecution of such action. The

Township, as the condemning authority, shall object to any application to withdraw funds on deposit by the Designated Acquisition Parcel owner or anyone else having an interest in the Designated Acquisition Parcel until the costs of Remediation are known, and then only if there are funds in excess of the costs of Remediation.

(ii) As reasonably requested by Redeveloper, and at no cost to the Township, the Township will cooperate with the Redeveloper in filing and pursuing applications to the NJDEP, including, but not limited to, applications for monies available through the *Hazardous Discharge Site Remediation Fund* for investigation and Remediation of any Designated Acquisition Parcel, and in investigating the availability of funding under the *Brownfields Reimbursement Program* administered by the New Jersey Economic Development Authority, Department of Treasury and NJDEP, for reimbursement of all or any part of the environmental costs incurred as to the clean up of any Designated Acquisition Parcel.

3.3(d) Conveyance by the Township to Redeveloper. Once title to a Designated Acquisition Parcel is acquired, and provided that there is no outstanding Event of Default, the Township hereby agrees to convey fee simple ownership of the Designated Acquisition Parcel to the Redeveloper on the Closing Date, for the sum of **ONE and 00/100 (\$1.00) DOLLAR** and otherwise on the terms and conditions in this Redevelopment Agreement. If so requested by the Redeveloper, the Township may, but shall not be obligated to, convey fewer than all of the Designated Acquisition Parcels within a single Phase to Redeveloper at one time, if the Township, in its reasonable discretion, determines that it is in the best interests of the community and of the Redevelopment Plan to do so. All conveyances will be by bargain and sale deed, and each deed will contain a use restriction and limited right of reverter which the Township may but is not obligated to exercise in the event of an Event of Default that results in the termination of this Agreement prior to the issuance of a Certificate of Completion.

3.3(e) No Warranties. The Redeveloper specifically acknowledges that the Township makes no representation or warranty, expressed or implied, as to the fitness of any Designated Acquisition Parcel or any improvement thereon for any particular purpose, as to the condition or durability thereof, or that the Designated Acquisition Parcel is or will be suitable for the Redeveloper's intended purposes.

3.3(f) Payment of All Condemnation Costs by Redeveloper. (i) Redeveloper shall be required to fund all Condemnation Costs on an ongoing basis by funding the Condemnation Costs Account (or if and to the extent agreed by the Township in its discretion, by posting an irrevocable letter of credit in form and amount and issued by an underwriter acceptable to the Township.) If the Condemnation Costs exceed or will exceed, in the Township's good faith estimate, the Condemnation Costs Deposit, then upon receipt of a written request by the Township reflecting the actual amounts paid or reasonably anticipated to be required, Redeveloper shall be obligated to deposit within fifteen (15) business days of such request such additional funds to the Condemnation Costs Account. Failure of Redeveloper to make any additional Subsequent Condemnation Deposit when requested by the Township shall constitute a Default by the Redeveloper in the performance of its obligations under this Agreement as set forth in Section 3.3(b)(ii) above.

(ii) If there are any outstanding Condemnation Costs as of the closing date for a Designated Acquisition Parcel, and as a condition of the closing, the Redeveloper shall reimburse the Township for all such outstanding Condemnation Costs at closing. The amount to be paid by the Redeveloper on the closing date shall be equal to the outstanding balance of such Condemnation Costs to the extent the deposits in the Condemnation Costs Account did not cover such expenses. Any unused balance in the Condemnation Costs Account on the closing date will be applied first to any outstanding Township Costs, if any, and if there are no outstanding Township Costs then any excess funds will be returned to the Redeveloper.

(iii) Except as otherwise expressly provided in Section 13.2 of this Agreement with regard to litigation costs, Redeveloper hereby agrees to indemnify the Township for all Condemnation Costs and all other reasonable costs, expenses, fees, and other monetary obligations or expenditures of funds (including professional fees and expenses) arising out of or in connection with acquisition of the Designated Acquisition Parcels by the Township.

(iv) Anything in this Agreement to the contrary notwithstanding, Redeveloper's obligations to pay or to reimburse, and to indemnify, the Township for Condemnation Costs shall survive termination of this Agreement by reason of an Event of Default of Redeveloper and conveyance of title of any Designated Acquisition Parcel to Redeveloper.

3.3(g) Waiver of Certificates of Continued Occupancy. On a case-by-case basis and to the extent permitted by Applicable Laws, the Township agrees to consider in good faith, and to coordinate with the Township Zoning Officer and Code Official regarding, requests by Redeveloper for waiver of a Certificate of Continued Occupancy in connection with conveyances to Redeveloper of Acquisition Parcels.

3.3(h) Access to and Control of Designated Acquisition Parcels as Prerequisite to Certain Obligations of Redeveloper. If performance of Redeveloper's obligations requires that Redeveloper have ownership of, or access to, one or more Designated Acquisition Parcels, and Redeveloper through no fault of its own does not have such ownership or access, then Redeveloper's failure to perform the obligation shall not be deemed incomplete, deficient or delinquent or otherwise in default. All time periods for satisfaction of such Redeveloper obligations shall be tolled for the period of time that Redeveloper does not own or have access to the relevant portion of the Designated Acquisition Parcels.

ARTICLE IV IMPLEMENTATION OF PROJECT

4.1 Project Implementation. For so long as this Agreement and Redeveloper's designation as Redeveloper hereunder remain in effect, Redeveloper shall have the exclusive right to redevelop Township-Owned Property and the Acquisition Parcels, once acquired. The Redeveloper agrees to implement the 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. All residential units shall be constructed and marketed as "for sale" units; *provided, however*, that with the Township's prior consent, not to be unreasonably withheld, Redeveloper may construct and market a limited number rental units in satisfaction of its COAH obligations hereunder; *and provided further*, that nothing herein shall be deemed to limit the ability of a Mortgagee in possession to lease unsold residential units in the event of a foreclosure.

4.1(a) Phasing. The Redevelopment Project shall be constructed in Phases in accordance with a mutually agreed upon phasing plan and construction schedule and the associated Infrastructure Obligations (the "**Phasing Plan**"); *provided, however*, that under all circumstances the, Parking Deck and the redevelopment of the Edison Battery Building shall be accomplished in Phase 1 of the Project. Redeveloper's current proposed Phasing Plan is included as **Exhibit "C"**. The schedule incorporated therein will constitute the "**Construction Schedule**" for the Project. 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.

(i) "**Phase 1**" comprises the redevelopment of the Edison Battery Building, retail development and construction of the Parking Deck, and includes the construction of approximately 300 residential units. Unless otherwise tolled or adjusted as provided for herein Commencement of Construction of Phase 1 will take place on or before April 1, 2008 and Completion of Construction of Phase 1 will take place on or before December 31, 2009. As of the Contingency Satisfaction Date Redeveloper's obligation to Commence and Complete Phase 1 in accordance with the Construction Schedule will be absolute and unconditional.

(ii) "**Phase 2**" consists of Edison Lofts, and includes the construction of approximately 127 residential units. Subject to the provisions of Section 4.1(c) below, and unless otherwise tolled or adjusted as provided for herein, Redeveloper shall Commence Construction of Phase 2 on or before April 1, 2009 and shall Complete Construction of Phase 2 on or before June 30, 2011.

(iii) "**Phase 3**" consists of Edison Village, and includes the construction of approximately 182 residential units. Subject to the provisions of Section 4.1(c) below, and unless otherwise tolled or adjusted as provided for herein, Redeveloper shall Commence Construction of Phase 3 on or before September 1, 2009 and shall Complete Construction of Phase 3 on or before December 31, 2012.

4.1(b) Infrastructure Construction Agreement Contingency and Infrastructure Obligations. In the event Redeveloper and the Township fail to enter into the Infrastructure Construction Agreement on or before the Contingency Satisfaction Deadline, the Township in its sole discretion may terminate this Agreement and the designation of Redeveloper hereunder (the "**Infrastructure Construction Agreement Contingency**"). Redeveloper, at Redeveloper's cost and expense, shall satisfy the infrastructure obligations as set forth on **Exhibit "C"** (the "**Infrastructure Obligations**"), in accordance with the specifications

and on the timetables to be set forth in the Infrastructure Construction Agreement. The Township agrees to provide financial assistance not to exceed **SEVEN MILLION FIVE HUNDRED THOUSAND and 00/100 (\$7,500,000) DOLLARS**, to pay toward the cost of construction of the Infrastructure Obligations, on terms and conditions as more particularly to be set forth in the Financial Agreement and such other necessary or appropriate agreements or documentation to be negotiated. Any costs for the Infrastructure Obligations in excess of \$7,500,000 shall be solely for the account of Redeveloper. Such terms and conditions at a minimum shall provide that an amount or amounts not to exceed \$7,500,000 in total be allocated out of the RAB proceeds and utilized as a source of funding for the Township's contribution towards the cost of the Infrastructure Obligations as provided herein.

4.1(c) Phasing Flexibility. (i) Provided that Redeveloper has satisfied the Acquisition Contingency and has Commenced Construction and is diligently pursuing Completion of Phase 1 and all Phase 1-related Infrastructure Obligations, and subject to Redeveloper demonstrating to the reasonable satisfaction of the Township Redeveloper's ability to satisfy the Phase 2-related Infrastructure Obligations in accordance with the terms of the Infrastructure Construction Agreement, Redeveloper on Notice to the Township may elect to accelerate the Commencement of Construction of Phase 2. Under no circumstances will Redeveloper's election to accelerate Phase 2 relieve Redeveloper of its unconditional obligation to Complete Construction of Phase 1 in accordance with the Construction Schedule and the other applicable terms and conditions of this Agreement.

(ii) Provided that Redeveloper (A) has secured construction financing for the residential conversion of the Edison Battery Building and is diligently pursuing Completion of Construction thereof, (B) has Completed Construction of the Parking Deck, and (C) has acquired title to the Township-Owned Property, then (D) subject to Redeveloper demonstrating to the reasonable satisfaction of the Township Redeveloper's ability to satisfy the Phase 3-related Infrastructure Obligations in accordance with the terms of the Infrastructure Construction Agreement, Redeveloper may on Notice to the Township elect to accelerate the Commencement of Construction of Phase 3. Under no circumstances will Redeveloper's election to accelerate Phase 3 relieve Redeveloper of its unconditional obligation to Complete Construction of Phase 1 and all Phase 1-related Infrastructure Obligations in accordance with the Construction Schedule and the other applicable terms and conditions of this Agreement and in accordance with the terms of the Infrastructure Construction Agreement, nor of its obligations to diligently pursue and Complete Construction of Phase 2 or the Phase 2-related Infrastructure Obligations once Construction thereof has Commenced.

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

4.2(a) Application for Phase 1 Site Plan Approval. Each Governmental Application submitted by or on behalf of the Redeveloper in connection with the Redevelopment 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. Within one hundred eighty (180) days following the Contingency Satisfaction Date Redeveloper shall at a minimum have filed with the Planning Board a Governmental Application seeking at least preliminary site plan approval for Phase 1 of the Project. Unless tolled as provided in the following sentence, Redeveloper's failure to file a *bona fide* application for Phase 1 site plan approval within 180 days following the Contingency Satisfaction Date or to diligently pursue that application after filing it shall constitute a Default by Redeveloper in the performance of its obligations hereunder. Notwithstanding the foregoing, if Redeveloper is unable to submit a Phase 1 site plan within the timeframe provided herein because of delays arising out of or in connection with *ISRA* compliance, then upon Notice of such delay to the Township Redeveloper's obligation to file the Phase 1 site shall be tolled for a period equal to the delay, but in no event to exceed a total of an additional 180 days.

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 Project consistent with the Phasing Plan and the Construction Schedule. All of the Governmental Applications shall be in conformity with the applicable provisions of the Redevelopment Plan, this Redevelopment 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 the Phasing Plan and the 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 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. Redeveloper shall apply for demolition permits and commence demolition in connection with Phase 1 as soon as practicable after the Contingency Satisfaction Date and in accordance with the Construction Schedule; *provided, however*, that if

tenant relocation is required prior to demolition Redeveloper agrees to diligently pursue and fund such relocation in accordance with the applicable WRAP, if any, and thereafter to apply for and diligently pursue demolition permits as soon as possible but in no event later than thirty (30) days following completion of such relocation.

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 relevant Phase or Project Parcel, 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. The Redeveloper agrees to Commence Construction and diligently Complete Construction of the Project, and failure to do so shall be a Default by Redeveloper. Subject to the provisions of this Agreement with respect to Force Majeure and the applicable provisions of Section 5.3, if any, any material change in the scope of the Project (including changes in the Project budget if relevant to the calculation of the PILOT), changes or updates to the Phasing Plan or 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 Project, to the extent that they are materially different from those previously supplied to the Township by Redeveloper. The Redeveloper understands that absent extraordinary and unforeseeable circumstances 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.

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 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 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 10.8. 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 Project Oversight by the Township. During the construction of the 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 Project, as follows:

4.3(b)(i) Progress Meetings. Redeveloper shall attend and participate in periodic progress meetings as reasonably called by the Township, to report on the status of the 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 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 Phasing Plan or 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 or Phasing Plan, 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 or modification of the Phasing Plan, 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 Redevelopment Agreement with respect to the applicable Phase of the 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 Redevelopment Agreement and has completed construction of the applicable Phase of the Project (or relevant portion thereof) in accordance with the requirements of this Redevelopment 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 Project in accordance with the provisions of this Redevelopment 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 Redevelopment Agreement and the Redevelopment Plan with respect to the obligations of the Redeveloper to construct the Project or relevant Phase or portion thereof, 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 and the conditions

and requirements of *N.J.S.A. 40A:12A-9* shall be deemed to have been satisfied with respect to the Redevelopment Project or applicable portion thereof. Unless otherwise required by a related Financial Agreement, Governmental Approval or Applicable Law, upon the issuance of Certificate of Completion the provisions of this Agreement shall no longer encumber the applicable Phase of the 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 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 Project or the Township-Owned Property.

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. On or before January 5, 2007 Redeveloper agrees to establish with the Township an escrow account (the "**Escrow Account**") having an initial balance of **ONE HUNDRED THOUSAND and 00/100 (\$100,000) DOLLARS** (inclusive of any amount transferred from the pre-agreement escrow account as provided in the next sentence, but exclusive of and in addition to any Condemnation Deposit) to cover Township Costs. As of the Effective Date any balance remaining in an escrow account funded by Redeveloper to cover the Township's costs of negotiation and preparation of this Redevelopment Agreement shall be transferred to the Escrow Account. From time to time during the implementation of the 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 D**" is a description of the agreed upon procedure to be utilized in establishing, funding and replenishing the Escrow Account and in making disbursements therefrom.

ARTICLE V REDEVELOPER PROTECTIONS

5.1 Competitive Projects. In recognition and in consideration of Redeveloper's unconditional commitment to the Commencement and Completion of Phase 1 in accordance with

the Construction Schedule, the Township agrees to afford to Redeveloper the following limited protections with respect to timing for the development of potentially competitive products within and adjacent to the Redevelopment Area.

5.1(a) The Township agrees that for a period of three (3) years from the Effective Date (subject to tolling for Force Majeure Events but in no event to exceed four (4) years and six (6) months from the Effective Date) the Township will neither expand the boundaries of the Downtown Redevelopment Area nor create a new redevelopment area within the Competition District, without Redeveloper's consent. Notwithstanding, anything contained herein to the contrary, Redeveloper acknowledges and agrees that property owners within the Competition District shall be entitled to develop their properties or undertake improvements that may be directly competitive with Redeveloper's Project, if consistent with existing zoning and where no redevelopment agreement, financial assistance or PILOT is sought from the Township.

5.1(b) The Township agrees that any redevelopment agreement entered into by the Township subsequent to the Effective Date but prior to the Completion of Construction of Phase 1 with third parties for the redevelopment of properties that are within the Redevelopment Area but not a part of the Project will contain a provision that limits said redeveloper's ability to develop a product that is competitive with Phase 1 of the Project for a period of eighteen (18) months (subject to tolling for Force Majeure Events) from the Commencement of Construction of Phase I; (i) *provided*, that a competing product may be constructed by a redeveloper within 18 months from the Commencement of Construction of Phase I to the extent that such competing product is developed in coordination with and with the consent of the Redeveloper, which consent shall not be unreasonably withheld, conditioned or delayed; and (ii) *provided further*, that a competing retail product may be developed within 18 months of the Commencement of Construction of Phase I to the extent that the Redeveloper has leasing commitments for 80% of the proposed Phase I retail space identified in the approved site plan for that Phase of the Project; and (iii) *provided further*, that as each component of the Phase I Project is completed, the above-referenced restrictions and coordination requirements would no longer apply as to that product type notwithstanding the fact that less than 18 months may have elapsed from the Commencement of Construction of Phase 1. Redeveloper acknowledges and agrees that nothing herein will prevent a property owner, or a redeveloper not seeking a PILOT or other financial assistance or entering into a redeveloper agreement with the Township, from developing competitive product, so long as such product is being developed in accordance with the requirements of the Redevelopment Plan.

5.2 Redevelopment Plan Amendments. Other than in satisfaction of the Plan Amendment Contingency, and subject to the provisions of Section 5.1 above and Section 5.3(c) below, the Township agrees that prior to Commencement of Construction of the last Phase of the Project the Township will not amend the Redevelopment Plan or otherwise impair this Agreement without Redeveloper's prior consent; *provided, however*, that as to properties within the Redevelopment Area that are not within the Project and as to which Redeveloper has not been designated as redeveloper, Redeveloper's consent shall not be unreasonably withheld, conditioned or delayed.

5.3 Impossibility of Performance; Changed Market Conditions. Other than Phase 1, as to which Redeveloper's commitment to Commence and Complete construction shall be unconditional, Redeveloper's failure or refusal to acquire an Acquisition Parcel or to develop a particular Phase of the 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:

5.3(a) Physical Impossibility or Economic Infeasibility as a result of Property-Specific Matters. Subject to the provisions of Section 5.3(c) below, Redeveloper's failure or refusal to acquire an Acquisition Parcel or to develop a particular Phase of the 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 purchase price for a Designated Acquisition Parcel that is determined to be significantly in excess of what Redeveloper estimated (or reasonably could have estimated) as a part of the Project *pro forma*, or a cost of Remediation of an environmental condition that would significantly and adversely affect the anticipated return of the Project as reflected on the Project *pro forma* supplied to the Township by Redeveloper, in either case such that redevelopment of the Project on the terms and conditions set forth herein becomes economically irrational or infeasible.

5.3(b) Changed Market Conditions. Subject to the provisions of Section 5.3(c) below, Redeveloper's failure or refusal to acquire an Acquisition Parcel or to develop a particular Phase of the 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 Project, which changed market conditions render the development and marketing of the Parcel or Phase based upon the product type and financial assumptions currently proposed by Redeveloper economically infeasible or remote.

5.3(c) Applicable Procedures; ramifications for Redevelopment Plan Amendments. In order to invoke the protections of Section 5.3(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.

5.3(c)(i) If Redeveloper's failure or refusal to acquire an Acquisition Parcel or to develop a Project Parcel or Phase of the Project in accordance with the terms and conditions of this Agreement is excused by reason of physical impossibility of performance, then such failure or refusal shall not constitute a Default hereunder if Redeveloper relinquishes its designation as redeveloper as to that Parcel or Phase, as the case may be, and all rights to develop that Parcel or Phase under the terms of the Redeveloper's 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.

5.3(c)(ii) If Redeveloper's failure or refusal to develop is excused by reason of economic infeasibility or changed market conditions, 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.

If Redeveloper has previously acquired the Project Parcel(s) for which redevelopment activities are claimed to be no longer economically feasible as planned, the Township agrees that Redeveloper's obligations hereunder with respect to the Commencement or Completion of Construction as to such Parcel or Phase 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.

If Redeveloper has not yet acquired the Acquisition Parcel(s), the tolling/renegotiation period shall be nine (9) months, and Redeveloper may request one extension of such period, which extension shall not exceed three (3) 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 those Parcels and Redeveloper would have no further rights to develop that Parcel or Phase under the terms of the Redeveloper's Agreement; *provided, however*, that no such termination shall operate to terminate Redeveloper's rights or obligations as to any other Parcel(s), nor 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 from Redeveloper the Project Parcel(s) for which redevelopment activities are claimed to be no longer economically feasible as planned, the maximum purchase price for which shall be calculated as provided in Section 3.2(d)(i); 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.

5.3(c)(iii) Prior to invoking the protections and provisions of this Section 5.3, 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 5.3 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 purchase the Acquisition Parcels on the terms and conditions set forth herein, and to perform Redeveloper's obligations hereunder.

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

(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 Redevelopment Agreement and to authorize and direct the persons executing this Redevelopment 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 Redevelopment 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, and except for the Pending Litigation, to the best of Redeveloper's knowledge and belief after diligent inquiry there is no action, proceeding or investigation now pending, nor any basis therefore, known or believed to exist which (i) questions the validity of this Redevelopment Agreement, Redeveloper's execution hereof, or any action or act taken or to be taken by the Redeveloper pursuant to this Redevelopment 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 Redevelopment Agreement.

(G) Redeveloper's execution and delivery of this Redevelopment 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 included in Redeveloper's response to the RFQ submitted by Redeveloper to the Township and its agents (including but not limited to Robert Benecke and McManimon & Scotland, L.L.C.) are complete, true and accurate in all material respects. Redeveloper acknowledges that the facts and representations contained in the information submitted by Redeveloper in response to the RFQ 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 Redevelopment 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 Robert Benecke and McManimon & Scotland, L.L.C.) 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 Project.

(K) The party or parties signing the Redevelopment 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 and of the Prism Member are as set forth in the Operating Agreement of Prism Green Associates IV, LLC, a true and complete copy of which has been supplied by Redeveloper to the Township.

Redeveloper's representations and warranties are intended to and shall survive the delivery of a deed to the Township-Owned Property or Designated Acquisition Parcels to Redeveloper.

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, 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 except as to the PILOT Contingency and Financial Agreement and matters relevant thereto 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 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) As of the Effective Date, and except for the Pending Litigation, 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 title to the Township-Owned Property, the Downtown Redevelopment Area designation, the Redevelopment Plan, or the Township's ability to convey the Township-Owned Property to Redeveloper.

(E) To the best of the Township's knowledge the Township is not in violation of any term of any judgment, decree, injunction or order affecting the Township-Owned Property.

(F) The Township has not received notice of any pending eminent domain or condemnation of the Township-Owned Property and the Township does not know of, or have reason to know of, any proposed eminent domain or condemnation proceeding with respect to any portion of the Township-Owned Property.

(G) The Township is the sole legal owner of the Township-Owned Property in fee simple and the Township-Owned Property is not subject to any outstanding option or agreement of sale.

(H) Except as set forth in Exhibit "G", to the best of the Township's knowledge the Township has not received any notice of violation issued by any federal, state or other public authority with regard to the Township-Owned Property.

(I) 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 Redevelopment Agreement. 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.

The Township's representations and warranties are intended to and shall survive the delivery to Redeveloper of the Deed or of any deeds to the Designated Acquisition Parcels.

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 (**Exhibit "A"**) as of (i) the date Redeveloper takes possession of Township Owned Property, (ii) the date of conveyance to Redeveloper of each Designated Acquisition Parcel acquired by the Township on behalf of the Redeveloper within the Redevelopment Area, or (ii) as of the Commencement of Construction for those parcels acquired directly by Redeveloper. The covenants and restrictions shall remain in effect for the period set forth in Section 7.2 below:

(A) in connection with its use or occupancy of the Project, not effect or execute any covenant, agreement, lease, conveyance or other instrument whereby any portion of the 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 *LRHL* and all obligations under this Agreement and shall at all times develop, design, finance, construct and operate the Project or cause the Project to be developed, designed, financed, constructed and operated pursuant to the conditions and requirements of Applicable Laws, Governmental Approvals, this Agreement and the 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 Project may be devoted are controlled by the Redevelopment Plan, the Governmental Approvals, Applicable Laws and this Redevelopment Agreement and that under no circumstances can the Redeveloper undertake any construction or development of the Project not in accordance with the Redevelopment Plan, the Governmental Approvals, Applicable Laws and this Redevelopment 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 Townships and in general do all things which may be requisite or proper for the construction and development of the Project in accordance with the Redevelopment 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 Project including evidence satisfactory to the Township that its use of the 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 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 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 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 in the case of a Force Majeure Event, not suspend or discontinue the performance of its obligations under this Redevelopment 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 Project.

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

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

(I) during construction of the 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 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 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 Project (*i.e.* condominium or homeowner association) 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 Agreement shall be covenants running with the land and that they shall, in any event, and without regard to technical classification or designation, legal or otherwise, and except only as otherwise specifically provided in this Agreement, be binding, to the fullest extent permitted by law and equity, for the benefit and in favor of, and enforceable by, 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 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 Redevelopment Project to the general welfare of the community and that the identity of the Redeveloper and its qualifications are critical to the Township in entering into this 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 identity of the parties in control of Redeveloper or the degree thereof, is for practical purposes a Transfer or disposition of the Project. Redeveloper recognizes that it is because of such qualifications and identity that the Township is entering into this 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, prior to completion of the Project (or applicable Phase thereof) 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) the Township-Owned Property, (ii) any Designated Acquisition Parcel conveyed to Redeveloper, or (iii) any equity interest in Redeveloper, nor (iv) 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 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 Phase of the 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. The Transfer or Transfers of a non-controlling interest or interests in the Greenfield Member that do not result in a change in control of Redeveloper as set forth in the Operating Agreement shall not constitute a prohibited Transfer. The death or incapacity of a principal of the Prism Member or the Greenfield Member of Redeveloper shall not constitute a prohibited Transfer hereunder. With respect to this provision, Redeveloper and the party or parties signing the Redevelopment 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, and with prior knowledge of the Township by written notice from Redeveloper, the following shall not constitute a prohibited Transfer, for purposes of Section 8.1:

Transfer to an entity or entities controlled by Redeveloper, including but not limited to **Prism Green Urban Renewal Associates IV, LLC ("Prism Green URE")** or other urban renewal entity or entities formed by Redeveloper pursuant to *N.J.S.A. 40A:20-4*; *provided, however*, that such successor and assignee of Redeveloper shall assume all of the obligations of Redeveloper hereunder, but Redeveloper shall remain primarily liable for the performance of Redeveloper's obligations; and *provided further*, that (i) a copy of the fully executed written instrument of conveyance and assignment and assumption of this Redevelopment Agreement shall be promptly delivered to the Township; and (ii) such conveyance or assignment does not violate any of the Governmental Approvals.

8.3 Prohibition of Transfer of Redevelopment Agreement. Redeveloper further agrees for itself, its successors and assigns, that prior to the Completion of the 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:

(i) a Mortgage or related security granted by Redeveloper to a Mortgagee for the purpose of obtaining the financing necessary to enable Redeveloper to perform its obligations under this Redevelopment Agreement, including any Mortgage or Mortgages and other liens and encumbrances granted by Redeveloper to a Mortgagee for the purpose of financing costs associated with the acquisition, development, construction, or marketing of the Project; *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 Mortgagee; or

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

(iii) Sales of individual condominium units to the end users thereof.

The Township recognizes and acknowledges that financing of the Project is likely to include one or more of equity participations, "mezzanine" debt, and other financing arrangements in addition to a Mortgage. The Township agrees to consider such financing arrangements in good faith and 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 acquisitions of the Township-Owned Property, of the Designated Acquisition Parcels conveyed to Redeveloper, and Redeveloper's undertakings pursuant to this Redevelopment Agreement are, and will be used, for the purpose of the Redevelopment 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 8, Redeveloper represents that the certificate attached to this Agreement as "**Exhibit F**" 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, and, as to each such entity, all entities owning at least a 10% interest therein, such disclosure being intended to be the same disclosure that Redeveloper will be required to make in connection with its Governmental Applications for land use approvals pursuant to *N.J.S.A. 40:55D-48.2*.

(A) At least annually during the period between the Effective Date and Completion of the 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 F current as to Redeveloper as well as to each permitted urban renewal entity or joint venture.

(B) Redeveloper will immediately notify the Township in writing of any and all changes whatsoever in the ownership of Redeveloper and any permitted urban renewal entity or joint venture, legal or beneficial, or of any other act or transaction involving or resulting in any change in such ownership or in the relative distribution thereof, or with respect to the identity of the parties in control of Redeveloper or the degree thereof, of which it or any of its officers or members have been notified or otherwise have knowledge or information.

(C) 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 all of managing members, or other owners of equity interests of Redeveloper, and of any permitted urban renewal entity or joint venture, and the extent of their respective holdings, and in the event any other parties have a beneficial interest in Redeveloper's entity, their names and the extent of such interest. Notwithstanding the foregoing, Redeveloper shall not be required to disclose the identities or interests held by investors in Greenfield Acquisition Partners, IV, LP, except to the extent Redeveloper would be required to make such disclosure in connection with its Governmental Applications for land use approvals pursuant to *N.J.S.A. 40:55D-48.2*.

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 Redevelopment 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 Project, by mortgage or involuntary act of the Redeveloper or others, upon obtaining knowledge or notice of same.

9.2 Obligations of Mortgagee. Notwithstanding any of the provisions of this Redevelopment Agreement, including but not limited to those which are or are intended to be covenants running with the land, the holder of any mortgage authorized by this Redevelopment Agreement (including but not limited to any such holder who obtains title to one or more Project Parcels, 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 itself) shall in no way be obligated by the provisions of this Redevelopment Agreement to construct or complete the Project or to guarantee such construction or completion; *provided* that nothing in this Article or any other Article or provision of this Redevelopment Agreement shall be deemed or construed to permit or authorize any such holder to devote the Project 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 Redevelopment 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 of 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 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 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 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 Project or the Township-Owned Property. 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 Default related to conveyance of the Township-Owned Property.

10.1(a) Default by the Township. If title to the Township-Owned Property does not close because of the Township's Default, then the Redeveloper shall be entitled to pursue all other remedies at law or equity available to it by reason of the Township's default (including but not limited to specific performance and recovery of costs); *provided, however*, that failure of the Governing Body to authorize or approve the transaction shall not constitute a Default by the Township, but only a failure of the condition precedent to the conveyance; and *provided further*, that under no circumstances shall the Township be liable for consequential, indirect or special damages of any kind.

10.1(b) Default by Redeveloper. If title to the Township-Owned Property does not close because of the Redeveloper's Default, the Township shall be entitled to terminate this Agreement insofar as it pertains to, and Redeveloper's designation as redeveloper of, the Township-Owned Property and the Acquisition Parcels commonly known as the "Barton Press Site", Block 115, Lots 15, 16 and 17. Nothing in this Section shall be construed as limiting the

ability of the Township to be reimbursed from the Escrow Account for Township Costs incurred through the date of termination.

10.2 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:

10.2(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 failure or refusal to deposit Condemnation Costs into the Condemnation Costs Account in accordance with the terms of this Agreement, 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 acquisition of the Acquisition Parcels or the implementation of the Project in accordance with this Agreement and the Phasing Plan,

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 Project or substantially suspends construction work without the prior knowledge and consent of the Township (unless such suspension arises out of a Force Majeure Event), 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.

10.2(b) Township Events of Default. (i) Failure of the Township to reimburse Redeveloper for Litigation Costs as provided in Section 13.2, 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.

10.3 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 Redevelopment Agreement and Redeveloper's designation as Redeveloper 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. 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.

10.4 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.

10.5 No Waiver. Except as otherwise expressly provided in this Redevelopment 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.

10.6 Remedies Cumulative. No remedy conferred by any of the provisions of this Redevelopment Agreement is intended to be exclusive of any other remedy and each and every

remedy shall be cumulative and shall be in addition to every other remedy given hereunder 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.

10.7 Failure or Delay by Either Party. Except as otherwise expressly provided in this Redevelopment 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.

10.8 Replacement of Redeveloper. Upon termination of this Agreement by the Township due to an Event of Default by the Redeveloper subsequent to the Redeveloper's acquisition of title to the Township-Owned Property, the Township shall, pursuant to their responsibilities under Applicable Law, use reasonable efforts to designate a replacement developer for the 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 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 Project documents and other rights and agreements pertaining to the 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 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.

10.9 Intentionally Omitted.

10.10 Termination Rights Related to Litigation. If third party litigation is commenced challenging the validity of (i) the designation of the Redevelopment Area, (ii) the Redevelopment Plan, or (iii) execution of this Redevelopment Agreement by the Township, the commencement of such litigation shall be a Force Majeure Event effective as of the date of the filing of the summons and complaint if Redeveloper invokes the Force Majeure provisions of Section 10.4; *provided, however,* that (a) if such 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.

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 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 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 the 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 Township-Owned Property is located.

(F) In respect of the Township-Owned Property (if acquired by Redeveloper) and each Designated Acquisition Parcel, the title to which is acquired and conveyed to Redeveloper by the Township pursuant to the provisions of Article 3 of this Agreement, Redeveloper agrees to use commercially reasonable efforts to cause the Township to be named as an additional insured as its interests may appear under pollution legal liability or other environmental insurance policies, if and to the extent procured by Redeveloper for itself or its lender(s).

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 first Closing 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 Project 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 Property; *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 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 residents of Township in the construction of the Project, consistent with market wages and the financial success of the 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 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 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 Project, notwithstanding any other provision of this Redevelopment Agreement to the contrary.

12.4 Reporting and Enforcement.

(1) All contracts entered into by the Redeveloper for the construction of the 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

PILOT CONTINGENCY & FINANCIAL AGREEMENT; LITIGATION COSTS

13.1 PILOT Contingency & Financial Agreement. Redeveloper intends to apply to the Township for approval of a financial agreement (the "**Financial Agreement**") providing for, among other things, payments in lieu of taxes pursuant to *N.J.S.A. 40A:20-1 et seq.* ("**PILOT**"). The Township agrees to consider such application in good faith and to consider and pursue in good faith and in accordance with the criteria set forth in the Applicable Laws the issuance of redevelopment area bonds pursuant to the *Redevelopment Bond Area Financing Law, N.J.S.A. 40A:12A-64 et seq.* ("**RAB**") of not more than a total par amount of \$41 million to provide financial assistance to the Project, which par amount shall include the \$7.5 million retained by the Township for infrastructure costs pursuant to Section 4.1(b), the \$5.7 million retained by the Township to be applied towards satisfaction of its growth share obligations under COAH regulations pursuant to Section 2.3, and \$6.5 million to be utilized by the Township for the costs of relocating the existing DPW and animal shelter facilities at the Township-Owned Property. The RAB, if issued, may be issued in multiple series, and shall comply with the following minimum criteria to be set forth in the Financial Agreement and the resolutions, indentures or other agreements to be negotiated providing for and securing the issuance of the RAB:

(i) The RAB shall be non-recourse to the Township and shall not in any way require the Township to levy *ad valorem* taxes, whether to pay principal, interest, interest reserves or any other costs or expenses with respect to the RAB ;

(ii) The security provided to RAB bondholders shall be, from among other possible sources, (A) proceeds from the sale or execution of municipal liens or

foreclosures on Project Parcels; and (B) a pledge of a portion of the PILOT payments that shall be applied for the following purposes (only a portion of which shall actually be applied to pay debt service on the RAB) in the following amounts and in the following order of priority (it being expressly understood by the Parties that land taxes shall not in any way secure the RAB and shall be payable to the Township at the times and in the amounts prescribed by Applicable Laws):

- a. *First*, five (5%) percent payable to Essex County, to the extent required under Applicable Laws;
- b. *Second*, to pay the Township for municipal services, in an amount calculated as of the first year when Certificate of Occupancies are issued for any new residential unit but in no event later than January 2010, equal to the difference between \$850,000, increased annually, (after January 2010), by the percentage increase in the tax levy, and the land taxes collected by the Township;
- c. *Third*, for RAB debt service, in an amount equal to the annual debt service on the RAB;
- d. *Fourth*, to replenish any reserves, but not including such amounts as are released to the Township as a result of a reduction in the amounts on deposit in the debt service reserve by reason of amortization of the principal amount of the RAB;
- e. *Fifth*, to pay any other necessary amounts due under the RAB resolution, indenture or other agreements to be negotiated (including trustee and PILOT administrator fees, and any federal income tax rebate obligation); and
- f. *Sixth*, the balance to the Township.

(iii) In addition to amounts required by Redeveloper for the development of Phase I and all related infrastructure (subject to Section 13.1(iv) below) a portion of the proceeds from the first series of RAB in an amount acceptable to the Township shall be utilized by the Township (A) to pay costs, expenses, and professional fees incurred in planning and pursuing the relocation of the existing DPW and animal shelter facilities at the Township-Owned Property prior to Redeveloper's acquisition thereof, or (B) to reimburse the Township for such costs, expenses and fees if they have been paid by the Township prior to the issuance of the RAB. Such costs, expenses and fees shall include, without limitation, those relating to replacement site investigation, Remediation costs, and site or facility design and planning.

(iv) Prior to the issuance of any RAB, the Parties shall review the initial Project assumptions and projections as of the date of the Financial Agreement in order to ensure that the relative economic benefits that each Party expects to realize thereunder remain reasonably capable of realization, based

upon, among other factors, the Phase or Phases of the Project being constructed, including projected infrastructure costs relating thereto and market conditions affecting the issuance of RAB bonds. In the event Redeveloper in accordance with the provisions of this Agreement elects to forego redevelopment of a material portion of the Project, the Parties agree to renegotiate the terms and conditions of the Financial Agreement, which may include a reduction in the amount of RAB financing.

The Township agrees to consider and pursue Redeveloper's PILOT application and RAB issuance in good faith, but Redeveloper acknowledges that the Township retains discretion under Applicable Laws as to whether to grant the PILOT or issue the RAB. If the terms of a mutually acceptable Financial Agreement, RAB financing, and all applicable State approvals in connection therewith have not been obtained by the Contingency Satisfaction Deadline, then either Party may elect to terminate this Agreement by providing Notice to that effect to the other Party (the "PILOT Contingency").

13.2 Litigation Costs. (a) All litigation costs incurred by the Township arising out of or in connection third party litigation challenging this Agreement or any RAB, PILOT or Financial Agreement 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 (including but not limited to the Pending Litigation) challenging (i) execution of this Redevelopment 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 13.2 shall survive termination of this Agreement.

13.3 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 13.2(b) 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 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 conveyance of title to the Acquisition Parcels to Redeveloper and any termination of this Redevelopment 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 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 Redevelopment Agreement or any Project, nor participate in any decision relating to the Redevelopment Agreement or any Project which is prohibited by law.

14.3 No 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 Redevelopment 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 Redevelopment 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 Redevelopment 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 Redevelopment 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 Redevelopment 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 Redevelopment 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 Redevelopment Agreement by any Party to the other ("**Notice**") shall be in writing and shall be sufficiently given or delivered if dispatched by United States Registered or Certified Mail, postage prepaid and return receipt requested, or delivered by overnight courier or delivered personally (with receipt acknowledged), or by facsimile transmission (with 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 John McKeon and John Sayers, Business Administrator

With a copy to:

Glenn F. Scotland, Esq.
McManimon & Scotland, L.L.C.
One Riverfront Plaza; Fourth Floor
Newark, New Jersey 07102

As to the Redeveloper:

Prism Green Associates IV, LLC
c/o Prism Capital Partners, LLC
50 Grand Avenue
Englewood, New Jersey 07631-3506
ATTN: Eugene Diaz

With a copy to:

Robert S. Goldsmith, Esq.
Greenbaum, Rowe, Smith & Davis, LLP
Metro Corporate Campus One
99 Wood Avenue South
Iselin, New Jersey 08830

and

Barry Marcus
Senior Vice-President
Greenfield Partners
50 North Water Street
South Norwalk, CT 06854

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 Redevelopment 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 Redevelopment Agreement shall not affect the validity of the remaining Articles and Section, clauses or provisions hereof.

14.12 Successors Bound. This Redevelopment 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 Redevelopment 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, Guarantor 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 Redevelopment 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 Redevelopment Agreement are hereby made a part of this Redevelopment Agreement by this reference thereto.

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

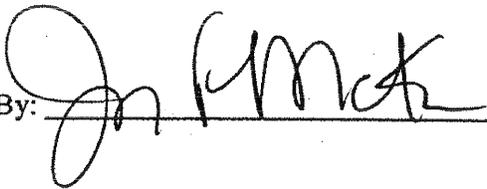
14.17 Waiver. No waiver made by any party with respect to any obligation of any other party under this Redevelopment Agreement shall be considered a waiver of any other rights of the party making the waiver beyond those expressly waived in writing and to the extent thereof.

IN WITNESS WHEREOF, the parties hereto have caused this Redevelopment 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

Jo Ann Behar
Deputy Clerk

By: 

Witness:

PRISM GREEN ASSOCIATES IV, LLC

By: _____

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**TOWNSHIP OF WEST ORANGE,
NEW JERSEY**

Attest

By: _____

Witness:

PRISM GREEN ASSOCIATES IV, LLC



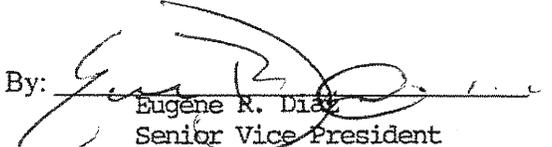
By: 
Eugene R. Diaz
Senior Vice President

EXHIBIT "A"

Form of Declaration of Covenants and Restrictions

Record and Return to:

Glenn F. Scotland
McMANIMON & SCOTLAND, LLC
One Riverfront Plaza, 4th Floor
Newark, New Jersey 07102

Prepared by:

Glenn F. Scotland, Esq.

DECLARATION OF COVENANTS AND RESTRICTIONS

Block __ Lots ____ and Block __ Lots ____, Township of West Orange (the "Property")

(Record in Mortgage Book)

This Declaration of Restrictions is made this ____ day of _____, 2006 by and between the **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

PRISM GREEN ASSOCIATES IV, LLC, a limited liability company of the State of Delaware authorized to do business in the State of New Jersey, having offices at c/o Prism Capital Partners, LLC, 50 Grand Avenue, Englewood, New Jersey 07631-3506 (together with its permitted successors or assigns as hereinafter provided, the "Redeveloper").

WITNESSETH

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

WHEREAS, the Governing Body duly adopted a resolution determining that the Downtown Redevelopment Area was an "area in need of redevelopment" in accordance with the procedures and criteria in *N.J.S.A. 40A:12A-6* of the *LRHL*; and

WHEREAS, the Governing Body adopted and amended by ordinance a redevelopment plan for the Downtown Redevelopment Area (the "**Redevelopment Plan**") in accordance with *N.J.S.A. 40A:12A-7* of the *LRHL*; and

WHEREAS, in order to implement the development, financing, construction, operation and management of the Project, the Governing Body of the Township by duly adopted resolution authorized the execution of a redevelopment agreement with the Redeveloper dated _____, 2006 (the "**Redevelopment Agreement**") in accordance with *N.J.S.A. 40A:12A-8(f)* of the *LRHL*; and

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

WHEREAS, the Redevelopment Agreement contains such a covenant by the Redeveloper and its successor or assigns for as long as the Redevelopment Agreement remains in effect, as well as two (2) perpetual covenants by the Redeveloper and its successor or assigns not to unlawfully discriminate upon the basis of age, race color creed, religion, ancestry, national origin, sex or familial status in the sale, lease, rental, use or occupancy of the Downtown Redevelopment Area or any building or structures erected thereon and to maintain in good condition any improvements made on the Property (as defined above) in accordance with Article VII of the Redevelopment Agreement; and

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

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

NOW THEREFORE, IT IS AGREED AS FOLLOWS:

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

Section 2. Redeveloper covenants and agrees that:

(A) In connection with its use or occupancy of the Project, Redeveloper shall not effect or execute any covenant, agreement, lease, conveyance or other instrument whereby any portion of the 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) Redeveloper shall comply with the applicable provisions and public purposes of the *LRHL* and all obligations under the Redevelopment Agreement and shall at all times develop, design, finance, construct and operate the Project or cause the Project to be developed, designed, financed, constructed and operated pursuant to the conditions and requirements of Applicable Laws, Governmental Approvals, the Redevelopment 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 Project may be devoted are controlled by the Redevelopment Plan, the Governmental Approvals, Applicable Laws and the Redevelopment Agreement and that under no circumstances can the Redeveloper undertake any construction or development of the Project not in accordance with the Redevelopment Plan, the Governmental Approvals, Applicable Laws or the Redevelopment Agreement.

(C) Redeveloper shall, in order to effectuate the purposes of the Redevelopment Agreement, make, execute, acknowledge and deliver any contracts, orders, receipts, writings and instructions with any other persons, firms or Townships and in general do all things which may be requisite or proper for the construction and development of the Project in accordance with the Redevelopment 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) Redeveloper shall use diligent efforts to obtain all Governmental Approvals requisite to the construction and development of the Project including evidence satisfactory to the Township that its use of the Project is in compliance with the Redevelopment Agreement, the Redevelopment Plan and all Applicable Laws, and use diligent and commercially reasonable efforts to ensure timely performance of its obligations under the Redevelopment Agreement, including but not limited to Completion of Construction of the Project within the time periods specified in the Construction Schedule.

(E) Redeveloper shall use diligent efforts to obtain all Governmental Approvals authorizing the occupancy and uses of the Project for the purposes contemplated in the Redevelopment Agreement. Redeveloper shall enter into such other commercially reasonable agreements with respect to its development, financing, construction and management and operation of the Project, containing such provisions as may be required by Applicable Laws or as may reasonably be required by Governmental Approvals.

(F) Except as otherwise permitted in the Redevelopment Agreement, in the case of a Force Majeure Event, Redeveloper shall not suspend or discontinue the performance of its obligations under the Redevelopment Agreement (other than in the manner provided for in the Redevelopment Agreement) 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 Project.

(G) Redeveloper shall diligently undertake the construction and development of each individual component of the Project throughout the Construction Period and, subject to the terms and conditions of the Redevelopment Agreement, to use commercially reasonable efforts to complete each component of the Project on or before the applicable Completion Date.

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

forth in the Redevelopment Agreement.

(I) Redeveloper shall, during construction of the 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) Redeveloper shall cause the Project to be developed, designed, financed and constructed at its sole cost and expense, except as otherwise set forth in the Redevelopment Agreement.

(K) Redeveloper shall 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 Project in furtherance of the Township's consideration in executing the Redevelopment Agreement with Redeveloper if such change will materially impair Redeveloper's ability to perform its obligations pursuant to the terms of the Redevelopment Agreement.

(L) Redeveloper shall 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 Project (*i.e.* condominium or homeowner association) to maintain such improvements.

Section 3. It is intended and agreed that the covenants and restrictions set forth in Section 2 of this Declaration shall run 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 the Redevelopment Agreement and this Declaration, be binding, to the fullest extent permitted by law and equity, for the benefit and in favor of, and enforceable by, the Township, its successors and assigns, and any successor in interest to the Property, or any part thereof, against Redeveloper, its successors and assigns and every successor in interest therein, and any Person in possession or occupancy of the Property or any part thereof. The covenants and restrictions herein shall be binding on Redeveloper itself, each successor in interest to Redeveloper and each party in possession or occupancy, respectively, only for such period as Redeveloper or such successor or party shall be in possession or occupancy of the Property, the Redevelopment Project or any part thereof.

Section 4. In amplification, and not in restriction, of the provisions of Section 2 of this Declaration, it is intended and agreed that the Township and its successors and assigns shall be deemed beneficiaries of the covenants and restrictions set forth in the Redevelopment Agreement and this Declaration, both for and in their own right but also for the purposes of protecting the interests of the community and other parties, public or private, in whose favor or for whose benefit such covenants and restrictions have been provided. Such covenants and restrictions shall run in favor the Township for the entire period during which such covenants and restrictions shall be in force and effect, without regard to whether the Township has at any time been, remains, or is an owner of any land or interest therein. The Township shall have the

right, in the event of any material breach of any such covenant or restriction, to exercise all the rights and remedies and to maintain any actions or suits at law or in equity or other proper proceedings to enforce the curing of such breach of covenant or restrictions, to which it or any other beneficiaries of such agreement or covenant may be entitled.

Section 5. Upon redevelopment of the Property and completion of the Redevelopment Project, the conditions that were found and determined to exist at the time the Property was determined to be in need of redevelopment shall be deemed to no longer exist and the conditions and requirements of *N.J.S.A. 40A:12A-9* shall be deemed to have been satisfied with respect to the Redevelopment Project or any applicable portion thereof. The covenants contained herein shall terminate and this Declaration will be discharged of record upon Redeveloper's receipt of a Certificate of Completion and termination of the Redevelopment Agreement pursuant to Section 7.2 thereof (i) for the Redevelopment Project, or (ii) for a Phase thereof, in which case the covenants shall terminate and the Declaration will be discharged of record only as to such Phase.

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

Attest:

TOWNSHIP OF WEST ORANGE, NEW JERSEY

By: _____

WITNESS:

PRISM GREEN ASSOCIATES IV, LLC

By: _____

Name: _____

Title: _____

EXHIBIT "B"

FORM OF PURCHASE AND SALE AGREEMENT

THE TOWNSHIP OF WEST ORANGE

AGREEMENT FOR PURCHASE AND SALE OF REAL PROPERTY IN A DESIGNATED REDEVELOPMENT AREA

AGREEMENT made this ____ day of _____, 2006 (the "Effective Date") by and between the TOWNSHIP OF WEST ORANGE (the "Township"), a body corporate and politic of the New Jersey, having its address at 66 Main Street, West Orange, New Jersey 07052; and _____ (the "Seller") having its/his/her address at _____.

1.0 Background

1.1 Seller is the owner of certain real property located in the Township of West Orange, County of Essex, New Jersey (the "Township"), commonly known as [STREET ADDRESS] and designated as Block __, Lot __ on the Tax Maps of the Township of West Orange (the "Property"). The Property is more particularly described on Exhibit 1 annexed hereto and made a part hereof.

1.2 By Municipal Council resolutions _____ adopted _____, as supplemented and amended by Resolution _____ adopted _____, and pursuant to the *Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq.* (the "LRHL"), the Township included the Property as part of a duly designated "area in need of redevelopment" known as the "_____" Redevelopment Area" (the "Redevelopment Area"). On _____ the Municipal Council adopted Ordinance _____, subsequently amended by Ordinance _____ dated _____, approving a redevelopment plan for the Redevelopment Area (as amended, the "Redevelopment Plan"). Among other things, the Redevelopment Plan identifies the Property as one that might be acquired by the Township through the exercise of the power of eminent domain and in accordance with the applicable provisions of the LRHL, in further the objectives of the Redevelopment Plan.

1.3 By Resolution _____ dated _____, the Municipal Council designated the Township as the "redevelopment entity" within the meaning of the LRHL, responsible for implementing the Redevelopment Plan and carrying out redevelopment projects within the Redevelopment Area, including the acquisition of property for redevelopment purposes.

2.0 Agreement to Sell The Seller agrees to sell the Property to the Township and the Township agrees to buy the Property from the Seller upon the terms and conditions set forth below. This Agreement is entered into pursuant to *N.J.S.A. 40A:12-5* and/or *N.J.S.A. 40A:12A-22(i)*, as applicable, in lieu of condemnation proceedings.

3.0 Property to be Conveyed The Property consists of all those certain lots, tracts or parcels of land particularly described by the description attached hereto as **Exhibit 1**, together with any buildings and improvements thereon contained and the privileges contained and appurtenances thereto appertaining, including but not limited to all rights, title and interest of the Seller in and to any water rights, mineral rights, air rights, rights of surface support, adjoining strips and gores, and easements and rights-of-way incidental thereto. The legal description of the Property set forth in the Survey (as defined in Section 6.2 below), if different than Exhibit 1 attached to this Agreement, shall be substituted as the legal description of the Property. If such Survey is not certified to the Seller, Seller shall deliver a bargain and sale deed with covenants for the Property using the legal description pursuant to which the Property was conveyed to it, and specify that the property being conveyed is "also described as" set forth in the legal description of the Property set forth in the Survey, and shall quitclaim such legal description to the Township.

4.0 Purchase Price The purchase price is _____ **AND**
00/100 (\$ _____) **DOLLARS** (the "**Purchase Price**").

5.0 Payment of Purchase Price The Township agrees to pay the entire Purchase Price to the Seller on the Closing Date (as hereinafter defined) subject to the adjustments, if any, set forth in this Agreement.

6.0 Title

6.1 The Seller shall deliver marketable and insurable title at regular rates by the "Title Company" as hereinafter defined (herein referred to as "**marketable title**"). If the Seller is unable to convey marketable title to the Township, the Township shall have the right to terminate this Agreement as set forth below.

6.2 The Township agrees to obtain, at the Township's cost and expense, a title report (the "**Title Report**") of the Property from a title company selected by the Township authorized to do business in the State of New Jersey (the "**Title Company**"), and, if desired by the Township, a survey (the "**Survey**") of the Property by a licensed New Jersey surveyor including a right of entry if required by the Township pursuant to Article 10 hereof, and to furnish a copy of the Title Report and Survey to the Seller promptly after the Township receives same, but in no event later than sixty (60) days following the Effective Date. If anything in the Title Report or Survey constitutes a title defect which renders title to the Property to be less than marketable title, then the Township shall give notice thereof to the Seller, specifying in detail such title defect(s), before 5:00 p.m. on the date which shall be sixty (60) days following the Effective Date. The Seller shall cure, satisfy and/or discharge such title defect(s) by the earlier of (a) thirty (30) days from the date Seller receives the Title Report or Survey, or (b) the Closing Date as hereinafter defined (the "**Title Defect Cure Date**"). The Seller shall be obligated to

remove title defect(s) or encumbrances relating to monetary liens, whether for loans, taxes, judgments or otherwise (herein referred to as "Monetary Liens") without any further notification by the Township. If the Seller fails to cure, satisfy or discharge title defects which render title to the Property to be less than marketable title, by the Title Defect Cure Date the Township shall have the right to terminate this Agreement on written notice to the Seller. If the Seller decides to cure, satisfy and/or discharge any title defect(s), the Township in its sole discretion may grant Seller a reasonable adjournment of the Closing Date to do so but in no event shall such adjournment be for a period greater than ten (10) days. Without limiting the foregoing, the Seller or the Township may use any portion of the balance of the Purchase Price to discharge Monetary Liens. The Township shall have the right to continue any and all title searches to the Closing Date to confirm that Seller is conveying marketable title.

6.3 If the Seller is unable to convey marketable title to the Township, the Township may proceed to acquire the Property by condemnation in accordance with Paragraph 31 hereof. The parties agree that regardless of whether a closing occurs under this Agreement due to a failure of a condition precedent, the terms and conditions of this Agreement including but not limited to, the Purchase Price, are the results of bona fide negotiations between the parties pursuant to the *Eminent Domain Act of 1971*. The Purchase Price shall constitute the Just Compensation to be paid for the Property to be acquired, unless the Title Defect has a material and negative impact on the fair market value of the Property, in which case Just Compensation shall be the lesser amount. The Seller agrees to accept the same as payment in full for the Property in the event a condemnation action is filed by the Township. An amount equal to the original offer by the Township will be deposited with the Clerk of the Superior Court as required under the Eminent Domain Act upon filing and recording of a Declaration of Taking in the event Seller is unable or unwilling to close title, for any reason in accord with the terms of this Agreement. Upon entry of a final consent judgment determining that the amount of Just Compensation shall be in the amount of the agreed upon consideration, the balance between the amount initially deposited and the amount of the judgment will be deposited with the Clerk of the Superior Court however, direct payment of the balance will only be made to the Seller where no other party to the action objects or claims entitlement thereto and the court so orders.

7.0. Closing of Title

7.1 It is agreed by the parties hereto that the closing of title (the "Closing") shall take place at the offices of the counsel for the Township: McManimon & Scotland, L.L.C., One Riverfront Plaza, Fourth Floor, Newark, New Jersey 07102-5408 or at such other location as designated by the Township, at 10:00 a.m., on or before the _____ () day after the expiration of the Due Diligence Period without termination of this Agreement by the Township, as hereinafter defined, and the satisfaction of the conditions precedent to Closing more fully set forth in Article 16 below (the "Closing Date") in accordance with the terms of this Agreement.

7.2 On the Closing Date, the Seller shall deliver to the Township the following:

- a) A fully and properly executed bargain and sale deed with covenants against grantor's acts, in recordable form to convey title to the Property;
- b) An executed Affidavit of Title in form and substance reasonably acceptable to the Township and its Title Company;
- c) An Internal Revenue Code Section 1445 Affidavit;
- d) Closing Statement;
- e) Corporate resolution approving this transaction and authorizing officers of Seller to take such acts and to execute and deliver such documents as are needed to effectuate same.
- f) A properly completed and executed Affidavit of Consideration or Exemption and GIT/REP Form 1,2 or 3;
- g) Evidence of *ISRA* compliance, if applicable; and
- h) Any other necessary documents reasonably required by the Township, its attorney, or the Title Company;

7.3 The Township will pay for all recording fees and realty transfer taxes, if any, incidental to conveying title to the Township. It is expressly understood and agreed, however, that each party shall be solely responsible for its own attorney fees.

8.0 Adjustments at Closing The following adjustments are to be made at the Closing as of the end of the Closing Date: (i) real estate taxes on the basis of the fiscal year for which assessed; (ii) water charges; (iii) sewer rents; (iv) gas; (v) electric; (vi) fuel (at the Seller's cost therefor); and (vii) any other items which shall be appropriate for adjustment under local closing standards and practices. If the Closing Date shall occur before a tax rate is fixed, the apportionment of real estate taxes shall be made upon the basis of the tax rate for the immediately preceding year applied to the latest assessed valuation of the Property.

9.0 Due Diligence Period

9.1 The Township shall have a period of sixty (60) days from the Effective Date (the "**Due Diligence Period**") to conduct a review of all applicable laws, statutes, ordinances and regulations, the status of title to the Property and any other facts or matters relating to the Property which the Township shall deem appropriate. The due diligence review shall be performed at the Township's sole cost and expense.

9.2 In the event the Township shall determine in its sole and absolute discretion that it is not satisfied with the condition of the Property as a result of its review, the Township shall have the right to terminate this Agreement by written notice to the Seller given prior to 5:00 p.m. on the last day of the Due Diligence Period, in which event neither party shall have any further rights nor liabilities hereunder thereafter (except as set forth in Section 6.3 above and any other provisions that expressly survive termination of this Agreement). In the event that the Township does not terminate this Agreement prior to 5:00 p.m. of the last day of the Due Diligence Period as herein above provided, time being of the essence, the Township shall be deemed to have waived its right to terminate this Agreement pursuant to this Article 9.

10.0 Right of Entry The Seller agrees to permit the Township or its duly authorized agents and representatives a right of entry for any purposes permitted under this Agreement and to otherwise conduct pre-closing inspections at any reasonable time prior to the Closing Date. The Township's right to enter upon the Property and to inspect same shall be conditioned upon the Township first furnishing the Seller with proof satisfactory to the Seller that all of the inspections to be conducted upon the Property by or on behalf of the Township shall be protected by liability insurance pursuant to a liability insurance policy having a single limit of not less than \$1,000,000, which policy shall be in form and issued by an insurance company licensed to do business in the State of New Jersey.

11.0 Assessment Special assessments for public improvements, whether confirmed or unconfirmed, which have been commenced as of the date of this Agreement, are to be paid in full by the Seller. Any assessment which has been commenced or completed and is payable in installments is to be paid by the Seller.

12.0 Representations and Warranties of the Seller

12.1 For the purpose of inducing the Township to enter into this Agreement and to consummate the transactions contemplated hereby pursuant to the terms and conditions hereof, the Seller represents and warrants to the Township as follows:

- a) The Seller is the owner in fee simple of the Property herein agreed to be conveyed to the Township and, if an individual, is over eighteen years of age.
- b) Each party executing and delivering this Agreement and all documents to be executed and delivered in regard to the consummation of the transaction contemplated hereby on behalf of the Seller has due and proper authority to execute and deliver same. The Seller has the full right, power and authority to sell and convey the Property to the Township as provided herein and to carry out its obligations hereunder without the joinder or consent of any other person or entity or governmental body or agency or the order of any court, and the Seller has due and proper authority to execute and deliver all documents related to the consummation of the transactions.
- c) The Property is now and has been held in peaceable and undisturbed possession by the Seller since said Property was acquired and the title has never been disputed, questioned or rejected to the Seller's knowledge or belief, nor does the Seller know any facts by reason of which said possession or title may be disputed or questioned, or by reason of which any claim to any part of the Property or any interest therein adverse to that of the Seller which might be set up or made.
- d) No contract for the sale of the Property has been made and no option to purchase the same has been given to anyone other than the Township. The Seller will not sell, mortgage, encumber or otherwise dispose of the Property or any part thereof prior to the Closing Date, except to the Township.

e) The Seller will not permit anyone who is not, as of the Effective Date, a tenant or occupant of the Property to occupy the Property subsequent to the date of this Agreement.

f) Except as otherwise identified herein, no tenants, persons or entities hold or possess any right to use or occupy the Property. There are no verbal or written leases currently affecting the Property, except as set forth on **Exhibit 2**. The Seller does not hold any funds as tenants' security deposits in connection with the Property, except as set forth on Exhibit 2. Seller agrees that upon the Effective Date the Township or its employees, agents or consultants are hereby authorized to (i) deliver to the tenants a ninety (90) day notice of vacation letter and (ii) negotiate with the tenants as to the termination of their current leases and, if the Township so chooses, execution of new short term occupancy agreements to be effective as of the date of the Closing.

g) Within five (5) days of the Effective Date, the Seller will provide the Township copies of all maintenance or service contracts or other contracts relating to the maintenance and operation of the Property ("**Service Contracts**"), if any. A list of the Service Contracts is attached hereto as **Exhibit 3**. The Seller represents that all payments under such Service Contracts are current. At least five (5) days prior to the Closing Date, the Township shall notify the Seller in writing which Service Contracts, if any, the Township elects to have assigned to the Township. Effective as of the Closing Date, the Seller shall assign to the Township any Service Contract that the Township elects to have assigned to the Township. The Seller shall, at the Seller's sole cost and expense, terminate all Service Contracts not assigned to the Township effective as of the Closing Date.

h) No labor has been performed or material furnished for the Property (i) for which the Seller has not heretofore fully paid, (ii) for which a Notice of Unpaid Balance and Right to File Lien Claim, construction lien, mechanic's or materialman's lien or liens, or any other lien, can be claimed by any person, party or entity.

i) The Seller acknowledges that all legal work necessary to transfer title shall be performed by the Seller's attorney at the Seller's sole expense.

j) The Seller warrants that no person has been employed, directly or indirectly to solicit or secure this Agreement in violation of *N.J.S.A. 52:34-15 et seq.*

k) The Seller has no knowledge of any pending or threatened legal action of any kind or character whatsoever affecting the Property which will in any manner interfere with the transfer of possession or title upon consummation hereof, nor has the Seller knowledge that any such action is presently contemplated.

l) The execution and delivery of this Agreement and the consummation of the transactions herein contemplated will not conflict with any applicable law, ordinance, regulation, statute, rule, restriction or any judgment, order or decree of any court having jurisdiction over the Seller or the Property.

m) The Seller has no actual knowledge of, and has received no notice of, any outstanding violation of, and the Property is currently in compliance with, any governmental law, rule, statute, ordinance, or regulation affecting the Property, including, without limitation, any applicable laws, rules, regulations, ordinances, permits, orders and directives relating to environmental protection. In the event the Seller receives a notice or notices of any violation(s) subsequent to the date hereof, it will immediately provide the Township with a copy of same and will expeditiously correct same prior to the Closing Date.

n) Intentionally omitted.

o) There are no insolvency proceedings pending or to Seller's knowledge, threatened against it.

p) The amount due on the liens and encumbrances affecting the Property do not now and will not on the Closing Date exceed the Purchase Price.

q) No lien has been attached to any revenues or any real or personal property owned by the Seller and located in the State of New Jersey, including, but not limited to the Property, as a result of monies being expended out of the New Jersey Spill Compensation Fund to pay for "Cleanup and Removal Costs" as such term is defined in N.J.S.A. 58:10-23.11b(d) arising from an intentional or unintentional action or omission of the Seller or of any previous owner or operator of said real property.

r) The execution, delivery and performance of this Agreement will not conflict with or result in a breach of any material terms and conditions of, or constitute a default or require consent under the terms of any material agreement to which Seller is a party or by which Seller may be bound, or to which the Property is subject, and no consent, approval or authorization of any third party is now required for the execution, delivery and performance of this Agreement, except those that have been obtained or made, and are in full force and effect.

12.2 The representations and warranties as set forth in this Agreement shall be continuing and shall be true and correct on and as of the Closing Date with the same force and effect as if made at that time and shall survive the closing of title.

13.0 Environmental Provisions

13.1 (a) Seller represents the following to the best of Seller's knowledge and belief, that (i) the Property is in compliance with all applicable local, federal and state statutes or regulations, ordinances, permits, orders, and directives regarding pollutants, contaminants,

hazardous waste, materials and/or substances (hereinafter collectively referred to as "contamination") and/or solid waste; (ii) there is no pending or contemplated proceeding or administrative action arising out of the environmental condition of the Property except as provided in subparagraph (c) below, and (iii) the Property has never been remediated, except as provided in subparagraph (c) below.

(b) Seller(s) further represent(s) that: (i) it has not discharged any hazardous substances or waste on the Property; (ii) it has no knowledge of any discharge of hazardous substances or waste on the Property; (iii) it did not deposit or cause to be deposited solid waste on the Property; and (iv) it has no knowledge of the presence of solid waste on or buried in the Property except as provided in subparagraph (c).

(c) The following exceptions to subparagraph (a) and (b) are noted:

(d) The parties agree that the following remediation and/or removal of solid waste as noted in subparagraph (c) will be handled as follows:

13.2 The Purchase Price set forth in this Agreement assumes that there is no contamination and/or solid waste in, on or under the Property above actionable levels in excess of current standards as set forth by the New Jersey Department of Environmental Protection ("NJDEP") applicable to the intended use of the Property pursuant to the Redevelopment Plan. However, where the existence of contamination or solid waste is noted in Section 13.1(c) above actionable levels established by NJDEP, the Purchase Price reflects the anticipated remediated condition of the Property and not its present condition. The Purchase Price does not include any deduction, offset or credit for any remediation costs that may be described in paragraphs 13.1(c) or 13.1(d) above.

13.3 The Seller shall not be relieved of any legal obligations pursuant to federal or state statutes or regulations or under common law resulting from the presence of contamination or solid waste on the Property as of the Closing Date or the date of vacation of the Property by all occupants, whichever is later. The Township does not accept any liability or responsibility of the Seller or any occupant, including any liability to third parties, as a result of the presence of contamination and/or solid waste on the Property. Pursuant to *N.J.S.A. 58:10-23.11g.d (4)*, the Township is not liable for the cleanup and removal costs of any discharge which occurred or began prior to ownership by the Township.

13.4 The Township shall be responsible only for the actual costs of conducting a preliminary environmental screening and assessment of the Property, which activity shall be limited to inspection to confirm the presence of contamination on the Property as distinguished from determining the source and extent of contamination. The failure of this screening to detect contamination or the presence of solid waste shall not be a bar to any future recovery action by the Township against the Seller or any other person or entity in the event that contamination and/or solid waste are subsequently discovered.

13.5 This Agreement is negotiated pursuant to the Township of *N.J.S.A. 40A:12-5(a)(1)* and *N.J.S.A. 40A:12A-22(i)*, as applicable, and the *Eminent Domain Act of 1971* and the result of *bona fide* negotiations.

13.6 The Seller shall provide the Township copies of all correspondence, reports and document relating to any environmental investigations and/or remediation in a timely manner and shall afford the Township the opportunity to participate in all meetings and conferences with NJDEP

13.7 The Township further reserves the right to file a complaint and pursue whatever relief is necessary if any contamination and/or solid waste are subsequently discovered in, on or under the Property which were not previously detected by the Township and is not specifically revealed in writing prior to the signing of this Agreement or where the Seller refuses to remediate contamination and/or solid waste on the Property.

13.8 This Agreement will not in any way affect the jurisdiction of the NJDEP over the Property.

13.9 The Seller represents that the Seller has complied with all requirements for underground storage tanks pursuant to the *New Jersey Underground Storage of Hazardous Substances Act, N.J.S.A. 58:10A-21 et seq.*, and the regulations implementing the provisions thereof, and with all federal requirements governing underground storage tanks, including, without limitation, *40 U.S.C. Section 6991 et seq.* and *40 CFR Part 280* (hereinafter "Underground Tank Requirements"). The Seller shall indemnify the Township from any and all losses, costs and damages including reasonable attorneys' fees for the Seller's failure to comply with the Underground Tank Requirements. On the Closing Date, the Seller shall deliver to the Township copies of all registration forms, other filings and correspondence related to underground storage tanks. Notwithstanding the foregoing, the Seller represents that there are no underground storage tanks at, under or on the Property.

13.10 The provisions of this Article 13 shall survive the transfer of title to the Property. The Township does not waive any rights that it might have to pursue administrative remedies or to bring suit under federal or state statutes or regulations or under common law and hereby reserves the right to do so in the event any contamination or solid waste is discovered which preexisted the closing of title.

14.0 Risk of Loss The risk of loss to the Property until the Closing shall be on the Seller. In the event that the Property shall be destroyed or damaged by reason of fire, storm, accident or other casualty, the Township shall have the option on written notice to the Seller to either: (i) terminate this Agreement on written notice to the Seller, whereupon neither party shall have any further rights nor liabilities hereunder thereafter (except for provisions that expressly survive termination of this Agreement); or, (ii) direct the Seller to assign to the Township at Closing the Seller's right to any casualty insurance proceeds resulting from such casualty (or if such insurance proceeds are not assignable, the Seller shall at Closing grant to the Township a credit against the Purchase Price in the amount of any such insurance proceeds), in all instances with Seller providing to the Township a credit against the Purchase Price for the amount of any

applicable deductible. If the Township elects to have insurance proceeds assigned to the Township, the Seller shall not be required to repair or replace the damaged Property nor shall the Purchase Price be abated (except that if insurance proceeds have already been paid to the Seller by the Closing Date, the Township shall be credited with the amount so paid against the Purchase Price). If the Seller does not have insurance to cover any such destruction or damage or is unable to collect the insurance proceeds, then the Township shall have the option on written notice to the Seller to either (a) terminate this Agreement whereupon neither party shall have any further rights or obligations except as otherwise set forth in this Agreement or (b) abate the Purchase Price in an amount necessary to repair or replace any such destruction or damage. The Township shall have the right to independently insure its interest in the Property, at the Township's sole cost and expense.

15.0 Condemnation In the event that the entire Property or a substantial part thereof shall have been taken by eminent domain by the federal government or shall be in the process of being so taken by the federal government, on the Closing Date, the Township shall have the option to terminate this Agreement on written notice to the Seller, whereupon neither party shall have any further rights or liabilities hereunder thereafter (except for provisions that expressly survive termination of this Agreement). In the event any such taking shall not include a substantial part of the Property or in the event that the Township shall not terminate this Agreement pursuant to the preceding sentence, the Township shall accept the Property in the condition in which it is left following such taking, with an abatement of the Purchase Price measured by the proceeds of any condemnation award allowed. In the event the award has not been made or collected by the Seller on the Closing Date, the Seller shall assign to the Township at Closing all rights, title and interest of the Seller in the collection of such award and the Township shall accept the Property without abatement of the Purchase Price. As employed herein, the term "a substantial part of the Property" shall be deemed to mean (i) a part of the Property consisting of ten (10%) percent or more of the total area of the Property, or (ii) a part of the Property consisting of less than ten (10%) percent of the total area, but which renders the Property unsuitable for redevelopment.

16.0 Condition Precedent to Closing The Township and the Seller acknowledge that the Closing is contingent upon (i) the review and inspection to be conducted by the Township of any and all matters relating to the condition of the Property during the Due Diligence Period as more fully set forth in Article 9 of this Agreement; (ii) Seller's cure of title defects, if any, in accordance with the provisions of Article 6 of this Agreement; and (iii) continuing availability of funding and continuing legal authority for the acquisition by the Township.

17.0 Discharge of Liens On or before the Closing Date, the Seller shall cause to be properly released, satisfied and discharged all mortgages, judgments, mechanic's or materialman's liens and other encumbrances and shall furnish proper evidence of having done so.

18.0 Possession The Seller will vacate the entire Property prior to the Closing Date and will give possession of the entire Property to the Township at the closing of title free and clear of all tenancies (except those listed in Exhibit 3). The Seller will deliver keys to the Property to the Township at Closing.

19.0 Personal Property and Fixtures

19.1 This sale includes all articles of property that are attached to the Property that have become so much a part of the Property that their separation from it would lessen the value or damage the Property. Such articles are known as "fixtures". For the purpose of clarity, the following articles are specifically INCLUDED in this sale if present at the Property:

19.2 The following articles are specifically EXCLUDED:

20.0 Time of Essence Except as may be otherwise specifically provided in this Agreement, time is of the essence of this Agreement and each and every provision hereof.

21.0 Assignment The Seller may not assign this Agreement without the prior written consent of the Township. The Township shall have the right to assign this Agreement, to another agency or instrumentality of the Township or other public entity, or, if and to the extent permitted under the *LRHL* or other applicable laws, to the duly designated redeveloper of the Property, without the consent of the Seller.

22.0 Specific Performance In the event the Seller fails to comply with any of the provisions of the Agreement, then, in addition to all other legal remedies to which the Township is entitled, the Township shall have the right to specific performance.

23.0 Binding Agreement This Agreement shall bind not only the Seller and the Township but also their heirs, executors, administrators, successors and assigns.

24.0 Entire Agreement It is understood and agreed that all understandings and agreements between the parties are merged in this Agreement which alone fully and completely expresses their agreement. This Agreement may not be changed, altered or canceled orally, but only in writing signed by the parties.

25.0 Joinder The Seller agrees to join in and/or execute any applications, petitions, agreements or other documents requested by the Township prior to the Closing regarding or affecting the Property for the purpose of facilitating the Township's procurement of permits and approvals including but not limited to governmental permits and certificates of occupancy. The Township shall bear all costs and expenses associated therewith.

26.0 Brokerage Commissions Each party hereto represents to the other that no finders or brokers have been involved with the introduction of the Township and the Seller and/or the purchase and sale of the Property. This representation shall survive Closing.

27.0 Limitation of Township Liability The Seller hereby agrees that nothing in this Agreement shall make the Township or its employees or agents liable to pay any damages or costs for which it and/or they have no liability under the *New Jersey Tort Claims Act, N.J.S.A. 59:1-1 et seq.*

28.0 Notices

28.1 All notices, requests, consents, approvals or other communications under this Agreement shall be in writing and mailed by certified mail, return receipt requested, postage prepaid, or delivered by a nationally recognized overnight courier service which obtains delivery receipts (e.g., Federal Express) addressed

If to the Seller, at:

with a copy to:

If to the Township, at:

Township of West Orange
66 Main Street
West Orange, New Jersey 07052
Attention: _____,

with a copy to:

Glenn F. Scotland, Esq.
McManimon & Scotland, LLC
One Riverfront Plaza, Fourth Floor
Newark, NJ 07102

28.2 Either party may, by notice given as aforesaid, change its address for all subsequent notices. A party's attorney may deliver any notice on behalf of that party.

28.3 All notices hereunder shall be effective upon the earlier of either three (3) days after mailing (if mailed) or one (1) business day after delivery to the nationally recognized independent overnight courier.

29.0 Miscellaneous

29.1 This Agreement shall be governed by and construed in accordance with the laws of the State of New Jersey.

29.2 The Seller and the Township waive any statutory or common law presumption which would serve to have this document construed in favor and against either party as the drafter.

29.3 The submission of this Agreement for examination does not constitute an offer or option to purchase the Property and this Agreement shall become effective as an Agreement only upon execution and delivery thereof by both the Seller and the Township.

29.4 Each of the parties hereby agrees to execute, acknowledge, and deliver such other documents or instruments as the other may reasonably require from time to time to carry out the purposes of this Agreement.

29.5 The Effective Date of this Agreement shall be the date on which it is signed by all parties, or, if not signed simultaneously, the date on which it is signed by the last of the parties, which date shall be inserted at the top of the first page hereof.

30.0 Counterparts This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

31.0 Consensual Condemnation In Lieu of Closing This Agreement between the Seller and Township for the purchase of the Property for public use is in lieu of condemnation. Should Seller refuse or be unable to close in accordance with the terms hereof for any reason, then the Township shall have the right to effectuate the transfer of title by the filing of a condemnation action pursuant to the *Eminent Domain Act of 1971, N.J.S.A. 20:3-1 et seq.* With regard to said condemnation action, the Township shall be obligated to pay the Seller, and the Seller obligated to accept as just compensation, the Purchase Price of _____, inclusive of interest, pursuant to *N.J.S.A. 20:3-14*. Should said condemnation action be filed, Seller shall not object to the Township's authority to condemn the Property on any grounds and shall be estopped from seeking compensation greater than the Purchase Price. Moreover, should said condemnation action be filed, the date of value for determining just compensation shall be the date of commencement of such action. The Township shall not be obligated to file a Declaration of Taking pursuant to *N.J.S.A. 20:3-17* and deposit its estimated compensation pursuant to *N.J.S.A. 20:13-18* until the entry of final judgment adjudicating the Township's authority to condemn. Upon execution of a Consent Order for Final Judgment, the Township shall deposit the balance due to make the Purchase Price into Court or, alternatively, should the Court determine that no other party is entitled to compensation, make direct payment of the balance due to the Seller. Should the condemnation matter proceed to a commission hearing at the request of a third party, Seller may not present evidence of just compensation in excess of the Purchase Price.

IN WITNESS WHEREOF the parties have caused this Agreement for Purchase of Real Property to be executed as set forth below intending to be legally bound to the terms of this Agreement:

ATTEST:

TOWNSHIP OF WEST ORANGE

By: _____

Name:

Title:

Date: _____

[Seller]

By: _____

Name:

Title:

Date: _____

Attachments:

Exhibit 1: Legal Description of Property

Exhibit 2: List of Tenants, Rent Roll, and Lease Terms

Exhibit 3: List of Service Contracts

Exhibit 1

Legal Description of Property

Exhibit 2

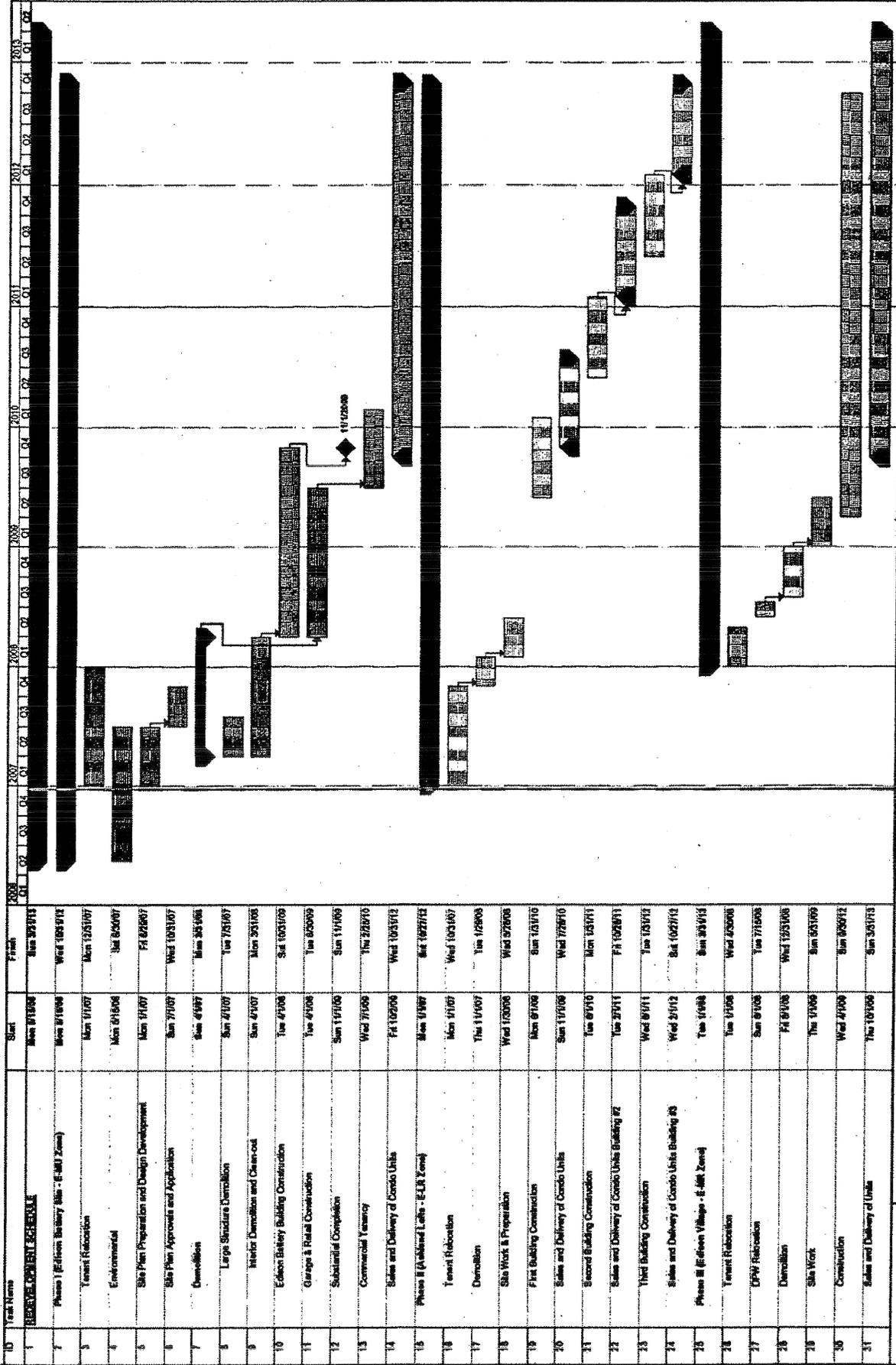
List of Service Contracts

Exhibit 3

List of Tenants, Rent Roll and Lease Terms

EXHIBIT "C"
PHASING PLAN and INFRASTRUCTURE IMPROVEMENTS

EXHIBIT "C" PHASING PLAN



█ Summary
█ Project Summary
█ External Tasks
█ External Milestone
◆ Milestone
◆ Task

Project: FEMA Redevelopment Phasing
 Date: Tue 12/1/06

Page 1

EXHIBIT "D"
ESCROW PROCEDURES

1. **Escrow Deposit.** The Escrow Deposit is separate from and in addition to all other application fees and escrow deposits that may be required by the Township in connection with applications for land use approvals to implement the Redevelopment Plan. Additions to the Escrow Deposit may subsequently become necessary to cover all reimbursable expenses incurred by the Township pursuant to the terms of this Agreement.
2. **Deposit and Administration of Escrow Funds.** The Escrow Deposit and all additions thereto shall be held by the Escrowee in a banking institution or savings and loan association in the State of New Jersey insured by an agency of the federal government, or in any other fund or depository approved for such deposits by the State of New Jersey, in a segregated, interest-bearing account referenced to the Redevelopment Agreement.
3. **Payments from the Escrow Funds.** (a) The Escrowee shall use the Escrow Deposit and all additions thereto to pay Township Costs in accordance with the provisions of the Redevelopment Agreement.

 (b) Township Costs paid out of the Escrow Account shall include all Township Costs as defined in the Redevelopment Agreement.

 (c) Each payment for professional services charged to the Escrow Account shall be pursuant to a voucher from the professional or consultant, identifying the personnel performing the reimbursable service, each date the services were performed, the hours spent in not greater than one-quarter (1/4) hour increments, the hourly rate, and specifying in reasonable detail the properly reimbursable expenses. All professionals shall submit the required vouchers or statements to the Escrowee on a monthly basis in accordance with the schedule and procedures established by the Escrowee. The professional shall simultaneously send an informational copy of each voucher or statement submitted to the Escrowee to the Redeveloper (redacted as necessary to remove confidential and privileged information).
4. **Accounting and Additional Deposits.** At least annually during the term of the Redevelopment Agreement, or as reasonably requested by the Redeveloper (but not more often than quarterly), Escrowee shall prepare and send to the Redeveloper a statement which shall include an accounting of funds listing all deposits, interest earnings, disbursements and the cumulative balance of the Escrow Account. If at any time the balance in the Escrow Account is less than **TWENTY-FIVE THOUSAND and 00/100 (\$25,000) DOLLARS**, or if the Escrow Account in the Township's reasonable estimation for good cause shown otherwise contains insufficient funds to enable the Township to continue performance of its obligations under the Redevelopment Agreement, the Escrowee shall provide Redeveloper with a notice of the insufficient Escrow Account balance and the amount of additional funds required. Upon receipt of such notice Redeveloper shall deposit to the escrow account additional funds such that the total amount on deposit shall be not less than **FIFTY THOUSAND and 00/100 DOLLARS**, such deposit to be made within fifteen (15) business days of the Township's notice, failing which the Township may unilaterally cease work without liability to Redeveloper.
5. **Close Out Procedures.** Upon the issuance of a Certificate of Completion the Redeveloper shall send written notice by certified mail to the Escrowee requesting that the remaining balance of the Escrow Deposit be refunded, or otherwise applied in accordance with the provisions of the Redevelopment Agreement. After receipt of such notice, and within 30 days of Escrowee's receipt of all outstanding

invoices for Township Costs, if any, the Escrowee shall pay all outstanding Township Costs and render a written final accounting to the Redeveloper.

6. **Disputed Charges.** (a) Redeveloper may dispute the propriety or reasonableness of Township Costs paid out of the Escrow Deposit by written notice to the Escrowee. A copy of such notice shall be sent simultaneously to any the entity(ies) whose charges or estimated costs are the subject of the dispute. Such written notice of a disputed charge shall be given within 45 days from Redeveloper's receipt of the informational copy of a voucher or invoice, statement, bill or invoice, except that if Redeveloper has not received an informational copy then the Redeveloper shall send notice within 60 days from receipt of the first statement of activity against the Escrow Account containing the disputed charge. Failure to dispute a charge in writing within the prescribed time shall constitute Redeveloper's acceptance of the charge and a waiver by Redeveloper of all objections to the charge and to payment thereof out of the Escrow Account.

(b) During the pendency of a dispute the Escrowee may continue to pay undisputed charges out of the Escrow Account. If a dispute over a charge is resolved in Redeveloper's favor after having been paid, the Escrowee shall reimburse the Escrow Account in the amount determined to be properly disputed.

EXHIBIT "E"

PENDING LITIGATION

1. *R.D. #1, LLC v. TOWNSHIP OF WEST ORANGE, et al.* - Docket No. ESX-L-5685-06
2. *JOHN F. SCMHIDT and KEVIN MALANGA v. TOWNSHIP OF WEST ORANGE, et als.*
- Docket No. ESX-L-7139-06
3. *COLUMBIA WEST ORANGE REALTY CORPORATION v. TOWNSHIP OF WEST
ORANGE COUNCIL* – Docket No. ESX-L- _____ -06

EXHIBIT "F"
INCUMBENCY CERTIFICATE

INCUMBENCY CERTIFICATE

Pursuant to Section 8.6 of the Redevelopment Agreement between The Township of West Orange and Prism Green Associates IV LLC, a Delaware limited liability company (the "Company"), the undersigned, as managing member of the Company hereby represents and warrants to the Township of West Orange that:

1. The only entity which owns a 10% or greater interest in the Company is Greenfield Prism IV LLC, a Delaware limited liability company ("Greenfield IV"), having an address c/o Greenfield Partners LLC, 50 North Water Street, South Norwalk, Connecticut 06854.
2. The only entity which owns a 10% or greater interest in Greenfield IV is Greenfield Acquisition Partners IV, L.P., a Delaware limited partnership, having an address c/o Greenfield Partners LLC, 50 North Water Street, South Norwalk, Connecticut 06854.

[SIGNATURE FOLLOWS ON NEXT PAGE]

IN WITNESS WHEREOF, the undersigned has executed and delivered this certificate as of December 20, 2006.

PRISM VENTURE VI LLC,
a Delaware limited liability company


Eugene Robert Diaz, Member

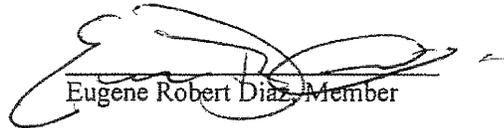
Sworn to before me this
20th day of December, 2006


Notary Public

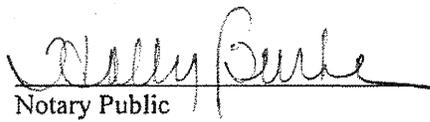
HOLLY JEANNE BURKE
NOTARY PUBLIC OF NEW JERSEY
Commission Expires 9/24/2007

IN WITNESS WHEREOF, the undersigned has executed and delivered this certificate as of December 20, 2006.

PRISM VENTURE VI LLC,
a Delaware limited liability company


Eugene Robert Diaz, Member

Sworn to before me this
20th day of December, 2006


Notary Public

HOLLY JEANNE BURKE
NOTARY PUBLIC OF NEW JERSEY
Commission Expires 9/24/2007

EXHIBIT "G"

NJDEP CORRESPONDENCE RE: TOWNSHIP-OWNED PROPERTY



State of New Jersey

Department of Environmental Protection
Bureau of Underground Storage Tank
CN-433
401 East State Street
Trenton, NJ 08625

Robert C. Shinn, Jr.
Commissioner

Christine Todd Whitman
verger

APR 17 1993

Leonard Lepore
Township of West Orange
66 West Main Street
West Orange, NJ 07052

Re: Township of West Orange Department of Public Works
25 Lakeside Avenue
West Orange Township, Essex County
Case #93-05-04-1501-12
UST #0144236
TMS #C92-2044, C92-2047
Well Permit #26-42954

Dear Mr. Lepore:

Existing Underground Storage Tank (UST) cases requiring additional remedial investigation (RI) and remedial action (RA) pursuant to the Underground Storage of Hazardous Substances Act, N.J.S.A. 58:10A-21 et seq. (UST Law), are assigned and reviewed by the New Jersey Department of Environmental Protection (Department), Bureau of Underground Storage Tanks (BUST) as technical staff become available to conduct these reviews. The Department reviews existing RI and RA work at the site for compliance with the UST Law and the "Technical Requirements for Site Remediation," N.J.A.C. 7:26E (Technical Regulations). The Department has recently undertaken such a review for the above referenced site. This correspondence contains a summary of the latest site conditions and work completed to date and details remaining remedial requirements to ensure compliance with the UST Law and the Technical Regulations. Compliance with these requirements should enable the completion of corrective action and eventual case closure.

On April 21, 1993 and May 4, 1993, piping associated with three gasoline and one diesel underground storage tanks was removed. Petroleum odors were noted beneath the piping associated with the gasoline tank at the front of the repair garage area. A soil sample in this area revealed the presence of contamination in excess of the Department's Soil Cleanup Criteria. Additional soil borings indicate contamination extends beyond the area of the tank piping. One ground water monitoring well has been installed. Ground water is contaminated with volatile organic compounds in excess of the standards set forth in N.J.A.C. 7:9-6.

Based upon a review of the remedial investigation completed to date, the following requirements shall be addressed as listed in Sections I, II and III below. The results of these remedial requirements shall be submitted as part of a Remedial Action Workplan (RAW) within ninety (90) days of the date of this letter. The March 1995 "Guide for the Submission of Remedial Action Workplans" provides the detailed information required for a complete RAW submittal.

I. Remedial Investigation

1. Soil

a. Soil sample #G5, taken at the time of the piping closure, indicated total volatile organic compounds in excess of the Department's Soil Cleanup Criteria of 1,000 parts per million (ppm), benzene in excess of the Residential Soil Cleanup Criteria of 1 ppm and total xylenes in excess of the Impact to Ground Water Criteria of 10 ppm. The Department's letter dated February 9, 1995, required the horizontal and vertical delineation of the contamination. Subsequent soil sampling indicates exceedance of the Department's Residential Cleanup Criteria at soil sample B2. In addition, the sample locations chosen do not delineate contamination to the northwest and northeast of the original sample, #G5. As indicated in the Department's letter dated February 9, 1995, the Township of West Orange shall either:

i. Remediate the soils to below the most restrictive cleanup criteria and conduct post-remedial sampling pursuant to N.J.A.C. 7:26E-6.4. The sample(s) shall be analyzed for volatile organics using EPA Method 8240, calibrated for xylenes, with a library search (VOCs). The April 1994 "Site Remediation News" (see the "Cleanup Criteria" section below) may be used when evaluating the post-remedial sampling results; or

ii. Fully delineate the horizontal & vertical extent of the contamination in accordance with N.J.A.C. 7:26E-4. Based on the results, submit a proposal for either further remedial action or an alternative residential/nonresidential use soil remediation standard pursuant to N.J.S.A. 58:10B (P.L. 1993, c. 139, Section 35). Please be advised that proposals to leave contamination in place above the most restrictive cleanup criteria may require appropriate engineering/institutional controls pursuant to N.J.S.A. 58:10B (P.L. 1993, c. 139, Section 36). In addition, be advised that any proposal to leave contamination in place above the impact to ground water cleanup criteria will require a Ground Water Remedial Investigation pursuant to N.J.A.C. 7:26E-4.

2. Ground Water

a. One ground water monitoring well was installed and sampled. Lead and every volatile organic compound identified in the ground water was present in excess of the Department's Ground Water Quality Criteria (N.J.A.C. 7:99-6). The Township of West Orange shall install additional ground water monitoring wells to fully delineate the horizontal and vertical extent of ground water contamination. Contamination shall be delineated to the Ground Water Quality Standards, N.J.A.C. 7:9-6, unless otherwise approved by the

Department. If it is necessary to install wells off-site, the Township of West Orange shall provide documentation of written requests seeking access to install said monitoring wells on off-site properties within thirty (30) calendar days of receipt of this correspondence. Please be advised that N.J.S.A. 58:10B, a statute concerning site remediation, provides a cause of action for persons to obtain access to properties not owned by that person for the purpose of conducting remedial activities at that site. Please see the enclosed information on this provision of N.J.S.A. 58:10B for further information.

The Township of West Orange shall submit boring logs and the monitoring well construction details for all newly installed monitoring wells.

3. Receptor Evaluation

a. One ground water monitoring well was installed and ground water analyzed. Every volatile organic compound identified in ground water was present in excess of the Department's Ground Water Quality Standard (N.J.A.C. 7:9-6). When contamination in excess of the Ground Water Quality Standards is identified, a receptor evaluation addressing any nearby ground water usage, surface water bodies, and subsurface utilities including basements, or other structures that may be impacted from a vapor hazard shall be performed. In addition, a well search identifying all irrigation, monitoring and domestic wells located within a one-half mile radius of the site (including any such wells located on-site) and all industrial, public supply wells and wells with water allocation permits located within a one mile radius of the site should be conducted.

A well search has been conducted but the distances from the site listed on the table and the distances from the site diagrammed on the map do not coincide. The Township of West Orange shall resubmit a summary of the well search (both table and map) which do not conflict. In addition, due to high concentrations of volatile organic compounds (over 70 parts per million total compounds) the Township of West Orange shall identify all nearby receptors as noted above.

II. Quality Assurance

- A. All data submitted shall conform to the "Technical Requirements for Site Remediation," N.J.A.C. 7:26E; except where specifically indicated.
- B. In accordance with the "Technical Requirements for Site Remediation," specifically N.J.A.C. 7:26E-3.10(b) 3, a technical overview is required for any report submission. As part of that overview, a discussion regarding the reliability of the laboratory analytical data, shall be included. Please see Appendix 2 of the March 1995 Guide for the Submission of Remedial Action Workplans.

III. Other

A. Certification Requirements

Effective April 25, 1992, all persons performing tank services must be certified per N.J.S.A. 58:10A-21.1-6. All work related to any tank service shall be conducted by, or under the immediate on site supervision of an individual certified in the activity being conducted. All documents (tank closure and permit applications, reports, proposals) submitted to the Department shall be prepared and signed by a certified individual.

B. Field Activity Notification

The Township of West Orange shall notify the assigned BUST Case Manager at least 14 calendar days prior to implementation of field activities. If the Township of West Orange fails to initiate sampling within 30 calendar days of the receipt of this letter, any requests for an extension of the required time frames may be denied.

C. Billing

Due to the presence of ground water contamination at the referenced facility, this case has become a Phase II case within the Bureau of Underground Storage Tanks. Although the assigned case manager has not changed, the Department will be billing the Township of West Orange as of April 16, 1996, for the time expended for oversight of this case. Documents submitted in accordance with the "Technical Requirements for Site Remediation" (N.J.A.C. 7:26E) will help reduce the time necessary for the oversight of the case. At this time, the Department intends to process bills on a semi-annual basis. Please consult the April 5, 1993, and February 22, 1994, State Registers for details concerning the UST Fee Rule (Amendments and New Rules at N.J.A.C. 7:14B). Copies can be obtained by contacting the Office of Administrative Law at (609) 588-6500.

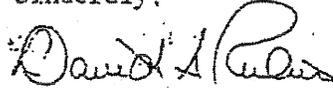
It should be noted that if the Township of West Orange completes the above requirements, and the data indicate that the remedial investigation has not been completed (i.e., contamination not completely delineated), the Township of West Orange shall submit a Remedial Investigation Workplan (RIW) in accordance with N.J.A.C. 7:26E-4.8 within the specified time frame. The RIW shall include a schedule of implementation of the remaining remedial investigation required and the submittal date of the RAW. The Township of West Orange also has the option of completing the remaining remedial investigation in accordance with N.J.A.C. 7:26E-4, followed by the submission of the RIR/RAW. If the latter option is selected, the Township of West Orange shall notify the Case Manager listed below, in writing, within two weeks prior to the specified time frame referenced above. This notification shall include a generic discussion of activities conducted to date and activities to be conducted, as well as a detailed schedule of implementation which includes the submission of the RIR/RAW.

Please note, pursuant to N.J.S.A. 58:10A-21 et seq. and N.J.A.C. 7:14B et seq., the owner and operator of the regulated underground storage tanks are strictly liable for compliance with these requirements. In addition, all state regulated USTs, except for heating oil USTs for on-site consumption, are regulated under

40 CFR Part 280. Non-compliance with these federal and state regulations exposes the tank owner and operator to the penalty and liability specified in 40 CFR Part 280, N.J.S.A. 58:10A-21 et seq. and N.J.A.C. 7:14B et seq.

If you should have any questions regarding this matter, please contact me within the Bureau of Underground Storage Tanks at (609) 633-1284.

Sincerely,



David S. Rubin, Principal Geologist
Bureau of Underground Storage Tanks

enclosures: Guide for the Submission of Remedial Action Workplans

c: Darrell Moore, PMK Group
Joseph Fonzi, West Orange Dept. of Health
Dr. Michael Festa, Essex Co. Health Department



State of New Jersey

Christine Todd Whitman
Governor

Department of Environmental Protection
Bureau of Underground Storage Tanks
P.O. Box 433
401 East State Street
Trenton, NJ 08625
Fax: (609)633-1454

Robert C. Shinn, Jr.
Commissioner

Leonard Lepore
Township of West Orange
66 Main Street
West Orange, NJ 07052

JAN 22 1998

Re: Township of West Orange Department of Public Works
25 Lakeside Avenue
West Orange Township, Essex County
Case #93-05-04-1501-12
UST #0144236
TMS #C92-2044, C92-2047
Well Permit #26-42954, 26-45793, 26-45794, 26-45795, 26-47511, 26-47512,
26-47513
Remedial Action Workplan Dated: November 1997

Dear Mr. Lepore:

The New Jersey Department of Environmental Protection (Department) has completed a review of the above referenced document. Please be advised that the document is unacceptable due to the administrative and technical deficiencies detailed below.

The document has been deemed unacceptable based upon the following deficiencies:

1. The PMK Group proposes to remediate volatile organic compound contamination of soil through the use of soil vapor extraction (SVE). To confirm that SVE is an appropriate remedial action based on the specific site's condition, the Township of West Orange shall perform the SVE pilot study prior to the remedial action workplan (RAW) approval. The results from this pilot test shall be submitted with the RAW addendum.

2. Soil samples GP-11 and GP-13 indicate that soil is contaminated with lead (633 and 668 parts per million [ppm] respectively) and lead cannot be remediated via SVE. The RAW prepared by the PMK Group does not address this contamination. Since levels of lead above the Department's health-based criterion for lead remains on-site, the Township of West Orange shall either:

i. Propose another remedial alternative for the lead including post-remedial sampling pursuant to N.J.A.C. 7:26E-6.4. Post-remedial soil samples shall be analyzed for volatile organics using EPA Method 8240 calibrated for xylenes, with a library search (VOs). The April 1994 "Site Remediation News" may be used when evaluating

the post-remedial sampling results; or

ii. Fully delineate the horizontal and vertical extent of the contamination in accordance with N.J.A.C. 7:26E-4. If the ground water elevation has increased since the previous samples were collected, it may be necessary to collect soil samples in the saturated zone. Based upon the results of delineation sampling, submit a proposal for either further remedial action or an alternative residential/nonresidential use soil remediation standard pursuant to N.J.S.A. 58:10B (P.L. 1993, c. 139, Section 35). Please be advised that proposals to leave contamination in place above the Direct Contact Cleanup Criteria may require appropriate engineering / institutional controls pursuant to N.J.S.A. 58:10B (P.L. 1993, c. 139, Section 36).

3. In accordance with the Department's Guide for the Submission of Remedial Action Workplans, before a RAW may be approved, a receptor search for vapors must be completed. Based upon the levels of ground water contamination present, the Township of West Orange shall canvass the immediate area, locate all subsurface utilities and basements and determine the presence/absence of gasoline vapors in accordance with N.J.A.C. 7:26E-4.4(h)4. The Township of West Orange shall plot the exact locations of all subsurface utilities and basements on a scaled site map. If gasoline vapors are detected in any subsurface utilities or basements, the Township of West Orange shall conduct air monitoring to determine the levels and hazards present in accordance with N.J.A.C. 7:26E-4.4(i). If it is confirmed that the source of the vapors is emanating from the Township of West Orange site, the Township of West Orange shall take immediate action to abate and remediate the source.

4. In accordance with the Department's Guide for the Submission of Remedial Action Workplans, the RAW must contain a proposed sentinel well. Sentinel wells shall not exhibit any contaminants in excess of the Ground Water Quality Standards, N.J.A.C. 7:9-6, and may not be located more than five years travel time for the identified contaminants from the down gradient edge of the plume and no closer than one to three years travel time from the receptor. The proposal submitted to the Department does not delineate the down gradient edge of the ground water plume of methyl tertiary butyl ether (MTBE), trichloroethylene (TCE) and tetrachloroethane. Please be advised that ground water monitoring point GP-7 was analyzed and contained benzene in a concentration of 759 parts per billion (ppb). The Township of West Orange shall delineate the ground water plume and propose locations for sentinel wells.

5. The Township of West Orange shall recalculate the ground water and contaminant velocities predicted for this site. Page 14, of the PMK Group's RAW calculates contaminant velocity and distance traveled each year. Although an effective porosity of 20% is noted, the calculations were performed using 25% as the effective porosity thus underestimating velocity and distance. This calculation will effect the predicted distance for the down gradient edge of the contaminant plume.

6. The PMK Group's RAW proposes the use of ORC Socks in monitoring wells #1, 2 and 3. Be advised that the manufacturer of ORC does not recommend that ORC be placed in critical wells used for monitoring the quality of ground water at a site. Therefore, based on the information/evaluation required below, the Township shall re-evaluate the use of ORC (not to include ORC application in an existing monitoring well). Also, the ORC proposal did not address the contamination found at MW-5. The RAW Addendum shall also address the contamination in the vicinity of MW-5.

ORC socks may be effective remediating ground water contamination when there is no product present, ground water pH is between 5.3 and 10 and the iron content of the ground water is less than 330 milligrams per liter (mg/l). The Township of West Orange shall check the pH of the ground water to ensure that it is in the appropriate range and evaluate the concentration of iron in the water and submit the results with the required revised proposal.

Numerous criteria should be taken into account when designing a remedial action proposal for ORC application. These factors include the types of soil present, the sorptive capacity of these soils ("Additional Demand Factor"), the concentration of ORC to apply, the number and radius of application points. Therefore, before the Department will permit ORC bioremediation and to determine if the ORC treatment regime, as proposed, would be most effective, the Township of West Orange shall submit a Design Output Sheet. This is a print-out generated from software available through Regenesys which takes the above referenced factors into account when designing a treatment regime for ORC.

7. The maps included in the RAW prepared by the PMK Group indicate two areas where high levels of ground water contamination with toluene, ethylbenzene and xylenes (there are high concentrations in monitoring wells #1 and 5) and TCE (there are high concentrations in monitoring wells #1 and 7) exist. In fact, the ground water evaluation using temporary well points indicated the highest level of contamination between wells #1 and 5 at point GP-4 (total benzene, toluene, ethylbenzene and xylenes [BTEX] exceeded 125,000 ppb). The Township of West Orange shall prepare a RAW which addresses the ground water contamination at the source area (MW #1) as well as down gradient at well #5.

8. Ground water contaminated with lead exists at monitoring wells #5 and 6. The Township of West Orange shall as an initial measure resample these wells and analyze ground water for lead. The Township of West Orange shall ensure that the groundwater samples are turbid free. It is recommended that a low well evacuation rate be used before the collection of groundwater samples (guidance attached). Please be advised, the Department does not recommend the use of alternate sampling techniques when analysis for any metal is required.

Ground water shall be analyzed for total lead using EPA Method 200.7 (ICAP) or EPA Method 239.2 (Graphite Furnace). The SW-846 equivalent for this procedure is ICAP 3010/6010, sample prep 3050/6010 or Graphite Furnace 3020/7421, sample prep 3050/2421.

9. Classification Exception Area (CEA) pursuant to the Ground Water Quality Standards (N.J.A.C. 7:9-6. et seq.) apply to all site remediation cases involving ground water contamination above applicable criteria. A designated CEA shall also act as a Well Restriction Area pursuant to N.J.A.C. 7:9-6.6(d).

As a result of the ground water contamination at this site, a CEA shall be established at the time of remedial action workplan (RAW) or no further action (NFA) approval, as applicable. Although a CEA was submitted with the RAW, performance of the above noted requirements may result in modification of it's boundaries. When the Township of West Orange submits the required amendments to the RAW, the Township of West Orange shall include a new proposal for the CEA if there are any changes in it's characteristics.

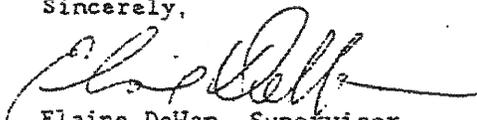
Therefore, the Township of West Orange is out of compliance with N.J.S.A. 58:10A-21 et seq. for having failed to submit a completed document within the specified time frame. The Township of West Orange shall correct the deficiencies, conduct the vapor survey, conduct the additional ground water delineation and submit a RAW Addendum which conforms to the Department's comments within 120 calendar days of the date of this letter.

If the Township of West Orange fails to submit the required report within the referenced time frame, this case will be referred to the Bureau of Federal Case Management, Negotiations / Enforcement Support Unit for review. The Township of West Orange has been previously notified of their penalty and liability exposure for non-compliance under 40 CFR Part 280, N.J.S.A. 58:10-A-21 et seq. and N.J.A.C. 7:14B et seq. This letter does not represent an extension or a modification of the time frames for compliance previously set forth. The Department reserves the right to implement all applicable enforcement measures.

Effective February 22, 1994, the Department initiated direct billing for oversight cost at contaminated UST sites, your case manager may be contacted with any additional questions.

If you require copies of Departmental Guidance Documents or applications, many of these documents are available on the internet at WWW.STATE.NJ.US/DEP/SRP. If you should have any questions regarding this matter, please contact David S. Rubin, Principal Geologist within the Bureau of Underground Storage Tanks at (609) 633-1284.

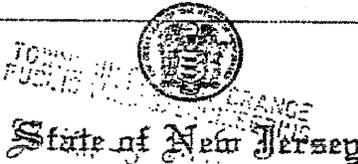
Sincerely,



Elaine DeWan, Supervisor
Bureau of Underground Storage Tanks

encl: Low Flow Ground Water Sampling Procedures

c: David S. Rubin, BUST
Dr. Michael Festa, Essex County Health Department
Joseph Fonzino, West Orange Department of Health
Djamel Lekmine, PMK Group.



Christine Todd Whitman
Governor

Department of Environmental Protection

Robert C. Shinn, Jr.
Commissioner

VCERTIFIED MAIL
RETURN RECEIPT REQUESTED

APR 20 2007

0519590251
Leonard Lepore
Township of West Orange
66 West Main Street
West Orange, New Jersey 07052

Re: Township of West Orange Department of Public Works
25 Lakeside Avenue
West Orange Township, Essex County
UST # 0144236
BFCM # 0144236
CASE # 93-05-04-1501-12

Dear Mr. Lepore:

This is to inform you that the above referenced case has been referred to the Negotiation/Enforcement Support Unit within the Bureau of Federal Case Management for the failure to perform all the actions and provide information required by the New Jersey Department of Environmental Protection's (NJDEP) letter(s) dated April 17, 1996 and January 7, 1997 and pursuant to the Underground Storage of Hazardous Substances Act, N.J.S.A. 58:10A-21 et seq. (USHSA) and N.J.A.C. 7:14B.

Please be advised that the owner and operator of the above referenced underground storage tank facility (UST) are subject to penalties of up to \$50,000.00 per day, denial or revocation of the owner's or operator's registration or permit to operate the UST, and the initiation of a criminal action pursuant to N.J.S.A. 58:10A-10. Penalties will continue to accrue until all the actions and information required by N.J.S.A. 58:10A-21 et seq. and N.J.A.C. 7:14B is received by this office.

Therefore, the Township of West Orange shall submit the required Remedial Action Workplan ("RAW") within thirty (30) days after receipt of this letter. Should the Township of West Orange fail to submit the required information within the established time schedule, NJDEP may take enforcement action as allowed by law and may transfer the case from the UST program to determine its priority status on the Comprehensive Site List (CSL).



State of New Jersey

Christine Todd Whitman
Governor

Department of Environmental Protection
Bureau of Underground Storage Tanks
CN-433
401 East State Street
Trenton, NJ 08625

Robert C. Shinn, Jr.
Commissioner

Leonard Lepore
Township of West Orange
66 West Main Street
West Orange, NJ 07052

JAN 07 1997

Re: Overdue Report
Township of West Orange Department of Public Works
25 Lakeside Avenue
West Orange Township, Essex County
Case #93-05-04-1501-12
UST #0144236
TMS #C92-2044, C92-2047
Well Permit #26-42954

Dear Mr. Lepore:

On April 17, 1996, the New Jersey Department of Environmental Protection (Department) sent a letter to you requiring the submission of a Remedial Action Workplan (RAW) pursuant to the Underground Storage of Hazardous Substances Act, N.J.S.A. 58:10A-21 et seq. and implementing regulations, N.J.A.C. 7:14B et seq. This information was required to be submitted on or before July 19, 1996. As of this time, the Department has not received the required report. Therefore, the Township of West Orange is in violation of the Underground Storage of Hazardous Substances Act and implementing regulations.

The required report shall be submitted to the Department at the above address, within 15 days of the date of this letter.

If the Township of West Orange fails to submit the required report within the referenced time frame, this case will be referred to the Bureau of Federal Case Management, Negotiations/Enforcement Support Unit for review. The Township of West Orange has been previously notified of their penalty and liability exposure for non-compliance under 40 CFR Part 280, N.J.S.A. 58:10-A-21 et seq. and N.J.A.C. 7:14B et seq. This letter does not represent an extension or a modification of the time frames for compliance previously set forth. The Department reserves the right to implement all applicable enforcement measures.

If you should have any questions regarding this matter, please contact me within the Bureau of Underground Storage Tanks at (609)633-1284.

Sincerely,


David S. Rubin, Principal Geologist
Bureau of Underground Storage Tanks

c: Darrell Moore, PMK Group

TOWNSHIP OF WEST ORANGE
Municipal Building
66 Main Street
West Orange, New Jersey

May 8, 2007

Via Federal Express:

Eugene Diaz
Prism Green Associates IV, L.L.C.
c/o Prism Capital Partners, L.L.C.
50 Grand Avenue
Englewood, New Jersey 07631

**Re: Township of West Orange
Redevelopment Agreement Dated December 20, 2006**

Dear Mr. Diaz,

On December 20, 2006, the Township of West Orange entered into that certain Redevelopment Agreement (the "Redevelopment Agreement") with Prism Green Associates IV, L.L.C. ("Redeveloper") governing the redevelopment of certain parcels within the Township's Downtown Redevelopment Area.

Section 1.1 of the Redevelopment Agreement defines the term "Contingency Satisfaction Deadline" as follows (referred to hereinafter as the "Definition"):

Contingency Satisfaction Deadline" means March 31, 2007; *provided, however*, that if as of March 31, 2007, and notwithstanding the diligent and good faith efforts of the Parties, the PILOT Contingency has not been satisfied because required State approvals that have been applied for have not yet been obtained, then either Party by Notice to the other Party may elect to extend the Contingency Satisfaction Deadline until April 30, 2007. In the event all Contingencies are not satisfied by the Contingency Satisfaction Deadline the Parties may elect to terminate this Agreement as hereinafter provided; *provided, however*, that upon such termination the Parties shall have no further liability to each other under this Agreement except as otherwise expressly provided to the contrary herein; *and provided further*, that in the event of any such termination the Township shall not be obligated to reimburse Redeveloper for any monies expended by Redeveloper in connection with this Agreement, the Project or the performance of Redeveloper's obligations hereunder."

This letter agreement will serve to formalize our agreement that the following modification be made to the Redevelopment Agreement:

Where the date March 31, 2007 shall currently appear in the Definition, strike "March 31, 2007" and insert "May 30, 2007", and where the date April 30, 2007 shall currently appear in the Definition, strike "April 30, 2007" and insert "June 30, 2007".

All other provisions of the Redevelopment Agreement shall remain unmodified in force and effect. Please have Redeveloper indicate its agreement to the foregoing by executing a copy of this letter and returning it to my attention via facsimile and Federal Express. By signing this letter, we are each representing that we have the full authority and power to do so.

Sincerely,

John F. McKeon
Mayor

Agreed to on behalf of Prism Green Associates IV, L.L.C.:

Name:
Title:

Name:
Title:

TOWNSHIP OF WEST ORANGE
Municipal Building
66 Main Street
West Orange, New Jersey

June 26, 2007

Via Federal Express:

Eugene Diaz
Prism Green Associates IV, L.L.C.
c/o Prism Capital Partners, L.L.C.
50 Grand Avenue
Englewood, New Jersey 07631

Re: Township of West Orange
Redevelopment Agreement Dated December 20, 2006

Dear Mr. Diaz,

On December 20, 2006, the Township of West Orange entered into that certain Redevelopment Agreement, as amended by letter agreement on May 8, 2007 (the "Redevelopment Agreement") with Prism Green Associates IV, L.L.C. ("Redeveloper") governing the redevelopment of certain parcels within the Township's Downtown Redevelopment Area.

Section 1.1 of the Redevelopment Agreement as amended defines the term "Contingency Satisfaction Deadline" as follows (referred to hereinafter as the "Definition"):

"Contingency Satisfaction Deadline" means May 30, 2007; *provided, however*, that if as of May 30, 2007, and notwithstanding the diligent and good faith efforts of the Parties, the PILOT Contingency has not been satisfied because required State approvals that have been applied for have not yet been obtained, then either Party by Notice to the other Party may elect to extend the Contingency Satisfaction Deadline until June 30, 2007. In the event all Contingencies are not satisfied by the Contingency Satisfaction Deadline the Parties may elect to terminate this Agreement as hereinafter provided; *provided, however*, that upon such termination the Parties shall have no further liability to each other under this Agreement except as otherwise expressly provided to the contrary herein; *and provided further*, that in the event of any such termination the Township shall not be obligated to reimburse Redeveloper for any monies expended by Redeveloper in connection with this Agreement, the Project or the performance of Redeveloper's obligations hereunder."

This letter agreement will serve to formalize our agreement that the first sentence of the Definition shall be stricken and replaced with the following sentence:

" "Contingency Satisfaction Deadline" means August 31, 2007."

The balance of the Definition and all other provisions of the Redevelopment Agreement shall remain unmodified in force and effect. Please have Redeveloper indicate its agreement to the foregoing by executing a copy of this letter and returning it to my attention via facsimile and Federal Express. By signing this letter, we are each representing that we have the full authority and power to do so.

Sincerely,

John F. McKeon
Mayor

Agreed to on behalf of Prism Green Associates IV, L.L.C.:

Name:

Title:

Name:

Title:

TOWNSHIP OF WEST ORANGE
Municipal Building
66 Main Street
West Orange, New Jersey

September 11, 2007

Via Federal Express:

Eugene Diaz
Prism Green Associates IV, L.L.C.
c/o Prism Capital Partners, L.L.C.
50 Grand Avenue
Englewood, New Jersey 07631

**Re: Township of West Orange
Redevelopment Agreement Dated December 20, 2006 – Third Modification**

Dear Mr. Diaz,

On December 20, 2006, the Township of West Orange entered into that certain Redevelopment Agreement, as amended by letter agreements on May 8, 2007 and June 26, 2007 (the "Redevelopment Agreement") with Prism Green Associates IV, L.L.C. ("Redeveloper") governing the redevelopment of certain parcels within the Township's Downtown Redevelopment Area.

Section 1.1 of the Redevelopment Agreement as amended defines the term "Contingency Satisfaction Deadline" as follows (referred to hereinafter as the "Definition"):

"Contingency Satisfaction Deadline" means August 31, 2007. In the event all Contingencies are not satisfied by the Contingency Satisfaction Deadline the Parties may elect to terminate this Agreement as hereinafter provided; *provided, however,* that upon such termination the Parties shall have no further liability to each other under this Agreement except as otherwise expressly provided to the contrary herein; *and provided further,* that in the event of any such termination the Township shall not be obligated to reimburse Redeveloper for any monies expended by Redeveloper in connection with this Agreement, the Project or the performance of Redeveloper's obligations hereunder."

This letter agreement will serve to formalize our agreement that the first sentence of the Definition shall be stricken and replaced with the following sentence:

" "Contingency Satisfaction Deadline" means October 31, 2007."

The balance of the Definition and all other provisions of the Redevelopment Agreement shall remain unmodified in force and effect. Please have Redeveloper indicate its agreement to the foregoing by executing a copy of this letter and returning it to my attention via facsimile and Federal Express. By signing this letter, we are each representing that we have the full authority and power to do so.

Sincerely,

John F. McKeon
Mayor

Agreed to on behalf of Prism Green Associates IV, L.L.C.:

Name:
Title:

Name:
Title:

TOWNSHIP OF WEST ORANGE
Municipal Building
66 Main Street
West Orange, New Jersey

October 27, 2009

Via Federal Express:

Eugene Diaz
Prism Green Associates IV, L.L.C.
c/o Prism Capital Partners, L.L.C.
50 Grand Avenue
Englewood, New Jersey 07631

**Re: Township of West Orange
Redevelopment Agreement Dated December 20, 2006 – Third Modification**

Dear Mr. Diaz,

On December 20, 2006, the Township of West Orange entered into that certain Redevelopment Agreement, as amended by letter agreements on May 8, 2007, June 26, 2007 and September 11, 2007 (the "Redevelopment Agreement") with Prism Green Associates IV, L.L.C. ("Redeveloper") governing the redevelopment of certain parcels within the Township's Downtown Redevelopment Area.

Section 2.3 of the Redevelopment Agreement, entitled "COAH Housing Obligation", sets forth the Redeveloper's responsibilities to satisfy the growth share obligations of the Township arising as a result of the construction of the Redevelopment Project through the construction or conversion of seventy-one housing units (as defined therein, the "COAH Units"). The satisfaction of these obligations has been affected by the unprecedented market and economic forces of the last twelve months. Therefore, the parties wish to allow the use of alternative mechanisms to provide these affordable housing units.

This letter agreement will serve to formalize our agreement that a new subsection (d) shall be added to Section 2.3 to read as follows:

"(d) With respect to the 71 COAH Units to be provided by Redeveloper in accordance with the foregoing section, the provision of up to 12 COAH Units shall be deemed to have occurred if: (i) the Redeveloper submits to the Township a written certification of its intent to subsidize the construction, rehabilitation, or conversion of affordable housing units in an amount and at a level sufficient to receive credit for that number of affordable housing units pursuant to COAH Regulations and all other Applicable Laws. The notice shall state the number of COAH Units requested to be provided in this manner, contact information for the entity receiving the subsidy, and the intended amount and date of the proposed

subsidy; (ii) the Redeveloper, having made such a showing, obtains the written consent of the Township, which shall not be unreasonably withheld, delayed, conditioned or denied. For purposes of this section, the Mayor of the Township is hereby authorized to grant such consent and no further additional governmental action would be needed to effectuate the consent described herein; and (iii) once authorized, the Redeveloper shall file with the Township a certification of the recipient entity that the subsidization has in fact occurred, as well as the date and amount with respect to same. The relevant number of COAH Units shall be deemed to be provided as of the date that the certification of the recipient entity described in this Section 2.3(d)(iii) is received by the Township."

The balance of Section 2.3 and all other provisions of the Redevelopment Agreement shall remain unmodified in force and effect. Please have Redeveloper indicate its agreement to the foregoing by executing a copy of this letter and returning it to my attention via facsimile and Federal Express. By signing this letter, we are each representing that we have the full authority and power to do so.

Sincerely,

John F. McKeon
Mayor

Agreed to on behalf of Prism Green Associates IV, L.L.C.:

Name:
Title:

Name:
Title: