

# **TAX INCREMENT FINANCING AGREEMENT**

**BY AND BETWEEN**

**THE TOWN OF HANOVER,**

**AND**

**PREP HANOVER REAL ESTATE LLC**

**THIS TAX INCREMENT FINANCING AGREEMENT** (the “AGREEMENT”) is made this 10<sup>th</sup> day of July, 2017, by and between the Town of Hanover, a municipal corporation duly organized under the laws of The Commonwealth of Massachusetts, having a principal place of business at Town Hall, 550 Hanover Street, Hanover, Massachusetts 02339 (hereinafter referred to as the “TOWN”), and PREP Hanover Real Estate LLC, a Delaware limited liability company (hereinafter referred to as the “DEVELOPER”) with an address c/o PECO Real Estate Partners, LLC, 5905 E. Galbraith Road, Suite 1000, Cincinnati, Ohio 45236 .

## **WITNESSETH**

**WHEREAS**, the TOWN wishes to utilize the Massachusetts Economic Development Assistance Program (the “EDIP”) managed by the Massachusetts Economic Assistance Coordinating Council (the “EACC”) to benefit the economy of the TOWN;

**WHEREAS**, the DEVELOPER owns the land, buildings, and improvements known as the Hanover Mall (the “FACILITY”), which is more particularly located as shown on the parcel description and map attached hereto as Exhibit A;

**WHEREAS**, the FACILITY has recently been purchased by the DEVELOPER who, over a period of years, plans to upgrade, improve, remodel and expand the FACILITY (the “CERTIFIED LOCAL INCENTIVE ONLY PROJECT”) which requires no public construction and which is described in more detail in the CERTIFIED LOCAL INCENTIVE ONLY PROJECT APPLICATION;

**WHEREAS**, once the CERTIFIED LOCAL INCENTIVE ONLY PROJECT is completed, and the FACILITY is at full operational capacity, the DEVELOPER will have created directly at least two (2) permanent, full-time jobs, and the DEVELOPER estimates that its tenants will create approximately one hundred (100) new jobs in connection with the CERTIFIED LOCAL INCENTIVE ONLY PROJECT. The DEVELOPER represents that it, and its tenants, will make an investment of at least Forty Million Dollars (\$40,000,000.00) in new construction, renovation, equipment, and improvement costs. The DEVELOPER anticipates the CERTIFIED LOCAL INCENTIVE ONLY PROJECT will reach its full operational capacity in fiscal year 2023.

**WHEREAS**, the DEVELOPER is seeking a Tax Increment Financing Exemption from the TOWN (the “EXEMPTION”) in order to enhance the financial viability of the CERTIFIED LOCAL INCENTIVE ONLY PROJECT to be established at the FACILITY, in accordance with the EDIP and Chapter 23A and Chapter 40, Section 59 of the Massachusetts General Laws;

**WHEREAS**, the TOWN strongly supports increased economic activity at the FACILITY to (i) provide additional jobs for residents of the TOWN, (ii) expand commercial, retail and industrial activity within the TOWN, (iii) assist the DEVELOPER to recover a portion of costs associated with needed public

infrastructure facilities such as sewer improvements, and offset other costs associated with the FACILITY, and (iv) develop a healthy economic and strong property tax base;

**WHEREAS**, the CERTIFIED LOCAL INCENTIVE ONLY PROJECT will further the economic development goals of the TOWN and attract a private project or investment that will contribute significantly to the resiliency of the local economy;

**WHEREAS**, on June 19, 2017, the Hanover Board of Selectmen recommended approval of this AGREEMENT to the Hanover Town Meeting;

**WHEREAS**, on June 19, 2017, Hanover Town Meeting voted to approve this AGREEMENT; and

**WHEREAS**, the Project is subject to approval by the EACC of the DEVELOPER's application for the Project and this AGREEMENT;

**NOW, THEREFORE**, in consideration of the mutual promises of the parties contained herein and other good and valuable consideration each to the other paid, and the receipt of which is hereby acknowledged, the parties hereby agree as follows:

**A. TAX INCREMENT FINANCING EXEMPTION**

1. The TOWN, acting by and through its Board of Selectmen, subject to approval by the Town Meeting, hereby enters into this AGREEMENT with the DEVELOPER for the CERTIFIED LOCAL INCENTIVE ONLY PROJECT.
2. Subject to Town Meeting approval of this AGREEMENT, the EXEMPTION is hereby granted by the TOWN to the DEVELOPER in accordance with Chapter 23A, Section 3E; Chapter 40, Section 59; and Chapter 59, Section 5 of the Massachusetts General Laws. The EXEMPTION shall be for the period of sixteen (16) years (the "EXEMPTION PERIOD"), commencing with Fiscal Year 2019 (which begins July 1, 2018) and ending with Fiscal Year 2034 (which ends June 30, 2034) and shall provide a percentage EXEMPTION from real estate taxation and personal property taxes, as described in the table below, on the increased assessed value of the FACILITY resulting from the CERTIFIED LOCAL INCENTIVE ONLY PROJECT as determined in Sections A-3 and A-4 below. The EXEMPTION percentages shall be calculated and shall remain unchallenged for each fiscal year as follows:

YEAR	FISCAL YEAR	TAX EXEMPTION
1	2019 (7/1/2018-6/30/2019)	0% of the increase in valuation
2	2020 (7/1/2019-6/30/2020)	0% of the increase in valuation
3	2021 (7/1/2020-6/30/2021)	0% of the increase in valuation
4	2022 (7/1/2021-6/30/2022)	100% of the increase in valuation
5	2023 (7/1/2022-6/30/2023)	100% of the increase in valuation
6	2024 (7/1/2023-6/30/2024)	100% of the increase in valuation
7	2025 (7/1/2024-6/30/2025)	100% of the increase in valuation
8	2026 (7/1/2025-6/30/2026)	100% of the increase in valuation
9	2027 (7/1/2026-6/30/2027)	75% of the increase in valuation
10	2028 (7/1/2027-6/30/2028)	75% of the increase in valuation
11	2029 (7/1/2028-6/30/2029)	75% of the increase in valuation
12	2030 (7/1/2029-6/30/2030)	75% of the increase in valuation

13	2031 (7/1/2030-6/30/2031)	75% of the increase in valuation
14	2032 (7/1/2031-6/30/2032)	50% of the increase in valuation
15	2033 (7/1/2032-6/30/2033)	50% of the increase in valuation
16	2034 (7/1/2033-6/30/2034)	50% of the increase in valuation

3. The EXEMPTION formula for the CERTIFIED LOCAL INCENTIVE ONLY PROJECT will be calculated as prescribed by the Massachusetts General Laws Chapter 40, Section 59 and in 760 CMR 22.00. The EXEMPTION formula shall apply to the incremental difference in the assessed valuation of the FACILITY between the base valuation in the base year, which shall be FY 2018, and the annual increase in assessed valuation of the FACILITY for the sixteen (16) years thereafter.
4. If the assessed value of the FACILITY is less than \$39,500,000, Developer agrees to pay to the TOWN as additional real estate taxes the difference between \$39,500,000 and the lower assessed value, multiplied by the rate imposed by the TOWN in that year to calculate real estate taxes. For example, if the assessed value is \$35,500,000, the amount to be paid is based on the following formula ( $\$39,500,000 - \$35,500,000 = \$4,000,000$ ) multiplied by the rate imposed by the TOWN in that tax year to calculate real estate taxes.
5. The annual tax bills of the TOWN relating to the FACILITY shall be issued based on the full and fair market value established by the TOWN'S Board of Assessors. The DEVELOPER shall pay such full market value taxes to the TOWN. Annually, the DEVELOPER shall file for tax abatement pursuant to Chapter 59, Section 59 of the Massachusetts General Laws in the amount equal to the tax savings defined as the annual value of the EXEMPTION calculated using the EXEMPTION percentages listed in Section A-2 above. Upon receipt of the DEVELOPER'S annual abatement application, the TOWN shall abate the taxes and pay the DEVELOPER the savings (defined as the annual value of the EXEMPTION as defined in Section 2 above) within fourteen (14) days and not as a credit against future taxes owed on the FACILITY.
6. The Town grants the EXEMPTION to the DEVELOPER in consideration of, and commitment by, the DEVELOPER to the obligations set forth below, which constitute the material representations of the parties that serve as the basis for the descriptions contained in this TIF AGREEMENT in accordance with M.G.L. c. 40 § 59(ii) and (v).

## **B. CONDITIONS**

The EXEMPTION granted to the DEVELOPER by the TOWN hereby is in consideration of the DEVELOPER'S commitments stated hereafter as follows:

1. To employ, directly, or indirectly, at least TWO (2) permanent full-time jobs as outlined in the CERTIFIED LOCAL INCENTIVE ONLY PROJECT APPLICATION, submitted to the TOWN by the DEVELOPER in connection with DEVELOPER'S request for the EXEMPTION, and use its best efforts to hire residents of the TOWN as outlined in the WORK FORCE ANALYSIS AND JOB CREATION PLANS section of the CERTIFIED LOCAL INCENTIVE ONLY PROJECT APPLICATION;
2. To invest or cause its tenants to invest at least Forty Million Dollars (\$40,000,000.00) in new construction, renovation, remodeling, equipment and improvements at the FACILITY to be



placed into service by the end of Fiscal Year 2023, as more completely described in the CERTIFIED LOCAL INCENTIVE ONLY PROJECT APPLICATION, which investments shall include the demolition of the existing interior mall, new construction of buildings with individual exterior entrances for each tenant, new landscaping, updated site lighting, updated waste water treatment facility, and the distribution of utilities to each tenant location, which new construction, equipment and improvements shall be placed in service by the end of Fiscal Year 2023;

3. To cooperate with the South Shore Workforce Investment Board, the local Office of the Massachusetts Department of Employment and Training and other agencies, as appropriate, in seeking to fill job vacancies with the DEVELOPER as they develop, and operate a job outreach program whereby Hanover residents are made aware of job opportunities with the DEVELOPER, including advertising in the local newspapers encouraging such residents to apply for employment any time advertisements are otherwise placed for employment at the FACILITY and hire properly qualified Hanover residents on a priority basis consistent with any applicable laws or regulations;
4. To use best efforts to afford the opportunity to solicit local contractors, vendors and suppliers, in connection with the construction of the CERTIFIED LOCAL INCENTIVE ONLY PROJECT and the operation of the FACILITY, subject to any applicable laws or regulations, and assuming equal qualification;
5. To submit annual reports, exclusively relating to the DEVELOPER, exclusive of its tenants, on job creation, job retention and new investments at the FACILITY to the TOWN, and the EACC by September 30 of each year during the EXEMPTION PERIOD. The annual report shall include (i) the number of permanent (regular), full and part time jobs created by the DEVELOPER, (ii) the number of people hired from within the TOWN annually, and on a cumulative basis, (iii) the value of capital investments made with respect to the FACILITY annually and on a cumulative basis, (iv) the amount of property taxes paid to the TOWN, and (v) the utilization of local contractors, vendors and suppliers annually and on a cumulative basis. ). If the DEVELOPER fails to submit a required annual report or the annual report indicates that the DEVELOPER has failed to meet one hundred (100%) percent of the jobs retained requirements and one hundred (100%) percent of the new jobs created requirements contained herein, the exemption from real property taxation shall be zero (0%) percent until the DEVELOPER is able to submit evidence demonstrating that it has come to meet such jobs retained and new jobs created requirements;
6. To pay all taxes owed the TOWN by the DEVELOPER relating to the FACILITY in a timely fashion; and
7. To permit the TOWN, through its Town Manager, to manage, administer, monitor and enforce its rights under this AGREEMENT pursuant to its terms.

### **C. ADDITIONAL PROVISIONS**

1. The DEVELOPER agrees that the TOWN has the right to petition to the EACC to decertify the CERTIFIED LOCAL INCENTIVE ONLY PROJECT and revoke this AGREEMENT if the TOWN, acting through its Board of Selectmen, determines that the DEVELOPER has failed in any material way to meet any of the obligations set forth in this AGREEMENT after notice and

opportunity to cure as provided in Section C.9 below. Upon de-certification by the EACC, the TOWN shall discontinue the EXEMPTION benefits described above, commencing with the fiscal year immediately following the year for which the DEVELOPER has so failed to meet its obligations. Prior to filing any such petition for de-certification, however, the TOWN shall give the DEVELOPER written notice of the alleged defaults and an opportunity to be heard at a public hearing on the matter. If the TOWN is satisfied that the DEVELOPER has made a good faith effort to meet its obligations under this AGREEMENT, the parties will attempt to negotiate a mutually acceptable and reasonable resolution, which may result in amendments to this AGREEMENT, prior to the TOWN filing a de-certification petition.

2. The DEVELOPER shall receive the benefits of the EXEMPTION as applied to any personal property taxes relating to the FACILITY during the time this AGREEMENT remains in force. However the EXEMPTION shall not be applicable to any personal property owned by the DEVELOPER'S tenants.
3. The DEVELOPER shall give the TOWN two (2) month's written notice prior to any proposed material change in the use of the FACILITY other than its primary continued use for retail purposes or its proposed disposition of the FACILITY, excluding sales of outparcels or sales of the FACILITY where the successor will continue to use the FACILITY for retail purposes. Said notice shall be given to the Town Manager, 550 Hanover Street, Hanover, MA 02339. The TOWN shall not, except as required by law, disclose any information provided by the DEVELOPER regarding the proposed change in the use of, or proposed disposition of the FACILITY.
4. Pursuant to the 760 CMR 22.05 (8)(d), this AGREEMENT shall be binding upon all parties to it, and be binding upon the DEVELOPER and its successors and assigns and shall inure to the benefit of affiliates of the DEVELOPER so long as the CERTIFIED LOCAL INCENTIVE ONLY PROJECT has not been de-certified by the EACC.
5. The CERTIFIED LOCAL INCENTIVE ONLY PROJECT becomes eligible for the EXEMPTION on the July 1<sup>st</sup> following the date on which the EACC approves the TIF Plan pursuant to which this AGREEMENT is executed, as provided in 760 CMR 22.05 (4)(d).
6. If any provision of this AGREEMENT shall be found invalid for any reason, such invalidity shall be construed as narrowly as possible and the balance of this AGREEMENT shall be deemed to be amended to the minimum extent necessary to provide to the TOWN, and the DEVELOPER substantially the benefits set forth in this AGREEMENT.
7. All notices permitted or required under the provisions of this AGREEMENT shall be in writing, and shall be sent by registered or certified mail, postage prepaid, or shall be delivered by private express carrier to the addresses listed above or at such other address as may be specified by a party in writing and served upon the other in accordance with this section.
8. If and to the extent that any party is prevented from performing its obligations hereunder either by an event of force majeure or otherwise, such party shall be excused from performing hereunder and shall not be liable in damages or otherwise, so long as the force majeure event or other event shall continue, and the parties instead shall negotiate in good faith with respect to appropriate modifications to the terms hereof, provided however, in the event such force majeure or other event precludes the TOWN from paying the DEVELOPER the abatement due to the DEVELOPER hereunder, or the DEVELOPER is prevented from paying its taxes to the



TOWN, such payment(s) shall be made as reasonably practicable and nothing contained herein shall mean that the TOWN or the DEVELOPER is not obligated to pay the same. For purposes of this AGREEMENT, the term "force majeure" as used herein shall mean any supervening cause beyond the reasonable control of the affected party, including without limitation requirement of statute or regulation; actions of any court, explosion, actions of the elements, war, terrorism, riots, mob violence, actions of regulatory authority, or public authority having jurisdiction; acts of God, fire, earthquake, floods, inability to procure or a TOWN shortage of labor, equipment, facilities, materials or supplies in the open market, failure of transportation, strikes, lockouts, actions of labor unions, condemnation, laws or orders of governmental or military authorities, denial of, refusal to grant or appeals of any permit, approval or action of any public or quasi-public authority, official, agency or subdivision and any litigation relating thereto, or any other cause similar to the foregoing, not within the control of such party obligated to perform such obligation.

9. Failure by the DEVELOPER to perform any term or provision of this AGREEMENT shall not constitute a default under this AGREEMENT unless DEVELOPER fails to commence to cure, correct or remedy such failure within thirty (30) days of the receipt of written notice of such failure from the TOWN to the DEVELOPER and thereafter fails to complete such cure, correction or remedy within ninety (90) days of the receipt of such written notice, or, with respect to defaults which cannot be remedied within such ninety (90) day period, within such additional period of time as is required to reasonable remedy such default, provided the DEVELOPER exercises due diligence in the remedying of such default. Notwithstanding the foregoing, any late payments of property taxes due under this AGREEMENT shall be subject to the same interest and penalty charges that would otherwise be levied in case of a failure to timely pay property taxes.
10. After receiving written notice from any person, firm or other entity, that such party holds a mortgage which includes as part or all of the mortgaged premises, any part of the FACILITY, the TOWN shall, so long as such mortgage is outstanding, be required to give to such holder the same notice as is required to be given to DEVELOPER under the terms of this AGREEMENT, but such notice may be given by the TOWN to the DEVELOPER and such holder concurrently. It is further agreed that such holder shall have the same opportunity to cure any default as is available to the DEVELOPER and that such holder shall have forty five (45) days more to cure any such default than would be available to DEVELOPER under the provisions of this AGREEMENT. In addition, so long as any such holder, within seventy five (75) days of receiving any such notice from the TOWN, shall commence proceedings for foreclosure of any such mortgage and shall, in the meantime, keep and perform or cause to be kept and performed all the obligations of the DEVELOPER to satisfy any condition of this AGREEMENT, to the extent that any such actions can be performed or undertaken by a party proceeding under foreclosure under applicable law, no default or failure of any condition shall exist under this AGREEMENT. Notwithstanding the foregoing, any late payments of property taxes due under this AGREEMENT shall be subject to the same interest and penalty charges that would otherwise be levied in case of a failure to timely pay property taxes.
11. This AGREEMENT and the benefits provided hereunder shall run with the land comprising the FACILITY and shall be binding upon, and inure to the benefit of the successors in interest to DEVELOPER. If the FACILITY is sold in part creating new Assessors' parcels, the EXEMPTION shall be passed through directly to the new owner or owners subject to and with the benefit of the terms of this AGREEMENT, upon approval by the Town. The Base Value of

each such tax parcel shall be that percentage of the original Base Value that the lot area of the new tax parcel or parcels represents of the land area currently of the FACILITY.

12. This AGREEMENT shall be governed by and construed in accordance with, the laws of The Commonwealth of Massachusetts. The TOWN and DEVELOPER hereby irrevocably submit to the jurisdiction of any state or federal court sitting in The Commonwealth of Massachusetts in any action or proceeding arising out of or relating to this AGREEMENT and hereby irrevocably agree that all claims in respect of such action or proceeding shall be heard and determined in a state or federal court sitting in The Commonwealth of Massachusetts.
13. This AGREEMENT may be executed in several counterparts, each of which shall be considered a duplicate original and the same instrument.
14. This AGREEMENT is expressly subject to and conditioned upon approval of the Town Meeting and approval of the Project as a CERTIFIED LOCAL INCENTIVE ONLY PROJECT by the EACC including certification of this AGREEMENT as an approved Tax Incremental Financing Agreement under M.G.L. c. 40 §59(vii). In the event that the Town Meeting does not approve this AGREEMENT, the EACC does not approve the Project, or the EACC decertifies the Project, this AGREEMENT shall immediately be deemed null and void, with no further recourse by either party.
15. This AGREEMENT contains the entire agreement between the parties, and supersedes all prior and contemporaneous agreements, communications, and understandings, whether written or oral, with respect to the subject matter hereof. Each party represents and warrants that, in executing this AGREEMENT; it has not relied and does not rely upon any representation or statement outside this written AGREEMENT made by the other party.
16. The undersigned signatories do hereby represent and warrant that they are duly authorized to enter into, execute and deliver this AGREEMENT.

*[Remainder of Page Intentionally Left Blank; Signature Page Follows]*

**WITNESSETH** the execution and delivery of this AGREEMENT by the TOWN, and DEVELOPER as an instrument under seal as of the date first above written.

The **TOWN OF HANOVER**,

By its Board of Selectmen, duly authorized pursuant to Town Meeting vote under Article 1 of the 2017 Special Town Meeting, duly called and held on June 19, 2017

  
\_\_\_\_\_  
David R. Delaney, Chairman

  
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John C. Tuzik, Vice-Chair


  
\_\_\_\_\_  
Brian E. Barthelmes, Selectman

\_\_\_\_\_  
Emmanuel J. Dockter, Selectman

  
\_\_\_\_\_  
Jocelyn R. Keegan, Selectman

**BOARD OF SELECTMEN**

**PREP HANOVER REAL ESTATE LLC,**  
a Delaware limited liability company

By:   
Name: SARA J. BRENNAN  
Title: COO



**Exhibit A**  
**Map of FACILITY**

