

2/1/12

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: _____, 2012

PHASE 1 INFRASTRUCTURE CONSTRUCTION AGREEMENT

THIS PHASE 1 INFRASTRUCTURE CONSTRUCTION AGREEMENT (“**Agreement**”) is made this _____ day of _____, 2012 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, 50 Grand Avenue, Englewood, New Jersey 07631-3506 (“**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 _____, 2012, 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 _____, 2012 (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, 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.

“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: 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.

“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”: _____ 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.

“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 the 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.

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;

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

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

(e) 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;

(f) 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 (\$3,000,000) 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 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, L.L.C.
1037 Raymond Boulevard, Suite 400
Newark, New Jersey 07102

To the Redeveloper:

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

With a copy to:

GP 177 Main Urban Renewal, LLC
c/o Prism Capital Partners, LLC
50 Grand Avenue
Englewood, New Jersey 07631-3506
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.

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: _____