



**AGENDA**  
**NEWTON TOWN COUNCIL**  
**AUGUST 9, 2010**  
**7:00 P.M.**

**I. PLEDGE OF ALLEGIANCE**

**II. ROLL CALL**

**III. OPEN PUBLIC MEETINGS ACT STATEMENT**

**IV. APPROVAL OF MINUTES**

- JULY 22, 2010 EXECUTIVE MEETING
- JULY 26, 2010 SPECIAL MEETING
- JULY 26, 2010 REGULAR MEETING
- JULY 26, 2010 EXECUTIVE MEETING

**V. PRESENTATION**

- a. ST. PATRICK'S DAY PARADE COMMITTEE

**VI. OPEN TO THE PUBLIC**

AT THIS POINT IN THE MEETING, THE TOWN COUNCIL WELCOMES COMMENTS FROM ANY MEMBER OF THE PUBLIC ON ANY TOPIC. TO HELP FACILITATE AN ORDERLY MEETING AND TO PERMIT THE OPPORTUNITY FOR ANYONE WHO WISHES TO BE HEARD, SPEAKERS ARE ASKED TO LIMIT THEIR COMMENTS TO 5 MINUTES. IF READING FROM A PREPARED STATEMENT, PLEASE PROVIDE A COPY AND EMAIL A COPY TO THE CLERK'S OFFICE AFTER MAKING YOUR COMMENTS SO IT MAY BE PROPERLY REFLECTED IN THE MINUTES.

**VII. COUNCIL & MANAGER REPORTS**

- a. HYDRANT FLOW TESTS/FIRE ORDINANCE 2010-2

**VIII. ORDINANCES**

- a. 2<sup>ND</sup> READING AND PUBLIC HEARING

ORDINANCE 2010-8

AN ORDINANCE TO AMEND AND SUPPLEMENT CHAPTER 12, HEALTH CODE, OF THE REVISED GENERAL ORDINANCES TO GUARD AGAINST DUMPSTER AND REFUSE CONTAINER EXPOSURE TO STORMWATER

- i. OPEN HEARING TO PUBLIC
- ii. CLOSE HEARING TO PUBLIC
- iii. ACT ON ORDINANCE

ORDINANCE 2010-9

AN ORDINANCE TO AMEND AND SUPPLEMENT CHAPTER 19B, STORMWATER CONTROL, OF THE REVISED GENERAL ORDINANCES TO PREVENT THE DISCHARGE OF SOLIDS AND FLOATABLES FROM PRIVATE PROPERTIES INTO MUNICIPAL SEPARATE STORM SEWER SYSTEMS

- i. OPEN HEARING TO PUBLIC
- ii. CLOSE HEARING TO PUBLIC
- iii. ACT ON ORDINANCE

**b.** INTRODUCTION

ORDINANCE 2010-10

AN ORDINANCE TO AMEND CHAPTER 10 "TRAFFIC" OF NEWTON'S REVISED GENERAL ORDINANCES

ORDINANCE 2010-11

BOND ORDINANCE AMENDING BOND ORDINANCE NUMBERED 2007-22 OF THE TOWN OF NEWTON, IN THE COUNTY OF SUSSEX, NEW JERSEY FINALLY ADOPTED SEPTEMBER 10, 2007 IN ORDER TO AMEND THE DESCRIPTION OF THE PROJECT

ORDINANCE 2010-12

ORDINANCE AUTHORIZING THE EXECUTION OF A FINANCIAL AGREEMENT FOR CERTAIN PROPERTY WITHIN THE SPARTA AVENUE PLAN AREA

ORDINANCE 2010-13

BOND ORDINANCE AMENDING AND SUPPLEMENTING BOND ORDINANCE 2009-29 OF THE TOWN OF NEWTON, IN THE COUNTY OF SUSSEX, NEW JERSEY FINALLY ADOPTED DECEMBER 14, 2009 IN ORDER TO AUTHORIZE THE EXECUTION OF A TRUST AGREEMENT

**IX. OLD BUSINESS**

**X. CONSENT AGENDA**

ALL ITEMS LISTED WITH AN ASTERISK (\*) ARE CONSIDERED TO BE ROUTINE AND NON-CONTROVERSIAL BY THE TOWN COUNCIL AND WILL BE APPROVED BY ONE MOTION. THERE WILL BE NO SEPARATE DISCUSSION OF THESE ITEMS UNLESS A COUNCIL MEMBER SO REQUESTS, IN WHICH CASE THE ITEM WILL BE REMOVED FROM THE CONSENT AGENDA AND CONSIDERED IN ITS NORMAL SEQUENCE ON THE AGENDA.

**a.** RESOLUTION #127-2010\*

CONCUR WITH THE TOWN MANAGER'S APPOINTMENT OF SCHOOL CROSSING GUARDS

**b.** RESOLUTION #128-2010\*

APPOINTMENT OF EVIN JOICE TO THE ECONOMIC DEVELOPMENT ADVISORY COMMISSION

- c. RESOLUTION #129-2010\* AFFIRM THE ISSUANCE OF A BOND ANTICIPATION NOTE
- d. RESOLUTION #130-2010\* AUTHORIZE CREDITS DUE WATER AND SEWER UTILITY ACCOUNTS
- e. RESOLUTION #131-2010\* TO CANCEL RECEIVABLE AND APPROPRIATED RESERVE BALANCES IN THE FEDERAL AND STATE GRANT FUND
- f. RESOLUTION #132-2010\* AWARD CONTRACT FOR ACCUBRINE SYSTEM TO TIMMERMAN EQUIPMENT COMPANY
- g. RESOLUTION #133-2010\* AWARD CONTRACT FOR PROPOSED IMPROVEMENTS TO SPORTS PRACTICE FIELD AT MEMORY PARK TO ROBERT W. WOGISCH, LANDSCAPE CONTRACTOR, INC.
- h. RESOLUTION #134-2010\* RESOLUTION OF TOWN OF NEWTON IN THE COUNTY OF SUSSEX, NEW JERSEY AUTHORIZING AN AMENDMENT TO THE REDEVELOPMENT AGREEMENT WITH THORLABS URBAN RENEWAL, LLC.
- i. RESOLUTION #135-2010\* APPROVE BILLS AND VOUCHERS FOR PAYMENT
- j. APPLICATIONS\*
  - FOUR APPLICATIONS FOR RAFFLES:
  - APPLICATION FOR AN OFF-PREMISE RAFFLE FROM ST. JOSEPH RC CHURCH, 17 ELM STREET, NEWTON TO BE HELD ON OCTOBER 15, 2010 AT ST. JOSEPH'S COMMUNITY CENTER, HALSTED STREET, NEWTON AT 7:30 PM.
  - APPLICATION FOR AN OFF-PREMISE RAFFLE FROM NEWTON MEMORIAL HOSPITAL FOUNDATION, 175 HIGH STREET, NEWTON TO BE HELD ON NOVEMBER 20, 2010 AT 175 HIGH STREET, NEWTON AT 6:30 PM.
  - APPLICATION FOR AN ON-PREMISE RAFFLE FROM THE PRIDE FOUNDATION, INC., 44 RYERSON AVENUE, NEWTON TO BE HELD ON SEPTEMBER 23, 2010 AT 59 HALSTED STREET, NEWTON FROM 6:30 PM TO 8:30 PM.
  - APPLICATION FOR AN ON-PREMISE RAFFLE FROM THE PRIDE FOUNDATION, INC., 44 RYERSON AVENUE, NEWTON TO BE HELD ON SEPTEMBER 17, 2010 AT 3:00 PM, SEPTEMBER 25, 2010 AT 1:00 PM, OCTOBER 9, 2010 AT 2:00 PM, AND OCTOBER 23, 2010 AT 1:00 PM, AT 44 RYERSON AVENUE, NEWTON.

**XI. INTERMISSION**

**XII. DISCUSSION**

- a.** CONSOLIDATION OF LAND USE BOARDS

**XIII. OPEN TO THE PUBLIC**

**XIV. COUNCIL & MANAGER COMMENTS**

**XV. ADJOURNMENT**

**TOWN OF NEWTON**  
**Sussex County, New Jersey**

**ORDINANCE No. 2010-8**

**AN ORDINANCE TO AMEND AND SUPPLEMENT  
CHAPTER 12, HEALTH CODE, OF THE REVISED GENERAL ORDINANCES  
TO  
GUARD AGAINST DUMPSTER AND REFUSE CONTAINER EXPOSURE TO  
STORMWATER**

**WHEREAS**, the New Jersey Department of Environmental Protection requires that all Tier A municipalities take measures to prevent the discharge of liquids or solids from uncovered dumpsters and other refuse containers into municipal separate storm sewers systems. In order to comply with the requirements of the Town of Newton's Municipal Stormwater General Permit, the Town Council wishes to amend the revised general ordinances to require that all dumpsters and other refuse containers exposed to stormwater be covered at all times.

**BE IT ORDAINED** by the Town of Newton Council that certain sections within Chapter 12, Health Code, of the Code of the Town of Newton be amended as follows:

**SECTION 1.** Chapter 12, Section 12-13, *Refuse Containers/Dumpsters* is created to include the following:

The purpose of this section is to require that all dumpsters and other refuse containers that are outdoors or exposed to stormwater to be covered at all times and prohibits the spilling, dumping, leaking, or otherwise discharge of liquids, semi-liquids or solids from the containers to the municipal separate storm sewer system(s) operated by the Town of Newton and/or the waters of the State so as to protect public health, safety and welfare, and to prescribe penalties for the failure to comply.

Subsections:

- 12-13.1 Definitions
- 12-13.2 Prohibited Conduct
- 12-13.3 Exceptions to Prohibition
- 12-13.4 Enforcement
- 12-13.5 Violations and Penalties
- 12-13.6 Severability

**SECTION 2.** Chapter 12, Section 12-13.1, *Definitions* is created to include the following:

For the purpose of this section, the following terms, phrases, words, and their derivations shall have the meanings stated herein unless their use in the text of this Chapter clearly demonstrates a different meaning. When not inconsistent with the context, words used in the present tense include the future, words used in the plural number include the singular

number, and words used in the singular number include the plural number. The word “shall” is always mandatory and not merely directory.

*MUNICIPAL SEPARATE STORM SYSTEM (MS4)* – a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains) that is owned or operated by the Town of Newton or other public body, and is designed and used for collecting and conveying stormwater.

*PERSON* – any individual, corporation, company, partnership, firm, association, or political subdivision of this State subject to municipal jurisdiction.

*REFUSE CONTAINER* – any waste container that a person controls whether owned, leased, or operated, including dumpsters, trash cans, garbage pails, and plastic trash bags.

*STORMWATER* – means water resulting from precipitation (including rain and snow) that runs off the land’s surface, is transmitted to the subsurface, is captured by separate storm sewers or other sewerage or drainage facilities, or is conveyed by snow removal equipment.

*WATERS OF THE STATE* – means the ocean and its estuaries, all springs, streams and bodies of surface or ground water, whether natural or artificial, within the boundaries of the State of New Jersey or subject to its jurisdiction.

**SECTION 3.** Chapter 12, Section 12-13.2, *Prohibited Conduct* is created to include the following:

Any person who controls, whether owned, leased, or operated, a refuse container or dumpster must ensure that such container or dumpster is covered at all times and shall prevent refuse from spilling out or overflowing.

Any person who owns, leases or otherwise uses a refuse container or dumpster must ensure that such container or dumpster does not leak or otherwise discharge liquids, semi-liquids or solids to the municipal separate storm sewer system(s) operated by the Town of Newton.

**SECTION 4.** Chapter 12, Section 12-13.3, *Exceptions to Prohibition* is created to include the following:

- A. Permitted temporary demolition and/or construction containers.
- B. Litter receptacles (other than dumpsters or other bulk containers).
- C. Individual homeowner trash and recycling containers.

- D. Refuse containers at facilities authorized to discharge stormwater under a valid NJPDES permit.
- E. Large bulky items (e.g., furniture, bound carpet and padding, white goods placed curbside for pickup).

**SECTION 5.** Chapter 12, Section 12-13.4, *Enforcement* is created to include the following:

The Town Manager, through the Town Zoning Officer, shall enforce the provisions of this section. It shall be unlawful for any reason to violate any part of this ordinance adopted by the Town Council of the Town of Newton.

**SECTION 6.** Chapter 12, Section 12-13.5, *Violations and Penalties* is created to include the following:

Any person(s) who is found to be in violation of the provisions of this ordinance shall be first notified of the violation and if the violation is not remediated within 30 days, that person(s) shall be liable to a penalty in accord with the following schedule for each day on which the violation exists beyond the 30 day limit:

<i>Offense</i>	<i>Fine</i>
First	\$100 per day
Second	\$250 per day
Third and Subsequent	\$500 per day

**SECTION 7.** Chapter 12, Section 12-13.6, *Severability* is created to include the following:

It is the intention of the Town Council that every provision of this Section shall be considered separable and the invalidity of any article, clause or provision of this Section shall not affect the validity of any other portion of this Section or this Chapter.

**SECTION 8.** Effective date:

This ordinance shall take effect upon final adoption and will be published as required by law.

**NOTICE**

TAKE NOTICE that the above Ordinance was introduced at a regular meeting of the Town Council of the Town of Newton conducted on July 26, 2010. It was adopted, after final reading and public hearing thereon, at a meeting of the Newton Governing Body conducted at 7:00 pm on August 9, 2010 in the Council Chambers at the Newton Municipal Building, 39 Trinity Street, Newton, New Jersey, and shall take effect according to law.

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Lorraine A. Read, RMC  
Municipal Clerk

**TOWN OF NEWTON**  
**Sussex County, New Jersey**

**ORDINANCE No. 2010-9**

**AN ORDINANCE TO AMEND AND SUPPLEMENT CHAPTER 19B,  
STORMWATER CONTROL, OF THE REVISED GENERAL ORDINANCES  
TO  
PREVENT THE DISCHARGE OF SOLIDS AND FLOATABLES FROM PRIVATE  
PROPERTIES INTO MUNICIPAL SEPARATE STORM SEWER SYSTEMS**

**WHEREAS**, the New Jersey Department of Environmental Protection requires that all Tier A municipalities take measures to prevent the discharge of solids and floatables from private properties into municipal separate storm sewers systems. In order to comply with the requirements of the Town of Newton's Municipal Stormwater General Permit, the Town Council wishes to amend the revised general ordinances to require the retrofitting of existing storm drain inlets on privately owned properties.

**BE IT ORDAINED** by the Town of Newton Council that certain sections within Chapter 19B, Stormwater Control of the Code of the Town of Newton be amended as follows:

**SECTION 1.** Chapter 19B, Section 19B-18, *Private Storm Drain Inlet Retrofitting* is created to include the following:

The purpose of this section is to require the retrofitting of existing storm drain inlets which are in direct contact with repaving, repairing, reconstruction, or resurfacing or alterations of facilities on private property, to prevent the discharge of solids and floatables (such as plastic bottles, cans, food wrappers and other litter) to the municipal separate storm sewer system(s) operated by the Town of Newton so as to protect public health, safety and welfare, and to prescribe penalties for the failure to comply.

Subsections:

- 12-18.1 Definitions
- 12-18.2 Prohibited Conduct
- 12-18.3 Design Standards
- 12-18.4 Enforcement
- 12-18.5 Violations and penalties
- 12-18.6 Severability

**SECTION 2.** Chapter 19B, Section 19B-18.1, *Definitions* is created to include the following:

For the purpose of this section, the following terms, phrases, words, and their derivations shall have the meanings stated herein unless their use in the text of this Chapter clearly demonstrates a different meaning. When not inconsistent with the context, words used in the present tense include the future, words used in the plural number include the singular

number, and words used in the singular number include the plural number. The word “shall” is always mandatory and not merely directory.

*MUNICIPAL SEPARATE STORM SEWER SYSTEM (MS4)* – a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains) that is owned or operated by The Town of Newton or other public body, and is designed and used for collecting and conveying stormwater.

*PERSON* – any individual, corporation, company, partnership, firm, association, or political subdivision of this State subject to municipal jurisdiction.

*STORM DRAIN INLET* – an opening in a storm drain used to collect stormwater runoff and includes, but is not limited to, a grate inlet, curb-opening inlet, slotted inlet, and combination inlet.

*WATERS OF THE STATE* – means the ocean and its estuaries, all springs, streams and bodies of surface or ground water, whether natural or artificial, within the boundaries of the State of New Jersey or subject to its jurisdiction.

**SECTION 3.** Chapter 19B, Section 19B-18.2, *Prohibited Conduct* is created to include the following:

No person in control of private property (except a residential lot with one single family house) shall authorize the repaving, repairing (excluding the repair of individual potholes), resurfacing (including top coating or chip sealing with asphalt emulsion or a thin base of hot bitumen), reconstructing or altering any surface that is in direct contact with an existing storm drain inlet on that property unless the storm drain inlet either:

- A. Already meets the design standard below to control passage of solid and floatable materials; or
- B. Is retrofitted or replaced to meet the standard in Section IV below prior to the completion of the project.

**SECTION 4.** Chapter 19B, Section 19B-18.3, *Design Standards* is created to include the following:

Storm drain inlets shall comply with the following standard to control passage of solid and floatable materials through storm drain inlets. For purposes of this paragraph, “solid and floatable materials” means sediment, debris, trash, and other floating, suspended, or settleable solids. For exemptions to this standard see Section 19B-18.3(3) below.

- A. Design engineers shall use either of the following grates whenever they use a grate in pavement or another ground surface to collect stormwater from that surface into a storm drain or surface water body under that grate:

- (1) The New Jersey Department of Transportation (NJDOT) bicycle safe grate, which is described in Chapter 2.4 of the NJDOT Bicycle Compatible Roadways and Bikeways Planning and Design Guidelines (April 1996); or
- (2) A different grate, if each individual clear space in that grate has an area of no more than seven (7.0) square inches, or is no greater than 0.5 inches across the smallest dimension.

Examples of grates subject to this standard include grates in grate inlets, the grate portion (non-curb-opening portion) of combination inlets, grates on storm sewer manholes, ditch grates, trench grates, and grates of spacer bars in slotted drains. Examples of ground surfaces include surfaces of roads (including bridges), driveways, parking areas, bikeways, plazas, sidewalks, lawns, fields, open channels, and stormwater basin floors.

B. Whenever design engineers use a curb-opening inlet, the clear space in that curb opening (or each individual clear space, if the curb opening has two or more clear spaces) shall have an area of no more than seven (7.0) square inches, or be no greater than two (2.0) inches across the smallest dimension.

C. This standard does not apply:

- (1) Where the municipal engineer agrees that this standard would cause inadequate hydraulic performance that could not practicably be overcome by using additional or larger storm drain inlets that meet these standards;
- (2) Where flows are conveyed through any device (e.g., end of pipe netting facility, manufactured treatment device, or a catch basin hood) that is designed, at a minimum, to prevent delivery of all solid and floatable materials that could not pass through one of the following:
  - a. A rectangular space four and five-eighths inches long and one and one-half inches wide (this option does not apply for outfall netting facilities); or
  - b. A bar screen having a bar spacing of 0.5 inches.
- (3) Where flows are conveyed through a trash rack that has parallel bars with one-inch (1") spacing between the bars; or
- (4) Where the New Jersey Department of Environmental Protection determines, pursuant to the New Jersey Register of Historic Places Rules at N.J.A.C. 7:4-7.2(c), that action to meet this standard is an undertaking

that constitutes an encroachment or will damage or destroy the New Jersey Register listed historic property.

**SECTION 5.** Chapter 19B, Section 19B-18.4, *Enforcement* is created to include the following:

The Town Manager, through the Public Works Supervisor, shall enforce the provisions of this section. It shall be unlawful for any reason to violate any part of this ordinance adopted by the Town Council of the Town of Newton.

**SECTION 6.** Chapter 19B, Section 19B-18.5, *Violations and Penalties* is created to include the following:

Any person(s) who is found to be in violation of the provisions of this ordinance shall be first notified of the violation and if the violation is not remediated within 30 days, that person(s) shall be liable to a penalty in accord with the following schedule for each day on which the violation exists beyond the 30 day limit:

<i>Offense</i>	<i>Fine</i>
First	\$100 per day
Second	\$250 per day
Third and Subsequent	\$500 per day

**SECTION 7.** Chapter 19B, Section 19B-18.6, *Severability* is created to include the following:

It is the intention of the Town Council that every provision of this Section shall be considered separable and the invalidity of any article, clause or provision of this Section shall not affect the validity of any other portion of this Section or this Chapter.

**SECTION 8.** Effective date:

This ordinance shall take effect upon final adoption and will be published as required by law.

**NOTICE**

TAKE NOTICE that the above Ordinance was introduced at a regular meeting of the Town Council of the Town of Newton conducted on July 26, 2010. It was adopted, after final reading and public hearing thereon, at a meeting of the Newton Governing Body conducted at 7:00 pm on August 9, 2010 in the Council Chambers at the Newton Municipal Building, 39 Trinity Street, Newton, New Jersey, and shall take effect according to law.

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Lorraine A. Read, RMC  
Municipal Clerk

**TOWN OF NEWTON**

**ORDINANCE #2010-10**

**AN ORDINANCE TO AMEND CHAPTER 10 "TRAFFIC" OF NEWTON'S REVISED GENERAL ORDINANCES.**

**WHEREAS**, there is a need to amend Chapter 10, Traffic to accurately reflect current parking regulations;

**NOW THEREFORE BE IT ORDAINED** by the Town Council of the Town of Newton, in the County of Sussex and State of New Jersey, that Chapter 10, entitled Traffic of the Revised General Ordinances of the Town of Newton be amended as follows:

**CHAPTER 10**

Shall be amended as follows:

**10-13B.2 Permitted Parking Hours.**

(b) Deleted.

**10-13B.3 Penalties.**

(b) Deleted.

**10-12.2 Individual Spaces to be Outlined.**

In the parking meter zones established in subsection 10-12.1, the town engineer shall outline by appropriate markings, individual parking spaces. The spaces shall be of a sufficient size to accommodate automobiles of the most current size and design. No parking meters shall be installed in locations where parking is prohibited pursuant to R.S. 39:4-138. The town engineer shall also provide for the installation of parking meters upon the curb adjacent to each of the parking areas or spaces so created which, upon the deposit of a coin, coins or paper currency as provided in subsection 10-12.3, will indicate the duration of the legal parking period as established in this chapter and the time when the period has elapsed.

**10-12.3 Parking Lot Fines.**

Upon entering any parking meter space in a paid parking area zone as described in Schedule XII, the operator of the vehicle shall deposit the appropriate United States coin, coins or paper currency as set forth in subsection 21-1.5a.

#### **10-12.4 Occupying a Space Beyond the Legal Time.**

Upon the deposit of a coin, coins or paper currency as specified in subsection 10-12.3, and placing the metering device in operation, the parking space may lawfully be occupied by the vehicle during the period of parking time which has been prescribed for the part of the street or lot in which the parking space is located. If the vehicle remains parked in any parking space beyond the parking time limit fixed for the parking space, the vehicle shall be considered as parked over-time and beyond the period of legal parking time. Any person convicted of a violation of this subsection shall be subject to a penalty in the amount described in Schedule XIX attached to and made a part of this chapter.

#### **10-12.5 Additional Rules and Regulations.**

a. No owner or operator shall stand or park a vehicle in any parking space in any parking meter area between the hours of 8:00am and 6:00pm Monday through Saturday, without depositing sufficient coin, coins or paper currency in the designated parking meter to cover the period during which the vehicle remains standing or parked. The provisions of this subsection shall not be applicable on Sunday or any legal holiday, or the day designated for observance of a legal holiday.

#### **10-14.2 Parking Meter Fees; Hours.**

When any vehicle is parked in any metered space in any of the public parking lots enumerated in subsection 10-14.1 between the hours of 8:00am and 6:00pm on all week days and Saturdays, upon entering the parking lot, the operator of the vehicle shall deposit a proper United States coin, coins or paper currency in the denominations set forth in subsection 21-1.5c.

#### **10-14.5 Additional Rules and Regulations.**

a. No owner or operator shall stand or park a vehicle in any of the aforementioned parking lots at any time on any week day between the hours specified in subsection 10-4.2 without depositing sufficient coin, coins or paper currency in the designated meter to cover the period during which the vehicle shall remain standing or parked. All day parking passes may be used in lieu of depositing coin, coins or paper currency.

The provisions for chapter shall not be applicable on Sundays or any legal holiday or the day designated for the observance of any holiday, except as otherwise provided in subsection 10-14.3.

**TAKE NOTICE** that the above Ordinance was introduced at a regular meeting of the Town Council of the Town of Newton held on Monday, August 9, 2010. The Ordinance will be considered for adoption following a final reading and public hearing thereon, at a regular meeting of the Newton Town Council to be conducted at 7:00pm in the Council Chambers at the Newton Municipal Building, 39 Trinity Street, Newton, New Jersey on Monday, August 23, 2010 and shall take effect according to law

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Lorraine A. Read, RMC  
Municipal Clerk

# TOWN OF NEWTON

## ORDINANCE 2010-11

BOND ORDINANCE AMENDING BOND ORDINANCE  
NUMBERED 2007-22 OF THE TOWN OF NEWTON, IN THE  
COUNTY OF SUSSEX, NEW JERSEY FINALLY ADOPTED  
SEPTEMBER 10, 2007 IN ORDER TO AMEND THE  
DESCRIPTION OF THE PROJECT.

BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF NEWTON, IN  
THE COUNTY OF SUSSEX, NEW JERSEY (not less than two-thirds of all members thereof  
affirmatively concurring) AS FOLLOWS:

Section One. Section 3(a) of Bond Ordinance numbered 2007-22 of the Town of  
Newton, in the County of Sussex, New Jersey (the "Town") finally adopted September 10, 2007  
is hereby amended to read as follows:

(a) The improvement hereby authorized and the purpose for the financing of  
which the bonds are to be issued is the improvement of municipal properties by  
the replacement of the roof of the Department of Public Works maintenance  
garage located on 117 Moran Street and the demolition of the storage building  
located on 27 Orchard Street, including all costs necessary therefor or incidental  
thereto.

Section Two. The Town hereby certifies that it has adopted a capital budget or a  
temporary capital budget, as applicable. The capital or temporary capital budget of the Town is  
hereby amended to conform with the provisions of this ordinance to the extent of any  
inconsistency herewith. To the extent that the purposes authorized herein are inconsistent with  
the adopted capital or temporary capital budget, a revised capital or temporary capital budget has  
been filed with the Division of Local Government Services.

Section Three. This bond ordinance shall take effect 20 days after the first publication thereof after final adoption, as provided by the Local Bond Law.

**TAKE NOTICE** that the above Ordinance was introduced at a regular meeting of the Town Council of the Town of Newton held on Monday, August 9, 2010. The Ordinance will be considered for adoption following a final reading and public hearing thereon, at a regular meeting of the Newton Town Council to be conducted at 7:00pm in the Council Chambers at the Newton Municipal Building, 39 Trinity Street, Newton, New Jersey on Monday, August 23, 2010 and shall take effect according to law

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Lorraine A. Read, RMC  
Municipal Clerk

**TOWN OF NEWTON CAPITAL BUDGET AMENDMENT**

August 9, 2010

Project Title	Project Number	Cost Estimate as Adopted	Cost Estimate as Amended	Funding as Amended		
				Capital Improvement Fund	Prior Year Reserves	Grants in Aid
<b>General Capital</b>						
Roof Replacement & Renovations to Municipal Properties	2007-22	\$ 350,000	\$ 350,000.00	\$ 17,500		
DPW Roof Replacement & Storage Building Demolition (project description change only)	2010-11	\$ -	\$ -			
<b>Total - All Projects</b>		<b>\$ 350,000</b>	<b>\$ 350,000</b>	<b>\$ 17,500</b>	<b>\$ -</b>	<b>\$ -</b>

**TOWN OF NEWTON  
ORDINANCE 2010-12**

***THIS ORDINANCE SECURES BONDS OR OTHER OBLIGATIONS ISSUED IN ACCORDANCE WITH THE PROVISIONS OF THE REDEVELOPMENT AREA BOND FINANCING LAW AND THE LIEN HEREOF IS A MUNICIPAL LIEN SUPERIOR TO ALL NON-MUNICIPAL LIENS HEREINAFTER RECORDED***

**ORDINANCE AUTHORIZING THE EXECUTION OF A FINANCIAL AGREEMENT FOR CERTAIN PROPERTY WITHIN THE SPARTA AVENUE PLAN AREA**

**WHEREAS**, the Mayor and Town Council (the "Governing Body") of the Town of Newton (the "Town") adopted Resolution No. 65-2005 on April 25, 2005, designating that certain property identified as Block 1104, Lot 21 on the Official Tax Map of the Town, commonly known as 56 Sparta Avenue (the "Property"), as an "area in need of redevelopment" (the "Redevelopment Area") under the Local Redevelopment and Housing Law, *N.J.S.A.* 40A:12A-1 *et seq.* (the "Redevelopment Law"); and

**WHEREAS**, the Governing Body adopted Resolution No. 70-2007 on April 23, 2007 determining that certain areas within the Town, including that certain area immediately adjacent to the Property and encompassing the public streets and rights-of-way of Sparta Avenue, Merriam Avenue and Pine Street, qualified as an "area in need of rehabilitation" under the Redevelopment Law (the "Rehabilitation Area"); and

**WHEREAS**, on March 23, 2009, the Governing Body finally adopted Ordinance 2009-6 implementing a redevelopment plan (as amended, the "Redevelopment Plan") for the Redevelopment Area and the above-described portion of the Rehabilitation Area (collectively, the "Sparta Avenue Plan Area"), finding, among other things, the Redevelopment Plan to be substantially consistent with the Master Plan for the Town; and

**WHEREAS**, pursuant to Section 4 of the Redevelopment Law, the Town has determined to act as the "Redevelopment Entity" (as such term is defined at Section 3 of the Redevelopment Law) for the Redevelopment Area to exercise the powers contained in the Redevelopment Law to facilitate the development of the Project (as hereinafter defined); and

**WHEREAS**, the Redevelopment Plan provides, among other things, for the construction of a facility consisting of light manufacturing, research and development, office space and associated storage space and parking components on the Property, as well as the construction of street lighting, landscaping, sidewalk and other on- and off-site improvements in accordance with the requirements of the Redevelopment Plan (the "Project"); and

**WHEREAS**, the Project will consist of an initial phase encompassing the construction of not to exceed 125,000 square feet of office, light manufacturing, and research and development space, as well as associated storage space, ancillary surface parking, certain road improvements and

water system improvements and the environmental remediation of the Property (collectively, the "Phase 1 Project"), and in the Redeveloper's (as defined below) sole discretion, up to two future phases; and

**WHEREAS**, in order to implement the development, financing, construction, operation and management of the Project, the Town entered into a redevelopment agreement with Thorlabs, Inc., Newton, New Jersey (the "Redeveloper") dated November 30, 2009, as amended (the "Redevelopment Agreement"); and

**WHEREAS**, in accordance with Section 8.05 of the Redevelopment Agreement, the Redeveloper assigned the Redevelopment Agreement to its affiliate, Thorlabs Urban Renewal, LLC, Newton, New Jersey (the "Entity") as of December 2, 2009; and

**WHEREAS**, the Entity has represented to the Town that the Phase 1 Project would not be feasible in its intended scope but for the provision of financial assistance by the Town; and

**WHEREAS**, in order to improve the feasibility of the Phase 1 Project, the Entity made an application for a long term tax exemption and financial agreement with respect to the Property (the "Application") pursuant to the Long Term Tax Exemption Law, *N.J.S.A. 40A:20-1 et seq.* (the "Tax Exemption Law"), which Application is on file with the Town Clerk; and

**WHEREAS**, after review of the Application together with redevelopment counsel, the Mayor and the Town Manager recommended that the Application be approved; and

**WHEREAS**, the Governing Body, together with the Town Manager and redevelopment counsel for the Town, have reviewed the terms of a proposed financial agreement (the "Financial Agreement"), a copy of which has been filed with the Town Clerk and which is attached hereto as Exhibit A and by this reference incorporated herein; and

**WHEREAS**, the Town hereby finds that the relevant benefits of the Phase 1 Project to the redevelopment of the Sparta Avenue Plan Area outweigh the loss, if any, of property tax revenue in granting the long term tax exemption for the Phase 1 Project; and

**WHEREAS**, the Town hereby determines that the assistance provided to the Phase 1 Project pursuant to the Financial Agreement will be a significant inducement for the Entity to proceed with the Phase 1 Project and that based on information set forth in the Application, the Phase 1 Project would not be feasible without such assistance;

**NOW, THEREFORE BE IT ORDAINED**, by the Mayor and Town Council of the Town of Newton, in the County of Sussex, New Jersey as follows:

**I. GENERAL**

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

**II. APPLICATION FOR EXEMPTION APPROVED**

The Application, which is on file with the Town Clerk and has been recommended for approval to the Town Council by the Mayor and the Town Manager, is hereby accepted and approved.

**III. EXECUTION OF FINANCIAL AGREEMENT AUTHORIZED**

(a) The Town Manager is hereby authorized to execute the Financial Agreement, substantially in the form as it has been presented to the Governing Body subject to modification or revision deemed necessary and appropriate in consultation with redevelopment counsel.

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

(c) The Town Clerk shall file certified copies of this ordinance and the Financial Agreement with the Tax Assessor of the Town and the Director of the Division of Local Government Services within the Department of Community Affairs in accordance with Section 12 of the Tax Exemption Law.

**IV. SEVERABILITY**

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

**V. AVAILABILITY OF THE ORDINANCE**

A copy of this Ordinance shall be available for public inspection at the offices of the Town.

**VI. EFFECTIVE DATE**

This Ordinance shall take effect according to law.

EXHIBIT A

Financial Agreement

**THIS FINANCIAL AGREEMENT AND THE ORDINANCE ATTACHED HERETO AS EXHIBIT 2 SECURES BONDS OR OTHER OBLIGATIONS ISSUED IN ACCORDANCE WITH THE PROVISIONS OF THE "REDEVELOPMENT AREA BOND FINANCING LAW" AND THE LIEN HEREOF IS A MUNICIPAL LIEN SUPERIOR TO ALL OTHER NON-MUNICIPAL LIENS HEREAFTER RECORDED**

Record and return to:  
Glenn F. Scotland, Esq.  
McManimon & Scotland, L.L.C.  
1037 Raymond Boulevard, Suite 400  
Newark, New Jersey 07102

**FINANCIAL AGREEMENT**

**THIS FINANCIAL AGREEMENT** (hereinafter "Agreement" or "Financial Agreement"), is made this \_\_\_\_ day of \_\_\_\_\_, 2010, by and between **THORLABS URBAN RENEWAL, LLC**, an urban renewal entity, along with its successors and/or assigns, qualified to do business under the provisions of the Long Term Tax Exemption Law of 1992, as amended and supplemented, *N.J.S.A. 40A:20-1 et seq.* (the "Long Term Tax Exemption Law"), with offices c/o Thorlabs, Inc., 435 Route 206, Newton, New Jersey 07860 (hereinafter the "Entity" or "Redeveloper") and the **TOWN OF NEWTON**, a municipal corporation of the State of New Jersey in the County of Sussex with offices located at 39 Trinity Street, Newton, New Jersey 07860 (the "Town").

**WITNESSETH:**

**WHEREAS**, the Mayor and Town Council (the "Governing Body") adopted Resolution No. 56-2004 on April 26, 2004, authorizing the Planning Board of the Town (the "Planning Board") to undertake a preliminary investigation pursuant to the Local Redevelopment and Housing Law, *N.J.S.A. 40A:12A-1 et seq.* (the "Redevelopment Law"), specifically *N.J.S.A. 40A:12A-6(a)*, to determine whether that certain property identified as Block 1104, Lot 21 on the Official Tax Map of the Town, as more specifically described in the metes and bounds description attached hereto as Exhibit 1, (the "Property" or the "Redevelopment Area"), met the criteria in *N.J.S.A. 40A:12A-5* for designation as an "area in need of redevelopment"; and

**WHEREAS**, the Planning Board held public hearings at which evidence regarding the Property was presented and determined that the conditions present established that such area was an "area in need of redevelopment" pursuant to *N.J.S.A. 40A:12A-5*, and adopted a Resolution on March 16, 2005 recommending that the Governing Body declare the Property to be an "area in need of redevelopment"; and

**WHEREAS**, the Governing Body reviewed the recommendation of the Planning Board and adopted Resolution No. 65-2005 on April 25, 2005 determining that the Property was an "area in need of redevelopment" in accordance with *N.J.S.A. 40A:12A-6(b)*; and

**WHEREAS**, the Town issued a "DeRose Notice" on April 10, 2008 to the owners of the Property as required by *Harrison Redevelopment Agency v. DeRose et al.*, 395 *N.J.Super.* 361 (App. Div. 2008); and

**WHEREAS**, in accordance with *N.J.S.A.* 40A:12A-14, following recommendation by the Planning Board, the Governing Body adopted Resolution No. 70-2007 dated April 23, 2007 determining that certain areas within the Town, including that certain area immediately adjacent to the Property and encompassing the public streets and rights-of-way of Sparta Avenue, Merriam Avenue and Pine Street, qualified as an "area in need of rehabilitation" (the "Rehabilitation Area"); and

**WHEREAS**, the Town developed a draft redevelopment plan (the "Proposal") for the Property and the above-described portion of the Rehabilitation Area (collectively, the "Plan Area"); and

**WHEREAS**, the Governing Body referred the Proposal to the Planning Board for review pursuant to *N.J.S.A.* 40A:12A-7 by Resolution No. 26-2009 dated February 23, 2009; and

**WHEREAS**, the Planning Board reviewed the Proposal at a duly noticed public meeting on March 4, 2009, and recommended to the Governing Body by resolution of even date that the Town adopt the Proposal, together with certain revisions and modifications, as the redevelopment plan for the Plan Area (the "Revised Proposal"); and

**WHEREAS**, after publication and public hearing in accordance with the Redevelopment Law, the Governing Body finally adopted the Revised Proposal as the redevelopment plan for the Plan Area (the "Initial Redevelopment Plan") by Ordinance 2009-6 finally adopted March 23, 2009, finding, among other things, it to be substantially consistent with the Master Plan for the Town; and

**WHEREAS**, after review of and comment by the Planning Board with respect to certain proposed amendments to the Initial Redevelopment Plan, in accordance with the Redevelopment Law, the Governing Body by Ordinance 2009-33 finally adopted January 11, 2010 amended the Initial Redevelopment Plan (as amended, the "Redevelopment Plan"), finding, among other things, the Redevelopment Plan to be substantially consistent with the Master Plan for the Town; and

**WHEREAS**, pursuant to *N.J.S.A.* 40A:12A-4, the Town has determined to act as the "Redevelopment Entity" (as such term is defined at *N.J.S.A.* 40A:12A-3) for the Redevelopment Area to exercise the powers contained in the Act to facilitate the development of the Project (as hereinafter defined); and

**WHEREAS**, the Redevelopment Plan provides, among other things, for the construction of a facility consisting of light manufacturing, research and development, office space and associated storage space and parking components on the Property, as well as the construction of

street lighting, landscaping, sidewalk and other on- and off-site improvements in accordance with the requirements of the Redevelopment Plan (the "Project"); and

**WHEREAS**, the Project will consist of an initial phase composed of the Facility and the Infrastructure Improvements, each as defined below (collectively, the "Phase 1 Project"), and in Redeveloper's sole discretion, up to two future phases; and

**WHEREAS**, the Redeveloper has agreed to implement the Redevelopment Plan and in connection therewith, the Redeveloper agreed to devote substantial funds to the completion of the Project; and

**WHEREAS**, in order to implement the development, financing, construction, operation and management of the Project, the Town entered into a redevelopment agreement with Thorlabs, Inc. dated November 30, 2009 (as amended August 9, 2010, the "Redevelopment Agreement"); and

**WHEREAS**, in accordance with Section 8.05 of the Redevelopment Agreement, Thorlabs, Inc. assigned the Redevelopment Agreement to the Entity by that certain Assignment and Assumption Agreement by and among the Redeveloper, the Entity and the Town, effective as of December 2, 2009; and

**WHEREAS**, the Phase 1 Project will require, among other items, certain infrastructure improvements in and around the Redevelopment Area, as set forth in the Redevelopment Agreement (collectively, the "Infrastructure Improvements"); and

**WHEREAS**, the Redeveloper has represented to the Town that the Phase 1 Project, including the Infrastructure Improvements, would not be feasible in its intended scope but for the provision of financial assistance by the Town; and

**WHEREAS**, in addition to the profit limitations required under this Agreement, the nature of the Phase 1 Project entails an inherent profit limitation to the Entity through the extra costs, issues, and responsibilities associated with the Phase 1 Project that are not present outside of the redevelopment context, and there is a need recognized by the Legislature to provide incentives to render implementation of redevelopment feasible; and

**WHEREAS**, in order to enhance the economic viability of and opportunity for a successful Phase 1 Project, the Town will enter into this Agreement with the Entity governing payments made to the Town in lieu of real estate taxes on the Phase 1 Project pursuant to the Long Term Tax Exemption Law; and

**WHEREAS**, the Town intends to issue bonds, bond anticipation notes, or other obligations pursuant to the applicable provisions of the Local Bond Law, *N.J.S.A. 40A:2-1 et seq.* (the "Local Bond Law"), Section 37 of the Redevelopment Law and the Redevelopment Area Bond Financing Act, *N.J.S.A. 40A:12A-64 et seq.* (the "Bond Financing Law") in an

amount, not to exceed \$4,660,000, sufficient to yield proceeds of not less than \$4,000,000 for costs of construction of the Phase 1 Project, including the Infrastructure Improvements; and

**WHEREAS**, the provisions of the Long Term Tax Exemption Law and the Bond Financing Law authorize the Town to accept, in lieu of real property taxes, an Annual Service Charge (as defined below) to be paid by the Entity to the Town; and

**WHEREAS**, the Entity has agreed to make payment of the Annual Service Charge to the Town or its designee, which Annual Service Charge shall be available to pay Debt Service (as defined below) due on the Bonds, and/or any other lawful governmental purpose in the exercise of the Town's sole discretion; and

**WHEREAS**, pursuant to *N.J.S.A. 40A:20-8*, the Entity filed an application with the Town for approval of a long term tax exemption for the Phase 1 Project (attached hereto as Exhibit 3, the "Application"); and

**WHEREAS**, the Town made the following findings:

A. Relative benefits of the Phase 1 Project:

- i. The Phase 1 Project will revitalize an area in need of redevelopment and an area in need of rehabilitation;
- ii. The Phase 1 Project will provide not to exceed 125,000 square feet of additional research and development, light manufacturing and office space in the Town;
- iii. The Phase 1 Project will provide for the environmental remediation of a long-vacant brownfield site;
- iv. The Phase 1 Project will create approximately 250 construction jobs; and
- v. The Phase 1 Project will retain hundreds of permanent jobs currently located in the Town and surrounding communities, thereby bringing approximately 300 permanent jobs to the Town.

B. Assessment of the importance of the tax exemption in obtaining development of the Phase 1 Project:

- i. The exemption permits productive use of the long vacant, environmentally troubled Property;
- ii. The exemption permits completion of significant infrastructure improvements adjacent to and benefiting the Redevelopment Area; and
- iii. The exemption permits the undertaking of the Phase 1 Project in its intended scope, which would not be possible but for the granting of the exemption by the Town.

**WHEREAS**, on [\_\_\_\_], 2010, the Town Council adopted an Ordinance (attached hereto as Exhibit 2, the "Ordinance") approving the Application, including the Annual Service Charge, and authorizing the execution of this Agreement; and

**WHEREAS**, in order to set forth the terms and conditions under which the Entity and the Town (together, the "Parties") shall carry out their respective obligations with respect to (a) payment of the Annual Service Charge by the Entity for the Phase 1 Project, and (b) issuance of Bonds by the Town and provision for repayment thereof by the Entity through the Annual Service Charge, the Parties have determined to execute this Financial Agreement; and

**WHEREAS**, this Agreement is intended to address the Phase 1 Project only. The Town will consider in good faith the future grant of long term tax exemption and the execution of financial agreements with respect to Phase 2 and/or Phase 3, as defined below, upon request therefor,

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

**ARTICLE I.**

GENERAL PROVISIONS

**Section 1.01** Governing Law

This Financial Agreement shall be governed by the provisions of (a) the Long Term Tax Exemption Law, the Act, the Bond Financing Law and such other statutes as may be the sources of relevant authority, and (b) the Ordinance. It is expressly understood and agreed that the Town expressly relies upon the facts, data, and representations contained in the Application, attached hereto as Exhibit 3, in granting this tax exemption.

**Section 1.02** General Definitions

The following terms shall have the meaning assigned to such term in the preambles hereof:

Agreement	Phase 1 Project
Bond Financing Law	Planning Board
Entity	Property
Financial Agreement	Proposal
Governing Body	Redeveloper
Infrastructure Improvements	Redevelopment Agreement
Initial Redevelopment Plan	Redevelopment Area
Local Bond Law	Redevelopment Law
Long Term Tax Exemption Law	Redevelopment Plan
Ordinance	Rehabilitation Area

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

Allowable Net Profit - The amount arrived at by applying the Allowable Profit Rate to the cost of the Phase 1 Project pursuant to the provisions of *N.J.S.A.* 40A:20-3(c).

Allowable Profit Rate – The allowable profit rate as defined in *N.J.S.A.* 40A:20-3(c).

Annual Gross Revenue – as defined in *N.J.S.A.* 40A:20-3.

Annual Service Charge – The payment by the Entity pursuant to Article IV herein of such amounts as set forth at Article IV, below, with respect to the Improvements (but not the Land) for the Phase 1 Project, which: (a) the Entity has agreed to pay in part for municipal services supplied to the Phase 1 Project; (b) is in lieu of any taxes on the Improvements (as defined below) pursuant to *N.J.S.A.* 40A:20-12; (c) shall be paid on the Annual Service Charge Payment Dates, and (d) shall be pro rated according to the number of days remaining in the year in which this Agreement begins and the year in which this Agreement terminates.

Annual Service Charge Payment Dates – means February 1, May 1, August 1 and November 1 of each year commencing on the Annual Service Charge Start Date, and continuing through the Term of this Agreement set forth at Section 3.01 hereof.

Annual Service Charge Start Date – shall mean the first day of the month following the date that is the earlier of: (i) the Substantial Completion of the Phase 1 Project; (ii) the issuance of a Certificate of Occupancy for the Phase 1 Project; or (iii) the issuance of a Certificate of Completion for the Phase 1 Project, but in any and all events shall be no later than eighteen (18) months following the issuance of Bonds as defined in this Agreement.

Applicable Law - shall mean all federal, state and local laws, ordinances, approvals, rules, regulations and requirements that are, from time to time, applicable to the Phase 1 Project and/or the Project, as the case may be.

Applicable Phase(s) - shall mean Phase 1 and such of Phases 2 and 3, as Redeveloper, in its sole discretion, elects to undertake pursuant to the Redevelopment Agreement.

Auditor's Report - A complete financial statement outlining the financial status of the Phase 1 Project (for a period of time as indicated by context), which shall also include a certification of Total Project Cost and clear computation of Net Profit as provided in *N.J.S.A.* 40A:20-3(c)(2). The contents of the Auditor's Report shall have been prepared in conformity with generally accepted accounting principals. The Auditor's Report shall be certified as to its conformance with such principles by a certified public accountant licensed to practice that profession in the State of New Jersey.

Base Facility – as defined in Section 4.10 hereof.

Base Payment – as defined in Section 4.10 hereof.

Bond Amount - means the aggregate principal amount of Bonds to be issued as determined by the Town in accordance with the provisions of the Redevelopment Agreement.

Bond Anticipation Notes - means any short-term debt obligations to be issued by the Town pursuant to *N.J.S.A.* 40A:2-8 in anticipation of the issuance of the Bonds for the purpose of providing short-term or temporary financing for (a) all or a portion of the Phase 1 Project costs, (b) the refunding of any outstanding Bond Anticipation Notes, (c) capitalized interest payable on the Bond Anticipation Notes and (d) the costs incurred by the Town in connection with the authorization, execution and delivery of the Bond Anticipation Notes. "Bond Anticipation Notes" shall be deemed to include any initial series of Bond Anticipation Notes and any renewals thereof.

Bonds - means one or more series of taxable or tax-exempt redevelopment area bonds, Bond Anticipation Notes or other obligations issued pursuant to the Local Bond Law, the Redevelopment Law and the Bond Financing Law, in an aggregate principal amount not exceeding the Bond Amount, the proceeds of which shall be applied toward payment of the costs relating to the design, permitting, development and construction of the Phase 1 Project, including, without limitation, the financing or refunding of any series of Bonds. Such Bonds will be full faith and credit obligations of the Town payable from the levy of *ad valorem* taxes without limitation as to rate or amount. The Town's general obligation pledge under the Local Bond Law will be secured by that portion of the Annual Service Charge retained by the Town after payment of the County Share. The Annual Service Charge shall not be pledged to the holders of the Bonds and pursuant to the terms of the Trust Agreement, for all purposes of the Bond Financing Law, Applicable Law and this Agreement, the Town shall be deemed to be the sole holder of the Bonds.

Certificate of Completion - means a certificate or certificates, issued by the Town certifying that the Redeveloper has performed its duties and obligations under the Redevelopment Agreement and the Redevelopment Plan with respect to the Phase 1 Project.

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

Change in Law - means the enactment, promulgation, modification or repeal of Applicable Law, including without limitation, the Long-Term Tax Exemption Law, the Bond Financing Law, the Redevelopment Law or other similar statute with respect to the matters addressed by the terms of this Agreement and/or the transactions contemplated hereby.

Chief Financial Officer - means the chief financial officer of the Town.

Completion, Complete or Completed - means with respect to the Phase 1 Project that; (a) all work related to the Phase 1 Project in its entirety or any other work or actions to which such

term is applied has been Substantially Completed, acquired and/or installed in accordance with the Redevelopment Agreement and in compliance with Applicable Law so that (i) the Phase 1 Project in its entirety may, in all respects, be used and operated under the applicable provisions of the Redevelopment Agreement, or (ii) with respect to any other work or action to which such term is applied, that the intended purpose of such work or action has been completed; (b) all permits, licenses and approvals that are required in order that a Certificate of Completion can be issued for the Phase 1 Project in its entirety, or such other work or action to which such term is applied are in full force and effect; and (c) such “completion” has been evidenced by a written notice provided by the Redeveloper (with respect to the Phase 1 Project), which determination is reasonably acceptable to the Town.

Construction Loan Agreement – means that certain Construction Loan Agreement executed by and between Thorlabs Urban Renewal, LLC and Lakeland Bank dated [\_\_\_\_], 2010.

County – means the County of Sussex.

County Share – means five percent (5%) of the Annual Service Charge received by the Town, which shall be payable to the County in accordance with the provisions of *N.J.S.A.* 40A:20-12.

Debt Service – The scheduled amount of interest and amortization of principal payable on the Bonds during the period of computation, excluding amounts scheduled during such period which relate to principal which has been retired before the beginning of such period.

Default - means a breach or failure of the Entity to perform any obligation imposed upon the Entity by the terms of this Agreement, or any material obligation imposed upon the Entity under Applicable Law, beyond any applicable grace or cure periods.

Defeasance Amount - an amount of money, which when invested in State and Local Government Series Treasury Obligations (“SLGs”), will be sufficient to pay the principal and interest on the Bonds on the earliest redemption date for the Bonds.

Defeasance Notice – means written notice provided to the Town by the Entity identifying the date on which the Entity wishes to defease the Bonds, which date shall be not less than ninety days following the transmission of the notice.

Disclosure Statement – as defined in Section 8.02(C) hereof.

Early Termination – means, as applicable, the Entity’s right to terminate this Agreement prior to expiration in accordance with Section 3.02 hereof, or the Town’s right to terminate this Agreement prior to expiration in accordance with Section 15.04 hereof.

Early Termination Payment – as defined in Section 3.02(b)(2) hereof.

Enhanced Facility – as defined in Section 4.10 hereof.

Enhanced Payment – as defined in Section 4.10 hereof.

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

Expansion Phases – shall mean Phase 2 and/or Phase 3, as applicable.

Facility - shall mean the Base Facility or the Enhanced Facility, as the case may be, containing not more than 125,000 square feet of light manufacturing, research and development and office space, as well as associated storage space and approximately 300 surface parking spaces to be constructed on the Property by Redeveloper as part of the Phase 1 Project, in accordance with the Redevelopment Plan, the Plans and Specifications, the Governmental Approvals and Applicable Laws.

Financial Plan – as defined in Section 2.06 hereof.

Improvements – means any building, structure or fixture permanently affixed to the Property as part of the Phase 1 Project, which, as of the date of this Agreement, would be fixed as real property under *N.J.S.A. 54:4-1*.

Infrastructure Improvements - shall mean, collectively, (i) the road and streetscape improvements; (ii) offsite water improvements; and (iii) study of sewer capacity, all as described at Section 5.05 of the Redevelopment Agreement. The Infrastructure Improvements shall be undertaken by the Town and funded from Bond proceeds in an amount not to exceed \$320,000.

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

Issuer - means the Town of Newton.

Land Taxes – mean the amount of taxes assessed on the value of the underlying Property upon which the Phase 1 Project is located.

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

Material Conditions – as defined in Section 4.05.

Minimum Annual Service Charge – as defined in Section 4.04.

Net Profit – means the Gross Revenue of the Entity pertaining to the Phase 1 Project, less all operating and non-operating expenses of the Entity, all determined in accordance with generally accepted accounting principles and the provisions of *N.J.S.A. 40A:20-3(c)*.

Outstanding – when used with reference to Bonds and as of any particular date, describes all Bonds theretofore and thereupon being delivered, issued and outstanding except (a) any Bonds cancelled at or before such date; (b) any Bond for the payment of which the Defeasance Amount has been irrevocably deposited with one or more fiduciaries and for which the Defeasance Notice has been provided; (c) any Bond which has been redeemed; (d) any Bond in lieu of or in substitution for which another shall have been delivered; and (e) Bonds deemed tendered for purchase and not delivered to the Trustee as Paying Agent on the purchase date thereof, provided sufficient funds for payment of the purchase price are on deposit with the Trustee as Paying Agent.

Phase 1 Project - means the first phase of the Project and includes the Facility, together with the Infrastructure Improvements.

Phase 1 Project Completion Date(s) - means the dates by which the Phase 1 Project shall be Completed, as set forth on Exhibit 7 hereto.

Phase 2 and Phase 3 - mean the second and third phases of the Project, respectively, which, if Redeveloper so elects in its sole discretion, Redeveloper shall develop as part of the Project, and, if applicable, may include the construction, in one or two phases (i.e., Phase 2 and/or Phase 3), of additions to the Facility or new building(s), in either case not to exceed a total of approximately 250,000 square feet inclusive of the Facility; and/or a structured parking facility, in accordance with the Redevelopment Plan.

Plan Area - means all that certain property governed by the Redevelopment Plan, including the Redevelopment Area and the portion of the Rehabilitation Area immediately adjacent thereto, that is, the public streets and rights-of-way of Sparta Avenue, Merriam Avenue and Pine Street.

Recovery Zone Facility Bonds – means the Recovery Zone Facility Bonds, Series 2010 in the principal amount not to exceed \$6,175,000 authorized under the American Recovery and Reinvestment Act of 2009 (the “Stimulus Act”) issued by the Town pursuant to an allocation from Sussex County, New Jersey of its volume cap under the Stimulus Act, and purchased by Lakeland Bank, simultaneously with the issuance of the Bonds under this Agreement; the full principal amount of which will be loaned to Redeveloper for construction of the Phase 1 Project.

State – means the State of New Jersey.

Substantial Completion – means the date the work related to the Phase 1 Project is sufficiently complete in accordance with the Redevelopment Plan and the Redevelopment Agreement so that the Phase 1 Project may be occupied or utilized for its intended use. The issuance of a temporary Certificate of Occupancy shall be conclusive proof that the Phase 1 Project has reached Substantial Completion, however, absence of a temporary Certificate of Occupancy shall not be conclusive proof that the Phase 1 Project has not reached Substantial Completion.

Tax Assessor - means the Town tax assessor.

Tax Collector - means the Town tax collector.

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

Termination – means the expiration of the term of this Agreement, voluntary termination by the Entity in accordance with the provisions of Section 3.02 hereof, or any action or omission, including Default, which by operation of the terms of this Financial Agreement shall cause the Entity to relinquish its tax exemption, provided however, that in accordance with Section 3.02 hereof, there shall be no voluntary termination by the Entity while there are Bonds Outstanding.

Total Project Cost – includes the costs of: i) the acquisition of the Property; ii) architectural, engineering, surveying and legal fees payable in connection with the planning, construction and financing of the Phase 1 Project; iii) actual construction costs, including only the cost of labor and materials in the construction of the buildings and structures, as certified by a qualified architect or engineer; and iv) site preparation expenses, including environmental remediation and insurance, interest, financing costs, real property taxes and other like expenses incurred prior to the date of Completion of the Improvements.

Town Manager – means the Town Manager of the Town of Newton.

Transferee Agreement – as defined in Section 9.01(b) hereof.

Trust Agreement – means that certain Trust Agreement to be entered into by and between the Town and a corporate trustee (the “Trustee”) to be appointed by the Town in connection with the issuance of the Bonds.

**Section 1.03 Interpretation and Construction** - In this Agreement, unless the context otherwise requires:

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

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

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

(d) Any headings preceding the texts of the several Articles and Sections of this Financial Agreement, and any table of contents or marginal notes appended to copies hereof,

shall be solely for convenience of reference and shall not constitute a part of this Financial Agreement, nor shall they affect its meaning, construction or effect.

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

(f) All notices to be given hereunder and responses thereto shall be given, unless a certain number of days is specified, within a reasonable time, which shall not be less than ten (10) days nor more than twenty (20) days, unless the context dictates otherwise.

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

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

## **ARTICLE II.**

### **APPROVAL**

**Section 2.01** Approval of Tax Exemption - Pursuant to the Ordinance, the Phase 1 Project to be constructed and maintained by the Entity on the Property shall be exempt from taxation as provided for herein and in the Long Term Tax Exemption Law. In accordance with *N.J.S.A.* 40A:20-12, the tax exemption shall constitute a single continuing exemption from local property taxation for the duration of this Agreement.

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

**Section 2.03** Improvements to be Constructed – The Entity represents that it will construct the Phase 1 Project, the use of which Phase 1 Project is more specifically described in the Application attached hereto as Exhibit 3, in accordance with the Redevelopment Plan, the Redevelopment Agreement and Applicable Law.

**Section 2.04** Construction Schedule - The Entity agrees to make commercially reasonable efforts to commence construction and complete the Phase 1 Project in accordance with the Estimated Construction Schedule attached hereto as Exhibit 5.

**Section 2.05** Ownership, Management and Control - The Entity represents that it is the owner of the Property upon which the Phase 1 Project is to be constructed and which is the subject of this Agreement.

**Section 2.06 Financial Plan** - The Entity represents that the Improvements shall be financed substantially in accordance with the Financial Plan attached hereto as Exhibit 6 (the “Financial Plan”). The Financial Plan sets forth estimated Total Project Cost, amortization rate on Total Project Cost, the source of funds, the interest rates to be paid on construction financing, the source and amount of paid-in capital, and the terms of any mortgage amortization.

### **ARTICLE III.**

#### **DURATION OF AGREEMENT**

**Section 3.01 Term** - It is understood and agreed by the parties that this Agreement, including the obligation to pay the Annual Service Charge required under Article IV hereof and the tax exemption granted and referred to in Section 2.01 hereof, shall remain in effect for the earlier of: (i) thirty-five (35) years from the date of execution of this Agreement; (ii) thirty (30) years from the issuance of a Certificate of Occupancy for the Phase 1 Project; or (iii) the date of Early Termination. The tax exemption shall continue in force only while the Phase 1 Project is owned by a corporation, association or other entity formed and operating under the Long Term Tax Exemption Law. At the expiration of the term hereof or upon Termination, the tax exemption for the Phase 1 Project shall expire and the Improvements shall thereafter be assessed and taxed according to the general law applicable to other non-exempt property in the Town. After expiration of the term hereof, all restrictions and limitations upon the Entity shall terminate upon the Entity's rendering and the Town's acceptance of its final accounting, pursuant to *N.J.S.A. 40A:20-13*.

**Section 3.02 No Voluntary Termination by Entity While Bonds Are Outstanding** – (a) The Entity may not terminate this Agreement at any time when any Bonds remain Outstanding.

(b) The Parties agree that the Entity may terminate this Agreement upon the occurrence of the following:

(1) At the sole cost and expense of the Entity, either: (i) defeasance of the remaining outstanding principal amount of the Bonds, effective upon (x) deposit into an irrevocable escrow account of the Defeasance Amount and (y) provision of the Defeasance Notice; or (ii) redemption of the Bonds, as the case may be; and

(2) Payment to the Town by the Entity of an early termination payment in the amount of Five Hundred Thousand Dollars (\$500,000.00) (the “Early Termination Payment”), it being understood that if the Bonds are issued on or after November 16, 2010, the Early Termination Payment shall be reduced to Four Hundred and Seventy-Five Thousand Dollars (\$475,000.00) and shall decrease by an additional Twenty-Five Thousand Dollars (\$25,000.00) for each thirty-day period that elapses after November 16, 2010 until the Bonds are issued. It is further understood and agreed, however, that there shall be no diminution of the Early Termination Payment if a delay in issuance is caused by circumstances or events beyond the Town’s reasonable control.

(c) The Entity further expressly acknowledges, understands and agrees that in accordance with the Bond Financing Law, specifically *N.J.S.A.* 40A:12A-66(a), the relinquishment provisions set forth in the Long Term Tax Exemption Law, specifically *N.J.S.A.* 40A:20-9(g) and 13, are not applicable in accordance with, pursuant to, and under this Agreement. The Entity further expressly rejects, refuses, relinquishes, surrenders, and otherwise waives any and all rights of relinquishment of its status under the acts and this Agreement that it may have otherwise been entitled to in accordance with any Applicable Law, including without limitation, *N.J.S.A.* 40A:20-13, provided however, that the Entity retains its right to relinquish its status upon expiration of this Agreement or compliance by the Entity with the early termination mechanism set forth at Section 3.02(b), above.

**Section 3.03** Date of Termination - Upon any Termination of the tax exemption approved in Section 2.01 hereof, the date of such Termination shall be deemed to be the end of the fiscal year of the Entity for the purposes of this Agreement.

## **ARTICLE IV.**

### **ANNUAL SERVICE CHARGE**

**Section 4.01** Consent of Redeveloper to Annual Service Charge - The Entity hereby consents and agrees to the amount of Annual Service Charge and to the liens established in this Agreement, and the Redeveloper shall not contest the validity or amount of any such lien. Notwithstanding anything herein to the contrary, the Entity's obligation to pay the Annual Service Charge shall be absolute and unconditional and shall not be subject to any defense, set-off, recoupment or counterclaim under any circumstances, including without limitation any loss of status of Entity as an "urban renewal entity" qualified under and as defined in the Long Term Tax Exemption Law, or any violation by the Town of any provisions of this Financial Agreement, termination of the Redevelopment Agreement or failure of the Redeveloper to complete the Phase 1 Project. The Entity's remedies shall be limited to those specifically set forth herein and otherwise provided by law.

**Section 4.02** Quarterly Installments - After the Annual Service Charge Start Date, the Entity agrees that payment of the Annual Service Charge shall be paid to the Town on a quarterly basis on February 1, May 1, August 1, and November 1. In the event that Entity fails to timely pay any installment, the amount past due shall bear the rate of interest permitted under applicable State law and then being assessed by the Town against other delinquent taxpayers in the case of unpaid taxes or tax liens until paid.

**Section 4.03** Annual Service Charge - On the Annual Service Charge Start Date, the Entity shall pay the Annual Service Charge to the Town or its designee.

**Section 4.04** Minimum Annual Service Charge - (a) Payment of Minimum Annual Service Charge. Beginning on the first day of February, May, August or November next following the execution of this Agreement, and continuing until the Annual Service Charge Start Date, the Entity shall, to the extent required hereunder, and hereby expressly agrees and covenants to, make payment to the Town or its designee on a quarterly basis of a Minimum

Annual Service Charge. The Minimum Annual Service Charge shall equal the Debt Service due during the next succeeding quarter, less any capitalized interest available from Bond proceeds for the payment of that Debt Service, plus the County Share, it being the intent of the parties that the Town shall not pay Debt Service from sources other than capitalized interest or payments made by the Entity to the Town hereunder.

(b) Examples. By way of example only, if the Debt Service due during the next succeeding quarter shall equal \$200,000, and \$50,000 in capitalized interest shall be available to pay a portion of the Debt Service, the Minimum Annual Service Charge shall equal \$157,894.74 (that being an amount sufficient to yield \$150,000 to the Town for the payment of Debt Service after 5% of the Minimum Annual Service Charge is paid to the County in satisfaction of the County Share).

By further way of example, if the Debt Service due during the next succeeding quarter shall equal \$200,000, and \$200,000 in capitalized interest shall be available to the pay the Debt Service, the Minimum Annual Service Charge for that quarter shall equal zero.

(c) Certification of Minimum Annual Service Charge Payment Due. On the fifteenth day of each January, April, July and October following the execution of this Agreement, and continuing until the Annual Service Charge Start Date, the Chief Financial Officer of the Town shall certify in writing to the Town and the Entity the Minimum Annual Service Charge payment due for the following quarter in accordance with this agreement.

**Section 4.05** Material Conditions - It is expressly agreed and understood that all payments of Land Taxes, Annual Service Charges and any interest payments, penalties or costs of collection due thereon, are material conditions of this Financial Agreement. If any other term, covenant or condition of this Financial Agreement or the Application, as to any person or circumstance shall, to any extent, be determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Financial Agreement or the application of such term, covenant or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each remaining term, covenant or condition of this Financial Agreement shall be valid and enforced to the fullest extent permitted by applicable law.

**Section 4.06** No Reduction in Payment of the Annual Service Charge - Neither the amounts nor dates established for payment of the Annual Service Charge, as provided in Article IV hereof shall be reduced, amended or otherwise modified during the Term of this Agreement.

**Section 4.07** Annual Service Charges as Municipal Lien - The Town and the Entity hereby expressly acknowledge, understand and agree that in accordance with the Bond Financing Law, specifically *N.J.S.A.* 40A:12A-68, and other Applicable Law, upon the recordation of the Ordinance and this Agreement: (a) the Ordinance, this Agreement and any amount due hereunder, including without limitation, the Annual Service Charge, shall be a continuous, municipal lien on the Property and the Phase 1 Project, and that any subsequent Annual Service Charge, including any interest, penalties or costs of collection thereof, that shall thereafter become due or accrue, shall be added and relate back to and be part of the initial municipal lien

on the Property and the Phase 1 Project, (b) the Ordinance, this Agreement and any amounts due hereunder, including without limitation, the Annual Service Charge, shall constitute an automatic, enforceable and perfected statutory municipal lien for all purposes on the Property and the Phase 1 Project, including specifically and without limitation, the federal bankruptcy code, and (c) any applicable process, procedure or action of any court, government body or other relevant authority, including without limitation any confirmation hearing, to determine the amount of the Annual Service Charge due shall not affect the commencement or validity of the municipal lien.

**Section 4.08** Security for Payment of Annual Service Charges - In order to secure the full and timely payment of the Annual Service Charges, the Town reserves the right to prosecute an In Rem Tax Foreclosure action against the Property as more fully set forth in this Agreement.

**Section 4.09** Land Taxes – (a) Assessed Separately from Improvements. Land Taxes shall be separately assessed for the Property, and shall be assessed only on the land portion of the Property.

(b) Appeal of Land Value Assessment. Nothing contained in this Agreement shall limit or alter the right of the Entity to appeal the assessment of the land portion only of the Property in accordance with the provisions set forth at *N.J.S.A. 54:3-21*.

(c) No Added Assessment during Construction. The Town agrees that it shall not impose an added assessment, omitted added assessment or similar assessment on the value of the Improvements to be made by the Entity from the date the Entity acquired the Property to the date of Completion of the Phase 1 Project.

**Section 4.10** Calculation of Annual Service Charge; Increases and Credits – (a) Base Payment. To the extent that the Facility shall contain 100,000 square feet or less of gross floor area (the “Base Facility”), the Annual Service Charge shall equal \$400,000 in the year that the Annual Service Charge Start Date occurs (the “Base Payment”). The amount of the Base Payment that is payable in that year may be pro-rated, depending on the Annual Service Charge Start Date, provided however, that the Base Payment shall not be pro-rated for purposes of calculating the annual increases described at Section 4.10(c), below.

(b) Enhanced Payment. To the extent that the Facility shall contain more than 100,000 square feet of gross floor area (but in no event more than 125,000 square feet of gross floor area) (the “Enhanced Facility”), the Annual Service Charge shall equal \$465,000 in the year that the Annual Service Charge Start Date occurs (the “Enhanced Payment”). The amount of the Enhanced Payment that is payable in that year may be pro-rated, depending on the Annual Service Charge Start Date, provided however, that the Enhanced Payment shall not be pro-rated for purposes of calculating the annual increases described at Section 4.10(c), below.

(c) Increases Apace with Municipal Tax Rate. The Annual Service Charge shall increase in each subsequent municipal fiscal year for the duration of this Agreement, by a percentage equal to the percentage increase in the municipal tax rate over that of the prior municipal fiscal

year. If the municipal tax rate, when compared to that of the prior municipal fiscal year, shall remain static or shall decrease, the Annual Service Charge shall remain static.

(d) Examples. The following examples are set forth for illustrative purposes only.

(i) Year of Annual Service Charge Start Date. By way of example, if the Entity elects to construct the Base Facility and the Annual Service Charge Start Date shall occur on July 1, 2011, the amount of the Base Payment that shall be payable in the first year shall be \$200,000 (that is, one-half of the Base Payment). If the Entity elects to construct the Enhanced Facility and the Annual Service Charge Start Date shall occur on July 1, 2011, the amount of the Enhanced Payment that shall be payable in the first year shall be \$232,500 (that is, one-half of the Enhanced Payment).

(ii) Year following Annual Service Charge Start Date. If, by way of example, the Entity elects to construct the Base Facility and the Annual Service Charge Start Date shall occur on July 1, 2011, and the 2012 municipal tax rate shall be 4% higher than the 2011 municipal tax rate, the amount of the Annual Service Charge due and payable in 2012 shall equal \$416,000 (representing the 2011 Base Payment of \$400,000 escalated by the 4% increase in the municipal tax rate). If the Entity elects to construct the Enhanced Facility and Annual Service Charge Start Date shall occur on July 1, 2011, and the 2012 municipal tax rate shall be 4% higher than the 2011 municipal tax rate, the amount of the Annual Service Charge due and payable in 2012 shall equal \$483,600 (representing the 2011 Enhanced Payment of \$465,000 escalated by the 4% increase in the municipal tax rate).

(iii) Each Subsequent Year. If, assuming the facts set forth in Example (ii), above, the 2013 municipal tax rate shall be 4% higher than the 2012 municipal tax rate, the amount of the Annual Service Charge due and payable in 2013 with respect to the Base Facility would equal \$432,640 (representing the 2012 payment of \$416,000 escalated by the 4% increase in the municipal tax rate). If, assuming the facts set forth in Example (ii), above, the 2013 municipal tax rate shall be 4% higher than the 2012 municipal tax rate, the amount of the Annual Service Charge due and payable in 2013 with respect to the Enhanced Facility would equal \$502,944 (representing the 2012 payment of \$483,600 escalated by the 4% increase in the municipal tax rate).

(e) Waiver of Credits. The Entity hereby expressly rejects, refuses, relinquishes, surrenders, and otherwise waives any and all credits against, or reductions of, the Annual Service Charge that it may have otherwise been entitled to in accordance with any applicable law, including without limitation, any credit for the payment of land tax as set forth at *N.J.S.A. 40A:12A-12*.

(f) Calculation of Annual Service Charge Not Limited by Long Term Tax Exemption Law. The Entity expressly acknowledges, understands and agrees that in accordance with the Bond Financing Law, specifically *N.J.S.A. 40A:12A-66(a)*, the Annual Service Charge shall not be restricted or limited by, or otherwise subject to, the minimum, maximum or staged increase provisions of the Long Term Tax Exemption Law.

**Section 4.11** County Share Paid to the County - In accordance with the provisions of *N.J.S.A.* 40A:20-12, upon receipt of the Annual Service Charge or Minimum Annual Service Charge, the Town shall remit the County Share to the County.

## **ARTICLE V.**

### **ISSUANCE AND PAYMENT OF THE BONDS**

**Section 5.01.** Security for the Bonds – The Bonds will be full faith and credit obligations of the Town payable from the levy of *ad valorem* taxes without limitation as to rate or amount. The Town's general obligation pledge under the Local Bond Law will be secured by that portion of the Annual Service Charge retained by the Town after payment of the County Share. The Annual Service Charge shall not be pledged to the holders of the Bonds and pursuant to the terms of the Trust Agreement, for all purposes of the Bond Financing Law, Applicable Law and this Agreement, the Town shall be deemed to be the sole holder of the Bonds.

**Section 5.02.** Payment of County Share, Debt Service – (a) Of the Annual Service Charge received by the Town, the County Share portion shall be first payable to the County. Thereafter, the portion of the Annual Service Charge remaining shall be available to pay Debt Service on the Bonds and/or for any lawful governmental purpose.

(b) If the Town in its sole discretion terminates this Agreement pursuant to Article XV herein, the Town will make all Debt Service payments required on the Bonds, whether from (a) the general revenues of the Town; (b) the proceeds of an In Rem tax foreclosure action against the Project and the land apportioned thereto; or (c) from any other funds available to the Town that it may recover from the Entity.

**Section 5.03.** Issuance of Bonds – (a) Timing for Issuance. The Issuer will take all necessary steps pursuant to the Bond Financing Law to authorize the issuance and sale of the Bonds after execution of this Agreement, and receipt of all necessary approvals and authorizations related thereto as required under Applicable Law. The Issuer will begin the marketing period for the Bonds, as evidenced by the dissemination of a notice of sale and/or the posting of a preliminary official statement, on or before October 15, 2010. The Issuer will receive competitive bids for the Bonds on or before October 29, 2010. To the extent that these deadlines are not met, the Town agrees to seek approval from the Local Finance Board, in the Division of Local Government Services, in the New Jersey Department of Community Affairs, to issue the Bonds on a negotiated basis.

(b) Simultaneous Issuance of Recovery Zone Facility Bonds. Simultaneously with the issuance of the Bonds, the Town, as conduit issuer, will issue the Recovery Zone Facility Bonds, as further described in this Agreement and the Redevelopment Agreement.

(c) Application of Bond Proceeds. The Town will appoint a Trustee to perform corporate trust and paying agent services with respect to the Bonds. The Town will make its best efforts to induce the Trustee to enter into an agreement with Lakeland Bank, which has been designated to administer the proceeds of the construction financing pursuant to the Construction

Loan Agreement, as well as the proceeds of Recovery Zone Facility Bonds, to administer the Bond proceeds as escrow agent. The proceeds of the Bonds and the Recovery Zone Facility Bonds shall be applied on a pro-rata, pari passu basis in the manner set forth in the Construction Loan Agreement.

(d) Inspection of Work; Requisitions for Payment. The parties hereby agree that the construction monitor engaged by Lakeland Bank shall also act as the party responsible to inspect the work undertaken and certify as to its completion with respect to requisitions for payment from the Bond proceeds, except with respect to requisitions related to the Infrastructure Improvements, for which the inspection and certification process shall be carried out by the Town's engineer.

## ARTICLE VI.

### REMEDIES

**Section 6.01. Remedies** - The Town's customary tax payment enforcement proceedings will apply to the collection of any delinquent payment of the Annual Service Charge. In the event of a Default on the part of the Entity to pay any installment of the Annual Service Charge required by Article IV above, and the continuance of such Default after expiration of any notice, grace or cure periods under Applicable Law, the Town in addition to its other remedies, reserves the right to proceed against the Entity's land and premises, in the manner provided by Applicable Law, including the Tax Sale Law, and any act supplementary or amendatory thereof, provided that, the Entity hereby acknowledges and agrees that in the event that a payment Default has occurred and all cure periods have run, the Town is hereby authorized and empowered to hold a public sale under the Tax Sale Law, without waiting for the 11<sup>th</sup> day of the 11<sup>th</sup> month of the municipal fiscal year, as otherwise provided by statute. It is further provided that it is understood and agreed that the Town shall look solely to the estate and property of the Entity in the Phase 1 Project (including the rental income and insurance proceeds therefrom) for the satisfaction of the Town's remedies for the collection of a judgment or other judicial process requiring the payment of money by the Entity in the event of any default or breach by the Entity with respect to any of the terms, covenants and conditions of this Agreement to be observed or performed by the Entity, and any other obligation of the Entity created by, under or as a result of this Agreement, and no other property or assets of the Entity, or of their partners, beneficiaries, shareholders, officers, directors, members, managers, tenants, principals, agents or attorneys (as the case may be) (in any of their capacities) shall be subject to service, levy, execution or other enforcement procedures for the satisfaction of the Town's remedies. In no event shall the Town name Entity's partners, members, shareholder's, officers, directors, managers, beneficiaries, tenants, shareholders, principals, agents or attorneys (in any of their capacities) to any suit or other proceeding to which the Town and/or Entity are a party arising out of or relating to this Agreement.

The Town shall pursue the collection of delinquent payments of Annual Service Charge with the same diligence it employs in the collection of the Town's general *ad valorem* real estate taxes, including the commencement of an In Rem Tax Foreclosure. The Parties understand and agree that the Town's ordinary discretion in this regard allows it to decide not to expend resources to collect *de minimis* outstanding amounts.

Whenever the word "Taxes" appears, or is applied, directly or implied, to mean taxes or municipal liens on land, such statutory provisions shall be read, as far as it is pertinent to this Agreement, as if the Annual Service Charge were taxes or municipal liens on land.

## ARTICLE VII.

### CERTIFICATE OF OCCUPANCY

**Section 7.01** Certificate of Occupancy - It is understood and agreed that it shall be the obligation of the Entity to obtain and the Town to issue all Certificates of Occupancy in a reasonably timely manner.

**Section 7.02** Filing of Certificate of Occupancy – The Entity shall file or cause to be filed with both the Tax Assessor and the Tax Collector a copy of the Certificate of Occupancy promptly upon receipt thereof by the Entity.

Failure of the Entity to file such issued Certificate of Occupancy as required by the preceding paragraph, shall not militate against any action or non-action by the Town, including, if appropriate, retroactive billing with interest for any charges determined to be due in the absence of such filing by the Entity.

## ARTICLE VIII.

### ANNUAL AUDITS

**Section 8.01** Accounting System - The Entity agrees to calculate its “Net Profit” pursuant to *N.J.S.A.* 40A:20-3(c).

**Section 8.02** Periodic Reports -

(A) Auditor’s Report: Within ninety (90) days after the close of each fiscal or calendar year, depending on the Entity’s accounting basis that this Agreement shall continue in effect, the Entity shall submit to the Town Manager, the Town Council, the Tax Collector and the Town Clerk, who shall advise those municipal officials required to be advised, and the New Jersey Division of Local Government Services in the Department of Community Affairs, its Auditor’s Report for the preceding fiscal or calendar year. The Report shall clearly identify and calculate the Net Profit for the Entity, in accordance with *N.J.S.A.* 40A:20-15: i) during the previous year; and ii) on a cumulative basis from the inception of the Agreement through the conclusion of the previous year. The Entity assumes all costs associated with preparation of the periodic reports. All such periodic reports shall remain confidential except as otherwise required by law.

(B) Total Project Cost Audit: Within ninety (90) days after the Substantial Completion of the Phase 1 Project, the Entity shall submit to the Town Manager, the Town Council, the Tax Collector and the Town Clerk, who shall advise those municipal officials required to be advised, an audit of Total Project Cost, certified as to actual construction costs by the Entity’s architect utilizing the form attached hereto as Exhibit 8.

(C) Disclosure Statement: On each anniversary date of the execution of this Agreement, if there has been a change in ownership or interest in the Phase 1 Project from the prior year's filing, the Entity shall submit to the Town Manager, the Town Council, the Tax Collector and the Town Clerk, who shall advise those municipal officials required to be advised, a Disclosure Statement listing the persons having an ownership interest in the Project (each a "Disclosure Statement"), and the extent of the ownership interest of each and such additional information as the Town may request from time to time.

**Section 8.03** Inspection - The Entity shall permit the inspection of its property, equipment, buildings and other facilities of the Project and, if deemed appropriate or necessary, by representatives duly authorized by the Town, and the New Jersey Division of Local Government Services in the Department of Community Affairs pursuant to *N.J.S.A. 40A:20-9(e)*. Such inspection shall be made upon seven (7) business days' prior written notice during the Entity's regular business hours, in the presence of an officer or agent designated by the Entity. To the extent reasonably possible, the inspection will not materially interfere with construction or operation of the Phase 1 Project.

**Section 8.04** Limitation on Profits and Reserves - During the period of tax exemption as provided herein, the Entity shall be subject to a limitation of its profits pursuant to the provisions of *N.J.S.A. 40A:20-15*. This calculation shall be completed in accordance with *N.J.S.A. 40A:20-3(c)*. Pursuant to *N.J.S.A. 40A:20-15*, the net profit shall be calculated for the period, taken as one accounting period, commencing on the date on which the Phase 1 Project is completed, and terminating at the end of the last full fiscal year.

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

**Section 8.05** Payment of Dividend and Excess Profit Charge - In the event the Net Profits of the Entity during the Term of this Agreement shall exceed the Allowable Net Profits for such period, then the Entity, within ninety (90) days after the termination of this Agreement shall pay such excess Net Profits to the Town as an additional service charge. The calculation of Net Profit and Allowable Net Profit shall be made in the manner required pursuant to *N.J.S.A. 40A:20-3(c)* and *40A:20-15*.

## ARTICLE IX.

### ASSIGNMENT AND/OR ASSUMPTION

#### **Section 9.01** Approval of Sale of Phase 1 Project to an Entity Formed and Eligible to Operate Under Law -

(A) As permitted by *N.J.S.A.* 40A:20-10(c), upon written application by the Entity after completion of the Phase 1 Project, the Town will consent to a sale to another urban renewal entity purchasing all or a portion of the Phase 1 Project in fee simple and the transfer of the tax exemption in this Agreement for the Phase 1 Project, or portion thereof (reflected in a new financial agreement incorporating all the terms of this Agreement for the period remaining on the tax exemption for the Phase 1 Project or portion thereof (the “**Transferee Agreement**”)), provided: (1) the transferee entity is formed and eligible to operate under the Long Term Tax Exemption Law; (2) the Entity is not then in Default of this Agreement or the Long Term Tax Exemption Law; (3) the Entity’s obligations under this Agreement as to the Phase 1 Project or portion thereof being transferred are fully assumed by the transferee entity in the Transferee Agreement; (4) the transferee entity agrees to all terms and conditions of this Agreement in the Transferee Agreement; and (5) the principal owners of the transferee entity possess substantially equal or greater business reputation, financial qualifications and credit worthiness as the Entity and are otherwise reputable. The Town shall, in good faith, in a prompt and timely manner reasonably cooperate with the Entity and the transferee entity and use its best efforts to review the written application of the Entity, review and approve the application for approval of the transferee entity pursuant to *N.J.S.A.* 40A:20-8, and negotiate and approve the Transferee Agreement. The then applicable Annual Service Charge for the Phase 1 Project or portion thereof will be paid by the transferee entity pursuant to the Transferee Agreement. In the event that the transfer contemplated in this Section 9.01(A) is for less than the whole of the Phase 1 Project, the Annual Service Charge to be paid each by the Entity and the transferee entity after the transfer shall be pro-rated based on the relative assessed value of the portion of the Phase 1 Project being transferred compared to the portion of the Phase 1 Project remaining with the Entity.

(B) The Town may levy an administrative fee of two percent (2%) of the Annual Service Charge for the processing of a request to transfer as set forth above, if the proposed transferee entity is not affiliated with the Entity. No administrative fee shall be charged for the processing requests to transfer to affiliates of the Entity.

**Section 9.02** Severability - It is an express condition of the granting of this tax exemption that during its duration, the Entity shall not, without the prior consent of the Town Council by Ordinance, convey, mortgage or transfer, all or part of the Phase 1 Project so as to sever, disconnect, or divide the Improvements from the Property which is basic to, embraced in, or underlying the exempted Improvements.

**Section 9.03** Subordination of Fee Title - It is expressly understood and agreed that the Entity has the right, subordinate to the lien of the Annual Service Charge, to encumber and/or assign the fee title to the Property and/or the Phase 1 Project for purposes of (i) financing and/or

refinancing the design, development and construction of, and/or capital improvements and/or repairs to, the Phase 1 Project and (ii) permanent mortgage financing or other secured financing, and such encumbrance, lease or assignment shall not be deemed to be a violation of this Agreement.

**Section 9.04** Deed Restriction - Upon execution of this Agreement, the Entity shall file a deed restriction on the Property in the form set forth as Exhibit 8 with the County Clerk reflecting that any transfer of the Property (except for a transfer permitted under this Article IX) shall be void *ab initio*.

## **ARTICLE X.**

### **WAIVER**

**Section 10.01.** Waiver - Except as specifically provided in this Agreement to the contrary, including, but not limited to, Sections 3.02, 4.05 and 4.10, nothing contained in this Agreement or otherwise shall constitute a waiver or relinquishment by the Town or the Entity of any rights and remedies provided by Applicable Law. Nothing herein shall be deemed to limit any right of recovery that the Town or the Entity has under law, in equity, or under any provision of this Agreement.

## **ARTICLE XI.**

### **NOTICE**

**Section 11.01** Notice - Formal notices, demands and communications between the Town and Entity shall be deemed given if dispatched to the address set forth below by registered or certified mail, postage prepaid, return receipt requested, or by a commercial overnight delivery service with packaging tracking capability and for which proof of delivery is available. In that case such notice is deemed effective upon delivery. Such written notices, demands and communications may be sent in the same manner to such other addresses as either party may from time to time designate by written notice.

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

**If to the Town:**

Town of Newton  
39 Trinity Street  
Newton, New Jersey 07860  
Attn: Town Manager

**with copies to:**

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

**If to Entity:**

Thorlabs Urban Renewal, LLC  
c/o Thorlabs, Inc.  
435 Route 206  
Newton, New Jersey 07860

**With copies to:**

Robert P. Regimbal, Esq.  
Graham Curtin, A Professional Association  
4 Headquarters Plaza  
Morristown, New Jersey 07962

**ARTICLE XII.**

**COMPLIANCE**

**Section 12.01 Statutes and Ordinances** - The Entity hereby agrees at all times prior to the expiration or other Termination of this Financial Agreement to remain bound by the provisions of Applicable Law, including, but not limited to, the Long Term Tax Exemption Law and the Bond Financing Law. The Entity's material failure to comply with such statutes or ordinances shall constitute a violation and breach of the Financial Agreement, subject to the provisions of Section 15.02 hereof.

**ARTICLE XIII.**

**CONSTRUCTION**

**Section 13.01 Construction** - This Financial Agreement shall be construed and enforced in accordance with the laws of the State, and without regard to or aid or any presumption or other rule requiring construction against the party drawing or causing this Agreement to be drawn since counsel for both the Entity and the Town have combined in their review and approval of same.

**ARTICLE XIV.**

**INDEMNIFICATION**

**Section 14.01 Indemnification** - It is understood and agreed that in the event the Town shall be named as party defendant in any action brought against the Town or Entity by allegation of any breach, Default or a violation by the Entity of any of the provisions of this Agreement and/or the provisions of Applicable Law, the Entity shall indemnify and hold the Town harmless from and against all liability, losses, damages, demands, costs, claims, actions or expenses (including reasonable attorneys' fees and expenses) of every kind, character and nature arising out of or resulting from the action or inaction of the Entity and/or by reason of any breach,

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

## **ARTICLE XV.**

### **DEFAULT**

**Section 15.01 Default** - Default shall be failure of the Entity to conform to the terms of this Agreement and failure of the Entity to perform any material obligation imposed upon the Entity by Applicable Law beyond any applicable notice, cure or grace period.

**Section 15.02 Cure Upon Default** - Should the Entity be in Default of any obligation under this Agreement, the Town shall notify the Entity and any mortgagee of the Entity in writing of said Default. Said notice shall set forth with particularity the basis of said Default. Except as otherwise limited by law, the Entity shall have sixty (60) days to cure any Default (other than a Default in payment of any installment of the Annual Service Charge, which default must be cured within ten (10) days). However, the Entity shall not be considered to have failed to cure a Default (other than a payment Default), if at the expiration of the cure period the Entity is proceeding diligently and in good faith to cure the Default.

**Section 15.03 Remedies Upon Default Cumulative; No Waiver** - In the event of any uncured Default, the Town shall have the right to proceed against the Property pursuant to applicable provisions of the law, including, with respect to a Default in payment of any installment of the Annual Service Charge, the right to proceed to In Rem Tax Foreclosure consistent with the Tax Sale Law and the Long Term Tax Exemption Law. No Default hereunder by the Entity shall terminate the long term tax exemption (except as described herein) and its obligation to make Annual Service Charges, which shall continue in effect for the duration set forth in Section 3.01 hereof and subject to Section 15.04 hereinafter.

Subject to the provisions of Section 6.01 hereof and the other terms and conditions of this Agreement, all of the remedies provided in this Agreement to the Town, and all rights and remedies granted by law and equity shall be cumulative and concurrent and no determination of the invalidity of any provision of this Agreement shall deprive the Town of any of its remedies or actions against the Entity because of Entity's failure to pay Land Taxes, the Annual Service Charge and/or any applicable water and sewer charges and interest payments. This right shall only apply to arrearages that are due and owing at the time, and the bringing of any action for Land Taxes, Annual Service Charges or other charges, or for breach of covenant or the resort of any other remedy herein provided for the recovery of Land Taxes, Annual Service Charges or

other charges shall not be construed as a waiver of the right to proceed with an In Rem Tax Foreclosure action consistent with the terms and provisions of this Agreement.

In the event of a Default under this Agreement by any of the Parties or a dispute arising between the Parties in reference to the terms and provisions as set forth herein, other than a dispute as to payment of the Annual Service Charge, then the Parties shall submit the dispute to the American Arbitration Association in the State to be determined in accordance with its rules and regulations in such a fashion to accomplish the purpose of said laws. Each Party shall bear its own costs for said arbitration.

**Section 15.04** Termination Upon Default of the Entity – Subject to the provisions of Section 3.02, in the event the Entity fails to cure or remedy the Default within the time period provided in Section 15.02, the Town may terminate this Agreement upon thirty (30) days, prior written notice to the Entity.

**Section 15.05** Final Accounting - Within ninety (90) days after the date of Termination, the Entity shall provide a final accounting and pay to the Town the reserve, if any, pursuant to the provisions of *N.J.S.A.* 40A:20-13 and 15 as well as any excess Net Profits. For purposes of rendering a final accounting the Termination of the Agreement shall be deemed to be the end of the fiscal year for the Entity.

**Section 15.06** Conventional Taxes - Upon Termination or expiration of this Agreement, the tax exemption for the Phase 1 Project shall expire and the Property and the Improvements thereon shall thereafter be assessed and conventionally taxed according to the general law applicable to other nonexempt taxable property in the Town.

## **ARTICLE XVI.**

### **MISCELLANEOUS**

**Section 16.01** Conflict - The parties agree that in the event of a conflict between the Application and this Agreement, the language in this Agreement shall govern and prevail.

**Section 16.02** Oral Representations - There have been no oral representations made by either of the parties hereto which are not contained in this Agreement.

**Section 16.03** Entire Document - All conditions in the Ordinance are incorporated in this Agreement and made a part hereof. This Financial Agreement, the Ordinance and the Application constitute the entire agreement between the Parties and there shall be no modifications thereto other than by a written instrument executed by the Parties hereto and delivered to each of them.

**Section 16.04** Good Faith - In their dealings with each other, the Parties agree that they shall act in good faith.

**Section 16.05 Recording** – Upon the execution and delivery of this Agreement, contemporaneously with the issuance of the Bonds, but prior to the recording of any mortgage relating to the Recovery Zone Facility Bonds or the conventional financing obtained by the Entity, the entire Agreement, including the Ordinance, shall be filed and recorded with the office of the Sussex County Clerk by the Entity, at the Entity’s expense, such that this Agreement and the Ordinance shall be reflected upon the land records of the County as a municipal lien upon and a covenant running with the Property, including the Improvements related thereto.

**Section 16.06 Discharge** – Upon the expiration of this Agreement in accordance with Section 3.01 hereof, or the early termination of this Agreement by the Entity in compliance with Section 3.02 hereof, the Town shall execute, upon the request of the Entity, a discharge of this Agreement in the form set forth as Exhibit 9 attached hereto. Upon execution of the discharge, the Entity may record same, at its sole cost and expense.

**Section 16.07 Municipal Services** – Pursuant to *N.J.S.A. 40:67-23.1 et seq.*, the Entity and/or its successors (including without limitation any owner’s or similar association) will be responsible to provide and/or pay for the following services:

a. Water & Sewer - The Entity shall make payments for water and sewer charges and any services that create a lien on a parity with or superior to the lien for the Land Taxes and Annual Service Charge, as required by law.

b. Waste and Refuse Disposal – In accordance with Town ordinance, collection and disposition of all solid waste, refuse and recyclables emanating from the Phase 1 Project shall be the responsibility of the Entity to have picked up and disposed of by a licensed collector, hauler or scavenger, at the Entity’s cost and expense. The Town may establish regulations for the collection and for the storage and recycling of solid waste, discarded or old newspaper and/or other recyclables; compliance therewith shall be by and at the expense of the Entity.

Nothing herein is intended to release Entity from its obligation to provide and pay for the services described herein. The Town will not be responsible to provide or pay for any of the foregoing services.

**Section 16.08 Financing Matters** - The financial information required by the final paragraph of *N.J.S.A. 40A:20-9* is set forth in the Application.

**Section 16.09 Counterparts** - This Agreement may be simultaneously executed in counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

**Section 16.10 Amendments** - This Agreement may not be amended, changed, modified, altered or terminated without the written consent of the Parties hereto.

**Section 16.11 Certification** - The Town Clerk shall certify to the Tax Assessor, pursuant to *N.J.S.A. 40A:20-12*, that a financial agreement with an urban renewal entity, i.e., the Entity, for the development of the Property, has been entered into and is in effect as required by

*N.J.S.A. 40A:20-1 et seq.* Delivery by the Town Clerk to the Tax Assessor of a certified copy of the Ordinance adopted by the Governing Body approving the tax exemption described herein and this Financial Agreement shall constitute the required certification. Upon certification as required hereunder and upon the Annual Service Charge Start Date, the Tax Assessor shall implement the exemption and continue to enforce that exemption without further certification by the Town Clerk until the expiration of the entitlement to exemption by the terms of this Financial Agreement or until the Tax Assessor has been duly notified by the clerk that the exemption has been terminated.

Further, upon the adoption of this Financial Agreement, a certified copy of the Ordinance adopted by the Governing Body approving the tax exemption described herein and this Financial Agreement shall forthwith be transmitted to the Director of the Division of Local Government Services by the Town Clerk.

**Section 16.12 Annual Administrative Fee** - The Town and Entity agree that the Entity shall pay to the Town an annual administrative fee equal to two percent (2%) of the Annual Service Charge due in the year in which the administrative fee is paid, commencing on the Annual Service Charge Start Date and on each anniversary thereof during the Term, but in no event shall the annual administrative fee due and payable in any year exceed Ten Thousand Dollars (\$10,000.00).

## **EXHIBITS**

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

### Exhibits

1. Metes and Bounds Description of the Property;
2. Ordinance of the Town Authorizing the Execution of this Agreement;
3. The Application with Exhibits;
4. Certificate of Formation for the Entity;
5. Estimated Construction Schedule;
6. The Financial Plan for the Undertaking of the Phase 1 Project;
7. Certification of Estimated Construction Costs;
8. Deed Restriction on Transfer; and
9. Form of Discharge of Financial Agreement.

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

**ATTEST:**

**TOWN OF NEWTON**

\_\_\_\_\_  
**Lorraine A. Read**  
**Town Clerk**

**By:** \_\_\_\_\_  
**Thomas S. Russo, Jr. Town Manager**

**THORLABS URBAN RENEWAL, LLC**

**By:** \_\_\_\_\_  
**Managing Member**

EXHIBIT 1

Metes and Bounds Description of the Property

EXHIBIT 2

Ordinance Authorizing the Execution of this Agreement

EXHIBIT 3

Application with Exhibits

EXHIBIT 4

Certificate of Formation of the Entity

EXHIBIT 5

Estimated Construction Schedule

EXHIBIT 6

The Financial Plan for the Undertaking of the Phase 1 Project

EXHIBIT 7

Certification of Estimated Construction Costs  
(to be provided by Project Architect or Engineer)

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

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

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

By: \_\_\_\_\_

EXHIBIT 8

Deed Restriction on Transfer

This declaration of restrictions (the "Declaration") is made this \_\_\_\_ day of \_\_\_\_\_, 2010, by and between **THORLABS URBAN RENEWAL, LLC**, an urban renewal entity, along with its successors and/or assigns, qualified to do business under the provisions of the Long Term Tax Exemption Law of 1992, as amended and supplemented, *N.J.S.A. 40A:20-1 et seq.* (the "Long Term Tax Exemption Law"), with offices c/o Thorlabs, Inc., 435 Route 206, Newton, New Jersey 07860 (hereinafter the "Entity" or "Redeveloper") and the **TOWN OF NEWTON**, a municipal corporation of the State of New Jersey in the County of Sussex with offices located at 39 Trinity Street, Newton, New Jersey 07860 (the "Town").

**WITNESSETH:**

**WHEREAS**, the Entity and the Town have entered into that certain Financial Agreement dated \_\_\_\_\_, 2010 (the "Financial Agreement") with respect to that property identified as Block 1104, Lot 21 on the Official Tax Map of the Town, commonly known as 56 Sparta Avenue, Newton, New Jersey (the "Property"); and

**WHEREAS**, the Financial Agreement contains certain restrictions on the transfer of the Property during the term of the Financial Agreement; and

**WHEREAS**, the Financial Agreement requires that such restrictions be memorialized in a deed restriction and that such deed restriction be recorded in the office of the County Clerk of the County of Sussex in the State of New Jersey,

**NOW, THEREFORE, IT IS AGREED AS FOLLOWS:**

**Section 1.** Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Financial Agreement.

**Section 2.** PURSUANT TO SECTION 9.04 OF THE FINANCIAL AGREEMENT IT IS HEREBY MEMORIALIZED AND AFFIRMED THAT ANY TRANSFER OF THE PROPERTY, EXCEPT FOR A TRANSFER PERMITTED UNDER ARTICLE IX OF THE FINANCIAL AGREEMENT, IS AND SHALL BE VOID AB INITIO.

**Section 3.** In the event of any conflict between the terms of this Declaration and the terms of the Financial Agreement, it is agreed that the terms of the Financial Agreement shall prevail.

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

**ATTEST:**

**TOWN OF NEWTON**

\_\_\_\_\_  
**Lorraine A. Read**  
**Town Clerk**

**By:** \_\_\_\_\_  
**Thomas S. Russo, Jr. Town Manager**

**THORLABS URBAN RENEWAL, LLC**

**By:** \_\_\_\_\_  
**Managing Member**

STATE OF NEW JERSEY,  
COUNTY OF

SS:

I CERTIFY that on \_\_\_\_\_, 20\_\_, \_\_\_\_\_ personally came before me and stated to my satisfaction that this person (or if more than one, each person):

- (a) was the maker of the attached instrument;
- (b) was authorized and did execute this instrument as \_\_\_\_\_ of the Town of Newton; and
- (c) executed the instrument as the act of the Town of Newton.

\_\_\_\_\_  
Notary Public

STATE OF NEW JERSEY,  
COUNTY OF

SS:

I CERTIFY that on \_\_\_\_\_, 20\_\_, \_\_\_\_\_ personally came before me and stated to my satisfaction that this person (or if more than one, each person):

- (a) was the maker of the attached instrument;
- (b) was authorized and did execute this instrument as \_\_\_\_\_ of Thorlabs Urban Renewal, LLC; and
- (c) executed the instrument as the act of Thorlabs Urban Renewal, LLC.

\_\_\_\_\_  
Notary Public

EXHIBIT 9

Form of Discharge of Financial Agreement

Record and return to:

Discharge of Financial Agreement

That certain Financial Agreement dated \_\_\_\_\_, 2010, made by and between the Town of Newton and Thorlabs Urban Renewal, LLC, (the "Financial Agreement") was recorded in the office of the County Clerk in and for the County of Sussex in the State of New Jersey, at Book \_\_\_\_\_, Page \_\_\_\_\_ on \_\_\_\_\_, 2010.

- 1) The Financial Agreement has been satisfied and discharged. It may now be discharged of record. This means that the Financial Agreement is null and void.
- 2) I sign and certify to this discharge of the Financial Agreement on \_\_\_\_\_, 20\_\_.

Witnessed or Attested by: \_\_\_\_\_ (Seal)

\_\_\_\_\_ (Seal)

STATE OF NEW JERSEY,  
COUNTY OF

SS:

I CERTIFY that on \_\_\_\_\_, 20 \_\_, \_\_\_\_\_ personally came before me and stated to my satisfaction that this person (or if more than one, each person):

- (d) was the maker of the attached instrument;
- (e) was authorized and did execute this instrument as \_\_\_\_\_ of the Town of Newton; and
- (f) executed the instrument as the act of the Town of Newton.

\_\_\_\_\_  
Notary Public

STATE OF NEW JERSEY,  
COUNTY OF

SS:

I CERTIFY that on \_\_\_\_\_, 20 \_\_, \_\_\_\_\_ personally came before me and stated to my satisfaction that this person (or if more than one, each person):

- (d) was the maker of the attached instrument;
- (e) was authorized and did execute this instrument as \_\_\_\_\_ of Thorlabs Urban Renewal, LLC; and
- (f) executed the instrument as the act of Thorlabs Urban Renewal, LLC.

\_\_\_\_\_  
Notary Public

**TOWN OF NEWTON  
ORDINANCE 2010-13**

**BOND ORDINANCE AMENDING AND SUPPLEMENTING BOND  
ORDINANCE 2009-29 OF THE TOWN OF NEWTON, IN THE COUNTY  
OF SUSSEX, NEW JERSEY FINALLY ADOPTED DECEMBER 14, 2009  
IN ORDER TO AUTHORIZE THE EXECUTION OF A TRUST  
AGREEMENT**

**WHEREAS**, on December 14, 2009, the Mayor and Town Council (the “Governing Body”) of the Town of Newton (the “Town”) adopted Ordinance 2009-29 appropriating \$4,660,000 and authorizing the issuance of not to exceed \$4,660,000 bonds or notes of the Town (the “Initial Ordinance”); and

**WHEREAS**, the purpose of the appropriation and indebtedness authorized by the Initial Ordinance was to provide assistance to Thorlabs Urban Renewal, LLC, Newton, New Jersey (“Redeveloper”) in its role as the designated redeveloper and urban renewal entity with respect to the development of a mixed-use research and development, office and light manufacturing facility (the “Project Improvements”) at 56 Sparta Avenue, Newton, New Jersey pursuant to the Local Redevelopment and Housing Law, *N.J.S.A. 40A:12A-1 et seq.* (the “Redevelopment Law”) and that certain redevelopment plan adopted by the Town on March 23, 2009 by Ordinance 2009-6, as amended; and

**WHEREAS**, the obligations authorized by the Initial Ordinance (the “Obligations”) are further authorized by Section 37 and Section 67 of the Redevelopment Law; and

**WHEREAS**, Section 67 of the Redevelopment Law provides in part that in order to provide further security for obligations authorized thereunder, a municipality may enter into a financial agreement governing the establishment and payment of payments in lieu of taxes, which financial agreement, if recorded in the county land records, establishes a lien on the benefited property for the benefit of the holders of the obligations; and

**WHEREAS**, the Town expects to enter into a financial agreement (the “Financial Agreement”) with the Redeveloper governing payments in lieu of taxes with respect to the Project Improvements, which Financial Agreement is expected to be recorded in the office of the Sussex County Clerk; and

**WHEREAS**, the Obligations authorized by the Initial Ordinance are full faith and credit, *ad valorem* obligations of the Town; and

**WHEREAS**, the Town wishes to enter into a trust agreement (the “Trust Agreement”) with a corporate trust institution to apply and administer the payments in lieu of taxes to be received with respect to the Project Improvements under the Financial Agreement; and

**WHEREAS**, the Town further desires to provide in the Trust Agreement that in exchange for the full faith and credit, *ad valorem* pledge of the Town to the holders of the Obligations, the Town shall be deemed and treated for all purposes of the Redevelopment Law as the sole holder of the Obligations;

**BE IT ORDAINED BY THE MAYOR AND TOWN COUNCIL OF THE TOWN OF NEWTON, IN THE COUNTY OF SUSSEX, NEW JERSEY (not less than two-thirds of all members thereof affirmatively concurring) AS FOLLOWS:**

**Section 1.** The above recitals are incorporated herein as though fully set forth at length.

**Section 2.** The Initial Ordinance is hereby amended and supplemented to add the following section:

“Section 11. The appointment of a corporate trust institution by the Town to serve as trustee (the “Trustee”) with respect to obligations authorized herein is hereby approved. The execution of a trust agreement (the “Trust Agreement”) by and between the Town and the Trustee with respect to the obligations and the application and administration of the payments in lieu of taxes to be received with respect to the Project Improvements also is approved hereby. The Trust Agreement shall provide in relevant part that in exchange for the full faith and credit, *ad valorem* pledge of the Town to the bondholders with respect to the obligations authorized herein, the Town shall be deemed and treated for all purposes of the Redevelopment Law as the sole holder of the obligations. The Trust Agreement shall further contain such other provisions and matters of law as are deemed necessary and desirable by the Town, in consultation with bond counsel.”

**Section 3.** All other provisions and sections of the Initial Ordinance remain unchanged and in full force and effect.

**Section 4.** This bond ordinance shall take effect 20 days after the first publication thereof after final adoption, as provided by the Local Bond Law.

**TAKE NOTICE** that the above Ordinance was introduced at a regular meeting of the Town Council of the Town of Newton held on Monday, August 9, 2010. The Ordinance will be considered for adoption following a final reading and public hearing thereon, at a regular meeting of the Newton Town Council to be conducted at 7:00pm in the Council Chambers at the Newton Municipal Building, 39 Trinity Street, Newton, New Jersey on Monday, August 23, 2010 and shall take effect according to law.

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Lorraine A. Read, RMC  
Municipal Clerk



## TOWN OF NEWTON

### RESOLUTION #127-2010

August 9, 2010

**“Concur with the Town Manager’s  
Appointment of School Crossing Guards”**

**WHEREAS**, New Jersey Statute 40A:9-154.1 states *“The governing body, or the chief executive, or the chief administrative officer, as appropriate to the form of government of any municipality, may appoint adult school crossing guards for terms not exceeding one year...”*;

**NOW, THEREFORE BE IT RESOLVED**, by the Town Council of the Town of Newton that this Governing Body concurs with the Town Manager’s appointment of the following individuals as School Crossing Guards for the 2010-2011 school year:

Lisa Alex

Debbie Alger

Diane Bell

Carol Blanchard

June Bowne

Mark Clark

Louise Cort

Debbie Dellamo

Carolyn Dipple

Betty Francis

Thomas Hoffman

Lisa Huber

Glenn Kinney

Tiera McCullough

Barbara Meininger

Karen Mokrzycki

Martha Morris

Theresa Owens

Tara Pankz

Doreen Pasqualetto

Sarah Schmalstich

Steve Stoll

Angela Vealey

### CERTIFICATION

**THIS IS TO CERTIFY** that the above is a true copy of a Resolution adopted by the Town Council of the Town of Newton at a regular meeting of said Governing Body conducted on Monday, August 9, 2010.

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Lorraine A. Read, RMC  
Municipal Clerk



## TOWN OF NEWTON

### RESOLUTION #128-2010

August 9, 2010

**“Appointment of Evin Joice to the  
Economic Development Advisory  
Commission”**

**WHEREAS**, there is currently a vacancy for a Regular Member of the Economic Development Advisory Commission; and

**WHEREAS**, Evin Joice has expressed an interest in serving on the Commission;

**NOW, THEREFORE BE IT RESOLVED**, by the Town Council of the Town of Newton that Evin Joice is hereby appointed to the unexpired three-year term on the Economic Development Advisory Commission, effective immediately with said term continuing to December 31, 2011.

### CERTIFICATION

**THIS IS TO CERTIFY** that the above is a true copy of a Resolution adopted by the Town Council of the Town of Newton at a regular meeting of said Governing Body conducted on Monday, August 9, 2010.

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Lorraine A. Read, RMC  
Municipal Clerk



## TOWN OF NEWTON

### RESOLUTION #129-2010

August 9, 2010

### "Affirm the Issuance of a Bond Anticipation Note"

**WHEREAS**, when Bond Ordinances are adopted by the Town Council of the Town of Newton the Chief Financial Officer is authorized to issue Bond Anticipation Notes to provide temporary financing for the Town; and

**WHEREAS**, four quotations were received for a \$2,047,100 Bond Anticipation Note at 11:30 a.m. on Wednesday, July 21, 2010 by the Chief Financial Officer as follows:

<u>Institution</u>	<u>Net Interest</u>
Lakeland Bank	1.25%
Oppenheimer & Co., Inc	1.52%
Janney Montgomery	1.73%
First Hope Bank	2.05%

**WHEREAS**, the Chief Financial Officer accepted the quotation of Lakeland Bank for a Bond Anticipation Note totaling \$2,047,100.00 at a net interest cost of 1.25%, and a net interest payable of \$25,588.75, upon recommendation of bond counsel; and

**WHEREAS**, the appropriate Town Officials have executed said Note in the amount of \$2,047,100.00 with an interest rate of 1.25% dated July 28, 2010 for a term of 365 days (360 days for interest calculations) due July 28, 2011; and

**WHEREAS**, to comply with N.J.S.A. 40A:2-28 of the Local Bond Law, which requires that the Chief Financial Officer report certain information in writing to the Mayor and Council at the next Council meeting, herewith attached is the Certificate of Determination and Award;

**NOW, THEREFORE BE IT RESOLVED**, by the Town Council of the Town of Newton that it does hereby affirm the issuance of said Bond Anticipation Note by the Chief Financial Officer and the execution of said note by the appropriate Town Officials.

### Certification

**THIS IS TO CERTIFY** that the above is a true copy of Resolution #129-2010 adopted by the Town Council of the Town of Newton at a regular meeting held on August 9, 2010.

---

Lorraine A. Read, RMC  
Municipal Clerk

CERTIFICATE OF DETERMINATION AND AWARD

I, Dawn L. Babcock, Chief Financial Officer of the Town of Newton, in the County of Sussex, New Jersey (hereinafter referred to as the "Town"), HEREBY CERTIFY as follows:

1. I hereby determine to issue the Bond Anticipation Note (the "Note") hereinafter described by virtue of the authority conferred upon me by the bond ordinance of the Town referred to in the attached chart by reference to number, date of adoption and amount of bonds or notes authorized, such notes to be issued in the amount indicated in the chart.

<u>TOTAL</u> <u>PRINCIPAL</u> <u>AMOUNT:</u>	\$2,047,100	<u>NUMBERS</u> 2010-1	<u>DENOMINATIONS</u> \$2,047,100
<u>DATE:</u>	7/28/10		
<u>MATURITY:</u>	7/28/11		
<u>INTEREST</u> <u>RATE PER</u> <u>ANNUM:</u>	1.25%		
<u>PLACE OF</u> <u>PAYMENT:</u>	Town of Newton, in the County of Sussex, New Jersey		

2. Pursuant to the authority so conferred upon me, I have awarded and sold the Note to Lakeland Bank at the price of \$2,047,100, plus an amount equal to the interest on the Note accrued to the date of payment of the purchase price.

3. No bonds of the Town have heretofore been issued pursuant to the bond ordinance referred to in Section 1 hereof.

4. The date of the first note or other obligation issued in anticipation of the issuance of the bonds that the Note is issued in anticipation of, whether or not now outstanding, is July 28, 2010.

5. No grants have been received, no paydowns have been made and no cancellations have been enacted that would reduce the debt authorization below the amount of notes outstanding under the bond ordinance described in the attached chart.

6. No notes or other obligations in anticipation of the issuance of bonds have heretofore been issued pursuant to the bond ordinance referred to in the attached chart and now remain outstanding and unpaid.

\$2,047,100 Bond Anticipation Note  
of the  
Town of Newton, in the  
County of Sussex, New Jersey

Dated: July 28, 2010

Maturity: July 28, 2011

Bond Ordinance Number	Description of Improvement and Date of Adoption of Bond Ordinance	Original Bond Authorization	Period of Usefulness	New Money	Construction	Acquisition	Amount of Reimbursement to General Fund and Date of First Expenditure	Amount to be Issued
2010-7	Various capital improvements, finally adopted 6/14/10	\$2,047,100	12.05 years	\$2,047,100	\$904,250	\$1,142,850	\$0	\$2,047,100
<b>Totals:</b>				<u>\$2,047,100</u>	<u>\$904,250</u>	<u>\$1,142,850</u>	<u>\$0</u>	<u>\$2,047,100</u>



## TOWN OF NEWTON

### RESOLUTION #130-2010

August 9, 2010

### “Authorize Credits Due Water and Sewer Utility Accounts”

**WHEREAS**, Ms. Eliza Jo Paine of 105 High Street, Utility Account #6066 appeared before the Newton Town Council at their meeting on July 26, 2010 to appeal a decision by the Utility Advisory Board in reference to her 1<sup>st</sup> and 2<sup>nd</sup> quarter utility bills for 2010; and

**WHEREAS**, the Governing Body upheld the decision of the Utility Advisory Board but agreed to waive the penalties that Utility Account #6066 incurred while the dispute was being addressed;

**NOW, THEREFORE BE IT RESOLVED**, by the Town Council of the Town of Newton that the Water and Sewer Collector is hereby authorized to credit the following account due to the reason stated:

### Credit 1<sup>st</sup> quarter & 2<sup>nd</sup> quarter penalties per Town Council:

<u>Account</u>	<u>Address</u>	<u>Amount</u>
6066	105 High Street	\$82.19

### CERTIFICATION

**THIS IS TO CERTIFY** that the above is a true copy of a Resolution adopted by the Town Council of the Town of Newton at a regular meeting of said Governing Body conducted on Monday, August 9, 2010.

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Lorraine A. Read, RMC  
Municipal Clerk



## TOWN OF NEWTON

### RESOLUTION #131-2010

August 9, 2010

### "To Cancel Receivable and Appropriated Reserve Balances in the Federal and State Grant Fund"

**WHEREAS**, the Town of Newton received an award in the amount of \$4,000.00 from the State of New Jersey for a Click It or Ticket grant covering the period 5/24/10 – 7/06/10; and

**WHEREAS**, the total costs expended and approved by the State of New Jersey for this grant total \$3,824.05; and

**WHEREAS**, a receivable balance of \$175.95 entitled *Due from State of New Jersey Click It or Ticket Grant* remains on the Federal and State Grant Fund balance sheet; and

**WHEREAS**, it is necessary to formally cancel the receivable balance and its offsetting appropriated reserve balance from the Federal and State Grant Fund balance sheet;

**NOW, THEREFORE BE IT RESOLVED**, by a majority of the full membership of the Town Council of the Town of Newton, that we hereby cancel the following grant receivable and appropriated reserve balances:

#### Federal & State Grant Fund

Grant Receivable – Click It or Ticket #110115	\$175.95
Appropriated Reserve – Click It or Ticket #111215	\$175.95

#### CERTIFICATION

**THIS IS TO CERTIFY** that the above is a true copy of a Resolution adopted by the Town Council of the Town of Newton at a regular meeting of said Governing Body conducted on Monday, August 9, 2010.

---

Lorraine A. Read, RMC  
Municipal Clerk



## TOWN OF NEWTON

### RESOLUTION #132-2010

August 9, 2010

### “Award Contract for Accubrine System to Timmerman Equipment Company”

**WHEREAS**, the Town of Newton and Andover Township purchased a Brine System in September of 2009 and now would like to add the Accubrine System which will allow for a blended mix of brine and calcium chloride to be used as weather conditions require; and

**WHEREAS**, Timmerman Equipment Company, the provider of the Brine System, has provided the Town of Newton a quote in the amount of \$29,000 to provide the Accubrine System and documentation that they are a “sole source” vendor for this system; and

**WHEREAS**, the Town of Newton bid threshold is \$29,000, and the Qualified Purchasing Agent, Department of Public Works Supervisor for Newton, and the Department of Public Works Supervisor for Andover Township, recommend the purchase of the Accubrine System from Timmerman Equipment Company; and

**WHEREAS**, the Chief Financial Officer for the Town of Newton has certified that funds are available to support this project as per the attached certification;

**NOW, THEREFORE BE IT RESOLVED**, by the Town Council of the Town of Newton that Timmerman Equipment Company, Whitehouse, NJ be awarded the contract for the Accubrine System in the amount of \$29,000.

#### CERTIFICATION

**THIS IS TO CERTIFY** that the above is a true copy of a Resolution adopted by the Town Council of the Town of Newton at a regular meeting of said Governing Body conducted on Monday, August 9, 2010.

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Lorraine A. Read, RMC  
Municipal Clerk



TOWN OF NEWTON

CERTIFICATION OF THE AVAILABILITY OF FUNDS  
(AS REQUIRED BY N.J.S.A. 40A:4-57, N.J.A.C. 5:34-5.1 et seq)

THIS IS TO CERTIFY THAT FUNDS ARE AVAILABLE AS FOLLOWS:

RESOLUTION #: 132-2010

APPROVING: TIMMERMAN EQUIPMENT COMPANY

FOR THE PURPOSE OF: ACCUBRINE SYSTEM

IN THE AMOUNT OF: \$29,000.00

APPROPRIATED BY: GENERAL CAPITAL - ORD.#2010-7  
CALCIUM/BRINE DISTRIBUTION UNITS #3091073 \$29,000.00

DATED THIS 9TH DAY OF AUGUST, 2010

BY

-----  
DAWN L. BABCOCK  
CHIEF FINANCIAL OFFICER



## TOWN OF NEWTON

### RESOLUTION #133-2010

August 9, 2010

**“Award Contract for Proposed Improvements to Sports Practice Field at Memory Park to Robert W. Wogisch, Landscape Contractor, Inc.”**

**WHEREAS**, bid specifications were prepared for the proposed improvements to the Sports Practice Field at Memory Park at the request of the Town Council; and

**WHEREAS**, bids were publicly opened and read on August 4, 2010 and the Town Engineer, Harold E. Pellow & Associates, Inc., reviewed all of the bids and recommends awarding the contract to Robert W. Wogisch Landscape Contractor, Inc., the low bidder as follows:

#### BID

<b>Robert W. Wogisch Landscape Contractor, Inc 169 Lakeview Avenue Ringwood, NJ 07456</b>	<b>\$41,190.00</b>
Salmon Bros. Inc. PO Box 67 Netcong, NJ 07857	\$51,720.00
Pierson Landscaping Inc. 130 East Shore Culver Road Branchville, NJ 07826	\$49,544.00
Andy-Matt, Inc. 19 Scrub Oak Road Mine Hill, NJ 07803	\$77,950.00
Bob Viersma & Sons, Inc. P.O. Box 224 Allamuchy, NJ 07820	\$48,670.50

**WHEREAS**, the Chief Financial Officer has certified that funds are available to support this project as per attached certification;

**NOW, THEREFORE BE IT RESOLVED**, by the Town Council of the Town of Newton that the contract for the proposed improvements to the Sports Practice Field at Memory Park is hereby awarded to Robert W. Wogisch, Landscape Contractor, Inc., of Ringwood, NJ in the amount of \$41,190.00 based on submission of the low bid described above and the recommendation of the Town Engineer, Harold E. Pellow & Associates, Inc.

#### CERTIFICATION

**THIS IS TO CERTIFY** that the above is a true copy of a Resolution adopted by the Town Council of the Town of Newton at a regular meeting of said Governing Body conducted on Monday, August 9, 2010.

\_\_\_\_\_  
Lorraine A. Read, RMC  
Municipal Clerk



TOWN OF NEWTON

CERTIFICATION OF THE AVAILABILITY OF FUNDS  
(AS REQUIRED BY N.J.S.A. 40A:4-57, N.J.A.C. 5:34-5.1 et seq)

THIS IS TO CERTIFY THAT FUNDS ARE AVAILABLE AS FOLLOWS:

RESOLUTION #: 133-2010

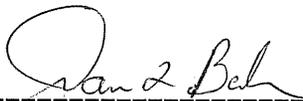
APPROVING: ROBERT W. WOGISCH,  
LANDSCAPE CONTRACTOR, INC.

FOR THE PURPOSE OF: SPORTS PRACTICE FIELD AT MEMORY PARK

IN THE AMOUNT OF: \$41,190.00

APPROPRIATED BY: CAPITAL - ORD.#2010-7  
IMPROVEMENTS TO MUNICIPAL PARKS  
#30910795

DATED THIS 9TH DAY OF AUGUST, 2010

BY  \_\_\_\_\_

DAWN L. BABCOCK  
CHIEF FINANCIAL OFFICER



## TOWN OF NEWTON

### RESOLUTION #134-2010

August 9, 2010

**“Resolution of Town of Newton in the County of Sussex, New Jersey Authorizing an Amendment to the Redevelopment Agreement with Thorlabs Urban Renewal, LLC.”**

**WHEREAS**, on November 30, 2009, the Town of Newton (the “Town”) and Thorlabs, Inc. entered into that certain redevelopment agreement (the “Redevelopment Agreement”) for the redevelopment of 56 Sparta Avenue, Newton, New Jersey; and

**WHEREAS**, pursuant to Section 8.05 of the Redevelopment Agreement, Thorlabs, Inc. assigned the Redevelopment Agreement to its affiliate, Thorlabs Urban Renewal, LLC (“Redeveloper”) effective as of December 2, 2009; and

**WHEREAS**, the parties wish to modify the description of the structure to be constructed in accordance with the Redevelopment Agreement, and to make certain other revisions relating thereto; and

**WHEREAS**, Section 14.08 of the Redevelopment Agreement provides that the Redevelopment Agreement may be amended with the written consent of the Town and the Redeveloper; and

**NOW, THEREFORE BE IT RESOLVED**, by the Mayor and Town Council of the Town of Newton, in the County of Sussex, New Jersey, as follows:

I. **GENERAL**

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

II. **EXECUTION OF AMENDMENT TO THE REDEVELOPMENT AGREEMENT**

(a) The Mayor and Town Council hereby authorize the execution of an amendment to the Redevelopment Agreement in substantially the form attached hereto as Exhibit A and by this reference incorporated herein (the “Amendment”).

(b) The Town Manger is hereby authorized to execute the Amendment in substantially the form attached hereto, with such additions, deletions and modifications as may be necessary in consultation with the Town Attorney and redevelopment counsel.

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 Town.

V. **EFFECTIVE DATE**

This Resolution shall take effect upon final passage.

**CERTIFICATION**

**THIS IS TO CERTIFY** that the above is a true copy of a Resolution adopted by the Town Council of the Town of Newton at a regular meeting of said Governing Body conducted on Monday, August 9, 2010.

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Lorraine A. Read, RMC  
Municipal Clerk

**TOWN OF NEWTON  
39 Trinity Street  
Newton, New Jersey 07860**

August 9, 2010

**Via Federal Express:**

Alex Cable  
Thorlabs Urban Renewal, LLC  
c/o Thorlabs, Inc.  
435 Route 206  
Newton, New Jersey 07860

**Re: Modification to Redevelopment Agreement Dated November 30, 2009**

Dear Mr. Cable,

On November 30, 2009, the Town of Newton entered into that certain Redevelopment Agreement (the "Redevelopment Agreement") with Thorlabs, Inc. governing the redevelopment of 56 Sparta Avenue, Newton, New Jersey. Pursuant to Section 8.05 of the Redevelopment Agreement, Thorlabs, Inc. assigned the Redevelopment Agreement to its affiliate, Thorlabs Urban Renewal, LLC ("Redeveloper").

At the time of execution of the Redevelopment Agreement, it was anticipated that the Facility, as defined therein, would be approximately 100,000 square feet. Redeveloper has requested that the definition of the Facility be revised to reflect a structure of approximately 125,000 square feet, together with certain other revisions.

This letter agreement will serve to formalize our agreement that:

1) The definition of Facility contained at Section 1.01 of the Redevelopment Agreement shall be amended to read as follows:

"Facility" shall mean the building containing no more than 125,000 square feet of light manufacturing, research and development and office space, as well as associated storage space and approximately 300 surface parking spaces to be constructed on the Property by Redeveloper as part of Phase 1, in accordance with the Redevelopment Plan, the Plans and Specifications, the Governmental Approvals and Applicable Laws.

2) Section 12.01(b) of the Redevelopment Agreement shall be amended to read as follows:

(b) To the extent that the Facility shall contain 100,000 square feet or less of gross floor area, the first year's Annual Service Charge shall be \$400,000, and shall escalate annually commensurate with actual percentage increases in the municipal tax rate. To the extent that the

Facility shall contain more than 100,000 square feet (but in no event more than 125,000 square feet) of gross floor area, the first year's Annual Service Charge shall be \$465,000, and shall escalate annually commensurate with actual percentage increases in the municipal tax rate.

3) Section 12.02(1) of the Redevelopment Agreement shall be amended to read as follows:

(1) After satisfaction of the Financial Contingencies, Redeveloper agrees to proceed in good faith and at its own cost and expense to seek to obtain all Governmental Approvals to develop and construct Phase 1, including any necessary planning approvals. On June 16, 2010, Redeveloper received preliminary site plan approval from the Planning Board with respect to a Facility containing approximately 98,000 square feet. Notwithstanding the foregoing, the Town will consider in good faith such amendments as may be required to address subsequent changes in project design and concept plan due to results from the Environmental Review, Governmental Approvals and cost considerations.

All other provisions of the Redevelopment Agreement shall remain unmodified in force and effect. Please have Redeveloper indicate its agreement to the foregoing by executing a copy of this letter and returning it to my attention via facsimile and Federal Express. By signing this letter, we are each representing that we have the full authority and power to do so.

Sincerely,

Thomas S. Russo, Jr.  
Town Manager

Agreed to on behalf of Thorlabs Urban Renewal, LLC

\_\_\_\_\_  
Name:

Title:



## TOWN OF NEWTON

### RESOLUTION #135-2010

August 9, 2010

“Approve Bills and Vouchers for Payment”

**BE IT RESOLVED** by the Town Council of the Town of Newton that payment is hereby approved for all vouchers that have been properly authenticated and presented for payment, representing expenditures for which appropriations were duly made in the 2009 and 2010 Budgets adopted by this local Governing Body, including any emergency appropriations, and where unexpended balances exist in said appropriation accounts for the payment of such vouchers.

### CERTIFICATION

**THIS IS TO CERTIFY** that the above is a true copy of a Resolution adopted by the Town Council of the Town of Newton at a regular meeting of said Governing Body conducted on Monday, August 9, 2010.

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Lorraine A. Read, RMC  
Municipal Clerk