



AGENDA
NEWTON TOWN COUNCIL
AUGUST 23, 2010
7:00 P.M.

I. PLEDGE OF ALLEGIANCE

II. ROLL CALL

III. OPEN PUBLIC MEETINGS ACT STATEMENT

IV. APPROVAL OF MINUTES

AUGUST 9, 2010 REGULAR MEETING

V. SWEARING-IN CEREMONY

SPECIAL OFFICER ARLENE LIPPENCOTT

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. PROCLAMATION – SURGICAL TECHNOLOGISTS WEEK

VIII. ORDINANCES

- a. 2ND READING AND PUBLIC HEARING

ORDINANCE 2010-10

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

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

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

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

ORDINANCE 2010-12

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

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

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

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

b. INTRODUCTION

ORDINANCE 2010-14

AN ORDINANCE RESCINDING ORDINANCE 2010-2

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 #136-2010*

AUTHORIZE EXTENSION FOR PAYMENT OF REAL ESTATE TAXES

- b. RESOLUTION #137-2010* REAPPOINTMENT OF STANLEY GOLDSCHMIDT TO THE CONSTRUCTION BOARD OF APPEALS
- c. RESOLUTION #138-2010* APPROVAL TO SUBMIT A GRANT APPLICATION AND EXECUTE A GRANT AGREEMENT WITH THE NEW JERSEY DEPARTMENT OF TRANSPORTATION FOR PHASE II REHABILITATION OF THE SUSSEX BRANCH RAIL TRAIL IN THE TOWN OF NEWTON
- d. RESOLUTION #139-2010* APPOINTMENT OF A CLASS II-SPECIAL POLICE OFFICER
- e. RESOLUTION #140-2010* RESOLUTION AUTHORIZING THE ISSUANCE AND SALE OF A RECOVERY ZONE FACILITY BOND OF THE TOWN OF NEWTON IN A PRINCIPAL AMOUNT NOT TO EXCEED \$6,175,000 AND AUTHORIZING AND APPROVING THE EXECUTION AND DELIVERY OF A BOND AGREEMENT AND RELATED INSTRUMENTS AND DETERMINING OTHER MATTERS IN CONNECTION THEREWITH
- f. RESOLUTION #141-2010* AWARD BID FOR RESURFACING OF VARIOUS STREETS
- g. RESOLUTION #142-2010* APPROVE BILLS AND VOUCHERS FOR PAYMENT
- h. APPLICATIONS* APPLICATION FOR AN OFF-PREMISE RAFFLE FROM NORWESCAP, 350 MARSHALL STREET, PHILLIPSBURG, NJ TO BE HELD ON DECEMBER 22, 2010 AT AN OPEN BOOK, 169 SPRING STREET, NEWTON AT 3:00PM. PROCEEDS TO BENEFIT NORWESCAP SUSSEX COUNTY FIRST BOOK.

APPLICATION FOR MEMBERSHIP TO THE NEWTON FIRE DEPARTMENT FROM GREGORY P. LEAVITT, 5 HAMILTON STREET, NEWTON.

XI. INTERMISSION

XII. DISCUSSION

- a. CONSOLIDATION OF LAND USE BOARDS

XIII. OPEN TO THE PUBLIC

XIV. COUNCIL & MANAGER COMMENTS

XV. ADJOURNMENT

Office of the Mayor

Newton, New Jersey

Proclamation

Surgical Technologist Week

September 19-25, 2010

WHEREAS, Surgical Technologists are allied health professionals, who are an integral part of the team of medical practitioners providing surgical care to patients; and

WHEREAS, Surgical Technologists work under the supervision of a surgeon to facilitate the safe and effective conduct of invasive surgical procedures, ensuring that the operating room environment is safe, that equipment functions properly, and that the operative procedure is conducted under conditions that maximize patient safety; and

WHEREAS, Surgical Technologists possess expertise in the theory and application of sterile and aseptic techniques and combine the knowledge of human anatomy, surgical procedures, and implementation tools and technologies to facilitate a physician's performance of invasive therapeutic and diagnostic procedures;

*NOW THEREFORE, WE, the Mayor and Town Council of the Town of Newton, hereby proclaim our **Congratulations** to the graduating class of Sussex County Community College's Surgical Technologist Program for their hard work and successful completion of the program. We would also like to proclaim September 19-25, 2010 as:*

"Surgical Technologist Week"

*In witness whereof I have hereunto set my
hand and caused this seal to be affixed.*

Attest: _____

Date: _____ August 19, 2010 _____

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 was adopted following a final reading and public hearing thereon, at a regular meeting of the Newton Town Council 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

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 was adopted following a final reading and public hearing thereon, at a regular meeting of the Newton Town Council 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

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
General Capital						
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	\$ -	\$ -			
Total - All Projects		\$ 350,000	\$ 350,000	\$ 17,500	\$ -	\$ -

**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 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 11th day of the 11th 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.

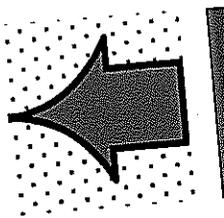
IN WITNESS WHEREOF, the Parties have caused this Financial Agreement to be executed as of the day and year first above written.

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. 40A:20-3h</u>) (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.

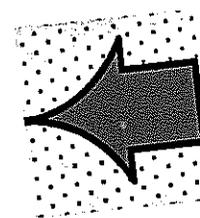
Section 2. PURSUANT TO SECTION 9.04 OF THE FINANCIAL AGREEMENT IT IS HEREBY MEMORIALIZED AND AFFIRMED THAT ANY TRANSFER OF THE PROPERTY, EXCEPT FOR A TRANSFER PERMITTED UNDER ARTICLE IX OF THE FINANCIAL AGREEMENT, IS AND SHALL BE VOID AB INITIO.

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 was adopted following a final reading and public hearing thereon, at a regular meeting of the Newton Town Council 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.

Lorraine A. Read, RMC
Municipal Clerk

**TOWN OF NEWTON
ORDINANCE NO. 2010-14**

AN ORDINANCE RESCINDING ORDINANCE 2010-2

WHEREAS, the Town of Newton enacted Ordinance 2010-2 on February 22, 2010 in an effort to ensure adequate fire protection capability for new construction; and

WHEREAS, the Town of Newton subsequently ordered, received and publicly reviewed at its regularly scheduled meeting of August 9, 2010 a comprehensive engineering report on the fire protection capacity of the fire hydrants in the Town of Newton, entitled "Fire Hydrant Flow Testing Study," prepared by Harold E. Pellow & Associates and dated August 4, 2010; and

WHEREAS, the Town of Newton has taken and will continue to take affirmative steps to provide fire protection capability, including the recommendations set forth in the above-referenced engineering report; and

WHEREAS, the Town of Newton considered the advice of its Construction Official and its Attorney regarding the obsolescence and inutility of Ordinance 2010-2 in light of the above-referenced engineering report, recent statutory lapses of referenced fire-related codes within the Uniform Construction Code occurring after the adoption of Ordinance 2010-2 and analysis of applicable Residential Site Improvement Standards and the State Uniform Construction Code, and concluded that Ordinance 2010-2 should be rescinded;

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 Ordinance 2010-2 is hereby rescinded. This Ordinance shall take effect upon its passage and publication, as provided for by law.

NOTICE

TAKE NOTICE that the above-entitled Ordinance was introduced at a regular meeting of the Town Council of the Town of Newton on the 23rd day of August 2010. Said Ordinance was adopted after public hearing the regular meeting of the Town Council of the Town of Newton held in the Council Chambers, 39 Trinity Street, Newton, New Jersey, on the 15th day of September, 2010.

Lorraine A. Read, R.M.C.,
Municipal Clerk



TOWN OF NEWTON

RESOLUTION #136-2010

August 23, 2010

"Authorize Extension for Payment of Real Estate Taxes"

WHEREAS, the Sussex County Board of Taxation certified the 2010 tax rate for the Town of Newton on August 5, 2010 and as a result, the tax bills for the third installment could not be mailed by June 15th, but were mailed instead on August 11, 2010; and

WHEREAS, the intent of NJSA 54:4-64 is to assure that taxpayers are given adequate notice of taxes due before penalties are invoked requiring payment of interest for delinquency under the provisions of NJSA 54:4-67; and

WHEREAS, in fairness to the taxpayers of the Town of Newton, a twenty-five (25) day extension period to September 8, 2010 shall be provided, in accordance with NJSA 54:4-67 and NJSA 54:4-81, by establishing the interest rate for delinquency at zero percent (0%) from the certification date of mailing said tax bills; and

WHEREAS, interest shall revert back to August 1, 2010 after the twenty five (25) day extension period to provide consistency and compliance in accordance with NJSA 54:4-67;

NOW, THEREFORE BE IT RESOLVED, by the Town Council of the Town of Newton that a twenty-five (25) extension period to September 8, 2010 is hereby granted for the August 2010 tax quarter by charging zero percent (0%) interest during said extension period;

BE IT FURTHER RESOLVED, that following the twenty-five (25) day extension period, interest shall be charged from August 1, 2010, in compliance with NJSA 54:4-67.

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 23, 2010.

Lorraine A. Read, RMC
Municipal Clerk



TOWN OF NEWTON

RESOLUTION #137-2010

August 23, 2010

**"Reappointment of Stanley Goldschmidt to the
Construction Board of Appeals"**

WHEREAS, Mr. Stanley Goldschmidt currently serves as a member of the Town of Newton Construction Board of Appeals relative to Property Maintenance issues; and

WHEREAS, Mr. Goldschmidt's current term expired on August 12, 2010 and he has expressed an interest in continuing to serve another three-year term;

NOW, THEREFORE BE IT RESOLVED, by the Town Council of the Town of Newton that Mr. Stanley Goldschmidt is hereby reappointed to a three-year term on the Construction Board of Appeals, with said term continuing to August 12, 2013.

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 23, 2010.

Lorraine A. Read, RMC
Municipal Clerk



TOWN OF NEWTON

RESOLUTION #138-2010

August 23, 2010

“Approval to Submit a Grant Application and Execute a Grant Agreement with the New Jersey Department of Transportation for Phase II Rehabilitation of the Sussex Branch Rail Trail in the Town of Newton”

WHEREAS, the Town of Newton is applying for funding in the amount of \$90,000.00 to complete the Phase II Rehabilitation of the Sussex Branch Rail Trail through the NJDOT Division of Local Aid and Economic Development Bikeway; and

WHEREAS, this project will rehabilitate the existing bike path in Town, and will also help to provide a better walking, running and biking connection to the Town; and

WHEREAS, the Town of Newton will assume the responsibility for the maintenance of the proposed bike path;

NOW, THEREFORE BE IT RESOLVED, that the Town Council of the Town of Newton formally approves the submission of the grant application for the above stated project; and

BE IT FUTHER RESOLVED, that the Mayor, Town Manager, and Clerk are hereby authorized to submit an electronic grant application identified as BIKE-2011-Newton Town-00009 to the New Jersey Department of Transportation on behalf of the Town of Newton; and

BE IT FURTHER RESOLVED, that the Mayor, Town Manager, and Clerk are hereby authorized to sign the grant agreement on behalf of the Town of Newton and that their signatures constitute acceptance of the terms and conditions of the grant agreement and approval of same.

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 23, 2010.

Lorraine A. Read, RMC
Municipal Clerk



TOWN OF NEWTON

RESOLUTION #139-2010

August 23, 2010

"Appointment of a Class II-Special
Police Officer"

WHEREAS, Section 3-10 within Chapter III, Police Department, of the Revised General Ordinances of the Town of Newton indicates that the Town Manager may appoint Special Police Officers for a term not to exceed 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 individual as a Class II - Special Police Officer for calendar year 2010:

Arlene D. Lippencott

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 23, 2010.

Lorraine A. Read, RMC
Municipal Clerk



TOWN OF NEWTON

RESOLUTION #140-2010

August 23, 2010

"Resolution Authorizing the Issuance and Sale of a Recovery Zone Facility Bond of the Town of Newton in a Principal Amount not to Exceed \$6,175,000 and Authorizing and Approving the Execution and Delivery of a Bond Agreement and Related Instruments and Determining Other Matters in Connection Therewith"

WHEREAS, on April 25, 2005, the Mayor and Town Council (the "Governing Body") of the Town of Newton (the "Town"), after investigation and public hearings of the Town's Planning Board in accordance with Section 5 of the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 *et seq.* (the "Redevelopment Law"), adopted Resolution No. 65-2005 designating that certain property identified as Block 1104, Lot 21 on the Official Tax Map of the Town (as further described at Section 1.01 below, the "Property" or the "Redevelopment Area"), as an "area in need of redevelopment" in accordance with Section 6 of the Redevelopment Law; 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 Section 14 of the Redevelopment Law, 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, on March 23, 2009, after review and comment by the Planning Board in accordance with the Redevelopment Law, the Town adopted Ordinance 2009-6 implementing a redevelopment plan (the "Initial Redevelopment Plan") for the Property and the above-described portion of the Rehabilitation Area (collectively, the "Plan Area"); and

WHEREAS, on January 11, 2010, after review and comment by the Planning Board in accordance with the Redevelopment Law, the Town adopted Ordinance 2009-33 amending the Initial Redevelopment Plan (as amended, the "Redevelopment Plan"); 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 (collectively, the "Project"); and

WHEREAS, on November 9, 2009, the Governing Body adopted Resolution No. 232-2009 designating Thorlabs, Inc., an S corporation of the State of New Jersey with offices at 435 Route 206, Newton, New Jersey ("Thorlabs") as redeveloper of the Plan Area and authorizing the execution of a redevelopment agreement; and

WHEREAS, the Town and Thorlabs have executed a redevelopment agreement for the Plan Area dated November 30, 2009 (the "Redevelopment Agreement"); and

WHEREAS, in accordance with the provisions of Resolution No. 232-2009 and the Redevelopment Agreement, Thorlabs has assigned its role as redeveloper to its affiliate Thorlabs Urban Renewal, LLC (the "Redeveloper"), a limited liability company of the State of New Jersey qualified to do business as an urban renewal entity under the Long Term Tax Exemption Law, N.J.S.A. 40A:20-1 *et seq.*, pursuant to an assignment and assumption agreement by and among Thorlabs, the Town and the Redeveloper effective December 2, 2009; and

WHEREAS, despite Redeveloper's investment of equity and borrowed funds, such amounts are insufficient to pay for all of the costs associated with the development and construction of the Project; and

WHEREAS, by Resolution dated December 16, 2009, the County of Sussex (the "County") has designated the Plan Area as a recovery zone pursuant to the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5 Stat. 115 (2009) (the "Stimulus Act"), and has allocated its \$6,175,000 of volume cap with respect to Recovery Zone Facility Bonds authorized under the Stimulus Act to the Plan Area for the Project; and

WHEREAS, in order to defray some of the costs of the Project, thereby making the Project viable, and to pay certain costs of issuance in connection with the Bond (as defined below), the Town, in furtherance of the purposes of the Redevelopment Law, proposes to issue its Recovery Zone Facility Bond, Series 2010, in a principal amount not to exceed \$6,175,000 (the "Bond") and to secure the Bond by a pledge of moneys to be received by the Town and the assignment of certain rights of the Town with respect to the Project, which pledge and assignment are hereby declared to further secure the payment of the principal of and interest on the Bond; and

WHEREAS, the Town proposes to apply the proceeds of the Bond to make a loan to the Redeveloper to assist in the financing of the Project in accordance with the Bond Agreement by and among the Town, Lakeland Bank as purchaser and escrow agent, and the Redeveloper (the "Bond Agreement") providing, in part, for payments by the Redeveloper sufficient to meet installments of interest and principal on the Bond.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND TOWN COUNCIL OF THE TOWN OF NEWTON, IN THE COUNTY OF SUSSEX AS FOLLOWS:

Section 1. In order to assist in financing the Project, the Bond is hereby authorized to be issued in a principal amount not to exceed \$6,175,000, with an interest rate not to exceed seven and a half percent (7.5%) per annum. The Bond shall be dated, shall bear interest at such rate of interest, and shall be payable as to principal, interest and premium, if any, all as is specified therein. The Bond shall be issued in the form, shall mature, shall be subject to redemption prior to maturity and shall have such other details and provisions as are prescribed by the Bond Agreement.

Section 2. The Bond shall be a special and limited obligation of the Town, payable solely out of the moneys derived pursuant to the Bond Agreement and all such moneys are hereby pledged to the payment of the Bond. The payment of the principal of, premium, if any, and interest on the Bond shall be secured by a pledge and assignment of revenues and certain rights of the Town as provided in the Bond Agreement. Neither the members of the Town's Governing Body nor any person executing the Bond issued pursuant to this Resolution, the Bond Agreement and the Redevelopment Law shall be liable personally on the Bond by reason of the issuance thereof. The Bond shall not be in any way a debt or liability of the State or of any political subdivision thereof other than the Town and shall not create or constitute any indebtedness, liability or obligation of the State or of any political subdivision other than the Town. The Bond shall not constitute a pledge of the faith and credit of the State or of any political subdivision, including the Town, and shall be payable solely from the pledge and assignment of revenues described in this Section.

Section 3. The Bond Agreement and all instruments attached as exhibits thereto, in substantially the form attached hereto, are hereby approved. The Mayor and Town Manager (each an "Authorized Officer") are hereby authorized to execute, acknowledge and deliver the Bond Agreement and all instruments attached as exhibits thereto with any changes, insertions and omissions as may be necessary or desirable in consultation with the Town's bond counsel, and the Town Clerk is hereby authorized to affix the seal of the Town on the Bond Agreement and all instruments attached as exhibits thereto and attest the same. The execution of the Bond Agreement shall be conclusive evidence of any approval required by this Section.

Section 4. Lakeland Bank, Newton, New Jersey is hereby appointed Escrow Agent under the terms of the Bond Agreement.

Section 5. The Bond is hereby authorized to be sold in accordance with the Bond Agreement.

Section 6. The Authorized Officers are hereby designated to be the authorized representatives of the Town, charged by this Resolution with the responsibility for issuing the Bond and each of them is hereby authorized and directed to execute and deliver any and all papers, instruments, opinions, certificates, affidavits and other documents and to do and cause to be done any and all acts and things necessary or proper for carrying out this Resolution, the Bond Agreement and the issuance of the Bond.

Section 7. The adoption of this Resolution shall be deemed to be an "official intent" within the meaning of Treasury Regulation 1.150-2, effective on the date of its adoption, as made applicable to the Bond by rulings of the Internal Revenue Service.

Section 8. In case any one or more of the provisions of this Resolution, the Bond Agreement or the Bond issued hereunder shall for any reason be held to be illegal or invalid, such illegality or invalidity shall not affect any other provision of this Resolution or the Bond Agreement and the Bond shall be construed and enforced as if such illegal or invalid provision had not been contained therein.

Section 9. All resolutions or parts of resolutions or other proceedings in conflict herewith are repealed insofar as such conflict exists.

Section 10. This Resolution shall take effect immediately.

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 23, 2010.

Lorraine A. Read, RMC
Municipal Clerk

Bond Agreement

Among

Town of Newton,

Lakeland Bank

and

Thorlabs Urban Renewal, LLC

Dated: [CLOSDTE]

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ARTICLE I

Background, Representations and Findings

Section 1.1 Background. This Bond Agreement dated [CLOSDTE], by and among the **Town of Newton** (the “Issuer”), a municipal corporation of the State of New Jersey (the “State”) in the County of Sussex, **Lakeland Bank**, a New Jersey banking corporation (the “Escrow Agent” and “Purchaser”), and **Thorlabs Urban Renewal, LLC**, a State urban renewal limited liability company (the “Borrower”).

WHEREAS, the Mayor and Town Council of the Issuer, acting by resolution on April 25, 2005, after review of the findings of the Planning Board in accordance with the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 *et seq.* (the “Act”) designated Block 1104, Lot 21 as an “area in need of redevelopment” under the Act (the “Redevelopment Area”); and

WHEREAS, on April 23, 2007, the Issuer designated a portion of the Issuer, including the public streets and rights-of-way of Sparta Avenue, Merriam Avenue and Pine Street adjacent to the Redevelopment Area as an “area in need of rehabilitation” in accordance with the Act (the “Rehabilitation Area”); and

WHEREAS, on March 23, 2009, after referral to and incorporation of comments received from the Planning Board, the Town adopted Ordinance No. 2009-6 implementing a redevelopment plan for the Redevelopment Area and a portion of the Rehabilitation Area adjacent thereto; and

WHEREAS, the Act provides that the Issuer may incur indebtedness, borrow, appropriate and expend money and issue its negotiable bonds or other obligations for the purpose of aiding any redevelopment entity with respect to any redevelopment project which is located within its jurisdiction, including those instances where, as here, the governing body of a municipality directly exercises the powers of the redevelopment entity under the Act; and

WHEREAS, the Act authorizes the Issuer to provide for the extension of credit, or making of loans, to redevelopers to finance any project or redevelopment work within its jurisdiction; and

WHEREAS, the Act further provides that the bonds or other obligations of a redevelopment entity (in this case, the Issuer) shall be authorized by resolution and sets forth the manner in which the bonds may be sold; and

WHEREAS, the County of Sussex, in the State (the “County”), has received an allocation of \$6,175,000 pursuant to the American Recovery and Reinvestment Act of 2009 (“ARRA”) for the purpose of issuing Recovery Zone Facility Bonds; and

WHEREAS, on December 16, 2009, the County adopted a resolution designating the Redevelopment Area as a Recovery Zone within the meaning of ARRA and allocated \$6,175,000 for the financing of the Project (defined below); and

WHEREAS, the Borrower has requested that the Issuer provide financial assistance in the principal amount of \$6,175,000 for the financing of a project (the "Project") consisting of the construction of an approximately 100,000 sq. ft. building and the acquisition of machinery and equipment, to be used in the manufacturing of photonic tools and systems, located in the Redevelopment Area; and

WHEREAS, the Issuer has by resolution, duly adopted in accordance with the Act, authorized the issuance of its \$6,175,000 principal amount Town of Newton Recovery Zone Facility Bond (Thorlabs Urban Renewal, LLC- 2010 Project) to the Purchaser for the purpose of making a loan to the Borrower; and

WHEREAS, the execution and delivery of this Bond Agreement have been duly authorized by the parties and all conditions, acts and things necessary and required by the Constitution or statutes of the State or otherwise to exist, to have happened, or to have been performed precedent to or in the execution and delivery of this Bond Agreement do exist, have happened and have been performed.

NOW THEREFORE, in consideration of the premises and the mutual covenants and representations herein, and intending to be legally bound the parties hereto hereby mutually agree as follows:

Section 1.2 Definitions.

In this Bond Agreement the following terms shall have the meanings specified in the foregoing recitals:

Act
ARRA
Borrower
County
Escrow Agent
Issuer
Purchaser
Project
Redevelopment Area
Rehabilitation Area
State

The following terms shall have the following meanings unless a different meaning clearly appears from the context:

“Article” shall mean a specified article hereof, unless otherwise indicated;

“Assignment of Rents” means the [Assignment of Rents and Leases] executed by the Borrower in favor of the Issuer with respect to the Premises;

“Authorized Borrower Representative” shall mean any individual or individuals duly authorized by the Borrower to act on its behalf;

“Authorized Issuer Representative” shall mean any individual or individuals duly authorized by the Issuer to act on its behalf;

“Bond” shall mean the \$6,175,000 principal amount Town of Newton Recovery Zone Facility Bond (Thorlabs Urban Renewal, LLC- 2010 Project) in the form attached to the General Certificate of the Issuer and made a part of the Record of Proceedings;

“Bond Agreement” or “Agreement” shall mean this Bond Agreement;

“Bond Counsel” shall mean the law firm of McManimon & Scotland, L.L.C., Newark, New Jersey or an attorney or firm of attorneys of nationally recognized standing on the subject of municipal bonds;

“Bond Proceeds” shall mean the amount, including any accrued interest, paid to the Issuer or its agents by the Purchaser pursuant to this Bond Agreement as the purchase price of the Bond, and interest income earned thereon, if any;

“Bond Year” shall mean each one-year period (or shorter period from date of issue) that ends at the close of business on a day in the calendar year selected by the Borrower;

“Borrower’s Completion Certificate” shall mean the certificate described in Section 3.7 hereof, substantially in the form of Exhibit 1 hereof, executed by the Borrower, wherein the Borrower certifies as to such matters as the Issuer shall require;

“Business Day” shall mean any day other than a Saturday, Sunday or day which shall be in the State a legal holiday or day on which banking institutions are required or authorized to close;

“Code” shall mean the Internal Revenue Code of 1986, as amended, and the Treasury Regulations in effect thereunder;

“Collateral” shall mean all the real and personal property subject to the lien of the Mortgage and the Assignment of Rents, as well as all those assets, including the Project Equipment, of the Borrower to which the Issuer is granted a security interest in order to secure the Bond;

“Completion Date” shall mean the date of completion of the Project as stated in the Borrower’s Completion Certificate described in Section 3.7 hereof;

“Construction Loan Agreement” means the Construction Loan Agreement dated on or about the date hereof between the Purchaser and the Borrower, pursuant to which the Purchaser is making available to the Borrower a construction loan for the Project in the maximum principal amount of \$5,000,000.

“Cost” shall include costs allowable under the Act and all expenses as may be necessary or incident to the Project;

“Counsel for the Purchaser” and “Counsel for the Escrow Agent” shall mean the law firm of Wolff & Samson PC;

“Default Rate” shall mean the interest rate of the Note plus 3% per annum, not to exceed the maximum amount permitted by law;

“Determination of Taxability” shall be deemed to have occurred upon the happening of any of the following:

(a) if the Borrower shall:

(i) file with the Internal Revenue Service any statement, supplemental statement or other tax schedule, return or document, or

(ii) be advised in writing by the Commissioner or any district director of the Internal Revenue Service of a final administrative determination, or

(iii) make an admission in writing to the Purchaser to the effect that any applicable provision of, or requirement under the Code has been violated or not satisfied; or

(b) if there shall occur:

(i) the issuance of a published or private ruling of the Internal Revenue Service, or

(ii) a final, nonappealable determination by a court of competent jurisdiction in the United States, or

(iii) the enactment of legislation of the Congress of the United States, or

- (iv) receipt by the holder of the Bond of a written opinion by an attorney or firm of attorneys of recognized standing on the subject of municipal bonds,

to the effect that the interest payable on the Bond is wholly includable in the gross income of the holder thereof;

“Escrow Fund” means the fund so designated that is established pursuant to Section 3.5 hereof and maintained under the Construction Loan Agreement;

“Event of Cancellation” has the meaning set forth in Section 6.8 hereof.

“Event of Default” shall mean any event of default as defined in Article VI;

“GAAP” shall mean generally accepted accounting principles, applied on a consistent basis;

“General Certificate of the Issuer” shall mean the certificate of the Issuer that is made a part of the Record of Proceedings;

“Guarantors” means, collectively, Thorlabs, Inc. and Alex Cable;

“Guaranty” means the [Guaranty of Payment] executed by the Guarantors in favor of the Purchaser in connection with the Loan, among other credit facilities;

The terms “herein”, “hereunder”, “hereby”, “hereto”, “hereof”, and any similar terms, refer to this Bond Agreement; the term “heretofore” means before the date of execution of this Bond Agreement; and the term “hereafter” means after the date of execution of this Bond Agreement;

“Indemnified Parties” shall mean the State, the Issuer, the Purchaser, the Escrow Agent, any person who “controls” the State, the Issuer, the Escrow Agent or the Purchaser within the meaning of Section 15 of the Securities Act of 1933, as amended, and any member, officer, official, employee, agent or attorney of the Issuer, the State, the Escrow Agent or the Purchaser, and their respective successors and assigns;

“Issuer’s Arbitrage Certificate” means the Arbitrage and Tax Certificate dated the date of the issuance of the Bond executed by the Issuer in a form satisfactory to Bond Counsel;

“Issuer’s Assignment” means the Issuer’s Assignment dated the date hereof executed by the Issuer and the Borrower in connection with the sale of the Bond to the Purchaser;

“Loan” shall mean the loan from the Issuer to the Borrower in the principal amount of the Bond, as evidenced by the Note;

“Loan Documents” shall mean any or all of this Bond Agreement, the Note, the Mortgage, the Assignment of Rents, the Financing Statements, the Guaranty and all documents and instruments executed in connection herewith or therewith, and all amendments and modifications thereto;

“Mortgage” shall mean the [Mortgage and Security Agreement] made by the Borrower in favor of the Issuer securing the Note and constituting a lien on the Premises and the other property described therein;

“Net Proceeds” shall mean the Bond Proceeds less any amounts placed in a reasonably required reserve or replacement fund within the meaning of Section 148 of the Code;

“Note” shall mean the note executed by the Borrower in favor of the Issuer evidencing the Loan;

“Obligations” shall mean the obligations of the Borrower created pursuant to the Loan Documents;

“Paragraph” shall mean a specified paragraph of a Section, unless otherwise indicated;

“Permitted Encumbrances” shall mean, as of any particular time: (i) liens for taxes and assessments not then delinquent, or provided there is no risk of forfeiture or sale of any of the Collateral, which are being contested in good faith and for which reserves have been established by the Borrower which are satisfactory to the Purchaser in its sole and absolute discretion; (ii) the liens provided for in this Bond Agreement or in the Loan Documents; (iii) utility access and other easements and rights of way, restrictions and exceptions that the Title Insurance Policy insures will not interfere with the use of or impair the Project; (iv) purchase money security interest encumbering property other than the Collateral; (v) those exceptions shown on Schedule B of the Title Insurance Policy acceptable to the Purchaser; (vi) the Purchaser's Liens; (vii) the RAB Lien, and (viii) such other encumbrances as are consented to in writing by the Purchaser;

“Person” or “Persons” shall mean any individual, corporation, partnership, joint venture, trust, or unincorporated organization, or a governmental agency or any political subdivision thereof;

“Premises” shall mean the premises and all improvements thereon located in the Project Municipality described in Schedule A of the Mortgage;

“Project Equipment” shall mean all equipment, machinery or other personal property, if any, purchased by the Borrower with the proceeds of the Bond, and all replacements thereof and substitutions therefor;

“Project Municipality” shall mean the municipality of Newton, County of Sussex, State of New Jersey;

“Proper Charge” means (i) issuance costs of the Bond, including, legal fees, printing costs, and similar expenses, which shall at no time exceed 2% of the proceeds of the Bond; (ii) an expenditure for the Project, paid and incurred after sixty (60) days prior to October 26, 2009, used (A) for the acquisition or improvement of land or the acquisition, construction, reconstruction or improvement of property of a character subject to the allowance for depreciation or (B) to redeem part or all of a prior issue which was issued for purposes described in (A) above; or (iii) expenditures for the Project which, after taking into account all expenditures under (i) above, will not result in more than 5% of the Net Proceeds being expended for expenditures other than those referred to in (ii) above;

“Purchaser's Liens” means the lien(s) on the Premises granted by the Borrower to the Purchaser as collateral security for the construction loan being made available on or about the date hereof by the Purchaser to the Borrower pursuant to the Construction Loan Agreement, which liens shall be *pari passu* with the lien of the Mortgage;

“RAB Lien” means the statutory lien for payments in lieu of taxes created in connection with the issuance by the Town of Newton of that certain Redevelopment Area Bond on or about the date hereof in connection with the Project;

“Rebatable Arbitrage” shall mean the excess of the future value, as of a date, of all receipts on nonpurpose investments over the future value, as of that date, of all payments on nonpurpose investments, as more fully described in Code Section 148(f) and Treas. Reg. Sec. 1.148-3;

“Rebate Fund” shall mean the fund so designated that is established pursuant to Section 3.6 hereto;

“Record of Proceedings” shall mean the Loan Documents, certificates, affidavits, opinions and other documentation executed in connection with the sale of the Bond and the making of the Loan;

“Requisition Form” shall mean the form of requisition required by Section 3.5 as a condition precedent to the disbursement of moneys from the Escrow Fund, in the form made part of the Record of Proceedings;

“Reserved Rights” shall mean the following rights of the Issuer which have been assigned to the Purchaser herewith but are also held and retained by the Issuer concurrently with the Purchaser (except those rights set forth in Section 6.8 herein, which are retained exclusively by the Issuer):

- (a) to receive notices under this Bond Agreement;

(b) to consent to any amendments, modifications or supplements to this Bond Agreement;

(c) to receive payments under and to enforce pursuant to Article VI all provisions or covenants in this Bond Agreement under the following sections: 3.6, 3.8, 3.30, 4.6, 5.1, 5.2, 5.4, 5.5, 5.8, 5.9, 6.3, 6.5, 6.8, 7.1, 7.8, 7.12, 7.14 and 7.15;

(d) to receive indemnification and to be held harmless by the Borrower as provided in this Bond Agreement; and

(e) to redeem or cancel the Bond in accordance with this Bond Agreement which rights are held and retained by the Issuer;

whether or not the Purchaser shall have exercised or shall have purported to exercise such rights and remedies;

“Resolution” shall mean the resolution of the Issuer dated [RESDTE] making certain findings and determinations and authorizing the issuance and sale of the Bond and determining other matters in connection with the Project;

“Section” shall mean a specified section hereof, unless otherwise indicated;

“Tax Certificate” shall mean the arbitrage and tax certificate executed by the Borrower in form and substance acceptable to the Issuer, wherein the Borrower certifies as to such matters as the Issuer shall require;

“Title Insurance Binder” shall mean the commitment to insure title no. [] issued by [] on behalf of [];

“Title Insurance Policy” shall mean the title insurance policy issued pursuant to the Title Insurance Binder;

“Yield” shall be determined on the basis of issue price (within the meaning of Treas. Reg. Sec. 1.148-1(b)) and shall mean that discount rate which when used in computing the present value as of the issue date of all unconditionally payable payments of principal, interest and fees for qualified guarantees on the issue and amounts reasonable expected to be paid as fees for qualified guarantees on the issue, produces an amount equal to the issue present value, using the same discount rate, of the issue price of the Bond of the issue as of the issue date.

Section 1.1 Borrower Representations. The Borrower represents that:

(a) Powers, etc. The Borrower is an urban renewal limited liability company duly organized, validly existing and in good standing under the laws of the State, has the power and

authority to own its properties and assets and to carry on its business as now being conducted (and as now contemplated by the Borrower) and has the power to perform all the undertakings of the Loan Documents to borrow hereunder and to execute and deliver the Loan Documents.

(b) Execution of Loan Documents. The execution, delivery and performance by the Borrower of the Loan Documents and other instruments required by this Bond Agreement:

(i) have been duly authorized by all requisite action;

(ii) do not and will not conflict with or violate any provision of law, rule or regulation, any order of any court or other agency of government;

(iii) do not and will not violate or result in a default under any provision of any indenture, agreement or other instrument to which the Borrower is a party or is subject;

(iv) do not and will not result in the creation or imposition of any lien, charge or encumbrance on the Collateral of any nature, other than the liens created by the Loan Documents;

(v) do not and will not conflict with or violate any provision of the certificate of formation or operating agreement of the Borrower; and

(vi) do not and will not require any authorization, consent, approval, license, exemption of, or filing or registration with, any court or governmental department, commission, board, bureau or instrumentality, other than consents or approvals already obtained in the ordinary course of business.

(c) Title to Collateral. The Borrower has good and marketable title to the Collateral and its other assets free and clear of any lien or encumbrance except for the Permitted Encumbrances. Upon proper recording in the appropriate office, the Mortgage and the Assignment of Rents will constitute valid first liens on the Premises (*pari passu* with the Purchaser's Liens), and upon proper filing in the appropriate office, the Financing Statements will perfect valid first liens on the Collateral owned by the Borrower other than the Premises.

(d) Judgment: Litigation. There are no outstanding judgments against the Borrower; nor is there any action, suit or proceeding at law or in equity or by or before any governmental instrumentality or other agency now pending or, to the knowledge of the Borrower, threatened against or affecting it or any of its properties or rights which, if adversely determined, would (i) affect the transactions contemplated hereby, (ii) affect the validity or enforceability of the Loan Documents, (iii) affect the ability of the Borrower to perform its obligations under the Loan Documents, (iv) materially impair the Borrower's right to carry on its business substantially as now conducted (and as now contemplated by the Borrower), (v) impair the value of any of the Collateral securing the Note or (vi) have a material adverse effect on the Borrower's financial condition.

(e) Payment of Taxes. The Borrower has filed or caused to be filed all federal, State and local tax returns which are required to be filed, and has paid or caused to be paid all taxes as shown on said returns or on any assessment received by it, to the extent that such taxes have become due. The Borrower represents that the taxes as shown on said returns were computed in good faith and are believed by the Borrower to be accurate.

(f) No Defaults. The Borrower is not in breach or default in any material respect in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any agreement or instrument to which it is a party or by which it is bound.

(g) No Material Adverse Change. There has been no material adverse change in the financial condition of the Borrower since the date of most recent financial statements submitted to the Purchaser.

(h) Obligations of the Borrower. The Loan Documents have been duly executed and delivered and are legal, valid and binding obligations of the Borrower enforceable against it in accordance with their respective terms, except as may be limited by applicable bankruptcy or insolvency laws.

(i) No Action. The Borrower has not taken and will not take any action and knows of no action that any other Person has taken or intends to take, which would cause interest income on the Bond to be included in the gross income of the recipients thereof under the Code.

(j) Operation of the Project and Borrower's Facilities and Business. The operation of the Project in the manner presently contemplated and the operation of the Borrower's facilities and business will not conflict with any current zoning, water, air pollution or other ordinances, orders, laws or regulations applicable thereto.

(k) Commencement of Project: Proper Charges. The Borrower has not incurred any expense prior to sixty (60) days prior to October 26, 2009 for which it shall seek reimbursement from the Escrow Fund.

(l) Placement in Service. The Project was not acquired or placed in service by the Borrower (determined in accordance with the provisions of Section 103 of the Code and applicable regulations thereunder) more than one year prior to the date of issuance of the Bond.

(m) Use of Proceeds. No portion of the Bond Proceeds will be used to provide any airplane, skybox or other private luxury box, facility primarily used for gambling or store the principal business of which is the sale of alcoholic beverages for consumption off premises.

(n) Economic Life. The information contained in the Tax Certificate, setting forth the respective cost, economic life, ADR midpoint life, if any, under Rev. Proc. 87-56, as supplemented and amended from time to time, and guideline life, if any, under Rev. Proc. 62-21,

1962-2 C.B. 118, as supplemented and amended from time to time, of each asset constituting the Project to be financed with the proceeds of the Bond is true, accurate and complete.

(o) Environmental Representation. (i) For purposes of this Section 1.3, “Applicable Environmental Laws” shall mean (A) the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. 9601 *et seq.* (“CERCLA”); (B) the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. 6901 *et seq.* (“RCRA”), (C) the New Jersey Industrial Site Recovery Act, as amended, *N.J.S.A.* 13:1K-6 *et seq.* (“ISRA”); (D) the New Jersey Spill Compensation and Control Act, as amended, *N.J.S.A.* 58:10-23.11B *et seq.* (“Spill Act”); (E) the New Jersey Leaking Underground Storage Tank Act, as amended, *N.J.S.A.* 58:10A-21 *et seq.* (“LUST”); and (F) any and all laws, regulations, executive orders, both federal, state and local, pertaining to environmental matters, as the same may be amended or supplemented from time to time. Any terms mentioned in the following sub-sections which are defined in any Applicable Environmental Law shall have the meanings ascribed to such terms in said laws; provided, however, that if any of such laws are amended so as to broaden any term defined therein, such broader meaning shall apply subsequent to the effective date of such amendment.

(ii) To its knowledge, except as set forth on Schedule 1.3(o) attached hereto, the Borrower represents and warrants that neither the Borrower nor the Premises are in violation of or subject to any existing, pending or threatened investigation or inquiry by any governmental authority pertaining to any Applicable Environmental Law.

(iii) The Borrower further represents, warrants, covenants and agrees as follows:

(A) The Borrower has not received any communication, written or oral, from the State Department of Environmental Protection concerning any intentional or unintentional action or omission on the Borrower’s part resulting in the releasing, spilling, leaking, pumping, pouring, emitting, emptying or dumping of Hazardous Substances or Hazardous Wastes into the waters or onto the lands of the State or into the waters outside the jurisdiction of the State resulting in damage to the lands, waters, fish, shellfish, wildlife, biota, air and other resources owned, managed, held in trust or otherwise controlled by the State.

(B) To the Borrower’s knowledge, none of the real property owned and/or occupied by the Borrower and located in the State, including without limitation the Premises, is now being used as a Major Facility, as such term is defined in *N.J.S.A.* 58:10-23.11(b)(1) and the Borrower shall not use any such property as a Major Facility in the future without the prior express written consent of the Issuer and the Purchaser. If the Borrower ever becomes an owner or operator of a Major Facility, then the Borrower shall furnish the State Department of Environmental Protection with all the information required by *N.J.S.A.* 58:10-23.11d, and shall duly file with the Director of the Division of Taxation in the State Department of the Treasury a tax report or return, and shall pay all taxes due therewith, in accordance with *N.J.S.A.* 58:10-23.11h.

(p) Issuance Costs. No more than 2% of the proceeds of the Bond will be used to pay the issuance costs of the Bond, as provided in Section 147(g) of the Code. The Issuer acknowledges and agrees that there is no fee payable in connection with the issuance of the Bonds and that no annual and/or special fees shall be charged to the Borrower or the Purchaser in respect to the Bonds.

Section 1.2 Issuer Representations. The Issuer hereby represents to the Purchaser that:

(a) The Issuer is a municipal corporation, duly created and existing as a political subdivision of the State, with the power and Issuer set forth in the Act, including the power and Issuer to authorize the issuance of the Bond under the Act.

(b) The Issuer has the requisite authority to enter into this Bond Agreement. This Bond Agreement has been duly authorized, executed and delivered by the Issuer and, assuming the due authorization, execution and delivery by the other parties hereto, will constitute a valid and binding obligation of the Issuer, enforceable in accordance with its terms (subject to any applicable bankruptcy, insolvency, moratorium or the similar laws or equitable principles affecting creditors' rights or remedies generally).

(c) The Issuer has the requisite authority to execute the Bond and when delivered to and paid for by the Purchaser at the closing in accordance with the provisions of this Bond Agreement and the Resolution, the Bond will have been duly authorized, executed and issued and will constitute a valid and binding special, limited obligation of the Issuer enforceable in accordance with its terms and entitled to the benefits and security of this Bond Agreement (subject to any applicable bankruptcy, insolvency, moratorium or other similar laws or equitable principles affecting creditors' rights or remedies generally).

(d) The adoption of the Resolution and the execution of this Bond Agreement and the Bond and compliance by the Issuer with the provisions thereof and hereof, under the circumstances contemplated thereby and hereby, to the knowledge of the Issuer, do not and will not in any material respect conflict with or constitute on the part of the Issuer a breach of or default under any indenture, deed of trust, mortgage, agreement, or other instrument to which the Issuer is a party, or conflict with, violate, or result in a breach of any existing law, public administrative rule or regulation, judgment, court order or consent decree to which the Issuer is subject.

(e) The Resolution and the forms of this Bond Agreement and the Bond were adopted or approved at a duly convened meeting of the Issuer, with respect to which all legally required notices were duly given, and at which meetings quorums were present and acting at the time of adoption thereof.

(f) The State is not obligated to pay, and neither the faith and credit nor taxing power of the State is pledged to the payment of, the principal or redemption price, if any, of or interest

on the Bond. The Bond is a special, limited obligation of the Issuer, payable solely out of the revenues or other receipts, funds or moneys of the Issuer pledged under this Bond Agreement and from any amounts otherwise available under this Bond Agreement for the payment of the Bond. The Bond does not now and shall never constitute a charge against the general credit of the Issuer. The Issuer has no taxing power.

(g) It is specifically understood and agreed that the Issuer makes no representation as to the financial position or business condition of the Borrower and does not represent or warrant as to the correctness, completeness or accuracy of any of the statements, information (financial or otherwise), representations or certifications furnished or to be made and furnished by the Borrower in connection with the execution and delivery of this Bond Agreement or the consummation of the transactions contemplated thereunder or in connection with the sale of the Bond.

(h) Pursuant to Section 5.5 hereof, the Borrower has covenanted that it will not take any action, or fail to take any action, if any such action or failure to take action would adversely affect the exclusion from gross income of the interest on the Bond under Section 103 of the Code and that the Borrower will not directly or indirectly use or permit the use (including the making of any investment) of any Bond Proceeds or any other funds of the Issuer or the Borrower, or take or omit to take any action, that would cause the Bond to be an "arbitrage bond" within the meaning of Section 148(a) of the Code. The Issuer hereby covenants that it will not take any action, or fail to take any action, if any such action or failure to take action would adversely affect the exclusion from gross income of the interest on the Bond under Section 103 of the Code, or take or omit to take any action, that would cause the Bond to be an "arbitrage bond" within the meaning of Section 148(a) of the Code. In this Bond Agreement, the Borrower has agreed to comply with the rebate requirements contained in Section 148(f) of the Code and any regulations promulgated thereunder. The Issuer further covenants to comply with the rebate requirements (including the prohibited payment provisions) contained in Section 148(f) of the Code and any regulations promulgated thereunder, to the extent applicable. The parties acknowledge that the Borrower has undertaken the obligation to comply with such rebate requirements hereunder.

Section 1.3 Purchaser Representations. The Purchaser hereby represents as follows:

(a) It has made an independent investigation and evaluation of the financial position and business condition of the Borrower and the value of the Project, or has caused such investigation and evaluation of the Borrower and the Project to be made by persons it deems competent to do so. The Purchaser has not relied on the Issuer for any information regarding the Borrower or the Project and the Purchaser expressly relieves the Issuer and its agents, representatives and attorneys of any liability for failure to provide such information or for any untrue fact or material omission in any information regarding the Borrower or the Project that may have been provided by the Borrower or the Issuer, and their agents, representatives and attorneys.

(b) It is purchasing the Bond for its own account, with the purpose of investment and not with the intention of distribution or resale thereof. The Bond will not be sold unless registered in accordance with the rules and regulations of the Securities and Exchange Commission or the Issuer is furnished with an opinion of counsel or a “No Action” letter from the Securities and Exchange Commission, that such registration is not required.

(c) It has taken all action necessary to be taken by it prior to the date of this Bond Agreement to authorize the execution, delivery and performance of this Bond Agreement.

(d) This Bond Agreement is the legal, valid and binding obligation of the Purchaser, enforceable against it in accordance with its terms.

ARTICLE II

The Project

Section 2.1 Description of Project. The Borrower will provide such supplemental information to reflect material additions to, deletions from and changes in the Project and will notify the Issuer and the Purchaser of such modifications so that the Issuer and the Purchaser will be able to ascertain the nature, location and estimated cost of the facilities covered by this Bond Agreement.

Notwithstanding any provision to the contrary, the Borrower shall not make any improvements, additions or changes to the Project that would result in a violation of the Act or conflict with the Borrower’s covenants herein.

Section 2.2 Notices and Permits. The Borrower shall give or cause to be given all notices and comply or cause compliance with all laws, ordinances, municipal rules and regulations and requirements of public authorities applying to or affecting the conduct of the work on the Project, and the Borrower will defend and save the Issuer, its members, officers, agents and employees and the Purchaser, its officers, agents and employees harmless from all fines due to failure to comply therewith. The Borrower shall procure or cause to be procured all permits and licenses necessary for the completion of the Project.

ARTICLE III

The Financing

Section 3.1 The Financing. The Purchaser has agreed with the Issuer to purchase the Bond, and the Issuer has agreed to make the Loan to the Borrower. To accomplish this financing, the following acts will occur simultaneously and concurrently with the execution and delivery of this Bond Agreement:

- (a) The Issuer will sell, issue and deliver the Bond to the Purchaser.
- (b) The Purchaser will deliver the proceeds from the sale of the Bond to the Escrow Agent.
- (c) The Borrower will execute and deliver to the Issuer the Note and the other Loan Documents.
- (d) The Issuer will assign the Loan Documents to the Purchaser in accordance with the Issuer's Assignment.

Section 3.2 Effectiveness of Bond and Note. So long as there are no defaults in the performance by the Borrower of any of the terms, covenants and conditions of the Loan Documents, the Bond will be outstanding and will control the interest rate and monthly payments due the Purchaser. If there is such a default, the provisions of Article VI and the Loan Documents will govern. When the obligations of the Issuer pursuant to the Bond have been released and canceled pursuant to Article VI, the Note will remain fully effective and will control the interest rate and monthly payments due the Purchaser.

Section 3.3 The Bond. Subject to the terms and conditions and upon the basis of the representations hereinafter set forth, the Issuer hereby agrees to sell the Bond to the Purchaser, and the Purchaser hereby agrees to purchase the Bond from the Issuer at the purchase price of \$6,175,000.

The Bond will be delivered in registered form. Payment for the Bond by the Purchaser and delivery thereof by the Issuer shall be made at the offices of the Issuer in Newton, New Jersey or at such other place in the State as the Issuer and Purchaser mutually agree.

The offering of the Bond has not been registered under the Securities Act of 1933, as amended, and this Bond Agreement has not been qualified under the Trust Indenture Act of 1939, as amended. The Bond may not be offered or sold by the Purchaser in contravention of said acts.

Section 3.4 Deposit of Net Proceeds. The Net Proceeds of the Bond will be deposited into the Escrow Fund established in Section 3.5 hereof and will be held and disbursed by the Escrow Agent for payment of Costs of the Project upon requisition by the Borrower as provided in Section 3.5 of this Bond Agreement, subject to the satisfaction of the conditions precedent to advances set forth in the Construction Loan Agreement. The Issuer hereby authorizes and directs Lakeland Bank, in its capacity as Purchaser and Escrow Agent, to deposit the proceeds of the Bond, \$6,175,000, into the Escrow Fund. The Borrower agrees that the sums requisitioned from the Escrow Fund will be used only for the Costs of the Project.

Section 3.5 Escrow Fund. (a) The Issuer irrevocably authorizes and directs the Escrow Agent to make disbursements from the Escrow Fund to pay Costs of the Project, or to reimburse the Borrower for any Cost of the Project paid by it or on its behalf. Pursuant to this Bond Agreement, the Escrow Agent shall make such disbursements directly to or at the direction of the Borrower without any act by or notice to the Issuer, but only upon compliance by the Borrower with the conditions precedent to advances established by the Purchaser in the Construction Loan Agreement.

(b) The Borrower agrees as a condition precedent to the disbursement of any portion of the Escrow Fund to comply with the terms of this Bond Agreement and to furnish the Escrow Agent with a Requisition Form signed by an Authorized Borrower Representative stating with respect to each payment made: (i) the requisition number; (ii) the name and address of the Person to whom payment is to be made by the Escrow Agent or, if the payment is to be made to the Borrower for a reimbursable advance, the name, address and a copy of the invoice of the Person to whom such advance was made together with proof of payment by the Borrower; (iii) the amount to be paid; (iv) that each obligation for which payment is sought is a Proper Charge against the Escrow Fund, is unpaid or unreimbursed, and has not been the basis of any previously paid requisition; (v) if such payment is a reimbursement to the Borrower for costs or expenses incurred by reason of work performed or supervised by officers or employees of the Borrower or any of its affiliates, that the amount to be paid does not exceed the actual cost thereof to the Borrower or any of its affiliates; (vi) that no uncured Event of Default has occurred under this Bond Agreement; and (vii) the Borrower has received no written notice of any lien, right to lien or attachment upon, or other claim affecting the right to receive payment of, any of the moneys payable under such Requisition Form to any of the Persons named therein, or if any of the foregoing has been received, it has been released or discharged or will be released or discharged upon payment of the Requisition Form.

Section 3.6 Rebate Fund. A special fund is hereby created and designated as the Rebate Fund. The Escrow Agent shall notify the Borrower of its obligation to determine the Rebatable Arbitrage, and shall notify the Borrower of its obligation to deposit such amount, if any, in the Rebate Fund. The Borrower shall transfer or cause to be transferred by the Escrow Agent from the Rebate Fund at such times and to such person as required by Section 148 of the Code an amount equal to the Rebatable Arbitrage. Amounts in the Rebate Fund shall be exempt from the lien of this Bond Agreement. To the extent such amounts on deposit in the Rebate Fund are not sufficient to meet the Rebatable Arbitrage, the amount of the deficiency shall be immediately paid by the Borrower to the Escrow Agent for deposit in the Rebate Fund. Notwithstanding anything contained in this Bond Agreement to the contrary, neither the Issuer nor the Escrow Agent shall be responsible or liable for any loss, liability, or expense incurred to the extent incurred as a result of the failure of the Borrower to fulfill its obligations with respect to the calculation and payment of the Rebatable Arbitrage. The Issuer and the Escrow Agent shall be entitled to rely conclusively upon the calculations provided by the Borrower.

The Escrow Agent, at the direction of the Borrower given in accordance herewith shall apply or cause to be applied the amounts in the Rebate Fund at the times and in the amounts

required by Section 148 of the Code solely for the purpose of paying the United States of America in accordance with Section 148 of the Code.

Moneys held in the Rebate Fund shall be invested and reinvested upon the written direction of the Borrower by the Escrow Agent in Permitted Investments that mature at such times specified in such written direction, which times shall be not later than such times as shall be necessary to provide moneys when needed for the payments to be made from such Rebate Fund and in accordance with the provisions hereof. The interest earned on any moneys or investments in the Rebate Fund shall be retained in such Fund.

Moneys held in the Rebate Fund shall be held by the Escrow Agent for a period of not less than seventy five (75) days following the redemption or final maturity of the Bond.

Section 3.7 Establishment of Completion Date. Within ten (10) days after completion of the Project the Borrower shall deliver to the Issuer, the Purchaser and the Escrow Agent, the Borrower's Completion Certificate, which shall evidence completion of the Project and shall be signed by an Authorized Borrower Representative stating the date of completion of the Project and that, as of such date, except for amounts retained by the Escrow Agent at the Borrower's direction for any Cost of the Project not then due and payable or, if due and payable not then paid: (i) the Project has been completed in accordance with the terms of this Bond Agreement and the Construction Loan Agreement; (ii) the Cost of all labor, services, materials and supplies used in the Project has been paid, or will be paid from amounts retained by the Escrow Agent at the Borrower's direction for any Cost of the Project not then due and payable; (iii) the Project Equipment has been installed to the Borrower's satisfaction, such Project Equipment so installed is suitable and sufficient for the efficient operation of the Project for the intended purposes and all Costs and expenses incurred in the acquisition and installation of such equipment have been paid, or will be paid from amounts retained by the Escrow Agent at the Borrower's direction for any Cost of the Project not then due and payable; and (iv) the Project is being operated as an authorized "redevelopment project" under the Act and substantially as described herein. Notwithstanding the foregoing, the Borrower's Completion Certificate may state that it is given without prejudice to any rights against third parties which exist at the date of the Borrower's Completion Certificate or which may subsequently come into being. Any amount remaining in the Escrow Fund after the Purchaser has confirmed the completion of the Project as set forth in the Borrower's Completion Certificate (except for amounts therein sufficient to cover costs of the Project not then due and payable or not then paid) shall be applied by the Escrow Agent in accordance with Section 3.11 hereof. The Borrower shall give the Escrow Agent investment instructions with respect thereto which would not result in such funds being invested at a Yield materially higher than the Yield on the Bond.

Section 3.8 Bond Not to Become Arbitrage Bond. The Escrow Agent will invest moneys held by the Escrow Agent as directed in writing by the Borrower. The Borrower hereby covenants to the Issuer and to the Purchaser that, notwithstanding any other provision of this Bond Agreement or any other instrument, it will neither make nor instruct the Escrow Agent to make any investment or other use of the Escrow Fund or other proceeds of the Bond which

would cause the Bond to be an arbitrage bond under Section 148 of the Code and the regulations thereunder, and that it will comply with the requirements of such Section and regulations throughout the term of the Bond. The Escrow Agent is entitled to rely on such written directions and shall not be liable for any damages, direct or indirect, special, consequential, foreseen or unforeseen, which may result from the Escrow Agent's compliance with such directions.

Section 3.9 Restriction on Use of Escrow Fund. The Borrower shall apply the proceeds of the Bond as set forth in the Tax Certificate and (i) shall not use or direct the use of moneys from the Escrow Fund in any manner, or take or omit to take any other action, so as to cause the interest on the Bond to be included in the gross income of the Purchaser for federal income tax, (ii) shall not use more than 2% of the proceeds of the Bond for costs of issuance thereof, (iii) shall use at least 95% of the proceeds of the Bond for Project Costs constituting property of a character subject to an allowance for depreciation for federal income tax purposes within the meaning of Section 167 of the Code and (iv) shall not use the proceeds of the Bond to acquire, construct or install facilities, the nature of which would cause the interest on the Bond to become subject to federal income tax.

Section 3.10 Three-Year Expenditure Requirement. Except to the extent otherwise approved by an opinion of nationally recognized bond counsel furnished by the Borrower to the Purchaser, within three years of the date of original delivery and payment for the Bond, the Borrower shall have completed the Project and caused all of the proceeds of the Bond to be expended for Costs of the Project.

Section 3.11 Completion of Project; Excess Bond Proceeds. When the Borrower delivers the Borrower's Completion Certificate to the Escrow Agent, the Purchaser and the Issuer as contemplated by Section 3.7 hereof and the Purchaser has confirmed the completion of the Project, any amounts remaining in the Escrow Fund, as and when determined by the Escrow Agent and the Purchaser, will be applied to the payment of the amounts then due pursuant to the Bond, this Bond Agreement and the other Loan Documents in such order and manner as the Purchaser may elect and, to the extent applied to principal, in inverse order of maturity. If for any reason the amount in the Escrow Fund proves insufficient to pay all Costs of the Project, the Borrower will pay the remainder of such Costs, which obligation shall survive the termination of this Bond Agreement and the Construction Loan Agreement.

Section 3.12 Escrow Agent Not Responsible for Use of Proceeds. The Borrower acknowledges that the Escrow Agent is not responsible for the ultimate use of the Bond Proceeds or any consequences, of whatever kind, resulting, directly or indirectly, from the Borrower's use of Bond Proceeds.

Section 3.13 Investment of Escrow Fund. (a) So long as no Event of Default has occurred and is continuing, the Escrow Agent may invest or reinvest, in accordance with written directions, or oral directions confirmed in writing, of the Authorized Borrower Representative only in the following obligations or securities (collectively "Permitted Investments"):

(i) direct obligations of the United States of America for which its full faith and credit is pledged,

(ii) obligations issued by any instrumentality or agency of the United States of America, whether now existing or hereafter organized and guaranteed by the United States of America,

(iii) obligations issued or guaranteed by any state of the United States or the District of Columbia which are rated at least Aa by Moody's or AA by Standard & Poor's,

(iv) repurchase agreements fully secured by obligations of the kind specified in (i) or (ii) above including repurchase agreements with the Escrow Agent,

(v) interest-bearing deposits in any bank or trust company (which may include the Escrow Agent) or any other bank or trust company which has a combined capital surplus and undivided profits at least \$50,000,000,

(vi) commercial paper with one of the two highest ratings from Moody's or Standard & Poor's and

(vii) deposits in the Federated Cash Management Fund Trust for short-term government obligations or any similar common trust fund established pursuant to law as a legal depository of public moneys.

(b) With respect to Permitted Investments described in clause (iv) of subsection (a) above, the Escrow Agent (i) shall make any such purchase subject to agreement with the seller for repurchase by the seller at a later date, and in such connection, may accept the seller's agreement for the payment of interest in lieu of the right to receive the interest payable by the issuer of the security purchased, provided that title to the security so purchased by the Escrow Agent shall vest in the Escrow Agent, that the Escrow Agent shall have a perfected security interest in such security and that the current market value of such security (or of cash or additional securities of the type described in said clauses pledged with the Escrow Agent as collateral for the purpose) is at all times at least equal to the total amount thereafter to become payable by the seller under said agreement, or (ii) may purchase shares of a fund whose sole assets are of a type described in clauses (i) and (ii) of subsection (a) above and such repurchase agreements thereof.

(c) If any Event of Default has occurred and is continuing hereunder, the Escrow Agent may make such investments in Permitted Investments as permitted under applicable laws as it deems advisable and as directed by the Purchaser; provided that in no event shall it invest in securities issued by or obligations of, or guaranteed by, the Issuer, the Borrower or any affiliate or agent of either of the foregoing.

Section 3.14 General Provisions of Investments. (a) Any permissible investments of moneys in the Escrow Fund and the Rebate Fund shall be held by or under the control of the Escrow Agent and shall be deemed at all times as part of the fund or account from which the investment was made and the interest accruing on any such investment and any profit realized from such investment shall be credited to such fund or account and any loss resulting from such investment shall be charged to such fund or account.

(b) The Borrower shall not direct the Escrow Agent to invest the proceeds of the Bond or payments due under this Bond Agreement, or any other funds which may be deemed to be proceeds of the Bond pursuant to Section 103 or 148 of the Code and the applicable regulations thereunder, including proposed regulations, in such a way as to cause the Bond to be treated as an "arbitrage bond" within the meaning of Section 103 or 148 of the Code and such regulations issued thereunder, as applicable to the Bond. In accordance with the foregoing, unless the Escrow Agent shall have been furnished with an approving opinion of Bond Counsel, no moneys in the Escrow Fund and the Rebate Fund shall be invested, except as provided in the Issuer's Arbitrage Certificate.

(c) The Escrow Agent shall not be held liable for any breach by the Borrower of provisions of the foregoing subparagraph as long as the Escrow Agent invests or reinvests, pursuant to written directions of the Authorized Borrower Representative moneys in Permitted Investments pursuant hereto. The Escrow Agent shall refuse to invest in obligations directed by the Authorized Borrower Representative which it believes in good faith violates the provisions hereof.

Section 3.15 Appointment of Escrow Agent; Acceptance of the Escrow. (a) At the request of the Borrower, Lakeland Bank is hereby appointed as Escrow Agent. The Escrow Agent hereby accepts the escrow imposed upon it by this Bond Agreement, and agrees to perform said escrow, but only upon and subject to the following express terms and conditions:

(i) The Escrow Agent may execute any of the powers hereof and perform any of its duties by or through attorneys or agents (provided that neither the Issuer, the Borrower nor any affiliate or agent of any of the foregoing shall act as an agent of the Escrow Agent), and shall not be answerable for any misconduct or negligence on the part of any attorney or agent appointed hereunder and shall be entitled to advice of counsel concerning all fiduciary matters hereof and the duties hereunder and under the Construction Loan Agreement and may in all cases pay such reasonable compensation to all such attorneys and agents as may reasonably be employed in connection with the fiduciary obligations hereof and may be reimbursed therefor. The Escrow Agent may act upon the opinion or advice of any attorney (who may be the attorney or attorneys for the Issuer or the Borrower) approved by the Escrow Agent in the exercise of its reasonable judgment. The Escrow Agent shall not be responsible for any loss or damage resulting from any action or nonaction in good faith in reliance upon such opinion or advice.

(ii) The Escrow Agent shall not be responsible for any recital herein or in the Bond or for insuring the Project, or collecting any insurance moneys, or for the validity of

execution by the Issuer of this Bond Agreement or of any supplements hereto or any instruments of further assurance, or for the sufficiency of the security for the Bond issued hereunder or intended to be secured hereby, or for the value or title of the Project or otherwise as to the maintenance of the security hereof, or, except as provided in Article VI hereof, for the eligibility of any security as an investment of escrow funds held by it.

(iii) The Escrow Agent shall not be accountable for the use of the Bond delivered hereunder after the Bond shall have been delivered in accordance with the instructions of the Issuer or the Borrower, as the case may be. The Escrow Agent may become the Purchaser of the Bond secured hereby with the same rights which it would have if not Escrow Agent. The Escrow Agent may engage in banking or other financial transactions with the Borrower with the same rights which it would have if not Escrow Agent.

(iv) The Escrow Agent shall be protected in acting in good faith upon any notice, request, requisition, investment instruction, consent, certificate, order, affidavit, letter, telegram or other paper or document believed to be genuine and correct and to have been signed or sent by the proper Person or Persons. Any action taken by the Escrow Agent pursuant to this Bond Agreement upon the request or authority or consent of any Person who at the time of making such request or giving such authority or consent is the Purchaser of any Bond, shall be conclusive and binding upon all future Purchasers of the same Bond and upon a Bond issued in exchange therefor or in place thereof.

(v) As to the existence or nonexistence of any fact or as to the sufficiency or validity of any instrument, paper or proceeding, the Escrow Agent shall be entitled, in the absence of bad faith on its part, to rely upon a certificate of the Issuer signed by (a) the Mayor of the Issuer, or (b) any other duly authorized Person (such authority to be conclusively evidenced by an appropriate resolution of the Issuer), or any certificate signed by an Authorized Borrower Representative, as sufficient evidence of the facts therein contained, and prior to the occurrence of an Event of Default of which the Escrow Agent has been notified or deemed notified as provided in Section 6.1 hereof, shall also be at liberty to accept a similar certificate to the effect that any particular dealing, transaction or action is necessary or expedient, but may at its discretion secure such further evidence deemed necessary or advisable, but shall in no case be bound to secure the same. The Escrow Agent may accept a certificate of the Clerk of the Issuer to the effect that a resolution in the form therein set forth has been adopted by the Issuer as conclusive evidence that such resolution has been duly adopted, and is in full force and effect.

(vi) The permissive right of the Escrow Agent to take actions enumerated in this Bond Agreement shall not be construed as a duty and it shall not be answerable for other than its gross negligence, willful misconduct, or willful default. The Escrow Agent shall act on behalf of the Issuer hereunder only insofar as its duties are expressly set forth and shall not have implied duties. The Escrow Agent shall not be under a duty to inquire into or pass upon the validity, effectiveness, genuineness or value of the Loan Documents and shall assume that the same are valid, effective and genuine and are what they purport to be. The Escrow Agent may consult with legal counsel selected by it and shall be entitled to rely upon the opinion of such

counsel in taking or omitting to take any action. The Escrow Agent shall have the same rights and powers as any other bank or lender and may exercise the same as though it were not the Escrow Agent, and it may accept deposits from, lend money to and generally engage in any kind of business with the Borrower as though it were not the Escrow Agent.

(vii) The Escrow Agent shall not be personally liable for any debts contracted or for damages to Persons or to personal property injured or damaged, or for salaries or non-fulfillment of contracts during any period.

(viii) The Escrow Agent shall not be required to give any bond or surety in respect of the execution of the said escrows and powers or otherwise in respect to the premises.

(ix) All moneys or investments received by the Escrow Agent shall, until used or applied as herein provided, be held in escrow in the manner and for the purposes for which they were received.

(b) In the case of and during the continuance of an Event of Default or upon the occurrence of an Event of Default as to which the Escrow Agent has received a notice as provided herein, the Escrow Agent shall exercise the rights and powers vested in it hereby, and use the same degree of care and skill in their exercise, as a prudent Person would exercise or use under the circumstances in the conduct of such Person's own affairs.

(c) Before taking any action hereunder the Escrow Agent may require that a satisfactory indemnity bond be furnished for the reimbursement of all expenses to which it may be put and to protect it against all liability, except liability that is adjudicated to have resulted from gross negligence, willful misconduct or willful default by reason of any action so taken.

Section 3.16 Fees, Charges and Expenses of Escrow Agent. The Escrow Agent shall be entitled to payment or reimbursement for reasonable fees for services rendered hereunder, including its annual fee, if any, and all reasonable expenses (including advances, counsel fees and other expenses reasonably and necessarily made or incurred by the Escrow Agent in connection with such services). The Borrower shall indemnify and hold the Escrow Agent harmless against any loss, liability or expense, incurred without gross negligence or intentional misconduct on the part of the Escrow Agent, arising out of or in connection with the acceptance or administration of the fiduciary obligations hereunder, including the costs and expenses of defending itself against any claim or liability in the premises. All fees, charges and other compensation to which the Escrow Agent may be entitled under the provisions of this Bond Agreement are required to be paid by the Borrower under the terms of this Bond Agreement and, accordingly, neither the Issuer nor the Purchaser shall be liable to indemnify the Escrow Agent for fees, charges and other compensation to which the Escrow Agent may be entitled, and by acceptance of the fiduciary obligations hereunder the Escrow Agent shall be deemed to have agreed to the foregoing.



TOWN OF NEWTON

RESOLUTION #141-2010

August 23, 2010

"Award Contract for Resurfacing of Various Streets"

WHEREAS, the Town of Newton publicly opened and read bids for the "Resurfacing of Various Streets" project on Wednesday, August 4, 2010 at 11:00am as follows:

<u>Name and Address of Bidder</u>	<u>Amount Bid</u>
Top Line Construction Corp. 22 Fifth Street Somerville, NJ 08876	\$441,283.76
Owl Contracting 36 Berkshire Valley Road Kenvil, NJ 07847	\$452,453.00
Tilcon New York Inc. 625 Mt. Hope Road Wharton, NJ 07885	\$485,193.01

WHEREAS, the Town of Newton Purchasing Agent, Town Engineer and Town Attorney recommend the award to Top Line Construction Corp., in the amount of \$441,283.76; and

WHEREAS, included in the bid amount of \$441,283.76 is an amount of \$131,867.59 for the proposed resurfacing of North Park Drive, which subproject is eligible as a State Aid Project from the New Jersey Department of Transportation, and as such the Mayor and Clerk are authorized to execute the attached Form of Resolution for submission to NJDOT by the Town Engineer; and

WHEREAS, the Chief Financial Officer has certified funds are available based on the attached certification;

NOW, THEREFORE BE IT RESOLVED, by the Town Council of the Town of Newton that the contract for the Resurfacing of the Various Roads be awarded to Top Line Construction Corp., 22 Fifth Street, Somerville, NJ in the amount of \$441,283.76, and the annexed State Aid Project Resolution be submitted to the New Jersey Department of Transportation by the Town Engineer.

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 23, 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 #: 141-2010

APPROVING: TOP LINE CONSTRUCTION CORP.

FOR THE PURPOSE OF: RESURFACING ROADS

IN THE AMOUNT OF: \$441,283.76

APPROPRIATED BY: CAPITAL - ORD.#2010-7

#3091074	CENTRAL PLAZA PARKING LOT	\$ 45,451.13
#30910795	PARKS - PINE STREET PARK	\$ 18,469.67
#30910795	PARKS - MEMORY PARK BASKETBALL COURT	\$ 32,093.63
#3091071	ROAD IMPR.-NORTH PARK DRIVE	\$131,867.59
#3091071	ROAD IMPROVEMENTS - VARIOUS	\$213,401.74

DATED THIS 23rd DAY OF AUGUST , 2010

BY

DAWN L. BABCOCK

CHIEF FINANCIAL OFFICER



TOWN OF NEWTON

RESOLUTION #142-2010

August 23, 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 23, 2010.

Lorraine A. Read, RMC
Municipal Clerk