

ESCROW AGREEMENT

THIS ESCROW AGREEMENT (“**Agreement**”) is made as of the ____ day of July 2019 by and between Green Essex Partners, LLC, (“**GEP**”), with an address at 16 Microlab Road, Suite A, Livingston, NJ 07039 and the Township of West Orange, a body corporate and politic of the State of New Jersey (the “**Township**”), with an address at 66 Main Street, West Orange, NJ 07052.

WITNESSETH:

WHEREAS, on January 9, 2018, the Township Council of the Township of West Orange (the “**Township**”) designated various properties commonly referred to as Essex Green and Executive Drive as an area need of redevelopment (the “**Redevelopment Area**”) and on June 11, 2019, the Township adopted a redevelopment plan for Redevelopment Area entitled Essex Green-Executive Drive Redevelopment Plan (the “**Plan**”) pursuant to the Local Redevelopment and Housing Law, *N.J.S.A. 40A:12A-1 et seq.* (the “**Redevelopment Law**”); and

WHEREAS, on July 16, 2019 the Township Council adopted Resolution ____ (the “**Resolution**”) whereby it designated GEP as conditional redeveloper of certain properties in the Redevelopment Area, specifically Block 155, Lots 40.02 and 42.02, also known as 100 and 200 Executive Drive (the “**Properties**”), and authorized the execution of this Agreement; and

WHEREAS, GEP proposes to redevelop the Properties; and

WHEREAS, GEP wishes to engage the Township, in its capacity as redevelopment entity pursuant to the Redevelopment Law, in the negotiation of a redevelopment agreement and other related agreements with respect to the Properties located in the Redevelopment Area; and

WHEREAS, N.J.S.A. 40A:12A-8(f) of the Redevelopment Law authorizes the Township to “negotiate and collect revenue from a redeveloper to defray the costs of the redevelopment entity;” and

WHEREAS, as an inducement to the Township to engage in such negotiations, and as a condition of the Resolution, GEP has agreed to deposit with the Township the initial amount of **TWENTY-FIVE THOUSAND and 00/100 (\$25,000.00) DOLLARS** (the “**Escrow Deposit**”) to be deposited in an escrow account and disbursed in accordance with the provisions of this Agreement to defray certain costs incurred by or on behalf of the Township arising out of or in connection with the Reimbursable Activities, as defined herein,

NOW THEREFORE, in consideration of the foregoing, and for other good and valuable consideration, and intending to be legally bound hereby, the parties hereto agree as follows:

1. **Escrow Deposit.** The initial Escrow Deposit is separate from and in addition to all other application fees and escrow deposits that may be required by the Township. Additions to the Escrow Deposit may subsequently become necessary to cover all reimbursable expenses incurred by the Township pursuant to the terms of this Agreement.
2. **Scope of Reimbursable Services.** The Township shall be entitled to be reimbursed for all professional charges incurred in connection with the selection and designation of GEP as redeveloper, and the negotiation and preparation of the Redevelopment Agreement and any related agreements, including but not limited to correspondence, meetings and all communications (including by telephone and e-mail) with GEP, their professionals, Township staff or retained professional(s) in the negotiation and preparation of such redevelopment agreement and related agreements (collectively, the “**Reimbursable Activities**”). Annexed hereto as **Schedule 1** for informational purposes only is a schedule of rates to be charged by outside professionals and consultants retained by the Township with respect to this matter as of the date of this Agreement. The schedule of such professionals and/or rates may change during the term of this Agreement in the sole discretion of the Township without prior notice to GEP. **Reimbursement may include charges incurred in connection with Reimbursable Activities prior to the date of this Agreement, and is not contingent upon the outcome of the negotiations or execution of a Redevelopment Agreement.**
3. **Deposit and Administration of Escrow Funds.** The Escrow Deposit and all additions thereto shall be held by the Township in a banking institution or savings and loan association in the State of New Jersey insured by an agency of the federal government, or in any other fund or depository approved for such deposits by the State of New Jersey, in a segregated, non-interest bearing account referenced to this Agreement. Concurrently with their submission of the Escrow Deposit to the Township, GEP shall provide a copy of their Business Registration Certificate and Form W-9, to aid in the administration of funds.
4. **Payments from the Escrow Funds.** (a) The Township shall use such funds to pay Reimbursable Activities.

 (b) GEP shall not be charged for any costs and expenses that do not constitute Reimbursable Activities.

 (c) Each payment for professional services charged to the escrow account shall be pursuant to a voucher from the professional, identifying the personnel performing the Reimbursable Activities, each date the services were performed, the hours spent in not greater than one-tenth (1/10) hour increments, the hourly rate, and specifying Reimbursable Activities. All professionals shall submit the required vouchers or statements to the Township on a monthly basis in accordance with the schedule and procedures established by the Township. Each professional shall simultaneously send an informational copy of each voucher or statement submitted to

the Township to GEP; *provided*, that each such informational voucher or statement may be redacted if and as necessary to prevent disclosure of privileged or otherwise confidential matters.

5. **Accounting and Additional Deposits.** Upon the execution of a Redevelopment Agreement, termination of negotiations, or as reasonably requested by GEP, the Township shall prepare and send to GEP a statement which shall include an accounting of funds listing all deposits, disbursements and the cumulative balance of the escrow account. If at any time the balance in the escrow account is less than **TEN THOUSAND DOLLARS and 00/100 (\$10,000.00)**, the Township shall provide GEP with a notice of the insufficient escrow deposit balance. GEP shall deposit to the escrow account additional funds such that the total amount on deposit shall be not less than **TWENTY-FIVE THOUSAND DOLLARS and 00/100 (\$25,000.00)**, with an equal amount to be deposited from each of GEP, such deposit to be made within five (5) business days of the Township's notice, failing which the Township may unilaterally cease work without liability to GEP.
6. **Close Out Procedures.** Upon termination of negotiations without a Redevelopment Agreement being executed, or upon the execution of a Redevelopment Agreement, and unless otherwise provided in the Redevelopment Agreement, GEP shall send written notice by certified mail to the Township, to the attention of the Township Attorney, requesting that the remaining balance of the Escrow Deposit be refunded, or otherwise applied as agreed to pursuant to the terms of the executed Redevelopment Agreement. After receipt of such notice, the professional(s) shall render a final bill to the Township within 30 days, and shall send an informational copy simultaneously to GEP. Within 30 days of receipt of the final bill the Township shall pay all outstanding bills in accordance with this Agreement and render a written final accounting to GEP detailing the uses to which the escrow funds were put. GEP will not be responsible for any additional charges once the final accounting has been rendered by the Township in accordance with this section. If a Redevelopment Agreement is executed and GEP so requests, the Township agrees to apply any balance remaining in the Escrow Deposit towards the funding of any escrow deposits that may be required to be posted pursuant to the terms of the executed Redevelopment Agreement.
7. **Disputed Charges.** (a) GEP may dispute the propriety or reasonableness of professional charges paid out of the Escrow Deposit by written notice to the Township. A copy of such notice shall be sent simultaneously to the professional(s) whose charges or estimated costs are the subject of the dispute. Such written notice of a disputed charge shall be given within 30 days from GEP' receipt of the informational copy of the professional's voucher, except that if the professional has not supplied GEP with an informational copy of the voucher, then GEP shall send notice within 30 days from receipt of the first statement of activity against the escrow account containing the disputed charge. Failure to dispute a charge in writing within the prescribed time shall constitute GEP' acceptance of the charge and a waiver by GEP of all objections to the charge and to payment thereof out of the escrow account.

(b) If the Township and GEP cannot agree on the resolution of a disputed charge, the parties agree to arbitrate the matter, with a retired judge mutually agreeable to the parties acting as arbitrator. The Party requesting arbitration shall serve a list of not less than five (5) acceptable arbitrators and certify that the Party nor its professionals have any social or financial relationship with the proposed arbitrators other than other arbitrations. The cost of the arbitrator shall be split equally between all parties and not exceed \$300 per party per hour. The responding party shall select one of the five (5) acceptable arbitrators within ten (10) days of receipt of the list. During the pendency of a dispute, the Township shall not pay the disputed charges out of the escrow account, but may continue to pay undisputed charges out of the escrow account.

8. **Governing Law.** This Escrow Agreement shall be governed, construed and enforced according to the laws of the State of New Jersey, without regard to its conflicts of laws principles. Any action hereunder shall be brought exclusively in a court of the State of New Jersey sitting in Essex County, New Jersey, or in a United States Court having jurisdiction in the District of New Jersey, sitting in Essex County, New Jersey, and GEP hereby waives all objections to such venue.
9. **Successors and Assigns.** This Escrow Agreement shall be binding upon, and inure to the benefit of, the parties hereto and upon each party's successors and assigns.
10. **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, as counsel for both GEP and the Township have combined in their review and approval of same.
11. **Entire Agreement; No Modification Unless in Writing.** This Escrow Agreement contains the entire agreement of the parties relative to the subject matter hereof. Any amendment hereto or modification or variation hereof shall be ineffective unless in writing signed by each of the parties hereto.
12. **Counterparts.** This Agreement may be simultaneously executed in counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.
13. **Effective Date.** This Agreement shall not become effective unless and until the Initial Escrow Deposit has been made.

The balance of this page intentionally left blank; signatures appear on next page.

IN WITNESS WHEREOF, the parties have executed this Agreement the date and year first above written.

Witness or Attest:

TOWNSHIP OF WEST ORANGE

By: _____
Karen J. Carnevale, R.M.C.

By: _____
Name: Robert D. Parisi
Title: Mayor

Witness or Attest:

GREEN ESSEX PARTNERS, LLC

By: _____

By: _____
Name:
Title:

SCHEDULE 1

Schedule of Rates (hourly rate):

Redevelopment Counsel: McManimon, Scotland & Baumann, LLC \$350.00 for partners, \$225.00 for associates, \$125.00 for paralegals

Redevelopment Planners: Heyer, Gruel & Associates \$175.00 for principals, \$150.00 for principal planners, \$135.00 for senior planners, \$110.00 for associate planners

Redevelopment Financial Advisors: NW Financial \$225.00

Redevelopment Engineers: Leonard R. Lepore, P.E. \$150.00