



**MEMORANDUM**

**TO:** Members of the Authority

**FROM:** Timothy J. Lizura  
President and Chief Operating Officer

**DATE:** March 13, 2018

**SUBJECT:** Agenda for Board Meeting of the Authority March 13, 2018

**Notice of Public Meeting**

**Roll Call**

**Approval of Previous Month's Minutes**

**Chairman's Report to the Board**

**CEO's Report to the Board**

**Board Presentation**

**Incentive Programs**

**Loans/Grants/Guarantees**

**Edison Innovation Fund**

**Office of Recovery**

**Board Memorandums**

**Real Estate**

**Executive Session**

**Public Comment**

**Adjournment**

**NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY**

**February 13, 2018**

**MINUTES OF THE MEETING**

Members of the Authority present: Chairman Thomas Scrivo; Mary Maples of the Executive Branch; Dini Ajmani representing Acting State Treasurer Elizabeth Muoio; Acting Commissioner Marlene Caride of the Department of Banking and Insurance; Acting Commissioner Robert Asaro - Angelo of Department of Labor and Workforce Development; Dan Ryan representing Acting Commissioner Catherine McCabe of the Department of Environmental Protection; Public Members Larry Downes, Vice Chairman; Charles Sarlo, Philip Alagia, Louis Goetting, Fred Dumont, Massiel Medina Ferrara, and William Layton,

Present via conference call: Public Member John Lutz, Third Alternate Public Member.

Absent: William J. Albanese, Sr., Second Alternate Public Member; and Rodney Sadler, Non-Voting Member.

Also present: Timothy Lizura, President and Chief Operating Officer; Deputy Attorney General Gabriel Chacon; Adam Sternbach, Governor's Authorities' Unit; and staff.

Mr. Scrivo called the meeting to order at 10:10 a.m.

Pursuant to the Internal Revenue Code of 1986, Mr. Lizura announced that this was a public hearing and comments are invited on any Private Activity bond projects presented today.

In accordance with the Open Public Meetings Act, Mr. Lizura announced that notice of this meeting has been sent to the *Star Ledger* and the *Trenton Times* at least 48 hours prior to the meeting, and that a meeting notice has been duly posted on the Secretary of State's bulletin board at the State House.

**MINUTES OF AUTHORITY MEETING**

The next item of business was the approval of the January 9, 2018 meeting minutes. A motion was made to approve the minutes by Mr. Dumont, and seconded by Mr. Layton, and was approved by 8 of the 13 voting members present, and one alternate.

Mary Maples of the Executive Branch; Dini Ajmani representing Acting State Treasurer Elizabeth Muoio; Acting Commissioner Marlene Caride of the Department of Banking and Insurance; Acting Commissioner Robert Asaro – Angelo of Department of Labor and Workforce Development; Dan Ryan representing Acting Commissioner Catherine McCabe of the Department of Environmental Protection abstained because they were not present for the meeting.

**FOR INFORMATION ONLY:** The next item was the presentation of the President's Monthly Report to the Board.

## **AUTHORITY MATTERS**

**ITEM:** Organizational Matters

**REQUEST:** To approve appointment of new Authority CEO, Tim Sullivan.

**RESOLUTION ATTACHED AND MARKED EXHIBIT: 1**

<b>Member</b>	<b>Yes</b>	<b>No</b>
Acting Commissioner Angelo	X	
Acting Commissioner Caride	X	
Dini Ajmani on behalf of Acting Treasurer Muoio	X	
Dan Ryan on behalf of Acting Commissioner McCabe	X	
Mary Maples representing Executive Branch	X	
Phil Alagia	X	
Fred Dumont		X
Lou Goetting	X	
Bill Layton	X	
Massiel Medina Ferrara	X	
Charles Sarlo	X	
Larry Downes	X	
Chairman Tom Scrivo	X	

## **INCENTIVE PROGRAMS**

### **Grow New Jersey Assistance Program**

**ITEM:** M&A Holdings Co. L.L.C.

APPL.#44722

**REQUEST:** To approve the finding of a material factor in the decision to make a capital investment and locate in municipality for GROW New Jersey Assistance program project.

**MOTION TO APPROVE:** Mr. Downes **SECOND:** Mr. Alagia **AYES:** 13 (and 1 alternate)

**RESOLUTION ATTACHED AND MARKED EXHIBIT: 2**

**ITEM:** M&A Holdings Co. L.L.C.

APPL.#44722

**REQUEST:** To approve the application of M&A Holdings Co. L.L.C. for a Grow New Jersey Assistance Program Grant to encourage the applicant to make a capital investment and locate in Camden, NJ. Project location of Camden, Camden County qualifies as a Garden State Growth Zone under N.J.S.A. 34:1B-242 et seq and the program's rules, N.J.A.C. 19:31-18. The project is eligible, pursuant to the statute, for bonus increases to the tax credit award for Deep Poverty Pocket, Jobs with Salary in Excess of GSGZ Average, Targeted Industry of Manufacturing, Mega/GSGZ Ind. Project w/ Cap. Inv. In Excess of Min 2007 Revit. Index>465 in Camden. The estimated annual award is \$540,000 for a 10-year term.

**MOTION TO APPROVE:** Mr. Layton **SECOND:** Ms. Ferrara **AYES:** 13 (and 1 alternate)

**RESOLUTION ATTACHED AND MARKED EXHIBIT: 3**

**ITEM:** ProFoot, Inc.

APPL.#44860

**REQUEST:** To approve the application of ProFoot, Inc. for a Grow New Jersey Assistance Program Grant to encourage the applicant to make a capital investment and locate in Elizabeth City, NJ. Project location of Elizabeth City, Union County qualifies as an Urban Transit Hub under N.J.S.A. 34:1B-242 et seq and the program's rules, N.J.A.C. 19:31-18. The estimated annual award is \$275,000 for a 10-year term.

**MOTION TO APPROVE:** Mr. Alagia      **SECOND:** Mr. Downes      **AYES:** 13 (and 1 alternate)

**RESOLUTION ATTACHED AND MARKED EXHIBIT: 4**

**Grow New Jersey Assistance Program- Modification**

**ITEM:** Seton Hall-Hackensack School of Medicine.

APPL.#41426

**REQUEST:** Consent to a change in the QBF; Approve a change in the applicant name; Add Hackensack Meridian Health and Seton Hall University as Affiliates; and Grant a one-year certification extension.

**MOTION TO APPROVE:** Mr. Dumont      **SECOND:** Mr. Layton      **AYES:** 9 (and 1 alternate)

**RESOLUTION ATTACHED AND MARKED EXHIBIT: 5**

Mr. Alagia abstained because Essex County is involved with the project.

Ms. Maples abstained because her father is a Commissioner in Nutley.

Mr. Goetting abstained because he does business with Hackensack.

Mr. Sarlo abstained because he does business with Hackensack.

**ITEM:** AP&G Co., Inc

APPL.#39523

**REQUEST:** Consent to a second six-month extension to complete the certification of cost and job requirements

**MOTION TO APPROVE:** Mr. Goetting      **SECOND:** Ms. Ferrara      **AYES:** 13 (and 1 alternate)

**RESOLUTION ATTACHED AND MARKED EXHIBIT: 6**

**LOANS/GRANTS/GUARANTEES**

**Premier Lender Program (PLP)**

**ITEM:** ConnectOne Bank

**REQUEST:** Approve the addition of ConnectOne Bank as a Premier Lender

**MOTION TO APPROVE:** Mr. Goetting      **SECOND:** Ms. Ferrara      **AYES:** 12 (and 1 alternate)

**RESOLUTION ATTACHED AND MARKED EXHIBIT: 7**

Acting Commissioner Marlene Caride abstained because she heads the Department of Banking and Insurance.

**Hazardous Discharge Site Remediation Fund**

**ITEM:** Summary of NJDEP Hazardous Discharge Site Remediation Fund Program projects approved by the Department of Environmental Protection.

**MOTION TO APPROVE:** Mr. Ryan **SECOND:** Mr. Alagia **AYES:** 13 (and 1 alternate)

**RESOLUTION ATTACHED AND MARKED EXHIBIT: 8**

**PROJECT:** Nagi Botros Sidham Botros

APPL.#44529

**LOCATION:** Irvington Township, Essex County

**PROCEEDS FOR:** Remedial and Site Investigation

**FINANCING:** \$191,077

**Petroleum Underground Storage Tank (PUST)**

**ITEM:** Estate of Lawrence Borek

**REQUEST:** Refer this legal matter to the Office of Administrative Law (OAL) in accordance with the Appellate Division's order.

**MOTION TO APPROVE:** Commissioner Caride **SECOND:** Mr. Goetting **AYES:** 13 (and 1 alternate)

**RESOLUTION ATTACHED AND MARKED EXHIBIT: 9**

**ITEM:** Estate of Winifred Skorski

**REQUEST:** Decline the application for PUST conditional hardship grant funding as it did not meet the program requirements.

**MOTION TO APPROVE:** Mr. Downes **SECOND:** Mr. Ryan **AYES:** 13 (and 1 alternate)

**RESOLUTION ATTACHED AND MARKED EXHIBIT: 10**

**ITEM:** Summary of NJDEP Petroleum UST Remediation, Upgrade & Closure Fund Program projects approved by the Department of Environmental Protection.

**MOTION TO APPROVE:** Mr. Ryan **SECOND:** Commissioner Caride **AYES:** 13 (and 1 alternate)

**RESOLUTION ATTACHED AND MARKED EXHIBIT: 11**

**PROJECT:** M&M Auto Mechanic Inc

APPL.#44754

**LOCATION:** Perth Amboy City, Middlesex County

**PROCEEDS FOR:** Remediation

**FINANCING:** \$45,541

**PROJECT:** Rose Alvarez

APPL.#44667

**LOCATION:** Union City, Hudson County

**PROCEEDS FOR:** Remediation

**FINANCING:** \$68,376

**PROJECT:** Gloria Dixon APPL.#44845

**LOCATION:** Woodbridge Township, Middlesex County

**PROCEEDS FOR:** Remediation

**FINANCING:** \$224,151

**PROJECT:** Saint James Church

APPL.#44668

**LOCATION:** Newark City, Essex County

**PROCEEDS FOR:** Remediation

**FINANCING:** \$525,390

### **EDISON INNOVATION FUND**

#### **NJ CoVest Fund Program**

**PROJECT:** Apprentice FS, Inc.

APPL.#44752

**LOCATION:** Jersey City, Hudson County

**PROCEEDS FOR:** Working Capital

**FINANCING:** \$250,000

**MOTION TO APPROVE:** Ms. Ferrara **SECOND:** Mr. Ryan

AYES: 13 (and 1 alternate)

**RESOLUTION ATTACHED AND MARKED EXHIBIT: 12**

### **OFFICE OF RECOVERY**

#### **Stronger NJ Business Loan Modification**

**ITEM:** Thomas Tweer & Robert Tweer dba Hobby Lobby Marine

APPL.#39045

**REQUEST:** Consent to a principal and interest moratorium for 12 months.

**MOTION TO APPROVE:** Mr. Downes **SECOND:** Commissioner Angelo

AYES: 13 (and 1 alternate)

**RESOLUTION ATTACHED AND MARKED EXHIBIT: 13**

### **BOARD MEMORANDUMS**

**FOR INFORMATION ONLY:** Projects approved under Delegated Authority

**Premier Lender Program:** 100 Mt Holly Bypass, LLC (44843), Britton Realty of Lawrenceville, LLC (44787)

**FOR INFORMATION ONLY:** Post Closing Credit Delegated Authority Approval for 4Q 2017

**FOR INFORMATION ONLY:** PUST and HDSRF Program Funding Status

**FOR INFORMATION ONLY: Technology & Life Sciences- Delegated Authority Approvals for 2017**

**EXECUTIVE SESSION**

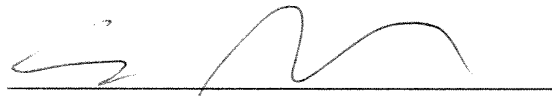
Chairman Scrivo invited members to discuss the informational item in Executive Session. The consensus was that it was not necessary.

**PUBLIC COMMENT**

There was no public comment.

There being no further business, on a motion by Mr. Dumont, and seconded by Mr. Layton, the meeting was adjourned at 11am.

Certification: The foregoing and attachments represent a true and complete summary of the actions taken by the New Jersey Economic Development Authority at its meeting.

A handwritten signature in black ink, appearing to read 'Erin Gold', is written over a horizontal line.

Erin Gold, Director, Marketing & Public Affairs  
Assistant Secretary



## MEMORANDUM

**TO:** Members of the Authority  
**FROM:** Tim Sullivan  
**DATE:** March 13, 2018  
**RE:** Monthly Report to the Board

### ORGANIZATIONAL UPDATE

In his first official act after being sworn in, Governor Phil Murphy signed Executive Order #1 on January 16, 2018 to combat gender inequality and promote equal pay for women in New Jersey. Under Executive Order #1, state agencies and offices are explicitly prohibited from asking a job applicant for their past wage history or investigating the prior salaries of their applicants. Consistent with the EDA's commitment to diversity and inclusion, our Human Resources team is assessing organizational policies to ensure alignment with the spirit and standards of the Executive Order.

Later in January, Governor Murphy signed an Executive Order directing New Jersey to re-enter the Regional Greenhouse Gas Initiative (RGGI), a multi-state cooperative that auctions carbon emission allowances and invests the proceeds in energy efficiency, consumer benefit, and renewable energy programs. The EDA is working closely with the Board of Public Utilities, the Department of Environmental Protection, and other state agencies to support these efforts, and to accelerate the growth of clean energy jobs and businesses in New Jersey.

Another new initiative the EDA is focused on is the Opportunity Zones Program, which was introduced as part of the federal Tax Cuts and Jobs Act of 2017. The program will allow investors with unrealized capital gains to temporarily defer taxes by investing in distressed areas designated as Opportunity Zones. The bill also creates Opportunity Funds, which will allow investors to execute and diversify investments in low-income neighborhoods. The EDA has been working with the Governor's Office, the Department of Community Affairs, the New Jersey Redevelopment Authority, and other state agencies to support this new program. Today we are joined by George Helmy, State Director for Senator Cory Booker, who will present an overview of this exciting new program.

Also note that EDA continues to provide information to the Office of the State Comptroller for its performance audit of EDA's incentives programs. The audit was mandated by Executive Order #3, signed by Governor Murphy on January 19.

Several of the reports issued by the Governor-Elect's Transition Advisory Committees provided thoughtful recommendations and actionable steps to spur economic growth for the state and in communities across New Jersey. The recommendations from the Stronger and Fairer Economy Transition Advisory Committee are most applicable to EDA's scope, however the EDA will potentially play an essential role in a range of initiatives, including energy and resiliency, urban and regional revitalization, labor and workforce development, government innovation and technology. The EDA is working in collaboration with the Governor's office and partners throughout the administration to implement recommendations from the various transition committee reports. Updates on progress will be provided regularly.



## **GOVERNOR MURPHY CREATES JOBS AND ECONOMIC OPPORTUNITY COUNCIL**

An Executive Order signed by Governor Phil Murphy late in February established the Jobs and Economic Opportunity Council, which will provide the Governor with advice and recommendations for stimulating job growth and workforce development in New Jersey. The Executive Order mandates that the Council formulate recommendations related to national and state economic trends, possible government action to expand employment opportunities, sources for infrastructure funding, priorities for federal and state-funded programs, and the development of software technology to improve services for job seekers.

I am pleased to have been asked to serve on the Council, along with Lieutenant Governor Sheila Oliver, the State Treasurer, Commissioner of Education, Commissioner of Labor, Secretary of Higher Education, Commissioner of Banking and Insurance, and the Director of the John J. Heldrich Center for Workforce Development at Rutgers University. The Governor's Chief of Staff, Chief Counsel, Chief Policy Advisor, and Deputy Chief of Staff for Economic Growth will also be on the Council.

## **RECOGNITION OF EDA-SUPPORTED COMPANIES AND PROJECTS ABUNDANT IN FEBRUARY**

EDA-supported projects throughout the State were recognized in February for their contributions to the State's economy. In Newark, vertical farming company AeroFarms was selected by *Fast Company* for the magazine's annual "Most Innovative Companies" list. AeroFarms created its state-of-the-art aeroponic farm inside a converted steel warehouse in Newark, supported by the Grow New Jersey and Economic Redevelopment and Growth (ERG) Programs. AeroFarms also received support from Newark Venture Partners, in which the EDA is a limited partner investor.

The Cultural Center Redevelopment project in New Brunswick has been selected as a 2018 "Mixed-Use Deal of the Year" finalist by the National Association of Industrial and Office Properties – New Jersey (NAIOP NJ). The \$171.8 million, 450,000-square-foot, 23-story New Brunswick Cultural Center Redevelopment project includes 207 apartments, multiple performance venues, office space and a parking garage. Supported under ERG, other partners include New Brunswick Development Corp., City of New Brunswick, Middlesex County, Rutgers University, Pennrose Properties, New Brunswick Cultural Center, and the New Brunswick Parking Authority.

Two other EDA-supported projects were selected by NAIOP NJ as finalists. Under consideration in the "Office Deal of the Year" category are Billtrust's lease for its new 89,000-square-foot headquarters in Lawrenceville, which represented the fourth-largest office lease statewide, and Barclays purchase of a 525,000-square foot office property in Whippany. Winners will be revealed at the 31st Annual Commercial Real Estate Awards Gala on May 10 at The Palace at Somerset Park.

## **CLOSED PROJECTS**

In the first two months of 2018, EDA closed on more than \$12 million in traditional lending assistance to support 18 projects, leveraging more than \$40 million in capital investment and the creation of 81 new permanent jobs.

In addition to the assistance provided through traditional lending programs, EDA also executed agreements, pending certification, with six projects for more than \$220 million, leveraging an estimated \$250 million in capital investment, the expected creation of more than 850 new jobs and more than 700 construction jobs, and the retention of 2,100 jobs at risk of leaving New Jersey.

**EVENTS/SPEAKING ENGAGEMENTS/PROACTIVE OUTREACH**

EDA representatives participated as speakers, attendees, or exhibitors at 18 events in February. These included the Cooper's Ferry Annual Meeting in Camden, the New Jersey Federal Credit Union Passaic Economic Impact Breakfast, and the Boost Your Business with Facebook events in Trenton and Newark.

A handwritten signature in dark ink, appearing to be 'T. L.', is positioned above a horizontal line.

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**INCENTIVE PROGRAMS**

## **GROW NEW JERSEY ASSISTANCE PROGRAM (GROW NJ)**

**NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY  
PROJECT SUMMARY – GROW NEW JERSEY ASSISTANCE PROGRAM**

As created by statute, the Grow New Jersey Assistance (Grow NJ) Program is available to businesses creating or retaining jobs in New Jersey and making a qualified capital investment at a qualified business facility in a qualified incentive area. Applications to the Grow NJ Program are evaluated to determine eligibility in accordance with P.L. 2013, c. 161 and as amended through the “Economic Opportunity Act of 2014, Part 3,” P.L. 2014, c. 63, based on representations made by applicants to the Authority. Per N.J.S.A. 34:1B-242 et seq./N.J.A.C. 19:31-1 and the program’s rules, applicants must employ a certain number of personnel in retained and/or new full-time jobs at a qualified business facility and make, acquire or lease a capital investment equal to or greater than defined thresholds in order to be eligible for tax credits. In addition to satisfying these statutorily-established job and capital investment requirements, applications undergo a material factor review to verify that the tax credits are material to the project advancing in New Jersey. Applications are also subject to a net benefit analysis to verify that the anticipated revenue resulting from the proposed project will be greater than the incentive amount. Credits are only certified for use annually and proportionally based on actual job performance during that year and an applicant is subject to forfeiture and recapture in event of default.

**APPLICANT:** Carts Mobile Food Equipment Corporation P44861

**PROJECT LOCATION:** 300 West 3<sup>rd</sup> Street Plainfield City Union County

**GOVERNOR’S INITIATIVES:**

(X) NJ Urban Fund ( ) Edison Innovation Fund ( ) Core ( ) Clean Energy

**APPLICANT BACKGROUND:**

Carts Mobile Food Equipment Corporation dba Carts Food Equipment (CFE) was founded in 1979 as a manufacturer of pushcarts serving hotdog vendors in New York City. CFE has since expanded, currently operating as a comprehensive provider of equipment for the foodservice industry. CFE manufactures a full line of custom-fabricated equipment serving customers including restaurants, food processors, corporate cafeterias, hotels, university dining halls, and mobile kitchens. The applicant has demonstrated the financial ability to undertake the project.

**MATERIAL FACTOR/NET BENEFIT:**

CFE is currently located in an owned facility in Brooklyn, NY housing its headquarters, manufacturing, and warehouse operations that it has outgrown, with current real estate market conditions making expanding in Brooklyn impractical. CFE is currently evaluating options to relocate these operations, having identified a 19,150 sq. ft. facility in Plainfield, NJ to purchase that would meet its operational needs after renovations. The project would represent the addition of 34 jobs new to the State and capital investment which includes renovations and the purchase of new machinery and equipment. Alternatively, CFE would make a comparable investment in a 20,000 sq. ft. facility in Glenolden, PA to house its combined operations and 34 related positions.

The location analysis submitted to the Authority shows New Jersey to be the more expensive option and, as a result, the management of Carts Mobile Food Equipment Corporation has indicated that the grant of tax credits is a material factor in the company’s location decision. The Authority is in receipt of an executed CEO certification by David Nadler, the President and highest-ranking employee of Carts Mobile Food Equipment Corporation, that states that the application has been reviewed and the information submitted and representations contained therein are accurate and that, but for the Grow New Jersey award, the creation and/or retention of jobs would not occur. It is estimated that the project would have a net benefit to the State of \$444,780 over the 20-year period required by the Statute.

**ELIGIBILITY AND GRANT CALCULATION:**

Per the Grow New Jersey statute, N.J.S.A. 34:1B-242 et seq. and the program's rules, N.J.A.C. 19:31-18, the applicant must:

- Make, acquire, or lease a capital investment equal to, or greater than, the minimum capital investment, as follows:

Minimum Capital Investment Requirements	(\$/Square Foot of Gross Leasable Area)
<b>Industrial/Warehouse/Logistics/R&amp;D - Rehabilitation Projects</b>	<b>\$ 20</b>
Industrial/Warehouse/Logistics/R&D - New Construction Projects	\$ 60
Non-Industrial/Warehouse/Logistics/R&D – Rehabilitation Projects	\$ 40
Non-Industrial/Warehouse/Logistics/R&D – New Construction Projects	\$120

*Minimum capital investment amounts are reduced by 1/3 in GSGZs and in eight South Jersey counties: Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Ocean and Salem*

- Retain full-time jobs **AND/OR** create new full-time jobs in an amount equal to or greater than the applicable minimum, as follows:

Minimum Full-Time Employment Requirements	(New / Retained Full-time Jobs)
Tech start ups and <b>manufacturing businesses</b>	<b>10 / 25</b>
Other targeted industries	25 / 35
All other businesses/industries	35 / 50

*Minimum employment numbers are reduced by 1/4 in GSGZs and in eight South Jersey counties: Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Ocean and Salem*

As an Industrial - Rehabilitation Project for a manufacturing business in Union County, this project has been deemed eligible for a Grow New Jersey award based upon these criteria, outlined in the table below:

Eligibility	Minimum Requirement	Proposed by Applicant
Capital Investment	\$383,000	\$1,598,000
New Jobs	10	34
Retained Jobs	25	0

The Grow New Jersey Statute and the program's rules also establish criteria for the Grant Calculation for **New Full-Time Jobs**. This project has been deemed eligible for a Base Award and Increases based on the following:

<b>Base Grant</b>	<b>Requirement</b>	<b>Proposed by Applicant</b>
Distressed Municipality	Base award of \$4,000 per year for projects located in a designated Distressed Municipality	Plainfield City is a designated Distressed Municipality
<b>Increase(s) Criteria</b>		
Deep Poverty Pocket or Choice Neighborhood	An increase of \$1,500 per job for a project locating in a Deep Poverty Pocket or Choice Neighborhood	300 West 3 <sup>rd</sup> Street is located in a Deep Poverty Pocket.
Transit Oriented Development	An increase of \$2,000 per job for a project locating in a Transit Oriented Development	300 West 3 <sup>rd</sup> Street is located in a Transit Oriented Development by virtue of being within 1/2 mile of the midpoint of a New Jersey Transit Corporation rail station.
Capital Investment in Excess of Minimum (non-Mega)	An increase of \$1,000 per job for each additional amount of capital investment in an industrial premises that exceeds the minimum amount required for eligibility by 20%, with a maximum increase of \$3,000	The proposed capital investment of \$1,598,000 is 317.2% above the minimum capital investment resulting in an increase of \$3,000 per year.
Targeted Industry	An increase of \$500 per job for a business in a Targeted Industry of Transportation, Manufacturing, Defense, Energy, Logistics, Life Sciences, Technology, Health, or Finance excluding a primarily warehouse, distribution or fulfillment center business	The applicant is a Manufacturing business.

The Grow New Jersey Statute and the program's rules establish a Grant Calculation for **Retained Full-Time Jobs**. The Grant Calculation for Retained Full-Time Jobs for this project will be based upon the following:

<b>PROJECT TYPE</b>	<b>GRANT CALCULATION</b>
Project located in a Garden State Growth Zone	The Retained Full-Time Jobs will receive the same Grant Calculation as New Full-Time Jobs as shown above subject to the same per employee limits.
A Mega Project which is the U.S. headquarters of an automobile manufacturer located in a priority area	The Retained Full-Time Jobs will receive the same Grant Calculation as New Full-Time Jobs as shown above subject to the same per employee limits.
The Qualified Business Facility is replacing a facility that has been wholly or substantially damaged as a result of a federally declared disaster	The Retained Full-Time Jobs will receive the same Grant Calculation as New Full-Time Jobs as shown above subject to the same per employee limits.
<b>All other projects</b>	<p>The Retained Full-Time Jobs will receive the lesser of:</p> <ul style="list-style-type: none"> <li>- ½ of the Grant Calculation for New Full-Time Jobs (<math>1/2 * \\$11,000 = \\$5,500</math>) or</li> <li>- <b>The estimated eligible Capital Investment divided by 10 divided by the total New and Retained Full-Time Jobs</b> (<math>\\$1,598,000 / 10 / (34 + 0) = \\$4,700</math>)</li> </ul> <p>In the event that upon completion a project has a lower actual Grant Calculation for New Full-Time Jobs or a lower Capital Investment than was estimated herein, the above calculations will be re-run and the applicant will receive the lesser of the two amounts.</p>



**Grant Calculation****BASE GRANT PER EMPLOYEE:**

Distressed Municipality	\$ 4,000
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**INCREASES PER EMPLOYEE:**

Deep Poverty Pocket:	\$ 1,500
Transit Oriented Development:	\$ 2,000
Capital Investment in Excess of Minimum (non-Mega):	\$ 3,000
Targeted Industry (Manufacturing):	\$ 500

<b>INCREASE PER EMPLOYEE:</b>	<b><u>\$ 7,000</u></b>
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**PER EMPLOYEE LIMIT:**

Distressed Municipality	\$11,000
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<b>LESSER OF BASE + INCREASES OR PER EMPLOYEE LIMIT:</b>	<b>\$ 11,000</b>
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**AWARD:**

New Jobs:	34 Jobs X \$11,000 X 100% =	\$ 374,000	
Retained Jobs:	0 Jobs X \$ 4,700 X 100% =	<u>\$ 0,000</u>	

<b>Total:</b>	<b>\$ 374,000</b>
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**ANNUAL LIMITS:**

Distressed Municipality	\$ 8,000,000
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<b>TOTAL ANNUAL AWARD</b>	<b><u>\$ 374,000</u></b>
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**PROJECT IS:** (X) Expansion                      (X) Relocation

<b>ESTIMATED ELIGIBLE CAPITAL INVESTMENT:</b>	\$1,598,000
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**ANTICIPATED COMPLETION DATE**

**FOR CAPITAL INVESTMENT:**

December 31, 2019

**ANTICIPATED DATE THAT JOBS WILL BE AT QUALIFIED**

**BUSINESS FACILITY:**

December 31, 2019

**SIZE OF PROJECT LOCATION:**

19,150 sq. ft.

**NEW BUILDING OR EXISTING LOCATION?**

Existing

**INDUSTRIAL OR NON-INDUSTRIAL FACILITY?**

Industrial

**CONSTRUCTION:** (X) Yes                      ( ) No

<b>Carts Mobile Food Equipment Corporation</b>	<b>Grow New Jersey</b>	<b>Page 6</b>
<b>NEW FULL-TIME JOBS:</b>		34
<b>RETAINED FULL-TIME JOBS:</b>		0
<b>STATEWIDE BASE EMPLOYMENT (AS OF DECEMBER 31, 2017):</b>		0
<b>CITY FROM WHICH JOBS WILL BE RELOCATED IN NEW JERSEY:</b>		NA
<b>MEDIAN WAGES:</b>	\$	40,961
<b>NET BENEFIT MODEL:</b>		2017
<b>GROSS BENEFIT TO THE STATE (OVER 20 YEARS, PRIOR TO AWARD):</b>	\$	4,184,780
<b>TOTAL AMOUNT OF AWARD:</b>	\$	3,740,000
<b>NET BENEFIT TO THE STATE (OVER 20 YEARS, NET OF AWARD):</b>	\$	444,780
<b>ELIGIBILITY PERIOD:</b>		10 years

**CONDITIONS OF APPROVAL:**

1. Applicant has not committed to locate the project in New Jersey without the Grow New Jersey tax credit, as may be shown by an executed lease or purchase contract.
2. Applicant will create and/or retain jobs and will make eligible capital investment, at the qualified business facility, of no less than the minimum eligibility requirements after Board approval, but no later than three years from Board approval.
3. No employees that are subject to a BEIP, BRRAG, legacy Grow New Jersey, Urban Transit Hub or other NJEDA incentive program are eligible for calculating the benefit amount of the Grow New Jersey tax credit.
4. No capital investment that is subject to a BEIP, BRRAG, legacy Grow New Jersey, Urban Transit Hub or other NJEDA incentive program is eligible to be counted toward the capital investment requirement for Grow New Jersey.
5. Within twelve months following approval, the applicant will submit progress information indicating that the business has site plan approval, committed financing for, and site control of the qualified business facility.
6. If the number of employees, salaries or capital investment to be counted in the Net Benefit Test (NBT) falls by more than 10% from the amounts contained herein, the net benefit to the state will need to be recalculated under the then current NBT model, which may reduce the amount of the Grow NJ Award.

**APPROVAL REQUEST:**

The Members of the Authority are asked to approve the proposed Grow New Jersey grant to encourage Carts Mobile Food Equipment Corporation to increase employment in New Jersey. The recommended grant is contingent upon receipt by the Authority of evidence that the company has met certain criteria to substantiate the recommended award. If the criteria met by the company differs from that shown herein, the award amount and the term will be lowered to reflect the award amount that corresponds to the actual criteria that have been met.

**DEVELOPMENT OFFICER:** Diane Ubinger

**APPROVAL OFFICER:** Kevin DeSmedt

**NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY  
PROJECT SUMMARY – GROW NEW JERSEY ASSISTANCE PROGRAM**

As created by statute, the Grow New Jersey Assistance (Grow NJ) Program is available to businesses creating or retaining jobs in New Jersey and making a qualified capital investment at a qualified business facility in a qualified incentive area. Applications to the Grow NJ Program are evaluated to determine eligibility in accordance with P.L. 2013, c. 161 and as amended through the “Economic Opportunity Act of 2014, Part 3,” P.L. 2014, c. 63, based on representations made by applicants to the Authority. Per N.J.S.A. 34:1B-242 et seq./N.J.A.C. 19:31-1 and the program’s rules, applicants must employ a certain number of personnel in retained and/or new full-time jobs at a qualified business facility and make, acquire or lease a capital investment equal to or greater than defined thresholds in order to be eligible for tax credits. In addition to satisfying these statutorily-established job and capital investment requirements, applications undergo a material factor review to verify that the tax credits are material to the project advancing in New Jersey. Applications are also subject to a net benefit analysis to verify that the anticipated revenue resulting from the proposed project will be greater than the incentive amount. Credits are only certified for use annually and proportionally based on actual job performance during that year and an applicant is subject to forfeiture and recapture in event of default.

**APPLICANT:** Feldware, Inc. P44900

**PROJECT LOCATION:** 900 Hart Street Rahway City Union County

**GOVERNOR’S INITIATIVES:**

(X) NJ Urban Fund ( ) Edison Innovation Fund ( ) Core ( ) Clean Energy

**APPLICANT BACKGROUND:**

Feldware, Inc., established in 1959, is a manufacturer of unfinished metal stampings and plastic jar discs used primarily in the cosmetic industry. The company has been family owned and operated for three generations. The applicant is currently located in Brooklyn, NY. The applicant has demonstrated the financial ability to undertake the project.

**MATERIAL FACTOR/NET BENEFIT:**

Feldware, Inc., is seeking additional space to accommodate its increased demand. The company is considering a 44,000 Sq. Ft. facility in Rahway, NJ or a 40,000 Sq. Ft. facility in Freeport, NY. The project involves the creation of 45 new positions.

The location analysis submitted to the Authority shows New Jersey to be the more expensive option and, as a result, the management of Feldware, Inc. has indicated that the grant of tax credits is a material factor in the company’s location decision. The Authority is in receipt of an executed CEO certification by Charles Feldman, the CEO of Feldware, Inc., that states that the application has been reviewed and the information submitted and representations contained therein are accurate and that, but for the Grow New Jersey award, the creation and/or retention of jobs would not occur. It is estimated that the project would have a net benefit to the State of \$6.5 million over the 20 year period required by the Statute.

**ELIGIBILITY AND GRANT CALCULATION:**

Per the Grow New Jersey statute, N.J.S.A. 34:1B-242 et seq. and the program’s rules, N.J.A.C. 19:31-18, the applicant must:

- Make, acquire, or lease a capital investment equal to, or greater than, the minimum capital investment, as follows:

<u>Minimum Capital Investment Requirements</u>	<u>(\$/Square Foot of Gross Leasable Area)</u>
<b>Industrial/Warehouse/Logistics/R&amp;D - Rehabilitation Projects</b>	<b>\$ 20</b>

**Feldware, Inc.****Grow New Jersey****Page 2**

Industrial/Warehouse/Logistics/R&D - New Construction Projects \$ 60  
 Non-Industrial/Warehouse/Logistics/R&D – Rehabilitation Projects \$ 40  
 Non-Industrial/Warehouse/Logistics/R&D – New Construction Projects \$120  
*Minimum capital investment amounts are reduced by 1/3 in GSGZs and in eight South Jersey counties: Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Ocean and Salem*

- Retain full-time jobs **AND/OR** create new full-time jobs in an amount equal to or greater than the applicable minimum, as follows:

<u>Minimum Full-Time Employment Requirements</u>	<u>(New / Retained Full-time Jobs)</u>
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Tech start ups and <b>manufacturing businesses</b>	<b>10 / 25</b>
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Other targeted industries	25 / 35
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All other businesses/industries	35 / 50
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*Minimum employment numbers are reduced by 1/4 in GSGZs and in eight South Jersey counties: Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Ocean and Salem*

As an Industrial - Rehabilitation Project for a manufacturing business in Union County, this project has been deemed eligible for a Grow New Jersey award based upon these criteria, outlined in the table below:

<b>Eligibility</b>	<b>Minimum Requirement</b>	<b>Proposed by Applicant</b>
Capital Investment	\$880,000	\$1,056,155
New Jobs	10	45
Retained Jobs	25	0

The Grow New Jersey Statute and the program's rules also establish criteria for the Grant Calculation for **New Full-Time Jobs**. This project has been deemed eligible for a Base Award and Increases based on the following:

<b>Base Grant</b>	<b>Requirement</b>	<b>Proposed by Applicant</b>
Distressed Municipality	Base award of \$4,000 per year for projects located in a designated Distressed Municipality	Rahway City is a designated Distressed Municipality
<b>Increase(s) Criteria</b>		
Capital Investment in Excess of Minimum (non-Mega)	An increase of \$1,000 per job for each additional amount of capital investment in an industrial premises that exceeds the minimum amount required for eligibility by 20%, with a maximum increase of \$3,000	The proposed capital investment of \$1,056,155 is 20.01% above the minimum capital investment resulting in an increase of \$1,000 per year.
Targeted Industry	An increase of \$500 per job for a business in a Targeted Industry of Transportation, Manufacturing, Defense, Energy, Logistics, Life	The applicant is a Manufacturing business.

**Feldware, Inc.****Grow New Jersey****Page 3**

	Sciences, Technology, Health, or Finance excluding a primarily warehouse, distribution or fulfillment center business	
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The Grow New Jersey Statute and the program's rules establish a Grant Calculation for **Retained Full-Time Jobs**. The Grant Calculation for Retained Full-Time Jobs for this project will be based upon the following:

<b>PROJECT TYPE</b>	<b>GRANT CALCULATION</b>
Project located in a Garden State Growth Zone	The Retained Full-Time Jobs will receive the same Grant Calculation as New Full-Time Jobs as shown above subject to the same per employee limits.
A Mega Project which is the U.S. headquarters of an automobile manufacturer located in a priority area	The Retained Full-Time Jobs will receive the same Grant Calculation as New Full-Time Jobs as shown above subject to the same per employee limits.
The Qualified Business Facility is replacing a facility that has been wholly or substantially damaged as a result of a federally declared disaster	The Retained Full-Time Jobs will receive the same Grant Calculation as New Full-Time Jobs as shown above subject to the same per employee limits.
<b>All other projects</b>	<p>The Retained Full-Time Jobs will receive the lesser of:</p> <ul style="list-style-type: none"> <li>- <math>\frac{1}{2}</math> of the Grant Calculation for New Full-Time Jobs (<math>\frac{1}{2} * \\$5,500 = \\$2,750</math>) or</li> <li>- The estimated eligible Capital Investment divided by 10 divided by the total New and Retained Full-Time Jobs (<math>\\$1,056,155 / 10 / (45 + 0) = \\$2,347</math>)</li> </ul> <p>In the event that upon completion a project has a lower actual Grant Calculation for New Full-Time Jobs or a lower Capital Investment than was estimated herein, the above calculations will be re-run and the applicant will receive the lesser of the two amounts.</p>

**Grant Calculation****BASE GRANT PER EMPLOYEE:**

Distressed Municipality	\$ 4,000
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**INCREASES PER EMPLOYEE:**

Capital Investment in Excess of Minimum (non-Mega):	\$ 1,000
Targeted Industry (Manufacturing):	\$ 500

<b>INCREASE PER EMPLOYEE:</b>	<u>\$ 1,500</u>
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**PER EMPLOYEE LIMIT:**

Distressed Municipality	\$11,000
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<b>LESSER OF BASE + INCREASES OR PER EMPLOYEE LIMIT:</b>	\$ 5,500
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**AWARD:**

New Jobs:	45 Jobs X \$5,500 X 100% =	\$247,500
Retained Jobs:	0 Jobs X \$2,347 X 100% =	<u>\$ 0</u>

<b>Total:</b>	<b>\$247,500</b>
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**ANNUAL LIMITS:**

Distressed Municipality	\$ 8,000,000
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<b>TOTAL ANNUAL AWARD</b>	<b><u>\$247,500</u></b>
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**PROJECT IS:** (X) Expansion ( ) Relocation  
**ESTIMATED ELIGIBLE CAPITAL INVESTMENT:** \$ 1,056,155  
**ANTICIPATED COMPLETION DATE**  
**FOR CAPITAL INVESTMENT:** September 30, 2019  
**ANTICIPATED DATE THAT JOBS WILL BE AT QUALIFIED BUSINESS FACILITY:** September 30, 2019  
**SIZE OF PROJECT LOCATION:** 44,000 sq. ft.  
**NEW BUILDING OR EXISTING LOCATION?** Existing  
**INDUSTRIAL OR NON-INDUSTRIAL FACILITY?** Industrial  
**CONSTRUCTION:** (X) Yes ( ) No  
  
**NEW FULL-TIME JOBS:** 45  
**RETAINED FULL-TIME JOBS:** 0  
**STATEWIDE BASE EMPLOYMENT (AS OF DECEMBER 31, 2017):** 0  
**CITY FROM WHICH JOBS WILL BE RELOCATED IN NEW JERSEY:** N/A  
**MEDIAN WAGES:** \$ 28,080  
  
**NET BENEFIT MODEL:** 2017  
**GROSS BENEFIT TO THE STATE (OVER 20 YEARS, PRIOR TO AWARD):** \$ 8,991,935  
**TOTAL AMOUNT OF AWARD:** \$ 2,475,000  
**NET BENEFIT TO THE STATE (OVER 20 YEARS, NET OF AWARD):** \$ 6,516,935  
  
**ELIGIBILITY PERIOD:** 10 years

#### CONDITIONS OF APPROVAL:

1. Applicant has not committed to locate the project in New Jersey without the Grow New Jersey tax credit, as may be shown by an executed lease or purchase contract.
2. Applicant will create and/or retain jobs and will make eligible capital investment, at the qualified business facility, of no less than the minimum eligibility requirements after Board approval, but no later than three years from Board approval.
3. No employees that are subject to a BEIP, BRRAG, legacy Grow New Jersey, Urban Transit Hub or other NJEDA incentive program are eligible for calculating the benefit amount of the Grow New Jersey tax credit.
4. No capital investment that is subject to a BEIP, BRRAG, legacy Grow New Jersey, Urban Transit Hub or other NJEDA incentive program is eligible to be counted toward the capital investment requirement for Grow New Jersey.
5. Within 12 months following approval, the applicant will submit progress information indicating that the business has site plan approval, committed financing for, and site control of the qualified business facility.

#### APPROVAL REQUEST:

The Members of the Authority are asked to approve the proposed Grow New Jersey grant to encourage Feldware, Inc. to increase employment in New Jersey. The recommended grant is contingent upon receipt by the Authority of evidence that the company has met certain criteria to substantiate the recommended award. If the criteria met by the company differs from that shown herein, the award amount and the term will be lowered to reflect the award amount that corresponds to the actual criteria that have been met.

**DEVELOPMENT OFFICER:** M. Sestrich

**APPROVAL OFFICER:** S. Novak

Per the Grow New Jersey statute, N.J.S.A. 34:1B-242 et seq. and the program's rules, N.J.A.C. 19:31-18, the applicant must:



- Make, acquire, or lease a capital investment equal to, or greater than, the minimum capital investment, as follows:

(\$/Square Foot  
of Gross Leasable Area)

Minimum Capital Investment Requirements

Industrial/**Warehouse**/Logistics/R&D - Rehabilitation Projects      **\$ 20**

Industrial/Warehouse/Logistics/R&D - New Construction Projects      \$ 60

Non-Industrial/Warehouse/Logistics/R&D – Rehabilitation Projects      \$ 40

Non-Industrial/Warehouse/Logistics/R&D – New Construction Projects      \$120

*Minimum capital investment amounts are **reduced by 1/3** in GSGZs and in eight South Jersey counties: Atlantic, Burlington, Camden, Cape May, **Cumberland**, Gloucester, Ocean and Salem*

- Retain full-time jobs **AND/OR** create new full-time jobs in an amount equal to or greater than the applicable minimum, as follows:

Minimum Full-Time Employment Requirements      (New / Retained Full-time Jobs)

Tech start ups and manufacturing businesses      10 / 25

Other targeted industries      25 / 35

**All other businesses/industries      35 / 50**

*Minimum employment numbers are **reduced by 1/4** in GSGZs and in eight South Jersey counties: Atlantic, Burlington, Camden, Cape May, **Cumberland**, Gloucester, Ocean and Salem*

As a Warehouse – Rehabilitation Project for an other business in Cumberland County, this project has been deemed eligible for a Grow New Jersey award based upon these criteria, outlined in the table below:

Eligibility	Minimum Requirement	Proposed by Applicant
Capital Investment	\$400,000	\$3,210,000
New Jobs	27	125
Retained Jobs	38	0

The Grow New Jersey Statute and the program's rules also establish criteria for the Grant Calculation for **New Full-Time Jobs**. This project has been deemed eligible for a Base Award and Increases based on the following:

Base Grant	Requirement	Proposed by Applicant
Distressed Municipality	Base award of \$4,000 per year for projects located in a designated Distressed Municipality	Vineland City is a designated Distressed Municipality
<b>Increase(s) Criteria</b>		
2007 Revit. Index > 465 in Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Ocean, Salem	An increase of \$1,000 per job for locating in a municipality with a 2007 Revitalization Index greater than 465	Vineland City has a 2007 Revitalization Index of 474.

The Grow New Jersey Statute and the program's rules establish a Grant Calculation for **Retained Full-Time Jobs**. The Grant Calculation for Retained Full-Time Jobs for this project will be based upon the following:

PROJECT TYPE	GRANT CALCULATION
Project located in a Garden State Growth Zone	The Retained Full-Time Jobs will receive the same Grant Calculation as New Full-Time Jobs as shown above subject to the same per employee limits.
A Mega Project which is the U.S. headquarters of an automobile manufacturer located in a priority area	The Retained Full-Time Jobs will receive the same Grant Calculation as New Full-Time Jobs as shown above subject to the same per employee limits.
The Qualified Business Facility is replacing a facility that has been wholly or substantially damaged as a result of a federally declared disaster	The Retained Full-Time Jobs will receive the same Grant Calculation as New Full-Time Jobs as shown above subject to the same per employee limits.
<b>All other projects</b>	<p><b>The Retained Full-Time Jobs will receive the lesser of:</b></p> <ul style="list-style-type: none"> <li>- <math>\frac{1}{2}</math> of the Grant Calculation for New Full-Time Jobs (<math>\frac{1}{2} * \\$5,000 = \\$2,500</math>) or</li> <li>- The estimated eligible Capital Investment divided by 10 divided by the total New and Retained Full-Time Jobs (<math>\\$3,210,000 / 10 / (125 + 0) = \\$2,568</math>)</li> </ul> <p>In the event that upon completion a project has a lower actual Grant Calculation for New Full-Time Jobs or a lower Capital Investment than was estimated herein, the above calculations will be re-run and the applicant will receive the lesser of the two amounts.</p>

**Grant Calculation****BASE GRANT PER EMPLOYEE:**

Distressed Municipality	\$4,000
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**INCREASES PER EMPLOYEE:**

2007 Revit. Index > 465 in Atlantic, Burlington, Camden  
 Cape May, Cumberland, Gloucester, Ocean, Salem: \$ 1,000

**INCREASE PER EMPLOYEE:**\$1,000**PER EMPLOYEE LIMIT:**

Distressed Municipality	\$11,000
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**LESSER OF BASE + INCREASES OR PER EMPLOYEE LIMIT:**\$5,000**AWARD:**

New Jobs:	125 Jobs X \$5,000 X 100% =	\$625,000
Retained Jobs:	0 Jobs X \$5,000 X 50% =	<u>\$0,000</u>

**Total:** **\$625,000****ANNUAL LIMITS:**

Distressed Municipality	\$ 8,000,000
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**TOTAL ANNUAL AWARD****\$625,000****PROJECT IS:** (X) Expansion ( ) Relocation**ESTIMATED ELIGIBLE CAPITAL INVESTMENT:**

\$ 3,210,000

**ANTICIPATED COMPLETION DATE****FOR CAPITAL INVESTMENT:**

September 1, 2018

**ANTICIPATED DATE THAT JOBS WILL BE AT QUALIFIED****BUSINESS FACILITY:**

September 30, 2019

**SIZE OF PROJECT LOCATION:**

30,000 sq. ft.

**NEW BUILDING OR EXISTING LOCATION?**

Existing

**INDUSTRIAL OR NON-INDUSTRIAL FACILITY?**

Non-Industrial

**CONSTRUCTION:** (X) Yes

( ) No

<b>NEW FULL-TIME JOBS:</b>	125
<b>RETAINED FULL-TIME JOBS:</b>	0
<b>STATEWIDE BASE EMPLOYMENT (AS OF DECEMBER 31, 2017):</b>	0
<b>CITY FROM WHICH JOBS WILL BE RELOCATED IN NEW JERSEY:</b>	N/A
<b>MEDIAN WAGES:</b>	\$ 19,760
<b>NET BENEFIT MODEL:</b>	2017
<b>GROSS BENEFIT TO THE STATE (OVER 20 YEARS, PRIOR TO AWARD):</b>	\$ 7,648,698
<b>TOTAL AMOUNT OF AWARD:</b>	\$ 6,250,000
<b>NET BENEFIT TO THE STATE (OVER 20 YEARS, NET OF AWARD):</b>	\$ 1,398,698
<b>ELIGIBILITY PERIOD:</b>	10 years

**CONDITIONS OF APPROVAL:**

1. Applicant has not committed to locate the project in New Jersey without the Grow New Jersey tax credit, as may be shown by an executed lease or purchase contract.
2. Applicant will create and/or retain jobs and will make eligible capital investment, at the qualified business facility, of no less than the minimum eligibility requirements after Board approval, but no later than three years from Board approval.
3. No employees that are subject to a BEIP, BRRAG, legacy Grow New Jersey, Urban Transit Hub or other NJEDA incentive program are eligible for calculating the benefit amount of the Grow New Jersey tax credit.
4. No capital investment that is subject to a BEIP, BRRAG, legacy Grow New Jersey, Urban Transit Hub or other NJEDA incentive program is eligible to be counted toward the capital investment requirement for Grow New Jersey.
5. Within 12 months following approval, the applicant will submit progress information indicating that the business has site plan approval, committed financing for, and site control of the qualified business facility.

**APPROVAL REQUEST:**

The Members of the Authority are asked to approve the proposed Grow New Jersey grant to encourage Infinite Herbs LLC to increase employment in New Jersey. The recommended grant is contingent upon receipt by the Authority of evidence that the company has met certain criteria to substantiate the recommended award. If the criteria met by the company differs from that shown herein, the award amount and the term will be lowered to reflect the award amount that corresponds to the actual criteria that have been met.

**DEVELOPMENT OFFICER:** J. Kenyon

**APPROVAL OFFICER:** T. Wells

## NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY PROJECT SUMMARY – GROW NEW JERSEY ASSISTANCE PROGRAM

As created by statute, the Grow New Jersey Assistance (Grow NJ) Program is available to businesses creating or retaining jobs in New Jersey and making a qualified capital investment at a qualified business facility in a qualified incentive area. Applications to the Grow NJ Program are evaluated to determine eligibility in accordance with P.L. 2013, c. 161 and as amended through the “Economic Opportunity Act of 2014, Part 3,” P.L. 2014, c. 63, based on representations made by applicants to the Authority. Per N.J.S.A. 34:1B-242 et seq./N.J.A.C. 19:31-1 and the program’s rules, applicants must employ a certain number of personnel in retained and/or new full-time jobs at a qualified business facility and make, acquire or lease a capital investment equal to or greater than defined thresholds in order to be eligible for tax credits. In addition to satisfying these statutorily-established job and capital investment requirements, applications undergo a material factor review to verify that the tax credits are material to the project advancing in New Jersey. Applications are also subject to a net benefit analysis to verify that the anticipated revenue resulting from the proposed project will be greater than the incentive amount. Credits are only certified for use annually and proportionally based on actual job performance during that year and an applicant is subject to forfeiture and recapture in event of default.

**APPLICANT:** Union Packaging, LLC P44885

**PROJECT LOCATION:** 2210 Broadway Camden City Camden County

**GOVERNOR’S INITIATIVES:**

(X) NJ Urban Fund ( ) Edison Innovation Fund ( ) Core ( ) Clean Energy

**APPLICANT BACKGROUND:**

Union Packaging, LLC (“Union Packaging”) manufactures FDA-compliant paperboard food packaging. Today, food is served around the nation in Union Packaging's earth-friendly clamshell, folded, and nested cartons. Union Packaging's commitment to social responsibility has led to the recruitment and development of the disabled, citizens returning from incarceration, and documented new arrivals to America.

Union Packaging seeks to purchase a new facility to accommodate its growing business. The proposed Camden facility would be retrofitted to consist of 35,900 square feet to meet Union Packaging's needs. The site also provides open space for an additional 35,100 square feet to be constructed at the rear of the property, for a total square footage of 71,000. This would enable the company to continue its business of manufacturing FDA-compliant paperboard food packaging. The alternate would be to remain in its current leased facility in Yeadon, PA, consisting of 105,000 square feet.

The applicant has demonstrated the financial ability to undertake the project.

**MATERIAL FACTOR/NET BENEFIT:**

The proposed project is located in Camden, NJ, a city that ranked 566 out of 566 municipalities in the 2007 New Jersey Municipal Revitalization Index. In recognition of Camden's inability to attract investment, in the New Jersey Economic Opportunity Act, the Legislature declared that Camden and the other Garden State Growth Zones presented significant challenges to development and created incentives unique to Camden and other similarly situated Garden State Growth Zones to overcome these barriers.

The management of Union Packaging, LLC has indicated that the grant of tax credits is a material factor in the company's decision whether or not to locate the project in Camden. The Authority is in receipt of an executed CEO certification by Michael Pearson, the CEO of Union Packaging, LLC, which states that the Grow New Jersey award is a material factor in the company's decision to make the capital investment and locate the project in Camden. The CEO certification also states that the application has been reviewed and the information submitted and representations contained therein are accurate.

Staff reviewed the project and finds support for management's assertion that the award of tax credits is a material factor in the company's decision to locate in Camden. If Union Packaging, LLC chooses the Camden option, the company would establish 2210 Broadway in Camden. The alternative is to remain at its current location in Yeadon, PA.

This project represents a significant positive step forward for Camden's redevelopment efforts, bringing 2210 Broadway to the city. It is estimated that the project would have a net benefit to the State of \$44,376 over the 35-year period required by the Statute.

#### ELIGIBILITY AND GRANT CALCULATION:

Per the Grow New Jersey statute, N.J.S.A. 34:1B-242 et seq. and the program's rules, N.J.A.C. 19:31-18, the applicant must:

- Make, acquire, or lease a capital investment equal to, or greater than, the minimum capital investment, as follows:

Minimum Capital Investment Requirements	(\$/Square Foot of Gross Leasable Area)
<b>Industrial/Warehouse/Logistics/R&amp;D - Rehabilitation Projects</b>	<b>\$ 20</b>
Industrial/Warehouse/Logistics/R&D - New Construction Projects	\$ 60
Non-Industrial/Warehouse/Logistics/R&D – Rehabilitation Projects	\$ 40
Non-Industrial/Warehouse/Logistics/R&D – New Construction Projects	\$120

*Minimum capital investment amounts are **reduced by 1/3 in GSGZs** and in eight South Jersey counties: Atlantic, Burlington, **Camden**, Cape May, Cumberland, Gloucester, Ocean and Salem*

- Retain full-time jobs **AND/OR** create new full-time jobs in an amount equal to or greater than the applicable minimum, as follows:

Minimum Full-Time Employment Requirements	(New / Retained Full-time Jobs)
Tech start ups and <b>manufacturing businesses</b>	<b>10 / 25</b>
Other targeted Industries	25 / 35
All other businesses/industries	35 / 50

*Minimum employment numbers are **reduced by 1/4 in GSGZs** and in eight South Jersey counties: Atlantic, Burlington, **Camden**, Cape May, Cumberland, Gloucester, Ocean and Salem*

As an Industrial - Rehabilitation Project for a manufacturing business in Camden County, this project has been deemed eligible for a Grow New Jersey award based upon these criteria, outlined in the table below:

Eligibility	Minimum Requirement	Proposed by Applicant
Capital Investment	\$946,667	\$10,640,272
New Jobs	8	65
Retained Jobs	19	0

The Grow New Jersey Statute and the program's rules also establish criteria for the Grant Calculation. Projects located in Camden are eligible to receive per employee as a tax credit the total amount of capital investment for the project divided by the number of employees, subject to the following limits, provided that the project represents a net positive benefit to the State:

New Jobs or Retained Jobs New to Camden	Capital Investment	Maximum Annual Tax Credit	Limit on Total Tax Credit
≥35	\$5,000,000	\$2,000,000	\$20,000,000
≥70	\$10,000,000	\$3,000,000	\$30,000,000
≥100	\$15,000,000	\$4,000,000	\$40,000,000
≥150	\$20,000,000	\$5,000,000	\$50,000,000
≥250	\$30,000,000	\$35,000,000	\$350,000,000

Provided the company complies with all other program requirements, a reduction in the number of new or retained full-time jobs indicated in the company's annual report below the number certified in the initial CPA certification shall proportionately reduce the amount of tax credits the company may apply against liability in the relevant tax period. Also, if the number of new and retained full-time jobs, as indicated by the company's annual report, is reduced below the required number in the table above, the tax credits that the business may take shall be subject to the annual limit corresponding to the new jobs and retained full-time jobs new to Camden.

#### **GRANT CALCULATION**

**CAPITAL INVESTMENT:** \$ 10,640,272

**JOBS BASED TAX CREDIT LIMIT:** \$ 20,000,000

**GROSS BENEFIT TO THE STATE OVER 35 YEARS:** \$ 10,684,226

**THE APPLICANT IS ELIGIBLE FOR A TAX CREDIT EQUAL TO THE LOWEST OF THE THREE NUMBERS ABOVE (CONVERTED TO AN EVEN DOLLAR AMOUNT PER EMPLOYEE PER YEAR):** \$ 10,639,850

**TOTAL ANNUAL AWARD BASED ON THE BENEFIT TO THE STATE (OVER 35 YEARS, PRIOR TO THE AWARD) BEING 100% OF THE AWARD WITH A COMMITMENT TO REMAIN IN THE QUALIFIED BUSINESS FACILITY FOR 27 YEARS:**

New Jobs: 65 Jobs X \$16,369 X 100% = \$ 1,063,985

Retained Jobs: 0 Jobs X \$16,369 X 100% = \$ 0,000

**TOTAL ANNUAL AWARD \*** \$ 1,063,985

**\* PLEASE SEE RECOUPMENT SCHEDULE BELOW**

**RECOUPMENT SCHEDULE**

	<b><u>YEAR</u></b>	<b><u>RECOUPMENT AMOUNT</u></b>
IF THE APPLICANT LEAVES IN YEAR:	16	\$2,583,337.00
IF THE APPLICANT LEAVES IN YEAR:	17	\$2,318,438.83
IF THE APPLICANT LEAVES IN YEAR:	18	\$2,062,912.07
IF THE APPLICANT LEAVES IN YEAR:	19	\$1,816,425.16
IF THE APPLICANT LEAVES IN YEAR:	20	\$1,578,658.31
IF THE APPLICANT LEAVES IN YEAR:	21	\$1,349,303.02
IF THE APPLICANT LEAVES IN YEAR:	22	\$1,128,061.72
IF THE APPLICANT LEAVES IN YEAR:	23	\$ 914,647.35
IF THE APPLICANT LEAVES IN YEAR:	24	\$ 708,783.01
IF THE APPLICANT LEAVES IN YEAR:	25	\$ 510,201.61
IF THE APPLICANT LEAVES IN YEAR:	26	\$ 318,645.50
IF THE APPLICANT LEAVES IN YEAR:	27	\$ 133,866.14

The Grow New Jersey Statute and the program's rules establish a Grant Calculation for **Retained Full-Time Jobs**. The Grant Calculation for Retained Full-Time Jobs for this project will be based upon the following:

<b>PROJECT TYPE</b>	<b>GRANT CALCULATION</b>
<b>Project located in a Garden State Growth Zone</b>	<b>The Retained Full-Time Jobs will receive the same Grant Calculation as New Full-Time Jobs as shown above subject to the same per employee limits.</b>
A Mega Project which is the U.S. headquarters of an automobile manufacturer located in a priority area	The Retained Full-Time Jobs will receive the same Grant Calculation as New Full-Time Jobs as shown above subject to the same per employee limits.
The Qualified Business Facility is replacing a facility that has been wholly or substantially damaged as a result of a federally declared disaster	The Retained Full-Time Jobs will receive the same Grant Calculation as New Full-Time Jobs as shown above subject to the same per employee limits.
All other projects	<p>The Retained Full-Time Jobs will receive the lesser of:</p> <ul style="list-style-type: none"> <li>- <math>\frac{1}{2}</math> of the Grant Calculation for New Full-Time Jobs (<math>\frac{1}{2} * \\$16,370 = \\$8,185</math> or</li> <li>- The estimated eligible Capital Investment divided by 10 divided by the total New and Retained Full-Time Jobs (<math>\\$10,640,272 / 10 / (65 + 0) = \\$16,369</math>)</li> </ul> <p>In the event that upon completion a project has a lower actual Grant Calculation for New Full-Time Jobs or a lower Capital Investment than was estimated herein, the above calculations will be re-run and the applicant will receive the lesser of the two amounts.</p>



<b>PROJECT IS:</b>	<input type="checkbox"/> Expansion	<input checked="" type="checkbox"/> Relocation	
<b>ESTIMATED ELIGIBLE CAPITAL INVESTMENT:</b>			\$ 10,640,272
<b>ANTICIPATED COMPLETION DATE FOR CAPITAL INVESTMENT:</b>			May 1, 2019
<b>ANTICIPATED DATE THAT JOBS WILL BE AT QUALIFIED BUSINESS FACILITY:</b>			May 1, 2019
<b>SIZE OF PROJECT LOCATION:</b>			71,000 sq. ft.
<b>NEW BUILDING OR EXISTING LOCATION?</b>			Existing
<b>INDUSTRIAL OR NON-INDUSTRIAL FACILITY?</b>			Industrial
<b>CONSTRUCTION:</b>	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	
 <b>NEW FULL-TIME JOBS:</b>			65
<b>RETAINED FULL-TIME JOBS:</b>			0
<b>STATEWIDE BASE EMPLOYMENT (AS OF DECEMBER 31, 2017):</b>			0
<b>CITY FROM WHICH JOBS WILL BE RELOCATED IN NEW JERSEY:</b>			N/A
<b>MEDIAN WAGES:</b>			\$ 32,968
 <b>NET BENEFIT MODEL:</b>			2017
<b>GROSS BENEFIT TO THE STATE (OVER 35 YEARS, PRIOR TO AWARD):</b>			\$ 10,684,226
<b>TOTAL AMOUNT OF AWARD:</b>			\$ 10,639,850
<b>NET BENEFIT TO THE STATE (OVER 35 YEARS, NET OF AWARD):</b>			\$ 44,376
<b>ESTIMATED AWARD PER NEW/RETAINED JOB:</b>			\$ 16,369
 <b>ELIGIBILITY PERIOD:</b>			10 years

**CONDITIONS OF APPROVAL:**

1. Applicant has not committed to locate the project in New Jersey without the Grow New Jersey tax credit, as may be shown by an executed lease or purchase contract.
2. Applicant will create and/or retain jobs and will make eligible capital investment, at the qualified business facility, of no less than the minimum eligibility requirements after Board approval, but no later than three years from Board approval.
3. No employees that are subject to a BEIP, BRRAG, legacy Grow New Jersey, Urban Transit Hub or other NJEDA incentive program are eligible for calculating the benefit amount of the Grow New Jersey tax credit.
4. No capital investment that is subject to a BEIP, BRRAG, legacy Grow New Jersey, Urban Transit Hub or other NJEDA incentive program is eligible to be counted toward the capital investment requirement for Grow New Jersey.
5. Within twelve months following approval, the applicant will submit progress information indicating that the business has site plan approval, committed financing for, and site control of the qualified business facility.
6. Due to the Net Benefit to the State exceeding the minimum Net Benefit required for a Grow NJ award by 10% or less, the Net Benefit to the State will be recalculated if the CPA certification shows a 10% or more reduction of the number of eligible jobs, capital investment, or payroll from the amounts approved by the Board. If the Net Benefit analysis does not support awarding a tax credit for the entire amount of the capital investment, then the amount of the award will be reduced accordingly.
7. The applicant will be required to produce a site control document prior to closing that demonstrates control of the site for the entire 27-year period it has committed to remain in the Qualified Business Facility or its award will revert back to the standard award (\$8,056,513) for a 15-year commitment) based on the actual length of the site control document.

**APPROVAL REQUEST:**

The Members of the Authority are asked to: 1) concur with the finding by staff that the award of the Grow New Jersey tax credits is a material factor in the applicant's decision to make a capital investment and locate in Camden; 2) approve the proposed Grow New Jersey grant to encourage Union Packaging, LLC to locate in Camden. The recommended grant is contingent upon receipt by the Authority of evidence that the company has met certain criteria to substantiate the recommended award. If the criteria met by the company differs from that shown herein, the award amount and the term will be lowered to reflect the award amount that corresponds to the actual criteria that have been met.

**DEVELOPMENT OFFICER:** Christina Fuentes**APPROVAL OFFICER:** Mark Chierici

## **LOANS/GRANTS/GUARANTEES**

## **LOAN MODIFICATIONS**



## **MEMORANDUM**

**TO:** Members of the Authority

**FROM:** Timothy J. Lizura, President and Chief Operating Officer

**DATE:** March 13, 2018

**SUBJECT:** AC Beach Development Partners, LLC, et al  
\$6,288,868 Direct Loan - MODIFICATION

### **Request:**

Consent to the release of the guarantees of Craig Wood and Cape Advisors in exchange for payments of \$1.6 million, additional corporate guarantee, mortgages on commercial and residential properties and the shortening of the loan term to 7 years.

### **Background:**

AC Beach Development Partners LLC ("AC") was formed by the principals of Cape Advisors (Curtis Bashaw and Craig Wood) in 2007 develop the Chelsea Hotel in Atlantic City. Cape Advisors and affiliate Congress Hall employs over 1400 in Cape May County.

In November 2008, EDA approved a \$3 million direct (Urban Plus) loan and a \$4.2 million New Markets Tax Credit loan to supplement \$78.5 million in senior debt and \$12.5 million in equity to complete the project. The loans were personally guaranteed by the principals and by Cape Advisors.

The economic recession and gaming competition from other states negatively impacted the Chelsea Hotel which defaulted on its senior debt in early 2009. EDA and the senior lender provided a series of payment moratoria to provide cash flow relief and to support operations while the principals attempted to improve hotel operations. While continuing to operate during the summers, the hotel ceased operations in 2016 and was acquired through a deed in lieu of foreclosure by Icahn Enterprises and is being renovated as part of the Tropicana Casino and Resort expansion in Atlantic City.

In June 2016, the Members approved the restructure of the loan balances of \$6.7 million to be amortized over 10 years. Because the hotel was struggling financially, repayment of the restructured loan was reliant solely on the cash flow of the principals' income from other real estate projects. The principals were required to make an upfront payment of \$550,000, monthly payments of \$25,700, and milestone payments, including \$2.1 million due in November 2018. Since closing in October 2016, the guarantors have made \$385,500 in monthly payments as agreed.

Mr. Bashaw recently advised EDA that he and Mr. Wood are ending their business relationship through a buyout of jointly held interests. Post buyout, Mr. Bashaw will retain full ownership of NJ properties including Congress Hall, while Mr. Wood will retain full ownership of New York properties and Cape Advisors. Consideration to Mr. Wood will include a combination of liability assumption by Mr. Bashaw, exchange of ownership interests and cash paid at closing.

To facilitate the transaction, Mr. Bashaw has asked EDA to release the guarantees of Craig Wood and Cape Advisors under new terms with additional consideration as shown below:

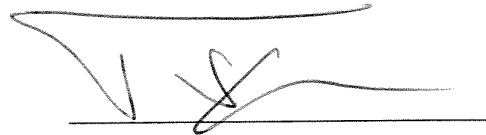
- \$1.6 million in payments (\$1.3 million at closing and 6 monthly payments of \$50,000 applied to accrued interest), and repayment of the remaining ~\$5MM principal loan balance over 7 years at 1.5%
- The corporate guarantee of Cape Resorts Management Company that manages the Cape May properties
- A junior mortgage on Mr. Bashaw's residence at 10 Jackson Street, Cape May, NJ
- A first mortgage on Beach Plum Farm III at 515 N. Delsea Drive, Cape May Court House, NJ
- Assignment of Mr. Bashaw's 100% ownership interest in a newly formed entity that will own fully Chamberlain Hospitality, Inc. (the Virginia Hotel), 10 Jackson, LLC (the Pink Cottage) and JF Equities, LLC (the Red Cottage). Additional debt against these properties will require EDA consent.

Mr. Bashaw will continue to be personally obligated to repay the loan. Payments will be paid through a combination of distributions from Mr. Bashaw's owned properties plus property distributions and management fees that were formerly paid to with Mr. Wood. Based on historical financial information and projections, there is adequate debt service coverage for all related loan payments.

**Recommendation:**

Consent to a release of guarantors Craig Wood and Cape Advisors in exchange for payments of \$1.6 million, additional corporate guarantee, mortgages on commercial and residential properties and the shortening of the loan term to 7 years.

Borrower will be provided up to 6 months from approval to close, with an update required at 3 months. The Members are also asked to delegate authority to staff (Level 3: SVP or Managing Director) to extend the closing deadline (up to 6 months) upon receipt of satisfactory information.

A handwritten signature in dark ink, appearing to be "V. S.", is written over a horizontal line.

**Prepared by:** Jerome T. Stesney

## **PETROLEUM UNDERGROUND STORAGE TANK (PUST)**



**MEMORANDUM**

**TO:** Members of the Authority

**FROM:** Timothy J. Lizura, President/Chief Operating Officer

**DATE:** March 13, 2018


**SUBJECT:** NJDEP Petroleum UST Remediation, Upgrade & Closure Fund Program

The following residential grant project has been approved by the Department of Environmental Protection to perform initial upgrade, closure and remediation activities. The scope of work is described on the attached project summary:

**UST Residential Grant:**

P44424 John and Doris Clayton \$ 146,988

**Total UST Funding – March 2018 \$ 146,988**



Timothy Lizura

Prepared by: Wendy Wisniewski



**NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY  
PROJECT SUMMARY - UNDERGROUND STORAGE TANK GRANT**

**APPLICANT:** John Clayton and Doris Clayton

P44424

**PROJECT USER(S):** Same as applicant

\* - indicates relation to applicant

**PROJECT LOCATION:** 401 Tavistock Blvd Haddonfield Borough (N) Camden

**GOVERNOR'S INITIATIVES:** ( ) Urban ( ) Edison (X) Core ( ) Clean Energy

**APPLICANT BACKGROUND:**

John Clayton and Doris Clayton are homeowners seeking to remove a leaking 550-gallon residential #2 heating underground storage tank (UST) and perform the required remediation. The tank will be decommissioned and removed in accordance with NJDEP requirements. The NJDEP has determined that the project costs are technically eligible.

Financial statements provided by the applicants demonstrate that the applicants' financial condition conforms to the financial hardship test for a conditional hardship grant.

**APPROVAL REQUEST:**

The applicants are requesting grant funding in the amount of \$146,988 to perform the approved scope of work at the project site.

The NJDEP oversight fee of \$14,699 is the customary 10% of the grant amount. This assumes that the work will not require a high level of NJDEP involvement and that reports of an acceptable quality will be submitted to the NJDEP.

**FINANCING SUMMARY:**

**GRANTOR:** Petroleum UST Remediation, Upgrade & Closure Fund

**AMOUNT OF GRANT:** \$146,988

**TERMS OF GRANT:** No Interest; No Repayment

**PROJECT COSTS:**

Upgrade, Closure, Remediation	\$146,988
NJDEP oversight cost	\$14,699
EDA administrative cost	\$250
<b>TOTAL COSTS</b>	<b>\$161,937</b>

**APPROVAL OFFICER:** W. Wisniewski

**EDISON INNOVATION FUND**

## **NJ CoVEST FUND PROGRAM**



**MEMORANDUM**

**TO:** Members of the Authority

**FROM:** Timothy J. Lizura  
President/Chief Operating Officer

**DATE:** March 13, 2018

**RE:** NJ CoVest Fund – Early Stage Technology Company Investment Program

**Summary**

On April 13, 2017, the Board approved the creation of the NJ CoVest Program to support early stage technology and life science companies, with a \$3 million original program commitment. The program is designed to provide seed funding to early stage New Jersey technology companies in the form of convertible notes.

To date, the board has approved two commitments under the program including Reflik (10/12/17) and Apprentice FS, Inc. (2/13/18). With the execution and review of the supporting loan documents and agreements necessary to consummate the first approved transaction, staff is recommending the board consider approving the clarification of defaults and applicable terms under the agreement as outlined herein.

**Background**

Current program requirements include the following language:

<b>Default</b>	Failure to comply with <b><i>any requirement will result in an event of default</i></b> in which the Note becomes immediately due and payable at either a multiple of one and a half times the principal and accrued interest or a multiple of one and a half times equity value at the election of the EDA.
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<b>Commitment to NJ</b>	<p>Company must maintain a corporate headquarters office space within the boundaries of the State of New Jersey.</p> <p>Company must maintain a minimum of 75% of the management/executive team space within the boundaries of the State of New Jersey.</p> <p>Company must maintain at least 75% of employees, working on average 80% of their time, within the boundaries of the State of New Jersey.</p> <p>Commitments must be met at application submission date and maintained until five years after repayment in full or five years after note maturity date. A change to these Commitments may be considered by the EDA in event of merger or acquisition.</p>
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### Proposed Change

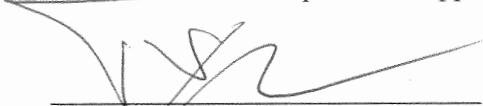
The noted default language above, lives beyond the note repayment and during the five-year “tail” for NJ commitment and employment for all defaults and requirements. The original program memo drafting required all compliance, collateral, terms, etc. to be carried for the “tail” of the note that has a five-year NJ jobs requirement. Given the need for these young companies to continually fundraise and secure financing support, the program was constructed as an unsecured instrument to allow future follow on funding required for these early companies to continue to grow in the state. Many of the ancillary terms, springing liens, etc. are needed only to ensure repayment and thereafter would hinder the prospects of these young companies from obtaining follow on funding after the repayment of the EDA obligation. Staff is recommending ONLY the commitment to NJ live beyond the “non-default” payment satisfaction of interest and principal on the CoVest Funding. The required reporting to evidences the NJ Commitment will remain during the five-year “tail”. This in turn will allow the negative pledge to be released with full payment of the ***“non-default rate” principal and interest*** at which point the only outstanding requirements is the commitment to NJ (and potential relative default payment), along with any potential remaining life in the 10-year warrant.

The proposed program amendment is as detailed below.

<p><b>Default</b></p>	<p>Failure to comply with <b><i>any requirement, prior to the full repayment of the "non-default rate" principal and interest will result in an event of default</i></b> in which the Note becomes immediately due and payable at either a multiple of one and a half times the principal and accrued interest or a multiple of one and a half times the principal and interest equity value (based on the original matching funds pricing round, whether or not converted)at the election of the EDA .</p> <p>Upon full payment of the <b><i>"non-default rate" principal and interest</i></b>, the only remaining event of default is the "commitment to NJ" requirement. Failure to comply with this requirement will result in the requirement to pay either a multiple of one and a half times the principal and accrued interest or a multiple of one and a half times the principal and interest equity value (based on the original matching funds pricing round, whether or not converted) at the election of the EDA <i>less</i> the payment of <b><i>"non-default rate" principal and interest</i></b>.</p>
-----------------------	--

**Recommendation**

The Members are requested to approve the program clarification as outlined herein.

  
 Timothy J. Lizura  
 President/Chief Operating Officer

Prepared by: Kathleen W. Coviello

## **OFFICE OF RECOVERY**

**ENERGY RESILIENCE BANK (ERB) PROGRAM  
MODIFICATIONS**





## **MEMORANDUM**

**TO:** Members of the Authority

**FROM:** Timothy Lizura  
President and Chief Operating Officer

**DATE:** March 13, 2018

**RE:** Energy Resilience Bank – St. Peter’s University Hospital Project Funding  
Modification Recommendation

### **Request:**

The Members are requested to (1) modify the April 12, 2016 Board action for the St. Peter’s University Hospital CHP Project under the Energy Resilience Bank (ERB) program by changing the reservation of ERB funding from \$7,488,500 to \$8,125,240 for the project due to additional project work and resiliency modifications, and (2) authorize staff to amend the executed Subrecipient Funding Agreement to reflect the ERB loan amount of \$2,530,707 and ERB grant amount of \$5,594,533 in accordance with ERB program requirements and policies.

### **Background:**

In April 2016, the St. Peter’s University Hospital CHP Project was presented to the EDA Board for review and funding consideration under the Energy Resilience Bank (ERB) program.

St. Peter’s University Hospital (SPUH) is a not-for-profit organization, sponsored by the Diocese of Metuchen, incorporated in 1908, and located in New Brunswick. SPUH is an acute care, 478 bed teaching hospital that provides a broad array of services to the community treating more than 30,000 inpatients and more than 200,000 outpatients annually and employs 2,800 healthcare professionals and support personnel. SPUH was the first ERB project to execute their Subrecipient Funding Agreement and closed on its ERB financing in February 2017. Construction of the 2-Megawatt combined heat and power system (natural gas fired reciprocating engine), with the necessary blackstart and islanding system controls to be able to operate independently from the grid, began in April 2017 and is proceeding on schedule.

During construction, SPUH noted two possible project modifications which would add overall resiliency: (1) an additional independent chilled water loop to provide the resiliency necessary for the operating rooms to function during a power outage with air conditioning capacity and to meet full hospital critical load; and, (2) installation of a new resilient closed transition type automatic transfer switch dedicated to the operating rooms to provide a seamless flow of

electricity during a power failure. This additional work is estimated to be completed within the existing construction timeline. All work will occur inside the hospital and will not impact the already completed NEPA review and AUGF. At this time, the CHP should be in initial operating and testing phase in April 2018 and the project (including these additional resiliency modifications) should be fully completed and operational by July 2018.

SPUH is working with its contractor, Forest Electric, on cost estimates and has received preliminary bid pricing for these modifications and has submitted a funding increase request, along with a modified total budget with resiliency cost breakdown, to EDA. To date, the project has been on schedule and within budget. There remains approximately \$250,000 in contingency funding to cover some of the proposed additional costs. The new total project cost is estimated at \$9,125,240, an increase of \$636,740.

The original estimated total project cost was \$8,488,500, to be funded by \$7,488,500 in ERB funds (ERB Grant of \$4,415,400 and ERB Loan of \$3,073,100) and \$1,000,000 from PSEG's Hospital Efficiency Program for CHPs. Since there are no remaining funds in PSEG's CHP program funding to allocate to this project, ERB funds are being requested.

It is now estimated that \$3,240,728 are cost reasonable resilient related costs per ERB program guidelines and this amount is in conformity with ERB project review and funding policies. Consistent with the ERB's Financing and Program Guide, the SPUH project will be provided with the following, subject to cost reasonableness analysis and review of final project costs:

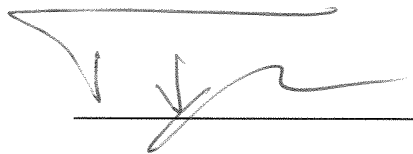
ERB Grant:	\$5,594,533	
ERB Loan Funding:	\$2,530,707	(2% interest rate, 20-year term)

The financing will be a general obligation to SPUH with the projected annual cost of \$153,629. Through the established feasibility and technical review, the annual net energy cost savings projected from development of the CHP project are approximately \$914,000, which combined with annual operating and maintenance costs and service warranty contracts is sufficient to repay the project loan within the loan terms.

**ERB Program Fund Balance:** After program administrative costs, the Energy Resilience Bank has a \$170 million CDBG-DR allocation from HUD to reserve for ERB projects. After today's actions, there will be \$5,726,595 remaining to reserve for additional projects.

**Recommendation:**

The Members are requested to (1) modify the April 12, 2016 Board action for the St. Peter's University Hospital CHP Project under the Energy Resilience Bank (ERB) program by changing the reservation of ERB funding from \$7,488,500 to \$8,125,240 for the project due to additional project work and resiliency modifications, and (2) authorize staff to amend the executed Subrecipient Funding Agreement to reflect the ERB loan amount of \$2,530,707 and ERB grant amount of \$5,594,533 in accordance with ERB program requirements and policies.

A handwritten signature in black ink, consisting of a series of loops and a final horizontal stroke, positioned above a solid horizontal line.

Prepared by: Liza Nolan

## **REAL ESTATE**



## **MEMORANDUM**

**TO:** Members of the Authority

**FROM:** Timothy J. Lizura  
President/Chief Operating Officer

**RE:** FMERA Purchase and Sale & Redevelopment Agreement with Commvault Systems, Inc. for the Charles Wood Fire Station Parcel in Tinton Falls

**DATE:** March 13, 2018

### **Request**

I am requesting that the Board consent to the Fort Monmouth Economic Revitalization Authority ("FMERA") entering into the redevelopment agreement that is contained within FMERA's Purchase and Sale & Redevelopment Agreement ("PSARA") with Commvault Systems, Inc. ("Commvault") for the sale and redevelopment of the Charles Wood Fire Station Parcel in the Tinton Falls Reuse Area.

### **Background**

FMERA issued a Request for Offers to Purchase ("RFOTP") in connection with the planned redevelopment of the Charles Wood Fire Station Parcel in Tinton Falls on May 6, 2016. The Charles Wood Fire Station Parcel is an approximately 2.3-acre parcel that contains the former fire station (Building 2560) plus the adjacent tract to the east of the Charles Wood Fire Station which includes an additional 1.7 acres of unimproved land. This adjacent tract is bound by Heliport Drive, Radiac Way, Guam Lane & Corregidor Road. Building 2560 is a circa 2001 10,070 sf one-story fire station consisting of three high-bays, offices, bedrooms, a day room, kitchen and associated parking which is targeted for reuse in the Fort Monmouth Reuse and Redevelopment Plan ("Reuse Plan"). FMERA staff received interest in the building for potential commercial and retail reuse or recreation space which would cater to the various developments around this site.

Responses to the RFOTP were due on July 8, 2016 and five responses were received from Commvault Systems, Inc. ("Commvault" or "Purchaser"), Kolber Properties, LLC, Trinity Hall, Inc., Fortis Holding Group, LLC and Data Network Solutions. An evaluation committee scored the proposals and Commvault was the highest ranked proposal. Subsequently, two (2) of the five (5) bidders submitted formal withdrawals of their proposals. As Commvault's proposal was also compliant with the RFOTP, the evaluation committee recommended proceeding with negotiations for a Purchase and Sale & Redevelopment Agreement ("PSARA").

Initially, the Reuse Plan envisioned the 2.3-acre Fire Station parcel would be used for an institutional or civic function. The Borough of Tinton Falls withdrew their Notice of Interest for the Firehouse, however, and the Board authorized the issuance of an RFOTP seeking potential purchasers for either a use compliant with the Reuse Plan or for a commercial use that would require a Reuse Plan amendment. After two rounds of unsuccessful RFOTPs, FMERA added an adjacent 1.7-acre tract to address bidders' concerns with parking limitations and expand potential uses to include commercial and recreational reuses. After receiving FMERA Board approval to expand the site and anticipated uses, and prior to FMERA putting this parcel out for a third RFOTP, the FMERA Board adopted Amendment #3 to the Reuse Plan which permits Building 2560 to be reused for commercial use rather than for a civic use. In addition, the amendment permits a commercial and/or accessory parking use on the approximately 1.7 acre tract located to the east of the Charles Wood Fire Station.

Commvault proposes to adaptively reuse the Fire Station as corporate office space which may include swing space for Commvault's existing corporate campus and recreation uses on the open space on the property. Purchaser may, at its sole discretion, improve the Property with additional square footage to accommodate additional office space, contingent on site constraints including but not limited to floodplain and stream encroachment restrictions, and subject to the Fort's Reuse Plan and Land Use Rules, as amended.

#### **Purchase and Sale & Redevelopment Agreement**

Pursuant to the terms of the PSARA, Commvault will pay \$1,970,000 for the property. Subject to Commvault's thirty (30) day due diligence period, closing will occur on the later of March 14, 2018 or thirty (30) days after Seller obtains approval of its Board and the consent of the NJEDA Board. FMERA will convey the property to Commvault in as-is condition, but with clear title and subject to the Army's on-going obligations under CERCLA to address pre-existing contamination, if any, that may exist on the Property and that is the responsibility of the Army under federal law and regulations.

The Project will consist of the renovation of the existing structure for commercial use, including corporate office uses. Commvault will seek to obtain all approvals within 24 months of closing and commence construction upon receipt of all approvals. Commvault will complete construction within 24 months of receiving all approvals, as evidenced by a temporary or permanent certificate of occupancy. FMERA will have the right to repurchase the property if construction is not timely commenced or completed. Commvault will incur a minimum investment of approximately \$1,000,000 to complete the Project. The Purchaser will also be obligated to create 40 permanent, full-time jobs at the property within twenty-four months of obtaining a certificate of occupancy or pay a penalty of up to \$60,000 (\$1,500 per job). Commvault will repave and/or improve the section of Heliport Drive which runs through the property to standards acceptable to the Borough of Tinton Falls.

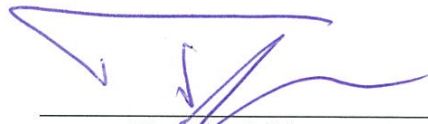
Pursuant to the FMERA Act, all purchasers of real estate on Fort Monmouth must enter into a redevelopment agreement containing the following provisions, which will be covenants running with the land until the redeveloper completes the project: (i) a provision limiting the use of the

property to the uses permitted by the Reuse Plan or an amendment to the Reuse Plan as approved by the FMERA Board and uses permitted by FMERA's Land Use Rules; (ii) a provision requiring the redeveloper to commence and complete the project within a period of time that FMERA deems reasonable; and (iii) a provision restricting the transfer of the property or the redeveloper's rights under the PSARA prior to completion of the project. Based on the redevelopment provisions of the PSARA between FMERA and Commvault, staff concludes that the essential elements of a redevelopment agreement between FMERA and Commvault are sufficiently addressed and that it is not necessary for FMERA to enter into a separate redevelopment agreement with Commvault for its redevelopment of the Charles Wood Fire Station Parcel.

Attached is a form of the PSARA between FMERA and Commvault that was approved by FMERA's Board on February 21, 2018. The final terms of the PSARA are subject to the approval of FMERA's Executive Director and the Attorney General's Office.

**Recommendation**

In summary, I am requesting that the Members consent to FMERA entering into the redevelopment agreement contained within the Purchase and Sale & Redevelopment Agreement with Commvault Systems, Inc. for the Charles Wood Fire Station Parcel in Tinton Falls.



---

Timothy J. Lizura  
President/Chief Operating Officer

Attachments: Purchase and Sale & Redevelopment Agreement  
Parcel Map

Prepared by: Donna T. Sullivan & David E. Nuse





**PURCHASE AND SALE AGREEMENT  
AND REDEVELOPMENT AGREEMENT**

**BETWEEN**

**FORT MONMOUTH ECONOMIC REVITALIZATION AUTHORITY**

**As Seller,**

**AND**

**COMMVAULT SYSTEMS, INC.**

**As Purchaser**

**As of \_\_\_\_\_, 2018**



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## **EXHIBIT LIST**

- A. Quitclaim Deed from Army to FMERA (Army Quitclaim Deed) [Attached]**
- B. Conceptual Plan [Attached- Subject to Further Amendments by Mutual Agreement of the Parties]**
- C. Survey & Description of Property [To be provided by Seller Prior to Closing]**
- D. Title Insurance Policy [To be provided by Purchaser Prior to Closing]**
- E. Promissory Note Regarding Job Creation [Attached]**
- F. Release of Declaration of Covenants [To be provided by Seller on a Form Agreed Upon by the Parties Prior to Closing]**
- G. Release of Rights of Revision [To be provided Seller on a Form Agreed Upon by the Parties Prior to Closing]**
- H. Commvault's Easement [Attached]**

**PURCHASE AND SALE AGREEMENT AND  
REDEVELOPMENT AGREEMENT**

This **PURCHASE AND SALE AGREEMENT AND REDEVELOPMENT AGREEMENT** ("Agreement") is made as of March \_\_, 2018 ("Effective Date") between **Fort Monmouth Economic Revitalization Authority**, ("FMERA" or "Authority" or "Seller") a public body corporate and political constituted as an independent authority and instrumentality of the State of New Jersey, pursuant to P.L. 2010, c. 51, N.J.S.A. 52:27I-18 et seq., whose address is 502 Brewer Avenue, Oceanport, New Jersey 07757, referred to as the Seller, and Commvault Systems, Inc., ("Commvault" or "Purchaser") a Delaware corporation, whose address is 400 Hope Road, Tinton Falls, N.J. 07724, referred to as the Purchaser. Seller and Purchaser are collectively referred to herein as the "Parties".

**WITNESSETH:**

**WHEREAS**, on behalf of the United States Secretary of Defense, the Office of Economic Adjustment recognizes the Seller as the local redevelopment authority for Fort Monmouth, located in the Boroughs of Oceanport, Eatontown and Tinton Falls, New Jersey;

**WHEREAS**, FMERA has publicly advertised a Request for Offers to Purchase ("RFOTP") the approximately 4.0 acre parcel which includes the 2.3 acres improved by the Charles Wood Fire Station Building 2560 and the additional 1.7 acres of unimproved land in Fort Monmouth, Tinton Falls, New Jersey (the "Property" as further identified, described and defined herein) in accordance with FMERA's Rules for the Sale of Real and Personal Property, N.J.A.C. 19:31C-2.1 et seq.;

**WHEREAS**, there exists an Economic Development Conveyance Agreement ("EDC Agreement"), between the United States Department of the Army ("Army") and FMERA which

addresses the terms by which the Army transferred to Seller a portion of Fort Monmouth, which includes the Property;

**WHEREAS**, Seller is subject to the terms and conditions of the EDC Agreement;

**WHEREAS**, attached hereto as **Exhibit A** is the quitclaim deed by which the Army conveyed the Property and other land and property in Fort Monmouth to FMERA (the “Army Quitclaim Deed”);

**WHEREAS**, the Purchaser proposes to utilize the Property for corporate office space which may include swing space for Purchaser’s existing corporate campus and recreation uses on the open space on the Property in accordance with the Fort Monmouth Reuse and Redevelopment Plan, as amended, and FMERA has confirmed that the proposed uses are consistent with the amendment.

**WHEREAS**, Seller desires to sell to Purchaser, and Purchaser desires to purchase from Seller, the Property subject to the terms and conditions set forth herein.

**NOW THEREFORE**, for good and valuable consideration, the mutual receipt and legal sufficiency of which the Parties hereby acknowledge, Seller and Purchaser hereby agree as follows:

#### **DEFINITIONS**

For all purposes of this Agreement, the following terms shall have the respective meanings set forth below:

**1. Definitions:**

- a. **“Affiliate”** means with respect to Purchaser, any other Person directly or indirectly controlling or controlled by, or under direct common Control with Commvault. For purposes of this definition the term “Control” (including the correlative meanings of the term “controlled by” and “under common control with” as used with respect

to Purchaser), shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management, operations and policies of the Purchaser, whether through the ownership of voting securities or by contract or otherwise.

- b. **"Agreement"** means this Purchase and Sale Agreement and Redevelopment Agreement dated above, as same may be amended, modified or supplemented from time to time by written instrument signed by the Parties.
- c. **"All Approvals"** means all Non-Appealable Final Approvals, permits, decisions, reviews and agreements issued by municipal, county, state, federal and quasi-governmental authorities needed to obtain building permits for all of the residential units and commercial uses on the Property and related off-site improvements so as to allow the continuous development of the Project and which Approvals shall contain terms and conditions acceptable to Purchaser in its reasonable discretion, including but not limited to, the following Non-Appealable Final Approvals: (i) the mandatory conceptual review approval of the Project by FMERA which is required pursuant to N.J.A.C. 19:31C-3.20(c); (ii) preliminary and final subdivision approval, if applicable; and (iii) preliminary and final site plan approval, if applicable, including the required review by FMERA in connection with "d" variances; (iv) execution of an acceptable Developer's Agreement with the Borough of Tinton Falls and/or County of Monmouth as may be required; (v) a Final Remediation Document issued to Commvault by either the New Jersey Department of Environmental Protection ("NJDEP") or Commvault's licensed site remediation professional that documents that the Property has been remediated and

which document includes a covenant not to sue pursuant to either N.J.S.A. 58:10B-13.1 or N.J.S.A. 58:10B-13.2; and (vi) such permits or Approvals as may be needed from the NJDEP which include, but are not limited to, a sewer extension permit, stream encroachment permit, CAFRA, and fresh water wetland permit. Each such approval shall be referred to as an "Approval."

- d. **"Army"** means the United States of America, acting by and through the Secretary of the Army and any division, department or agency thereof.
- e. **"CERCLA"** means the Comprehensive Environmental Response and Liability Act of 1980 (P.L. 96-510) as amended.
- f. **"CERCLA Covenants"** shall have the meaning ascribed in Section 21.
- g. **"Closing"** shall mean the transfer of the Property from the Seller to the Purchaser and the transfer of the Purchase Price from the Purchaser to the Seller which shall occur upon the satisfaction of the Conditions Precedent to Closing set forth in Section 14.
- h. **"Complete", "Completed" or "Completion"** means completion of the bonded improvements as described in Section 6(e). Thereafter Seller shall issue a Certificate of Completion.
- i. **"Conditions Precedent to Closing"** shall mean the obligations of the Purchaser and Seller which are set forth in Section 14.
- j. **"Deposit"** shall mean collectively the Initial Deposit and Second Deposit described in Section 5 herein.
- k. **"Discharge"** pursuant to N.J.S.A. 58:10-23.11b, as same may be amended, means any intentional or unintentional action or omission resulting in the releasing,

spilling, leaking, pumping, pouring, emitting, emptying or dumping of Hazardous Substances into the waters or onto the lands of the State, or into waters outside the jurisdiction of the State when damage may result to the lands, waters or natural resources within the jurisdiction of the State.

- l. “Due Diligence Period”** means the period commencing on Seller’s issuance of a license allowing Purchaser to access the Property and ending at five o’clock (5:00) p.m. on the later of (i) March 7, 2018 or (ii) thirty (30) days following receipt of the survey of the Property from Seller (the “Due Diligence Period”), during which the Purchaser upon prior written notice to Seller, at its sole cost and expense, may investigate the Property to determine whether the as-is condition of the Property is satisfactory to the Purchaser. The parties acknowledge that Seller issued said license on December 22, 2017. Notwithstanding the foregoing, the Due Diligence Period shall be no less than thirty (30) days following delivery of the required survey of the Property from the Seller to the Purchaser. The Due Diligence period shall be extended for an additional period of thirty (30) days (i) in the event the Purchaser’s environmental assessment indicates further investigation is warranted as to the environmental condition of the property; or (ii) if the environmental assessment uncovers another significant environmental concern that has not been identified in the FOST which would require the Purchaser to conduct additional environmental testing or due diligence; or (iii) by the mutual agreement of the parties for such additional period as the parties may determine.
- m. “EDC Agreement”** shall mean the Agreement between the Army and FMERA dated June 25, 2012 which sets forth the terms by which the Army conveyed



portions of Fort Monmouth (including the Property) to FMERA and the terms under which FMERA acquired same from the Army.

- n. **“Effective Date”** shall mean the date set forth in the introductory paragraph of this Agreement.
- o. **“Environmental Laws”** or **“Environmental Law”** shall mean each and every applicable federal, state, county or municipal environmental and/or health and safety statute, ordinance, rule, regulation, order, code, directive or requirement.
- p. **“Final Remediation Document”** pursuant to N.J.S.A. 58:10-23.11b, as it may be amended, means a no further action letter (“NFA”) issued by the NJDEP pursuant to N.J.S.A. 58:10B-1 et al., or a response action outcome (“RAO”) issued by a licensed site remediation professional pursuant to N.J.S.A. 58:10C-14.
- q. **“Finding of Suitability to Transfer”** or **“FOST”** means the document entitled “Draft Final Finding of Suitability to Transfer, (FOST), Fort Monmouth, New Jersey, Fort Monmouth, Charles Wood Area,” dated August 2013 and prepared by the Army. The purpose of the FOST is to document the environmental suitability of certain parcels at Fort Monmouth for transfer to FMERA consistent with CERCLA Section 120(h) and Department of Defense Policy. In addition, the FOST includes CERCLA Notice, Covenant and Access Provisions and other Deed Provisions and the Environmental Protection Provisions necessary to protect human health or the environment after transfer of certain parcels from the Army to FMERA.
- r. **“Force Majeure”** shall mean the failure or delay of performance by Seller or Purchaser of any provision of the Agreement by reason of the following: labor

disputes, strikes, picket lines, boycott efforts, war (whether or not declared), riots, moratorium regarding sewer, water or any other utilities, litigation filed against either Seller or Purchaser affecting the Property, acts of God, or materially adverse conditions affecting the real estate market and the Project or any individual phase of the Project as demonstrated by an independent market study prepared by a qualified economist or financial consultant selected by the Party seeking a delay in performance based upon materially adverse real estate market conditions and approved by the non-benefitting party which approval shall not be unreasonably withheld or delayed. In such cases, neither the Seller nor Purchaser shall be in default of this Agreement if the delay or failure to perform is by reason of the aforementioned events or conditions. Any extension of the timeframes for performance of obligations set forth in this Agreement for Force Majeure shall be contingent upon the Party claiming a Force Majeure notifying the other Party in writing within thirty (30) days of the occurrence of the event resulting in the failure or delay of performance. The time of performance shall be extended for the period of the delay occurring as a result of the Force Majeure event; provided, however, that in no event shall the extension of the timeframe exceed twelve (12) months in the aggregate for all Force Majeure or Tolling events.

- s. "**Hazardous Substances**" means all substances set forth in N.J.A.C. 7:1E-1.7 as same may be amended from time to time.
- t. "**Improvements**" shall mean the building, fixtures and structures located on Property.

- u. **“Interested Parties”** means Purchaser’s Mortgagee, Purchaser’s Lender, and/or Purchaser’s Tax Credit Investor.
- v. **“Municipality”** shall mean the Borough of Tinton Falls, in the County of Monmouth, State of New Jersey.
- w. **“No Further Action Letter” (“NFA”)** has the same meaning as set forth at N.J.S.A. 58:10B-1.
- x. **“Person”** means an individual, partnership, limited liability company, corporation, business trust, joint stock company, trust, unincorporated association, joint venture, government authority, or other entity of whatever nature.
- y. **“Preliminary Site Plan Approval” and “Preliminary Subdivision Approval”** shall have the meanings set forth in N.J.S.A. 40:55D-1 et seq.
- z. **“Project”** means the renovation and retrofitting of the existing building on approximately the 4.0 acre parcel for use as corporate office space and may include swing space for Purchaser’s existing corporate campus and recreation uses on the open space on the Property. The Project is further described herein at Section 6 and depicted in the current version of the conceptual site plan, which may be amended by mutual agreement of the parties, attached hereto as **Exhibit B**. . Purchaser’s obligation to complete the Project within a time certain as set forth herein shall only be as to the extent of any bonded improvements as otherwise set forth in Section 6(e).
- aa. **“Property”** means (a) the approximately 2.3 acre parcel improved by the 10,070 square foot Building 2560, known as the Charles Wood Fire Station, Fort Monmouth, in the Borough of Tinton Falls, New Jersey inclusive of an

approximately 0.25 acre environmental care-out (“ECP 28”), and (b) an additional 1.7 acres of unimproved land on the adjacent subparcel to the east of the Charles Wood Fire Station (the “Property” as further identified, described and defined herein). The Property is further described in Section 3 and is also depicted in the boundary survey and the metes and bounds description that is attached hereto as **Exhibit C**.

bb. **“Purchaser”** shall mean Commvault Systems, Inc., a Delaware corporation, and its authorized assignees or successors.

cc. **“Purchase Price”** is the price that the Purchaser shall pay the Seller for the Property. The Purchase Price shall be paid as described in Sections 4 and 5.

dd. **“Response Action Outcome” (“RAO”)** has the same meaning as set forth at N.J.S.A. 58:10-23.11b, as amended.

ee. **“Tolling”** shall mean a period of time during which all time frames and obligations of Purchaser or Seller as set forth in this Agreement are suspended in accordance with the terms of this Agreement and which suspension of time frames and obligations shall continue until the event causing the Tolling is resolved to the satisfaction of the Party seeking the benefit of a Tolling period. The Party seeking the benefit of a Tolling period must provide the other Party with notice of the happening of the Tolling event within thirty (30) days after the occurrence of the Tolling event.

2. **Purchase and Sale Agreement**. Subject to the terms and conditions set forth in this Agreement and the performance by the Parties of all of the obligations hereunder, the Seller agrees to sell and convey to Purchaser, and the Purchaser agrees to purchase and acquire

from Seller, the Property. The Seller will sell and convey to the Purchaser the Property in its as-is condition, which consists of: (a) the land and building, other improvements and fixtures on the land; (b) all of the Seller's rights relating to the land; and (c) all personal property specifically included in this Agreement.

3. **The Property.** The Property is the approximately 4.0 acre parcel improved by the 10,070 square foot Building 2560, known as the Charles Wood Fire Station, Fort Monmouth, in the Borough of Tinton Falls, New Jersey (the "Property" as further identified, described and defined herein). The Property is more fully described in the attached **Exhibit C.**
4. **The Purchase Price.** Subject to adjustments as called for in Section 25, the price that the Purchaser will pay the Seller for the Property is One Million Nine Hundred and Seventy Thousand (\$1,970,000) dollars.
5. **Payment of the Purchase Price.** Subject to adjustments as called for in Section 25, the Purchaser will pay the purchase price as follows:

An initial deposit of one hundred and fifteen thousand (\$115,000.00) dollars.	\$115,000.00
A second deposit of one hundred and eighty thousand five hundred (\$180,500) dollars due upon execution of this Agreement.	\$180,500.00
Balance to be paid at closing of title, by wire transfer, in cash or by certified check (subject to adjustment at closing).	\$1,674,500.00
<b>Total purchase price</b>	<b>\$1,970,000.00</b>

6. **Redevelopment Project, Capital Investment, and Job Creation.**

- a. **Redevelopment Plan:** Purchaser represents that Purchaser proposes to adaptively reuse the existing Fire Station as corporate office space and may include swing space for Purchaser's existing corporate campus and recreation uses on the open space on the Property. Purchaser may, at its sole discretion, improve the Property with additional square footage to accommodate additional office space, contingent on site constraints including but not limited to floodplain and stream encroachment restrictions, and subject to the Fort's Reuse Plan and Land Use Rules, as amended. Purchaser will make ancillary improvements, including parking, to meet the needs of the office user and the additional square footage, in accordance with the Fort Monmouth Reuse and Redevelopment Plan and as otherwise set forth herein. Purchaser's site plan and subdivision will be subject to FMERA's Mandatory Conceptual Review and Tinton Falls' planning board review, as required by applicable law.

Purchaser will also be responsible for the repavement and/or improvement of the section of Heliport Drive running through the Property (along the Property frontage on Heliport Drive from Corregidor Road to the southern property limits) as proposed in the attached conceptual site plan, and to the standards acceptable to the Borough of Tinton Falls in accordance with Tinton Falls design standards set forth in the Development Ordinances of Tinton Falls and as permitted or required under the New Jersey Municipal Land Use Law. Purchaser shall not be responsible for the cost of the relocation of existing utilities, if any, within the right of way for Heliport Drive.

Purchaser will be responsible for securing and maintaining uninterrupted access to Parcel C-1 and Building 2525 during construction and Seller hereby grants to Purchaser (and/or its successor) an access license for the duration of said construction. The parties shall execute any and all other documents as may be reasonably and further necessary to effect and evidence such license.

Purchaser will use its best efforts to obtain All Approvals within twenty-four (24) months from Closing and commence the Project upon receipt of All Approvals and complete the Project, as evidenced by receipt of certificate of occupancy, within twenty-four (24) months of the receipt of said approvals.

Purchaser will renovate and upgrade the Property for corporate office space and may include swing space for Commvault's Purchaser's existing corporate campus and recreation uses on the open space on the Property, and required accessory improvements for the Property as Purchaser requires, at a minimum investment of approximately one million (\$1,000,000) dollars. Purchaser shall complete renovations within twenty-four (24) months of receipt of All Approvals, as evidenced by a temporary or permanent certificate of occupancy.

In the event that the bonded improvements as set forth in Section 6(e) are not complete within twenty-four (24) months from receipt of All Approvals as contemplated above by reason of force-majeure or such reasons as agreed between the Parties and provided Purchaser's construction is ongoing and Purchaser is proceeding in good faith toward the completion of the Project, then in such event, Purchaser shall be entitled to an extension of the twenty-four (24) month completion date without penalty for a term as reasonably agreed upon by FMERA.

- b. **Capital Investment:** Purchaser will adaptively reuse the existing Fire Station as a corporate office space and may include swing space for Purchaser's existing corporate campus and recreation uses on the open space on the Property at a minimum cost of one million (\$1,000,000.00) dollars.
- c. **Job Creation:** Purchaser will create a minimum of forty (40) full-time jobs at the Property within twenty-four (24) months of the completion of the Project as evidenced by Purchaser's receipt of a final certificate of occupancy.

To the extent the Purchaser fails to achieve the creation of a minimum of forty (40) total jobs on the Property within twenty-four (24) months of the completion of the Project, then on that date it shall be liable to pay to the Seller one thousand five hundred (\$1,500.00) dollars for each job not created. It is agreed and understood that Purchaser's obligation to create a minimum of forty (40) jobs within twenty-four (24) months of the completion of the Project, is a one-time obligation and that "jobs" created shall be "full time jobs" as defined in the then applicable EDA regulations and that any such jobs need not be full time employment at the Project; rather, only that any such employee's place of employment shall be at the Project as may be certified by any Tenant in a "manning" or other similar report which they will be obligated to provide Purchaser. Payment shall be due to Seller within thirty (30) days of Seller's delivery of notice pursuant to this Section. To the extent that the Purchaser fails to achieve the minimum job creation level, then the Purchaser will be liable to Seller in the amount of a one thousand five hundred dollar (\$1,500) per job penalty.



- i. **New Jobs Security:** Prior to Closing, Purchaser shall secure its obligation to create a minimum of forty (40) new jobs at the Property, or pay up to a one thousand five hundred dollar (\$1,500) per job penalty, through the granting of a promissory note ("Note") from Purchaser in a form substantially similar to **Exhibit E**. The provisions of Section 6 shall survive Closing, shall run with the land, and shall be a one-time obligation as set forth above. It is agreed and understood that upon receipt of notice of creation of forty (40) jobs as set forth above or the payment of any monies for jobs not created, then Seller shall, within thirty (30) days of notice of creation or payment, cancel or otherwise discharge the Note which shall no longer be in force or effect. It is agreed and understood that Purchaser has within twenty four (24) months of the completion of the Project, as set forth above, to provide forty (40) jobs as set forth herein, the option to pre-pay any such obligation for any deficiency and thereafter Seller shall cancel the Note as set forth above.
- ii. **Completion Bond or Promissory Note:** Prior to Closing, Purchaser shall secure its obligation to complete the Project, either by a promissory note, or through the purchase of a performance bond for the benefit of FMERA and/or the Borough of Tinton Falls, underwritten by a surety or financial institution, and in a form, acceptable to the Borough of Tinton Falls and FMERA in the amount as required by the Borough in the context of preliminary and final site plan improvements for the Project as permitted pursuant to the Municipal Land Use Law of the State of NJ, **N.J.S.A.**

40:55D – 1 et seq. (“MLUL”) but in no event not less than one million dollars (\$1,000,000.00). For the avoidance of doubt and notwithstanding anything to the contrary herein, the performance guarantees referred to herein are limited to those guarantees as may be permitted pursuant to the MLUL and shall not mean performance guarantee(s) of any nature on the improvements relating to structures on or to be constructed on the Property that are not otherwise subject to the performance guarantee requirements of the MLUL. It shall be a default under this Agreement for Purchaser to fail to commence or complete the bonded improvements timely, as required herein. Notwithstanding anything herein to the contrary, Seller agrees to provide Purchaser with ninety (90) days advance written notice of Seller's intent to declare a default under this Section 6 and the Purchaser shall have the opportunity to cure within said notice period. The written notice may be conveyed any time after the ninety first (91<sup>st</sup>) day prior to the commencement or completion deadline. FMERA's right to make a demand to draw on the completion bond shall survive the Closing and/or termination of this Agreement, and shall run with the land, and shall be a continuing obligation until such time as the bonded improvements are completed and the bonds released. It is agreed and understood that any such bonds posted with the Borough of Tinton Falls for site plan or other improvements, shall be released pursuant to the applicable provisions of the MLUL. Upon completion of the bonded improvements and the Project, Purchaser shall provide a Certification of Completion which Seller must review and

respond to within no more than twenty (20) days of receipt. If Seller confirms that all improvements as described in the bond or that are defined as the Project have been completed, it shall provide such written evidence of same in a form satisfactory to the issuer of the bonds so as to allow for their release. If Seller indicates that all improvements as described in the bond or that are defined as the Project have not been completed, it shall provide a written list of all such items that remain outstanding. Upon Purchaser's completion of those items as set forth in the written list and Seller's confirmation of same, Seller shall provide such written evidence of same in a form satisfactory to the issuer of the bonds so as to allow for their release.

Each and every one of the foregoing representations and covenants contained in this Section 6 shall survive Closing, shall run with the land, and shall be a continuing obligation.

7. **Declaration of Covenants.** Prior to Closing, Purchaser shall provide the Seller with a declaration of covenants and restrictions upon the Property for review and approval by the Seller. The declaration of covenants and restrictions shall run with the land and shall contain the following and which shall expire upon the issuance of a Certificate of Completion issued by Seller and thereafter the Purchaser shall be entitled to record the Release of the Declaration of Covenants as set forth in **Exhibit F** attached. The Declaration shall indicate or otherwise contain:

- a. The uses of the Property shall be limited to those uses permitted pursuant to the Fort Monmouth Reuse and Redevelopment Plan, as amended.

- b. Purchaser, as the approved redeveloper, will commence and complete the Project within the period of time established in this Agreement.
- c. Purchaser, as the approved redeveloper, will not sell, lease or transfer the Property, the Project or this Agreement prior to the Completion of the Project without the written consent of FMERA, except as set forth in Section 30 hereof.

Purchaser shall provide Seller with a copy of the recorded declaration of covenants and restrictions against the Property within six (6) months of Closing.

**8. Reversion to Seller.**

- a. The quitclaim deed from Seller to Purchaser shall provide that if the timeframes set forth herein have not been met, then Seller shall have the right of reversion of title, at Seller's sole option, to Property. If Purchaser has not commenced or completed construction within twenty-four (24) months from receipt of All Approvals. In the event Purchaser's construction is ongoing and Purchaser is proceeding in good faith toward the completion of the Project, then in such event, Purchaser shall be entitled to an extension of the twenty-four (24) month completion date without penalty for a term as reasonably agreed upon by FMERA. Such right of reversion shall be, by its terms as set forth in the quitclaim deed, subordinate to any and all land, construction, permanent or other lender whose lien shall have superiority over any such rights.
- b. Should Seller exercise this reverter option, Seller and Purchaser agree that (i) the existing land value of the Property is one million nine hundred and seventy thousand (\$1,970,000) dollars. Seller shall pay Purchaser one million nine hundred and seventy thousand (\$1,970,000.00) dollars plus the base costs of all

improvements installed at the property if the Property becomes subject to this reverter option. Any reversion purchase price paid by Seller shall be applied first to reduce any outstanding balance of any mortgage or lien imposed on the Property by Purchaser.

- c. Seller's reversion right shall always be subject to and shall not defeat, render invalid or limit in any way (i) the lien of any mortgage in favor of any Interested Parties or (ii) any rights or interests for the protection of Interested Parties. Notwithstanding anything herein to the contrary, Seller agrees to provide Purchaser with ninety (90) days advance written notice of Seller's intent to exercise its right of reverter and the Purchaser shall have the opportunity to cure within said notice period. The ninety (90) day period referred to is known as the "Reversion Cure Period". During the Reversion Cure Period, any of the Interested Parties may either: i) cure the default identified by the Seller in their default notice; or ii) agree with Seller on a proposal which must be acceptable to both parties in both parties reasonable discretion, for one or more of the Interested Parties to cure Purchaser's default beyond the Reversion Cure Period. If following the Reversion Cure Period, the default is neither cured nor have the parties agreed upon a proposal to cure the default, then Seller may move forward with its right of reversion.
- d. The Seller's right of reversion shall survive the Closing and/or termination of this Agreement, and shall run with the land on any portion of the Property that is subject to the Seller's right of reversion pursuant to Section 8(a).
- e. Seller shall execute a release evidencing the termination of Seller's right of reversion on any portion of the Property for which the bonded improvements and

Project as set forth in Section 6 (e) have been completed upon the presentation of (i) proof of completion and (ii) a form of release that shall be recorded at the sole cost and expense of the Purchaser or its successors and assigns. Upon completion of the bonded improvements and Project as set forth in Section 6 (e) Purchaser shall be entitled to record the Release of Rights of Reversion as set forth in **Exhibit G**.

**9. Prevailing Wage.** Prevailing wage will apply only to the extent that the development of the Property includes “public work” as that term is defined in the New Jersey Prevailing Wage Act, N.J.S.A. 34: 11-56.25 et seq., or if the Purchaser receives financial assistance from FMERA, the State or any other State entity and such assistance requires, by law, the use of prevailing wage. This prevailing wage obligation shall survive Closing and/or termination of this Agreement and shall continue until renovation of the Project is Completed.

**10. Purchaser Financially Able to Close.** The Purchaser represents that it has or will have sufficient cash available at Closing to complete the purchase without financing. The Closing shall not be contingent upon the Purchaser or any other Person obtaining financing to pay the Purchase Price. Notwithstanding Purchaser’s representation that it has or will have sufficient cash available at Closing to complete the purchase without financing, Purchaser may in Purchaser’s sole discretion choose to seek and obtain financing to complete the purchase.

**11. Deposit Monies.**

- a. All deposit monies (and interest accrued thereon) will be held by FMERA’s attorney (“Escrow Agent”) in its interest-bearing, Attorney Trust Account pursuant to the Escrow letter executed by the Purchaser and Seller until the date of Closing

or as otherwise provided in this Agreement. At Closing, Purchaser shall receive a credit against the Purchase Price in the amount of the Deposit and all interest accrued thereon. If Purchaser terminates this Agreement in accordance with its terms, the Escrow Agent shall refund the Deposit to Purchaser within three business days of receipt of Purchaser's notice. The Initial and Second Deposit shall be refundable upon termination of this Agreement pursuant to Sections 11, 12, 13, 14, 21, 22 and 23.

- b. In the event that the Agreement is terminated by the Seller because Purchaser defaults and said default is not cured within the time frames established herein, then the Escrow Agent shall pay the Seller the two hundred ninety five thousand and five hundred (\$295,500.00) dollar deposit and all accrued interest as liquidated damages.

**12. Title and Survey Investigation.**

- a. Attached hereto as **Exhibit D** is a Title Insurance Policy Commitment No. \_\_\_\_\_ ("Title Commitment") that was issued by \_\_\_\_\_ ("Title Company") for the Purchaser. Seller agrees that prior to and as a Condition Precedent to Closing, Seller shall:

- i. Deliver title to the Property, as well as title to ECP 28, which parcel has received a final remediation document from the Army and will be conveyed by the Army to the Seller via quitclaim deed, that is good, marketable, fee simple title, valid of record and insurable at regular rates; and

- ii. Satisfy, remove, discharge and/or cure to the reasonable satisfaction of Purchaser and the Title Company the following requirements and exceptions that are identified in the Title Commitment:
- b. Seller shall deliver a survey of the Property showing all existing easements and utilities to remain to the Purchaser no later than thirty (30) days after the execution of this Agreement. If Purchaser elects to obtain a survey, then no later than thirty (30) days from the end of the due diligence period, Purchaser shall deliver to Seller a copy of Purchaser's survey together with a list of survey objections. Not later than ten (10) days after Seller receives Purchaser's survey objections, Seller shall notify Purchaser which of the objections, if any, Seller shall cure prior to or at the Closing, including when and in what manner said items are to be cured. If Purchaser is dissatisfied with Seller's response or lack of response, Purchaser may either terminate this Agreement within thirty (30) days of receipt of Seller's response (or within thirty (30) days of Seller's failure to respond) or proceed under this Agreement. If Purchaser elects to proceed under this Agreement after Purchaser supplies an unsatisfactory response or no response, then Purchaser's election is deemed an acceptance of the survey objections by the Purchaser and Seller shall have no further obligation to cure the Purchaser's survey objections either prior to or at Closing.
- c. Purchaser shall have the further right to order a run-down title examination(s) at any time prior to Closing, at Purchaser's cost and expense, and to submit to Seller any title and/or survey objections which may have arisen since the initial title and survey examination.



- d. If Seller fails to meet the requirements of Section 12(a), or if Seller has agreed to cure a survey objection pursuant to Section 12(b) and fails to do so, or if Purchaser has additional title and/or survey objections as a result of its run-down title examination pursuant to Section 12(c) and Seller fails to cure such objections, then Purchaser may: i) delay Closing to a date mutually agreed upon by Seller and Purchaser so that Seller or Purchaser removes or cures such non-permitted exception at Seller's expense; or ii) terminate this Agreement and receive a full refund of the Deposit.
- e. From the date of this Agreement, Seller shall not permit any further encumbrance on the Property without Purchaser's prior written consent, which consent may be withheld for any reason.

**13. Due Diligence Period.**

- a. Purchaser, its agents and Purchaser's prospective assignees, shall have the right, during the Due Diligence Period, and at all times during the term of this Agreement, to access the Property, to inspect the Property and to investigate all matters relating thereto, including, but not limited to, existing zoning requirements, the physical condition of the Property, the environmental condition of the Property and its environs, and any other matters Purchaser deems relevant to its decision to purchase the Property.
- b. Purchaser may terminate this Agreement in its sole, absolute and unfettered discretion prior to five o'clock (5:00) p.m. on the last day of the Due Diligence Period. Upon termination of this Agreement during the Due Diligence Period, the Deposit shall be promptly returned to Purchaser.

- c. Purchaser, its agents and Purchaser's prospective assignees, shall provide Seller with proof of the following insurances prior to being provided access to the Property:
  - i. Comprehensive General Liability policy (including insurance with respect to owned or operated motor vehicles which may be provided under a separate policy) as broad as the standard coverage form currently in use in the State of New Jersey, which shall not be circumscribed by any endorsements limiting the breadth of coverage. The policy shall include an additional insured endorsement (broad form) for contractual liability. Limits of liability and property damage in the minimum amounts of one million (\$1,000,000.00) dollars per occurrence and three million (\$3,000,000.00) dollars aggregate. Seller shall be named an additional insured on this policy;
  - ii. Worker's Compensation applicable to the Laws of the State of New Jersey and Employer's Liability Insurance with limits of not less than one hundred thousand (\$100,000.00) dollars per occurrence for bodily injury liability and one hundred thousand (\$100,000.00) dollars occupational disease per employee with an aggregate limit of five hundred thousand (\$500,000.00) dollars occupational disease;
- d. Purchaser shall repair any damage caused by its investigations and shall restore the Property to substantially the same condition as existed immediately prior to such investigations. Purchaser hereby indemnifies and holds Seller harmless from any liability to the extent related to any negligent act or omission of Purchaser or Purchaser's agents or representatives in the performance of any and all activities

conducted on the Property by Purchaser until Closing, unless such liability is the result of Seller's negligence or intentional acts or omissions.

**14. Conditions Precedent to Closing.**

- a. The Closing is subject to and conditioned upon the following:
  - i. Receipt by Purchaser of a Final Remediation Document that demonstrates that any area of concern or Hazardous Substance at the Property has been remediated in accordance with all applicable Environmental Laws which document includes a covenant not to sue pursuant to either N.J.S.A. 58:10B-13.1 or N.J.S.A. 58:10B-13.2;
  - ii. The receipt by Seller of a reasonably acceptable form of a declaration of covenants and restrictions upon the Property pursuant to Section 7 for review and approval by the Seller prior to Closing.
  - iii. Seller shall have performed all covenants, agreements and conditions required by this Agreement to be performed by Seller prior to or as of Closing and shall have cured all defaults;
  - iv. Seller shall have satisfied all conditions relating to the conveyance of fee simple marketable title insurable at regular rates in accordance with Section 12;
  - v. Purchaser has not terminated this Agreement in accordance with the terms set forth in this Agreement; and
  - vi. Seller has obtained EDA Board approval of Purchaser as the Redeveloper.
- b. The Seller and Purchaser mutually agree as follows concerning the Conditions Precedent to Closing:

- i. Each Party shall use its best efforts to perform all conditions required by this Agreement diligently prior to or as of Closing and each Party shall have cured any of its respective defaults prior to Closing or at Closing; and
- ii. Either Party may waive the performance of a covenant or a condition by the other Party, or may waive the cure of the other Party's default at any time prior to Closing or at Closing.

**15. Time and Place of Closing.**

- a. Subject to the expiration of the Due Diligence Period as defined herein and the satisfaction of the Conditions Precedent to Closing detailed in Section 14, the Closing shall occur the later of March 14, 2018 or thirty (30) days after Seller obtains approval of its Board and the consent of the NJEDA Board. The Closing will be held at the offices of Purchaser's counsel.
- b. If any event constituting a Force Majeure is in effect at the time of the Closing, then the date for the Closing shall be Tolloed and suspended for an equal number of days not to exceed twelve (12) months in the aggregate for all Force Majeure or Tolling events.
- c. In the event the Army has not conveyed the portion of ECP Parcel 28 on the Property to the Seller as of the Closing date, Seller will deed the portion of ECP Parcel 28 to Purchaser subsequently, upon Seller's receipt of title and environmental clearance.
- d. Seller shall deliver the following documents at Closing in form and substance satisfactory to Purchaser and to Purchaser's Title Company:
  - i. Quitclaim deed;

- ii. Affidavit of Title;
  - iii. Entity resolution;
  - iv. Paid receipt of Real Estate Broker;
  - v. Tax and utility bills, if any;
  - vi. Certificate of Compliance with Section 1445 of the Internal Revenue code (FIRPTA);
  - vii. Bill of Sale for any Personalty;
  - viii. IRS Form 1099;
  - ix. A post-Closing adjustments letter whereby the parties agree to readjust the pro-rations should any error or mistake be discovered within twelve (12) months of Closing;
  - x. A partial release of the EDA mortgage with respect to the Property; and
  - xi. Those originally executed Releases as set forth in **Exhibit's F and G** which are to be held in escrow and not released or recorded until those conditions as set forth herein are fulfilled. Purchaser shall deliver the Purchase Price and a Title Closing Statement at Closing.
- e. At Closing, Purchaser shall pay the balance of the Purchase Price (after application of a credit for the Deposit and all accrued interest) to the Seller. Purchaser shall make payment at Purchaser's option by either certified check or attorney trust account check or with the consent of Seller by wire transfer.

**16. Transfer of Ownership.** At Closing, the Seller shall transfer ownership of the Property to the Purchaser via a properly executed quitclaim deed. The quitclaim deed shall be in a form reasonably acceptable to Purchaser and the Title Company. The quitclaim deed

between the Parties shall include a metes and bounds description of the Property that, at Purchaser's election, shall be based upon the boundary survey supplied and paid for by FMERA which is attached hereto as **Exhibit C** and which may also recite the survey to be prepared by the Purchaser, at Purchaser's sole cost and expense. The quitclaim deed between the Purchaser and Seller shall be in substantially the same form as the Army Quitclaim Deed, subject to all notices, CERCLA Covenants, covenants, access provisions, deed provisions and environmental protection provisions recorded upon the Property as set forth in the Army Quitclaim Deed attached at **Exhibit A** and any covenants and restrictions that must be recorded pursuant to the requirements of N.J.A.C. 19:31C-3.24.

**17. Personal Property and Fixtures.** Many items of property become so attached to a building or other real property that they become a part of it. These items are called fixtures. They include such items as fireplaces, patios and built-in shelving. All personal property and fixtures are INCLUDED in this sale unless they are listed below as being EXCLUDED.

a. The following fixtures are EXCLUDED from this sale: none.

b. The following personal property is EXCLUDED from this sale: none.

**18. Physical Condition of the Property.** This Property is being sold "as is". The Seller does not make any claims or promises about the condition or value of any of the Property included in this sale. The Purchaser has inspected the Property and relies on this inspection and any rights, if any, which may be provided for elsewhere in this Agreement. Until Closing, the Seller agrees to maintain the grounds and secure, but not maintain, the building and improvements.

**19. Acknowledgment and Covenants Regarding FOST.** Purchaser and Seller agree and acknowledge that the Army is responsible for the environmental investigation and

remediation of the Property, as required by applicable law. The Purchaser and Seller acknowledge that each has received the FOST. The Purchaser and Seller agree that to the extent that the notices, covenants, access provisions, deed provisions and environmental protection provisions concerning the Property found in the FOST are contained in the Army Quitclaim Deed, then such terms shall run with the land. Purchaser, its affiliates, assignees, corporate successors, heirs, devisees and personal representatives covenant and hold harmless the Seller, and shall make no claim against the Seller, its successors and assigns, whether based upon strict liability, negligence or otherwise, concerning noise, environmental, land use, pollution, vibrations, or any similar problems, for any damage, direct or consequential, to any person or persons, or to property or otherwise, or for any other relief, which may arise from the condition of the Property or the fact that the Property is subject to the FOST and the Army Quitclaim Deed. This covenant shall survive Closing and/or termination of this Agreement and if the terms are included in the Army Quitclaim Deed, then such terms shall also run with the land and be binding upon the Purchaser and its successors and assigns.

- 20. Risk of Loss.** Seller shall be responsible for all losses and damages to the Property by fire, windstorm, casualty or other cause, and for all damages or injuries to persons or property occurring thereon or relating thereto (except as may be caused by acts of the Purchaser or its officers, employees, agents, contractors, licensees or sub lessees) prior to Closing. Notwithstanding the foregoing, Seller shall have no obligation to repair, replace or demolish any portion of the Property that is damaged or destroyed prior to Closing, but Seller shall take reasonably appropriate measures to ensure that the Property is secure. Seller and Purchaser agree that any damage or destruction to the Property shall not

otherwise affect the rights and responsibilities under this Agreement, and that Purchaser shall not be entitled to any offset against the Purchase Price for any damage or destruction to the building, structures, fixtures or improvements located on, under or above the Property that might occur prior to Closing.

**21. Environmental Matters.**

- a. Purchaser and Seller acknowledge that pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), the Army will retain responsibility for any Army caused environmental contamination (other than mold, asbestos containing materials, lead-based paint and commercially-applied pesticides and termiticides) that may be present on the Property as of the date of the Army Quitclaim Deed and as otherwise set forth in the RFOTP. The Parties acknowledge that the quitclaim deed between Seller and the Purchaser shall contain certain covenants required by CERCLA (the "CERCLA Covenants") which covenants are contained in the Army Quitclaim Deed.

The Seller shall not bear any responsibility or liability to the Purchaser or its successors or assigns for the presence of mold, asbestos containing materials, lead-based paint or commercially applied pesticides and termiticides on the Property as of or after the Closing. Purchaser shall be solely responsible for the proper disposal of any mold, asbestos containing materials, lead-based paint or commercially applied pesticides encountered during the renovation or demolition of the building and improvements on the Property.

- b. If Seller receives notice from any Person at any time prior to the Closing that any Discharge of a Hazardous Substance has occurred on the Property which has not



already been documented in the FOST, then Seller shall provide Purchaser with notice of the Discharge on the Property within three (3) days of receiving notice. Seller shall advise Purchaser within thirty (30) days of receiving the notice of Discharge whether Seller or the Army or other responsible third party shall remediate such Discharge and obtain a Final Remediation Document. If Seller advises Purchaser that neither the Seller nor the Army nor the other responsible third party shall remediate the Discharge and obtain a Final Remediation Document, then Purchaser shall have thirty (30) days from the receipt of this notice from the Seller to terminate this Agreement and receive a full refund of all Deposits. If Purchaser fails to terminate this Agreement within thirty (30) days of receipt of notice from the Seller that neither the Seller nor the Army nor the other responsible third party shall remediate the Discharge, then the Purchaser shall have waived the right to terminate the Agreement due to the Discharge. If Purchaser waives the right to terminate the Agreement after receiving notice from the Seller that neither the Seller nor the Army nor the other responsible third party shall remediate the Discharge of a Hazardous Substance on the Property, then Purchaser shall not be entitled to a set off or reduction in Purchase Price at Closing.

- c. If Seller or the Army or the other responsible third party agree to remediate the Property by delivering a Final Remediation Document and Seller or the Army or the other responsible third party subsequently fails to provide the Final Remediation Document prior to the date set for the Closing, then Purchaser may:
  - i. terminate this Agreement and recover all Deposits; or

- ii. delay Closing to a date reasonably specified by Purchaser to allow sufficient time for Seller or the Army or the other responsible third party to obtain the Final Remediation Document.

**22. Termination of Agreement.** If this Agreement is legally terminated, the Purchaser and the Seller shall be free of liability to each other, except (subject to the terms of Section 11 herein) for the return of the Deposit with all accrued interest that may be owed and any obligations that specifically survive termination of the Agreement.

**23. Default by Seller.**

- a. If Seller shall be unable or fail to convey the Property in accordance with the terms of this Agreement, then Purchaser shall have the right to terminate this Agreement and upon return of the Deposit (together with all interest accrued thereon), this Agreement shall be terminated and neither party shall have any further rights or obligations hereunder, except for any rights or obligations that specifically survive the termination of this Agreement.
- b. Purchaser acknowledges that the remedies set forth in this Section 23 are Purchaser's exclusive remedies in the event of any breach of or default under this Agreement by Seller or the inability or unwillingness of Seller to consummate the Closing as provided in this Agreement. In no event shall Purchaser have any claim for any damages against Seller, except as set forth in this Section 23. The terms of this Section 23 shall survive the Closing and/or any termination of this Agreement.
- c. The Purchaser agrees that prior to declaring the Seller in default hereunder, Purchaser shall provide Seller with thirty (30) days advance written notice of such

default and Seller shall have the right to cure such default within said thirty (30) day period.

**24. Default by Purchaser.**

a. The following occurrences shall be a default by Purchaser of the terms of this Agreement:

- i. Failure of Purchaser to observe and perform any covenant, condition, representation, warranty or agreement hereunder, and continuance of such failure for a period of ninety (90) days (if such default cannot be reasonably cured within ninety (90) days, then such obligation to cure shall be extended for such time as is minimally necessary to undertake such cure), after receipt of written notice from the Seller specifying the nature of such failure and requesting that such failure be remedied.
- ii. Purchaser shall have: a) Applied for or consented to the appointment of a custodian, receiver, trustee or liquidator of all or a substantial part of its assets; or b) A custodian shall have been legally appointed with or without consent of Purchaser; or c) Purchaser has: 1) made a general assignment for the benefit of creditors; or 2) filed a voluntary petition in bankruptcy or a petition or an answer seeking an arrangement with creditors or has taken advantage of any insolvency law; or d) Purchaser has filed an answer admitting the material allegations of a petition in any bankruptcy or insolvency proceeding; or e) a petition in bankruptcy shall have been filed against Purchaser, and shall not have been dismissed for a period of ninety (90) consecutive days; or f) an Order for Relief shall have been entered with

respect to or for the benefit of Purchaser, under the Bankruptcy Code; or g) an Order, judgment or decree shall have been entered, without the application, approval or consent of Redeveloper, by any court of competent jurisdiction appointing a receiver, trustee, custodian or liquidator of Purchaser, or a substantial part of its assets and such order, judgment or decree shall have continued unstayed and in effect for any period of ninety (90) consecutive days; or h) Redeveloper shall have suspended the transaction of its usual business.

iii. Purchaser has abandoned or substantially suspended any work on the Approvals such abandonment or suspension of work shall not be cured, ended or remedied within ninety (90) days after written demand by the Seller.

iv. The Purchaser shall place on the Property any unauthorized encumbrance or lien on the Property prior to Closing, or shall suffer any levy or attachment to be made on the Property prior to Closing, or any materialmen's or mechanics' lien, or any other unauthorized encumbrance or lien to attach to the Property prior to Closing and the encumbrance or lien shall not have been removed or discharged satisfactorily to the Seller at the sole cost and expense of the Purchaser within ninety (90) days after written demand by the Seller to do so.

b. If an occurrence of default by Purchaser occurs or Purchaser fails or refuses to consummate the Closing (where no default by Seller has occurred under the Agreement and all Conditions Precedent to Closing have been satisfied), then

Seller, as its sole and exclusive remedy, may terminate this Agreement by giving notice thereof to Purchaser. Upon any such termination, Seller shall retain as liquidated damages the portion of the Deposit stated in Section 11(d) above and all accrued interest and neither party shall have any further rights or obligations hereunder, except any rights or obligations that specifically survive the termination of this Agreement.

- c. Seller agrees that prior to declaring the Purchaser in default, Seller shall provide Purchaser with ninety (90) days advance written notice of such default and Purchaser shall have the right to cure such default within ninety (90) of receipt of written notice of the default.

**25. Adjustments at Closing/Assessments for Municipal Improvements.**

- a. The Purchaser and Seller agree to adjust the following expenses as of the closing date: water charges, sewer charges, and taxes, if any. The Purchaser or the Seller may require that any person with a valid claim or right affecting the Property be paid from the proceeds of this sale.
- b. Certain municipal improvements, including, but not limited to, sidewalks and sewers, may result in the Municipality charging property owners to pay for the improvement. All unpaid charges (assessments) against the Property for work completed before the date of Closing will be paid by the Seller at or before Closing, unless such assessments resulted from action taken by the Municipality in connection with Purchaser's Approvals, then the Purchaser shall pay such

assessments. If the improvement is not completed before the date of Closing then only the Purchaser will be responsible. If the improvement is completed at or before Closing, but the amount of the charge (assessment) has not been determined by the Municipality, the Seller will pay an estimated amount at Closing (unless such assessments resulted from action taken by the Municipality in connection with Purchaser's Approvals, then the Purchaser shall pay such assessments). When the amount of the charge is finally determined by the Municipality, the Seller will pay any deficiency to the Purchaser (if the estimate proves to have been too low), or the Purchaser will return any excess to the Seller (if the estimate proves to have been too high).

**26. Possession.** At Closing, the Purchaser will be given possession of the Property subject to the Army's right of access to the Property pursuant to the Army Quitclaim Deed. The delivery of the quitclaim deed for the Property by Seller to Purchaser and possession of the Property from Seller to Purchaser and the acceptance of possession of the Property by Purchaser shall be deemed full performance by Seller of its obligations under this Agreement, except for any duties that expressly survive Closing as provided herein.

**27. Liens.** In the event that an objection to title consists of an unpaid lien of a defined amount attributable to Seller, Seller has the right to satisfy the lien from the sales proceeds.

**28. Assignment of Permits and Approvals.**

- a. Seller agrees to cooperate with Purchaser in obtaining any required FMERA signatures or consents in connection with Purchaser's efforts to obtain All Approvals for the development of the Project on the Property and shall endeavor to obtain same from its Executive Director, within one week of presentation; from the

FMERA Real Estate Committee, within thirty (30) days from presentment; and from the FMERA Board, within forty five (45) days of presentment, subject to the Governor's ten (10) day veto period. Where required by law, FMERA will sign as owner or applicant on applications made by the Purchaser. Any delay beyond these time periods shall constitute an event entitling Purchaser to Tolling of the time periods set forth herein for performance by the Purchaser. At Closing Seller shall assign All Approvals related to the Project to the Purchaser.

- b. Seller shall join Purchaser in filing and recording a subdivision plat or plats in the County Clerk's office, which facilitates the dedication of streets, rights-of-way, and any easements, to the extent reasonably necessary, prior to the Closing provided that the cost and expense for same is paid solely by the Purchaser. Immediately prior to Closing, Purchaser shall post the necessary performance guarantees and inspection fees required to permit the filing of the subdivision plat with the County Clerk's Office.

**29. Parties Liable.** This Agreement is binding upon the Parties and all who succeed to their rights and responsibilities.

**30. Assignment.**

- a. Seller shall have the right to assign this Agreement without the consent of Purchaser to the State of New Jersey or any division thereof.
- b. Purchaser shall not have the right to assign this Agreement without first obtaining the express written consent of the Seller, which consent shall not be unreasonably withheld provided that:
  - i. the assignee is an Affiliate of the Purchaser;

- ii. the assignee is approved by the State of New Jersey's Department of the Treasury Chapter 51 Review Unit for compliance with the State of New Jersey's laws governing political contributions;
  - iii. the assignee has demonstrated to the satisfaction of FMERA that the potential assignee has the financial ability to meet the funding requirements of the assignee's Project;
  - iv. the assignee provides the Seller with an unqualified and unconditional acceptance of the terms and conditions of this Agreement including but not limited to the redevelopment obligations to the extent that they relate to the portion of the Property and Project being assigned;
  - v. the assignment will not delay the Completion of the Project;
  - vi. the assignee provides FMERA with satisfactory proof of the managerial experience and project experience of the assignee with projects of similar size and magnitude to the assignee's project;
- c. The Parties agree that if Seller authorizes an assignment in accordance with the terms herein, then Seller shall enforce this Agreement against the assignee and Seller shall release Purchaser from any and all duties, obligations, claims and damages arising under this Agreement, provided that the assignee has unconditionally accepted the assignment of this Agreement.
- d. Notwithstanding the foregoing, Purchaser shall have the right to assign this Agreement to an Affiliate of the Purchaser, such as an urban renewal entity created to undertake the Purchaser's Project without first obtaining the Seller's consent provided that the Affiliate or urban renewal entity is approved by the State of New



Jersey's Department of the Treasury Chapter 51 Review Unit for compliance with the State of New Jersey's laws governing political contributions and the Affiliate or urban renewal entity provides the Seller with an unqualified and unconditional acceptance of the terms and conditions of this Agreement.

**31. Successors and Assigns.** This Agreement shall inure to the benefit of and shall bind the Parties, their successors and assigns.

**32. Entire Agreement.** It is understood and agreed that all understandings and agreements between the parties regarding purchase, sale and conveyance of the Property are merged in this Agreement which alone fully and completely expresses their agreement. This Agreement replaces and supersedes any previous agreements between the Purchaser and the Seller regarding the purchase, sale and conveyance of the Property. This Agreement can only be changed by an agreement in writing signed by both Purchaser and Seller. The Seller states that the Seller has not made any other Agreement to sell the Property to anyone else.

**33. Governing Law.**

- a. This Agreement shall be governed, interpreted, construed and enforced in accordance with, the laws of the State of New Jersey without respect to any principles of conflict of law, both as to interpretation and performance. Seller and Purchaser waive any statutory or common law presumption which would serve to have this document construed in favor and against either party as the drafter.
- b. The Seller and the Purchaser agree that any and all claims made or to be made against the Seller based in contract law, including but not limited to, claims and damages described in Section 23(a) for all out of pocket costs and expenses, shall

be governed by and subject to the provisions of the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1 et seq.

- 34. Partial Invalidity.** If any term or provision of this Agreement or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by Law.
- 35. Headings.** The headings of the various Sections and Exhibits of this Agreement have been inserted only for the purposes of convenience, and are not part of this Agreement and shall not be deemed in any manner to modify, explain or restrict any of the provisions of this Agreement.
- 36. No Partnership or Joint Venture.** Nothing contained in this Agreement will make or will be construed to make the parties hereto joint venture partners with each other, it being understood and agreed that the only relationship between Purchaser and Seller hereunder is that of seller and purchaser. Nor should anything in this Agreement render or be construed to render either of the parties hereto liable to the other for any third party debts or obligations due the other party.
- 37. No Third-Party Rights or Benefits.** Nothing in this Agreement shall be construed as creating any rights of enforcement against any person or entity that is not a party to this Agreement, nor any rights, interest or third-party beneficiary status for any entity or person other than Purchaser and Seller. This Agreement is not an obligation of the State of New Jersey or any political subdivision thereof (other than FMERA) nor shall the State or any

political subdivision thereof (other than FMERA) be liable for any of the obligations under this Agreement. Nothing contained in this Agreement shall be deemed to pledge the general credit or taxing power of the state or any political subdivision thereof (other than FMERA).

**38. No Waiver.** No delay or failure on the part of any party hereto in exercising any right, power or privilege under this Agreement or under any other documents furnished in connection with or pursuant to this Agreement shall impair any such right, power or privilege or be construed as a waiver of any default or acquiescence therein. No single or partial exercise of any such right, power or privilege shall preclude the further exercise of such right, power or privilege, or the exercise of any other right, power or privilege. No waiver shall be valid against any party hereto unless made in writing and signed by the party against whom enforcement of such waiver is sought and then only to the extent expressly specified therein.

**39. Time Periods.** All time periods contained in this Agreement shall expire at five o'clock (5:00) p.m. Eastern Time on the date performance is due and any performance after such time and any Notice received after such time shall be deemed to have occurred on the next business day. In the event that any date falls on a weekend or any other day which commercial banks in the State of New Jersey are closed or permitted to be closed, the date shall be deemed to extend to the next weekday.

**40. Publication.** Purchaser and Seller agree:

- a. to consult with and cooperate with each other on the content and timing of all press releases and other public announcements relating to the transactions contemplated by this Agreement; and

- b. that Purchaser shall not issue any announcement or statement without the express written approval of Seller as to the text of the announcement.

**41. Recording or Notice of Pendency.**

- a. Purchaser shall not record nor attempt to record this Agreement; however, Purchaser may record the following:

- i. a memorandum or “short form” of this Agreement;
- ii. a Notice of Settlement; or
- iii. other reporting requirements under the Federal Securities Laws or other securities laws applicable to the Purchaser, provided that the documents that Purchaser proposes to record are provided to the Seller for review and approval, which shall not be unreasonably delayed or withheld, prior to recording.

- b. In the event Purchaser records this Agreement, without having obtained the prior written consent of Seller thereto, then Purchaser shall be deemed in material incurable default under this Agreement and Seller shall be authorized without any notice whatsoever:

- i. to terminate this Agreement; and
- ii. to take the Initial Deposit set forth in Section 5, including interest as liquidated damages, such damages being difficult, if not impossible to ascertain. This Section 41 shall survive the termination of the Agreement.

**42. Authority Representations of Purchaser and Seller.** Purchaser and Seller hereby represent to each other on and as of the date of this Agreement and on and as of the transfer(s) provided for herein, that each have full capacity, right, power and authority to

execute, deliver and perform this Agreement, and all required action and approvals therefore have been duly taken and obtained. The individual(s) signing this Agreement and all other documents executed or to be executed pursuant hereto on behalf of Seller and Purchaser shall be duly authorized to sign the same on Purchaser's and Seller's behalf and to bind Seller and Purchaser thereto. This Agreement and all documents to be executed pursuant to Seller and Purchaser are and shall be binding upon and enforceable against Seller and Purchaser in accordance with their respective terms. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby will not violate any judgment, order, injunction, decree, regulations or ruling of any court or governmental authority, or conflict with, result in a breach of, or constitute a default under any note or other evidence of indebtedness, any mortgage, deed of trust or indenture, or any lease or other material agreement or instrument to which Purchase or Seller is bound.

**43. Lis Pendens.** Unless Seller defaults, Purchaser hereby waives any right or privilege to place a lis pendens upon the Property or any property owned or controlled by FMERA and, accordingly, notwithstanding anything contained herein to the contrary, Purchaser shall be liable for all damages, including, but not limited to Seller's costs of removing the lis pendens for Purchaser's failure to comply with the terms hereof. This Section shall survive the termination of this Agreement.

**44. Political Campaign Contributions.**

**44.1** For the purpose of this Section, the following shall be defined as follows:

- (a) "Contribution" means a contribution reportable by a recipient under "The New Jersey Campaign Contributions and Expenditures Reporting Act" P.L. 1973, c. 83 (C.19:44A-1 et seq.), a contribution made to a legislative leadership committee, a

contribution made to a municipal political party committee or a contribution made to a candidate committee or election fund of any candidate for or holder of the office of Lieutenant Governor. Currently, contributions in excess of \$300 during a reporting period are deemed “reportable” under these laws.

(b) “Business Entity” means:

(i) a for-profit entity as follows:

- A. in the case of a corporation: the corporation, any officer of the corporation, and any person or business entity that owns or controls 10% or more of the stock of corporation;
- B. in the case of a general partnership: the partnership and any partner;
- C. in the case of a limited partnership: the limited partnership and any partner;
- D. in the case of a professional corporation: the professional corporation and any shareholder or officer;
- E. in the case of a limited liability company: the limited liability company and any member;
- F. in the case of a limited liability partnership: the limited liability partnership and any partner;
- G. in the case of a sole proprietorship: the proprietor; and
- H. in the case of any other form of entity organized under the laws of this State or other state or foreign jurisdiction: the entity and any principal, officer, or partner thereof;

(ii) any subsidiary directly or indirectly controlled by the Business Entity;

- (ii) (iii) any political organization organized under section 527 of the Internal Revenue Code that is directly or indirectly controlled by the Business Entity, other than a candidate committee, election fund, or political party committee;
    - (iii) (iv) principals who own or control more than 10 percent of the profits or assets of a Business Entity or 10 percent of the stock in the case of a Business Entity that is a corporation for profit (“Principals”); and
    - (v) with respect to an individual who is included within the definition of Business Entity, the individual’s spouse or civil union partner, and any child residing with the individual, provided, however, that, P.L. 2005, c. 51 shall not apply to a contribution made by such spouse, civil union partner, or child to a candidate for whom the contributor is entitled to vote or to a political party committee within whose jurisdiction the contributor resides unless such contribution is in violation of section 9 of P.L. 2005, c. 51 (C.19:44A-20.1 et seq.) (“Chapter 51”).
  - (c) PL 2005, c. 51 — means Public Law 2005, chapter 51 (C. 19:44A-20.13 through C. 19:44A-20.25, inclusive) as expanded by Executive Order 117 (Gov. Corzine, September 24, 2008).
- 44.2** The terms, restrictions, requirements and prohibitions set forth in P.L. 2005, c. 51 are incorporated into this Agreement by reference as material terms of this Agreement with the same force and effect as if P.L. 2005, c. 51 were stated herein its entirety. Compliance with P.L. 2005, c. 51 by Purchaser shall be a material term of this Agreement.

- 44.3** Purchaser hereby certifies to the Authority that commencing on and after October 15, 2004, Purchaser (and each of its Principals, subsidiaries and political organizations included within the definition of Business Entity) has not solicited or made any Contribution of money, pledge of Contribution, including in-kind Contributions, that would bar a contract agreement between Purchaser and the Authority pursuant to P.L. 2005, c. 51. Purchaser hereby further certifies to the Authority that any and all certifications and disclosures delivered to the Authority by Purchaser (and each of its Principals, subsidiaries and political organizations included within the definition of Business Entity) are accurate, complete and reliable. The certifications made herein are intended to and shall be a material term of this Agreement and if the Treasurer of the State of New Jersey determines that any Contribution has been made in violation of P.L. 2005, c. 51, the Authority shall have the right to declare this Agreement to be in default.
- 44.4** Purchaser hereby covenants that Purchaser (and each of its Principals, subsidiaries and political organizations included within the definition of Business Entity) shall not knowingly solicit or make any Contributions of money, or pledge of a Contribution, including in-kind Contributions, to a candidate committee or election fund of any candidate or holder of the public office of Governor of New Jersey or to any New Jersey state or county political party committee prior to the expiration or earlier termination of this Agreement. The provisions of this Section 44.4 are intended to and shall be a material term of this Agreement and if the Treasurer of the State of New Jersey determines that any Contribution has been made by Purchaser (and each of its Principals, subsidiaries and political



organizations included within the definition of Business Entity) in violation of P.L. 2005, c. 51, the Authority shall have the right to declare this Agreement to be in default.

- 44.5** In addition to any other Event of Default specified in this Agreement, the Authority shall have the right to declare an event of default under this Agreement if: (i) Purchaser (or any of its Principals, subsidiaries and political organizations included within the definition of Business Entity) makes or solicits a Contribution in violation of P.L. 2005, c. 51, (ii) Purchaser (or any of its Principals, subsidiaries and political organizations included within the definition of Business Entity) knowingly conceals or misrepresents a Contribution given or received; (iii) Purchaser (or any of its Principals, subsidiaries and political organizations included within the definition of Business Entity) makes or solicits Contributions through intermediaries for the purpose of concealing or misrepresenting the source of the Contribution; (iv) Purchaser (or any of its Principals, subsidiaries and political organizations included within the definition of Business Entity) makes or solicits any Contribution on the condition or with the agreement that it will be contributed to a campaign committee or any candidate or holder of the public office of Governor, or to any State or county party committee; (v) Purchaser (or any of its Principals, subsidiaries and political organizations included within the definition of Business Entity) engages or employs a lobbyist or consultant with the intent or understanding that such lobbyist or consultant would make or solicit any Contribution, which if made or solicited by Purchaser (or any of its Principals, subsidiaries and political organizations included within the definition of Business

Entity) directly would violate the restrictions of P.L. 2005, c. 51; (vi) Purchaser (or any of its Principals, subsidiaries and political organizations included within the definition of Business Entity) funds Contributions made by third parties, including consultants, attorneys, family members, and employees; (vii) Purchaser (or any of its Principals, subsidiaries and political organizations included within the definition of Business Entity) engages in any exchange of Contributions to circumvent the intent of P.L. 2005, c. 51; (viii) Purchaser (or any of its Principals, subsidiaries and political organizations included within the definition of Business Entity) directly or indirectly through or by any other person or means, does any act which would violate the restrictions of P.L. 2005, c. 51; or (ix) any material misrepresentation exists in any Political Campaign Contribution Certification and Disclosure which was delivered by Purchaser to the Authority in connection with this Agreement.

- 44.6** The Parties agree that on July 22, 2016 FMERA received confirmation from the Department of the Treasury's Chapter 51 Review Unit that Purchaser was approved for 2 year Chapter 51/EO117 certification. Purchaser hereby acknowledges and agrees that pursuant to P.L.2005, c. 51, Purchaser shall have a continuing obligation to report to the Office of the State Treasurer, Political Campaign Contribution Review Unit of any Contributions it makes during the term of this Agreement. If after the Effective Date of this Agreement and before the entire Purchase Price is paid to the Authority, any Contribution is made by Purchaser and the Treasurer of the State of New Jersey determines such Contribution to be a conflict of interest in violation of P.L. 2005, c. 51, the Authority shall have the right to declare this Agreement to be in default.

**45. Notices.** Any notices required to be given under this Agreement must be in writing and shall be addressed as follows:

To: Fort Monmouth Economic Revitalization Authority  
502 Brewer Avenue  
Oceanport, New Jersey 07757  
Attention: Bruce Steadman, Executive Director

With a copy to: Florio Perrucci Steinhardt & Fader, LLC  
235 Broubalow Way  
Phillipsburg, NJ 08865  
Attention: Reginald Jenkins, Jr., Esq.

And to: Commvault Systems, Inc.  
400 Hope Road  
Tinton Falls, NJ 07724  
Attention: Louis Miceli, Senior Vice President

With a copy to: Giordano, Halleran & Ciesla, P.C.  
125 Half Mile Road  
Red Bank, NJ 07724  
Attention: Michael Bruno, Esq.

- a. All notices which must be given under this Agreement are to be given either by:
- i. personal service,
  - ii. certified mail, return receipt requested, addressed to the other party at their address specified above, or
  - iii. overnight delivery service, addressed to the other party at their address specified above (e.g. Federal Express, United Parcel Service, DHL, United State Postal Service Next Day Mail).
- b. Either party may change the address to which notice must be provided pursuant to this Agreement by providing notice, in accordance with this provision, to the other party at that party's last-identified address, provided that such change of address shall not take effect until five (5) days following the date of such notice.

- c. Each party authorizes the other to rely in connection with their respective rights and obligations under this Agreement upon approval by the parties named above or any person designated in substitution or addition hereto by notice, in writing, to the party so relying.

**46. Brokerage Commissions.** FMERA's broker for this Agreement is Cushman & Wakefield of New Jersey, Inc. Seller and Purchaser represent to each other that each has had no dealings with any other broker, salesperson or agent in connection with the sale of the Property. In no event shall Seller be responsible for any commission to a broker other than Cushman & Wakefield arising from this transaction. The provisions of this Section shall survive Closing and/or any termination of this Agreement.

**47. Counterparts.** This Agreement may be simultaneously executed in several counterparts, or with counterpart signature pages, and may be delivered by facsimile or electronic mail, it being understood that all such counterparts or counterpart signature pages, taken together, shall constitute one and the same instrument.

**48. Exhibits.** By execution of this Agreement, Purchaser acknowledges receipt of all Exhibits described in this Agreement, which have been delivered previously to Purchaser in a package separate from this Agreement.

**49. Recitals.** The Recitals are incorporated herein as if restated at length.

**50. Right of Entry.**

- a. Provided that Purchaser has not terminated this Agreement or is in default hereunder, at any time subsequent to Purchaser's completion of Due Diligence, Purchaser may request that Seller grant Purchaser a license to use and enter the Property prior to Closing for the purposes of initiating demolition or renovation of

the Improvements. The license will be for one (\$1.00) dollar and will be on an absolutely triple net basis.

- b. The parties agree that the license for right of entry is not intended and will not create a leasehold interest in the Property, and that Purchaser will be precluded from sub-licensing or sub-leasing the Property during the license term. The license will terminate upon Closing or earlier termination of this Agreement.
- c. Seller will not, under any circumstance, reimburse the Purchaser for undertaking any improvements to the property and seller will own any fixtures that the Purchaser installs until title closing occurs.
- d. Purchaser agrees that any work undertaken by Purchaser and its consultants and/or contractors will comply with all applicable permits, approvals, ordinances, statutes, regulations, building codes and other applicable laws.
- e. Purchaser covenants and agrees to, at all times, indemnify, protect and save harmless FMERA from and against all cost or expense resulting from any and all losses, damages, detriments, suits, claims, demands, costs and charges, which FMERA or the Improvements may directly or indirectly suffer, sustain or be subject to by reason or on account of Sellers entry upon the Premises or the conduction of the Activities by Purchaser, its contractors, subcontractors, agents, officers, employees or invitees. In addition, Purchaser shall require its respective contractors, consultants, agents, and representatives to defend, indemnify, and hold harmless FMERA from and against any and all claims, actions, suits, complaints, and proceedings, including but not limited to any attorney's fees, costs of defense,

judgments and damages which arise from or are in any way connected with the contractors', consultants', agents', or representatives' entrance upon the Property.

- f. All consultants, agents, assignees, contractors, subcontractors, officers, or employees of Purchaser shall be covered by adequate Workers' Compensation.
- g. Purchaser agrees that any claims asserted against FMERA based in contract law in connection with this permit shall be subject to the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1, et seq. and that any claims asserted against FMERA based in tort law in connection with this permit shall be subject to the New Jersey Tort Claims Act, N.J.S.A. 59:1-1, et seq.
- h. Purchaser agrees that it:
  - i. will not create any condition during its use and occupancy of the Property, which violates any municipal, state or other regulatory agency or is dangerous.
  - ii. will not permit the creation of any liens affecting the Property during the pendency of this Agreement and shall promptly pay and discharge any claims or liabilities which may become a lien against the Premises.
  - iii. will maintain in force and effect, insurance for liability and property damage in the minimum amounts of one million (\$1,000,000.00) dollars per occurrence and three million (\$3,000,000.00) dollar aggregate naming the FMERA as an additional insured and provide proof of same to the FMERA prior to entry on the Property.

**51. Utilities and Easements.**

- a. Purchaser shall be responsible for replacement, repair, maintenance and/or relocation of all utilities within the Property, subject to Seller's review and approval, which approval shall not be unreasonably withheld. For the sake of clarity, Purchaser, shall not have an obligation to maintain and repair utilities that only serve off-site users, however Purchaser shall be responsible for repairing any damage that it may cause to those utilities and bear the cost of relocating those utilities if necessary to redevelop the Property.
- b. Purchaser responsible for establishing service and accounts with JCP&L, New Jersey American Water (NJAW), New Jersey Natural Gas (NJNG) and the Borough of Tinton Falls sewer service.
- c. Prior to the commencement of the Due Diligence Period, Seller will provide a survey of the Property showing any easements within the Property, including utility easements, that are required to remain after Closing.
- d. Title to the Property is subject to a fifty (50) foot wide easement retained by Seller extending south from Corregidor Road's frontage of the 1.7 acre subparcel, as described in the description attached hereto as Exhibit H, which easement is intended for the future installation, at Seller's expense, of no more than one (1) wayfinding or place-making signage and no more than one (1) architectural gateway to the Tinton Falls section of the Fort. Seller shall show such proposed easement area on the survey for the Property that Seller provides the Purchaser as required above. Seller agrees that prior to permitting any such signage or architectural features within the easement, Seller shall meet and consult with Purchaser to obtain Purchaser's input on such signage or features. This requirement

shall be set forth in the deed of easement to be recorded against the Property as herein contemplated the form of which shall be mutually agreed upon in good faith between the Seller and Purchaser prior to the expiration of the Due Diligence Period.

**52. Miscellaneous.**

The Purchaser shall repave and/or improve the section of Heliport Drive running through the Property (i.e. from Corregidor Road to the southern limits of the Property) to standards required by the Borough of Tinton Falls in accordance with Tinton Falls design standards set forth in the Development Ordinances of Tinton Falls and as permitted under the New Jersey Municipal Land Use Law. Purchaser shall not be responsible for the cost of the relocation of existing utilities, if any, within the right of way for Heliport Drive.

**53. Cooperation.**

- a. Purchaser and Seller agree to cooperate with each other and to that end agree, when necessary, to consent to the filing of applications and to execute other documents, declarations and or maps required to be signed by either of the parties and returned within seven (7) calendar days of delivery to the other Party. This time period is deemed to be a reasonable opportunity to review any document required in connection with this Agreement. The parties will otherwise cooperate with, assist and support each other in connection with any application for Approvals.
- b. Seller agrees to reasonably cooperate with Purchaser and use diligent and commercially reasonable efforts to obtain any required Seller signatures or consents in a commercially reasonable manner in connection with Purchaser's efforts to obtain the Approvals for the development of the Project on the Property. Any land



use applications which are consistent with the Concept Plan that Purchaser requests Seller to execute, shall be returned by Seller to Purchaser signed within ten (10) days of the date that Purchaser submits them to Seller (other than as to the mandatory conceptual review and any requested amendments to the Plan that require approval of Seller's Board). With respect to all other requests for signatures or consents, (such as mandatory review and any requested amendments to the Plan that require approval of Seller's Board), Seller shall obtain same, where applicable, from its Executive Director, within one week or presentation; from Seller's Real Estate Committee, within thirty (30) days from presentment; and for items requiring approval from Seller's Board, within forty-five (45) days from presentation by Purchaser, subject to the Governor's ten (10) day veto period. Where required by law, Seller will sign as owner or applicant on applications made by Purchaser so as not to cause a delay or disruption in Purchaser's efforts to pursue and obtain the Approvals. At Closing, Seller shall assign any permits or approval related to the Project to Purchaser.

[Execution page follows]

Wherefore the Seller and Purchaser have signed this Agreement as of the date first written above.

ATTEST:

FORT MONMOUTH ECONOMIC  
REVITALIZATION AUTHORITY, Seller

\_\_\_\_\_

By: \_\_\_\_\_  
Bruce Steadman  
Executive Director

ATTEST:

COMMVAULT SYSTEMS, INC.

\_\_\_\_\_

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

STATE OF NEW JERSEY )

)

COUNTY OF Monmouth )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of March, 2018, by Commvault Systems, Inc., a Delaware corporation, (the “Purchaser”), by [\_\_\_\_], on behalf of the Purchaser.

\_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_ day of March 2018, by Fort Monmouth Economic Revitalization Authority, a public body corporate and political constituted as an independent authority and instrumentality of the State of New Jersey, pursuant to P.L. 2010, c. 51 (the “Company”), by Bruce Steadman, its Executive Director, on behalf of the Company.

Reginald Jenkins, Jr., Esq.

## **BOARD MEMORANDUM**



## **MEMORANDUM**

**TO:** Members of the Authority

**FROM:** Timothy J. Lizura, President and COO

**DATE:** March 13, 2018

**SUBJECT:** Projects Approved Under Delegated Authority –  
**For Informational Purposes Only**

The following projects were approved under Delegated Authority in February 2018:

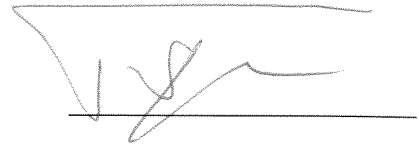
### **Direct Loan Program:**

- 1) Bylada Foods, LLC (P44063), located in East Rutherford Borough, Bergen County, was established in 2005 as a private label food manufacturing business for major supermarket chains across the US. The Company specializes in manufacturing frozen snacks, appetizers, and breakfast food. Bylada has a kosher brand of foods called Macabee Foods LLC that is well-known across the kosher population. Bobs Boys Bagels is a division of Bylada formed to implement in-house bagel production for Bylada and Macabee. The Company was approved for an \$816,000 direct loan to provide permanent financing on equipment originally purchased using a bridge loan. M&T Bank also approved a \$1,360,000 loan for the same purpose. Currently, the Company has 35 employees and plans to create five new jobs over the next two years.

### **Premier Lender Program:**

- 1) BTB Holdings, LLC and Butler Real Estate Holdings, LLC (P44859 & P44896), are the real estate holding companies for Oakland Spine & Rehabilitation Center's locations in Fair Lawn, NJ and Oakland, NJ, Bergen County. The operating company, Chiropractic Works !!!, LLC dba Oakland Spine & Rehabilitation Center, is a state-of-the-art rehabilitation center specializing in physical therapy, non-surgical herniated disk treatment, chiropractic care and acupuncture. BTB Holdings, LLC was approved for a 50% (\$416,250) Authority participation in an \$832,500 Atlantic Stewardship Bank commercial mortgage. Butler Real Estate Holdings, LCL was approved for a 50% (\$306,000) Authority participation in a \$612,000 commercial mortgage. Proceeds will be used to purchase real estate. Currently, the Company has 26 employees and plans to create 13 new positions within the next two years. SSBCI funds will be utilized for this project.

- 2) KD Singh Enterprise LLC (P44863), located in Edison Township, Middlesex County, is the real estate holding company which owns the operating companies' warehouse serving four grocery stores that specialize in South Asian and South Indian groceries. Provident Bank approved a \$3,057,975 loan contingent upon a 37.87% (\$1,157,975) Authority participation. Proceeds will be used to purchase property to accommodate business expansion. The Company currently has 80 employees and plans to create ten new jobs over the next two years.

A handwritten signature in black ink, appearing to be 'V. Singh', is written over a horizontal line.

**Prepared by:** G. Robins

/gvr