

fSETTLEMENT AGREEMENT

This Settlement Agreement (the “Agreement”) is made by, between, and among the Township of West Orange (the “Township”), Mayor Robert D. Parisi (the “Mayor”), and John O. Gross (the “CFO”, and collectively with the Township and the Mayor, the “Township Defendants”) on the one hand, and Prism Green Associates IV, LLC (“Prism”) on the other hand (hereinafter, the Township, Mayor, CFO, and Prism may be referred to individually as a “Party”, and sometimes collectively be referred to as the “Parties”).

RECITALS

WHEREAS, the Township is a municipal corporate body politic of the State of New Jersey, situated in the County of Essex, having an address at 66 Main Street, West Orange, New Jersey 07052; and

WHEREAS, the Mayor is the duly elected Mayor of the Township having served in that capacity since July 1, 2010; and

WHEREAS, the CFO is an employee of the Township; and

WHEREAS, Prism is a Delaware limited liability company and real estate developer with its office at 310 Kingsland Street, Nutley, New Jersey 07110; and

WHEREAS, the Township committed to redeveloping its downtown community and, pursuant thereto, the Township Council of the Township designated a portion of it downtown district as an “area in need of redevelopment” (the “Redevelopment Area”); and

WHEREAS, the Township enacted a redevelopment plan for the Redevelopment Area (the “Plan” or the “Redevelopment Plan”); and

WHEREAS, on December 20, 2006, the Township entered into a redevelopment agreement with Prism for the renovation and construction of certain properties within the Redevelopment Area (the “2006 Agreement”); and

WHEREAS, in August 2014, Prism and the Township entered into a modified agreement to amend the 2006 Agreement as it pertains to Phase I of the Redevelopment Plan (the “2014 Amended Agreement”); and

WHEREAS, on June 1, 2018, the Township and Prism entered into an amended agreement pertaining to Phase II of the Redevelopment Plan (the “2018 Amended Agreement” and together with the 2006 Agreement and the 2014 Amended Agreement, the “Redevelopment Agreement”); and

WHEREAS, simultaneous with approving the Amended Agreement, the Township and Prism entered into an Infrastructure Agreement (the “Infrastructure Agreement”); and

WHEREAS, simultaneous with approving the 2018 Amended Agreement, the Township and Prism entered into financial agreements for each of the four (4) sub-phases of Phase II (the “Financial Agreements”) the Redevelopment Agreement, the Infrastructure Agreement and the Financial Agreements are collectively referred to herein as the “Agreements”); and

WHEREAS, on May 25, 2021, the Township served a notice of default of the Redevelopment Agreement to Prism as redeveloper; and

WHEREAS, on June 28, 2021, the Township served a notice of termination of the Redevelopment Agreement based upon the alleged defaults set forth in the notice of default; and

WHEREAS, on or about July 22, 2021, Prism filed an action in the Superior Court of New Jersey (the “Court”) against the Township Defendants, Whoopi Inc. (“Whoopi”), MBS Group Holdings, LLC (“MBS”), Jeremy Hariton (“Hariton”) and John Wayman Henry III

(“Henry”), titled Prism Green Associates IV, LLC v. The Township of West Orange, et al., Docket No. ESX-L-5706-21, contesting, among other things the Township’s termination of Prism as redeveloper, seeking damages and a declaration that the Redevelopment Agreement was still valid and in force (the “Complaint”); and

WHEREAS, on or about August 13, 2021, the Township Defendants filed an answer and counterclaims against Prism (respectively, “Answer” and “Counterclaims”) (the Complaint, Answer and Counterclaim are referred to collectively herein as the “Legal Action”); and

WHEREAS, on September 8, 2021, the Parties attended an in-person settlement conference with the Honorable Thomas Moore, P.J. Cv., Superior Court of New Jersey, Essex Vicinage; and

WHEREAS, on September 8, 2021, at the conclusion of the settlement conference, counsel for Prism and the Township, respectively, placed the terms of settlement of the claims between and among those Parties on the record, the terms of which were acknowledged and accepted by representatives of Prism, the Township Defendants, and the Court, subject to (i) Prism confirming no later than October 8, 2021 that the Declaration of Restrictive Covenants executed on February 23, 2016 and recorded March 3, 2016 (“Restrictive Covenant”) shall be vacated in its entirety at the Closing (as defined herein), and (ii) Township Council approval; and

WHEREAS, on September 14, 2021, the Township Council enacted Ordinance No. 2651-21 on second and final reading, which authorized the issuance of bonds to finance the acquisition of the Properties (as hereinafter defined) owned by Prism in the Redevelopment Area pursuant to the settlement terms herein; and

WHEREAS, the Parties now wish to enter into this Agreement to memorialize the terms, conditions, responsibilities, and obligations of the Parties; and

NOW, THEREFORE, in consideration of the promises, the mutual obligations contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each of the Parties, the Parties hereto, each binding itself, its successors and assigns, do hereby covenant and agree, each with the other as follows:

I. TERMS AND CONDITIONS.

- a. The purpose of this Agreement is to settle all claims by and between the Parties related to the Legal Action and the Redevelopment Agreement.
- b. This Agreement purports to resolve all of the issues raised before the Court or which could have been asserted which arise from, arise out of, or are related in any way to the Legal Action, the Redevelopment Plan, and the Redevelopment Agreement.
- c. This Agreement excludes the already developed Phase I apartment building known as Edison Lofts.
- d. In the event of any legal challenges to the Township Council's approval of this Agreement, including a challenge by any third party, the Parties shall diligently defend any such challenge and shall cooperate with each other regarding any such defense with each Party bearing their own costs and expenses.
- e. No later than October 8, 2021, Prism shall confirm to the Township by written evidence satisfactory to the Township, and which approval shall not unreasonably withheld that the Restrictive Covenants shall be vacated at the Closing.

II. PRISM'S OBLIGATIONS. Prism shall have the following obligations:

- a. To sell, As Is, to the Township all of the parcels and real property listed in Exhibit A (the “Properties”) to this Agreement pursuant to the terms of a written Purchase and Sale Agreement, which shall provide the Township with a thirty (30) day due diligence period, commencing on the date of the Township Council’s vote to approve this Settlement Agreement, to assess the environmental condition of the Properties and any title defects or issues with respect to the Properties.
- b. At the time of Closing, defined in subsection (g) below, to provide a legal document extinguishing and vacating the Restrictive Covenants, in form and substance satisfactory to the Township, which approval shall not be unreasonably withheld; provided, however, that the Restrictive Covenant must be vacated in their entirety.
- c. To memorialize, execute at the time of Closing and record subsequent to Closing, a deed restriction over 12-26 Ashland Avenue, 18 Ashland Avenue, 20 Ashland Avenue, 22-26 Ashland Avenue, 24 Ashland, 38-40 Ashland Avenue (the “Ashland Avenue Properties”) prohibiting the following uses: outdoor storage, auto repair and/or body shop usage; junkyard and/or other waste or refuse facilities (e.g., public works facility); other industrial usages including but not limited to bus parking; truck depots (cross dock facility); gasoline station; manufacturing facility; commercial warehousing; logistics facility; lumber yards; any uses related to adult entertainment, pornography, massage parlors, cannabis, drug or cannabis paraphernalia, gambling, guns or weapons, abortion clinics, and/or methadone clinics

- d. To assign the rights to the environmental escrow funds, established pursuant to Section 3.3(c) of the Amended Agreement, in the amount of approximately \$316,000.00 currently held by the New Jersey Department of Environmental Protection (“DEP”) to the Township for use related to potential remediation costs associated with the Property, at or prior to Closing.
- e. To assign the rights to the infrastructure escrow funds, established pursuant to Section 4.6 of the Amended Agreement, in the amount of approximately \$766,000 currently held by the Township to the Township, at or prior to Closing.
- f. To dismiss the Complaint against the Township Defendants, Whoopi, MBS, Hariton and Henry with prejudice and without costs simultaneous with the Closing.
- g. The closing (the “Closing”) shall occur no later than December 31, 2021.
- h. To execute additional necessary documents, agreements, affidavits, certificates, and instruments required to effectuate (i) the transfer of the Properties to the Township, (ii) the assignment of the environmental escrow funds and infrastructure escrow funds to the Township, and (iii) dismiss the Complaint against Township Defendants, Whoopi, MBS, Hariton, and Henry.

III. **THE TOWNSHIP’S OBLIGATIONS.** The Township shall have the following obligations:

- a. To purchase from Prism the Properties, As Is, pursuant to the terms of a written Purchase and Sale Agreement consistent with the terms of this Agreement.
- b. To adopt and furnish a non-appealable bonding ordinance necessary to effectuate the purchase of the Properties.

- c. To negotiate and execute at the time of Closing, the deed restriction set forth at Section II(c) over the six (6) Ashland Avenue Properties.
- d. The Closing on the sale of the Properties on or before December 31, 2021, subject to a satisfactory Phase I environmental analysis.
- e. At the time of the Closing, to transfer the sum of twelve million five hundred thousand dollars (\$12,500,000.00) and any additional costs associated or necessitated by closing adjustments to the title agent to be identified five (5) days prior to the time of Closing to an account as directed by Prism.
- f. At the time of Closing, to pay Prism \$383,000 as a closing adjustment to compensate Prism for its efforts to release the existing Restrictive Covenant set forth at Exhibit B.
- g. To file with the Court upon completion of the Closing, documents dismissing the Counterclaims against Prism and any cross-claims the Closing with prejudice and without costs.
- h. Within two (2) business days of the Closing, withdraw and cause to dismiss with prejudice any and all summonses/complaints asserting zoning violations and other zoning or property maintenance related violations issued by the Township, including but not limited to West Orange Municipal Court Docket Nos. 0722-SC-2021-040521, 0722-SC-2022, 0722-SC-2023; and West Orange Notice of Violation Reference Numbers 10013076 (August 23, 2021), 10013083 (August 27, 2021), 10013085 (August 27, 2021), 10013086 (August 27, 2021), 10013087 (August 27, 2021), 10013088 (August 27, 2021), 10013089 (August 27, 2021), and any other violations which may be outstanding. The Township Defendants

shall take any and all necessary steps to cause the foregoing to continue to be stayed or adjourned, and to forego issuing new zoning or property maintenance summonses, complaints, or violations, through and including the Closing unless emergent health and safety issues exist which are not reasonably and timely addressed.

- i. To cease any and all efforts to condemn the Properties, and cause to be stayed any condemnation proceedings, through and including the Closing.
- j. Within seven (7) days of the Closing, to vacate the \$63,066 in fines that were ordered against 28 Babcock Place in or around 2014 [Summons No. 2014-034061];
- k. To make best efforts to move the Township Department of Public Works from its present location within four (4) years of the Closing.
- l. The Closing shall occur no later than December 31, 2021.
- m. To execute, as necessary, additional documents, agreements, affidavits, certificates, and instruments required to effectuate (i) the transfer of the Properties to the Township, (ii) acceptance of the assignment of the environmental escrow funds and infrastructure escrow funds to the Township, and (iii) dismiss any counterclaims and cross-claims against Prism.

IV. DEFAULT.

- a. **Default with Respect to the Township:** Default with respect to the Township shall be defined as the Township's failure to adopt or enact any resolutions and/or ordinances, including any bond ordinances, necessary to effectuate the sale of the Properties and/or payment of funds to Prism. The Township shall also be

considered in Default of this Agreement if, after written Notice of Default delivered to counsel for the Township, the Township has not cured any default within ten (10) business days or at the next regularly scheduled meeting of the Governing Body, whichever is later.

- b. **Default with Respect to Prism:** If Prism should default on any of the agreed upon terms and conditions of this Agreement, the Township will have the right to apply to Judge Moore, or any other Judge assigned to the Legal Action, to enforce whichever term or condition has been violated. Prism shall be considered in default of this Agreement if, after written notice of default has been delivered to counsel for Prism by the Township, Prism has not cured any default within ten (10) business days.
- c. For the avoidance of doubt, in the event either party is in default of this Agreement, the non-defaulting party may seek immediate relief before the Honorable Thomas Moore, Presiding Judge, Civil Part, Superior Court of New Jersey, Essex County or any other Judge assigned to the Legal Action, including but not limited to seeking to enforce whichever term or condition of this Agreement has been violated by the defaulting party.
- d. In the event that Prism advises on or before October 8, 2021 that the Restrictive Covenant will not be vacated at the Closing, or fails to confirm on or before October 8, 2021, that it will be vacated before the Closing, the Township may immediately recommence any condemnation acquisition activities and/or seek immediate relief before the Court including vacating the Order staying the Legal Action and any other relief that may be available.

V. **RELEASES.**

- a. **Prism's Release to the Defendants:** Upon the completion of the Closing of the purchase and sale of the Properties, and the Township's execution or approval of any additional conditions required to close, Prism for itself and on behalf of each of its respective heirs, successors and assigns, hereby fully and forever releases and discharges the Township Defendants and each of their respective past, present, and future council members and/or representatives, and any and all other elected officials from any and all claims asserted in the Legal Action and/or that could have been asserted in the Legal Action, including, but not limited to claims sounding in contract or tort, whether known or unknown, suspected or unsuspected based on any legal or equitable theory of recovery, in any way arising out of, growing out of, or relating to the Legal Action, the Redevelopment Plan, and the Redevelopment Agreement from the beginning of the world until and including the date of the Closing. In addition, Prism expressly releases any and all rights to redevelop in the Township.
- b. **Township Defendants' Release to Prism:** The Township Defendants hereby fully and forever release and discharge Prism and each of its respective past, present, and future directors, officers, members, shareholders, employees, agents, partners, representatives, attorneys, parent and affiliated corporations, subsidiaries, divisions, joint venturers, predecessors, successors, beneficiaries, and assigns, from any and all claims asserted in the Legal Action, including, but not limited to claims sounding in contract or tort, whether known or unknown, suspected or unsuspected based on any legal or equitable theory of recovery, in

any way arising out of, growing out of, or relating to the Legal Action, the Redevelopment Plan, or the Redevelopment Agreement from the beginning of the world until and including the date of the Closing.

- c. **Releases Do Not Extend to Obligations Under This Agreement:** The releases set forth above in **Sections V-a** and **V-b** are not intended to, and shall not, extend to or otherwise release or discharge the Parties respective rights to enforce this Agreement.
- d. **The Other Defendants.** Prism and the Township shall provide mutual general releases to Whoopi, MBS, Hariton, and Henry (the “Other Parties”) simultaneous with the Closing. If any of the Other Parties decline to execute a mutual general release, the Legal Action shall still be dismissed with prejudice and without costs as to the Other Parties.

VI. **MUTUAL OBLIGATIONS.**

- a. **Obligation To Comply with State Regulations:** The Parties shall comply with any and all Federal, State, County and local laws, rules, regulations, statutes, ordinances, permits, resolutions, judgments, orders, decrees, directives, interpretations, standards, licenses, approvals, and similarly binding authority, applicable to or the performance by the Parties of their respective obligations or the exercise by the Parties of their respective rights in connection with this Agreement.
- b. **Mutual Good Faith, Cooperation, and Assistance:** The Parties shall exercise good faith, cooperate, and assist each other in fulfilling the intent and purpose of this Agreement, including, but not limited to, the approval of this Agreement by

the Court (if necessary), the required sale of the Properties consistent with the terms hereof, and the defense of any legal challenge with regard to any of the foregoing.

- c. **Costs of Defense of Agreement:** Each Party exclusively shall be responsible for all costs which they may incur in carrying out the actions contemplated by this Agreement, including defending against any appeal, attack, or legal challenge to this Agreement or any action contemplated herein.
- d. **No Closing if Appeal Taken:** The Parties expressly agree that in the event of an appeal and/or legal challenge of any governmental action contemplated or necessitated by this Agreement, including the bonding ordinance, the resolution authorizing the Agreement and the Purchase and Sale Agreement, the Closing shall be delayed or stayed until any and all appeals are fully and finally resolved and all appellate rights are exhausted.

VII. **COOPERATION AND COMPLIANCE.**

- a. **Implementation and Enforcement of Agreement:** The Parties agree to cooperate with each other, provide all reasonable and necessary documentation, and take all necessary actions to satisfy the terms and conditions hereof and assure compliance with the terms of this Agreement.

VIII. **NOTICES.**

- a. **Notices:** Any notice or transmittal of any document required, permitted or appropriate hereunder and/or any transmittal between the Parties relating to the Property (herein “Notices”) shall be written and shall be served upon the respective Parties by facsimile, electronic mail (“email”), by certified mail, return

receipt requested, or recognized overnight or personal carrier such as, for example, Federal Express, with certified proof of receipt, and, where feasible (for example, any transmittal of less than fifty (50) pages), and in addition thereto, email and a facsimile delivery shall be provided. All Notices shall be deemed received upon the date of delivery set forth in such certified proof, and all times for performance based upon notice shall be from the date set forth therein. Delivery shall be affected as follows, subject to change as to the person(s) to be notified and/or their respective addresses upon ten (10) days' notice as provided herein:

TO PRISM:

Prism Capital Partners

Attention: Eugene Diaz
310 Kingsland Street
Nutley, New Jersey 07110
Fax: (201) 567-5517
Email: eugene.diaz@prismpartners.net

WITH COPIES TO:

O'Toole Scrivo, LLC

Attention: Thomas P. Scrivo, Esq. and Lawrence S. Cutalo, Esq.
14 Village Park Road
Cedar Grove, New Jersey 07009
Fax: (973) 239-3400
Emails: tscrivo@oslaw.com; lcutalo@oslaw.com

AND

Stroock & Stroock & Lavan LLP

Attention: Claude Szyfer, Esq.
180 Maiden Lane
New York, NY 10038
Fax: (212) 806-6006
Email: cszyfer@stroock.com

TO THE TOWNSHIP OF WEST ORANGE:

Township of West Orange

Attention: John O. Gross, CFO
66 Main Street
West Orange, New Jersey 07052
Email: jgross@westorange.org

WITH COPIES TO:

TrenkIsabel, P.C.
Attention: Richard Trenk, Esq.
290 W. Mt. Pleasant Ave., Suite 2350
Livingston, New Jersey 07039
Email: rtrenk@trenkisabel.law

In the event any of the individuals identified above has a successor, the individual identified shall name the successor and notify all others identified of their successor.

IX. MISCELLANEOUS PROVISIONS.

- a. **Amendments:** Neither this Agreement nor any term set forth herein may be changed, waived, discharged, or terminated except by a writing signed by all Parties.
- b. **Agreement Voluntarily Entered Into By Each of The Parties:** This Agreement is executed voluntarily by each of the Parties without any duress or undue influence on the part, or on behalf, of any of them. The Parties represent and warrant to each other that they have read and fully understand each of the provisions of this Agreement and have relied on the advice and representations of competent legal counsel of their own respective choosing.
- c. **Interpretation:** This Agreement has been reviewed by experienced and knowledgeable legal counsel for each of the Parties. Accordingly, none of the Parties shall be presumptively entitled to have any provisions of the Agreement

construed against any of the other Parties in accordance with any rule of law, legal decision, or doctrine.

- d. **No Admission of Liability/No Precedential Value:** The Parties agree that this Agreement is the result of a compromise of disputed issues, that the execution and delivery of this Agreement by any of the Parties shall not constitute or be construed as an admission of any liability, a course of performance, or wrongdoing on the part of any of them and that the settlement reflected in this Agreement shall be without precedential value. Nothing in this release shall be construed to represent an admission of wrong doing or a breach of contract.
- e. **Attorneys' Fees, Costs, and Expenses:** Subject to the terms and conditions of Paragraph IX(m) herein, each of the Parties shall bear its own costs, attorneys' fees, and expenses in connection with the negotiations for and preparation of this Agreement.
- f. **Entire and Integrated Agreement:** This Agreement is intended by the Parties as a final expression of their agreement and is intended to be a complete and exclusive statement of the agreement and understanding of the Parties with respect to the subject matters contained herein. This Agreement supersedes any and all prior promises, representations, warranties, agreements, understanding, and undertakings between or among the Parties with respect to such subject matters and there are no promises, representations, warranties, agreements, understanding, or undertakings with respect to such subject matters other than those set forth or referred to herein.

- g. **No Third Party Beneficiaries:** Nothing in this Agreement is intended or shall be construed to give any person or entity, other than the Parties and their respective successors and permitted assigns, any legal or equitable right, remedy, or claim under or in respect to this Agreement or any provisions contained herein; this Agreement and any conditions and provisions hereof being and intended to be for the sole and exclusive benefit of the Parties as well as each of their respective successors and permitted assigns, and for the benefit of no other person or entity.
- h. **Severability:** If any provisions of this Agreement, or the application thereof, shall for any reason or to any extent be construed by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement, and application of such provisions to other circumstances, shall remain in effect and be interpreted so as best to reasonably effect the intent of the Parties.
- i. **Headings:** The section titles, captions, and headings contained in this Agreement are inserted as a matter of convenience and for reference, and shall in no way be construed to define, limit, or extend the scope of this Agreement or the effect of any of its provisions.
- j. **Additional Representations and Warranties:** Each of the Parties represents and warrants that it is fully authorized to enter into this Agreement. In addition, each of the corporate Parties that is still in existence as of the Effective Date represents and warrants that (i) it is duly organized and existing in good standing under the laws of the United States, (ii) it has taken all necessary corporate and internal legal actions to duly approve the making and performance of this Agreement and that no further corporate or internal approval is necessary, and (iii) the making

and performance of this Agreement will not violate any provision of law or the party's articles of incorporation, charter, or by-laws. In addition, each of the individuals signing this Agreement represents and warrants that they are authorized to enter into this Agreement on behalf of the respective parties. The "Effective Date" of this Agreement is the date this Agreement has been executed and delivered by and to all Parties hereto.

- k. **Additional Necessary Documents:** The Parties, and each of them, agree to execute such additional documents as may be reasonably required in order to carry out the purpose and intent of this Agreement, or to evidence anything contained herein.
- l. **Execution in Counterparts:** This Agreement may be signed in multiple counterparts and the separate signature pages executed by the Parties may be combined to create a document binding on all of the Parties and together shall constitute one and the same instrument. This Agreement may be executed in facsimile or electronic counterparts. An original signature will be provided if requested by any party.
- m. **Enforceability of Agreement:** The Superior Court of New Jersey, Essex Vicinage shall retain jurisdiction to enforce any and all terms of this Agreement. In the event of any dispute, claim, or action based upon, arising out of, or relating to, the breach, enforcement, or interpretation of any of the provisions of this Agreement or where any provision hereof is validly asserted as a defense, the prevailing party or parties in such dispute, claim, or action shall be entitled to recover its or their reasonable attorneys' fees, costs and expenses from the non-

prevailing party or parties. In addition to the fees and costs recoverable under the preceding sentence, the Parties agree that the prevailing party shall be entitled to recover reasonable attorneys' fees, costs, and expenses incurred in connection with the enforcement of a judgment arising from such action or proceeding.

- n. **Schedules:** Any and all Exhibits annexed to this Agreement are hereby made a part of this Agreement by this reference thereto. Any and all Exhibits and Schedules now and/or in the future are hereby made or will be made a part of this Agreement with prior written approval of all Parties.
- o. **Assignability:** Prism shall have the unconditional right to assign some or all of its rights under this Agreement to any individual, entity, or organization without the prior approval of the Township. Prism shall notify the Township of any assignment and provide the name of the assignee, but the Township shall not be permitted to prevent or delay an assignment by Prism of any of its rights under this Agreement in any manner.
- p. **Conflicts:** In the event there is a conflict between this Agreement and the ordinances enabling acquisition of the Properties, the terms and conditions of this Agreement shall control and take precedence over any conflicting terms in the ordinances enabling acquisition of the Properties.

[THE REMAINDER OF THIS PAGE HAS BEEN INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date set forth opposite the respective signatures set forth below.

Dated: _____, 2021

Prism Green Associates IV, LLC

By:

Name:

Title:

Dated: _____, 2021

The Township of West Orange

By:

Name:

Title:

Dated: _____, 2021

Robert D. Parisi, Mayor

By:

Name:

Title:

Dated: _____, 2021

John O. Gross, CFO

By:

Name:

Title:

EXHIBIT A
THE PROPERTIES

EXHIBIT B

THE RESTRICTIVE COVENANT DATED FEBRUARY 26, 2016