

Exhibit B

Phase 1 Infrastructure Construction Agreement

PHASE 1 INFRASTRUCTURE CONSTRUCTION AGREEMENT

by and between

THE TOWNSHIP OF WEST ORANGE, as Redevelopment Entity,

and

**PRISM GREEN ASSOCIATES IV, LLC, on behalf of, and as agent for, GP 177 Main
Urban Renewal, LLC**

Dated: _____, 2014

PHASE 1 INFRASTRUCTURE CONSTRUCTION AGREEMENT

THIS PHASE 1 INFRASTRUCTURE CONSTRUCTION AGREEMENT (“**Agreement**”) is made this _____ day of _____, 2014 by and between the **TOWNSHIP OF WEST ORANGE** (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, acting 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, 200 Broadacres Drive, Bloomfield, New Jersey 07003 (“**Prism**”), acting on behalf of, and as agent for, GP 177 Main Urban Renewal, LLC (“**GP 177**”).

WITNESSETH

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

WHEREAS, on _____, 2014, Prism and the Township entered into that certain “**Modification Agreement**” governing the Phase 1 Redevelopment Project, as such term is defined therein; and

WHEREAS, in accordance with the Long Term Tax Exemption Law of 1992, as amended and supplemented, *N.J.S.A. 40A:20-1 et seq.* (the “**Long Term Tax Exemption Law**”), Prism created and established Prism Green Urban Renewal Associates IV, LLC (“**PG IV**”) and is its sole member; and

WHEREAS, in accordance with the Long Term Tax Exemption Law, PG IV created and established GP 177 and is its sole member; and

WHEREAS, in accordance with Section 8.2 of the Modification Agreement , Prism and GP 177 entered into that certain “Assignment and Assumption Agreement”, as acknowledged by the Township, dated _____, 2014 (the “**Assignment Agreement**”), whereby, inter alia, Prism assigned its rights, duties and obligations as set forth in the Modification Agreement to GP 177, provided however, as set forth in the Assignment Agreement, Prism remains primarily liable for the performance of GP 177’s respective duties and obligations; and

WHEREAS, for purposes of this Agreement and the undertaking of the Phase 1 Infrastructure Project, as such term is defined herein, Prism, as the sole member of PG IV, the sole member of GP 177, is acting on behalf of, and as the agent for, GP 177 and shall hereinafter be referred to as the “**Redeveloper**” for purposes of this Agreement; and

WHEREAS, defined terms used but not specifically defined herein shall have the meanings ascribed to them in the Modification Agreement; and

WHEREAS, in accordance with the terms and conditions of the Modification Agreement, Redeveloper has undertaken to enter into this Agreement setting forth, among other things, the terms, conditions, and specifications pertaining to Redeveloper's obligation to construct or install, or to cause to be constructed or installed, the Phase 1 Infrastructure Improvements (as hereinafter defined) and if and as required to convey ownership thereof to the Township or to Third Party Utility Providers, as such term is defined herein, as the case may be, all in accordance with the terms and conditions of the Modification Agreement and this Agreement; and

WHEREAS, the Modification Agreement provides that upon the satisfaction of certain terms and conditions, including the Satisfactory Resolution of the Pending Litigation (as defined below), the Township will pursue in good faith the issuance of not to exceed \$6,300,000 general obligation bonds or notes of the Township to provide funds for the Phase 1 Infrastructure Improvements, as defined therein, environmental remediation, public parking improvements, and costs of issuance of such obligations (the "**Bonds**"),

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the Township and Redeveloper agree as follows:

ARTICLE I

GENERAL PROVISIONS

1.1 Definitions. As used herein, each of the following terms has the indicated meanings:

"AAA": American Arbitration Association.

"Accept, Accepted, Acceptance": Means all or any portion of the Work that is approved and finally accepted by the Township or a Third Party Utility Provider following a required submission or review, or both, as and to the extent provided in the Phase 1 Infrastructure Project Matrix comprising Exhibit C attached hereto. Without limiting the generality of the foregoing sentence, as to a completed Phase 1 Infrastructure Improvement, "Accept, Accepted, or Acceptance" shall mean that the Project Manager has tested or inspected such Phase 1 Infrastructure Improvement and has determined that it is suitable for its intended purpose and has been constructed or installed in compliance with the applicable Final Plans and Specifications.

"Americans with Disabilities Act": 42 U.S.C. §12101 *et seq.*

"Arbitration Rules": The Construction Industry Dispute Procedures Arbitration Rules of the AAA.

“Bonds”: Upon the satisfaction of certain terms and conditions set forth in the Modification Agreement, including the Satisfactory Resolution of the Pending Litigation (as defined below), the issuance of not to exceed \$6,300,000 general obligation bonds or notes of the Township to provide funds for the Phase 1 Infrastructure Improvements, environmental remediation, public parking improvements, and costs of issuance of such obligations.

“Budget”: A projection or projections of Phase 1 Infrastructure Project costs prepared by the Redeveloper on the basis of bid results and submitted to the Township for review and Acceptance, which, when Accepted by the Township, shall constitute the approved Budget for the Phase I Infrastructure Project.

“Builders’ Risk Insurance Policy”: The insurance policy(s) as set forth in Section 14.1.2 hereof.

“Bond Proceeds”: The proceeds from the Bonds that shall be held by the Trustee for purposes of, among other things, funding, or otherwise reimbursing the Redeveloper, for all or a portion of the Phase 1 Infrastructure Project in accordance with the terms hereof.

“Business Day”: Any day other than (a) a Saturday or Sunday, (b) a federal or state holiday or other day on which the offices of the Township of West Orange are closed.

“CERCLA”: *The Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. §9601 et seq.*

“Change Order”: A written instrument, issued after execution of this Agreement, signed by the Township, to the extent required pursuant to the Phase 1 Infrastructure Project Matrix attached hereto as Exhibit C, and Redeveloper, stating their agreement upon a deviation in the quantity or character of work, services, or materials related to a Construction Contract or Subcontract (including but not limited to changes in the Final Plans or Specifications for Phase 1 Infrastructure Improvements), and quantifying the impact of such deviation or change upon the Eligible Costs, or the Redeveloper’s Costs, as the case may be, relating to such Construction Contract or Subcontract and on the Budget (as the same may have been affected by prior Change Orders). All Change Orders shall be in writing and shall be numbered sequentially.

“Commercial General Liability Insurance Policy”: The insurance policy(s) as set forth in Section 14.1.1 hereof.

“Construction Contract”: An agreement by and between the Redeveloper and a third party to perform all or a portion of the Work hereunder wherein such third party may enter into a Subcontract for all or a portion of the Work with a Subcontractor.

“Contract Documents”: This Agreement, the Final Plans and Specifications, the Redevelopment Plan, the Modification Agreement, the Phase 1 Financial Agreement, the Special Assessment Agreement, and the Trust Agreement, as each as may be amended from time to time in accordance with their respective terms.

“Contractor”: A person or entity having a Construction Contract with the Redeveloper to perform any portion of the Work, but shall not include any Third Party Utility Provider or its subcontractors or assignees.

“Contractor’s Pollution Legal Liability Insurance Policy”: The insurance policy(s) as set forth in Section 14.6 hereof.

“County”: Essex County, New Jersey.

“Default”: Means (i) a condition or event which constitutes or would constitute, after notice or lapse of time or both, an Event of Default hereunder; and (ii) a “Default” or “Event of Default” under the terms of the Modification Agreement.

“Deliverables”: Individual components of the Phase 1 Infrastructure Improvements, as set forth in the Phase 1 Infrastructure Project Matrix attached hereto as Exhibit C.

“DEP”: The New Jersey Department of Environmental Protection.

“Design Submissions”: Technical, engineering and design Plans and Specifications for the Phase 1 Infrastructure Improvements, submitted to the Project Manager, on behalf of the Township, or to the appropriate Third Party Utility Provider for review and Acceptance in accordance with the Phase 1 Infrastructure Project Matrix attached hereto as Exhibit C.

“Dispute”: A disagreement regarding (i) Eligible Costs, (ii) sufficiency or Acceptance of the Work, (iii) a claim of Default, or (iv) any other disagreement between the Parties regarding any provision herein.

“Dispute Resolution”: The process for the resolution of a Dispute as set forth in Article XIX hereof.

“Effective Date”: The date set forth on the first page of this Agreement.

“Eligible Costs”: Those itemized expenses and costs as more particularly described in Article IX hereof and actually incurred in connection with the design and construction of the Phase 1 Infrastructure Improvements, to be authorized by the Township, as and to the extent set forth on the Phase 1 Infrastructure Project Matrix comprising Exhibit C attached hereto, for payment or reimbursement from the Bond Proceeds by the Trustee, to the extent applicable.

“Environmental Law(s)”: As defined in the Modification Agreement.

“Event(s) of Default”: As defined in Section 18.1 hereof.

“Field Order”: Authorization for a minor change or deviation in the quantity or character of work, services or materials related to a Construction Contract or Subcontract for the construction or installation of Phase 1 Infrastructure Improvements, resulting in a change in amount that does not exceed the lesser of **TEN THOUSAND and 00/100 (\$10,000) DOLLARS**

or **TEN (10%) PERCENT** of the Eligible Costs related to such Subcontract. All Field Orders shall be memorialized in writing signed by the Project Manager, to the extent such Field Order shall be subject to the review and approval of the Township in accordance with the Phase 1 Infrastructure Project Matrix attached hereto as Exhibit C.

“Final Completion of Work Report”: A written report required to be filed by the Redeveloper in support of its request for, or payment of, Final Payment, which shall include: the Final Payment Requisition, to the extent applicable; a certification that no disputes or litigation are contemplated or have been filed with respect to any Construction Contract or Subcontract; a certification that the Redeveloper, Redeveloper’s Engineer, Other Professionals, Contractors, Subcontractors and Third Party Utility Providers will have been paid in full upon their receipt of their portion of the Final Payment; and a certification that the Redeveloper and the Project Manager have each examined the Contract Documents, Construction Contracts and Subcontracts and, in their best professional judgments, after diligent inquiry and on the basis of their observations and inspections, the Phase 1 Infrastructure Improvements, including all Final Punch List items, have been completed in accordance therewith, and that the Final Payment is due.

“Final Payment”: An amount equal to the unpaid balance of all amounts due under a Construction Contract or Subcontract in accordance with the terms hereof, including retainage where applicable.

“Final Payment Requisition”: A Requisition satisfying the requirements for Final Payment, to the extent that the Final Payment shall be paid from the Bond Proceeds.

“Final Plans and Specifications”: The 100% complete technical, engineering and design plans and specifications for the relevant Phase 1 Infrastructure Improvements as Accepted by the Township or Third Party Utility Provider as set forth in the Phase 1 Infrastructure Project Matrix in Exhibit C attached hereto.

“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 its obligations hereunder or of the Work or any portion of the Work by reason thereof, including, but not limited to: the Pending Litigation, third-party litigation that enjoins performance of the Work or implementation of the Phase 1 Infrastructure Obligations or the relevant phase or portion thereof; 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 Phase 1 Infrastructure construction Schedule(s) are 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; strikes or similar labor action by equipment or material suppliers or transporters, or unavailability of necessary materials (*provided* that there are no commercially reasonable alternatives to avoid the impact thereof on the progress of the Work); acts of Third Party Utility Providers, or the failure to act thereby, beyond the reasonable control of the Redeveloper; and unknown and unforeseen environmental conditions, but only to the extent the discovery thereof impedes performance and progress of the Work.

“Governmental Body”: Any Federal, State, County or local agency, department, commission, authority, court, or tribunal and any successor thereto, exercising executive, legislative, judicial or administrative functions of or pertaining to government.

“Hazardous Material(s)”: Any substance, material or waste, whether liquid, gaseous or solid and any pollutant or contaminant, that is toxic, hazardous, explosive, corrosive or radioactive, or that is defined, listed or regulated under any Environmental Law, including without limitation, solid waste, petroleum, polychlorinated biphenyls and urea formaldehyde. “Hazardous substances” means the “environmental hazardous substances” on the environmental hazardous substances list adopted by the DEP pursuant to *N.J.S.A. 34:5A-4*; such elements and compounds, including petroleum products, which are defined as such by the DEP, after public hearing and which shall be consistent to the maximum extent possible with and which shall include, the list of hazardous substances adopted by the EPA pursuant to Section 311 of the *Federal Water Pollution Control Act Amendments of 1972*, Pub.L.92-500, as amended by the *Clean Water Act of 1977*, Pub.L.95-217 (33 U.S.C. § 1251 *et seq.*); the list of toxic pollutants designated by Congress or the EPA pursuant to Section 307 of that act; and the list of hazardous substances adopted by the EPA pursuant to Section 101 of *CERCLA*; *provided* that sewage and sewage sludge shall not be considered as hazardous substances for the purposes of *N.J.S.A. 58:10-23.11 et seq.*

“Law(s)”: All laws, codes, ordinances, statutes, rulings, orders, decrees, directives and regulations promulgated or issued by any Governmental Body.

“Liens”: All liens, claims, security interests, or encumbrances arising out of or in connection with the Work.

“New Jersey Law Against Discrimination”: *N.J.S.A. 10:5-1 et seq.*

“New Jersey Prevailing Wage Act”: *N.J.S.A. 34:11-56.25 et seq.*

“New Pollution Condition”: shall mean environmental conditions, whether known or unknown, on, at or under any Phase 1 Infrastructure Improvement Location which first occur or exist after the commencement of the Work.

“Non-Third Party Utility Work”: All Work other than Third Party Utility Work.

“Other Professionals”: Other professionals such as landscape architects or traffic engineers retained to perform certain design and engineering services.

“Parties”: The Township and the Redeveloper.

“Party”: The Township or the Redeveloper.

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

11T3, which reviewed the decision of the Law Division in docket number ESX-L-3587-12.

“Phase 1 Financial Agreement”: As defined in the Modification Agreement.

“Phase 1 Infrastructure Development Approval(s)”: All Governmental Body and Third Party Utility Provider agreements, approvals, authorizations, permits or licenses which are required for the commencement and completion of the Work.

“Phase 1 Infrastructure Improvements”: All Work set forth in the Phase 1 Infrastructure Project Matrix attached hereto as Exhibit C and any other item agreed upon by the Parties, construction or installation of which by, or on behalf of, Redeveloper is necessary to satisfy the Redeveloper’s Phase 1 Infrastructure Obligations under Section 4.1(c) of the Modification Agreement.

“Phase 1 Infrastructure Improvements Locations”: The various places and locations where Phase 1 Infrastructure Improvements will be constructed or installed under the Contract Documents, including during the course of construction or installation thereof the surrounding work area, and any storage or staging area related to such construction or installation.

“Phase 1 Infrastructure Obligations”: The “Phase 1 Infrastructure Obligations” as defined in Section 4.1(c) of the Modification Agreement.

“Phase 1 Infrastructure Project”: The design, acquisition, construction and installation of all Phase 1 Infrastructure Improvements in accordance with the Final Plans and Specifications and the provisions of this Agreement, and the performance of all Work in connection therewith.

“Phase 1 Infrastructure Project Matrix”: The chart of Work, Deliverables and responsibilities, comprising Exhibit C attached to this Agreement.

“Phase 1 Infrastructure Project Schedule”: means the agreed upon timetable(s) and performance milestones for design, obtaining Phase 1 Infrastructure Development Approvals, site preparation, and completion of construction of the Phase 1 Infrastructure Improvements as may be modified or adjusted from time to time in accordance with this Agreement.

“Plans”: Technical, engineering and design drawings, plats, surveys, schematics, and other graphic materials relating to the Phase 1 Infrastructure Improvements and prepared as part of the design and engineering services for the Phase 1 Infrastructure Project.

“Pre-Existing Contamination”: means all environmental conditions on, at, under or emanating from any Phase 1 Infrastructure Improvement Location occurring or existing on or before the commencement of the Work by Redeveloper.

“Project Manager” means a duly qualified and licensed engineer or engineering firm retained as a consultant by the Township to oversee the day-to-day coordination of the Work on behalf of the Township and to conduct all required inspections on behalf of the Township, whose fixed fee compensation, which shall be mutually agreed upon by the Township and the

Redeveloper, shall be paid from the Bond Proceeds, to the extent applicable, as an Eligible Cost, or alternatively, by the Redeveloper as a Redeveloper Cost. As further set forth herein, the Project Manager may provide certain engineering services at the request of the Redeveloper.

“Punch List”: A list of incomplete or defective items, services, materials, or results which are to be completed or resolved by a Contractor or Subcontractor before Acceptance of the relevant portion of the Non-Third Party Utility Work by the Township and before issuance of the Final Payment for such Non-Third Party Utility Work.

“Redeveloper”: Prism Green Associates IV, LLC, acting on behalf of, and as agent for, GP 177.

“Redeveloper’s Costs”: All costs for the performance of the Work not otherwise paid from Bond Proceeds.

“Redeveloper’s Engineer”: Bohler Engineering or such other person or entity designated as the Redeveloper’s Engineer hereunder.

“Redevelopment Plan”: The Township redevelopment plan known as “Downtown Redevelopment Plan Historic West Orange” dated March 2003, as amended and supplemented by the First Amendment adopted August 15, 2006, as further amended and modified by the Second Amendment adopted March 6, 2007, as further amended and modified by the Third Amendment adopted March 8, 2011, and as may be further amended or modified.

“Redevelopment Project”: As defined in the Original Redevelopment Agreement, and which definition shall include the Phase 1 Redevelopment Project.

“Requisition”: A request for payment for Eligible Costs from the Bond Proceeds, all necessary certifications as to the quantity of completed Work to date and completed payment(s) for the applicable Work up to and including the prior disbursement, and with the exception for those requests for payment for services provided by Third Party Utility Providers, substantially in the form of American Institute of Architects forms G702 and G703, as such forms may be amended from time to time.

“RSIS”: The “*New Jersey Residential Site Improvement Standards*”, N.J.A.C. 5:21-1.1 *et seq.*, as the same may be modified or amended from time to time.

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

“Scope of Work”: As described in Section 3.1 hereof.

“Specifications”: Standards for the Phase 1 Infrastructure Improvements, including location, materials, construction methods, and performance.

“State”: The State of New Jersey.

“Subcontract”: An agreement between a Contractor and a third party to perform all or a portion of the Work hereunder.

“Subcontractor”: A person or entity having a Subcontract with a Contractor to perform any portion of the Work, but shall not include any Third Party Utility Provider or its subcontractors or assignees.

“Third Party Utility Provider”: As to sanitary sewerage, the Passaic Valley Sewerage Commission and the City of Orange, or their affiliates, successors or assigns; as to potable water service, means New Jersey American Water, its affiliates, successors or assigns; as to gas and electric utilities service, means Public Service Electric & Gas Company, its affiliates, successors or assigns; and as to telephone, high-speed internet access, cable television and associated services, Verizon and Comcast, their respective affiliates, successors and assigns; and any other utility provider or franchisee, in each case to the extent they own infrastructure improvements or provide utilities services within or to the Township affected by or relevant to this Agreement.

“Third Party Utility Work”: All Work to be undertaken by a Third Party Utility Provider as set forth in the Phase 1 Infrastructure Project Matrix, attached hereto as Exhibit C.

“Township”: The Township of West Orange. Unless otherwise specified herein or required by applicable Law, the Project Manager shall be authorized to act on behalf of the Township and to receive all submissions to the Township required or permitted hereunder.

“Township Change Order”: As defined in Section 11.5 hereof.

“Township Infrastructure Costs”: All costs for the procurement, design and construction of Phase 1 Infrastructure Improvements requested by the Township outside of the Scope of Work pursuant to a Township Change Order and any costs and expenses of the Township for the investigation and remediation of any Pre-Existing Contamination located on, in or under lands owned by the Township in accordance with Section 5.9.3 hereof.

“Trust Agreement”: That certain trust agreement, to be dated as of the date of the issuance of the Bonds, by and between the Township and a corporate trust institution, as acknowledged by Prism and GP 177, governing the delivery, deposit, application, investment, requisition, disbursement and withdrawal of Bond Proceeds.

“Trustee”: The Trustee named in the Trust Agreement.

“UCC”: shall mean the Uniform Commercial Code.

“*United States Bankruptcy Code*”: 11 *U.S.C.* § 1 *et seq.* and the accompanying regulations, as amended from time to time.

“**Work**”: All work, services, actions, and activities required for implementing the Phase 1 Infrastructure Project and satisfying the Phase 1 Infrastructure Obligations, including but not limited to the design and construction of the Phase 1 Infrastructure Improvements and such other Phase 1 Infrastructure Project-specific management and administration as shall be necessary to fully comply hereunder or to satisfy the Phase 1 Infrastructure Obligations.

1.2 General.

1.2.1 The Parties hereby acknowledge, understand, represent and agree that the Third Party Utility Work may be performed by one or more Third Party Utility Providers and the acts, or failure to act, of such Third Party Utility Provider may impact or alter the Phase 1 Infrastructure Project, including without limitation, the Work, the Phase 1 Infrastructure Project Schedule, the Budget, and other matters related thereto. The Redeveloper shall use its reasonable skill and judgment to ensure that any and all Third Party Utility Providers comply with the provisions and the intent of this Agreement, including without limitation, the performance and completion of the Third Party Utility Work. To the extent the actions or inactions of a Third Party Utility Provider negatively impact the Phase 1 Infrastructure Project, or any matters related thereto, the Redeveloper shall use its reasonable skill and judgment to minimize any such negative impacts. To the extent that any such actions or inactions of a Third Party Utility Provider are beyond the reasonable control of the Redeveloper and cannot otherwise be reasonably minimized through the reasonable skill and judgment of the Redeveloper, such actions or inactions and the corresponding impacts on the Phase 1 Infrastructure Project and matters related thereto shall not constitute a Default, or an Event of Default, hereunder.

1.2.2 Redeveloper agrees to perform the Non-Third Party Utility Work and, where applicable, to use its reasonable skill and judgment to cause the Third Party Utility Provider to perform the Third Party Utility Work, all in accordance with the terms and conditions hereof. The Township agrees to allow Eligible Costs to be paid or reimbursed from Bond Proceeds, to the extent applicable.

1.2.3 The Redeveloper agrees to complete the Non-Third Party Utility Work and, where applicable, to use its reasonable skill and judgment to cause the Third Party Utility Provider to complete the Third Party Utility Work, in an efficient, economical and timely manner in accordance with the Phase 1 Infrastructure Project Schedule and the Contract Documents. Except where explicitly stated herein that a Party may act in its own sole discretion, no approval or consent shall be unreasonably withheld, conditioned, or delayed by either Party. Every approval or consent required hereunder shall be in writing.

1.2.4 The Parties hereby acknowledge, understand, represent and agree that Work may begin prior to the issuance of any Bonds, provided however, that prior to the undertaking of any Work, the Redeveloper shall have complied with its obligations hereunder

and satisfied all of the conditions set forth herein required to be satisfied prior to the undertaking of any Work, including without limitation, the submission of the Deliverables to the Township for its review and approval, to the extent such Deliverables are subject to the review and approval of the Township in accordance with the Phase 1 Infrastructure Project Matrix attached hereto as Exhibit C. In such event, upon the issuance of the Bonds, and provided there are Bond Proceeds, the Redeveloper shall be entitled to a reimbursement of any Eligible Costs incurred or paid by the Redeveloper prior to the issuance of the Bonds, provided such Work shall be performed in accordance with the terms hereof, the Redeveloper shall have complied with its obligations as set forth herein and the Redeveloper shall not otherwise be in Default hereunder.

1.2.5 In the event that the Bonds, or any series thereof, are issued in such a manner that there are no proceeds of such Bonds, or alternatively, the proceeds of such Bonds are not otherwise held by the Trustee for the purpose of funding, or otherwise providing reimbursement to the Redeveloper, for costs of the Phase 1 Infrastructure Project, the Parties hereto hereby expressly acknowledge, understand, represent and agree that, for the purposes of this Agreement, there shall be no Bond Proceeds.

1.3 Extent of this Agreement. This Agreement together with the other Contract Documents represents the entire and integrated agreement between the Parties with respect to the Phase 1 Infrastructure Project, and, with respect to the Parties, supersedes all prior negotiations, representations or agreements, either written or oral, except for the other Contract Documents, each of which is incorporated herein by reference and shall be read in *pari materia* with this Agreement. This Agreement may only be amended by a written instrument signed by the Parties.

ARTICLE II

FUNDING

2.1 Basis of Payment. The basis of payment to the Redeveloper, or alternatively, to any Contractor, Subcontractor, Third Party Utility Provider, Redeveloper's Engineer or Other Professional from the Bond Proceeds shall be Eligible Costs, as identified on each Requisition.

2.2 Construction Contract Review and Approval. The Township shall review and approve all Construction Contracts and those Change Orders subject to the Township's review and approval in accordance with the Phase 1 Infrastructure Project Matrix attached hereto as Exhibit C within the time periods set forth in this Agreement, which approvals shall not be unreasonably withheld so long as such documents to be approved are in compliance with the requirements of this Agreement and are otherwise acceptable to all Third Party Utility Provider(s), if any, having an interest therein.

ARTICLE III

GENERAL SCOPE OF WORK

3.1 Scope of Work. The Scope of Work shall be as set forth in the Contract Documents, including without limitation the design, bidding, procurement, construction and installation of the Phase 1 Infrastructure Improvements.

3.2 Redeveloper's Cooperation. To the extent that the Scope of Work includes the construction or installation of certain Phase 1 Infrastructure Improvements (e.g., walkways, fire hydrants, lamp posts, *etc.*) upon, over or under the land owned or controlled by the Redeveloper or its affiliates or successors in interest, Redeveloper shall cooperate in granting the required easements, ancillary right of entry, access agreements, or such other rights as may be reasonably required in connection therewith. Redeveloper recognizes and acknowledges that this Agreement and the construction or installation of the Phase 1 Infrastructure Improvements are in furtherance of and necessary to the implementation of Phase 1 Redevelopment Project, and in consideration thereof agrees to grant or to cause to be granted all such required rights or interests without the payment of any additional consideration by the Township or any Third Party Utility Provider.

ARTICLE IV

SCHEDULE(S) OF THE WORK

4.1 Phase 1 Infrastructure Project Schedule. The Work shall proceed in accordance with one or more agreed upon schedules of Work. An initial schedule of Work is attached hereto as Exhibit B, which shall be tolled subject to the Satisfactory Resolution of the Pending Litigation.

4.2 Reserved.

4.3 Reserved.

4.4 Suspension of Work. Redeveloper shall not suspend performance of the Work unless notified to do so by the Township or unless otherwise expressly permitted hereunder. The Township may notify the Redeveloper to suspend all or any part of the Work upon the occurrence of:

- (a) An order by any Governmental Body to stop or suspend any aspect of the Work;
- (b) A tolling event under the Modification Agreement, if the Township in its discretion elects to suspend the Work in connection therewith;
- (c) An Event of Default under this Agreement or the Modification Agreement, which has not otherwise been cured in accordance with the terms hereof and thereof;

- (d) A material change to the Phase 1 Redevelopment Project, or to the Phase 1 Infrastructure Improvements required to service same; or
- (e) Circumstances requiring the suspension of the Work to protect the health, safety and welfare of the public.

Upon Redeveloper's receipt of notice pursuant to this Section 4.4, the Redeveloper shall cause all Non-Third Party Utility Work to stop, and shall request of any Third Party Utility Provider that it stop all applicable Third Party Utility Work, until it has received further notice from the Township to resume any such Work. Remobilization costs incurred by Contractors, Subcontractors or Third Party Utility Providers shall be deemed to be Eligible Costs.

ARTICLE V

RESPONSIBILITIES OF REDEVELOPER

5.1 General Statements of Responsibilities. The Redeveloper shall be responsible for all Work consistent with the terms and conditions of this Agreement and the Final Plans and Specifications, and with all Phase 1 Infrastructure Development Approvals, and applicable Laws. The Non-Third Party Utility Work shall be provided by the Redeveloper and, under the Redeveloper's control and supervision, by the Redeveloper's Engineer, Other Professionals, Contractors, Subcontractors and materials suppliers. The Third Party Utility Work shall be provided by the Third Party Utility Providers and the Redeveloper shall use its reasonable skill and judgment to ensure that the Third Party Utility Work is performed and completed in accordance with this Agreement.

5.2 Timeliness; Reasonable Care. The Redeveloper shall take all actions necessary to perform the Non-Third Party Utility Work, and in the case of the Third Party Utility Work, shall use its reasonable skill and judgment to cause the performance thereof, and complete, or cause the completion of, all the responsibilities set forth herein and required to accomplish the tasks hereunder in a timely, cost-efficient and professional manner. The Redeveloper shall exercise reasonable skill and judgment in the performance of the Non-Third Party Utility Work and shall use its reasonable skill and judgment to ensure that reasonable skill is exercised in the performance of the Third Party Utility Work to be performed by any and all Third Party Utility Providers. Redeveloper shall be solely responsible for all administration, coordination, compliance, construction, designs, means, methods, techniques, sequences, procedures and safety requirements for all of the Non-Third Party Utility Work.

5.3 Reserved.

5.4 Compliance with Reporting and Document Production. The Redeveloper and its Contractors and Subcontractors shall comply with all of the reporting and document production requirements set forth herein, and failure to do so shall constitute a Default

hereunder. The Redeveloper shall use its reasonable skill and judgment to cause any and all Third Party Utility Providers to comply with the same.

5.5 Giving Notices. The Redeveloper or its Contractors and Subcontractors shall give all legally required public and advertising notices applicable to the Phase 1 Infrastructure Development Approvals and to the performance of the Non-Third Party Utility Work.

5.6 Project Administration.

5.6.1 Financial Records. The Redeveloper shall keep full and detailed accounts of its financial management of the Phase 1 Infrastructure Project. The Township shall be afforded access to all the Redeveloper's records, books, correspondence, instructions, drawings, receipts, vouchers, memoranda and similar data relating to this Agreement upon notice during normal business hours. The Redeveloper shall preserve all such records for a period of seven (7) years after the Final Payment, or longer where required by Law.

5.6.2 Record Copy. The Redeveloper shall maintain one (1) record copy of each of the Contract Documents, Construction Contracts and Subcontracts. Upon completion of the Work, the Redeveloper shall deliver all such record copies to the Township.

5.7 Design and Engineering Services.

5.7.1 Redeveloper's Engineer and Other Professionals. Design and engineering services relating to the Phase 1 Infrastructure Improvements and the Phase 1 Infrastructure Project shall be provided on behalf of the Redeveloper by the Redeveloper's Engineer and Other Professionals retained by Redeveloper, or by a Third Party Utility Provider's engineer or other professionals, or the Redeveloper may request that the Project Manager provide such engineering services. All Final Plans and Specifications shall be executed, certified, or sealed, by the Redeveloper's Engineer, the Project Manager, such Other Professionals, or by a Third Party Utility Provider's engineer or other professionals, as applicable.

5.7.2 Plans and Specifications. All Design Submissions shall be subject to approval and Acceptance by the Township or applicable Third Party Utility Provider, as and to the extent set forth on the Phase 1 Infrastructure Project Matrix comprising Exhibit C attached hereto. Specifications for Phase 1 Infrastructure Improvements shall set forth in detail the requirements for the Phase 1 Infrastructure Improvements and either (i) shall be provided by the Township Engineer, Project Manager, or by the relevant Third Party Utility Provider, or (ii) if not so provided, shall be proposed by the Redeveloper's Engineer in Design Submissions submitted for approval and Acceptance by the Township (or by the Third Party Utility Providers, as necessary). Final Plans and Specifications consistent therewith shall be prepared by Redeveloper's Engineer, or at the request of the Redeveloper, the Project Manager, in conformance therewith and with all applicable Laws, and submitted to the Township for approval and Acceptance, to the extent required in accordance with the Phase 1 Infrastructure Project Matrix attached hereto as Exhibit C. A copy of the Final Plans and Specifications and of all applicable Change Orders and Field Orders which modify the Final Plans and Specifications shall be maintained at all times by Redeveloper. In the absence of Specifications from the

Township Engineer, Project Manager, or the Third Party Utility Providers, or to the extent required by applicable Law, the specifications, if any, set forth in the RSIS, as the same may be amended from time to time, shall apply.

5.8 Construction Services.

5.8.1 General. Construction services shall include the procurement and construction or installation of the Phase 1 Infrastructure Improvements.

5.8.2 Safety Precautions. The Redeveloper shall take, directly or through its Contractors and Subcontractors, or use its reasonable skill and judgment to cause any Third Party Utility Provider to take, all necessary safety precautions at and around all Phase 1 Infrastructure Improvement Locations. Redeveloper and its Contractors and Subcontractors shall comply with all applicable Laws to prevent accidents or injury to person or property on, about, or adjacent to the sites of the Non-Third Party Utility Work and Redeveloper shall use its reasonable skill and judgment to ensure that any Third Party Utility Provider comply with the same. This provision shall not operate to relieve or be interpreted or construed as relieving by implication the Redeveloper's Engineer, Other Professionals, any Contractor, Subcontractor or any Third Party Utility Provider of their respective responsibilities for the safety of persons or property in the performance of their Work or for compliance with all applicable Laws.

5.8.3 Cleanliness. At all times, the Redeveloper and its Contractors and Subcontractors shall ensure, and Redeveloper shall use its reasonable skill and judgment to cause any and all Third Party Utility Providers to ensure, that the Phase 1 Infrastructure Improvement Locations and all other Work sites and adjacent streets and highways are kept clean and free of debris and waste materials resulting from the construction of the Phase 1 Infrastructure Improvements, within generally accepted industry standards. At the completion of the construction of the Phase 1 Infrastructure Improvements, the Redeveloper and its Contractors and Subcontractors shall remove, and Redeveloper shall use its best efforts to cause any and all Third Party Utility Providers to remove, all construction equipment, tools, surplus materials, waste materials and debris from the Phase 1 Infrastructure Improvement Locations.

5.8.4 Traffic Safety and Access. The Redeveloper and its Contractors and Subcontractors shall maintain, and Redeveloper shall use its reasonable skill and judgment to cause any and all Third Party Utility Providers to maintain, safe vehicular and pedestrian access around or across the Phase 1 Infrastructure Improvement Locations sufficient to maintain ingress and egress to adjoining parcels of land. Provision and operation of alternate traffic routes shall be approved by the Township and shall be coordinated with the Township Police Department and the Township Fire Department, and, if and as applicable, the County or State. Construction staging area locations on public lands shall be limited to area(s) designated by the Township in consultation with Redeveloper and any all applicable Third Party Utility Providers.

5.8.5 Security. The Redeveloper and its Contractors and Subcontractors shall determine, install and maintain, and Redeveloper shall use its reasonable skill and judgment to cause any and all Third Party Utility Providers to install and maintain, all necessary security

procedures, monitoring equipment, materials or services necessary to protect all equipment, materials and work and staging areas from theft, fire and other losses.

5.9 Environmental Matters.

5.9.1 Safety Precautions Regarding Hazardous Material. Redeveloper acknowledges that the Work may be conducted in areas where there may be Hazardous Materials. The Redeveloper and its Contractors and Subcontractors shall properly prepare for and take all appropriate safety precautions in conducting the Non-Third Party Utility Work in affected areas and the Redeveloper shall use its reasonable skill and judgment to cause any and all Third Party Utility Providers to comply with the same.

5.9.2 Redeveloper's Due Diligence. Prior to commencement of the Work, the Redeveloper shall review any and all documents provided to the Redeveloper regarding the environmental conditions at the Phase 1 Infrastructure Improvements Locations, including without limitation any deed notices, environmental reports or federal, state or local regulatory agency documents.

5.9.3 Environmental Conditions. It is understood and agreed that the Township has not made, and does not make, any warranties or representations with respect to the physical condition of the Phase 1 Infrastructure Improvement Locations, including the environmental condition of the Phase 1 Infrastructure Improvement Locations. That notwithstanding, the Township (1) at its sole cost and expense shall be responsible for all investigation and remediation of any Pre-Existing Contamination located on, in or under lands owned by the Township and (2) shall not be responsible for additional costs incurred by Redeveloper as a result of acts or omissions of the Redeveloper which materially affect, disturb, exacerbate or aggravate any Pre-Existing Contamination on, in or under lands owned by the Township. Redeveloper, at its sole cost and expense, shall be responsible for all investigation and remediation of any Pre-Existing Contamination on lands not owned by the Township and any New Pollution Condition, whether known or unknown, on or under the Phase 1 Infrastructure Improvement Locations. Neither Redeveloper nor its Contractors or Subcontractors shall knowingly, willfully or intentionally discharge or improperly dispose of Hazardous Material in connection with or during the performance of the Work and Redeveloper shall use its reasonable skill and judgment to cause any and all Third Party Utility Providers to comply with the same.

The Redeveloper shall take, cause its agents, employees, and Contractors and Subcontractors to take, and use its reasonable skill and judgment to cause any and all Third Party Utility Providers to take, all reasonable efforts to perform the Work in accordance with the Contract Documents and to account for the environmental conditions, or potential environmental conditions, in the performance thereof. Such reasonable efforts shall include avoidance of identified contaminated areas, if any and where possible, and the inclusion of the existence, or potential existence, of environmental conditions in any final design plans and Final Plans and Specifications and compliance with all regulatory documents and requirements, including but not limited to the *Technical Requirements for Site Remediation, N.J.A.C. 7:26E*, and any DEP-

approved engineering and institutional controls.

5.9.4 Discovery of Environmental Conditions. If, at any time prior to, during or subsequent to the commencement of the Work, Pre-Existing Contamination is discovered by Redeveloper, or any of its agents, employees, Contractors or Subcontractors, or Redeveloper is informed by any Third Party Utility Provider of the discovery of any Pre-Existing Contamination, on, in or under lands owned by the Township, the Redeveloper shall immediately stop Work, or request any and all Third Party Utility Providers to stop work, in the affected area and promptly notify the Township. Subject to the payment responsibilities set forth in Section 5.9.3 of this Agreement, the Redeveloper shall perform diligently and in good faith all work necessary to investigate and remediate the identified environmental conditions in accordance with applicable Law. The Parties acknowledge that the environmental investigation and remediation within the Phase 1 Infrastructure Improvement Location will be reviewed, approved and coordinated with the Township and the Project Manager and approved, as appropriate, by the DEP.

5.9.4.1 To the extent necessary, the Redeveloper shall revise the Phase 1 Infrastructure Project Schedule, the Final Plans and Specifications, and the Budget to account for any environmental condition. Upon notification by the Township, the Redeveloper shall direct the Redeveloper's Engineer or alternatively, the Project Manager, or to the extent applicable, any Third Party Utility Provider, to revise the Final Plans and Specifications to conform to the new or revised work plan, and shall negotiate Change Orders, or issue new bids for additional Work, to perform the new Work and allow for the continuance of the preceding Work. Design and engineering services performed by the Redeveloper's Engineer, Project Manager, Other Professionals or Third Party Utility Providers pursuant to this paragraph shall be submitted as Change Orders, to the extent that such Change Orders are subject to the review and approval of the Township pursuant to the Phase 1 Infrastructure Project Matrix attached hereto as Exhibit C.

5.9.5 Government Approvals Relating to Environmental Conditions. Subject to the payment responsibilities set forth in Section 5.9.3 hereof, Redeveloper shall be responsible for obtaining all applicable approvals, including but not limited to, preparation of an environmental assessment or environmental impact statement, relating to the environmental investigation and remediation within the Phase 1 Infrastructure Improvement Locations. Prior to the submission of application(s) for such approvals, Redeveloper shall provide such submission to the Township for its review and approval or disapproval. The Township shall make reasonable efforts to assist Redeveloper in obtaining all such approvals in a reasonable time frame and shall promptly (within five (5) Business Days) execute any documents to satisfy this obligation.

5.9.6 Indemnities.

5.9.6.1 To the fullest extent permitted by law, the Township shall retain liability for all Pre-Existing Contamination on, in or under any lands owned by the Township. Without limiting the generality of the foregoing, the Township shall not be responsible for damages, costs or liabilities arising from (1) actions by the Redeveloper which materially

exacerbate or aggravate any Pre-Existing Contamination on, in or under lands owned by the Township (2) Pre-Existing Contamination on lands not owned by the Township (3) the use of Hazardous Materials brought to the location of the Work by the Redeveloper (4) any intentional, willful or negligent act or omission by Redeveloper and (5) the intentional, willful or negligent noncompliance by Redeveloper with any statute, regulation, ordinance, administrative complaint, notice of violation, notice letter, executive order or instruction of any Governmental Body after the commencement of the Work.

5.9.6.2 The Redeveloper shall defend, indemnify and hold harmless the Township and its agents, successors, assigns, officers, directors and employees, from and against any and all claims, damages, losses, costs and expenses, including attorney's fees and other costs of defense whether direct, indirect or consequential, arising out of or relating to (1) actions by the Redeveloper which exacerbate or aggravate any Pre-Existing Contamination on lands owned by the Township, (2) Pre-Existing Contamination on lands not owned by the Township, (3) the use of Hazardous Materials brought to the location of the Work by the Redeveloper, (4) any intentional, willful or negligent act or omission by Redeveloper, and (5) the intentional, willful or negligent noncompliance by Redeveloper with any statute, regulation, ordinance, administrative complaint, notice of violation, notice letter, executive order or instruction of any Governmental Body after the commencement of the Work. Without limiting the generality of the foregoing, the Redeveloper shall not be responsible for damages, costs or liabilities arising from the intentional, willful or negligent noncompliance by the Township or any Third Party Utility Provider with any statute, regulation, ordinance, administrative complaint, notice of violation, notice letter, executive order or instruction of any Governmental Body after the commencement of the Work or any of the actions set forth in this Section 5.9.6.2 by a Third Party Utility Provider.

5.9.6.3 The terms of this Section 5.9.6 shall survive the completion of the Work under this Agreement, Final Payment, and/or any termination of this Agreement.

5.9.7 Delays in the Work. In the event that delays in the Work are encountered for any reason, the Parties agree to undertake reasonable steps to mitigate the effect of such delays. The Redeveloper shall include all anticipated, completed, or occurring delay events in its Phase 1 Infrastructure Project Schedule.

5.9.8 Restriction on Use. Redeveloper shall not do or suffer to be done, or keep or suffer to be kept, anything in, upon or about any Phase 1 Infrastructure Improvement Location which will violate Redeveloper's policies of hazard or liability insurance or which will prevent Redeveloper from procuring such policies in companies acceptable to the Township.

5.10 Payment Bonds, Performance Guarantees and Deposits.

5.10.1 Payment Bonding. If and as to the extent reasonably requested by the Township, each Contractor shall provide payment bonds equal to the cost of the Work ("**Payment Bonds**") as security for payment by such Contractor to all of its Subcontractors, if, but only if, payment for the Work from the Bond Proceeds is being made to the Contractor rather than directly to the Subcontractors or, there are no Bond Proceeds.

5.10.2 Performance Guarantees. To the extent not otherwise required to be provided by Redeveloper in connection with the site plan approvals for the Phase 1 Redevelopment Project pursuant to and in accordance with *N.J.S.A. 40:55D-6* and *40:55D-53* through 53.6, or otherwise required by way of deposit by Third Party Utility Providers, the Township may require Contractors to furnish performance guarantees, maintenance guarantees, or both (collectively, “**Performance Guarantees**”) in connection with the construction or installation of the Phase 1 Infrastructure Improvements. The type(s) and permissible amount(s) of such Performance Guarantees shall be determined utilizing the standards described in *N.J.S.A. 40:55D-53(a)(1)* and *(2)*.

5.10.3 Deposits. The Parties hereby expressly acknowledge and represent that a Third Party Utility Provider may require a deposit, prior to such Third Party Utility Provider undertaking any applicable Third Party Utility Work, in amount equal to the cost, or reasonable estimation thereof, of all or a portion of the applicable Third Party Utility Work, to be held by, or on behalf of, the applicable Third Party Utility Provider. Any such deposit shall be deemed an Eligible Cost hereunder and to the extent such Eligible Cost is being paid from Bond Proceeds the Redeveloper shall submit to the Trustee a Requisition requesting payment to the Third Party Utility Provider of such deposit along with such other documentation as may be reasonably requested by the Trustee or the Township, to the extent that the review and approval by the Township of such Requisition is required pursuant to the Phase 1 Infrastructure Project Matrix attached hereto as Exhibit C.

5.11 Equal Employment Opportunity; Affirmative Action. The Redeveloper and all Contractors and Subcontractors shall comply with all applicable Laws and with the “Community Initiatives” provisions of Article XII of the Modification Agreement. Without limiting the generality of the foregoing, the Redeveloper shall attempt in good faith to employ minority and female workers and to otherwise comply with the *New Jersey Law Against Discrimination* and the regulations promulgated pursuant to P.L.1975, c.127, as amended and supplemented from time to time, and with the federal *Americans with Disabilities Act*, and shall require compliance with same by the Contractors and Subcontractors. Redeveloper shall be responsible for all reporting requirements.

5.12 Prevailing Wage Law. The Redeveloper shall comply with the provisions of the *New Jersey Prevailing Wage Act, N.J.S.A. 34:11-55*, as amended and supplemented, to the extent applicable, and shall require compliance with same by the Contractors and Subcontractors.

ARTICLE VI

INTENTIONALLY OMITTED

ARTICLE VII
RESPONSIBILITIES OF THE TOWNSHIP

7.1 Specification and Design Submission Review. The Township shall, within five (5) Business Days of receipt, review, approve and Accept, propose modifications to, or reject all Design Submissions including but not limited to Final Plans and Specifications, as and to the extent set forth in the Phase 1 Infrastructure Project Matrix attached hereto as Exhibit C.

7.2 Budget Review. The Township shall, within five (5) Business Days of receipt, review, approve and Accept, propose modifications to, or reject any proposed changes to the Budget, provided however, that the Township's approval and Acceptance of any change or modification to the Budget shall not be required to the extent that such change or modification to the Budget is the result of an increase in the cost of Work payable by the Redeveloper as a Redeveloper's Cost.

7.3 Change Order Review. The Township shall, within seven (7) Business Days of receipt, review, approve and Accept, modify, or reject any requested Change Orders, as and to the extent set forth in the Phase 1 Infrastructure Project Matrix attached hereto as Exhibit C.

7.4 Requisition Review. To the extent that the costs of the Phase 1 Infrastructure Project shall be paid or otherwise funded from Bonds Proceeds, the Township shall, within seven (7) Business Days of receipt, review, approve and Accept or reject Requisitions as and to the extent set forth on the Phase 1 Infrastructure Project Matrix in Exhibit C attached hereto.

7.5 Notice of Error. If the Township becomes aware of any error, omission or failure to meet the requirements of the Contract Documents or any fault or defect in the Work, the Township shall give prompt written Notice of same to the Redeveloper; *provided, however*, that failure to give such Notice shall not excuse such error nor constitute Acceptance by the Township nor a waiver of the Township's rights with respect thereto.

ARTICLE VIII
CONSTRUCTION CONTRACTS AND SUBCONTRACTS

8.1 Procurement of Bids, Services and Goods. Redeveloper agrees to enter into Construction Contracts independently and not as agent of the Township.

8.2 Bidding. To the extent that the cost of the Phase 1 Infrastructure Project shall be paid or otherwise funded from Bond Proceeds, or unless the Township agrees otherwise, the Redeveloper shall obtain proposals on a "unit price" basis, from at least three (3) qualified bidders for each Construction Contract, other than any Construction Contract with a Third Party Utility Provider. Redeveloper shall submit a bid summary of all bid proposals and a statement to

the Township as to which bidder the Redeveloper intends to select. In the event Redeveloper's proposed Contractor is not the lowest bidder, Redeveloper shall provide written explanation of why Redeveloper considers the Contractor to be the lowest qualified bidder. Redeveloper agrees that entities prohibited from receiving a contract within the State of New Jersey pursuant to *N.J.S.A. 34:11-56.48* shall not be "qualified bidders" and shall not be eligible to bid on any aspect of the Phase 1 Infrastructure Project.

ARTICLE IX

ELIGIBLE COSTS AND BUDGET

9.1. Eligible Costs; General Obligation to Pay. The Township agrees to authorize the Trustee to pay Redeveloper, or alternatively, to pay directly to the Redeveloper's Engineer, Other Professionals, Contractors, Subcontractors and Third Party Utility Providers on behalf of the Redeveloper, for all Eligible Costs included on a Requisition from the Bond Proceeds.

9.2 Eligible Costs. The following are Eligible Costs:

9.2.1 Project-Specific Administrative Costs. The Eligible Costs to be paid or reimbursed to the Redeveloper include Project-specific administration costs incurred by its front office, including, but not limited to, fiscal administration, accounting services, legal review, production of design and engineering contracts, Construction Contracts, Subcontracts, postage, copying and all miscellaneous expenses.

9.2.2 Project Manager Costs. Documented costs for the Project Manager.

9.2.3 Design and Engineering Services Costs.

(a) Amounts due to the Redeveloper's Engineer or Other Professionals pursuant to design and engineering Subcontract(s);

(b) Amounts due to a Third Party Utility Provider's engineer or professionals as may be required pursuant to the Construction Contract with such Third Party Utility Provider; and

(c) Necessary testing, inspection and surveying fees for the Phase 1 Infrastructure Improvements incurred by, or on behalf of, the Redeveloper or for which the Redeveloper is otherwise obligated to pay.

9.2.4 Eligible Costs for Construction Services.

(a) Amounts due to Contractors, Subcontractors or Third Party Utility Providers, including without limitation, any deposits that may be required by Third Party Utility Providers as referenced in Section 5.10.3 hereof, pursuant to the Construction Contract(s) or Subcontract(s);

(b) To the extent not included in a Construction Contract or Subcontract, cost of the premiums for all insurance and bonding as may be required in accordance herewith;

(e) To the extent not included in a Construction Contract or Subcontract, permits, fees, licenses, testing, inspection and surveying costs for the Work;

(f) To the extent not included in a Construction Contract or Subcontract, all water, power and fuel costs necessary for the Work;

(g) To the extent not included in a Construction Contract or Subcontract, costs for removal of all non-hazardous substances, debris and waste materials generated during the course of construction;

(h) To the extent not included in a Construction Contract or Subcontract, costs to comply with applicable Environmental Laws in the ordinary course of the performance of the Work; *provided, however,* that Eligible Costs shall not include costs for investigation or remediation of any discharge or release of Hazardous Material except as may be provided for herein.

(i) To the extent not included in a Construction Contract or Subcontract, costs due to an emergency affecting the safety of persons and/or property other than those due to the Redeveloper's negligence; and

(j) To the extent not included in a Construction Contract or Subcontract, such other non-itemized expenses and costs that are documented and determined to be Eligible Costs related to construction services.

9.3 Ineligible Costs. Township Infrastructure Costs shall not be deemed Eligible Costs. Costs incurred to cure Defaults of the Redeveloper shall not be Eligible Costs hereunder unless otherwise agreed to in writing by the Township, which agreement shall not be unreasonably withheld.

9.4 Budget. The Parties shall establish a Budget for the Phase 1 Infrastructure Project. The Budget will be reviewed together with the Progress Reports and may be revised from time to time with the Township's approval, to the extent required hereunder.

ARTICLE X

REQUISITIONS AND PROCESSES

10.1 General.

10.1.1 Submission of Requisitions. To the extent that the cost of the Phase 1 Infrastructure Project shall be paid from Bond Proceeds, or unless otherwise agreed, Requisitions subject to Township review and approval as and to the extent set forth on the Phase 1 Infrastructure Project Matrix comprising Exhibit C attached hereto shall be submitted by the

Redeveloper to the Township on a monthly basis. Same shall be submitted on the twenty-second (22) day of each month after Work has commenced. Each Requisition shall seek payment for the Eligible Costs incurred up to the last day of the immediately preceding month, as applicable, including the cost of stored materials. No Requisition shall be submitted for any expenditure which has not actually been incurred.

10.1.2 Retainage. Retainage shall be required for each Construction Contract and Subcontract, other than any Construction Contract or Subcontract with a Third Party Utility Provider. Retainage will be based upon a sliding scale starting at five percent (5%) and shall be reduced to two percent (2%) when a Contractor or Subcontractor has completed and billed for fifty percent (50%) or more of the total amount set forth in the applicable Construction Contract or Subcontract. Retainage shall not be required for any Construction Contract or Subcontract with a Third Party Utility Provider, any construction services provided directly by Redeveloper, or for any services provided by the Redeveloper's Engineer or Other Professionals.

10.1.3 Inspections. The Project Manager shall perform or cause to be performed such inspections of Work as are necessary or requested by the Township, as and to the extent set forth on the Phase 1 Infrastructure Project Matrix attached hereto as Exhibit C, and shall make recommendation for approval, modification, or denial of payment of such Requisitions based upon such inspections. The cost of such inspections shall be borne by the Redeveloper but shall constitute Eligible Costs. For Deliverables not subject to Township inspection and Acceptance, Redeveloper shall certify to the Township that the work has been performed and inspected and deemed acceptable by the Third Party Utility Provider responsible for such Deliverables pursuant to the Phase 1 Infrastructure Project Matrix attached hereto as Exhibit C.

10.1.4 Time for Payment. To the extent that the cost of the Phase 1 Infrastructure Project shall be paid from Bond Proceeds, within seven (7) Business Days after receipt of each Requisition to be approved by the Township, in accordance with the Phase 1 Infrastructure Project Matrix attached hereto as Exhibit C, the Township shall either Accept the Requisition and authorize payment of the requisitioned amount by the Trustee, or shall reject the Requisition with a detailed explanation as to the reason for such rejection.

10.1.5 Direction of Submissions. All submissions to the Township pursuant to this Article shall be directed to the Project Manager.

10.2 Conditions for Payment.

10.2.1 Reserved.

10.2.2 Submission for Initial Payment of Construction Services. Redeveloper shall submit to the Township at least seven (7) Business Days before the date on which the initial and first payment under a Construction Contract or Subcontract is sought to be paid as an Eligible Cost from the Bond Proceeds or otherwise to be paid by the Redeveloper as a

Redeveloper Cost, the following documents, together with a cover sheet listing the items submitted, certifying their truth and authenticity, and referencing this Section 10.2.2:

- (a) Documents evidencing the insurance policies that are required to be obtained with regard to the applicable Contractor or Subcontractor, as applicable;
- (b) Construction Contract, or Subcontract, as applicable, amount and associated Budget line for the Work performed;
- (c) A certificate evidencing Contractor or Subcontractor, as applicable, status in current good standing as a business entity in the state in which it is formed, and, if such state is not the State of New Jersey, evidence of the Contractor or Subcontractor, as applicable, qualification to do business within the State of New Jersey; and evidence of Contractor or Subcontractor, as applicable, certification or registration as may be required by Law;
- (d) The specimen signature of each officer, director or agent of Redeveloper authorized to deliver Requisitions, as applicable;
- (e) In connection with the applicable Construction Contract or Subcontract, all required payment and performance bonds;
- (f) Copies of each executed Construction Contract or Subcontract;

10.2.3 Submission for Final Payments for Construction Services.

Redeveloper shall submit to the Township, at least seven (7) Business Days before the date on which Final Payment is sought to be paid as an Eligible Cost from the Bond Proceeds or otherwise to be paid by the Redeveloper as a Redeveloper Cost, the following documents, together with a cover sheet listing the items submitted, certifying their truth and authenticity, and referencing this Section 10.2.3:

- (a) The items listed in Section 10.2.2;
- (b) Final accounting to the Township for such Construction Contract or Subcontract;
- (c) Final certified as-built plans, drawings, and surveys for all of the Phase 1 Infrastructure Improvements completed under such Construction Contract or Subcontract;
- (d) All applicable releases and lien waivers, and a certification by Redeveloper that all Contractors and Third Party Utility Providers have been paid and that there are no outstanding liens or other encumbrances

resulting from or arising out of or in connection with the Work for which Final Payment is to be made; and

- (e) Such other documents as may reasonably be requested by the Township, including but not limited to evidence that the conditions of Section 10.3 have been satisfied.

10.2.4 Document Submission for Requisitions Subject to Review and Approval by Township. The Township shall not be obligated to Accept any Requisition, to the extent that the Acceptance of such Requisition by the Township is required in accordance with the terms hereof and the Phase 1 Infrastructure Project Matrix attached hereto as Exhibit C, unless the following documents together with a cover sheet listing the items submitted, certifying their truth and authenticity and referencing this Section 10.2.4, shall be delivered to the Township at least seven (7) Business Days in advance of the date on which each payment is sought:

- (a) An itemization of the Eligible Costs for which the disbursement is sought and the associated Budget line for each itemized Eligible Cost;
- (b) An itemization of the specific percentage and amount to be withheld as retainage per each applicable Construction Contract or Subcontract;
- (c) An itemization of the Redeveloper's Costs applied to the Work;
- (d) An identification of each entity performing the Work that is covered by each Requisition, indicating the amount requested on behalf of each supported by a certification to the Township that such Eligible Costs have not previously been paid or authorized for payment;
- (e) A certification by the Redeveloper that all indebtedness connected with the Work completed prior to and during the period covered by the immediately previous Requisition has been paid or otherwise satisfied;
- (f) When necessary, partial waivers or releases of liens from Contractors, Subcontractors or suppliers with respect to all Non-Third Party Utility Work completed prior to and during the period covered by the immediately previous Requisition;
- (g) Copies of all contracts and applicable surety bonds for which payment is sought (or for contracts or bonds that have previously been delivered to the Township, a statement to that effect, with copies of any amendments thereof); and
- (h) Such additional documents, data or information reasonably requested by the Township in connection with the Work or in support of the

Requisition, including without limitation, documents as would customarily be required by construction lenders engaged in projects similar in scope to the Work; and invoices, receipts, credit card statements, and the like.

10.2.5 Document Submission for Requisitions Not Subject to Review and Approval of Township. For those Requisitions for which Township review and Approval shall not be required pursuant to the Phase 1 Infrastructure Project Matrix attached hereto as Exhibit C, the Redeveloper shall, provided that the costs of the Phase 1 Infrastructure Project shall be paid or otherwise funded from Bond Proceeds, submit such Requisitions to the Trustee, along with any other documentation as may be required by the Trustee pursuant to the terms of the Trust Agreement.

10.2.6 Redeveloper's Costs. For those costs that are deemed Redeveloper's Costs, the Township's review and approval of the payment of such Redeveloper's Costs by the Redeveloper shall not be required, provided however, the Redeveloper shall comply with the requirements of Sections 10.1.2, 10.1.3, 10.2.2, 10.2.3 and 10.3 hereof, as applicable.

10.3 General Requirements for Final Payment. The Final Payment in respect of Work to be Accepted by and conveyed to the Township shall be due and payable when the Work is fully completed (including all Final Punch List items), a Final Completion of Work Report has been filed with the Township and the Township Engineer, and the following conditions have been met:

- (a) The Project Manager (or Third Party Utility Provider, as the case may be) shall have made a final inspection of the Phase 1 Infrastructure Improvements after receipt of the Final Completion of the Work Report and is satisfied that the Work is completed, including all items on the Final Punch List, in accordance with the Contract Documents and the Law;
- (b) Redeveloper shall have obtained and delivered to the Township any required official approvals, certificates, licenses and permits, evidencing compliance with all requirements, for the Phase 1 Infrastructure Improvements (where applicable);
- (c) Redeveloper shall have submitted a final financial certified accounting of the costs of such Work to the Township;
- (d) Redeveloper shall have submitted to the Township all documentation (such as receipts, releases and waivers of liens) establishing payment or satisfaction of all financial obligations arising out of the Work, to the extent and in such form as may be designated by the Township. If any lien for any Work done by, or on behalf of, the Redeveloper has attached to the real estate constituting the Phase 1 Infrastructure Improvements Locations, or any real property owned by the Township, or the Phase 1 Infrastructure Improvements, Redeveloper shall pay all costs associated

with discharging any lien, including attorneys' fees, so long as the Lien was established because of the Redeveloper's actions;

- (e) Redeveloper shall have delivered to the Township four (4) sets each of photographic documentation that the Phase 1 Infrastructure Improvements were completed in accordance with the terms hereof and four (4) sets of the "as-built" certified plans, drawings, and surveys for all of the Phase 1 Infrastructure Improvements. These drawings shall accurately show deviations from the Final Plans and Specifications and the exact locations of underground or otherwise concealed utilities and appurtenances as referenced to permanent surface improvements. The required submissions shall be in hard copy and in an electronic format specified by the Township;
- (f) Redeveloper shall have submitted all required and necessary final maintenance or other surety bonds;
- (g) Redeveloper shall have submitted all required and necessary continuation policies for any required continuation insurance;
- (h) Redeveloper shall have submitted all required and necessary manufacturer's warranties;
- (i) Redeveloper shall have submitted any other documentation requested by the Township or the Township Engineer, including but not limited to such documentation as may be necessary to convey title to the Phase 1 Infrastructure Improvements to the Township; and
- (j) All Punch List items have been resolved.

10.4 Continuance of Representations. At all times, (a) the representations and warranties made by the Redeveloper herein shall be true, correct and complete, (b) Redeveloper shall not be in default of any covenant or obligation of Redeveloper under this Agreement, (c) Redeveloper shall not be in default of any of its covenants or obligations under the Modification Agreement or any of the agreements referenced therein; and (d) there shall be no Liens relating to the Phase 1 Infrastructure Improvements.

10.5 Title to Work and Phase 1 Infrastructure Improvements. Ownership and title to the Phase 1 Infrastructure Improvements and to all Work, materials and equipment, whether incorporated in the Phase 1 Infrastructure Improvements or not, will pass or be conveyed to the Township (or the Third Party Utility Provider, as the case may be) at the time of such Acceptance of the completed Work by the Township or the Third Party Utility Provider, as applicable, free and clear of all Liens so long as such Liens were not created by the Township or the Township's actions. Redeveloper shall prepare and execute all necessary documentation, if any, to accomplish transfer of ownership and all applicable warranties.

10.5.1 Irrevocable License to use Work. Prior to Final Payment the Township and anyone acting on the Township's behalf shall have an irrevocable license to use all Non-Third Party Utility Work, including but not limited to Final Plans and Specifications, to complete the design and engineering services, the construction services, or any other aspect of the Phase 1 Infrastructure Project in the event of Redeveloper's Default hereunder, and Redeveloper agrees to use its reasonable skill and judgment to ensure that all Construction Contracts and Subcontracts regarding the Work between Redeveloper and its Contractors, Subcontractors, or Other Professionals shall so provide.

10.6 Partial Use or Occupation Not Acceptance. The Township's periodic payments, occupancy or use of the Phase 1 Infrastructure Improvements, whether in whole or in part, shall not be deemed an acceptance of any Work not conforming to the requirements of the Contract Documents.

ARTICLE XI

CHANGES IN THE DESIGN AND ENGINEERING SERVICES AND CONSTRUCTION SERVICES

11.1 Changes. Changes in the construction services which are within the general scope hereof may be accomplished by Change Order or Field Order as provided herein without invalidating this Agreement.

11.2 Change Orders. A Change Order or Field Order shall be required for any change to a Construction Contract or Subcontract.

11.2.1 All Change Orders shall be approved and Accepted, modified or disapproved by the Township, to the extent so required pursuant to the Phase 1 Infrastructure Project Matrix attached hereto as Exhibit C, within seven (7) Business Days of submission to the Township by the Redeveloper.

11.2.2 Field Orders. All Field Orders shall be documented by the Redeveloper within seven (7) Business Days of the Township Engineer's approval thereof, provided that the Township Engineer's approval is required in accordance with the Phase 1 Infrastructure Project Matrix attached hereto as Exhibit C.

11.3 Certification. All Change Orders and Field Orders shall be reviewed and certified by the Project Manager.

11.4 Emergency Work. Notwithstanding the above, the Redeveloper may undertake to perform changed construction services in the case of an emergency affecting the safety of persons or property; *provided*, that such changed construction services and the circumstances

requiring them shall be documented and processed in the same manner as a Field Order as soon as practical after the performance thereof.

11.5 Township Change Orders. The Township shall have the right to request Change Orders. Upon receipt of a Change Order from the Township, the Redeveloper shall promptly comply with it by supplying all necessary design and engineering services or construction services in accordance therewith; *provided, however,* that the cost of any Change Order requested by the Township shall be a Township Infrastructure Cost.

ARTICLE XII

PUNCH LISTS

12.1 General. The Redeveloper shall be responsible for preparing the Punch Lists for the Non-Third Party Utility Work. All Punch Lists shall be created by comparing and inspecting the Non-Third Party Utility Work as applicable with the Contractors and Subcontractors to determine if such Non-Third Party Utility Work has been completed in accordance therewith. The Punch Lists shall be created by a collaborative effort between the Redeveloper, the Township Engineer and the Project Manager. A construction Punch List for the Non-Third Party Utility Work shall be submitted to the Township for Acceptance approximately fifteen (15) days before the Redeveloper anticipates that the construction services for a particular Construction Contract or Subcontract will be complete and a Final Payment shall be sought or paid. The final Punch List shall be submitted to the Township for Acceptance approximately fifteen (15) days before the Redeveloper anticipates forwarding the Final Payment Requisition., or otherwise making any Final Payment.

12.2 Completion of Punch List Items. All items on the Punch List shall be completed in an expeditious manner in accordance herewith and applicable Laws. In no event shall the completion of all items on a Punch List, including the final Punch List, occur later than thirty (30) days from the Township's Acceptance of such Punch List, unless such time is extended in writing by the Township.

ARTICLE XIII

REQUIRED PROVISIONS FOR CONSTRUCTION CONTRACTS AND SUBCONTRACTS

13.1 General as to Construction Contracts and Subcontracts. Unless otherwise approved by the Township, and in addition to the provisions necessary to implement or effectuate Redeveloper's obligations as set forth elsewhere in this Agreement (including but not limited to Section 10.5.1 hereof), the Redeveloper shall require that to the extent applicable the services to be performed pursuant to each Construction Contract and Subcontract, other than a Construction Contract or Subcontract with a Third Party Utility Provider, includes:

13.1.1 Warranties. A requirement that the applicable Contractor or Subcontractor warrant that (a) all materials and equipment furnished as part of the construction services shall be new unless otherwise specified, of good quality and in conformance with the Construction Contract or Subcontract, as applicable, and (b) that the construction and installation of all of the applicable Phase 1 Infrastructure Improvements shall be free from defective workmanship and materials for a minimum of two (2) years from acceptance of the Phase 1 Infrastructure Improvements by the Township or Third Party Utility Provider, as the case may be. The Redeveloper shall also require that the applicable Contractor or Subcontractor agree to correct, replace, or re-construct all Phase 1 Infrastructure Improvements which are defective in workmanship and/or materials during the two-year warranty period. The applicable Construction Contract or Subcontract shall also provide that, if required by the Township or Redeveloper, the Contractor or Subcontractor, as applicable, shall furnish satisfactory evidence as to the kind and quality of materials and equipment furnished under this Agreement.

13.1.2 Performance and Payment Bonds. In addition to all performance and maintenance bonds required by any Government Body to be posted in connection with Phase 1 Infrastructure Development Approvals, a requirement that the applicable Contractor provide labor and materials payment bonds equal in dollar amount to that of the applicable construction services, but only to the extent as required pursuant to Section 5.10 hereof. Such bonds shall be security for payment to all Subcontractors and suppliers thereunder. The bonds shall be provided by an insurance company approved by the Township and shall be in effect from the date of award of each Subcontract to the date of the Final Payment.

13.1.3 Contractors' Insurance. Each Construction Contract shall contain provisions requiring insurance coverage consistent with or as required by Article XIV below, or as otherwise may be required by a Third Party Utility Provider and not inconsistent with the insurance coverage required to be provided under the terms of this Agreement.

13.1.4 Provision for Retainage. Each Construction Contract and Subcontract shall contain a provision authorizing retainage in accordance with the terms hereof.

13.1.5 Equal Employment Opportunity; Affirmative Action. Each Construction Contract and Subcontract shall contain a provision requiring the Contractor or Subcontractor, as applicable, to comply with all applicable Laws and with the "Community Initiatives" provisions of Article XII of the Modification Agreement. Without limiting the generality of the foregoing, the Contractor, or Subcontractor, as applicable, shall attempt in good faith to employ minority and female workers and to otherwise comply with the *New Jersey Law Against Discrimination* and the regulations promulgated pursuant to P.L.1975, c.127, as amended and supplemented from time to time, and with the federal *Americans with Disabilities Act*, and shall require compliance with same by the Contractors and Subcontractors.

13.1.6 Prevailing Wage Law. Each Contractor and Subcontractor shall comply with the provisions of the *New Jersey Prevailing Wage Act, N.J.S.A. 34:11-55*, as amended and supplemented (including but not limited to the provision of certified payroll records as required), to the extent applicable. The Redeveloper hereby warrants that neither Redeveloper nor the Redeveloper's Engineer, nor the Other Professionals, nor any Contractor or Subcontractor that

may be employed to perform any Work covered under this Agreement are listed or on record with the New Jersey Department of Labor for failure to pay prevailing wages in accordance with the *New Jersey Prevailing Wage Act*.

13.1.7 Suspension of Work, etc. Each Construction Contract and Subcontract shall contain provisions consistent with the provisions of this Agreement regarding suspension of the Work.

13.2 General. The Redeveloper shall require that all Construction Contracts and Subcontracts for Non-Third Party Utility Work include a requirement that the Redeveloper's Engineer, Other Professionals, Contractors and Subcontractors shall represent that each is not prohibited from receiving a contract pursuant to *N.J.S.A. 34:11-56.48*.

13.3 Professional Liability Insurance of Redeveloper's Engineer and Other Professionals.

13.3.1 The Redeveloper's Engineer and Other Professionals shall be required to maintain professional liability insurance for claims arising from the negligent performance of professional services under the Design and Engineering Services Contract, which shall be written for not less than **TWO MILLION and 00/100 (\$2,000,000) DOLLARS** per claim and **FIVE MILLION and 00/100 (\$5,000,000) DOLLARS** in the aggregate, with a deductible not to exceed **ONE HUNDRED THOUSAND and 00/100 (\$100,000) DOLLARS**.

13.3.2 Each insurance policy maintained hereunder shall include a waiver of subrogation. Certificates of insurance, declarations pages and a true copy of each insurance policy showing required coverage to be in force shall be filed with the Township before commencement of the Work and on an annual basis thereafter.

13.4 Attornment in case of Event of Default. Each Construction Contract and Subcontract for Non-Third Party Utility Work shall include a provision requiring that, in the event this Agreement is terminated by reason of a Redeveloper Event of Default, (i) the Construction Contract and Subcontract shall likewise terminate, unless (ii) the Township, at its election and in its sole discretion, assumes the Construction Contract or Subcontract. In the event the Township elects to assume the Construction Contract or Subcontract, the Contractor, or Subcontractor, as the case may be, shall attorn to the Township and continue to perform in accordance with the terms of the Construction Contract or Subcontract, upon payment of all arrearages, if any, then properly owed to such Contractor or Subcontractor pursuant to the terms of the applicable Construction Contract or Subcontract as of the date of assumption by the Township, or the provision of adequate assurances that such payment shall be forthcoming within a reasonable period of time.

ARTICLE XIV

INSURANCE

14.1 Types of Insurance. From the date the Redeveloper commences, or causes the commencement of, any Work and up to the date of final completion of the Work, including all final Punch List Work as certified in writing by the Township Engineer, the Redeveloper shall effect and maintain with companies licensed or authorized by the New Jersey State Department of Insurance to do business in the State of New Jersey, the following types of insurance:

14.1.1 Commercial General Liability Insurance. The Redeveloper shall provide a Commercial General Liability Insurance Policy (with the coverage indicated below) in the Redeveloper's name and naming the Township as an "additional insured" thereunder, and endorsed to cover the liability assumed by the Redeveloper under the indemnity provisions of this Agreement and any Construction Contract hereunder. The insurance policy shall be maintained throughout the term of this Agreement and shall protect the Township, the Redeveloper, the Contractors, the Subcontractors and the Third Party Utility Providers, to the extent required pursuant to the Construction Contract with such Third Party Utility Provider, performing Work (if and to the extent not covered by insurance required to be provided by them pursuant to the terms of their Construction Contracts or Subcontracts), from claims for property damage and/or bodily injury, including accidental death, which may arise from performance of the Work. The coverage shall be at least as broad as that provided by Insurance Services Office ("ISO") Commercial General Liability Form CG0001. The coverage provided must be "occurrence" based rather than "claims-made".

14.1.1(a) The Commercial General Liability Insurance Policy provided shall include, without limitation, the following coverage: Premises Operations, Products or Completed Operations, Contractual Liability, Broad Form Property Damage, Medical Payments, Independent Contractors, Personal Injury (Contractual Exclusion deleted), Explosion, Collapse and Underground Property, and Incidental Malpractice. The Commercial General Liability Insurance Policy provided shall contain each of the following endorsements:

14.1.1(a)(i) The Township, together with its officials and employees, is an additional insured under this policy, with coverage at least as broad as ISO Form CG 2026; and

14.1.1(a)(ii) Notice under the Policy of the Township as an additional insured shall be addressed to each of the following: (1) the Project Manager; and (2) the Township, attn: Business Administrator.

14.1.1(a)(iii) Notwithstanding any provision of this policy to the contrary, notice by or on behalf of the Township as an additional insured of any occurrence, office, or claim, if such notice is required, will be deemed timely if given to the applicable insurance company as soon as

practicable after a notice of claim adequately specifying the occurrence, offense, or claim as one potentially covered under the policy has been filed with the Township; *however*, in no event shall “as soon as practicable” to be a period of less than ninety (90) days thereafter; and

14.1.1(a)(iv) Any notice, demand or other writing by or on behalf of the Redeveloper to the applicable insurance company relating to any occurrence, offense, claim or suit shall also be deemed to be a notice, demand, or other writing on behalf of the Township; and

14.1.1(a)(v) Notice of Cancellation of Policy: In addition to any other requirements concerning notice of cancellation, this policy shall not be cancelled, terminated, modified or changed by the applicable insurance company unless ten (10) days prior written notice is sent to the Redeveloper by Certified Mail, Return Receipt Requested and also sent by Certified Mail, Return Receipt Requested to the Township, nor shall this policy be cancelled, terminated, modified or changed by the Redeveloper without the prior written consent of the Township; and

14.1.1(a)(vi) Intentionally Omitted.

14.1.1(a)(vii) Notwithstanding any other provision or endorsement to the contrary, any provision or endorsement to this policy (other than one required by the Law of the State of New Jersey) which operates in any way to reduce coverage hereunder below that provided under CG0001 does not apply to the Township, as an additional insured, regardless of any reduction of coverage effected hereby upon any other insured; and

14.1.1(a)(viii) It is agreed that the insurance company, in the event of any payment under these policies, will waive its rights of recovery, if any, against the Township; and

14.1.1(a)(ix) Notwithstanding any other provision or endorsement to the contrary, the Township as additional insured shall be covered for any “bodily injury” or “property damage” which results from the intentional acts of the Redeveloper or any other insured under this policy other than the Township (provided that the Township had no part in the commission of the intentional act and did not order or condone the commission of such intentional act).

14.1.2 Builders’ Risk Insurance. The Redeveloper shall provide, or cause the Contractor to provide, a Builder’s Risk Insurance Policy covering all risks in completed value form for the Non-Third Party Utility Work. Completed value shall be as follows:

14.1.2(a) The total Construction Contract price, if the Construction Contract term is less than 365 Days; or

14.1.2(b) The total Construction Contract price, plus 10%; if the Construction Contract term exceeds 365 Days; or

14.1.2(c) The total Construction Contract price, plus 15%, if the Subcontract term exceeds 450 days.

14.1.2(d) The policy shall insure the Redeveloper and the Township as their respective rights and interests may appear under the Construction Contract. The policy shall cover the storage and transport of materials, equipment, and supplies of any kind whatsoever to be used on or in incidental to the Work. The Builders' Risk policy shall contain the following endorsements:

14.1.2(d)(i) This policy insures against loss or damage only on Work done under the Construction Contract for the Phase 1 Infrastructure Project described in the Contract Documents, which is susceptible to damage or loss; and

14.1.2(d)(ii) The policy shall contain under the loss payable clause or by endorsement thereon, "loss, if any, payable to the Township of West Orange as its interests may appear"; and

14.1.2(d)(iii) Notice of Cancellation Policy, as set forth in Article 14.1.1(a)(v); and

14.1.2(d)(iv) In the event the construction of that portion of the Phase 1 Infrastructure Project to which the Construction Contract applies involves an occupied facility, the policy shall permit occupancy without the consent of the insurance company; and

14.1.2(d)(v) If the insurance policy is that of a mutual insurance company, it shall contain the following:

"The Township of West Orange shall not be liable for any premium or assessment under this policy of insurance."

14.1.3 Workers' Compensation Insurance. The Redeveloper and each Contractor shall provide Workers' Compensation Insurance in accordance with the Laws of the State of New Jersey, as applicable, on behalf of all employees providing services under this Agreement.

14.1.4 Employers' Liability Insurance. The Redeveloper and each Contractor shall provide Employers' Liability Insurance affording compensation due to bodily injury

by accident or disease sustained by any employee of the insured arising out of and in the course of his/her employment by the insured.

14.1.5 Automobile Liability Insurance. The Redeveloper and each Contractor shall provide commercial auto liability insurance covering all owned, non-owned and hired vehicles to be used in connection with this Agreement and each Construction Contract or Subcontract.

14.2 General Requirements for Insurance Policies.

14.2.1 All required insurance policies shall be maintained with companies licensed and authorized to do business in the State of New Jersey by the New Jersey State Department of Insurance.

14.2.2 The Redeveloper or Contractor shall be solely responsible for the payment of all premiums for all required policies and all deductibles to which such policies are subject, whether or not the Township is an additional insured under the policy.

14.2.3 In its sole discretion, and to the extent permitted by Law, the Township may accept letters of credit or custodial accounts, or some combination thereof, in lieu of required insurance.

14.3 Proof of Insurance.

14.3.1 Within ten (10) Business Days of the Effective Date of this Agreement or the effective date of each Construction Contract, as the case may be, the Redeveloper shall provide the Township with a certificate of insurance for each policy required to be provided under this Agreement. Each such certificate shall certify insurance coverage in all ways in conformance with this article and shall include the following text: "The above-named broker/producer represents and warrants to the Township that it is an additional insured under the insurance policies listed herein and that such policies are in full compliance with" this Agreement or the Construction Contract, as the case may be.

14.3.2 Certificates confirming renewals of insurance shall be submitted to the Township prior to the expiration date of coverage until the Acceptance of the completed Work in accordance with the terms hereof.

14.4 No Work without required insurance.

14.4.1 The Redeveloper shall not commence any Work, or cause any Work to commence, unless and until all required certificates have been submitted to and Accepted by the Township. Acceptance by the Township of a certificate hereunder does not excuse the Redeveloper from securing a policy consistent with all provisions of this Agreement or of any liability arising from its failure to do so.

14.4.2 The Redeveloper shall be responsible for providing continuous insurance coverage as required by this Agreement and shall be authorized to perform Work, or cause the performance thereof, only during the effective period of all required coverage.

14.4.3 In the event that any of the required insurance policies lapse, are revoked, suspended, or otherwise terminated, for whatever cause, such failure of insurance shall constitute an Event of Default hereunder with no further Notice required. Redeveloper shall immediately stop all Work and shall not recommence Work until authorized in writing to do so by the Township.

14.4.4 As soon as practicable, but no later than thirty (30) days after the occurrence of any accidents or incidents causing bodily injury, personal injury, or property damage arising in the course of operations under the Construction Contract, the Redeveloper shall give written notice of such occurrence (a) on its own behalf and on behalf of the Township as an additional insured to the applicable insurance company, (b) to the Project Manager, and (c) to the Township Business Administrator. If the Redeveloper fails to give such notice as soon as practicable to the applicable insurance company on behalf of the Township, the Redeveloper shall indemnify the Township for all losses or expenses resulting from such failure.

14.5 Materiality/Non-Waiver. The Redeveloper's failure to secure policy(ies) as required by this article, or to give the insurance company timely notice of an occurrence, offense, claim or suit on behalf of the Township, shall constitute a material breach of this Agreement and a Default hereunder. Such Default shall not be waived or otherwise excused by any action or inaction by the Township at any time.

14.6 Contractor's Pollution Legal Liability. The Redeveloper shall provide, or cause the Contractor to provide, a Contractor's Pollution Legal Liability Insurance Policy (with the coverage indicated below) in the Redeveloper's name and naming the Township (and each Third Party Utility Provider, as may be the case) as an "additional insured" thereunder, and endorsed to cover the liability assumed by the Redeveloper under the indemnity provisions of this Agreement and any Construction Contract for Non-Third Party Utility Work. The insurance policy shall be maintained throughout the term of this Agreement and shall protect the Township, the Redeveloper, the Contractors, the Subcontractors and the Third Party Utility Providers, to the extent required pursuant to the Construction Contract or Subcontract with such Third Party Utility Provider, performing Work from claims for property damage and/or bodily injury, including accidental death, which may arise from operations under this Agreement.

14.7 Insurance required by Third Party Utility Providers. To the extent that a Third Party Utility Provider shall require any insurance policy not otherwise required hereunder, such insurance policy shall name the Township as an additional insured thereunder.

ARTICLE XV
REPRESENTATIONS AND WARRANTIES OF
REDEVELOPER

15.1 Representations and Warranties. The representations and warranties made by the Redeveloper in Section 6.1 of the Modification Agreement are hereby incorporated in their entirety, *provided* that references to “this Agreement” therein shall mean this Agreement.

15.2 Reliance on Representations and Warranties. The Redeveloper acknowledges that the Township is relying upon the applicable representations and warranties set forth in Section 15.1 hereof and throughout this Agreement.

15.3 Continuing Obligations. All representations and warranties made by the Redeveloper herein shall continue to be true and correct at all times during the term of this Agreement. The Redeveloper acknowledges an obligation to inform the Township of any material change or action or inaction which would effect any representation or warranty contained herein and shall so advise the Township within ten (10) Business Days of knowledge of same.

15.4 Non-Expiration. The Redeveloper recognizes and acknowledges that the representations and warranties made to the Township in the Contract Documents are ones that may continue beyond the dates of completion and acceptance of the Phase 1 Infrastructure Improvements.

ARTICLE XVI
REPRESENTATIONS AND WARRANTIES OF THE TOWNSHIP

16.1 Representations and Warranties. The representations and warranties made by the Township in Section 6.2 of the Modification Agreement are hereby incorporated in their entirety; *provided* that references to “this Agreement” shall mean this Agreement.

16.2 Reliance on Representations and Warranties. The Township acknowledges that the Redeveloper is relying upon the representations and warranties set forth in Section 16.1 hereof and throughout this Agreement.

16.3 Continuing Obligation. All representations and warranties made by the Township herein shall continue to be true and correct at all times during the term of this Agreement. The Township acknowledges an obligation to inform the Redeveloper of any material change or action or inaction which would effect any representation or warranty

contained herein and shall so advise the Redeveloper within ten (10) Business Days of knowledge of same.

16.4 Non-Expiration. The Township recognizes and acknowledges that the representations and warranties made to the Redeveloper in the Contract Documents are ones that may continue beyond the dates of completion and acceptance of the Phase 1 Infrastructure Improvements.

ARTICLE XVII

FORCE MAJEURE EVENTS

17.1 No Default by Reason of Force Majeure Event. Performance by either Party hereunder shall not be deemed to be in default where delays or failure to perform are the result of a Force Majeure Event.

17.1.1 It is the purpose and intent of this provision that in the event of the occurrence of any such delay by reason of a Force Majeure Event, 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 Work 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.

17.1.2 Other than with respect to the Pending Litigation, in order 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 within ten (10) Business Days of the commencement of the cause. The tolling period shall be calculated from the date of the notice. During any Force Majeure Event that affects only a portion of the Work, Redeveloper shall to the maximum extent feasible continue to perform its obligations for the balance of the Work unaffected by the Force Majeure Event. The assertions by the Redeveloper of the existence of a Force Majeure Event for any portion of the Work 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.

ARTICLE XVIII

EVENTS OF DEFAULT, TERMINATION, AND REMEDIES

18.1 Events of Default. Any one or more of the following events shall constitute an "Event of Default" hereunder:

18.1.1 Failure of the Redeveloper or the Township to abide by the Law or to observe or perform any covenant, condition or agreement herein and continuance of such failure for a period of thirty (30) days, after notice to the defaulting Party from the non-defaulting Party specifying the nature of such failure and requesting that such failure be remedied or cured; *provided, however*, that if the breach of any such covenant, condition or agreement is one which cannot be completely remedied or cured within the thirty (30) days after such notice has been given, it shall not be an Event of Default as long as the defaulting Party is proceeding with due diligence to remedy or cure the same as soon as practicable and to mitigate the effects of the Default.

18.1.2 Continued unexcused abandonment or suspension of Work by the Redeveloper for a period of fifteen (15) Business Days after notice to the Redeveloper from the Township of such unexcused abandonment or suspension.

18.1.3 The following events, if they continue uncured for more than thirty (30) days after Notice:

- (a) The use of improper materials and/or inadequately skilled workers by the Redeveloper, Redeveloper's Engineer, Other Professionals, Contractors or Subcontractors to perform the Non-Third Party Utility Work; or
- (b) The failure to make proper payment to laborers, material suppliers, the Redeveloper's Engineer, Other Professionals, Contractors, Subcontractors or Third Party Utility Providers.

18.1.4 Redeveloper shall have: (a) 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 the Redeveloper; (c) the Redeveloper (i) has made a general assignment for the benefit of creditors, (ii) has filed a voluntary petition in bankruptcy or a petition or an answer seeking an arrangement with creditors, (iii) has taken advantage of any insolvency Law; (iv) the Redeveloper has filed an answer admitting the material allegations of a petition in any bankruptcy or insolvency proceeding; (v) the Redeveloper shall take any action for the purpose of effecting any of the foregoing; (vi) a petition in bankruptcy shall have been filed against Redeveloper and shall not have been dismissed for a period of ninety (90) consecutive days; (vii) an order for relief shall have been entered with respect to or for the benefit of Redeveloper under the United States Bankruptcy Code; (viii) an order, judgment or decree shall have been entered, without the application, approval or consent of the Redeveloper by any court of competent jurisdiction appointing a receiver, trustee, custodian or liquidator of the 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 (ix) the Redeveloper shall have suspended the transaction of its usual business for ninety (90) consecutive days.

18.1.5 Reserved.

18.1.6 In the event that any of the required insurance policies lapse, are revoked, suspended, or otherwise terminated, for whatever cause, such failure of insurance shall constitute an Event of Default hereunder with no further notice required.

18.2 Township Remedies. Except as otherwise provided with regard to Dispute Resolution in Article XIX below, in case of an Event of Default by the Redeveloper the Township may (i) terminate this Agreement; (ii) elect to assume the Construction Contracts and Subcontracts and complete any Work in progress as of the date of termination; (iii) in the Township's sole discretion, draw on all applicable payment bonds and performance guarantees; and (iv) seek contract damages in a court of law or seek to have the provisions hereof specifically enforced as described in Section 18.2.1 hereof, or both.

18.2.1 If an Event of Default by the Redeveloper occurs, or if the Redeveloper threatens to take an action that will result in the occurrence of an Event of Default, the Township shall have the right and remedy, without posting bond or other security, to have the provisions hereof specifically enforced by any court having equity jurisdiction, it being acknowledged and agreed that any such breach or threatened breach may cause irreparable injury to the Township and that money damages may not provide an adequate remedy.

18.3 Redeveloper's Remedies. Except as otherwise provided with regard to Dispute Resolution in Article XIX below, in case of an Event of Default by the Township the Redeveloper may: (i) terminate this Agreement; (ii) seek contract damages by reason of such Event of Default or to seek to have the provisions hereof specifically enforced as described in Section 18.3.1 hereof, or both; and (iii) seek consequential damages to the extent that such Event of Default by the Township adversely impacts the Redevelopment Project.

18.3.1 If an Event of Default by the Township occurs, or if the Township threatens to take an action that will result in the occurrence of an Event of Default, the Redeveloper shall have the right and remedy, without posting bond or other security, to have the provisions hereof specifically enforced by any court having equity jurisdiction, it being acknowledged and agreed that any such breach or threatened breach may cause irreparable injury to the Redeveloper and that money damages may not provide an adequate remedy.

18.4 Reserved.

18.5 Continuance of Obligations. Unless this Agreement is terminated by reason thereof the occurrence of an Event of Default shall not relieve the defaulting Party of its obligations under this Agreement.

ARTICLE XIX

DISPUTE RESOLUTION

19.1 Disputes. Upon demand of either Party, a Dispute shall be resolved by binding arbitration conducted under and governed by Arbitration Rules with a single arbitrator. A judgment upon the award of the arbitrator may be entered in any court having jurisdiction.

19.2 All arbitration hearings shall be conducted in the County. A hearing shall begin within ninety (90) days of demand for arbitration and all hearings shall be concluded within one-hundred-twenty (120) days of demand for arbitration. These time limitations may not be extended unless a Party shows cause for extension and then for no more than a total of sixty (60) days. The expedited procedures set forth in Rule 51 *et seq.* of the Arbitration Rules shall be applicable to claims of less than **ONE HUNDRED THOUSAND and 00/100 (\$100,000) DOLLARS**. Arbitrators shall be licensed attorneys selected from the Construction Industry Dispute Procedures Dispute Arbitration Panel of the AAA. The Parties do not waive applicable Law except as provided herein.

19.3 Notwithstanding the preceding binding arbitration provisions, the Parties agree to preserve, without diminution, the right to terminate this Agreement or pursue specific performance in accordance herewith pending the outcome of any arbitration proceedings.

19.4 The Parties acknowledge that by agreeing to binding arbitration they have irrevocably waived any right they may have to a jury trial with regard to a Dispute.

ARTICLE XX

MISCELLANEOUS PROVISIONS

20.1 No Assignment. Neither party may assign this Agreement or their respective obligations hereunder without the other's prior knowledge and written consent. Any purported assignment made in violation of this provision shall be ineffective to relieve the assigning party of any obligation hereunder and shall be null and void *ab initio*.

20.2 Third Party Beneficiaries. The Agreement is for the exclusive benefit of the Parties and shall not be deemed to have conferred any rights, express or implied, upon any third person, other than the Urban Renewal Entities, and as may be expressly provided for herein with respect to Third Party Utility Providers.

20.3 Relationship of Parties. Nothing contained herein shall be deemed or construed by the Parties or by any other person to create the relationship of principal and agent, partnership, joint venture or any association between the Township and Redeveloper, their relationship being solely as contracting Parties under this Agreement.

20.4 Non-Liability of Officials, Employees and Agents of the Township. No member, official, employee or agent of the Township shall be personally liable to Redeveloper or any successor to the Redeveloper in an Event of Default or breach by the Township, or for any amount which may become due to Redeveloper or any successor to it, or on any obligation under the terms hereof.

20.5 Non-Liability of Officials, Employees and Agents of Redeveloper. No member, officer, shareholder, director, partner, employee or agent of the Redeveloper, or any of its affiliates, successors or assigns, including without limitation, GP 177, shall be personally liable to the Township, or any successor in interest, in the event of an Event of Default or breach by the Redeveloper or for any amount which may become due to the Township, or any successor to it, or on any obligation under the terms hereof.

20.6 Ownership of Construction Documents. All Final Plans and Specifications and construction documents for Township-Owned Infrastructure Improvements shall be the property of the Township and all Construction Contracts or Subcontracts shall so provide.

20.7 Royalties, Patents and Copyrights. The Township shall pay all royalties and license fees which may be due on the inclusion of any patented or copyrighted materials, methods or systems incorporated in the Work.

20.8 Exemption for Sales and Use Taxes. In accordance with the Township's direction, an exemption is claimed for sales and use taxes based upon the Township's title to the Phase 1 Infrastructure Improvements Locations and ownership of Phase 1 Infrastructure Improvements. To the extent available under applicable Law, the Redeveloper shall obtain and shall require Redeveloper's Engineer, Other Professionals, Contractors, Subcontractors and Third Party Utility Providers, to the extent applicable, to obtain an exemption for sales and use taxes in conducting all design and engineering services and construction services.

20.9 Notices. All Notices required by or relating to this Agreement shall be in writing and shall be personally delivered or transmitted by United States registered or certified mail, return receipt request, postage pre-paid, to the other respective Party at the addresses set forth below, or at such other address as such Party shall designate by notice.

To the Township:

Township of West Orange
66 Main Street
West Orange, New Jersey 07052
Attention: [Project Manager] (and where required pursuant to the terms of this Agreement, to "Business Administrator" as well)

With a copy to Redevelopment Counsel for the Township:

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

To the Redeveloper:

Prism Green Associates IV, LLC
c/o Prism Capital Partners, LLC
200 Broadacres Drive, Suite 180
Bloomfield, New Jersey 07003
Attn: Eugene R. Diaz

With a copy to:

GP 177 Main Urban Renewal, LLC
c/o Prism Capital Partners, LLC
200 Broadacres Drive, Suite 180
Bloomfield, New Jersey 07003
Attn: Eugene R. Diaz

With copy to Counsel to Redeveloper:

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

20.10 Severability. The partial or complete invalidity of any one or more provisions hereof shall not affect the validity or continuing force and effect of any other provision.

20.11 Titles. The titles given in this Agreement are for ease of reference only and shall not be relied upon or cited for any other purpose.

20.12 Counterparts. This Agreement may be executed by the Parties in any number of separate counterparts, all of which, when delivered, shall together constitute one and the same Agreement.

20.13 Non-Waiver of Performance. The failure of either Party to insist, in any one or more instances, on the performance of any of the terms, covenants or conditions hereof, or to exercise any of its rights, shall not be construed as a waiver or relinquishment of such term, covenant, condition or right with respect to further performance.

20.14 Binding Effect. This Agreement and each of the provisions herein shall be binding upon and inure to the benefit of the Township and the Redeveloper and their respective permitted successors and assigns.

20.15 Governing Law. This Agreement shall be governed by the laws of the State of New Jersey.

20.16 Review by Counsel. Interpretation of this Agreement shall be made without regard to or any presumption against or other rule requiring construction against the entity drawing or causing this Agreement to be drawn, since counsel for both the Redeveloper and the Township have combined in their review and approval of same.

20.17 Counting of Days; Saturday, Sunday or Holiday. The word “days” as used herein shall mean consecutive calendar days unless a contrary intention is stated; *provided*, that if the final date of any period provided for herein falls on a day other than a Business Day, then the time of such period shall be deemed extended to the next Business Day.

20.18 Qualifications of Professionals. Any person or entity retained to provide professional services, including without limitation engineers, architects and environmental consultants shall be qualified and professionally licensed to perform the services for which they are retained in the State of New Jersey.

20.19 Pending Litigation. Notwithstanding any language contained herein to the contrary, any and all references to the “Bonds” or “Bond Proceeds” shall be subject in all respects to the Satisfactory Resolution of the Pending Litigation, as defined herein.

This space deliberately left blank. Signature page follows.

The undersigned each represent that they are authorized to execute and accept this Agreement.

Attested:

TOWNSHIP OF WEST ORANGE

BY: _____
Name:
Title:

PRISM GREEN ASSOCIATES IV, LLC

BY: _____
Name:
Title:

IN WITNESS WHEREOF, GP 177 Main Urban Renewal, LLC (“GP 177”), hereby (i) acknowledges and represents that Prism Green Associates IV, LLC, is authorized to act on behalf of, and as agent for, GP 177, and (ii) acknowledges all of the terms, conditions and provisions of this Phase 1 Infrastructure Construction Agreement.

GP 177 Main Urban Renewal, LLC

By: _____

EXHIBIT A

RESERVED

EXHIBIT B

SCHEDULE OF WORK OF PHASE 1 INFRASTRUCTURE PROJECT

EXHIBIT C

PHASE 1 INFRASTRUCTURE PROJECT MATRIX

Exhibit C

Phase 1 Financial Agreement

Record and return to:

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

Financial Agreement

By and Between

The Township of West Orange

and

GP 177 Main Urban Renewal, L.L.C.

THIS FINANCIAL AGREEMENT (hereinafter “**Agreement**” or “**Financial Agreement**”), made this _____ day of _____, 2014, by and between GP 177 Main Urban Renewal, L.L.C. (referred to herein as “**GP 177**” or “**Urban Renewal Entity**”), an urban renewal entity, qualified to do business under the provisions of the *Long Term Tax Exemption Law of 1992*, as amended and supplemented, *N.J.S.A. 40A:20-1, et seq.* (the “**Long Term Tax Exemption Law**”), with offices at 200 Broadacres Drive, Bloomfield, NJ 07003, along with its permitted successors and/or assigns, and the Township of West Orange, a municipal corporation in the County of Essex and the State of New Jersey (the “**Township**”, and together with the Urban Renewal Entity, the “**Parties**”).

WITNESSETH:

WHEREAS, the Mayor and Township Council (the “**Governing Body**”) of the Township, acting by Resolution (the “**Designation Resolution**”) designated certain areas within the West Orange downtown area as an “area in need of redevelopment” (the “**Redevelopment Area**”) pursuant to §5 of the *Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq.* (the “**LRHL**” or the “**Act**”); and

WHEREAS, the 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 and as further described in the Designation Resolution, 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, 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, the Governing Body, after adherence to the procedures and standards set out in the *LRHL*, on August 15, 2006, March 6, 2007, and March 8, 2011 adopted amendments to the Initial Redevelopment Plan (the Initial Redevelopment Plan as so modified is hereinafter referred to as the “**Redevelopment Plan**”); and

WHEREAS, the Township entered into a redevelopment agreement with the Prism Green Associates IV, L.L.C. (the “**Redeveloper**”), dated December 20, 2006 (as amended by letter agreements dated May 8, 2007, June 21, 2007, September 11, 2007 and October 27, 2009, the “**Original Redevelopment Agreement**”), governing the redevelopment of the Downtown Redevelopment Area; and

WHEREAS, on March __, 2014, the Parties entered into a modification agreement (the “**Modification Agreement**”) amending and supplementing the Original Redevelopment Agreement with respect to a portion of the Redevelopment Area consisting of Block 66, Lots 1, 5 and 7, as may be further subdivided (the “**Phase 1 Property**”); and

WHEREAS, in accordance with the terms and conditions contained in the Modification Agreement, the Urban Renewal Entity proposes to rehabilitate certain structures, and to construct new improvements on other parcels, resulting in the construction or rehabilitation of approximately 333 residential rental units; together with up to approximately 18,500 square feet of commercial retail space and approximately 31,700 other amenity support space; a parking structure containing approximately 635 spaces (the “**Parking Facility**”) 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 and public rights of way (collectively, the “**Phase 1 Redevelopment Project**” or the “**Project**”);

WHEREAS, in order to enhance the economic viability of and opportunity for a successful project, the Township will enter into this Financial Agreement with the Urban Renewal Entity governing payments made to the Township in lieu of real estate taxes on the Project pursuant to the *Long Term Tax Exemption Law*; and

WHEREAS, the Urban Renewal Entity has filed an application, as amended and supplemented (collectively, the “**Application**” as further defined herein), with the Mayor of the Township, which Application has been accepted by the Township Council by resolutions dated March 18, 2008, February 3, 2009 and February 21, 2012, for approval of a long term tax

exemption for the Improvements (as defined herein) to the extent permitted by the *Long Term Tax Exemption Law*; and

WHEREAS, the Township has made the following findings with respect to the Project:

- A. Relative benefits of the Project:
 - i. The Project will provide additional housing and retail space in the Township, along with the renewal and revitalization of the Redevelopment Area.
 - ii. The Project will ease current parking difficulties in the Redevelopment Area, thereby increasing access to the existing downtown establishments as well as the Improvements associated with the Project.

- B. Assessment of the importance of the Tax Exemption in obtaining development of the Project and influencing the locational decisions of probable occupants:
 - i. Tax Exemption permits better use of the Land through:
 - a. The completion of certain infrastructure;
 - b. The remediation of environmentally troubled property; and
 - c. The rehabilitation of historically significant property which is a local landmark; and

WHEREAS, upon consideration of the Application and the Mayor's recommendations with respect thereto pursuant to *N.J.S.A. 40A:20-8*, the Township Council on March 20, 2012 adopted Ordinance No. 2351-12 authorizing the execution of this Agreement (the "**Ordinance**"); and

WHEREAS, in order to satisfy requirements of the *Long Term Tax Exemption Law* and to set forth the terms and conditions under which the Parties shall carry out their respective obligations with respect to the Annual Service Charge (as such term is defined herein), the Parties have determined to execute this Financial Agreement.

NOW THEREFORE, in consideration of the mutual covenants herein contained and for other good and valuable consideration, it is mutually covenanted and agreed as follows:

ARTICLE I.

GENERAL PROVISIONS

Section 1.01 Governing Law – THIS FINANCIAL AGREEMENT SHALL BE GOVERNED BY THE LAWS OF THIS STATE, INCLUDING THE PROVISIONS OF THE LONG TERM TAX EXEMPTION LAW, THE LRHL AND ALL OTHER APPLICABLE LAWS. IT IS HEREBY EXPRESSLY ACKNOWLEDGED, UNDERSTOOD AND AGREED THAT UPON THE RECORDATION OF THE ORDINANCE AND THIS FINANCIAL AGREEMENT IN ACCORDANCE WITH SECTION 14.05 HEREOF, EACH AND EVERY PARCEL OF LAND, AND ANY IMPROVEMENT RELATED THERETO, INCLUDING WITHOUT LIMITATION, ANY UNIT, AS SUCH TERMS ARE DEFINED HEREIN, SHALL BE SUBJECT TO AND GOVERNED BY THE TERMS OF THE FINANCIAL AGREEMENT AND EACH AND EVERY OWNER, WHETHER IN FEE SIMPLE OR OTHERWISE, OF ANY SUCH PARCEL OF LAND, AND ANY IMPROVEMENT RELATED THERETO, INCLUDING ANY UNIT, REGARDLESS OF WHETHER SUCH OWNER SHALL BE AN URBAN RENEWAL ENTITY, THE REDEVELOPER, A UNIT PURCHASER, AS SUCH TERM IS DEFINED HEREIN, OR ANY OTHER COMPANY, ENTITY OR PERSON (EACH INDIVIDUALLY REFERRED TO HEREIN AS AN “**OWNER**”) SHALL BE BOUND BY THE TERMS HEREOF. IN THE EVENT OF ANY BREACH OR DEFAULT OF THIS FINANCIAL AGREEMENT BY AN OWNER, SUCH BREACH OR DEFAULT SHALL NOT CONSTITUTE A BREACH OR DEFAULT BY ANY OTHER OWNER(S) AND SUCH OTHER OWNER(S), AND ITS RESPECTIVE PARCEL OR PORTION OF LAND, AND ANY IMPROVEMENTS RELATED THERETO, INCLUDING ANY UNIT, SHALL CONTINUE TO BE SUBJECT TO, GOVERNED BY AND BOUND BY THIS FINANCIAL AGREEMENT.

Section 1.02 General Definitions – The following terms shall have the meaning assigned to such term in the preambles hereof:

| | |
|--------------------------------------|-----------------------------------------|
| <u>Act</u> | <u>Land</u> |
| <u>Agreement/Financial Agreement</u> | <u>LRHL</u> |
| <u>Application</u> | <u>Long Term Tax Exemption Law</u> |
| <u>Designation Resolution</u> | <u>Modification Agreement</u> |
| <u>Edison Battery Building</u> | <u>Ordinance</u> |
| <u>GP 177</u> | <u>Original Redevelopment Agreement</u> |
| <u>Governing Body</u> | <u>Parking Facility</u> |
| <u>Initial Redevelopment Plan</u> | <u>Parties</u> |

| | |
|----------------------------------------------|-----------------------------|
| <u>Phase 1 Redevelopment Project/Project</u> | <u>Redevelopment Area</u> |
| <u>Phase 1 Property</u> | <u>Redevelopment Plan</u> |
| <u>Redeveloper</u> | <u>Township</u> |
| | <u>Urban Renewal Entity</u> |

Unless specifically provided otherwise or the context otherwise requires, the following terms when used in this Agreement shall mean:

Administrative Fee – shall be as defined in Section 14.08 herein.

Affiliated Entity – shall mean Redeveloper, its successors and assigns, and any other entity affiliated with the Urban Renewal Entity.

Allowable Net Profit – shall mean the amount arrived at by applying the Allowable Profit Rate to the cost of the Project pursuant to the provisions of *N.J.S.A.* 40A:20-3(c).

Allowable Profit Rate – shall mean the greater of (a) twelve percent (12%) or (b) the percentage per annum arrived at by adding one and one-quarter percent (1¼%) to the annual interest percentage rate payable on the Affiliated Entity's initial permanent mortgage financing. If the initial permanent mortgage is insured or guaranteed by a governmental agency, the mortgage insurance premium or similar charge, if payable on a per annum basis, shall be considered as interest for this purpose. If there is no permanent mortgage financing, or if the financing is internal or undertaken by a related party, the Allowable Profit Rate shall be the greater of (i) twelve percent (12%) or (ii) the percentage per annum arrived at by adding one and one-quarter percent (1¼%) per annum to the interest rate per annum that the Township determines to be the prevailing rate of mortgage financing on comparable improvements in the County. The provisions of *N.J.S.A.* 40A:20-3(b) are incorporated herein by reference.

Annual Gross Revenue or Gross Revenue – shall have the meaning applied to such term in, and shall be construed in accordance with, the Long Term Tax Exemption Law, specifically *N.J.S.A.* 40A:20-3(a) and Section 6.07 hereof, or in the event that any of the Units shall be converted to for sale, as opposed to rental, then in accordance with *N.J.S.A.* 40A:20-14(a).

Annual Service Charge – shall mean the payment by an Owner pursuant to Article IV herein.

Annual Service Charge Payment Dates – shall mean February 1, May 1, August 1 and November 1 of each year commencing on the first such date following the Annual Service Charge Start Date and continuing in accordance with the term of this Financial Agreement.

Annual Service Charge Start Date – shall mean, with respect to the Project or any portion thereof, including any Unit, the earlier of Substantial Completion or the date that the Project or

any portion thereof, as applicable, including any Unit, receives a Certificate of Occupancy, and shall be the date upon which the Annual Service Charge begins to accrue, *pro rata*.

Applicable Law – shall mean all federal, State and local laws, ordinances, approvals, rules, regulations and requirements applicable thereto including, but not limited to, the Ordinance, the Act, the *Long Term Tax Exemption Law*, relevant construction codes including construction codes governing access for people with disabilities, and such zoning, sanitary, pollution and other environmental safety ordinances, laws and such rules and regulations thereunder, including all applicable environmental laws, applicable federal and State labor standards and all applicable laws or regulations with respect to the payment of prevailing wages.

Application – shall mean collectively, the applications, as supplemented, filed by the Urban Renewal Entity pursuant to *N.J.S.A. 40A:20-8* with the Mayor of the Township for a long-term tax exemption for the Project, attached hereto as Exhibit 3.

Auditor's Report – shall mean a complete financial statement outlining the financial status of the Project (for a period of time as indicated by context), which shall also include a certification of Total Project Cost and clear computation of Net Profit as provided in *N.J.S.A. 40A:20-3(c)(2)*. The contents of the Auditor's Report shall have been prepared in conformity with Generally Accepted Auditing Standards. The Auditor's Report shall be certified as to its conformance with such principles by a certified public accountant licensed to practice that profession in the State.

Certificate of Occupancy – shall mean a temporary or permanent Certificate of Occupancy, as such term is defined in the New Jersey Administrative Code, as issued by the Township authorizing occupancy of a building, in whole or in part, pursuant to *N.J.S.A. 52:27D-133*.

Change in Law – shall mean the enactment, promulgation, modification or repeal of or with respect to Applicable Law, including without limitation, the *Long Term Tax Exemption Law*, the Act or other similar statute with respect to the matters addressed by the terms of this Financial Agreement and/or the transactions contemplated hereby.

Chief Financial Officer – shall mean the Township's chief financial officer.

Completion, Complete or Completed – shall mean, with respect to the Project, (a) all work related to the Project in its entirety or any other work or actions to which such term is applied has been completed, acquired and/or installed in accordance with the Modification Agreement and in compliance with Applicable Laws so that (i) the Project in its entirety may, in all respects, be used and operated under the applicable provisions of the Modification Agreement, or (ii) with respect to any other work or action to which such term is applied, that the intended purpose of such work or action has been completed; (b) all permits, licenses and approvals that are required can be issued for the Project in its entirety or such other work or action to which such term is applied are in full force and effect; and (c) such "completion" has been evidenced by a written notice provided by the Urban Renewal Entity with respect to the Project, which determination is reasonably acceptable to the Township.

County – shall mean the County of Essex.

County Share – shall mean five percent (5%) of the Annual Service Charge received by the Township, which shall be payable to the County as provided herein.

Default – shall mean a breach of or the failure of any Party to perform any obligation imposed upon such Party by the terms of this Agreement, or under Applicable Law, beyond any applicable grace or cure periods.

Exhibit(s) – shall mean any exhibit attached hereto, which shall be deemed to be a part of this Financial Agreement, as if set forth in full in the text hereof.

Improvements – shall mean any building, structure or fixtures which are permanently affixed to the Land as part of the Project and become incorporated therein, which improvements are recognized and exempted from taxation under this Agreement.

In Rem Tax Foreclosure – shall mean a summary proceeding by which the Township may enforce the lien for taxes due and owing by a tax sale. Said foreclosure is governed by *N.J.S.A. 54:5-1 et seq.*

Land – shall mean the real property, but not the Improvements, known as Block 66, Lots 1, 5 and 7, all as set forth on the tax maps of the Township, and more particularly described by the metes and bounds description set forth as Exhibit 1 to this Agreement.

Land Taxes – shall mean the amount of taxes assessed on the value of the Land upon which the Project is located.

Land Tax Payments – shall mean payments made on the quarterly due dates for Land Taxes as determined by the Tax Assessor and the Tax Collector.

Material Conditions – shall be as defined in Section 4.04 herein.

Minimum Annual Service Charge – shall mean in the year following the expiration of the Stabilization Period and each year thereafter, \$650,000.00.

Net Profit – shall mean the Gross Revenue of the Urban Renewal Entity pertaining to the Project less all operating and non-operating expenses of the Urban Renewal Entity, all determined in accordance with generally accepted accounting principles and the provisions of *N.J.S.A. 40A:20-3(c)*. Without limiting the foregoing, included in expenses shall be payments of principal and interest made by the Urban Renewal Entity in an amount sufficient to amortize (utilizing the straight line method-equal annual amounts) the Total Project Cost over the term of the abatement granted pursuant to this Agreement as well as all other expenses permitted under the provisions of *N.J.S.A. 40A:20-3(c)*.

Owner – shall have the meaning set forth in Section 1.01.

Pending Litigation - shall mean *In re: Petition for Referendum to Repeal Ordinance*

2354-12 of the Township of West Orange, pending before the New Jersey Supreme Court as docket number 073069, on appeal from the decision of the Appellate Division in docket number A-006181-11T3, which reviewed the decision of the Law Division in docket number ESX-L-3587-12.

Residential Project – shall mean that component of the Project consisting of the design, development, financing and construction of approximately 333 residential units, and uses attendant and necessary thereto as required, or otherwise permitted, under the Redevelopment Plan, the Modification Agreement and Applicable Law.

Residential Unit – shall mean one of the residential units, regardless of whether such unit shall be for sale or rental, to be built as a part of the Residential Project, the tax exemption upon which shall continue and inure to the benefit of any Owner, and its successors and assigns, in accordance with the terms hereof.

Retail Project – shall mean that component of the Project consisting of the design, development, financing and construction of approximately 18,500 square feet of commercial retail space and uses attendant and necessary thereto as required under the Redevelopment Plan, the Modification Agreement, and Applicable Law.

Retail Unit – shall mean one or more units to be built as part of the Retail Project, the tax exemption upon which shall continue and inure to the benefit of any Owner, and its successors and assigns, in accordance with the terms hereof.

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

Stabilization Period – shall mean twenty-four (24) months from the date that the Project is Completed.

State – shall mean the State of New Jersey.

Substantial Completion – shall mean the date the work related to the Project, or any portion thereof, including any Unit, is sufficiently complete in accordance with the Redevelopment Plan and the Modification Agreement so that the Project, or any portion thereof, including any Unit, may be occupied or utilized for the use for which it is intended. The issuance of a temporary Certificate of Occupancy shall be conclusive proof that the Project, or any portion thereof, including any Unit, has reached Substantial Completion.

Tax Assessor – shall mean the Township tax assessor.

Tax Collector – shall mean the Township tax collector.

Tax Sale Law – *N.J.S.A. 54:5-1 et seq.*, as the same may be amended or supplemented from time to time.

Term – shall be as defined in Section 3.01 of this Agreement.

Termination – shall mean the expiration of the term of this Agreement in accordance with Section 3.01 hereof which by operation of the terms of this Financial Agreement shall cause the relinquishment of the tax exemption applicable to any Improvement, including any Unit.

Unit – shall mean one of the Residential Units or Retail Units to be built as part of the Project, the tax exemption upon which shall continue and inure to the benefit of any Owner, its successors and assigns in accordance with the terms hereof.

Unit Purchaser – shall mean the buyer of a Unit to whom the tax exemption for that Unit will be transferred and who will be responsible pursuant to this Agreement to pay the applicable portion of the Annual Service Charge.

Section 1.02 Interpretation and Construction – In this Financial Agreement, unless the context otherwise requires:

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

(b) Words importing a particular gender mean and include correlative words of every other gender and words importing the singular number mean and include the plural number and vice versa.

(c) Words importing persons mean and include firms, associations, partnerships (including limited partnerships), trusts, corporations, limited liability companies and other legal entities, including public or governmental bodies, as well as natural persons.

(d) Any headings preceding the texts of the several Articles and Sections of this Financial Agreement, and any table of contents or marginal notes appended to copies hereof, shall be solely for convenience of reference and shall not constitute a part of this Financial Agreement, nor shall they affect its meaning, construction or effect.

(e) Unless otherwise indicated, all approvals, consents and acceptances required to be given or made by any person or party hereunder shall not be unreasonably withheld, conditioned, or delayed.

(f) All notices to be given hereunder and responses thereto shall be given, unless a certain number of days is specified, in writing and within a reasonable time, which shall not be less than fifteen (15) days nor more than thirty (30) days, unless the context dictates otherwise.

(g) This Financial Agreement shall become effective upon its execution and delivery by the parties hereto.

(h) All exhibits referred to in this Financial Agreement and attached hereto are incorporated herein and made part hereof.

ARTICLE II.

BASIS OF AGREEMENT

Section 2.01 Covenant of Tax Exemption - The Township hereby grants its approval for a tax exemption for the Improvements, including, without limitation, any Unit, to be constructed and maintained in accordance with the terms and conditions of this Agreement and the provisions of Applicable Law, which Improvements shall be constructed and/or renovated on the Land.

Section 2.02 Representations of Urban Renewal Entity - The Urban Renewal Entity represents that its Certificate of Formation as attached hereto as Exhibit 4 contains all the requisite provisions of law, has been reviewed and approved by the Commissioner of the State Department of Community Affairs, and has been filed with, as appropriate, the State Department of Treasury, all in accordance with *N.J.S.A. 40A:20-5*.

Section 2.03 Construction of the Project - The Urban Renewal Entity represents that it will construct its applicable portion of the Project in accordance with the Modification Agreement, the Redevelopment Plan and Applicable Law, the use of which is more specifically described in the Application attached hereto as Exhibit 3.

Section 2.04 Construction Schedule - The Urban Renewal Entity agrees to diligently undertake to commence construction and complete the Project in accordance with Schedule 1 attached hereto and by this reference incorporated herein, as such schedule may be tolled pending Satisfactory Resolution of the Pending Litigation in accordance with the Modification Agreement.

Section 2.05 Ownership, Management and Control - (a) The Urban Renewal Entity hereby represents that Prism Green Urban Renewal IV, L.L.C., the sole member of which is Prism Green Associates IV, L.L.C., the signatory party to the Modification Agreement and the Original Redevelopment Agreement, is its sole and managing member.

(b) The Urban Renewal Entity hereby represents that it is the fee title owner of the Phase 1 Property.

Section 2.06 Financial Plan - The Urban Renewal Entity represents that the Improvements shall be financed in accordance with the Financial Plan attached hereto as Exhibit 5. The Plan sets forth estimated Total Project Cost, amortization rate on Total Project Cost, the

source of funds, the interest rates to be paid on construction financing, the source and amount of paid-in capital, and the terms of any mortgage amortization.

Section 2.07 Statement of Rental Schedules - The Urban Renewal Entity represents that its good faith projections of the initial rental schedules are set forth in Exhibit 6 attached hereto.

ARTICLE III.

DURATION OF AGREEMENT

Section 3.01 Term - It is understood and agreed by the Parties that this Agreement, including the obligation to pay the Annual Service Charge required under Article IV hereof and the tax exemption granted and referred to in Section 2.01 hereof, shall, with respect to the Project or any portion thereof, including any Unit, remain in full force and effect for thirty (30) years from the date of issuance of a Certificate of Occupancy for the Project or any portion thereof, including any Unit, but in no event, with respect to Units or otherwise, longer than thirty-five (35) years from the date of execution hereof. Upon Termination, the tax exemption for the Project shall expire and the Improvements shall thereafter be assessed and taxed according to the general law applicable to other non-exempt property in the Township. Upon Termination, all restrictions and limitations upon the Urban Renewal Entity shall terminate upon the Urban Renewal Entity's rendering and the Township's acceptance of its final accounting, pursuant to N.J.S.A. 40A:20-13.

Section 3.02 Date of Termination - Upon any Termination of the tax exemption described in Section 2.01 hereof, the date of such Termination shall be deemed to coincide with the end of the fiscal year of the Urban Renewal Entity.

ARTICLE IV.

ANNUAL SERVICE CHARGE

Section 4.01 Commencement of Annual Service Charge - The Urban Renewal Entity shall make payment of the Annual Service Charge commencing on the Annual Service Charge Start Date.

Section 4.02 Payment of Annual Service Charge

(a) The Annual Service Charge shall be due and payable to the Township on the Annual Service Charge Payment Dates, commencing to accrue as of the Annual Service Charge Start Date. In the event that an Owner fails to timely pay any installment of the Annual Service Charge, the amount past due shall bear until paid the highest rate of interest permitted under applicable State law then being assessed against other delinquent taxpayers in the case of unpaid taxes or tax liens.

(b) Each installment payment of the Annual Service Charge is to be made to the Township and shall be clearly identified as “Annual Service Charge Payment for the Phase 1 Project”.

Section 4.03 Annual Service Charge In consideration of the exemption from taxation for the Improvements, including the Units, each Owner shall pay the Annual Service Charge to the Township on the Annual Service Charge Payment Dates in the amounts set forth below.

(a) The Annual Service Charge shall be equal to an amount calculated as follows:

(i) For each of the first six (6) years from the Annual Service Charge Start Date, the Annual Service Charge shall be equal to the greater of (A) ten percent (10%) of the Annual Gross Revenue, or (B) the Minimum Annual Service Charge, to the extent applicable;

(ii) For each of the years seven (7) through twelve (12) from the Annual Service Charge Start Date, the Annual Service Charge shall be equal to the greater of (A) ten percent (10%) of the Annual Gross Revenue, (B) twenty percent (20%) of the real property taxes otherwise due on the value of the Land and the Improvements, or (C) the Minimum Annual Service Charge;

(iii) For each of the years thirteen (13) through eighteen (18) from the Annual Service Charge Start Date, the Annual Service Charge shall be equal to the greater of (A) ten percent (10%) of the Annual Gross Revenue, (B) forty percent (40%) of the real property taxes otherwise due on the value of the Land and the Improvements, or (C) the Minimum Annual Service Charge;

(iv) For each of the years nineteen (19) through twenty-four (24) from the Annual Service Charge Start Date, the Annual Service Charge shall be equal to the greater of (A) ten percent (10%) of the Annual Gross Revenue, (B) sixty percent (60%) of the real property taxes otherwise due on the value of the Land and the Improvements, or (C) the Minimum Annual Service Charge; and

(v) For each of the years twenty-five (25) from the Annual Service Charge Start Date through the term of this Financial Agreement, the Annual Service Charge shall be equal to the greater of (A) ten percent (10%) of the Annual Gross Revenue, (B) eighty percent (80%) of the real property taxes otherwise due on the value of the Land and the Improvements, or (C) the Minimum Annual Service Charge.

(b) In accordance with the Tax Exemption Law, including without limitation, N.J.S.A. 40A:20-12, the Owner shall be entitled to a credit against the Annual Service Charge equal to the amount, without interest, of the Land Taxes paid by it in the last four preceding quarterly installments.

Section 4.04 Material Conditions - It is expressly agreed and understood that all payments of Land Taxes, Annual Service Charges and any interest payments, penalties or costs of collection due thereon, are material conditions of this Financial Agreement. If any other term,

covenant or condition of this Financial Agreement or the Application, as to any person or circumstance shall, to any extent, be determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Financial Agreement or the application of such term, covenant or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each remaining term, covenant or condition of this Financial Agreement shall be valid and enforced to the fullest extent permitted by Applicable Law.

ARTICLE V.

CERTIFICATE OF OCCUPANCY

Section 5.01 Certificate of Occupancy - It is understood and agreed that it shall be the obligation of the Urban Renewal Entity to obtain all Certificates of Occupancy in a reasonably timely manner after the Urban Renewal Entity has satisfied all requirements to secure such Certificate of Occupancy.

Section 5.02 Filing of Certificate of Occupancy - It shall be the primary responsibility of the Urban Renewal Entity to forthwith file with both the Tax Assessor and the Tax Collector a copy of each Certificate of Occupancy.

Notwithstanding the foregoing, the filing of any Certificate of Occupancy shall not be a prerequisite for any action taken by the Township, including, if appropriate, retroactive billing with interest to collect any charges hereunder to be due.

ARTICLE VI.

ACCOUNTING, REPORTS, CALCULATIONS

Section 6.01 Unit Purchasers - Notwithstanding anything herein to the contrary, it is hereby expressly acknowledged, understood and agreed that no section or provision of this Article VI shall be applicable to, or otherwise enforceable against, any Unit Purchaser that in accordance with Applicable Law is not otherwise required to be an Urban Renewal Entity. This Article VI shall only be applicable to, and enforceable against, an Urban Renewal Entity.

Section 6.02 Accounting System - The Urban Renewal Entity agrees to calculate its "Net Profit" pursuant to *N.J.S.A. 40A:20-3(c)*.

Section 6.03 Periodic Reports -

(a) Auditor's Report: if the Urban Renewal Entity is still responsible to pay the Annual Service Charge (*e.g.* if the Urban Renewal Entity is the Owner of one or more Units), within ninety (90) days after the close of each fiscal or calendar year (depending on the Urban Renewal Entity's accounting basis) that this Agreement shall continue in effect, the Urban

Renewal Entity shall submit to the Township Council, the Tax Collector and the Township Clerk, who shall advise those municipal officials required to be advised, and the Division of Local Government Services in the State Department of Community Affairs, its Auditor's Report for the preceding fiscal or calendar year. The report shall clearly identify and calculate the Net Profit for the Urban Renewal Entity during the previous year. The Urban Renewal Entity assumes all costs associated with preparation of the periodic reports.

(b) Disclosure Statement: if the Urban Renewal Entity is still responsible to pay the Annual Service Charge (e.g. if the Urban Renewal Entity is the Owner of one or more Units), on each anniversary date of the execution of this Agreement, if there has been a change in ownership or interest in the Project from the prior year's filing, the Urban Renewal Entity shall submit to the Township Council, the Tax Collector and the Township Clerk, who shall advise those municipal officials required to be advised, a Disclosure Statement listing the persons having an ownership interest in the Project, and the extent of the ownership interest of each and such additional information as the Township may request from time to time.

Section 6.04 Inspection - The Urban Renewal Entity shall, upon reasonable request and notice, permit inspection of its property, equipment, buildings and other facilities of the Project and also permit examination of audit of its books, contracts, records, documents and papers with respect to the Project, by authorized officers of the Township, and the Division of Local Government Services in the State Department of Community Affairs pursuant to *N.J.S.A.* 40A:20-9(e). To the extent reasonably possible, the inspection will not materially interfere with the construction or operation of the Project.

Section 6.05 Limitation on Profits and Reserves - During the period of tax exemption as provided herein, the Urban Renewal Entity shall be subject to a limitation of its profits pursuant to the provisions of *N.J.S.A.* 40A:20-15. Pursuant to *N.J.S.A.* 40A:20-3(c), this calculation is completed in accordance with generally accepted accounting principles.

The Urban Renewal Entity shall have the right to establish a reserve against vacancies, unpaid rentals, and reasonable contingencies in an amount up to ten percent (10%) of the Annual Gross Revenues of the Urban Renewal Entity for the last full fiscal year preceding the year and may retain such part of the excess Net Profits as is necessary to eliminate a deficiency in that reserve, as provided in *N.J.S.A.* 40A:20-15.

Section 6.06 Payment of Dividend and Excess Profit Charge - In the event the Net Profits of the Urban Renewal Entity, shall exceed the Allowable Net Profits for such period, then the Urban Renewal Entity, within one hundred and twenty (120) days after the end of the accounting period established by the Long Term Tax Exemption Law, shall pay such excess Net Profits to the Township as an additional service charge; provided, however, that the Urban Renewal Entity may maintain a reserve as determined pursuant to aforementioned Section 6.05. The calculation of Net Profit and Allowable Net Profit shall be made in the manner required pursuant to *N.J.S.A.* 40A:20-3(c) and 40A:20-15.

Section 6.07 Calculation of Gross Revenue and Net Profit - There is expressly excluded from calculation of Gross Revenue and from Net Profit as set forth in *N.J.S.A.* 40A:20-3 for the purpose of determining compliance with *N.J.S.A.* 40A:20-15 or *N.J.S.A.* 40A:20-16, any gain

realized by the Urban Renewal Entity on the sale of any Unit, whether or not taxable under federal or State law.

ARTICLE VII.

ASSIGNMENT AND/OR ASSUMPTION

Section 7.01 Approval to Sale of Project by Urban Renewal Entity Formed and Eligible to Operate Under Law - As permitted by *N.J.S.A.* 40A:20-10, it is understood and agreed that the Township, on written application by an Urban Renewal Entity, will consent to a sale of the Project (or a portion thereof) and the transfer of this Agreement (as pertaining to a portion of the Project) to another Urban Renewal Entity provided that (a) in the event that the Project or relevant portion thereof shall not have been completed, the transferee Urban Renewal Entity shall have demonstrated to the reasonable satisfaction of the Township that it possesses the experience and capitalization necessary to complete the Project or relevant portion thereof, which determination shall not be unreasonably withheld; (b) the transferee Urban Renewal Entity does not own any other project subject to long term tax exemption at the time of transfer; (c) the transferee Urban Renewal Entity is formed and eligible to operate under the *Long Term Tax Exemption Law*; (d) the Urban Renewal Entity is not then in Default of this Agreement or in violation of Applicable Law; (e) the Urban Renewal Entity's obligations under this Agreement are fully assumed by the transferee Urban Renewal Entity; and (f) the transferee Urban Renewal Entity abides by all terms and conditions of this Agreement including, without limitation, the filing of an application pursuant to *N.J.S.A.* 40A:20-8.

Section 7.02 Approval for Sale to Purchasers of Units in the Project - As permitted by *N.J.S.A.* 40A:20-10(b) and provided that the Residential Project, or the Retail Project, as the case may be, has been devoted to condominium ownership, it is understood and agreed that the Township hereby consents to a sale of Residential Units, or Retail Units, as the case may be, by the Urban Renewal Entity to Unit Purchasers and their successors and/or assigns, and the tax exemption shall continue and inure to any Improvement, including any Unit owned by a Unit Purchaser and his/her successors and/or assigns. The Township further hereby consents to entry by the aforesaid Unit Purchasers into customary financial instruments for the financing of the acquisition and/or maintenance of the Unit, e.g. mortgage financing, home equity financing.

Section 7.03 Section 14 Tax Exemption - Section 7.02 of this Agreement permits the conveyance of Units pursuant to *N.J.S.A.* 40A:20-10(b). When an Urban Renewal Entity files a master deed pursuant to *N.J.S.A.* 46:8B-1 et seq. as to all or a portion of the Project which has been approved for tax exemption under the Financial Agreement, each Unit shall continue to be subject to the provisions of the Financial Agreement, and the tax exemption previously approved under the Financial Agreement with respect to property converted to condominium ownership shall be unaffected by the recording of the master deed or any subsequent deed conveying the Unit and its appurtenant interest in common elements. The tax exemption herein shall continue as to the Unit and its appurtenant undivided interest in the common elements subject to the Financial Agreement.

Section 7.04 Conveyance of Unit - The conveyance of a Unit which is authorized under this Financial Agreement to a bona fide purchaser shall not require consent or approval of the

Township and the exemption from taxation as to the Unit shall continue unaffected by the transfer.

Section 7.05 Severability - It is an express condition of the granting of this tax exemption that during its duration, an Owner shall not, without the prior consent of the Governing Body of the Township of West Orange by ordinance, convey, mortgage or transfer, all or part of the Project so as to sever, disconnect, or divide the Improvements from the Land which is basic to, embraced in, or underlying the exempted Improvements.

Section 7.06 Subordination of Fee Title - It is expressly understood and agreed that the Urban Renewal Entity has the right to encumber and/or assign the fee title to the Land and/or Improvements for the purpose of financing the design, development and construction of the Project and that any such encumbrance or assignment shall not be deemed to be a violation of this Agreement.

ARTICLE VIII.

RESERVATION OF TOWNSHIP RIGHTS AND REMEDIES

Section 8.01 Reservation of Rights and Remedies. – Except as expressly provided herein, nothing contained in this Financial Agreement or otherwise shall constitute a waiver or relinquishment by the Township or any Owner of any rights and remedies provided by Applicable Law. Unless otherwise expressly stated, nothing herein shall be deemed to limit any right of recovery that the Township or any Owner has under law, in equity, or under any provision of this Financial Agreement.

ARTICLE IX.

NOTICES

Section 9.01 Notice - Formal notices, demands and communications between and among the Township and an Owner shall be in writing and deemed given if dispatched to the address set forth below by registered or certified mail, postage prepaid, return receipt requested, or by a commercial overnight delivery service with packaging tracking capability and for which proof of delivery is available. In that case such notice is deemed effective upon delivery. Such written notices, demands and communications may be sent in the same manner to such other addresses as either party may from time to time designate by written notice.

Copies of all notices, demands and communications shall be sent as follows:

If to the Township:

Township of West Orange
Municipal Building
66 Main Street
West Orange, New Jersey 07052-5313
Attn: John K. Sayers, Township Administrator

with copies to:

Township of West Orange
Municipal Building
66 Main Street
West Orange, New Jersey 07052-5313
Attn: John Gross, Chief Financial Officer

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

Township of West Orange
Municipal Building
66 Main Street
West Orange, New Jersey 07052-5313
Attn: Law Department

If to the Urban Renewal Entity:

GP 177 Main Urban Renewal, L.L.C.
c/o Prism Capital Partners, L.L.C.
200 Broadacres Drive, Suite 180
Bloomfield, New Jersey 07003

Eugene R. Diaz, Principal
Prism Capital Partners, LLC
200 Broadacres Drive, Suite 180
Bloomfield, New Jersey 07003

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

With copies to:

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

If to any other Owner:

The notice shall be directed to the Owner's address as set forth in the property tax records of the Township.

ARTICLE X.

COMPLIANCE BY ENTITY WITH LAW

Section 10.01 Statutes and Ordinances - Each Owner hereby agrees at all times prior to the expiration or other Termination of this Financial Agreement to remain bound by the provisions of Applicable Law, including, but not limited to, the *Long Term Tax Exemption Law*. Any Owner's failure to comply with such statutes or ordinances shall constitute a violation and breach of the Financial Agreement.

ARTICLE XI.

CONSTRUCTION

Section 11.01 Construction - This Financial Agreement shall be construed and enforced in accordance with the laws of the State, and without regard to or aid or any presumption or other rule requiring construction against the party drawing or causing this Agreement to be drawn since counsel for both the Urban Renewal Entity and the Township have combined in their review and approval of same.

ARTICLE XII.

INDEMNIFICATION

Section 12.01 Indemnification - It is understood and agreed that in the event the Township shall be named as party defendant in any action brought against the Township by allegation of any breach, Default or a violation of any of the provisions of this Agreement and/or the provisions of Applicable Law, the Urban Renewal Entity, provided that it is still the fee title owner of all or any portion of the Land, or any Improvements related thereto, shall indemnify and hold the Township harmless from and against all liability, losses, damages, demands, costs, claims, actions or expenses (including reasonable attorneys' fees and expenses) of every kind,

character and nature arising out of or resulting from the action or inaction of the Urban Renewal Entity and/or by reason of any breach, Default or a violation of any of the provisions of this Agreement and/or the provisions of Applicable Law, including without limitation, *N.J.S.A. 40A:20-1 et seq.*, except for the willful misconduct by the Township or its officers, officials, employees or agents and the Urban Renewal Entity shall defend the suit at its own expense. However, the Township maintains the right to intervene as a party thereto, to which intervention the Urban Renewal Entity hereby consents, the reasonable expense thereof to be borne by the Urban Renewal Entity. To the extent practical and ethically permissible, the Urban Renewal Entity's attorneys shall jointly defend and represent the interest of the Township and the Urban Renewal Entity as to all claims indemnified in connection with this Agreement.

ARTICLE XIII.

DEFAULT

Section 13.01 Default - Default shall be failure of any party to conform to the terms of this Agreement, and/or the failure of any party to perform any obligation imposed upon such party by Applicable Law beyond any applicable notice, cure or grace period. A default under this Agreement shall also constitute a default under the Modification Agreement, however, a default under the Modification Agreement shall not automatically constitute a default under this Agreement. In addition, a default under this Agreement by any Owner shall only be considered a default against that specific party, without any implication of default against any other Owner.

Section 13.02 Cure Upon Default - Should any party be in Default of any obligation under this Agreement, the other party shall notify the defaulting party and any mortgagee, if applicable, in writing of said Default. If the defaulting party is the Urban Renewal Entity, the Township, shall provide such notice. Said notice shall set forth with particularity the basis of said Default. Except as otherwise limited by law, the defaulting party shall have sixty (60) days to cure any Default, other than a Default in payment of any installment of the Annual Service Charge, in which case there shall be no cure period.

Section 13.03 Remedies for Default - (a) In the event of any uncured Default by the Township, the Urban Renewal Entity may take whatever action at law or in equity, as may be necessary or desirable to enforce the performance or observance of any rights under this Agreement, including an action for specific performance or damages.

(b) In the event of any uncured Default by an Owner, the Township may take whatever action at law or in equity, as may be necessary or desirable to enforce the performance or observance of any rights under this Agreement, including an action for specific performance or damages. No Default hereunder by an Owner shall terminate the long term tax exemption (except as described herein) and its obligation to make Annual Service Charges, which shall continue in effect for the duration set forth in Section 3.01 hereof and subject to Section 13.06 hereinafter.

Section 13.04 Arbitration - In the event of a breach of this Agreement by any party or a dispute arising between any parties in reference to the terms and provisions as set forth herein,

then the parties shall submit the dispute to the American Arbitration Association in the State to be determined in accordance with its rules and regulations in such a fashion to accomplish the purpose of said laws. Costs for said arbitration shall be paid by the non-prevailing party.

Section 13.05 Default in the Payment of Annual Service Charge - (a) Upon any Default by an Owner in payment of any installment of the Annual Service Charge, the Township, in addition to their other remedies, reserves the right to proceed against the applicable Land, and any Improvements related thereto, including any Unit, in the manner provided by Applicable Law and shall have the right to proceed to In Rem Tax Foreclosure consistent with the provisions and procedures of the In Rem Tax Foreclosure Law.

(b) Whenever the word "Taxes" appears, or is applied, directly or implied, to mean taxes or municipal liens on Land, such statutory provisions shall be read, as far as it is pertinent to this Agreement, as if the Annual Service Charge were taxes or municipal liens on Land. In either case, however, any Owner does not waive any defense it may have to contest the rights of the Township to proceed in the above-mentioned manner.

Section 13.06 Remedies Upon Default Cumulative; No Waiver - Subject to the provisions of this Article XIII and the other terms and conditions of this Agreement, all of the remedies provided in this Agreement to any party, and all rights and remedies granted by law and equity shall be cumulative and concurrent and no determination of the invalidity of any provision of this Agreement shall deprive the Township of any of their remedies or actions against an Owner because of the Owner's failure to pay Land Taxes, the Annual Service Charge and/or any applicable water and sewer charges and interest payments. This right shall only apply to arrearages that are due and owing at the time, and the bringing of any action for Land Taxes, Annual Service Charges or other charges, or for breach of covenant or the resort of any other remedy herein provided for the recovery of Land Taxes, Annual Service Charges or other charges shall not be construed as a waiver of the right to proceed with an In Rem Tax Foreclosure action consistent with the terms and provisions of this Agreement.

Section 13.07 Final Accounting - Within one hundred and twenty (120) days after the date of Termination, the Urban Renewal Entity shall provide a final accounting and pay to the Township any excess Net Profits. For purposes of rendering a final accounting the Termination of the Agreement shall be deemed to coincide with the end of the fiscal year of the Township.

Section 13.08 Conventional Taxes - Upon Termination or expiration of this Agreement, the tax exemption for the Improvements shall expire and the Land and the Improvements thereon shall thereafter be assessed and conventionally taxed according to the general law applicable to other nonexempt taxable property in the Township.

ARTICLE XIV.

MISCELLANEOUS

Section 14.01 Financial Agreement Controlling - The Parties agree that in the event of a conflict between (i) the Application and this Financial Agreement or (ii) the Modification

Agreement and this Financial Agreement, the provisions of this Financial Agreement shall govern and prevail.

Section 14.02 Oral Representations - There have been no oral representations made by either of the Parties hereto which are not contained in this Financial Agreement. This Financial Agreement, the Modification Agreement, the Ordinance and the Application constitute the entire agreement between the Parties with respect to the Phase 1 Redevelopment Project and there shall be no modifications thereto other than by a written instrument executed by the Parties and delivered to each of them.

Section 14.03 Entire Document - All conditions in the Ordinance are incorporated in this Agreement and made a part hereof.

Section 14.04 Good Faith - In their dealings with each other, the Parties agree that they shall act in good faith.

Section 14.05 Recording - Upon the execution and delivery of this Financial Agreement, the entire Financial Agreement and the Ordinance shall be filed and recorded with the Essex County Register by GP 177, at GP 177's expense, such that this Financial Agreement and the Ordinance shall be reflected upon the land records of the County of Essex.

Section 14.06 Municipal Services - Each Owner shall make payments for municipal services, including water and sewer charges and any services, to the extent that such water and sewer charges, and other services, are not otherwise included in the real property taxes generally assessed upon property within the Township, that create a lien on a parity with or superior to the lien for the Land Taxes and Annual Service Charge, as required by law. These charges are not included in the Annual Service Charge and shall be billed separately. Nothing herein is intended to release any Owner from its obligation to make such payments.

Section 14.07 Portion of Annual Service Charge Paid to County - Pursuant to *N.J.S.A.* 40A:20-12, the Township shall remit the County Share to the County upon the receipt thereof.

Section 14.08 Administrative Fee - In accordance with *N.J.S.A.* 40A:20-9(h), the Township shall collect an administrative fee equal to 1% of the Annual Service Charge due in any year. In the event that any building is operated as a condominium, the Administrative Fee shall be collected by the condominium association as a portion of the common area maintenance charges, and shall be payable to the Township by the condominium association on an annual basis. In the event that any building shall not be established as a condominium, the Owner of such building shall pay the Administrative Fee, which shall be payable by the Owner to the Township on an annual basis.

Section 14.09 Financing Matters - The financial information required by the final paragraph of *N.J.S.A.* 40A:20-9 is set forth in the Application.

Section 14.10 Counterparts - This Agreement may be simultaneously executed in counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 14.11 Amendments - This Agreement may not be amended, changed, modified, altered or terminated without the written consent of the parties hereto.

Section 14.12 Certification - The Township Clerk shall certify to the Tax Assessor, pursuant to *N.J.S.A.* 40A:20-12, that a Financial Agreement with the Urban Renewal Entity, for the development of the Land, has been entered into and is in effect as required by *N.J.S.A.* 40A:20-1, *et seq.* Delivery by the Township Clerk to the Tax Assessor of a certified copy of the Ordinance shall constitute the required certification. Upon certification as required hereunder and upon the Annual Service Charge Start Date the Tax Assessor shall implement the exemption and continue to enforce that exemption without further certification by the Township Clerk until the expiration of the entitlement to exemption by the terms of this Financial Agreement or until the Tax Assessor has been duly notified by the Township Clerk that the exemption has been terminated.

Further, upon the adoption of this Financial Agreement, a certified copy of the Ordinance shall forthwith be transmitted to the Director of the Division of Local Government Services by the Township Clerk.

Section 14.13 Severability of Invalid Provisions - If any one or more of the covenants, agreements or provisions herein contained shall be held to be illegal or invalid in a final proceeding, then any such covenants, agreements or provisions shall be null and void and shall be deemed separable from the remaining covenants, agreements or provisions and shall in no way affect the validity of any of the other provisions hereof.

EXHIBITS AND SCHEDULES

The following Exhibits are attached hereto and incorporated herein as if set forth at length herein:

Schedule 1 – Construction Schedule

Exhibit 1 – Metes and Bounds Description of the Project

Exhibit 2 – Ordinance of the Township Authorizing the Execution of this Agreement

Exhibit 3 – The Application

Exhibit 4 – Certificate of Formation for Urban Renewal Entity

Exhibit 5 – The Financial Plan for the Undertaking of the Project

Exhibit 6 – Initial Estimated Rental Schedules

Exhibit 7 – Certification of Estimated Construction Costs

IN WITNESS WHEREOF, the Parties have caused this Financial Agreement to be executed as of the day and year first above written.

ATTEST:

TOWNSHIP OF WEST ORANGE

**Karen Carnevale, RMC
Township Clerk**

By: _____
Hon. Robert Parisi, Mayor

GP 177 MAIN URBAN RENEWAL, LLC

By: _____
Eugene R. Diaz, Principal

SCHEDULE 1

Construction Schedule

Certain demolition, remediation and site work originally commenced in 2009. Construction of the Phase 1 Redevelopment Project is scheduled for July 1, 2012 with an anticipated completion date on or before June 30, 2014.

EXHIBIT 1

Legal Description of the Project

EXHIBIT 2

Ordinance Authorizing the Execution of this Agreement

EXHIBIT 3

Applications with Exhibits

EXHIBIT 4

Certificate of Formation of Urban Renewal Entity

EXHIBIT 5

The Financial Plan for the Undertaking of the Project

EXHIBIT 6

Initial Rental Schedules

EXHIBIT 7

Architect's Certification of Estimated Construction Costs

TOTAL PROJECT COST - N.J.S.A. 40A:20-3h

| | | |
|----|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----|
| A. | Land | \$ |
| B. | Architects, engineers and attorneys fees paid or payable in connection with the planning, construction and financing of the project | \$ |
| C. | Surveying and testing | \$ |
| D. | Construction cost (to be certified by the architect) | \$ |
| E. | Insurance, interest and finance costs during construction | \$ |
| F. | Cost of obtaining initial permanent financing | \$ |
| G. | Commissions and other expenses payable in connection with initial leasing/sale | \$ |
| H. | Real estate taxes and assessments during the construction period | \$ |
| I. | Developer's overhead based on a percentage of (d) above, to be computed in accordance with percentage given in law (<u>N.J.S.A.</u> 40A:20-3h) (for projects over \$10,000,000 - 5%) | \$ |
| | Total | \$ |

The undersigned hereby certifies that the foregoing is the projected total project cost in regard to the Project referenced in this Financial Agreement.

By: _____

Exhibit D

Construction Schedule

Certain demolition, remediation and site work originally commenced in 2009. Construction of the Phase 1 Redevelopment Project is scheduled for July 1, 2012 with an anticipated completion date on or before June 30, 2014.

Exhibit E

Declaration of Covenants and Restrictions

Record and Return to:
Jennifer L. Credidio, Esq.
McMANIMON, SCOTLAND & BAUMANN, LLC
75 Livingston Avenue
Roseland, New Jersey 07068

Prepared by:

Jennifer L. Credidio, Esq.

DECLARATION OF COVENANTS AND RESTRICTIONS
Block 66, Lots 1, 5 and 7, Township
of West Orange (the “Property”)

(Record in Mortgage Book)

This Declaration of Covenants and Restrictions (“**Declaration**”) is made this _____ day of _____, _____ by and between the **TOWNSHIP OF WEST ORANGE**, a municipal corporation of the State of 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**”);

and

GP 177 MAIN URBAN RENEWAL, LLC, a limited liability company of the State of New Jersey, having offices at c/o Prism Capital Partners, LLC, 50 Grand Avenue, Englewood, New Jersey 07631-3506 (the “**Owner**,” a wholly owned affiliate of Redeveloper).

W I T N E S S E T H

WHEREAS, the *Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1, et seq.*, 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 a certain redevelopment project, the Governing Body of the Township by duly adopted resolution authorized the execution of a redevelopment agreement with the Redeveloper dated December 20, 2006 (the “**Redevelopment Agreement**”) in accordance with *N.J.S.A. 40A:12A-8(f)* of the *LRHL*; and

WHEREAS, the Governing Body has subsequently authorized, and the Township has entered, an agreement with the Redeveloper dated _____, _____ modifying certain terms and conditions of the Redevelopment Agreement (the “**Modification Agreement**”); and

WHEREAS, the fee title to the Property is held by Owner, a wholly owned affiliate of Redeveloper; 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 Modification Agreement contains such a covenant by the Redeveloper and its successor or assigns for as long as the Modification 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 Modification Agreement; and

WHEREAS, the Modification Agreement also provides that the Property, the Modification 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 Modification Agreement; and

WHEREAS, the Modification Agreement requires that such covenants be memorialized in a Declaration of Covenants 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 Modification Agreement.

Section 2. Redeveloper covenants and agrees that:

(A) In connection with its use or occupancy of the Phase I Project, Redeveloper shall not effect or execute any covenant, agreement, lease, conveyance or other instrument whereby any portion of the Phase I 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 Modification Agreement and shall at all times develop, design, finance, construct and operate the Phase I Project or cause the Phase I Project to be developed, designed, financed, constructed and operated pursuant to the conditions and requirements of Applicable Laws, Governmental Approvals, the Modification Agreement and the Redevelopment Plan and for a period of thirty (30) years from the issuance of a Certificate of Completion shall construct no other use except that established in the Redevelopment Plan, *provided however*, that Redeveloper shall not be deemed to be in breach if Redeveloper diligently contests, in good faith and by appropriate proceedings, such compliance with any of the aforesaid Applicable Laws. All uses to which the Phase I Project may be devoted are controlled by the Redevelopment Plan, the Governmental Approvals, Applicable Laws and the Modification Agreement and that under no circumstances can the Redeveloper undertake any construction or development of the Phase I Project not in accordance with the Redevelopment Plan, the Governmental Approvals, Applicable Laws or the Modification Agreement.

(C) Redeveloper shall, in order to effectuate the purposes of the Modification Agreement, make, execute, acknowledge and deliver any contracts, orders, receipts, writings and instructions with any other persons, firms or the Township and in general do all things which may be requisite or proper for the construction and development of the Phase I Project in accordance with the Modification 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 Phase I Project including evidence satisfactory to the Township that its use of the Phase I Project is in compliance with the Modification Agreement, the Redevelopment Plan and all Applicable Laws, and use diligent and commercially reasonable efforts to ensure timely performance of its

obligations under the Modification Agreement, including but not limited to Completion of Construction of the Phase I 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 Phase I Project for the purposes contemplated in the Modification Agreement. Redeveloper shall enter into such other commercially reasonable agreements with respect to its development, financing, construction and management and operation of the Phase I 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 Modification Agreement, in the case of a Force Majeure Event, Redeveloper shall not suspend or discontinue the performance of its obligations under the Modification Agreement (other than in the manner provided for in the Modification 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 Phase I Project.

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

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

(I) Redeveloper shall, during construction of the Phase I 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 Phase I Project to be developed, designed, financed and constructed at its sole cost and expense, except as otherwise set forth in the Modification 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 Phase I Project in furtherance of the Township's consideration in executing the Modification Agreement

with Redeveloper if such change will materially impair Redeveloper's ability to perform its obligations pursuant to the terms of the Modification 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 Phase I 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 Modification 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 Phase I 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 Modification 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 Phase I 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 Phase I 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 Modification Agreement pursuant to Section 7.2 thereof for the Phase I Project.

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

By: _____

WITNESS:

**REDEVELOPER:
PRISM GREEN ASSOCIATES IV, LLC**

By: _____

Name: _____

Title: _____

WITNESS:

**OWNER:
GP 177 MAIN URBAN RENEWAL, LLC**

By: _____

Name: _____

Title: _____

ACKNOWLEDGMENT

STATE OF NEW JERSEY :
: SS
COUNTY OF _____ :

BE IT REMEMBERED, that on this ____ day of _____ , _____ before me, the subscriber, a Notary Public of New Jersey, personally appeared _____ , who, being by me duly sworn on his/her oath, deposes and makes proof to my satisfaction that he/she is the _____ of **PRISM GREEN ASSOCIATES IV, LLC**, the Redeveloper named in the within Instrument; that the execution, as well as the making of this Instrument, having been duly authorized by the Redeveloper, and said Instrument was signed and delivered by said _____ as and for the voluntary act and deed of said Redeveloper.

Notary Public of the State of New Jersey

ACKNOWLEDGMENT

STATE OF NEW JERSEY :
: SS
COUNTY OF _____ :

BE IT REMEMBERED, that on this ____ day of _____ , _____ before me, the subscriber, a Notary Public of New Jersey, personally appeared _____ , who, being by me duly sworn on his/her oath, deposes and makes proof to my satisfaction that he/she is the _____ of **GP 177 MAIN URBAN RENEWAL, LLC**, the Owner named in the within Instrument; that the execution, as well as the making of this Instrument, having been duly authorized by the Owner, and said Instrument was signed and delivered by said _____ as and for the voluntary act and deed of said Owner.

Notary Public of the State of New Jersey

Exhibit F

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 Modification 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 Modification Agreement.

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

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 G

Incumbency Certificate

INCUMBENCY CERTIFICATE

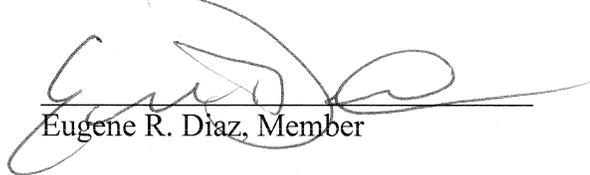
Pursuant to Section 6.1(L) of the Modification Agreement between the Township of West Orange and Prism Green Associates IV, LLC (the “Company”), the undersigned, as managing member of the Company hereby represents and warrants to the Township of West Orange that:

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 its address c/o Greenfield Partners LLC, 50 North Water Street, South Norwalk, Connecticut 06854.

[SIGNATURE FOLLOWING ON NEXT PAGE]

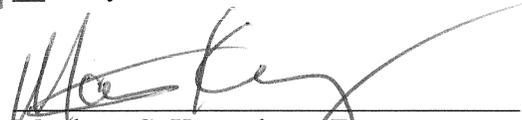
IN WITNESS WHEREOF, the undersigned has executed and delivered this certificate as of March __, 2014.

PRISM GREEN ASSOCIATES IV, LLC
a Delaware limited liability company



Eugene R. Diaz, Member

Sworn to before me this
15th day of March, 2014



Matthew C. Karrenberg, Esq.
Attorney, State of New Jersey

Exhibit H

Assignment and Assumption Agreement

ASSIGNMENT AND ASSUMPTION AGREEMENT

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT (this “Assignment”) is entered into as of this 8th day of August, 2014, by and among PRISM GREEN ASSOCIATES IV, L.L.C., a limited liability company of the State of Delaware authorized to do business in the State of New Jersey (the “Assignor”) and GP 177 MAIN URBAN RENEWAL, L.L.C., a New Jersey limited liability company (the “Assignee”).

WITNESSETH

WHEREAS, on March 14, 2000, as amended on September 6, 2000, the Mayor and Township Council (the “**Governing Body**”) of the Township of West Orange (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 certain areas within the West Orange downtown area (the “**Downtown Redevelopment Area**” or the “**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, after the Planning Board conducted an investigation and held public hearings in accordance with the statute, and recommended that the Area be so designated, the Governing Body duly adopted a resolution determining that the Area was an “area in need of redevelopment” in accordance with *N.J.S.A. 40A:12A-6*; 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; and

WHEREAS, in accordance with the provisions of *N.J.S.A. 40A:12A-7* the Governing Body on February 19, 2003, upon a report and recommendations of the Planning Board, approved Ordinance No. 1864-03 adopting a redevelopment plan for the Area (the “**Redevelopment Plan**”); and

WHEREAS, on August 15, 2006 the Governing Body approved by Ordinance No. 2091-06, certain amendments to the Redevelopment Plan, as further amended and supplemented by the March 6, 2007 by Ordinance 2123-07 (the Redevelopment Plan as amended on August 15, 2006 and March 6, 2007 referred to hereinafter as the “**Amended Redevelopment Plan**”); and

WHEREAS, the Township and the Assignor have entered into a redevelopment agreement for the Area, dated as of December 20, 2006 and as amended subsequent thereto (the “**Redevelopment Agreement**”); and

WHEREAS, on August 8, 2014, the Assignor and the Township entered into that certain Modification Agreement governing the Phase 1 Project, as such term is defined therein; and

WHEREAS, Section 8.2 of the Modification Agreement permits the Assignor to transfer its obligations under the Modification Agreement to the Assignee, provided, however, that Assignee shall assume all of the obligations of Assignor hereunder, but Assignor shall remain primarily liable for the performance of Assignor's obligations; and provided further, that (i) a copy of the fully executed written instrument of conveyance and assignment and assumption of the Modification Agreement shall be promptly delivered to the Township; and (ii) such conveyance or assignment does not violate any of the Government Approvals, as such term is defined in the Modification Agreement; and

WHEREAS, as of the date of hereof, Assignee has acquired and is the fee title owner of the Block 66, Lots 1, 5 and 7 (collectively, the "GP 177 Property"); and

WHEREAS, pursuant to the provisions of the Modification Agreement and applicable law, the Assignor intends to transfer its rights and obligations under the Modification Agreement to the Assignee; and

WHEREAS, the parties hereto seek to establish the terms and conditions of an assignment and assumption of the Assignor's rights and obligations under the Modification Agreement to the Assignee.

NOW THEREFORE, in consideration of the mutual covenants herein contained and for other good and valuable consideration, it is mutually covenanted and agreed as follows:

Section 1. Assignment and Assumption of Obligations relating to GP 177 Property. Assignor hereby assigns, transfers and sets over to Assignee and Assignee specifically assumes (i) all of Assignor's rights, title and interest in, to and under the Modification Agreement relating to the GP 177 Property and (ii) and any other agreements it has entered into with the Township (the "Contracts") relating to the GP 177 Property;

Section 2. Continuing Obligations under the Modification Agreement. Notwithstanding the provisions of Section 1 above, in accordance with Section 8.2 of the Modification Agreement, the Assignor shall at all times remain primarily liable to the Township to perform any and all duties or obligations of the Assignor under the Modification Agreement or under the Contracts relating to the GP 177 Property.

Section 3. Representations and Warranties. (a) the Assignor represents and warrants as follows:

(i) it has the right to assign the Modification Agreement and Contracts hereby assigned, and no other person, firm or corporation, other than the parties hereto, has any right title or interest therein;

(ii) it has duly and timely performed all of the material obligations, terms, covenants, conditions and warranties of the Modification and the Contracts on its part to be kept, observed and performed as of the date hereof;

(iii) it has not previously sold, assigned, transferred, mortgaged, pledged or otherwise encumbered the Modification Agreement or the Contracts, or any other right or interest therein, except as may be permitted therein;

(iv) all of the Modification Agreement and Contracts are in full force and effect on the date hereof and, to its knowledge, are not subject to defenses, setoffs, claims or counterclaims whatsoever; and

(v) the execution and delivery of this Assignment and its performance hereunder will not constitute a violation of any Governmental Approvals.

(b) the Assignee represents and warrants as follows:

(i) it is duly incorporated and validly existing under the laws of the State of New Jersey and all necessary resolutions or authorizations have been duly adopted to authorize the execution and delivery of this Assignment and direct the persons executing this Assignment to do so for and on its behalf;

(ii) as of the date hereof, to the best of its knowledge and belief after diligent inquiry, there is no action, proceedings or investigation now pending, nor any basis therefore, known or believed to exist which (1) questions the validity of this Assignment, such Assignee's execution thereof, or any action or act taken or to be taken by such Assignee pursuant to this Assignment; or (2) is likely to result in a material adverse change in such Assignee's property, assets, liabilities or condition which will materially and substantially impair such Assignee's ability to perform its obligations pursuant to the terms of this Assignment;

(iii) the execution and delivery of this Assignment and its performance hereunder will not constitute a violation of any operating agreement of such Assignee or of any other agreement, mortgage, indenture, instrument or judgment to which such Assignee may be a party; and

(iv) it specifically makes all the representations and warranties of the Assignor in Section 6.1(A), (B), (D), (E), (F), (G) and (J) of the Modification Agreement as if set forth herein; and

(v) to the best of its knowledge and belief after diligent inquiry, it is not aware that any of the representations and warranties of the Assignor set forth in Section 6.1(C), (H), (I), (K) or (L) of the Modification Agreement are false or misleading.

Section 4. Covenants. By execution of this Assignment, the Assignee covenants to undertake and complete the Phase 1 Project in accordance with the terms of the Modification

Agreement, including but not limited to the covenants and restrictions of Articles VII and VIII of the Modification Agreement.

Section 5. Township Rights. The Assignor and Assignees acknowledge and agree that this Assignment is not intended to diminish or reduce any of the rights of the Township under the Modification Agreement, including the right to enforce the terms thereof. Further, all other terms and provisions of the Modification Agreement shall remain in full force and effect with respect to both the Assignor and the Assignees in accordance with the terms hereof.

Section 6. Term. So long as no default has occurred under the Modification Agreement or any Contracts, beyond the expiration of applicable notice and grace periods set forth therein, the Assignees shall have the right to retain, use and enjoy the benefits of the Modification Agreement and the Contracts pursuant to the provisions of this Assignment.

Section 7. Third Party Beneficiaries. Except for the Township and its successors and/or assigns, nothing contained herein is intended or shall be deemed to create or confer any rights upon any third person not a party hereto, whether a third party beneficiary or otherwise, except as expressly provided herein, nor shall anything contained herein be construed to create any relationship of partnership, agency, joint venture or the like between the parties hereto.

Section 8. Severability of Invalid Provisions. If any one or more of the provisions contained herein shall be held to be illegal or invalid in a final proceeding, then any such provisions shall be null and void and shall be deemed separable from the remaining provisions and shall in no way affect the validity of any of the other provisions hereof.

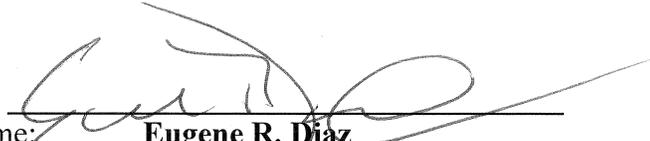
Section 9. Governing Law. This Assignment shall be governed by and construed and enforced pursuant to the laws of the State of New Jersey, without regard to its conflict of law principles. Any action hereunder shall be brought exclusively in a court of the State of New Jersey or in a United States Court having jurisdiction in the District of New Jersey, in either case, sitting in Essex County, New Jersey, and the parties hereto hereby waive objections to such venue. The parties hereto for themselves and their successors and assigns, hereby waive trial by jury in any action arising out of or in connection with this Assignment.

Section 10. Counterparts. This Assignment may be simultaneously executed in counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

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IN WITNESS WHEREOF, the parties hereto have caused this Assignment to be properly executed as of the date first written above.

PRISM GREEN ASSOCIATES IV, L.L.C.

By: 
Name: **Eugene R. Diaz**
Title: **Principal**

GP 177 MAIN URBAN RENEWAL, L.L.C.

By: 
Name: **Eugene R. Diaz**
Title: **Principal**

ACKNOWLEDGEMENT OF RECEIPT

The Township of West Orange hereby acknowledges the receipt of this Assignment and Assumption Agreement by and among Prism Green Associates IV, L.L.C. and GP 177 Main Urban Renewal, L.L.C., pursuant to the terms and provisions of Section 8.2 of the Modification Agreement.

ATTEST:

TOWNSHIP OF WEST ORANGE

Karen Carnevale, RMC
Township Clerk

By: _____
Hon. Robert Parisi, Mayor

Exhibit I

Special Assessment Agreement

Record and return to:

Glenn F. Scotland, Esq.
McManimon & Scotland, L.L.C.
1037 Raymond Boulevard, Suite 400
Newark, New Jersey 07102

Special Assessment Agreement

By and Between

The Township of West Orange

and

GP 177 Main Urban Renewal, L.L.C.,

THIS SPECIAL ASSESSMENT AGREEMENT (hereinafter “**Agreement**”), made this _____ day of _____, 2012, by and between GP 177 Main Urban Renewal, L.L.C. (referred to herein as “**GP 177**” or “**Urban Renewal Entity**”), an urban renewal entity, qualified to do business under the provisions of the *Long Term Tax Exemption Law of 1992*, as amended and supplemented, *N.J.S.A. 40A:20-1, et seq.* (the “**Long Term Tax Exemption Law**”), with offices at 50 Grand Avenue, Englewood, NJ 07631, along with its permitted successors and/or assigns, and the Township of West Orange, a municipal corporation in the County of Essex and the State of New Jersey (the “**Township**”, and together with the Urban Renewal Entity, the “**Parties**”).

WITNESSETH:

WHEREAS, the Mayor and Township Council (the “**Governing Body**”) of the Township, acting by Resolution (the “**Designation Resolution**”) designated certain areas within the West Orange downtown area as an “area in need of redevelopment” (the “**Redevelopment Area**”) pursuant to §5 of the *Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq.* (the “**LRHL**” or the “**Act**”); and

WHEREAS, the 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 and as further described in the Designation Resolution, 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, 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, the Governing Body, after adherence to the procedures and standards set out in the *LRHL*, on August 15, 2006, March 6, 2007 and March 8, 2011 adopted amendments to the Initial Redevelopment Plan (the Initial Redevelopment Plan as so modified is hereinafter referred to as the “**Redevelopment Plan**”); and

WHEREAS, the Township entered into a redevelopment agreement with Prism Green Associates IV, L.L.C. (the “**Redeveloper**”) dated December 20, 2006 (as amended by letter agreements dated May 8, 2007, June 21, 2007, September 11, 2007 and October 27, 2009, the “**Original Redevelopment Agreement**”), governing the redevelopment of the Downtown Redevelopment Area; and

WHEREAS, on _____, 2012, the Township and the Redeveloper entered into that certain “**Modification Agreement**” amending and supplementing the Original Redevelopment Agreement with respect to a portion of the Redevelopment Area consisting of Block 66, Lots 1, 5 and 7, as may be further subdivided (the “**Phase 1 Property**”); and

WHEREAS, in accordance with the terms and conditions contained in the Modification Agreement, the Redeveloper proposes to construct or rehabilitate approximately 333 residential rental units; together with up to approximately 18,500 square feet of commercial retail space and approximately 31,700 other amenity support space; a parking structure containing approximately 635 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; and the public infrastructure and improvements (collectively, the “**Phase 1 Project**” or the “**Project**”); and

WHEREAS, those certain public improvements enumerated at Exhibit A attached hereto and by this reference incorporated herein (the “**Public Improvements**”) constitute a portion of the Project and also constitute qualified improvements under the Local Improvements Law, as defined below; and

WHEREAS, in accordance with Section 8.2 of the Modification Agreement, the Redeveloper and the Urban Renewal Entity entered into that certain “Assignment and Assumption Agreement”, as acknowledged by the Township, dated _____, 2012 (the “**Assignment Agreement**”), whereby, inter alia, the Redeveloper assigned its rights, duties and obligations as set forth in the Assignment Agreement to the Urban Renewal Entity, but remained primarily liable for same; and

WHEREAS, the Public Improvements shall constitute local improvements within the meaning of, and for purposes of, *N.J.S.A. 40:56-1, et seq.* (the “**Local Improvements Law**”), and the Redevelopment Area Bond Financing Law, as amended and supplemented, *N.J.S.A. 40A:12A-64, et seq.* (the “**RAB Law**”), and

WHEREAS, on _____, 2012, the Township and the Redeveloper, acting on behalf of, and as agent for, the Urban Renewal Entity, entered into that certain Phase 1 Infrastructure Construction Agreement governing the construction of, among other things, the Public Improvements; and

WHEREAS, in order to enhance the economic viability of and opportunity for a successful project, the Township entered into that certain Phase 1 Financial Agreement with the Urban Renewal Entity, dated _____, 2012, governing payments made to the Township in lieu of real estate taxes on the Project pursuant to the *Long Term Tax Exemption Law*; and

WHEREAS, on _____, 2012, the Township finally adopted Ordinance No. [] (the “**Bond Ordinance**”) authorizing the issuance of general obligation bonds or notes of the Township (the “**Bonds**”), in an aggregate principal amount not to exceed \$6,300,000 to finance all or a portion of the costs of the improvements set forth therein, including the Public Improvements, provided however, that notes shall only be issued during the construction period and shall not otherwise be renewed subsequent to the completion of such improvements; and

WHEREAS, the Parties have agreed that fifty percent (50%) of the principal and interest on the Bonds shall be deemed the conferred benefit to the Phase 1 Property for the Public Improvements pursuant to the Local Improvements Law and the RAB Law; and

WHEREAS, in order to defray a portion of the costs of the Public Improvements, the Township shall impose on the Phase 1 Property a special assessment in accordance with the terms of this Agreement (the “**Special Assessment**”); and

WHEREAS, the Township Council on December __, 2012 adopted Ordinance No. __-__ authorizing the execution of this Agreement (the “**Ordinance**”, a copy of which is attached hereto as Exhibit B).

NOW THEREFORE, in consideration of the mutual covenants herein contained and for other good and valuable consideration, it is mutually covenanted and agreed as follows:

ARTICLE I.

GENERAL PROVISIONS

Section 1.01 Governing Law – THIS AGREEMENT SHALL BE GOVERNED BY THE LAWS OF THIS STATE, INCLUDING THE PROVISIONS OF THE LRHL, THE LOCAL IMPROVEMENTS LAW, THE RAB LAW AND ALL OTHER APPLICABLE LAWS. IT IS HEREBY EXPRESSLY ACKNOWLEDGED, UNDERSTOOD AND AGREED THAT UPON THE RECORDATION OF THE ORDINANCE AND THIS AGREEMENT IN ACCORDANCE WITH SECTION 7.01 HEREOF, EACH AND EVERY PARCEL OF LAND, AND ANY IMPROVEMENT RELATED THERETO, INCLUDING WITHOUT LIMITATION, ANY UNIT, AS SUCH TERMS ARE DEFINED HEREIN, SHALL BE SUBJECT TO AND GOVERNED BY THE TERMS OF THIS AGREEMENT AND EACH AND EVERY OWNER, WHETHER IN FEE SIMPLE OR OTHERWISE, OF ANY SUCH PARCEL OF LAND, AND ANY IMPROVEMENT RELATED THERETO, INCLUDING ANY UNIT, REGARDLESS OF WHETHER SUCH OWNER SHALL BE THE URBAN RENEWAL ENTITY, A UNIT PURCHASER, AS SUCH TERM IS DEFINED HEREIN, OR ANY OTHER COMPANY, ENTITY OR PERSON (EACH INDIVIDUALLY REFERRED TO HEREIN AS AN “**OWNER**”) SHALL BE BOUND BY THE TERMS HEREOF. IN THE EVENT OF ANY BREACH OR DEFAULT OF THIS AGREEMENT BY AN OWNER, SUCH BREACH OR DEFAULT SHALL NOT CONSTITUTE A BREACH OR DEFAULT BY ANY OTHER OWNER(S) AND SUCH OTHER OWNER(S), AND ITS RESPECTIVE PARCEL OR PORTION OF LAND, AND ANY IMPROVEMENTS RELATED THERETO, INCLUDING ANY UNIT, SHALL CONTINUE TO BE SUBJECT TO, GOVERNED BY AND BOUND BY THIS AGREEMENT.

Section 1.02 General Definitions – The following terms shall have the meaning assigned to such term in the preambles hereof:

Act
 Agreement
 Assignment Agreement
 Bond Ordinance
 Bonds
 LRHL
 Local Improvements Law
 Long Term Tax Exemption Law
 Modification Agreement
 Ordinance
 Original Redevelopment Agreement
 Owner
 Parking Deck
 Parties
 Phase 1 Infrastructure Construction Agreement
 Phase 1 Financial Agreement

Phase 1 Project/Project
Phase 1 Property
Public Improvements
RAB Law
Redeveloper
Redevelopment Area
Redevelopment Plan
Township
Urban Renewal Entity

Unless specifically provided otherwise or the context otherwise requires, the following terms when used in this Agreement shall mean:

Bond Proceeds – shall mean the proceeds of the Bonds, including investment earnings thereon, which proceeds shall only be spent on the costs of the improvements, including the Public Improvements, set forth in the Bond Ordinance, as well as the Costs of Issuance.

Costs of Issuance – shall mean the cost and expense related to the authorization, sale and issuance of the Bonds.

In Rem Tax Foreclosure – shall mean a summary proceeding by which the Township may enforce the lien for taxes, special assessments and other statutory liens. Said foreclosure is governed by *N.J.S.A. 54:5-1 et seq.*

Land – shall mean the real property known as Block 66, Lots 1, 5 and 7, all as set forth on the tax maps of the Township, and more particularly described by the metes and bounds description set forth as Exhibit C to this Agreement.

Residential Project – shall mean that component of the Project consisting of the design, development, financing and construction of approximately 333 residential units, and uses attendant and necessary thereto as required, or otherwise permitted, under the Redevelopment Plan, the Modification Agreement and Applicable Law.

Residential Unit – shall mean one of the residential units, regardless whether such units shall be for sale or rental, to be built as a part of the Residential Project.

Retail Project – shall mean that component of the Project consisting of the design, development, financing and construction of approximately 18,500 square feet of commercial retail space and uses attendant and necessary thereto as required under the Redevelopment Plan, the Modification Agreement, and Applicable Law.

Retail Unit – shall mean one or more units to be built as part of the Retail Project.

Tax Sale Law – *N.J.S.A. 54:5-1 et seq.*, as the same may be amended or supplemented from time to time.

Trust Agreement -That certain trust agreement by and between the Township and the Trustee, dated as of _____, 2012, and acknowledged by the Redeveloper, governing the delivery, deposit, application, investment, requisition, disbursement and withdrawal of the Bond Proceeds.

Unit – shall mean one of the approximately Residential Units or Retail Units to be built as part of the Project.

Unit Purchaser – shall mean the buyer of a Unit who will be responsible pursuant to this Agreement to pay the applicable portion of the Special Assessment.

ARTICLE II
DURATION OF AGREEMENT

SECTION 2.01 Term

The Parties hereby expressly, irrevocably and unconditionally acknowledge, agree, warrant and covenant that this Agreement, including the obligation to pay the Special Assessment required under Article III hereof, shall remain in effect, until the earlier of (i) thirty (30) years from the date that the first Special Assessment amount is due in accordance with the terms hereof, (ii) the date on which no Bonds remain outstanding, or (iii) the date on which an Owner, but only with respect to such Owner, shall, at its sole option, pay the Principal Amount of the Special Assessment, plus accrued interest, as set forth in Sections 3.01(d) and (e) hereof.

ARTICLE III
ASSESSMENT AMOUNT

SECTION 3.01 Special Assessment Amount

(a) The Parties hereby expressly and irrevocably acknowledge and agree that, with respect to the Phase 1 Property, the amount of the Special Assessment shall be \$3,150,000, (the “Principal Amount”), plus interest payable on such Principal Amount, calculated as the interest payable by the Township from time to time on such portion of the Bonds issued by the Township to fund the improvements set forth in the Bond Ordinance, including the Public Improvements, provided however, that under no circumstances shall the Principal Amount of the Special Assessment exceed the actual costs of the Public Improvements.

(b) In the event that upon the completion of the improvements set forth in the Bond Ordinance, including the Public Improvements, all of the Bond Proceeds have not otherwise been expended in accordance with the Trust Agreement, for any reason

whatsoever, the amount of the Special Assessment as set forth in Section 3.01(a) above shall be reduced by the amount of the unexpended Bond Proceeds plus the interest otherwise due thereon for the remaining term of the Bonds.

(c) In the event that the Bonds shall be refunded or otherwise refinanced by the Township, the amount of the Special Assessment as set forth in Section 3.01(a) above shall be reduced by fifty percent (50%) of the net whole dollar savings achieved by such refunding or refinancing, provided however, with the exception of the renewal or refinancing of notes, so long as GP 177 shall be the Owner of the Phase 1 Property, the Township shall not otherwise refund or refinance any Bonds without the express written approval of GP 177, unless such refunding or refinancing shall result in a reduction in the aggregate amount, and in each and every installment, of the outstanding Special Assessment.

(d) In the event that the Township shall issue notes, which notes shall only be issued during the construction period and shall not otherwise be renewed subsequent to the completion of the improvements set forth in the Bond Ordinance, including the Public Improvements, and such notes shall be outstanding, the Owner shall have the right, but not the obligation, at the maturity date of such notes, to pay down all or a portion of the outstanding Principal Amount of the Special Assessment, plus accrued interest to the date thereof. As set forth in Section 2.01 hereof, in the event that the Owner shall pay all of the outstanding Principal Amount allocable to it, together with the accrued interest as set forth in this section, this Agreement shall terminate with respect to such Owner.

(e) Other than as set forth in Section 3.01(d) above, the Owner shall have the right, but not the obligation, at any time during this Agreement upon forty-five (45) days written notice to the Township, to pay the outstanding Principal Amount of the Special Assessment, plus accrued interest to the next interest payment date on the Bonds. As set forth in Section 2.01 hereof, in the event that the Owner shall pay such amount, this Agreement shall terminate with respect to such Owner.

SECTION 3.02 Special Assessment Installments

(a) The Special Assessment shall be payable in such amounts and at such times as set forth in Exhibit D attached hereto. The estimated schedule at the time of the execution of this Agreement shall serve as the initial Exhibit D. Upon the issuance of the Bonds or any series of Bonds to refund or refinance the same, a new Exhibit D shall be attached to this Agreement reflecting such issuance.

(b) In the event that any of the Units shall be converted to for sale, as opposed to rental, then the amount of the Special Assessment as set forth in Exhibit D shall be allocated to each Unit pursuant to the respective square footage of each Unit plus the percentage of ownership of common areas allocated to each Unit, provided however, in no such event shall the amount of the Special Assessment exceed the amounts as set forth in the current Exhibit D.

(c) The Owner hereby expressly, irrevocably and unconditionally agrees, warrants, covenants and accepts that in the event that the Owner fails to timely pay, in

full, any installment of any Special Assessment amount, the amount past due shall bear the highest rate of interest permitted under New Jersey law in the case of unpaid taxes or tax liens on land until paid.

(d) Each installment payment of the aforesaid Special Assessment amount is to be made to the Township and shall be clearly identified as “Special Assessment Payment for the Phase 1 Project”.

(e) In the event that the amount of the Special Assessment shall be modified in accordance with Sections 3.01(b) or (c) herein, or the Units shall be converted to for sale, as opposed to rental, as set forth in Section 3.02(b) above, Exhibit D shall be automatically updated to reflect such modifications.

ARTICLE IV

MUNICIPAL LIEN; SUBORDINATION OF FEE TITLE

SECTION 4.01. Municipal Lien

(a) The parties hereby expressly, irrevocably and unconditionally acknowledge, agree, warrant and covenant that in accordance with the Local Improvements Law, specifically N.J.S.A. 40:56-33, and the RAB Law, specifically N.J.S.A. 40A:12A-66(c), and such other statutes as may be sources of relevant authority, if any, upon the recordation of the Ordinance and this Agreement, as set forth in Section 7.01 hereof, the Ordinance, this Agreement and any amount due hereunder, including without limitation, the Special Assessment, shall constitute an automatic, enforceable and perfected statutory municipal lien for all purposes of law.

(b) The Parties hereby expressly, irrevocably and unconditionally represent, agree, warrant and covenant that this Agreement, and the municipal lien created hereby, is valid and enforceable in accordance with all applicable law, including without limitation the Local Improvements Law and the RAB Law.

SECTION 4.02. Subordination of Fee Title

The Parties hereby expressly, irrevocably and unconditionally acknowledge, agree, warrant and covenant that the Owner has the right, subordinate to the municipal lien, as a matter of law, to encumber the fee title to its property, including any improvements related thereto, and that any such subordinate encumbrance shall not be deemed to be a violation of this Agreement.

ARTICLE V

DEFAULT

Section 5.01 Default - Default shall be failure of any party to conform to the terms of this Agreement, and/or the failure of any party to perform any obligation imposed upon such party by applicable law beyond any applicable notice, cure or grace period. In addition, a default under this Agreement by any Owner shall only be considered a default against that specific party, without any implication of default against any other Owner.

Section 5.02 Cure Upon Default - Should any party be in Default of any obligation under this Agreement, the other party shall notify the defaulting party and any mortgagee, if applicable, in writing of said Default. Except as otherwise limited by law, the defaulting party shall have sixty (60) days to cure any Default, other than a payment Default, for which the defaulting party shall have ten (10) days to cure.

Section 5.03 Remedies for Default - (a) In the event of any uncured Default by the Township, an Owner may take whatever action at law or in equity, as may be necessary or desirable to enforce the performance or observance of any rights under this Agreement, including an action for specific performance or damages.

(b) In the event of any uncured Default by an Owner, the Township may take whatever action at law or in equity, as may be necessary or desirable to enforce the performance or observance of any rights under this Agreement, including an action for specific performance or damages. No Default hereunder by an Owner shall terminate this Agreement (except as described herein) and its obligation to pay the Special Assessment amounts due hereunder, which shall continue in effect for the duration as set forth in Section 2.01 hereof.

Section 5.04 Default in the Payment of Special Assessment

Upon any default by an Owner in payment of any installment of the Special Assessment, the Township, in addition to their other remedies, reserves the right to proceed against the applicable Land, and any improvements related thereto, including any Unit, in the manner provided by Applicable Law and shall have the right to proceed to In Rem Tax Foreclosure consistent with the provisions and procedures of the In Rem Tax Foreclosure law. As set forth in the RAB Law, specifically *N.J.S.A. 40A:12A-66(c)*, an event of a default by an Owner in the payment of an installment of the Special Assessment shall not result in the acceleration of the subsequent installments of the Special Assessment and such subsequent installments shall be considered as not in default and the municipal lien for the subsequent installments of the Special Assessment not yet due shall continue.

ARTICLE VI

NOTICES

Section 6.01 Notice - Formal notices, demands and communications between and among the Township and an Owner shall be in writing and deemed given if dispatched to the address set forth below by registered or certified mail, postage prepaid, return receipt requested, or by a commercial overnight delivery service with packaging tracking capability and for which proof of delivery is available. In that case such notice is deemed effective upon delivery. Such written notices, demands and communications may be sent in the same manner to such other addresses as either party may from time to time designate by written notice.

Copies of all notices, demands and communications shall be sent as follows:

If to the Township:

Township of West Orange
Municipal Building
66 Main Street
West Orange, New Jersey 07052-5313
Attn: John K. Sayers, Township Administrator

with copies to:

Township of West Orange
Municipal Building
66 Main Street
West Orange, New Jersey 07052-5313
Attn: John Gross, Chief Financial Officer

Glenn F. Scotland, Esq.
McManimon & Scotland, L.L.C.
1037 Raymond Boulevard, Suite 400
Newark, New Jersey 07102

Township of West Orange
Municipal Building
66 Main Street
West Orange, New Jersey 07052-5313
Attn: Law Department

If to the Urban Renewal Entity:

GP 177 Main Urban Renewal, L.L.C.
c/o Prism Capital Partners, L.L.C.
50 Grand Avenue
Englewood, New Jersey 07631

Eugene R. Diaz, Principal
Prism Capital Partners, LLC
50 Grand Avenue
Englewood, New Jersey 07631

G. William Roesch II
Senior Vice President - Finance
Prism Capital Partners, LLC
50 Grand Avenue
Englewood, New Jersey 07631

With copies to:

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

If to any other Owner:

The notice shall be directed to the Owner's address
as set forth in the property tax records of the
Township.

ARTICLE VII.

MISCELLANEOUS

Section 7.01 Recording – Upon the execution and delivery of this Agreement, the entire Agreement and the Ordinance shall be filed and recorded with the Essex County Register by GP 177, at GP 177's expense, such that this Agreement and the Ordinance shall be reflected upon the land records of the County of Essex as a municipal lien upon and a covenant running with each and every parcel of Land and any improvements related thereto.

Section 7.02 Counterparts - This Agreement may be simultaneously executed in counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 7.03 Amendments - This Agreement may not be amended, changed, modified, altered or terminated without the written consent of the parties hereto.

Section 7.04 Severability of Invalid Provisions - If any one or more of the covenants, agreements or provisions herein contained shall be held to be illegal or invalid in a final proceeding, then any such covenants, agreements or provisions shall be null and void and shall be deemed separable from the remaining covenants, agreements or provisions and shall in no way affect the validity of any of the other provisions hereof.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of the day and year first above written.

ATTEST:

TOWNSHIP OF WEST ORANGE

Karen Carnevale, RMC
Township Clerk

By: _____
Hon. Robert Parisi, Mayor

GP 177 MAIN URBAN RENEWAL, LLC

By: _____
Eugene R. Diaz, Principal

EXHIBIT A

PUBLIC IMPROVEMENTS

EXHIBIT B
ORDINANCE

EXHIBIT C

METES AND BOUNDS DESCRIPTION

EXHIBIT D

SPECIAL ASSESSMENT INSTALLMENTS