

**RESOLUTION OF THE TOWNSHIP OF WEST ORANGE IN THE
COUNTY OF ESSEX, NEW JERSEY AUTHORIZING REVISIONS TO
AN AGREEMENT WITH DGP URBAN RENEWAL LLC FOR THE
REDEVELOPMENT OF CERTAIN PROPERTY IN THE DOWNTOWN
REDEVELOPMENT AREA COMMONLY KNOWN AS THE EDISON
BATTERY FACTORY**

WHEREAS, pursuant to the Local Redevelopment and Housing Law (*N.J.S.A. 40A:12A-1 et seq.*), the Township Council (the “**Township Council**”) of the Township of West Orange (the “**Township**”), acting by resolution, determined that the Downtown Redevelopment Area was an “area in need of redevelopment” in accordance with *N.J.S.A. 40A:12A-6(b)*; and

WHEREAS, on February 9, 2003 the Township Council approved an Ordinance adopting a redevelopment plan for the Downtown Redevelopment Area (as amended and supplemented from time to time, the “**Redevelopment Plan**”); and

WHEREAS, the Township and Prism Green Associates IV, LLC (“**Prism**”) entered into that certain Redevelopment Agreement dated as of December 20, 2006 (as amended and supplemented, the “**Original Redevelopment Agreement**”); and

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

WHEREAS, the Township and Prism entered into that certain Modification Agreement dated August 8, 2014 with respect to the redevelopment of the Edison Battery Parcels (the “**Modification Agreement**”) (as further defined therein, the “**Phase 1 Project**”); and

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

WHEREAS, on July 15, 2015, DGP Urban Renewal LLC (“**DGP**”), an urban renewal entity qualified to do business under the Exemption Law, proposed to the Township that the Township authorize DGP to take ownership of and develop the Phase 1 Project as the designated redeveloper thereof; and

WHEREAS, on August 11, 2015, the Township: acting by Resolution 202-15 authorized the termination of that certain Modification Agreement dated August 8, 2014 granting Prism and GP 177 certain redevelopment rights with respect to the Phase 1 Project Site; and acting by Resolution 203-15 authorized the execution of a redevelopment agreement with DGP authorizing DGP to undertake the Phase 1 Project and establishing the rights and obligations of DGP with respect to the same (“**DGP Redevelopment Agreement**”); and

WHEREAS, in connection with the finalization of construction financing for the Phase 1 Project, DGP has requested certain revisions to the form of the DGP Redevelopment Agreement, as further described herein; and

WHEREAS, the Township wishes to authorize the execution of the DGP Redevelopment Agreement with such revisions so that the construction financing for the Phase 1 Project can be completed,

NOW, THEREFORE BE IT RESOLVED by the Township Council of the Township of West Orange, in the County of Essex, New Jersey, as follows:

I. GENERAL

The aforementioned recitals are incorporated herein as though fully set forth at length.

II. EXECUTION OF DGP REDEVELOPMENT AGREEMENT

(a) The Mayor is hereby authorized to execute the DGP Redevelopment Agreement, as approved by Resolution 203-15, as modified by the revisions set forth at Exhibit A attached hereto and by this reference incorporated herein, together with such additions, deletions and modifications as are necessary and desirable in consultation with counsel to effectuate the same.

(b) The Township Clerk is hereby authorized and directed, upon execution of the Agreement in accordance with the terms of Section II(a) hereof, to attest to the signature of the Mayor upon such document and is hereby further authorized and directed to affix the corporate seal of the Township upon such document.

III. SEVERABILITY

If any part of this Resolution shall be deemed invalid, such parts shall be severed and the invalidity thereby shall not affect the remaining parts of this Resolution.

IV. AVAILABILITY OF THE RESOLUTION

A copy of this resolution shall be available for public inspection at the offices of the Township.

V. EFFECTIVE DATE

This Resolution shall take effect upon final passage.

I HEREBY CERTIFY the foregoing to be a true copy of a resolution adopted by the West Orange Township Council, in the County of Essex, at its meeting held on **February 23, 2016.**

Karen Carnevale, RMC, Township Clerk

Exhibit A

Section 4.1(a)(i), Project Implementation:

The second paragraph of Section 4.1(a)(i), reading:

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

shall be stricken and replaced with the following:

“Unless otherwise tolled or adjusted as provided for in this Agreement, Commencement of Construction of the Phase 1 Project will commence within thirty (30) days of the date hereof, and Completion of Construction of Phase 1 Project will take place by February 1, 2019.

It is the intention of the Parties that the Construction Schedule attached hereto as Exhibit D shall constitute the paramount Construction Schedule for the Phase 1 Project and that any substantial completion dates set forth in any other agreements between the Parties, including but not limited to the Financial Agreement, shall be construed as and deemed to be estimates. As such, it is the intention of the Parties that, so long as the Redeveloper is in compliance with the Construction Schedule hereunder, the failure to comply with such estimated dates shall not be construed as a default hereunder or under such other agreements between the Parties including the Financial Agreement.”

Section 10.2, Remedies Upon Event of Default:

The following language shall be added at the end of the first paragraph of Section 10.2:

“The Township agrees that it shall not terminate this Agreement or Redeveloper’s designation as redeveloper hereunder until Mortgagee’s cure period as set forth in Section 9.3 hereof has expired without the Mortgagee having commenced a cure or remedy of such default.”

Section 10.7, Replacement of Redeveloper:

The underlined language shall be included in Section 10.7(2):

“10.7 Replacement of Redeveloper. Upon termination of this Agreement by the Township due to an Event of Default by the Redeveloper, the Township shall, pursuant to their responsibilities under Applicable Law, use reasonable efforts to designate a replacement developer for the Phase 1 Project. Such replacement redeveloper shall be designated as soon and in such a manner as the Township

shall find feasible and consistent with the objectives of the Applicable Law and of the Redevelopment Plan. Consistent with Section 4.3(a), Redeveloper shall deliver to the Township originals of all Plans and Specifications and other Phase 1 Project documents to the extent in the possession and control of the Redeveloper or its consultants, contractors, engineers, architects or agents, and shall upon request execute assignments of all Phase 1 Project documents and other rights and agreements pertaining to the Phase 1 Project in favor of the Township. Any proceeds resulting from the designation of the replacement redeveloper shall be applied as follows:

(1) First, to all Township Costs;

(2) Second, to reimburse the Redeveloper, its successors or transferees up to the amount equal to the Redeveloper's actual costs (including debt secured by a mortgage but exclusive of profit and development or management fees paid to Redeveloper or its affiliates) associated with the Phase 1 Project, for land acquisition, engineering, site improvement, development costs and other costs expressly required by this Agreement; and

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

Section 11.1, Insurance – General Requirements:

Section 11.1 reads in part:

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

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

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

The following language shall be added at the end of Section 11.1(B):

“The Township agrees that the Township’s interest in the insurance coverages described in Section 11.1(A) and (B) is subject to the interest of a Mortgagee in such insurance;”

Exhibit D, Construction Schedule:

Exhibit D, reading:

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

shall be stricken and replaced with the following:

“Unless otherwise tolled or adjusted as provided for in this Agreement, Commencement of Construction of the Phase 1 Project will commence within thirty (30) days of the date hereof, and Completion of Construction of Phase 1 Project will take place by February 1, 2019.”