



**MEMORANDUM**

**TO:** Members of the Authority

**FROM:** Timothy Sullivan  
Chief Executive Officer

**DATE:** March 10, 2021

**SUBJECT:** Agenda for Board Meeting of the Authority March 10, 2021

**Notice of Public Meeting**

**Roll Call**

**Approval of Previous Month's Minutes**

**CEO's Report to the Board**

**Loans/Grants/Guarantees**

**Authority Matters**

**Office of Economic Growth**

**COVID-19 Response**

**Incentives**

**Real Estate**

**Board Memoranda**

**Public Comment**

**Adjournment**

**NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY**

**February 10, 2021**

**MINUTES OF THE MEETING**

*The Meeting was held by teleconference call.*

Members of the Authority present via conference call: Chairman Kevin Quinn; Commissioner Marlene Caride of the Department of Banking and Insurance; Commissioner Robert Asaro-Angelo of the Department of Labor and Workforce Development; Brian Wilton representing the Governor's Office; Jane Rosenblatt representing Commissioner Shawn LaTourette of the Department of Environmental Protection; Jennifer Keys - Maloney representing State Treasurer Elizabeth Muoio of the Department of Treasury; Public Members: Charles Sarlo, Vice Chairman; Virginia Bauer, Philip Alagia, Fred Dumont, Marcia Marley, Robert Shimko, First Alternate Public Member; and Rosemari Hicks, Second Alternate Public Member.

Also present via conference call: Timothy Sullivan, Chief Executive Officer of the Authority; Assistant Attorney General Gabriel Chacon; Jamera Sirmans, Governor's Authorities Unit; and staff.

Members of the Authority absent: Public Members Massiel Medina Ferrara, and Aisha Glover.

Mr. Quinn called the meeting to order at 10:00 am.

In accordance with the Open Public Meetings Act, Mr. Sullivan 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.

**MINUTES OF AUTHORITY MEETING**

The next item of business was the approval of the January 15, 2021 meeting minutes. A motion was made to approve the minutes by Mr. Dumont, and seconded by Mr. Alagia, and was approved by the 13 voting members present.

The next item of business was the approval of the January 15, 2021 executive session meeting minutes. A motion was made to approve the minutes by Commissioner Caride, and seconded by Commissioner Angelo, and was approved by the 13 voting members present.

**FOR INFORMATION ONLY:** The next item was the presentation of the Chairman's Remarks to the Board.

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

**ECONOMIC TRANSFORMATION**

**ITEM: NJ Collaborate**

**REQUEST:** To approve the launch of NJ Collaborate, a \$4 million pilot program to be conducted over a 36-month period; base eligibility requirements and scoring matrix to evaluate applications and determine awards; and delegated authority to approve grant awards up to \$100,000.

**MOTION TO APPROVE:** Ms. Bauer      **SECOND:** Commissioner Caride      **AYES: 13**

**RESOLUTION ATTACHED AND MARKED EXHIBIT: 1**

**ITEM: NJ Wind Turbine Tech Training Challenge**

**REQUEST:** To approve the launch of the NJ Wind Turbine Tech Training Challenge, structured as a \$1 million grant competition, to establish an offshore wind turbine technician training program through a NJ Community College to expand technical career pathways and credentialed skills opportunities.

*THIS ITEM WAS WITHHELD FROM CONSIDERATION*

**VENTURE**

**ITEM: Edison Partners X, LP**

**REQUEST:** To approve a limited partnership investment of up to \$4 million in Edison Partners X, LP from the Economic Recovery Fund (ERF).

**MOTION TO APPROVE:** Ms. Bauer      **SECOND:** Ms. Marley      **AYES: 12**

**RESOLUTION ATTACHED AND MARKED EXHIBIT: 2**

Ms. Hicks abstained from voting.

**INCENTIVES**

**Economic Redevelopment And Growth Grant Program**

**ITEM: Hinchliffe Master Urban Renewal, L.P.; Hinchliffe Housing Urban Renewal Associates, L.P.; Life Management, Inc., Mixed Use Parking Economic Redevelopment and Growth Grant Program (“Mixed Use Parking ERG”), PROD-00257926**

**REQUEST:** To approve the application of Hinchliffe Master Urban Renewal, L.P. located in Paterson City for the issuance of tax credits pursuant to the Mixed-Use Parking ERG program of the Authority as set forth in the New Jersey Economic Opportunity Act of 2013 to award 100% of actual eligible parking costs and 80% of the total actual eligible project costs allocable to residential and stadium uses, not to exceed \$67,206,004.

**MOTION TO APPROVE:** Ms. Bauer      **SECOND:** Commissioner Caride      **AYES: 13**

**RESOLUTION ATTACHED AND MARKED EXHIBIT: 3**

**Grow New Jersey Assistance Program**

**ITEM: Grow NJ COVID-Related Relief Implementation and Delegations**

**REQUEST:** To approved delegated authority to staff to amend approved Grow NJ awards in accordance with the COVID relief provisions recently enacted by amendment to the Grow NJ law, (P.L 2020, c. 156, eff. January 7, 2021, to be codified as N.J.S.A 34:1B-247 et al).

**MOTION TO APPROVE:** Mr. Dumont      **SECOND:** Ms. Maloney      **AYES: 13**

**RESOLUTION ATTACHED AND MARKED EXHIBIT: 4**

**ITEM: Professional Disposable International, Inc. – PROD-128529**

**REQUEST:** Consent to a 45.7% reduction in the number of new jobs, from 265 at approval to 144 new jobs, which will decrease the approved award from \$7,990,290 to \$6,206,250.

**MOTION TO APPROVE:** Ms. Bauer      **SECOND:** Commissioner Angelo      **AYES: 13**

**RESOLUTION ATTACHED AND MARKED EXHIBIT: 5**

**Film & Digital Media Tax Credit Program**

**ITEM:** Listen Film, LLC

PROD. #00187511

**MAX AMOUNT OF TAX CREDITS:** \$225,887.36

**MOTION TO APPROVE:** Commissioner Caride      **SECOND:** Mr. Dumont      **AYES: 13**

**RESOLUTION ATTACHED AND MARKED EXHIBIT: 6**

**COVID-19 RESPONSE**

**ITEM: Sustain & Serve NJ**

**REQUEST:** To approve a Memorandum of Understanding with the New Jersey Department of the Treasury whereby the EDA will reallocate funds received from the Coronavirus Relief Fund (CRF) for COVID Relief Programs and accept \$2.4 million , with delegated authority to the Chief Executive Officer (CEO) to accept an additional \$2 million from the CRF for purposes of funding eligible grant requests under the Sustain and Serve NJ Program; delegated authority to the CEO to amend existing CRF MOUs to reallocate the funds; an extension to the deadline for Sustain and Serve NJ grant recipients to incur eligible expenses from participating restaurants, with delegation of authority to staff to further extend the deadline if necessary; and delegation of authority to staff accept and/or dedicate other governmental funding and/or unrestricted gifts or grants received to fund the Sustain and Serve NJ Program.

**MOTION TO APPROVE:** Ms. Marley      **SECOND:** Commissioner Caride      **AYES: 13**

**RESOLUTION ATTACHED AND MARKED EXHIBIT: 7**

**AUTHORITY MATTERS**

**ITEM: Delegation of Authority Update and Clarification**

**REQUEST:** To approve an update and clarification to prior delegations of authority to include four new titles.

**MOTION TO APPROVE:** Ms. Rosenblatt      **SECOND:** Mr. Sarlo      **AYES: 13**

**RESOLUTION ATTACHED AND MARKED EXHIBIT: 8**

**ITEM: Extension of Memorandum of Understanding between NJEDA and the Capital City Redevelopment Corporation**

**REQUEST:** To approve a one-year extension of the Memorandum of Understanding between the Capital City Redevelopment Corporation (CCRC) and the Authority as an inter-department governmental agreement confirming the mutual understanding and intention between the agencies with respect to the provision of the Authority's support services to the CCRC through February 2022.

**MOTION TO APPROVE:** Ms. Bauer      **SECOND:** Ms. Maloney      **AYES: 13**  
**RESOLUTION ATTACHED AND MARKED EXHIBIT: 9**

**REAL ESTATE**

**ITEM:** Higher Education Public Private Partnership Program, New Jersey City University, Second Amended Application for West Campus, Blocks 4A and 6 (Crossroads Companies)

**REQUEST:** To approve New Jersey City University's second amended application, under the Higher Education Public Private Partnership Program, to grant Crossroads Companies, LLC an extension of the period to complete the project from December 31, 2021 to on or before December 31, 2022.

**MOTION TO APPROVE:** Commissioner Caride      **SECOND:** Mr. Shimko      **AYES: 13**  
**RESOLUTION ATTACHED AND MARKED EXHIBIT: 10**

**BOARD MEMORANDA - FYI ONLY:**

**CREDIT UNDERWRITING**

**FYI ONLY:** Credit Underwriting Projects Approved under Delegated Authority – January 2021

**Small Business Fund Program**

**PROJECT:** King George Partners (PROD. #00257841)  
**LOCATION:** Green Brook Township, Middlesex County  
**PROCEEDS FOR:** Retire bridge financing  
**FINANCING:** \$350,000 Loan

**Micro Business Loan Program**

**PROJECT:** A & R Ventures, Inc. (PROD. #00224237 & 00257898)  
**LOCATION:** Pennsville Township, Salem County  
**PROCEEDS FOR:** Working Capital  
**FINANCING:** \$45,000/\$5,000 working capital loan/forgivable working capital loan

**PROJECT:** Allegria Corp DBA Waxing the City Madison, LLC (PROD. #00224552 & 00257993)

**LOCATION:** Florham Park Borough, Morris County

**PROCEEDS FOR:** Working Capital

**FINANCING:** \$22,5000/\$2,500 working capital loan/forgivable working capital loan

**PROJECT:** Bal Veer LLC (PROD. #00224244 & 00257862)

**LOCATION:** North Brunswick Township, Middlesex County

**PROCEEDS FOR:** Working Capital

**FINANCING:** \$22,5000/\$2,500 working capital loan/forgivable working capital loan

**PROJECT:** Creative Leasing Solutions, Inc. DBA CLS Management (“CLS”) (PROD. #00224219 & 00257958)

**LOCATION:** North Brunswick Township, Middlesex County

**PROCEEDS FOR:** Working Capital

**FINANCING:** \$18,000/\$2,000 working capital loan/forgivable working capital loan

**PROJECT:** Faina Jyoti Corporation DBA 7-Eleven #14860 (PROD. #00224333 & 00257924)

**LOCATION:** Aberdeen Township, Monmouth County

**PROCEEDS FOR:** Working Capital

**FINANCING:** \$22,500/\$2,500 working capital loan/forgivable working capital loan

**PROJECT:** Greenlight Auto Specialist Corporation DBA Greenlight (PROD. #00224379 & 00257939)

**LOCATION:** Oaklyn Borough, Camden County

**PROCEEDS FOR:** Working Capital

**FINANCING:** \$44,100/\$4,900 working capital loan/forgivable working capital loan

**PROJECT:** Piv Train, Inc. DBA Rockstar Cheer (PROD. #00224297 & 00257896)

**LOCATION:** Southampton Township, Burlington County

**PROCEEDS FOR:** Working Capital

**FINANCING:** \$22,500/\$2,500 working capital loan/forgivable working capital loan

**PROJECT:** Plagge Enterprises LLC Rita’s Italian Ice (PROD. #00224249 & 00257873)

**LOCATION:** Pennsville Township, Salem County

**PROCEEDS FOR:** Working Capital

**FINANCING:** \$22,500/\$2,500 working capital loan/forgivable working capital loan

**PROJECT:** Royals Learning Center LLC DBA Royals Academy (PROD. #00224373 & 00257861)

**LOCATION:** Stratford Borough, Camden County

**PROCEEDS FOR:** Working Capital

**FINANCING:** \$45,000/\$5,000 working capital loan/forgivable working capital loan

**PROJECT:** Seven Cleaners Inc. (PROD. #00224398 & 00257989)

**LOCATION:** Freehold Township, Monmouth County

**PROCEEDS FOR:** Working Capital

**FINANCING:** \$22,500/\$2,500 working capital loan/forgivable working capital loan

**PROJECT:** The Delaware River Mill Society at Stockton (PROD. #00224531 & 00257903)

**LOCATION:** Stockton Borough, Hunterdon County

**PROCEEDS FOR:** Working Capital

**FINANCING:** \$22,500/\$2,500 working capital loan/forgivable working capital loan

**PROJECT:** The Harwill Corporation DBA Harwill Express Press (PROD. #00224443 & 00258024)

**LOCATION:** Robbinsville Township, Mercer County

**PROCEEDS FOR:** Working Capital

**FINANCING:** \$43,290/\$4,810 working capital loan/forgivable working capital loan

**PROJECT:** Xavier Court LLC DBA Supercuts Hair Salon (PROD. #00224337 & 00258003)

**LOCATION:** Bayonne City, Hudson County

**PROCEEDS FOR:** Working Capital

**FINANCING:** \$22,500/\$2,500 working capital loan/forgivable working capital loan

#### **POST CLOSING SERVICES**

**FYI ONLY:** Post Closing Bond Modifications – 4<sup>th</sup> Quarter 2020

**FYI ONLY:** Post Closing Credit Delegated Authority Approvals – 4<sup>th</sup> Quarter 2020

**FYI ONLY:** Post Closing Incentives Modifications – 4<sup>th</sup> Quarter 2020

#### **COVID-19 RESPONSE**

**FYI ONLY:** COVID Programs Compliance Plan 2021 - Federal CRF-Funded Compliance Plan for NJEDA COVID-19 Programs

#### **TECHNOLOGY & LIFE SCIENCES**

**FYI ONLY:** Technology & Life Sciences - Delegated Authority Approvals - 4<sup>th</sup> Quarter 2020

#### **PUBLIC COMMENT**

Jennifer Mazawey, Partner, Genova Burns, thanked the Board for approving the New Jersey City University project.

Louis Magazzu, Partner, Louis Magazzu Law, Vineland NJ, congratulated the Board on approving the Sustain and Serve NJ program, and asked when the regulations for NJ Zip program would be published. Tim Sullivan and Brian Sabina said that the program is a PILOT and that we're currently in the learning phase. Brian Sabina said we hope to launch in a couple of months, and to scale up later this year or early next year.

Mr. Magazzu asked when regulations for the new incentive programs would be published. Is there an interim process? Mr. Sullivan said in a couple of months, and we have to balance what businesses need and taxpayer resources, and we have to get it right.

Christopher Emigholz, VP, Government Affairs, for the New Jersey Business & Industry Association, thanked the Board and staff for their hard work. He added that regarding the new incentives, many companies have continued to maintain their employees and inquired about when Executive Order COVID-related workplace restrictions will be lifted to assist businesses. He stated that he looks forward to working with the EDA when the tax incentives are rolled out.

Julie Tattoni, Partner, Windels Marx, asked how businesses apply for the Grow NJ COVID-Related Relief Implementation and Delegations program waivers. Mr. Sullivan said it was better to speak off-line, since each application would be different. Mr. Ciallella reiterated that it was best to speak off-line, since the applications are fact-specific, but applications could be uploaded to the IDMS portal.

There being no further business, on a motion by Mr. Quinn, and seconded by Mr. Dumont, the meeting was adjourned at 11:51am.

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.

  
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Danielle Esser, Director  
Governance & Strategic Initiatives  
Assistant Secretary



**LOANS/GRANTS/GUARANTEES**



## MEMORANDUM

**TO:** Members of the Authority

**FROM:** Tim Sullivan  
Chief Executive Officer

**DATE:** March 10, 2021

**RE:** Micro Lender Support Grant Program

### Summary

The Members are asked to approve:

1. The creation of the Micro Lender Support Grant Program, a pilot program that will make grant funding available to support organizations that lend to New Jersey micro and small businesses. This grant funding will enable these organizations to scale up assistance to support more New Jersey micro and small businesses.
2. Utilization of \$2 million of funding the Authority has received as an unrestricted gift as the funding source to support this pilot program.
3. Delegation to Authority staff (Chief Community Development Officer or Managing Director, Community Development) to approve individual applications to the Micro Lender Support Grant Program in accordance with the terms set forth in this memo and the attached program specifications.
4. Delegation to Authority staff (Chief Community Development Officer or Managing Director, Community Development), to decline applications based solely on non-discretionary reasons.
5. For final administrative decisions on appeals based solely on non-discretionary reasons, delegated authority is requested for approval of a hearing officer's decision by a Senior Vice President, Vice President, Managing Director, Director – HUD Programs, or the Director of Legal Affairs.

## **Background**

On March 9, 2020, Governor Phil Murphy declared a State of Emergency and a Public Health Emergency to ramp up New Jersey's efforts to contain the spread of the COVID-19/novel coronavirus. Containment measures were enforced, which included restrictions on public gathering and limited operating hours for non-essential businesses. While these measures were consistent with similar measures being taken nationally to limit the public's exposure to the COVID-19/novel coronavirus, there was and continues to be an adverse economic impact on our nation's economy. Within New Jersey, New Jersey small businesses continue to struggle with recover and reopening efforts and being able to meet basic operating expenses during a prolonged period of reduced capacity and sales.

In addition to the support the NJEDA has provided small businesses in the form of grants and low-interest loans, the Authority has supported organizations that lend to micro and small businesses, which the Authority considers to be businesses with less than 10 full time equivalent (FTE) employees and \$1.5 million or less in annual revenue, that have difficulties accessing financing through the traditional banking sector. One example of this support was the Community Development Finance Institution (CDFI) Emergency Assistance Grant Program which was approved by the Members last March as part of the Authority's initial package of programs in response to the COVID-19 pandemic. Under this program, the Authority provided grants to CDFIs to allow these organizations to scale operations to meet massive demand among New Jersey small businesses, and to allow these organizations to offer financing to micro and small businesses at low interest-rates. Under the program, the Authority provided \$1.25 million in grant funding to five CDFIs.

The Members approved this program a year ago in recognition of the critical role CDFIs serve in providing access to financing tools and resources to businesses and individuals that have difficulty accessing the traditional banking sector. All CDFIs are certified by the Community Development Financial Institutions Fund at the U.S. Department of Treasury for the purpose of providing credit and financial services to underserved markets and populations.

## **Program Details**

In addition to CDFIs, of which there are a limited number in New Jersey, there are a host of other organizations across the state that could also scale operations and lend to more micro and small New Jersey businesses if grant funding were to be made available through the Authority. Therefore, the Members approval is requested to establish the Micro Lender Support Grant Program to provide grant funding to CDFIs (including non-New Jersey-based CDFIs serving New Jersey micro and small businesses), Minority Depository Institutions (MDIs), and organizations that meet the definition of "other eligible lenders" as defined under Subsection b. of Section 86 of P.L. 2020, c. 156, which includes a zone development corporation as defined in [NJSA 52:27H-62) that is located in a municipality with a population greater than 100,000, or another nonprofit lender with at least 10 years' experience lending to microbusinesses..

As businesses continue to struggle with reduced capacity and sales, New Jersey-based CDFIs have helped service the massive demand from the small business community throughout the

state, but have faced operational challenges due to the overwhelming community need in relation to limited staffing capacity to process applications, and servicing loan requests in a remote working environment. Grant funding under this proposed program will allow these CDFIs to address these challenges, but also allow for additional CDFIs that are not based in New Jersey to be eligible to expand their operations for the purposes of serving only NJ-based businesses. Allowing out of state CDFIs to participate in the program will make available new financing options for the New Jersey small business community. Expanding grant eligibility to include MDIs, and other micro lenders that meet the criteria for “other eligible lenders” as defined under Subsection b. of Section 86 of P.L. 2020, c. 156 will further grow the spectrum of support for New Jersey micro and small businesses.

Eligible uses of grant funding under the proposed program allows these lending organizations to expand operating costs to address shared challenges – the need for additional staff, investment in technology, marketing, and general administrative supplies. In addition, these organizations may use the grant funding to buy down interest rates on COVID-19 business loans, thereby lowering the cost of borrowing for New Jersey micro and small businesses. It is important to note, particularly for entities located outside of New Jersey that may be eligible, that the grant funding is to be used for services and products to support only New Jersey businesses. This support may cover increased operating expenses that allow the grant applicant to expand their operations to directly serve NJ businesses, technical support services for New Jersey-based businesses, underwriting capacity related to a loan product that serves New Jersey businesses, or the hiring of additional staff to better serve or market to New Jersey businesses. This financial support may also allow the entity to buy down interest rates on any COVID-19 related emergency or recovery working capital loan for New Jersey businesses, or to begin a targeted lending initiative focused on providing access to capital to underserved micro and small business owners in New Jersey, thereby lowering the cost and providing more flexibility to the borrower.

Under the Micro Business Lender Support Grant Program, the Authority will invite CDFIs, and other entities that meet the criteria outlined in the attached program specifications, to apply for grant funding of up to \$200,000 per entity. As part of the evaluation of each organization’s grant application, the Authority will ensure each organization can demonstrate the following:

- Significant experience working with underserved business segments
- Demonstration of available capital that could be leveraged in COVID-19-related emergency low-interest working capital loans
- Significant experience working in communities underserved by other financial institutions
- Deep experience (minimum of 10 years) and focus on micro and small business lending, as evidenced by having a significant portion of their lending portfolio be with small businesses and emergency assistance programs.
- A plan that outlines the intended uses of the grant funding. These uses may include offsetting an increase in operating expenses associated with the COVID -19 emergency, buying down the cost of funding to allow lower cost loans for COVID-19 emergency or recovery loan programs, or any targeted micro lending program to support women, Veteran, and minority business owners to gain access to capital.

Applicants will be asked to complete an online grant application, provide a 1-3-page narrative proposal detailing how the Authority's grant funding would be used, and disclose key financial metrics, such as availability of capital that demonstrate capacity to offer loan products. Applicants will also be required to provide a tax clearance certificate from the New Jersey Department of Treasury and must be in good standing with the New Jersey Department of Labor and Workforce Development (LWD).

Given the urgent need for funding and resources by micro and small-businesses, applications will be reviewed on a first come first serve basis. The Members are requested to approve Delegated Authority for the Chief Community Development Officer or Managing Director, Community Development to approve applications in accordance with the terms set forth in this memo and the attached program specifications. Delegation is also requested for the Chief Community Development Officer or Managing Director, Community Development to decline applications based solely on non-discretionary reasons. For final administrative decisions on appeals based solely on non-discretionary reasons, delegated authority is requested for approval of a hearing officer's decision by a Senior Vice President, Vice President, Managing Director, Director – HUD Programs, or the Director of Legal Affairs.

Upon approval of the grant application from the Authority, the entity will be fully disbursed the grant funding for the uses described in their approved application. Authority staff will require documentation on a quarterly basis validating the operational expenses or interest buy down for which the entity requested the grant disbursement. This documentation may include, but is not limited to: invoices, statements, receipts, or internal financial statements that support payroll costs and marketing costs. If the entity identifies that they will use the grant funding to lower rates, they will need to provide documentation on the impact the grant had on the rates. Specific reporting will be generated by the EDA and provided to each entity that is approved for a grant. If grant funding is not spent according to the grant agreement executed between the grantee and the Authority, the grant agreement will be terminated and the grantee shall be required to repay the disbursed grant funding to the Authority. Grantees will have 12 months from date of execution of grant agreement to use grant funding.

There is an application limit of one application per entity, but CDFIs that received a grant under last year's CDFI Emergency Assistance Grant Program will be eligible to submit a new application for grant funding if they have fully used their previous grant funds prior to applying to this new program. If a CDFI has remaining funds from last year's program, that CDFI would not be eligible to apply for this program until those funds are fully exhausted.

Due to financial hardship, the Authority will collect no fees from the applicant for this program.

### **Recommendations:**

The Members of the Board are requested to approve: (1) The creation of the Micro Business Lender Support Grant Program, a pilot program that will make grant funding available to support organizations that lend to New Jersey micro and small businesses. This grant funding will enable these organizations to scale up assistance to support more New Jersey micro and small

businesses; (2) Utilization of \$2 million of funding the Authority has accepted in unrestricted gifts as the funding source for this pilot program; (3) Delegation to Authority staff (Chief Community Development Officer or Managing Director of Community Development) to approve individual applications to the Micro Business Lender Support Grant Program in accordance with the terms set forth in this memo and the attached program specifications; (4) Delegation to Authority staff (Chief Community Development Officer or Managing Director, Community Development, to decline applications based solely on non-discretionary reasons, and; (5) For final administrative decisions on appeals based solely on non-discretionary reasons, delegated authority is requested for approval of a hearing officer's decision by a Senior Vice President, Vice President, Managing Director, Director – HUD Programs, or the Director of Legal Affairs.



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Tim Sullivan  
Chief Executive Officer

Attachments

Exhibit A – Micro Lender Support Grant Program Specifications

<b>Micro Lender Support Grant Program Proposed Program Specifications</b>	
<b>Funding Source</b>	\$2,000,000 – Funding the Authority has accepted as an unrestricted gift
<b>Program Purpose</b>	Support organizations that lend to New Jersey micro and small businesses by enabling these organizations to scale up assistance to support more New Jersey micro and small businesses
<b>Eligible Applicants</b>	<p>Applicant must be one of the following:</p> <ul style="list-style-type: none"> <li>• Community Development Finance Institutions (CDFIs) <ul style="list-style-type: none"> <li>○ All CDFIs must produce documentation that they are recognized by US Department of Treasury as a CDFI.</li> <li>○ If a CDFI received previous grant fund through the CDFI Emergency Grant Program, those proceeds must be fully used to be eligible to apply for Micro Lender Support Grant program .</li> </ul> </li> <li>• Minority Depository Institutions (MDIs) as recognized by the FDIC</li> <li>• Entities defined as “other eligible lenders” under Subsection b. of Section 86 of P.L. 2020, c. 156, which includes: <ul style="list-style-type: none"> <li>○ Zone development corporation as defined in section 3 of P.L. 1983, c. 303 (C,52:27H-62) that is located in a municipality with a population greater than 100,000, or;</li> <li>○ Nonprofit lender with at least 10 years’ experience lending to micro and small businesses</li> </ul> </li> </ul> <p>All applicants must:</p> <ul style="list-style-type: none"> <li>• Provide a current NJ Tax clearance certificate at time of application</li> </ul>

<b>Micro Lender Support Grant Program</b> <b>Proposed Program Specifications</b>	
	<ul style="list-style-type: none"> <li>• Be verified by the NJEDA to be in good standing with Department of Labor and Workforce Development (LWD)</li> </ul> <p>Applicants will be evaluated for a grant based on their ability to demonstrate the following key factors:</p> <ul style="list-style-type: none"> <li>• Significant experience working with underserved micro and small business segments. Additional consideration will be given for experience working on emergency assistance programs.</li> <li>• Demonstration of available capital that could be leveraged in COVID-19-related emergency and recovery low-cost and low-interest working capital loans or a targeted micro lending program to serve underserved businesses.</li> <li>• Significant experience working in communities and business segments underserved by the banking sector and other financial institutions</li> <li>• Deep experience and focus on small business lending, as evidenced by having a significant portion of their lending portfolio be with small businesses. Additional consideration will be given for having a portion of their lending portfolio with emergency assistance programs.</li> </ul>
<b>Eligible Uses</b>	<p>Grant funding must be used to:</p> <ul style="list-style-type: none"> <li>• Support increased operating expenses that allow the grant applicant to expand their operations to directly serve New Jersey businesses. This may include, but is not limited to: technical support services for New Jersey based businesses, underwriting capacity related to a loan product that serves New Jersey businesses, the hiring of additional staff to better serve or market to New Jersey businesses; and</li> <li>• Allow the entity to buy down interest rates on any COVID-19 related emergency or recovery working capital loan for a NJ business, or start a targeted lending initiative focused on providing access to capital to underserved micro and small NJ business, thereby lowering the cost and providing more flexibility to the borrower.</li> </ul>



<b>Micro Lender Support Grant Program Proposed Program Specifications</b>	
<b>Application Process and Board Approval/Delegated Authority</b>	<p>Entities will apply for the Grant Program through an online application and provide a 1 to 3-page narrative proposal of their plans for use of the funds, and disclosure of key financial metrics, such as availability of capital. Other necessary documentation will be identified and requested in the application.</p> <p>Given the urgent need for funding and resources by micro and small-businesses, applications will be reviewed and approved on a first-come, first-served basis subject to the availability of funding.</p> <p>Delegation to Authority staff (Chief Community Development Officer or Managing Director, Community Development) to approve individual applications to the Micro Business Lender Support Grant Program in accordance with the terms set forth in the program specifications.</p> <p>Delegation to Authority staff (Chief Community Development Officer or Managing Director, Community Development authority to decline applications based solely on non-discretionary reasons.</p> <p>For final administrative decisions on appeals based solely on non-discretionary reasons, delegated authority is requested for approval of a hearing officer's decision by a Senior Vice President, Vice President, Managing Director, Director – HUD Programs, or the Director of Legal Affairs.</p>
<b>Grant Amounts</b>	<p>Up to \$200,000 per entity.</p> <p>Application limit of one application per entity. Grantees will have 12 months from date of execution of grant agreement to use grant funding.</p>
<b>Funding Disbursement</b>	<p>Upon approval from the Authority for grant funding, the funding will be disbursed to the approved entity.</p> <p>The Authority will provide each grantee with required reporting that the grantee will be responsible for completing on a quarterly basis. This reporting will document and validate the operational expenses or interest buy down for which the CDFI or other micro</p>

<b>Micro Lender Support Grant Program Proposed Program Specifications</b>	
	lender requested the grant disbursement. This documentation may include, but is not limited to: detailed invoices, statements, detailed receipts, or internal financial statements.
<b>Fees</b>	Due to financial hardship, no fees will be collected by the Authority for this program.

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



**To:** Members of the Authority  
**From:** Timothy Sullivan, CEO  
**Date:** March 10, 2021  
**Subject:** P46000 – Hearing Officer’s Recommendation on the Appeal of the John O’Brien Application for a Conditional Hardship Grant Under the Petroleum Underground Storage Tank Remediation, Upgrade, and Closure Fund

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Pursuant to enabling legislation, the New Jersey Economic Development Authority (“Authority” or “NDA”) and the New Jersey Department of Environmental Protection (“DEP”) jointly administer the Petroleum Underground Storage Tank Remediation, Upgrade and Closure Fund (“Fund”). Upon a determination that an application for financial assistance meets all established criteria for the award of financial assistance from the Fund, the Authority shall approve the application.

Pursuant to N.J.S.A. 58:10A-37.5(c)(1), no applicant shall be eligible for a conditional hardship grant if the applicant has a taxable income of more than \$250,000 or a net worth, exclusive of the applicant's primary residence and pension, of over \$500,000. In making a finding of financial hardship for an application, the Authority shall base its finding upon the applicant's taxable income in the year prior to the date of the application being submitted.

I reviewed the attached Hearing Officer’s report, along with the appeal of John O’Brien, and I concur with the recommendation that the conditional hardship grant declination be upheld as the applicant’s taxable income in the year prior to the date of the application exceeded \$250,000.00.

A handwritten signature in blue ink, appearing to read "T. Sullivan".

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Timothy Sullivan  
Chief Executive Officer



**To:** Members of the Authority  
**From:** Marcus Saldutti, Hearing Officer  
**Date:** March 10, 2021  
**Subject:** P46000 – Hearing Officer’s Recommendation on the Appeal of the John O’Brien Application for a Conditional Hardship Grant Under the Petroleum Underground Storage Tank Remediation, Upgrade, and Closure Fund

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**Request**

Consent of the members to the Hearing Officer’s recommendation upholding the staff declination of Mr. John O’Brien’s application for a hardship grant under the Petroleum Underground Storage Tank Remediation, Upgrade, and Closure Fund (“Fund”).

**Background**

Pursuant to enabling legislation, the New Jersey Economic Development Authority (“Authority” or “NJEDA”) and the New Jersey Department of Environmental Protection (“DEP”) jointly administer the Fund. As requested, I served in the role of Hearing Officer to independently review this appeal.

**Previous Action and Appeal**

On November 1, 2019, Real Estate and Credit Underwriting received a memo from William Schreyer, Program Specialist III of the Fund Management Section of the Department of Environmental Protection (“DEP”). This memo indicated DEP received an application from Mr. O’Brien on March 6, 2017 for a grant from the Fund to reimburse the costs of remediation and removal of a previously undisclosed underground storage tank on Mr. O’Brien’s property. Discovery of the unknown tank was incident to an inspection conducted prior to a sale of the property. The memo indicated project costs of \$34,035.18, of which \$19,943.15 was approved.

On January 21, 2020, in response to correspondence received from Sam Guman of NJEDA, Mr. O’Brien sent a letter enclosing the requested documents. These included tax returns, a personal financial statement, and closing documents related to the sale of his New Jersey home where the tank remediation was completed in December of 2016. The letter also referred to a significant IRA distribution in 2016 to enable the funding of the remediation and the purchase of a new home during the pendency of the remediation. In addition to the requested 2016 and 2018 tax returns, Mr. O’Brien submitted returns for 2015 and 2017 to clearly identify his income pattern over several years surrounding the oil tank removal and remediation. These returns indicate

income well below the statutory limit to qualify for the grant, except for 2016 when the IRA withdrawal was made.

On February 7, 2020, Kathy Junghans, NJEDA Finance Officer in Credit Underwriting sent a letter to Mr. O'Brien indicating a grant could not be offered as his income exceeded the statutory limit of \$250,000. Instead, consistent with the Underground Storage Tank Finance Act, 58:10A-37.1. et seq, ("Act"), Mr. O'Brien was offered to have his application reviewed for a loan. This letter indicated Mr. O'Brien's income in 2018 exceeded the statutory limit; however, it is understood this was a typographical error and should have indicated 2016 as the year Mr. O'Brien's income was reviewed, consistent with the statute and rules which require a review of the applicant's income in the year prior to application.

On February 25, 2020, Mr. O'Brien sent a letter to the NJEDA Finance Officer acknowledging receipt of the February 7, 2020 declination and enclosing his 2016 tax return demonstrating a significant IRA withdrawal. Mr. O'Brien wrote that he understood and did not contest the criteria outlined in the declination letter. Mr. O'Brien contended that counting the aberrant income in 2016 due to the IRA withdrawal was outside the intent of the statute and that the most important date is when the remediation expenses were incurred – in this case December 2016, which is what causes the hardship. The Act requires examination of an applicant's taxable income in the year prior to making application. As indicated above, Mr. O'Brien applied in March 2017 but, due to the IRA withdrawal, his taxable income in 2016 exceeded the \$250,000 cap.

On June 9, 2020, after consultation with David Lawyer, Managing Director of Underwriting, Finance, and Development and Kathy Junghans, Mr. O'Brien initiated this appeal.

### **Record Assembled**

For purposes of this appeal, a record was assembled over the preceding months consisting of the following submissions:

11/01/2019 – Memorandum from William Schreyer of DEP to NJEDA, Real Estate and Credit Underwriting indicating technical approval of Mr. O'Brien's application and the enclosed March 6, 2017 application of Mr. O'Brien.

12/11/2019 – Correspondence from Sam Guman to Mr. O'Brien indicating DEP technical eligibility and requesting documents for financial review to determine EDA funding.

01/28/2020 – Financial review documents submitted by Mr. O'Brien.

02/05/2020 – Leaking Tank Review Sheet prepared by Kathy Junghans.

02/06/2020 – Homeowner Financial Hardship Test prepared by Kathy Junghans.

02/07/2020 – Correspondence from the Finance Officer to Mr. O'Brien declining the grant.

02/25/2020 – Correspondence from Mr. O'Brien to the Kathy Junghans describing the aberrant circumstance surrounding the IRA withdrawal that put Mr. O'Brien over the income limit.

05/01/2020 – Correspondence from Mr. O’Brien to Kathy Junghans underscoring his awareness of the intent of the regulations and requesting reconsideration of his application.

05/11/2020 – Correspondence from Kathy Junghans to Mr. O’Brien reiterating the declination.

05/11/2020 – Correspondence from Mr. O’Brien to Kathy Junghans reiterating his arguments regarding the application with respect to the intent of the legislation and regulations; and also requesting a reference to the legislation.

05/14/2020 – Correspondence from Mr. O’Brien to Timothy Sullivan arguing the unintended inequity of the application verbiage.

05/19/2020 – Correspondence from David Lawyer to Mr. O’Brien enclosing a copy of the Fund Rules and Act.

06/09/2020 – Appeal of Mr. O’Brien.

09/30/2020 – Memorandum from David Lawyer to the Hearing officer informing of the Fund criteria and recommendation to uphold the declination.

### **Hearing Officer’s Analysis**

Mr. O’Brien summarizes his appeal as follows:

*‘The essence of our appeal is that, due exclusively to the fact that our tank removal and remediation occurred so late in one calendar year (December 14, 2016), that, even the most expeditious application to NJ DEP had to be submitted very early in the subsequent calendar year. The supporting financial information requested in the NJ EDA application ignores the date of expenditures associated with the “eligible project” and speaks only to the submission date of the application. The significant financial hardship caused by our out of pocket expenses to cover the “eligible project” and delayed closing of the sale of our house could only be remedied by a premature withdrawal from our “Qualified Retirement Funds” which inflated our otherwise, modest income in the year of the “eligible project”, the year prior to the submission date of the application.’*

In addition, Mr. O’Brien’s appeal cites twelve sections and subsections of the Fund statute and six sections and subsections of the Fund rules. His arguments addressing each of these can be condensed into three related points. Firstly, Mr. O’Brien argues that the Authority’s declination is inconsistent with the intent of the Fund in its request for finite tax return information related exclusively to the application date. Secondly, Mr. O’Brien argues that the Authority’s application is deficient in that it fails to relate an applicant’s financial information to the actual event, but rather to a filing date at a later time. Thirdly, Mr. O’Brien asserts the following regarding the propriety of the application as it relates to the Act:

*“Nowhere in this entire section of The Act [in reference to N.J.S.A. 58:10A-37.5 c.(1)], does it mention anything about income in the year prior to the application. It exclusively addresses the “eligible project”. Again, the application, as written,*

*is deficient and does not adequately reflect the intent of The Act where a non-business property owner is forced to fund an “eligible project” from personal resources before any application for reimbursement can be filed.”*

Mr. O’Brien’s arguments are unpersuasive. The Authority’s application requirements are consistent with the expressed requirements in the Act. Among the documents to be submitted as part of the application are tax returns reflecting taxable income in the year prior to making application.

The Fund’s statute, N.J.S.A. 58:10A-37.1. Short title; Underground Storage Tank Finance Act (“Act”), et seq., specifies the requirements to be eligible for assistance from the Fund. Among them, applicable here under N.J.S.A. 58:10A-37.5 c.(1) in pertinent part, is the following:

“No applicant shall be eligible for a conditional hardship grant if the applicant has a taxable income of more than \$250,000 or a net worth, exclusive of the applicant's primary residence and pension, of over \$500,000.”

This same section of the Act, with Mr. O’Brien’s assertion to the otherwise, further reads the following:

“In making a finding of financial hardship for an application for the upgrade or remediation of a petroleum underground storage tank, where the petroleum underground storage tank is not a part of the business property of the owner, the authority shall base its finding upon the applicant's taxable income in the year prior to the date of the application being submitted.”

Similarly, the applicable Rule at N.J.A.C. 19:31-11.6 (b)1.ii. reads as follows:

“In order to be eligible for a conditional hardship grant for remediation, in the case of a regulated tank, the applicant shall have owned or operated the subject regulated tank at the time of tank closure; and not have a taxable income of more than \$250,000 or a net worth, exclusive of the applicant's primary residence and pension, of over \$500,000 taxable income derived from the tax return in the year prior to making application.”

The Act and Rules are clear; the income qualification shall be determined by the taxable income in the year prior to application. There is no discretion or exception.

Mr. O’Brien may very well be correct in his assertions that if the application could have been submitted sooner, prior to 2017, or alternatively, had he waiting up to 18 months after discovery of the tank (bringing him into 2018), he would have qualified for the grant. As indicated above, his pattern of income in other years surrounding the remediation is well within the program limit. However, the assertion in his appeal that this circumstance is “...an unintended consequence of a poorly written application” is unfounded. The application requirements pertaining to income are consistent with the statute and regulations; the inflexibility of which are beyond the Authority’s discretion.



In sum, Mr. O'Brien had to withdraw money from his IRA in 2016 in order to close on the purchase of his new residence in South Carolina due to the delay caused by the remediation. This untimely IRA withdrawal resulted in 2016 taxable income in excess of the maximum \$250,000 to qualify for assistance under the Fund. Mr. O'Brien submitted his application to DEP in 2017 and, according to the Act and Rules, the Authority correctly looked to income reported in the year before application in making its determination to decline Mr. O'Brien's application for a grant from the Fund.

**Conclusion**

In considering the assembled record, applicable statutes and regulations, and based upon the above analysis, I have concluded that staff has demonstrated a sufficient basis for their decision to deny the application of John O'Brien for a grant under the Fund.

**Recommendation**

As a result of careful consideration of the above appeal, I am recommending the Board uphold staff's determination denying the application of Mr. O'Brien for a conditional hardship grant under the Fund.



Marcus Saldutti  
Hearing Officer

**John L. O'Brien, Jr.**  
11 East Summerton Drive  
Bluffton, SC 29910

June 9, 2020

Mr. Stephen Innamorato  
New Jersey Economic Development Authority  
PO Box 990  
Trenton, New Jersey 08625-0990

**Re: APPEAL OF DENIAL OF APPLICATION # P46000/188143**  
**Applicant; John O'Brien**  
**Petroleum Underground Tank Program**  
**13 Gristmill Rd., Hanover, NJ**

**Sent via email: [SInnamorato@njeda.com](mailto:SInnamorato@njeda.com)**

Dear Mr. Innamorato:

I am submitting our appeal of the NJ EDA denial of our application for PUST reimbursement to you at the direction of Mr. David Lawyer. I have copied both Mr. Lawyer and Ms. Junghans, who initially handled our application. I should point out that I have communicated by phone and email with both parties and appreciate their very courteous and informative service to me. Mr. Lawyer provided me with N.J. Stat. § 58:10A-37.1 and N.J.A.C. 19:31-11.1 which I read and will refer to in support of our appeal.

Both Mr. Lawyer and Ms. Junghans advised me of their responsibilities (and limitations) and informed me that, in their positions, they could not handle our appeal nor could they bring notice to The Board of what I believe, is an unfortunate, unintended and inappropriate consequence of the application document as it was written. The essence of our appeal is that, due exclusively to the fact that our tank removal and remediation occurred so late in one calendar year (December 14, 2016), that, even the most expeditious application to NJ DEP had to be submitted very early in the subsequent calendar year. The supporting financial information requested in the NJ EDA application ignores the date of expenditures associated with the “*eligible project*” and speaks only to the submission date of the application. The significant financial hardship caused by our out of pocket expenses to cover the “*eligible project*” and delayed closing of the sale of our house could only be remedied by a premature withdrawal from our “Qualified Retirement Funds” which inflated our otherwise, modest income in the year of the “*eligible project*”, the year prior to the submission date of the application.

Our application was declined for a single reason; per the application, our income in the “*year prior to the application date*”, exceeded the maximum threshold. The year of the application

was not the year of the “*eligible project*” or our financial hardship. A copy of our appeal is being shared with each of the NJ EDA Board Members, not that I expect them to weigh in specifically on our appeal, but because I feel strongly that a correction to the application document is necessary. My hope is that The Board will direct the appropriate parties to correct the application verbiage so that this unintended and inappropriate consequence is not repeated with any future applicants.

I have considerable correspondence with NJ DEP and NJ EDA which I have not included here as I assume that is already available to you. However, in the event you do need anything from my files, I will promptly share any of that. I will present a timeline for the activities leading up to and associated with our appeal as follows;

1. We acquired our property at 13 Gristmill Rd. in 1984. We had a complete home inspection prior to closing and were advised that the natural gas heating system was in good order. There was no evidence, no mention and, at that time, no need to examine the property for any oil tank. That is clearly quite different today.
2. We decided to list our home for sale in late summer 2016 and look for a retirement residence. The property went under contract for sale in October with a buyer’s request to close “as soon as reasonably possible”. We agreed and simultaneously found our home here in South Carolina with a similar seller’s request to close as soon as possible.
3. The home inspection in NJ discovered the old oil tank and we were advised that the tank had to be removed and, if necessary, remediate the site before we could close the sale. The issue was exacerbated by the fact that, without any knowledge of the oil tank, we received the requisite permits and had a new deck built in 2001 right over the spot where the unknown tank was buried.
4. We immediately engaged ADS Environmental, Inc. to begin the process of the tank removal. We also contacted the original deck contractor to remove part of the deck and ultimately replace it to the buyer’s satisfaction.
5. The entire project was finished and signed off on by the Hanover Township Building Inspector on December 13, 2016. The property closing was completed the following afternoon, December 14, 2016. All the specific dates, expenses, soil readings and pictures of the removal and remediation were included in the Remedial Action Report filed with NJ DEP on January 6, 2017. Our “out of pocket expenses” for the entire process exceeded \$34,000 and had to be funded by a withdrawal from our “Qualified” retirement plan.
6. We also had an outstanding mortgage on the NJ property that was to be satisfied and closed with the proceeds of the sale at closing.
7. We were forced to continue with the transaction for our home in South Carolina well in advance of our delayed NJ closing and having insufficient income for a second mortgage approval, we needed additional funds from our “Qualified” retirement plan to support that transaction. By IRS regulations, all those withdrawn funds had to be included as “taxable income” in the year taken, 2016.

8. ADS Environmental, Inc. assisted us with the application to NJ DEP for reimbursement through the PUST Fund. Per the application, we could not file until we made a claim for reimbursement through our Homeowners Insurance policy. That claim was initiated on January 24, 2017. A formal denial of any liability was issued by the carrier on February 23, 2017.
9. On March 1, 2017, our application for reimbursement was filed with NJ DEP in the amount of \$27,315.18. This application amount is less than our actual expenses per NJ DEP pricing guidelines for certain items.
10. Nearly one year passed and not having heard anything from NJ DEP, I initiated a follow up inquiry on the application. I received a reply from Mr. William Schreyer of NJ DEP (also copied on this correspondence) that it may take as long as several years for our application to be reviewed as there were insufficient funds available to address the large number of PUST applications received.
11. On November 1, 2019, I received a letter from Mr. Schreyer indicating that funding was now available and that our *“eligible project”* was approved for potential financial assistance in the amount of \$19,943.15. He advised that, within a couple of weeks, I would receive the application package from NJ EDA
12. I received the application package with a cover letter dated December 11, 2019. Having been away, I did not personally receive the application until early January.
13. With my letter of January 21, 2020, to Mr. Sam Guman of NJ EDA, I submitted the completed application, all requested financial documents and our check in the amount of \$250. I had reviewed the application carefully and noted the request for our Tax Returns for 2016 and 2018, the years before and after the NJ DEP application filing date, not the year of the *“eligible project”*. I understood the need for a couple of years of our Tax Returns to be reviewed to justify financial need. To clearly identify our income pattern over several years surrounding the oil tank removal and remediation in 2016, I took the initiative to provide Tax returns for 2015, 2016, 2017 and 2018. This was all noted in my letter along with the explanation of our inordinate income in 2016 from our Qualified Retirement Fund to cover the expenses associated with the tank removal, remediation and delayed house sale.
14. *When requesting financial information, the application language is not at all interested in the date of the “eligible project” OR when the hardship expenses were actually incurred. Rather, it focuses exclusively on the application date.*
15. In her letter dated February 7, 2020, Ms. Junghans advised that our application was denied for a single reason. Our income in the year **prior to the application submission date**, which, in our case, was the year we endured the financial hardship of the tank removal and remediation expenses, was too high. As we have pointed out, that aberrant income level was due exclusively to our need to withdrawal funds from our Qualified Retirement Funds to cover those expenses and it does not accurately reflect our regular pattern of income. The Act is, justifiably, interested in income patterns to help determine eligibility. However, the application does not accurately reflect the intent of The Act in its request for finite Tax Return information related exclusively to the application date.

This restriction obfuscates our true income pattern and our financial hardship related to the “*eligible project*”.

16. I replied to Ms. Junghans on February 25, 2020 requesting that her decision be revisited and reversed. I had already provided additional information (our 2015 Tax Return, the year prior to the “*eligible project*”) for clarity of our income pattern.
17. I had not received any reply (perhaps related to Covid-19 restrictions) to my letter so I sent a “FOLLOW UP” on May 1, 2020. I received a voicemail reply from Ms. Junghans. She suggested that, due to the pandemic, it may be better to communicate via email.
18. I emailed Ms. Junghans and reiterated several points in further asking for an appeal. I specifically noted that, had our tank been discovered and removed several months earlier in 2016, our application would have been submitted in 2016 and we would have been approved based on our exact same income pattern.
19. On May 8, 2020, I communicated via email with Ms. Junghans to review the basis of our appeal and I also provided our 2019 Taxable Income. That new information further supports our true income pattern, apart from our necessary Qualified Retirement Fund withdrawal in 2016.
20. ***Through no reasonable fault on our part, our application was declined solely because it was necessarily filed in a subsequent year. Nothing in the application changed and nothing about our expenses or financial status changed. Only the calendar year changed and that alone caused our declination.*** If the application could have been submitted sooner (in the same year as the *eligible project*) or even if we waited the full 18 months after the event to submit the application as permitted by The Act, we would have been approved based upon our very same income pattern. ***IT IS NOT THE INTENT OF THE ACT TO DISCRIMINATE BASED ON THE TIMING OF SUBMISSION DATE OF THE APPLICATION.***
21. Ms. Junghans referred me to Mr. Lawyer with whom I spoke and exchanged informational emails with. I should note, again, my appreciation for the courtesy and assistance I received from Mr. Lawyer and Ms. Junghans. To proceed with the appeal process, Mr. Lawyer advised that I should communicate with you and he kindly shared the UST Act and Rules documents.

Throughout our filing process, I felt that the NJ EDA “*application*” as written, was insufficiently addressing the intent of the Act as it restricted the requested materials and that can easily misrepresent the true financial status of the applicant relative to the actual event or “*eligible projects*” as identified in the UST Act. Our application was *approved* by NJ DEP as an “*eligible project*”. The declination by NJ EDA is based exclusively on taxable income as requested in the application which, although ours was submitted promptly, was necessarily filed in the subsequent calendar year. We feel very strongly that this is unfair, inappropriate and an unintended consequence of a poorly written application. This restriction denies your Financial Officer of Credit Underwriting, Ms. Junghans, the opportunity to make a true valuation of need, circumstances and true income patterns.

I note certain passages of **NJ Statute 58:10A-37.1** that support my contention of an inadequate application form:

1. **37.2. Definitions;** “Financial Assistance means a grant or loan ... to fund an eligible owner ....” This definition suggests that most of the funds are approved prior to any work being done. This is important as it suggests that the application would review personal income or business activity prior to the approval of an “*eligible event*”. I provided additional tax return information for the years prior to our event but that information was ignored in our denial determination. The ACT is correct in requesting prior years income, but the “application” inappropriately disallowed this in our situation.
2. **37.4. a.;** This section further confirms that a majority of the financial assistance is allocated to finance (prospectively) “*eligible projects*” costs. Requested financial records for projects yet to be approved appropriately reflects the need to review income patterns leading up to a request for funds. However, the application is “deficient” as it does not request the same income pattern information for a retrospective reimbursement, as was our situation.
3. **37.4. c. ;** The Act states that situations like ours, where a leak has been identified and could pose a threat to a drinking water like the underground aquifers at our location, should “...be given priority over all applications for financial assistance.”
4. **37.5 c. (1);** “No applicant shall be eligible ... if the applicant has taxable income of more than \$250,000 ....” Considering the prior Act sections noted here suggesting that most of the financial assistance awards are for prospective projects, this clearly implies that there should not be income exceeding the threshold prior to the “*eligible event*”. We did not exceed that threshold prior to the event. I provided proof of that with my submission and offered to provide additional prior year’s Tax Returns to verify our consistent income pattern. Nowhere in this entire section of The Act, does it mention anything about income in the year prior to the application. It exclusively addresses the “*eligible project*”. Again, the application, as written, is deficient and does not adequately reflect the intent of The Act where a non-business property owner is forced to fund an “*eligible project*” from personal resources before any application for reimbursement can be filed.
5. **37.5.h.(1), (2), (3);** These sections again refer to loans on a prospective basis for an “*eligible project*”. If I had the opportunity to file our application with NJ DEP on a prospective basis in 2016 when the problem was discovered but not yet corrected, the NJ EDA Financial Officer of Credit Underwriting would have made a favorable determination on our application based on the exact same information we submitted.
6. **37.6. ;** “An eligible owner or operator seeking financial assistance from the fund shall file an application on a form to be developed by the authority.” I contend that the applications developed for submissions to both NJ DEP and NJ EDA are inconsistent in addressing “*eligible projects*” as the requested financial documentation does not

adequately differentiate between loans for proposed projects and reimbursements for completed “*eligible projects*”. This is grossly unfair as I filed for reimbursement in a timely fashion but in a subsequent calendar year. The application as written, forces me to be judged on different standards than applicants for a loan on a prospective project.

7. **37.7.d** ; “In the case of a regulated tank that is not operational, financial assistance for the closure or the remediation of any discharge therefrom may be awarded if the application is filed with the authority no more than 18 months after the discovery of the existence of the regulated tank, ....” This section suggests that I could have waited until March of 2018 (less than 18 months after the discovery) to file our claim. Had we done so, we would have been approved as the application would not have requested our 2016 income. The application, inappropriately, does not ask for financial information based on the actual date of expenditures but only the timing of the application which can clearly be manipulated by an applicant.
8. **37.7.g** ; “... The eligible owner or operator may expend its own funds for the upgrade, closure or remediation, and upon approval of the application, the authority shall award the financial assistance as a reimbursement of the monies expended for “*eligible project*” costs.” This is precisely what happened in our case, yet our application was denied.
9. **37.7.j** ; “... if an applicant has expended the applicant’s own funds for a remediation of a petroleum underground storage tank used to store heating oil at the applicant’s primary residence prior to filing an application for financial assistance from the fund for the eligible project costs of the remediation, the authority, upon approval of the application, may make a grant from the fund pursuant to paragraph (1) of subsection c. of section 5 of P.L.1997, c.235 (C.58:10A-37.5) to reimburse the applicant for the eligible costs of the remediation.”

I feel we have complied and our tank removal and remediation were approved as an “*eligible project*” and a change of calendar year should not have caused the denial of our application as that clearly is not the intent of The Act.

10. **37.8. ; “Rules regulations relative to application procedure”**

This entire section of The Act demands that the application process be developed in accordance with The Act. Section **37.8.(3)** requires the authority to “adopt such other requirements as may be deemed necessary to carry out its responsibilities pursuant to this act.” As I have pointed out, NJ EDA failed to create an application that is fair and equitable in recognizing expenditures associated with “*eligible projects*”. The Act clearly considers “timing” to be related to the event and does not penalize the applicant where there is a necessary delay in submitting the physical application.

11. **37.11. ; Insurance coverage for costs of remediation**

This section requires the applicant to file a notice of claim with their insurance carrier prior to applying for reimbursement. I did file as required and further delaying the timing of our application. This did not change the circumstances of our claim or our financial status at the time of the event. But, it did inappropriately cause NJ EDA to deny our claim.

12. **37.19.** ; This section requires the NJ DEP and NJ EDA to work in concert with each other in recognizing “*eligible projects*” and financially worthy applicants. We complied completely with the NJ DEP application and provided every bit of requested information, including the claim denial from our homeowner’s insurance carrier. Our application was completed and submitted as quickly as humanly possible, albeit in the subsequent calendar year.

The NJ EDA application **does not** allow adequate review of the circumstances of financial hardship and financial status of the applicant at the time of and immediately prior to the “*eligible project*” expenditures approved by NJ DEP. In our case, denial was based solely and blindly on your requested information relative to the application date as it ignored the date of the actual event and associated expenditures

I note certain passages of **N.J.A.C. 19:31-11.1** that support my contention of an inadequate application form:

1. **11.3 (a) Eligibility** ; Each of the 8 items outlined here use the term “**to finance eligible project costs**”. This suggests that all projects will be performed after the application is submitted. Clearly, “**Eligibility**” also includes reimbursements for “**eligible projects**”, like mine, that were completed prior to an application being filed. This is the foundation for the inappropriate application wording that ultimately caused our denial.
2. **11.5 v.** ; “Eligible project costs may include reimbursement of expenditures incurred by an applicant for remediation of a tank at the applicant’s primary residence prior to filing an application.” This is what happened in our case. I point out that there is no suggestion that an application can be judged on any information other than the facts surrounding the “**eligible project**”. I respectfully submit this demands that the NJ EDA Financial Underwriter judge every application on the date of and facts relevant to the “**eligible project**”. **The application fails in this regard** as it inadvertently demands that your financial underwriter look at a timeframe that can easily be different than the timing of an “*eligible project*” when the application happens to be filed in a subsequent calendar year as ours was.
3. **11.6 (b) 1. ii** ; Following the comments above, this section demands that your underwriter look at taxable income in the year prior to the application and makes no correlation to the timing of the approved “**eligible project**”. This oversight in the application wording does not follow the intent of The Act.
4. **11.7** ; This entire section relates to the “**Priority system for financial assistance**”. The section draws attention to the need for situations like ours to be addressed in a timely fashion and that reimbursement can follow based on a timely application. We filed on a timely basis but because the application requested financial data not specifically related to the actual date of the event, it inappropriately resulted in our denial.
5. **11.8 (e)** ; This section specifically states that a delay in a filing date related to a late application fee submission, “... shall not render the application ineligible for financial assistance ... as long as the initial date of the application is no more than 18 months after the discovery of the tank ....” Once again, our very same application would have been



approved had we waited until 2018 to file our claim. **The financial status of an applicant must relate to the timing of the “eligible project”.**

6. **11.11 Disbursement of financial assistance;**

All five letter subsections here relate to certifications that all work was in conformance with NJ DEP requirements for the “**eligible project**”. Here again, The Act is clear that approval must be related to the event and not the date an application is finally submitted. Our denial was not based on the date of the event.

Mr. Innamorato, while I regret the length of this letter, I wanted to be sure to adequately show why our application should not have been denied based on The Act and the New Jersey Administrative Code associated with The Act. The application form, as written, allows for an unintended denial of a perfectly legitimate applicant. I trust you and the NJ EDA Board Members receiving this can see how the NJ EDA application is, at times, inconsistent with the intent of The Act and also with the NJ DEP application by not relating an applicant’s financial information to the actual event, but rather to a filing date at a later time.

As noted previously, I am happy to share any further information from my files. I look forward to acknowledgement from your office of your receipt of my correspondence and once reviewed completely, a favorable determination. Thank you, in advance for your cooperation.

Very truly yours,

John L. O’Brien, Jr  
973-903-6516

Cc: NJ EDA Board Members  
Mr. Kevin A. Quinn, Chairman  
Mr. Charles H. Sario, Esq., Vice Chairman  
Mr. Philip B. Alagia  
Ms. Virginia S. Bauer  
Mr. Fred B. Dumont  
Ms. Massiel Medina Ferrara  
Ms. Aisha Glover  
Ms. Marcia Marley  
Ms. Rosemari Hicks  
Mr. Robert Shimko

Mr. Tim Sullivan, NJ EDA Chief Executive Officer

Mr. Jorge Santos, NJ EDA Chief of Staff

Ms. Tai Cooper, NJ EDA SVP Policy & Communications

Mr. David Lawyer, NJ EDA Managing Director, Underwriting

Ms. Kathy Junghans, NJ EDA Financial Officer Credit Underwriting

Mr. William Schreyer, NJ DEP Program Specialist

## **AUTHORITY MATTERS**



## MEMORANDUM

**TO:** Members of the Authority

**FROM:** Tim Sullivan  
Chief Executive Officer

**DATE:** March 10, 2021

**RE:** Extension of Memorandum of Understanding (MOU) for NJ Brownfields Assistance Center at NJIT

### **Request**

On January 16, 2020, the Members approved a Memorandum of Understanding (MOU) with New Jersey Institute of Technology (NJIT) pursuant to which the Authority provided \$200,000 in funding to establish the NJ Brownfields Assistance Center at NJIT to provide a variety of technical assistance and resource products for brownfields communities in New Jersey.

The Members' approval is requested to (1) extend that MOU for a period of 12 months, (2) provide additional funding in the amount of \$200,000, to NJIT for the NJ Brownfields Assistance Center at NJIT, and (3) grant delegated authority to permit the Chief Executive Officer to extend the MOU on the same terms and conditions, on an annual basis, at a cost not to exceed \$200,000 per year, for up to 3 additional years.

### **Background**

Through his comprehensive economic plan for building a stronger and fairer economy in New Jersey, Governor Murphy has identified the remediation and redevelopment of brownfield sites as an important component of smart planning that will allow New Jersey to meet its goals for economic growth while minimizing the environmental impact and sprawl that is the byproduct of new development. To facilitate brownfields redevelopment, the Authority has a portfolio of products and initiatives that run the gamut from technical assistance to investment resources, including:

- \$15 Million competitive brownfield loan program (which is accepting applications through April 13, 2021);
- Community Collaborative Initiative partnership with New Jersey Department of Environmental Protection (NJDEP);
- Brownfield Impact Fund (funded by a grant from the United States Environmental Protection Agency) (currently under development);
- \$50 million per year Brownfield Redevelopment Incentive which is part of the Economic Recovery Act (currently under development); and
- The NJ Brownfields Assistance Center at NJIT.

The NJ Brownfields Assistance Center was established last year, and helps NJ counties and local governments overcome challenges posed by brownfield sites. The Center also educates and engages communities in an effort to build capacity and knowledge. The NJ Brownfield Assistance Center has far exceeded our expectations. Over the past year, it has, among other things:

- Drafted a User's Guide for the Brownfield Loan Program;
- Assisted over 100 public entities, including 4 Brownfield Blueprint Learning Labs; and
- Hosted 6 webinars, participated in 4 conferences, authored 6 articles, and provided one-on-one technical assistance to 11 communities.

#### **Description of the need for extending the MOU with NJIT**

- **Assistance regarding the Brownfields Loan Program.** By extending the MOU, the NJ Brownfield Assistance Center at NJIT can offer assistance to communities to support the successful use of the loans in advancing sites from remediation through redevelopment.
- **Support for the Brownfields Impact Fund (USEPA Revolving Loan Fund (RLF)).** The Authority has been successful in securing a Brownfield Revolving Loan Fund grant from USEPA. The Authority will be launching that program in the coming months. By extending the MOU, the NJ Brownfield Assistance Center can provide much needed support to NJ communities that receive funding through the Brownfields Impact Fund, by creating a roadmap with all the steps necessary to advance their brownfields projects towards redevelopment. In addition, the Center would be able to be responsive and engaged to provide assistance to each of these communities in whatever fashion needed, whether that be the answer to a quick question, or more intensive guidance through the process. By extension, the Center's assistance will not only support each community's success, it will in turn support the success of our Brownfield Impact Fund program.
- **Continuity of Assistance.** The Center has been pro-active in establishing themselves as a credible resource over the past 12 months and we anticipate they will continue to do so upon extension of the MOU. This will ensure the Center's assistance will be available for municipalities as well as supporting NJEDA's Brownfields and Sustainable Systems team.

#### **Description of the need for delegated authority**

Together, these efforts will pave the way to a greener, fairer New Jersey where residents living in communities that have historically suffered from disinvestment, environmental contamination, and health disparities can benefit from brownfields redevelopment. Continuing to fund the NJ Brownfields Assistance Center at NJIT will support the goals set forth in the Governor's plan for a stronger and fairer New Jersey economy. That plan seeks to accomplish these goals by 2025. To ensure that the Authority has the ability to continue to support the NJ Brownfields Assistance Center at NJIT through that timeframe, staff request delegated authority to permit the Chief Executive Officer to extend the MOU on the same terms and conditions, on an annual basis, at a cost not to exceed \$200,000 per year, for up to 3 additional years.

**Recommendation**

The Members' approval is requested to (1) extend the Memorandum of Understanding with the New Jersey Institute of Technology for the NJ Brownfields Assistance Center at NJIT for a period of 12 months, (2) provide additional funding in the amount of \$200,000, and (3) grant delegated authority to the CEO to annually extend this MOU for up to 3 additional years.

A handwritten signature in blue ink, appearing to read 'T. Sullivan', is positioned above a horizontal line.

Tim Sullivan, CEO

Prepared by: Elizabeth Limbrick

Attachment:

- Exhibit A – Letter to extend MOU

**Extension of a Memorandum of Understanding (MOU)  
Between NJEDA and NJIT for Year 2 Funding of the  
NJ Brownfields Assistance Center at NJIT**

On February 10, 2020, the New Jersey Economic Development Authority (NJEDA) executed an MOU with the New Jersey Institute of Technology (NJIT), pursuant to which the NJEDA provided \$200,000 to launch the NJ Brownfields Assistance Center at NJIT. The performance period was 12 months. Included in the MOU is “an option to extend annually by mutual consent”. By authorized signatures of NJEDA and NJIT, the MOU is extended for an additional twelve (12) month period and NJEDA will provide reimbursement to NJIT an additional \$200,000 for NJIT’s performance of services noted below.

**Scope of Work for Year 2 Funding:**

1. Provide free, focused assistance to any NJ county, local government, local government entity (such as an improvement authority), and nonprofit. Brownfields focused assistance includes, but is not limited, conducting virtual brownfield learning labs, identifying various funding sources, explaining the regulatory process, explaining technical issues, and developing strategies for communities to advance their sites through assessment, cleanup, and redevelopment.
2. Maintain the NJ Brownfields Assistance Center at NJIT website and continue to populate it with various brownfields related information, news, tools, guidance, and success stories. Maintain and continue to add content to the Center’s social media platforms (Twitter and LinkedIn).
3. Design and conduct two (2) brownfield educational workshops or webinars whose themes shall be determined by NJIT and NJEDA.
4. Support NJEDA’s Brownfields Loan Program by promoting the program on the Center’s website and social media platforms, and answer questions from potential applicants during the solicitation process.
5. Support NJEDA’s Brownfields Impact Fund (aka RLF) program by promoting the program on the Center’s website and social media platforms, and in other ways as determined by NJEDA and NJIT which may include creating a user’s guide and FAQs, and hosting an informational webinar.
6. Support NJEDA’s Brownfields Tax Incentive Program by promoting the program on the Center’s website and social media platforms, and in other ways as determined by NJEDA and NJIT which may include creating a user’s guide and FAQs, and hosting an informational webinar.

All other terms and conditions of the MOU shall remain in full force and effect.

**In Witness Whereof, the Parties have signed this MOU extension.**

By: \_\_\_\_\_ Date \_\_\_\_\_  
Atam P. Dhawan, PhD  
Sr. Provost for Research  
New Jersey Institute of Technology

By: \_\_\_\_\_ Date \_\_\_\_\_  
Tim Sullivan  
Chief Executive Officer  
New Jersey Economic Development Authority



**OFFICE OF ECONOMIC GROWTH**



**TO:** Members of the Authority

**FROM:** Tim Sullivan  
Chief Executive Officer

**DATE:** March 10, 2021

**SUBJECT:** New Jersey Wind Port – Request for Increase to Moffatt & Nichol Contract Value to Accommodate Electricity Substation and Distribution System Design

#### **REQUEST**

The Members of the Board are asked to approve a not-to-exceed funding amount of \$353,854 for the engineering of an electricity substation and distribution system at the New Jersey Wind Port. The work will be performed by Moffatt & Nichol (M&N), the Authority's engineer-of-record on the Port project, on a lump sum basis, as permitted by the Authority's existing contract with M&N for engineering and design services on the Port.

Approval of this request will increase the total value of M&N's contract to \$9.5 million (from \$9.13 million) and will increase total approved project funding to-date to \$22.1 million.

Members should note that while these costs will be expended at-risk by the Authority on behalf of the State, staff anticipates capitalizing them (alongside all other external project costs and staff time dedicated to this project) into the development of the project – with these capitalized costs reimbursed to the Authority once project funding or financing is in place.

#### **BACKGROUND**

At its January 2021 meeting, the Authority's Board approved funding for Atlantic City Electric (ACE) to undertake a feasibility assessment to identify the optimal route, schedule, and cost for the design and construction of a transmission line connection to the Wind Port. This assessment recently commenced and is expected to take up to eight months to complete. Through initial scoping of a permanent power solution with ACE, the Authority has learned that ACE's electrical transmission line will cease at the Port boundary. In order to bring electricity onto the port site and safely distribute it across the circa 200-acre area proposed for development, the Authority will need to develop an on-site substation and distribution system.

At its September 2020 meeting, the Authority's Board approved the assignment from PSEG to the Authority of a contract with Moffatt & Nichol (M&N) for engineering and design services on the Port. This assignment enabled the Authority to have direct control over the design process and to establish privity with the Port's designer.

Section 40 ('Alterations, Changes, and Extras') of the M&N contract allows for the Authority to order extra engineering and design services work as it relates to the Port, via a Change Order or Purchase Order – issued on either a lump-sum or time and materials basis, depending on the ability to accurately price the work required. At its December 2020 meeting, the Board subsequently approved an increase in M&N's total contract value to \$9.13 million (from \$8.32 million) to accommodate several previously unanticipated design-related works.

Staff are now seeking to issue M&N with an additional Purchase Order (PO) for the design of an electricity substation and distribution system at the Port. Based on an agreed scope, M&N have proposed to undertake this work for a lump sum price of \$353,854 and a completion timeframe of six to eight months. With the assistance of the Authority's owners-engineers, WSP, staff have interrogated this price and are satisfied that it is fair value. As the engineer-of-record, M&N is familiar with the site and is uniquely placed to ensure that electricity-related design works fit with the Port's overall design. The specific tasks include:

- Development of a load estimate for overall site development. Load development will require consultation with potential port tenants on their anticipated power needs, as well as ACE to glean historical data on manufacturing loads comparisons;
- Design of the high voltage (exterior) portion of the substation including primary overcurrent protection and transformer(s), (graded) exterior yard and security perimeter;
- Design of the medium voltage portion of the substation including switchgear and associated building. Building design will be based on prefabricated metal building construction. Building design will include grading, fencing and a suitable ground grid; and
- Site distribution design which will include infrastructure (duct bank and vault systems), conductors, and electrical equipment required for future development of the parcels.

Approval of this request will increase the total value of the M&N contract to \$9.5 million (from \$9.13 million). This total includes an estimated cost of \$1.875 million for construction phase support, which will be billed on a time and materials basis. Approximately \$7.7 million of the total contract value will be incurred by the Authority directly; with approximately \$1.75 million already incurred by PSEG prior to contract assignment. Under the terms of the Authority's Letter of Intent (LOI) with PSEG, this amount will be reimbursed to PSEG upon the project's financial close.

Approval of this request will increase total approved funding for the Port to \$22.1 million.

## **REQUEST**

The Members of the Board are asked to approve a not-to-exceed funding amount of \$353,854 for the engineering of an electricity substation and distribution system at the New Jersey Wind Port. The work will be performed by Moffatt & Nichol (M&N), the Authority's engineer-of-record on the Port project, on a lump sum basis, as permitted by the Authority's existing contract with M&N for engineering and design services on the Port.

Approval of this request will increase the total value of M&N's contract to \$9.5 million (from \$9.13 million) and will increase total approved project funding to-date to \$22.1 million.

Members should note that while these costs will be expended at-risk by the Authority on behalf of the State, staff anticipates capitalizing them (alongside all other external project costs and staff time dedicated to this project) into the development of the project – with these capitalized costs reimbursed to the Authority once project funding or financing is in place.

A handwritten signature in dark ink, appearing to read 'T. Sullivan', with a long horizontal flourish extending to the right.

Tim Sullivan  
Chief Executive Officer

Prepared by: Jonathan Kennedy, Dennis Feeney, Aaron Roller

## **COVID-19 PROGRAM**



## MEMORANDUM

**TO:** Members of the Authority

**FROM:** Tim Sullivan  
Chief Executive Officer

**DATE:** March 10, 2021

**RE:** Community Development Finance Institution (CDFI) Emergency Loan Loss Reserve Fund – Program Extension

### **Summary**

The Members are asked to approve:

1. An extension to the CDFI Emergency Loan Loss Reserve Fund to allow for CDFIs to register closed loans with the NJEDA for 24 months following Governor Murphy's declared state of emergency (March 9, 2020). This extension from 12 months to 24 months would mean that CDFI's could close loans under the Loan Loss Reserve Fund and register these loans with the NJEDA until March 9, 2022 and that the Loan Loss Reserve Fund would expire on March 9, 2027
2. Delegation to Authority Staff (Chief Community Development Officer or Managing Director, Community Development) to further extend this deadline, if needed, to fully support economic recovery from this disaster.

### **Background**

On March 9, 2020, Governor Phil Murphy declared a State of Emergency and a Public Health Emergency to ramp up New Jersey's efforts to contain the spread of the COVID-19/novel coronavirus. Containment measures were enforced, which included restrictions on public gathering and limited operating hours for non-essential businesses. While these measures were consistent with similar measures being taken nationally to limit the public's exposure to the COVID-19/novel coronavirus, there was and continues to be an adverse economic impact on our nation's economy. Within New Jersey, New Jersey small businesses continue to struggle with recover and reopening efforts and being able to meet basic operating expenses during a prolonged period of reduced capacity and sales.

In addition to the support the NJEDA has provided small businesses in the form of grants and low-interest loans, the Authority has supported organizations that lend to micro businesses that

traditionally have difficulties accessing financing through the traditional banking sector. One example of this support was the Community Development Finance Institution (CDFI) Loan Loss Reserve Fund, which was approved by the Members last March as part of the Authority's initial package of programs in response to the COVID-19 pandemic. Under this program, the Authority will provide up to \$10 million in guarantees to CDFIs for working capital loans that are made after the date of the Governor's declaration of emergency (March 9, 2020) and that meet all the following criteria:

- Made to a company that certifies to the CDFI that it has been adversely impacted by the emergency (e.g., closed, reduced hours, 20% reduction in revenue, 25% reduction in staff availability, material disruptions to its supply chain);
- Focused on working capital needs of a micro or small business;
- Does not exceed \$75,000;
- Does not have an interest rate above 3.75%;
- Provides flexible loan structures (e.g. deferred payments, moratoriums or interest only for up to 6 months); and
- Does not exceed a term of five years.

As the Members may recall, and consistent with how the Authority manages all guarantees, the EDA holds the funding under the Loan Loss Reserve Fund until it is drawn on by the CDFI. The Authority does not undertake any selection, review, or underwriting analysis of each loan administered by the CDFI. Rather, each CDFI utilizes their own credit terms, underwriting practices, and application processes for the administration of the loans backed by the Authority's guarantee. Upon approval of a loan, the CDFI registers the loan with the Authority by sending the Authority notice of the approval, the percentage of guarantee the CDFI needs to make the loan, and the borrower's certification that it has been adversely affected by the emergency. The extension for the Members' consideration today affects the deadline for which CDFIs must register their loans with the Authority.

When this program was initially proposed last year, it was anticipated that all loans made by the CDFI would occur within one year of the declaration of emergency; and that the Loan Loss Reserve Fund would therefore expire after six years from the declaration of emergency, by March 9, 2026.

To date, there are a total of 301 loans registered with the Authority through five CDFIs for \$7,670,500. Given that nearly \$2.33 million of the \$10 million program pool still remains uncommitted under this program, and given that Authority staff in consultation with the approved CDFIs have determined that a one-year period is too short to fully support the economic recovery from this disaster, an extension request is being presented for the Members' consideration to extend the ability for approved CDFIs to register loans made under the Loan Loss Reserve Fund with the Authority, from one year to two years following the declaration of emergency. This extension would mean that loans could be registered with the Authority until March 9, 2022, and that the Loan Loss Reserve Fund would therefore expire after seven years from the declaration of emergency, on March 9, 2027.

The Members are also requested to approve delegation to Authority staff delegation to Authority Staff (Chief Community Development Officer or Managing Director, Community Development) to further extend this deadline if needed to fully support economic recovery from this disaster. Neither the extension of time nor the request for delegated authority will impact the amount of funding available under this program; if approved, both will prevent staff from potentially having to return to the Board next year with the same request.

**Recommendations:**

The Members are asked to approve: (1) an extension to the CDFI Emergency Loan Loss Reserve Fund to allow for CDFIs to register closed loans with the NJEDA for 24 months following Governor Murphy's declared state of emergency (March 9, 2020). This extension from 12 months to 24 months would mean that CDFI's could close loans under the Loan Loss Reserve Fund and register these loans with the NJEDA until March 9, 2022, and that the Loan Loss Reserve Fund would expire on March 9, 2027; and (2) delegation to Authority Staff (Chief Community Development Officer or Managing Director, Community Development) to further extend this deadline, if needed, to fully support economic recovery from this disaster.

A handwritten signature in blue ink, appearing to read 'T. Sullivan', is positioned above a horizontal line.

Tim Sullivan  
Chief Executive Officer



## **INCENTIVE PROGRAMS**

**ECONOMIC REDEVELOPMENT AND GROWTH (ERG)  
GRANT PROGRAM MODIFICATION**



## MEMORANDUM

**TO:** Members of the Authority

**FROM:** Tim Sullivan  
Chief Executive Officer

**DATE:** March 10, 2021

**SUBJECT:** **Camden Hotel Partners, LLC (“Partners”),**  
Economic Redevelopment and Growth Grant Program (“ERG”)  
P #44079

**Request:**

Re-designate the applicant name from Camden Hotel Partners, LLC to the property owner, and redeveloper of the project, CHP Land, LLC (“Land”).

There are no other changes to the project or the award as a result of these proposed changes.

**Background:**

Initially Land, as the applicant was approved on June 13, 2017 to receive an ERG award of 40% of total eligible costs, not to exceed \$18,352,709 to construct an eight-story hotel comprising of approximately 118,450 sq. feet hotel located at 1 Penn Street, City of Camden, Camden County, New Jersey. At the time of approval Land was comprised of Ensemble Investments, LLC, Keystone Hotel, LLC, Crimson Hotel, LLC, and Camden Michaels Hotel, LLC.

On November 14, 2017 a modification to the project was approved changing the applicant name from Land to Partners to reflect the new ownership of the project, as well as updating the address from Cooper St. to Penn St. to reflect the updated placement of the building on the property. Partners was comprised of Ensemble Hotel Partners, LLC, Molayem Family Trust, OSHAK, LLC, Maxxam Enterprises II, LP, KSLB Holding Company, LLC, and Zarabi Family Trust (CA). The intention of the change in Applicant occurred as Land, who would continue to manage the development of the project, brought in Partners to finance the project and ultimately operate the hotel. Further the parties sought to designate the ERG disbursements to Partners.

In March of 2020, the project was completed with a capital investment of \$58,340,000 and the hotel officially began operating on December 4<sup>th</sup>, 2020.

In discussions with the Applicant regarding certification, staff learned that all costs were incurred by Land. Under the ERG law, only the direct costs of the named applicant or “developer” can be incented. In order to allow for reimbursement, the applicant, Partners, proposes to re-designate the applicant as Land, in order to align with the requirements of the program. Land owns the property and will complete the redevelopment project.

**Gap Analysis**

EDA staff has reviewed the application to determine if there is a shortfall in the project development economics pertaining to the return on the investment for the developer and their ability to attract the required investment for this project. Staff analyzed the pro forma and projections of the project and compared the returns with and without the ERG over 10 years of cash flow as the project has been completed.

Gap Analysis at November 14, 2017 Modification

<b>Return without ERG</b>	<b>Return with ERG</b>
Equity IRR 1.67%	Equity IRR 5.72%

Revised Modification Gap Analysis

<b>Without ERG at proposal</b>	<b>With ERG at proposal</b>
Equity IRR 3.38%	Equity IRR 10.93%

As indicated in the chart above, the project would not otherwise be completed without the benefit of the ERG. With the benefit of the ERG, the Equity IRR is 10.93% which is below the Standard Hurdle Rate Model provided by EDA's consultant Jones Lang LaSalle which indicates a maximum IRR of 14.61%% for a hotel (lodging and entertainment) project located in the city of Camden.

Staff has reviewed the proposed modification and finds that the project remains consistent with the project as approved by the Board.

**Recommendation:**

Re-designate the applicant name from Camden Hotel Partners, LLC to the property owner, and redeveloper of the project, CHP Land, LLC ("Land").




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Tim Sullivan, CEO

Prepared: Marc Tomasini

## **NJ FILM AND DIGITAL MEDIA TAX CREDIT PROGRAM**

**NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY  
PROJECT SUMMARY – FILM TAX CREDIT PROGRAM**

As created under the Garden State Film and Digital Media Jobs Act, P.L. 2018, c. 56, the New Jersey Film and Digital Media Tax Credit Program provides a credit against the corporation business tax and the gross income tax for certain expenses incurred for the production of certain films and digital media content in New Jersey. Under the Film Tax Credit Program, applicants are eligible for a tax credit equal to 30% of qualified film production expenses, or 35% of qualified film production expenses incurred for services performed and tangible personal property purchased through vendors whose primary place of business is located in Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer or Salem County.

**APPLICANT:** Black Friday the Film Inc

PROD-00206965

**APPLICANT BACKGROUND:**

Black Friday the Film Inc is the production company responsible for “Red 48”, an action thriller that takes place in the present-day rural Northeastern United States. The story follows a Child Protective Services officer and a group of desperate individuals trapped inside a store during a hostile take over by a militant maniac and his trio of followers.

The film content has been reviewed and recommended for approval under the Act by the New Jersey Motion Picture and Television Commission. The Commission has determined that the film shall include, at no cost to the State, marketing materials promoting the State, including the placement of a logo in the end credits of the film.

**ELIGIBILITY AND TAX CREDIT CALCULATION:**

As part of eligibility for tax credits under the New Jersey Film Tax Credit Program, a film must meet at least one of two expense eligibility thresholds:

1. Total Film Production Expenses: A minimum of 60% of the film’s total production expenses (calculated excluding post-production expenses) must be incurred after July 1, 2018 but before July 1, 2023 for services performed and goods purchased through vendors authorized to do business in New Jersey. The following film production expenses are projected by the applicant.

A. Total Film Production Expenses	\$3,255,305
B. Total Post-Production Expenses	\$69,110
C. Total expenses for services performed and goods purchased through vendors authorized to do business in New Jersey (excluding any post-production expenses)	\$2,881,989
Percentage Calculation = $C/(A-B)$	90.45%
<b>Criterion Met</b>	<b>Yes</b>

2. Qualified Film Production Expenses: During a single privilege period, the film must have more than \$1 million in qualified film production expenses. “Qualified film production expenses” are expenses incurred in New Jersey after July 1, 2018 for the production of a film, including pre-production costs and post-production costs. “Qualified film production expenses” shall include, but shall not limited to: wages and salaries of individuals employed in the production of a film on which the New Jersey Gross Income Tax has been paid or is due; and, the costs for tangible personal property used and services performed in New Jersey, directly and exclusively in the

production of the film, such as expenditures for film production facilities, props, makeup, wardrobe, film processing, camera, sound recording, set construction, lighting, shooting, editing, and meals. Payments made to a loan out company or to an independent contractor shall not be a “qualified film production expenses” unless the payments are made in connection with a trade, profession, or occupation carried on in this State or for the rendition of personal services performed in this State and the taxpayer has made the withholding required by N.J.A.C. 19:31-21.3(c). “Qualified film production expenses” shall not include: expenses incurred in marketing or advertising a film; and payment in excess of \$500,000 to a highly compensated individual for costs for a story, script, or scenario used in the production of a film and for wages or salaries or other compensation for writers, directors, including music directors, producers, and performers, other than background actors with no scripted lines. The following qualified film production expenses are projected by the applicant to be incurred in New Jersey:

Total Qualified Film Production Expenses incurred in NJ in two privilege periods, of which at least \$1 million is incurred in a single privilege period after July 1, 2018.	\$3,075,446
<b>Criterion Met</b>	<b>Yes</b>

#### AWARD CALCULATION

Base Award Criteria	Calculation	Result
30% of Qualified Film Production Expenses	\$3,075,446 x 30% =	\$922,633.80
<b>Bonus Criteria Met</b>		
Submission of Diversity Plan deemed satisfactory by EDA and NJ Taxation. 2% of Qualified Film Production Expenses.	\$0 x 2% =	\$0
5% of Qualified Film Production Expenses incurred for services performed and tangible personal property purchased through vendors whose primary place of business is located in Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer or Salem County.	\$0 x 5% =	\$0
<b>Total Award</b>		<b>\$922,633.80</b>

<b>APPLICATION RECEIVED DATE:</b>	7/6/2020 (Application #45)
<b>DATE APPLICATION DEEMED COMPLETE:</b>	1/12/2021
<b>PRINCIPAL PHOTOGRAPHY COMMENCEMENT:</b>	8/17/2020
<b>PRINCIPAL NJ PHOTOGRAPHY LOCATION:</b>	Parsippany, NJ
<b>ESTIMATED DATE OF PROJECT COMPLETION:</b>	3/1/2021
<b>APPLICANT'S FISCAL YEAR END:</b>	12/31/2021
<b>TAX CREDIT VINTAGE YEAR(S):</b>	2021
<b>TAX FILING TYPE:</b>	Corporate Business Tax
<b>ANTICIPATED CERTIFICATION DATE:</b>	3/15/2021

In general, the final documentation shall be submitted to the Authority no later than four years after the Authority's initial approval if the taxpayer is seeking a credit against the tax imposed pursuant to

N.J.S.A. 54:10A-5 and three years after the Authority's initial approval if the taxpayer is seeking a credit against the tax imposed pursuant to the N.J.S.A. 54A:1-1 et seq.

The Garden State Film and Digital Media Jobs Act originally provided a total of \$75 million in tax credits for State Fiscal Year 2019 and increased to \$100 million as amended by law on 1/21/2020. The program amendment also allows \$50 million of unused allocation to carry over to the subsequent State Fiscal Year. As a result, \$150 million of film tax credits are available for State Fiscal Year 2021. After today's approvals, \$144.1 million remains in the program for State Fiscal Year 2021 which may be available to 16 additional applications in the pipeline totaling \$68.6 million.

**APPROVAL REQUEST:**

The Members of the Authority are asked to initially approve the proposed award to the applicant under the New Jersey Film and Digital Media Tax Credit Program. The recommended tax credit is contingent upon receipt by the Authority of evidence that the applicant has met certain criteria to substantiate the recommended award, and is subject to final approval by the Authority and the Division of Taxation. Staff may issue the Authority's final approval if the criteria met by the company is consistent with that shown herein. If the criteria met by the company differs from that shown herein, Staff may lower the tax credit amount to reflect what corresponds to the actual criteria that have been met.

**APPROVAL OFFICER:** S. Novak



**NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY  
PROJECT SUMMARY – FILM TAX CREDIT PROGRAM**

As created under the Garden State Film and Digital Media Jobs Act, P.L. 2018, c. 56, the New Jersey Film and Digital Media Tax Credit Program provides a credit against the corporation business tax and the gross income tax for certain expenses incurred for the production of certain films and digital media content in New Jersey. Under the Film Tax Credit Program, applicants are eligible for a tax credit equal to 30% of qualified film production expenses, or 35% of qualified film production expenses incurred for services performed and tangible personal property purchased through vendors whose primary place of business is located in Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer or Salem County.

**APPLICANT:** Shackled Film LLC

PROD-00191008

**APPLICANT BACKGROUND:**

Shackled Film LLC is the production company responsible for “Shackled”, a sci-fi crime thriller set in a dystopian future where the parole system has been replaced with the Recidivism Accountability Partnership Program. The story follows an ex-con that must take drastic measures to ensure his survival when he is paired with a sociopathic gangster with terminal cancer. One wrong move by either of them could mean a summary execution via the explosive charges surgically implanted in their hearts as a condition of their release.

The film content has been reviewed and recommended for approval under the Act by the New Jersey Motion Picture and Television Commission. The Commission has determined that the film shall include, at no cost to the State, marketing materials promoting the State, including the placement of a logo in the end credits of the film.

**ELIGIBILITY AND TAX CREDIT CALCULATION:**

As part of eligibility for tax credits under the New Jersey Film Tax Credit Program, a film must meet at least one of two expense eligibility thresholds:

1. Total Film Production Expenses: A minimum of 60% of the film’s total production expenses (calculated excluding post-production expenses) must be incurred after July 1, 2018 but before July 1, 2023 for services performed and goods purchased through vendors authorized to do business in New Jersey. The following film production expenses are projected by the applicant.

A. Total Film Production Expenses	\$436,130
B. Total Post-Production Expenses	\$30,500
C. Total expenses for services performed and goods purchased through vendors authorized to do business in New Jersey (excluding any post-production expenses)	\$321,630
Percentage Calculation = $C/(A-B)$	79.29%
<b>Criterion Met</b>	<b>Yes</b>

Qualified Film Production Expenses: During a single privilege period, the film must have more than \$1 million in qualified film production expenses. “Qualified film production expenses” are expenses incurred in New Jersey after July 1, 2018 for the production of a film, including pre-production costs and post-production costs. “Qualified film production expenses” shall include, but shall not limited to: wages and salaries of individuals employed in the production of a film on which the New Jersey

Gross Income Tax has been paid or is due; and, the costs for tangible personal property used and services performed in New Jersey, directly and exclusively in the production of the film, such as expenditures for film production facilities, props, makeup, wardrobe, film processing, camera, sound recording, set construction, lighting, shooting, editing, and meals. Payments made to a loan out company or to an independent contractor shall not be a “qualified film production expenses” unless the payments are made in connection with a trade, profession, or occupation carried on in this State or for the rendition of personal services performed in this State and the taxpayer has made the withholding required by N.J.A.C. 19:31-21.3(c). “Qualified film production expenses” shall not include: expenses incurred in marketing or advertising a film; and payment in excess of \$500,000 to a highly compensated individual for costs for a story, script, or scenario used in the production of a film and for wages or salaries or other compensation for writers, directors, including music directors, producers, and performers, other than background actors with no scripted lines. The following qualified film production expenses are projected by the applicant to be incurred in New Jersey:

Qualified Film Production Expenses incurred in NJ during a single privilege period after July 1, 2018.	\$321,630
<b>Criterion Met</b>	<b>No</b>

#### AWARD CALCULATION

Base Award Criteria	Calculation	Result
30% of Qualified Film Production Expenses	\$321,630 x 30% =	\$96,489.00
<b>Bonus Criteria Met</b>		
Submission of Diversity Plan deemed satisfactory by EDA and NJ Taxation. 2% of Qualified Film Production Expenses.	\$321,630 x 2% =	\$6,432.60
5% of Qualified Film Production Expenses incurred for services performed and tangible personal property purchased through vendors whose primary place of business is located in Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer or Salem County.	\$0 x 5% =	\$0
<b>Total Award</b>		<b>\$102,921.60</b>

<b>APPLICATION RECEIVED DATE:</b>	4/23/2020 (Application #43)
<b>DATE APPLICATION DEEMED COMPLETE:</b>	1/15/2021
<b>PRINCIPAL PHOTOGRAPHY COMMENCEMENT:</b>	2/17/2020
<b>PRINCIPAL NJ PHOTOGRAPHY LOCATION:</b>	Paterson City
<b>ESTIMATED DATE OF PROJECT COMPLETION:</b>	8/15/2021
<b>APPLICANT'S FISCAL YEAR END:</b>	12/31/2021
<b>TAX CREDIT VINTAGE YEAR(S):</b>	2021
<b>TAX FILING TYPE:</b>	Gross Income Tax
<b>ANTICIPATED CERTIFICATION DATE:</b>	10/15/2021

In general, the final documentation shall be submitted to the Authority no later than four years after the Authority's initial approval if the taxpayer is seeking a credit against the tax imposed pursuant to

N.J.S.A. 54:10A-5 and three years after the Authority's initial approval if the taxpayer is seeking a credit against the tax imposed pursuant to the N.J.S.A. 54A:1-1 et seq.

The Garden State Film and Digital Media Jobs Act originally provided a total of \$75 million in tax credits for State Fiscal Year 2019 and increased to \$100 million as amended by law on 1/21/2020. The program amendment also allows \$50 million of unused allocation to carry over to the subsequent State Fiscal Year. As a result, \$150 million of film tax credits are available for State Fiscal Year 2021. After today's approvals, \$144.1 million remains in the program for State Fiscal Year 2021 which may be available to 16 additional applications in the pipeline totaling \$68.6 million.

**APPROVAL REQUEST:**

The Members of the Authority are asked to initially approve the proposed award to the applicant under the New Jersey Film and Digital Media Tax Credit Program. The recommended tax credit is contingent upon receipt by the Authority of evidence that the applicant has met certain criteria to substantiate the recommended award, and is subject to final approval by the Authority and the Division of Taxation. Staff may issue the Authority's final approval if the criteria met by the company is consistent with that shown herein. If the criteria met by the company differs from that shown herein, Staff may lower the tax credit amount to reflect what corresponds to the actual criteria that have been met.

**APPROVAL OFFICER:** S. Novak

**NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY  
PROJECT SUMMARY – FILM TAX CREDIT PROGRAM**

As created under the Garden State Film and Digital Media Jobs Act, P.L. 2018, c. 56, the New Jersey Film and Digital Media Tax Credit Program provides a credit against the corporation business tax and the gross income tax for certain expenses incurred for the production of certain films and digital media content in New Jersey. Under the Film Tax Credit Program, applicants are eligible for a tax credit equal to 30% of qualified film production expenses, or 35% of qualified film production expenses incurred for services performed and tangible personal property purchased through vendors whose primary place of business is located in Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer or Salem County.

**APPLICANT:** Whoiskurt L.L.C.

PROD-00188360

**APPLICANT BACKGROUND:**

Whoiskurt L.L.C. is the production company responsible for “Kurt”, the portrayal of the truth behind humanity, power, the ones supplying it and the ones that can’t get enough of it. The film takes place in the modern day and depicts a power hungry yet true artistic photographer on his way out of industry due to his failure to adapt with modern practices.

The film content has been reviewed and recommended for approval under the Act by the New Jersey Motion Picture and Television Commission. The Commission has determined that the film shall include, at no cost to the State, marketing materials promoting the State, including the placement of a logo in the end credits of the film.

**ELIGIBILITY AND TAX CREDIT CALCULATION:**

As part of eligibility for tax credits under the New Jersey Film Tax Credit Program, a film must meet at least one of two expense eligibility thresholds:

1. Total Film Production Expenses: A minimum of 60% of the film’s total production expenses (calculated excluding post-production expenses) must be incurred after July 1, 2018 but before July 1, 2023 for services performed and goods purchased through vendors authorized to do business in New Jersey. The following film production expenses are projected by the applicant.

A. Total Film Production Expenses	\$1,537,833
B. Total Post-Production Expenses	\$12,600
C. Total expenses for services performed and goods purchased through vendors authorized to do business in New Jersey (excluding any post-production expenses)	\$990,162
Percentage Calculation = $C/(A-B)$	64.91%
<b>Criterion Met</b>	<b>Yes</b>

2. Qualified Film Production Expenses: During a single privilege period, the film must have more than \$1 million in qualified film production expenses. “Qualified film production expenses” are expenses incurred in New Jersey after July 1, 2018 for the production of a film, including pre-production costs and post-production costs. “Qualified film production expenses” shall include, but shall not limited to: wages and salaries of individuals employed in the production of a film on which the New Jersey Gross Income Tax has been paid or is due; and, the costs for tangible personal property used and services performed in New Jersey, directly and exclusively in the

production of the film, such as expenditures for film production facilities, props, makeup, wardrobe, film processing, camera, sound recording, set construction, lighting, shooting, editing, and meals. Payments made to a loan out company or to an independent contractor shall not be a “qualified film production expenses” unless the payments are made in connection with a trade, profession, or occupation carried on in this State or for the rendition of personal services performed in this State and the taxpayer has made the withholding required by N.J.A.C. 19:31-21.3(c). “Qualified film production expenses” shall not include: expenses incurred in marketing or advertising a film; and payment in excess of \$500,000 to a highly compensated individual for costs for a story, script, or scenario used in the production of a film and for wages or salaries or other compensation for writers, directors, including music directors, producers, and performers, other than background actors with no scripted lines. The following qualified film production expenses are projected by the applicant to be incurred in New Jersey:

Qualified Film Production Expenses incurred in NJ during a single privilege period after July 1, 2018.	\$990,162
<b>Criterion Met</b>	<b>No</b>

#### AWARD CALCULATION

Base Award Criteria	Calculation	Result
30% of Qualified Film Production Expenses	\$990,162 x 30% =	\$297,048.60
<b>Bonus Criteria Met</b>		
Submission of Diversity Plan deemed satisfactory by EDA and NJ Taxation. 2% of Qualified Film Production Expenses.	\$0 x 2% =	\$0
5% of Qualified Film Production Expenses incurred for services performed and tangible personal property purchased through vendors whose primary place of business is located in Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer or Salem County.	\$0 x 5% =	\$0
<b>Total Award</b>		<b>\$297,048.60</b>

<b>APPLICATION RECEIVED DATE:</b>	4/7/2020 (Application #41)
<b>DATE APPLICATION DEEMED COMPLETE:</b>	12/18/2020
<b>PRINCIPAL PHOTOGRAPHY COMMENCEMENT:</b>	5/1/2020
<b>PRINCIPAL NJ PHOTOGRAPHY LOCATION:</b>	Paterson City
<b>ESTIMATED DATE OF PROJECT COMPLETION:</b>	11/31/2020
<b>APPLICANT'S FISCAL YEAR END:</b>	12/31/2021
<b>TAX CREDIT VINTAGE YEAR(S):</b>	2021
<b>TAX FILING TYPE:</b>	Corporate Business Tax
<b>ANTICIPATED CERTIFICATION DATE:</b>	2/28/2021

In general, the final documentation shall be submitted to the Authority no later than four years after the Authority's initial approval if the taxpayer is seeking a credit against the tax imposed pursuant to N.J.S.A. 54:10A-5 and three years after the Authority's initial approval if the taxpayer is seeking a

credit against the tax imposed pursuant to the N.J.S.A. 54A:1-1 et seq.

The Garden State Film and Digital Media Jobs Act originally provided a total of \$75 million in tax credits for State Fiscal Year 2019 and increased to \$100 million as amended by law on 1/21/2020. The program amendment also allows \$50 million of unused allocation to carry over to the subsequent State Fiscal Year. As a result, \$150 million of film tax credits are available for State Fiscal Year 2021. After today's approvals, \$144.1 million remains in the program for State Fiscal Year 2021 which may be available to 16 additional applications in the pipeline totaling \$68.6 million.

**APPROVAL REQUEST:**

The Members of the Authority are asked to initially approve the proposed award to the applicant under the New Jersey Film and Digital Media Tax Credit Program. The recommended tax credit is contingent upon receipt by the Authority of evidence that the applicant has met certain criteria to substantiate the recommended award, and is subject to final approval by the Authority and the Division of Taxation. Staff may issue the Authority's final approval if the criteria met by the company is consistent with that shown herein. If the criteria met by the company differs from that shown herein, Staff may lower the tax credit amount to reflect what corresponds to the actual criteria that have been met.

**APPROVAL OFFICER:** S. Novak

## **REAL ESTATE**



## MEMORANDUM

**TO:** Members of the Authority

**FROM:** Tim Sullivan  
Chief Executive Officer

**RE:** FMERA Purchase and Sale & Redevelopment Agreement with  
New Jersey American Water for the Water Tank Parcel in Eatontown

**DATE:** March 10, 2021

### **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, as amended ("PSARA") with New Jersey American Water ("NJAW" or "Purchaser") for the sale and redevelopment of the Water Tank Parcel (the "Project") in the Fort's Eatontown Reuse Area.

### **Background**

FMERA was created by P.L. 2010, c. 51 ("the Act") to carry out the coordinated and comprehensive redevelopment and revitalization of Fort Monmouth. The Act designates the New Jersey Economic Development Authority ("NJEDA") as a designated redeveloper for any property acquired by or conveyed to FMERA and authorizes FMERA to enter into redeveloper agreements with NJEDA for the redevelopment of the Fort, while also allowing FMERA to enter into redevelopment agreements directly with private developers.

In June 25, 2012, FMERA and the Army entered into an Economic Development Conveyance Agreement ("EDC Agreement") with the Army for the Phase 1 portion of the Fort, and title to the property was transferred to FMERA in May 29, 2014. The Water Tank Parcel is located in the Eatontown section of the Phase 1 property.

On December 29, 2014, FMERA publicly advertised a Request for Offers to Purchase ("Howard Commons RFOTP") an approximately 63.67 acre of land and improvements located in the Charles Wood Are of Fort Monmouth known as Howard Commons Parcel ("Howard Commons Parcel"), in accordance with FMERA's Rules for the Sale of Real and Personal Property, N.J.A.C. 19:31C-2.1 et seq., which included the Water Tank Parcel. Since the issuance of the Howard Commons RFOTP environmental contamination has been found on the Howard Commons Parcel, in the form of historically applied pesticides, which has led to delays in development and the withdrawal of the top scoring bidder to the Howard Commons RFOTP. FMERA remains in negotiations with the only remaining bidder to the Howard Commons RFOTP - US Home Corporation, a wholly owned subsidiary of Lennar Corporation ("Lennar"), a corporation of the State of Delaware, located in Hamilton, New Jersey, and expects to enter into a Purchase and Sale Agreement and Redevelopment Agreement during the first Quarter of 2021.



Since the issuance of the Howard Commons RFOTP, NJAW has indicated to FMERA that there is severe shortage of water storage capacity and pressure in the surrounding area of Monmouth County and has indicated it is in need of land to build an approximately two million gallon storage tank to better serve the surrounding community's needs. These issues impact Fort properties that FMERA owns and remains responsible to redevelop. As NJAW serves as the sole source water provider in the Tinton Falls/Eatontown/Oceanport area, FMERA staff responded to NJAW's request by identifying a 3.945 tract of land located on the Howard Commons Parcel herein identified as the Water Tank Parcel or Property. The Water Tank Parcel is uniquely suited to serve NJAW's needs by providing approximately four acres of land surrounded on two sides by undeveloped preserved woods, a municipal road on another and a fourth side that encompasses soon to be built residential units which will be buffered by trees.

The Water Tank Parcel is also impacted by the environmental contamination identified on the Howard Commons Parcel. The Water Tank Parcel includes portions of Building 3034 and Buildings 3035, 3036 & 3037 which are identified for demolition. The estimated costs for remediation and demolition on the Water Tank Parcel is between \$1,025,000.00 to \$1,275,000.00, which includes demolition costs for the entirety of Building 3034. By way of a Term Sheet dated September 9, 2020 and by correspondence dated January 4, 2021 Lennar has agreed to exclude the Property from the Howard Commons RFOTP in exchange for foregoing costs associated with demolition and remediation at that site.

A water storage tank located anywhere near Fort Monmouth would ultimately benefit development projects at Fort Monmouth and others in the surrounding areas, especially large volume water users, such as Robert Wood Johnson/Barnabas Health, which has executed an agreement with NJEDA and FMERA for the redevelopment of the Myer Center parcel.

In addition, as part of the Fort's overall utility replacement and improvement plan and to connect the western Main Post properties to the eastern Main Post properties on the Fort, FMERA requires that a 24-inch water main extension be built from Route 35 east along Avenue of Memories to the intersection of Avenue of Memories and Irwin Avenue ("Water Main Extension"), totaling approximately 5,500 linear feet. FMERA anticipates that the Water Main Extension would cost FMERA approximately \$1.3 million. As part of the purchase price for the Water Tank Parcel, NJAW has agreed to install the Water Main Extension under the terms set forth in the PSARA, advancing the installation of the line by three to five years. Combined, the water tank and the Water Main Extension will resolve a major impediment to redevelopment on Fort Monmouth by allowing FMERA to market properties to developers that require large volumes of water and provide overall improvements to the infrastructure of the Fort.

Using the Fort's appraisal for the Main Post, the fair market value of 3.945 acres for open space recreation use, net of the demolition costs, results in an estimated value of \$0 for the Property. Purchaser has agreed to make the federally-mandated Homeless Trust Fund payment of \$80,220 based on Property's developable acreage.

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

The Purchase and Sale and Redevelopment Agreement ("PSARA") was approved by FMERA's board on January 20, 2021 and will be executed after the expiration of the Governor's veto period. Pursuant to the

terms of the PSARA, NJAW will pay \$80,220 to the Homeless Trust Fund for the approximately 3.945-acre property and complete the Water Main Extension at no cost to FMERA by December 31, 2021. Purchaser will have a sixty (60) day Due Diligence Period commencing on the Effective Date of the PSARA; an Initial Approval Period of six (6) months commencing at the end of the Due Diligence period; and a six (6) month Approval Extension Period, subject to FMERA approval. Closing will occur within thirty (30) days of satisfaction or waiver of the Conditions Precedent to closing. NJAW has represented that intends to elect to waive All Approvals and close on the Property but has agreed to provide progress updates to FMERA every 6 months on the status of approvals. FMERA will convey the Property to NJAW in as-is condition, but with clear title and subject to the Army's on-going obligations under CERCLA to address pre-existing contamination that may exist on the Property. It is anticipated that a Reuse Plan Amendment will be required to permit the construction of the water tank on the site.

NJAW's Capital Investment shall be the aggregate of (1) the cost to demolish the existing buildings and construct a two (2) million gallon water storage tank on the Property, and (2) the installation of the Water Main Extension within the timelines set forth under the PSARA, as well associated paving, ancillary storage and landscape buffering to support the site for the water tank use.

The Project will be completed over multiple Phases. Phase I consists of the demolition of Buildings 3034, 3035, 3036 and 3037, including any all asbestos abatement work; the Purchaser will follow standard demolition procedures and ensure any subsurface spaces are removed and soil is graded after demolition. NJAW will commence demolition of Phase I of Project no later than ninety (90) days after Closing. Purchaser will Complete Phase I of the Project no later than March 31, 2022. Phase II consists of the construction of the two million gallon water tank, at a height not to exceed 35 feet, including any required soil remediation. The water tank project will also include other site improvements necessary to operate the tank and support water utility operations (e.g. booster pump station and generator) and a mature foliage buffer and/or berm will be installed on the western boundary of the Property. At Purchaser's discretion, Purchaser may seek to create a paved area of approximately 3,250 square feet, and storage facilities for limited utility equipment storage to support Purchaser's water utility operations.

Regarding infrastructure and utility improvements, the NJAW has agreed to the following: Purchaser is responsible for establishing service and accounts for any utility service required to service the site and the water tank. Purchaser is also responsible for replacement, repair, maintenance and/or relocation of utilities within the Property to serve the Project, subject to Seller's review and approval. Purchaser is responsible for coordinating communication services to the Property through a provider of its choosing.

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 New Jersey American Water, staff concludes that the essential elements of a redevelopment agreement between

FMERA and NJAW are sufficiently addressed and that it is not necessary for FMERA to enter into a separate redevelopment agreement with NJAW for its redevelopment of the Water Tank Parcel.

Attached is the PSARA between FMERA and New Jersey American Water approved by FMERA's Board on January 20, 2021. The PSARA specifies that New Jersey American Water will be confirmed as designated redeveloper of the Property upon NJEDA approval of the PSARA in accordance with N.J.S.A. 52:27I-38.

**Recommendation**

In summary, I am requesting that the Members consent to FMERA entering into the redevelopment agreement contained within the Purchase and Sale Agreement & Redevelopment Agreement with New Jersey American Water for the sale and redevelopment of the Water Tank Parcel in the Fort's Eatontown Reuse Area.



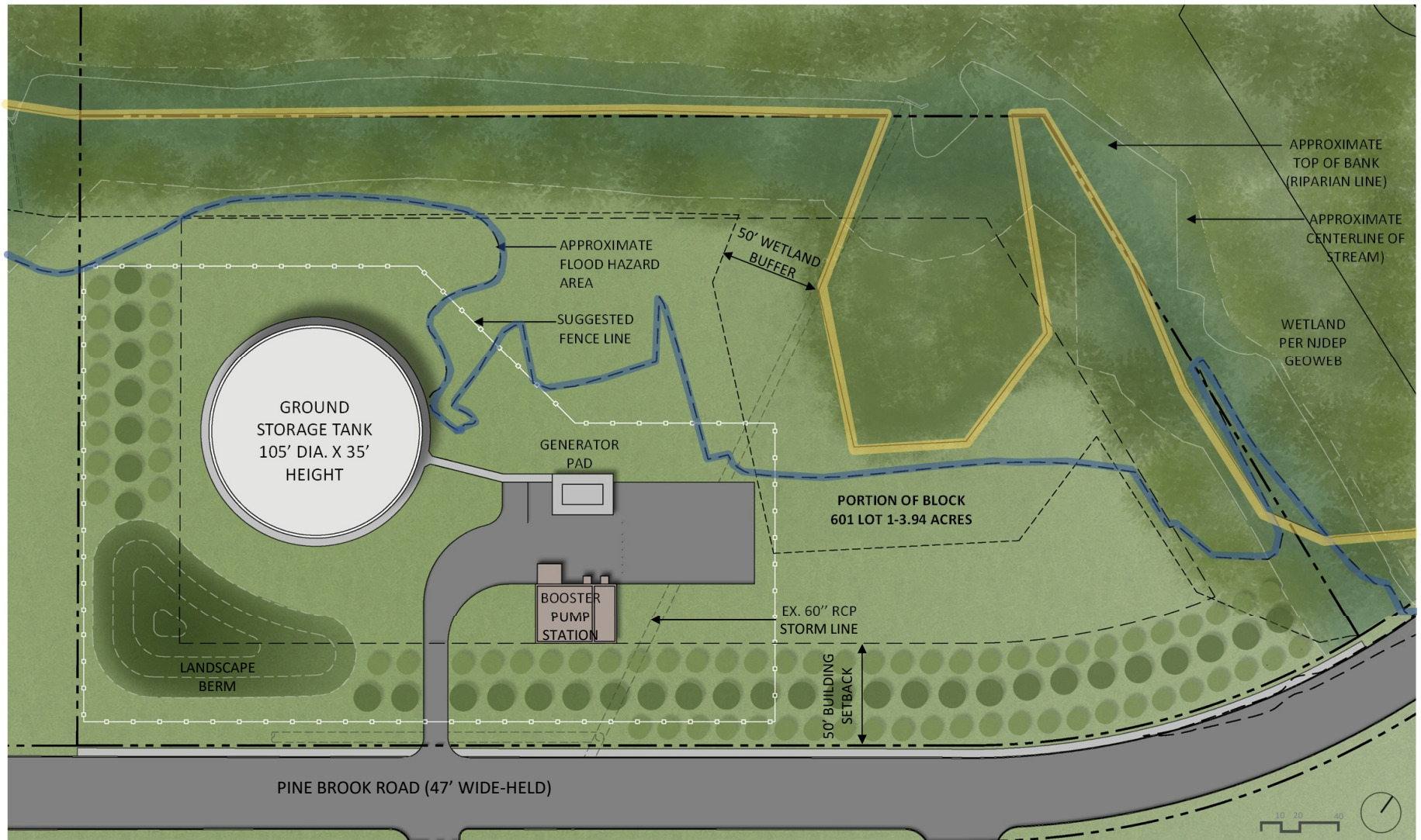
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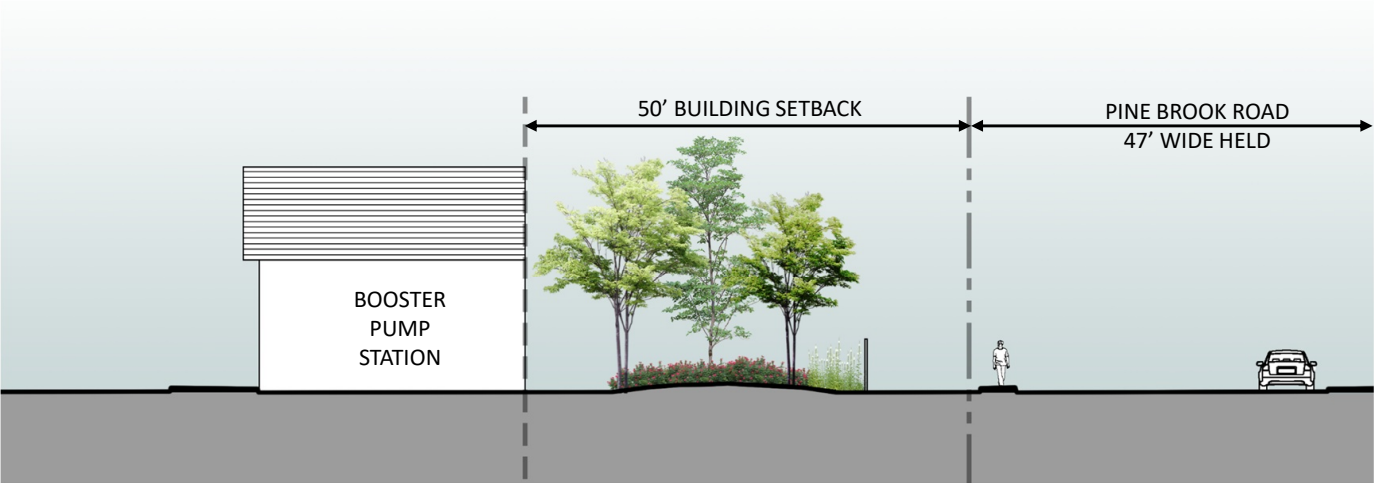
Tim Sullivan  
Chief Executive Officer

Attachments: Purchase and Sale & Redevelopment Agreement

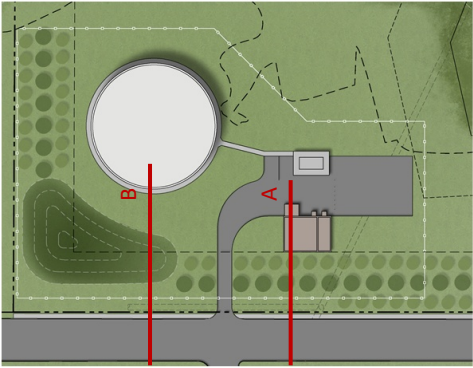
Parcel Map

Prepared by: Kara Kopach & David E. Nuse

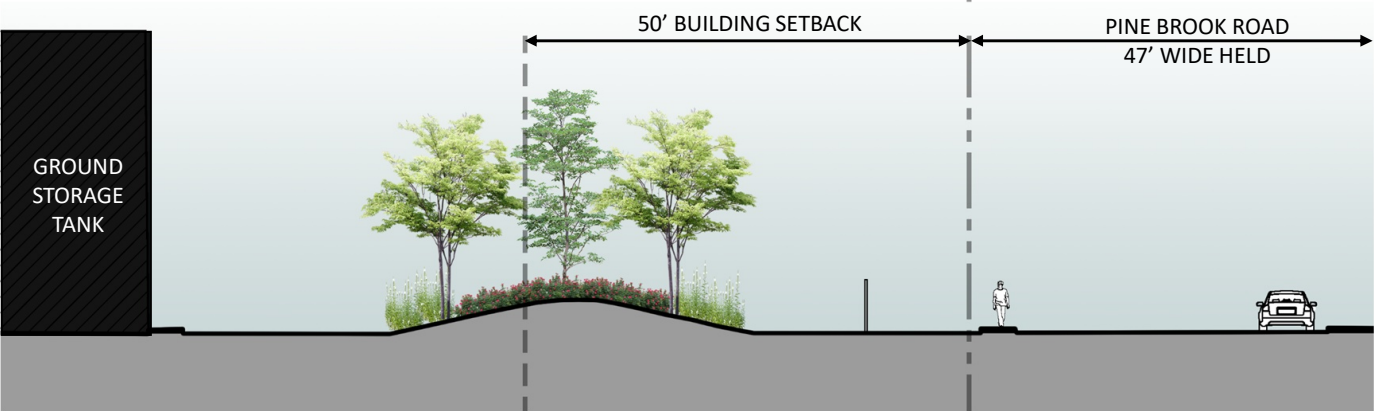




SECTION A



KEY PLAN



SECTION B

**PURCHASE AND SALE AGREEMENT  
AND REDEVELOPMENT AGREEMENT**

**BETWEEN**

**FORT MONMOUTH ECONOMIC REVITALIZATION AUTHORITY**

**As Seller,**

**AND**

**New Jersey-American Water, Inc.,**

**As Purchaser**

**As of January \_\_\_\_, 2021**



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**EXHIBIT LIST**

**A – Conceptual Site Plan**

**B – Boundary Survey & Description of Property (to be provided at a later date)**

**C – Water Main Extension (to be provided at a later date)**

**D – Quitclaim Deed from Army to FMERA**

**PURCHASE AND SALE AGREEMENT AND  
REDEVELOPMENT AGREEMENT**

This **PURCHASE AND SALE AGREEMENT AND REDEVELOPMENT AGREEMENT** (this “**Agreement**”) is made as of \_\_\_\_\_, 2021 (the “**Effective Date**”) between **Fort Monmouth Economic Revitalization Authority** (“**FMERA**” or “**Seller**”), a public body corporate and politic 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, and **New Jersey-American Water, Inc.** (“**NJAW**” or “**Purchaser**”), a New Jersey public utility corporation of the State of New Jersey, whose address is 1 Water Street, Camden NJ 08102. Seller and Purchaser are collectively referred to herein as the “**Parties**”.

**WITNESSETH:**

**WHEREAS**, pursuant to the Defense Base Closure and Realignment Act of 1990, Pub.L.101-510 (10 U.S.C. § 2687), 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 Tinton Falls, Eatontown and Oceanport, New Jersey; and

**WHEREAS**, FMERA has adopted the Fort Monmouth Reuse and Redevelopment Plan, as same may be amended from time to time (the “**Reuse Plan**”) which governs land use at the Property in conjunction with the land use regulations set forth at N.J.A.C. 19:31C-3.1 et seq. (the “**Land Use Regulations**”); and

**WHEREAS**, the United States Department of the Army (the “**Army**”) and Seller executed an Economic Development Conveyance Agreement (“**EDC Agreement**”) dated June 25, 2012 outlining the terms and conditions of the transfer of certain portions of Fort Monmouth, which includes the transfer of the “**Property**” (hereinafter defined) from the Army to Seller; and

**WHEREAS**, Seller acquired title to certain property identified on the official tax map of Eatontown as a portion of Block 601, Lot 1, and more commonly known as Four Acre Water Tank Parcel (“**Water Tank Parcel**”), from the Army via a quitclaim deed recorded with the Monmouth

County Clerk on June 30, 2014 in Book OR-9070 at Page 9803 et seq., incorporated herein by reference (the “**Army Quitclaim Deed**”) along with sufficient adjoining property in order to provide for free and unencumbered ingress and egress to and from the Property to and from adjoining dedicated and proposed public streets so that Seller is able to convey the Property to Purchaser, in accordance with the terms, conditions, covenants and restrictions as set forth in the Army Quitclaim Deed; and

**WHEREAS**, on December 29, 2014, FMERA publicly advertised a Request for Offers to Purchase (“**Howard Commons RFOTP**”) an approximately 63.67 acre of land and improvements located in the Charles Wood Are of Fort Monmouth known as Howard Commons Parcel (“**Howard Commons Parcel**”), in accordance with FMERA’s Rules for the Sale of Real and Personal Property, N.J.A.C. 19:31C-2.1 et seq., which included the Water Tank Parcel; and

**WHEREAS**, since the issuance of the Howard Commons RFOTP significant environmental contamination has been found on the Howard Commons Parcel, in the form of historically applied pesticides, which has led to delays in development and the withdrawal of the top scoring bidder to the Howard Commons RFOTP; and

**WHEREAS**, FMERA remains in negotiations with the only remaining bidder to the Howard Commons RFOTP - US Home Corporation, a wholly owned subsidiary of Lennar Corporation (“**Lennar**”) a corporation of the State of Delaware, located at 2465 Kuser Road, Floor 3, Hamilton, New Jersey 08690, and expects to enter into a Purchase and Sale Agreement and Redevelopment Agreement during the first Quarter of 2021; and

**WHEREAS**, the Water Tank Parcel is also impacted by the environmental contamination identified on the Howard Commons Parcel, and the Water Tank Parcel includes portions of Building 3034 and Buildings 3035, 3036 & 3037 which are identified for demolition; and

**WHEREAS**, the estimated costs for remediation and demolition on the Water Tank Parcel is between \$1,025,000.00 to \$1,275,000, which includes the entirety of Building 3034; and

**WHEREAS**, by way of a Term Sheet dated September 9, 2020 and by correspondence dated January 4, 2021 Lennar has agreed to exclude the property identified as the Water Tank Parcel from the Howard Commons RFOTP in exchange for foregoing costs associated with demolition and remediation at that site; and

**WHEREAS**, NJAW has indicated to FMERA that there is severe shortage of water storage capacity in the surrounding area of Monmouth County, which shortage impacts Fort properties that FMERA owns and remains responsible to redevelop; and

**WHEREAS**, NJAW is the sole source water provider in the Tinton Falls/Eatontown/Oceanport area and is in need of land to build an approximately two million gallon storage tank to better serve the surrounding community's needs; and

**WHEREAS**, the Water Tank Parcel is uniquely suited to NJAW's needs, providing four acres of land surrounded on two sides by undeveloped preserved forest, a municipal road on another and a fourth side that encompasses soon to be built residential units which will be buffered by trees ; and

**WHEREAS**, a water storage tank located anywhere near Fort Monmouth would ultimately benefit development projects at Fort Monmouth and others in the surrounding areas, especially large volume water users, such as RWJ Barnabas which has an executed Purchase and Sale Agreement with New Jersey Economic Development Authority ("**NJEDA**") and FMERA for the redevelopment of Myer Center parcel as well as several anticipated projects on Parcel B, the Tinton Falls Commercial Area, and McAfee Center parcels; and

**WHEREAS**, in furtherance of redevelopment projects on Fort Monmouth and to connect that western Main Post properties to the eastern Main Post properties on the Fort, FMERA requires that a 24-inch water main extension be built from Route 35 east along Avenue of Memories to the intersection of Avenue of Memories and Irwin Avenue ("**Water Main Extension**") as further identified in **Exhibit C**, totaling approximately 5,500 linear feet; and

**WHEREAS**, FMERA anticipates that the Water Main Extension would cost FMERA approximately \$1.3 million; and

**WHEREAS**, in exchange for the Water Tank Parcel, NJAW has agreed to install the Water Main Extension under the terms set forth herein, expediting the installation of the line by three to five years; and

**WHEREAS**, the Project (as defined herein) shall resolve a major impediment to redevelopment on Fort Monmouth by allowing FMERA to market properties to developers that require large volumes of water and provide overall improvements to the infrastructure of the Fort; and

**WHEREAS**, based on the foregoing identified benefits to FMERA and NJAW's unique position as the sole source water provider to the Fort, FMERA has agreed to sell the Water Tank Parcel to NJAW; and

**WHEREAS**, it is the Parties understanding that NJAW will seek to Close on the Property without first obtaining All Approvals and the Project timeline has been negotiated to reflect an expedited timeline for Phase I (as defined herein); and

**WHEREAS**, as of the Effective Date or upon New Jersey Economic Development Authority's ("NJEDA") approval of this Agreement (whichever occurs later), Purchaser is the designated redeveloper of the Property pursuant to N.J.S.A. 52:27I-38; and

**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:

**1. Recitals.**

The Recitals are imported by reference into this Agreement as if set out and repeated in full herein.

**2. Definitions.**

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

- a. **"Affiliate"** means with respect to Purchaser, any other Person directly controlling or controlled by, or under direct common Control with NJAW. 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, 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. **"Affiliate Urban Renewal Entity"** means an entity meeting the requirements of Section 27 and qualifying under the Long Term Tax Exemption Law, N.J.S.A. 40A:20-1 et seq.
- c. **"Agreement"** means this Purchase and Sale Agreement and Redevelopment Agreement dated as of the Effective Date, as same may be amended, modified or supplemented from time to time by written instrument signed by the Parties.
- d. **"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 commercial and other 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) ("**Mandatory Conceptual Review**");
  - ii. preliminary and final subdivision approval, if applicable;

- iii. preliminary and final site plan approval, if applicable, including the required review by FMERA in connection with “use-type” variances;
- iv. a confirmation that there is no evidence of areas of concern (“AOC”) or a Final Remediation Document issued to Purchaser by either the New Jersey Department of Environmental Protection (“NJDEP”) or Purchaser’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;
- v. such permits or approvals as may be needed from the NJDEP which may include, but are not limited to, a sewer extension permit, stream encroachment permit, and fresh water wetlands permit, and any approvals or permits required pursuant to the Coastal Area Facilities Review Act (“CAFRA”) N.J.S.A. 13:19-1 et seq.

Each such approval shall be referred to herein as an “**Approval**” or collectively as the “**Approvals**”.

- e. “**ALTA Survey**” shall mean a comprehensive boundary survey that adheres to the national standards adopted by the American Land Title Association and National Society of Professional Surveyors.
- f. “**Approval Costs**” shall mean all costs and expenses including, without limitation, attorneys’, consulting, engineering, and application fees associated with obtaining All Approvals.
- g. “**Approval Period**” shall be six (6) months commencing upon the completion of the Due Diligence Period in which Purchaser will diligently seek to obtain All Approvals. If Purchaser waives the Approval Period and Closes on the Property before receiving All Approvals than Purchaser agrees to continue to progress in good faith toward receipt of All Approvals and will notify FMERA every six (6) months of its progress..
- h. “**Approval Extension Period**” shall be as defined in Subsection 7(c)(i).
- i. “**Army**” means the United States of America, acting by and through the Secretary of the Army and any division, department or agency thereof.
- j. “**Army Quitclaim Deed**” means the quitclaim deed that FMERA received from the Army and recorded with the Monmouth County Clerk on June 30, 2014 in Book OR-

9070 at Pages 9803 et seq. attached hereto as **Exhibit D**, whereby the Army conveyed all right, title and interest to the Property to FMERA, subject to the terms, conditions, covenants and restrictions set forth in the Army Quitclaim Deed.

- k. **“Boundary Survey”** is a means to formally define the boundaries of a property, showing the corners of a parcel of land described in a deed, attached hereto as **Exhibit B**.
- l. **“Capital Investment”** means demolition and site work, off-site improvement costs, construction costs, labor, and all other costs included in connection with the construction of the Project and the Water Main Extension, exclusive of Property acquisition and the costs of obtaining All Approvals.
- m. **“Certificate of Completion”** means a document issued by FMERA constituting a recordable, conclusive determination of the Completion of the Project and satisfaction and termination of this Agreement and the Declaration of Covenants with respect to the Project pursuant to N.J.A.C. 19:31C-3.24(f).
- n. **“Certificate of Occupancy”** means a certificate of occupancy or other document issued by a governmental authority allowing the occupancy or use of a building or other structure and certifying that the structure or use has been constructed and will be used in compliance with all applicable municipal codes and ordinances.
- o. **“CERCLA”** means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (P.L. 96-510), as amended.
- p. **“CERCLA Covenants”** means those certain covenants required by CERCLA which are contained in the Army Quitclaim Deed.
- q. **“Closing”** shall mean the transfer of the Property from the Seller to the Purchaser and the delivery of the Purchase Price from the Purchaser to the Seller which shall occur after the satisfaction or the waiver of the Conditions Precedent to Closing set forth in Section 13.
- r. **“Commence Construction”**, **“Commenced Construction”**, **“Commence the Construction”** or **“Commencement of the Construction”** shall mean the receipt of building permits by the Purchaser and any two of the following items (i.) mobilization of contractors on site, (ii.) demolition of existing structures, if applicable, (iii.) installation of infrastructure on site, (iv.) site work, or (v.) building renovation work.



- s. **“Complete”**, **“Completed”** or **“Completion”** means the issuance of a Certificate of Occupancy by the Municipality for a building or other structure to be occupied for the intended commercial use as part of the Project or that the improvements as discussed in Paragraph 7(b) have received all necessary approvals and are fully functional. Thereafter, Purchaser may apply to Seller for a Certificate of Completion subject to the requirements of N.J.A.C. 19:31C-3.24(f), if all other requirements of this Agreement have been satisfied.
- t. **“Conditions Precedent to Closing”** shall mean the obligations of the Purchaser and Seller which are set forth in Section 13.
- u. **“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.
- v. **“Due Diligence Period”** means the thirty (30) day period commencing on the Effective Date of this Agreement and ending at five o’clock (5:00) p.m. on the thirtieth (30th) day thereafter, 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.
- w. **“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.
- x. **“Effective Date”** shall mean the date set forth in the introductory paragraph of this Agreement, if no date is set forth in the introductory paragraph, the Effective Date shall mean the date upon which the last party to sign this Agreement executes this Agreement.
- y. **“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.

- z. **“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 seq., or a response action outcome (“RAO”) issued by a licensed site remediation professional pursuant to N.J.S.A. 58:10C-14.
- aa. **“Finding of Suitability to Transfer”** or **“FOST”** means the document issued by the Army, dated August 2013. The purpose of the FOST is to document the environmental suitability of the Property for transfer to FMERA consistent with CERCLA Section 120(h) and Department of Defense Policy. In addition, the FOST includes the 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 the Property from the Army to FMERA.
- bb. **“Fixtures”** means items of property that become so attached to a building or other real property that they become a part of it. They include such items as fireplaces, patios and built-in shelving.
- cc. **“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, or acts of God.
- dd. **“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.
- ee. **“Improvements”** shall mean the buildings, fixtures and structures located on the Property.
- ff. **“Interested Parties”** means Purchaser’s Mortgagee, Purchaser’s Lender and/or Purchaser’s Tax Credit Investor.
- gg. **“Municipality”** shall mean the Borough of Eatontown, in the County of Monmouth, State of New Jersey.
- hh. **“Non-Appealable Final Approval”** shall mean an Approval where the time to challenge or appeal the grant or denial of the Approval or a term or condition of the Approval that is before any administrative body or court of law has expired, and no challenge or appeal is pending. The term shall also mean an Approval decided after a

challenge or appeal has been filed where the challenge or appeal has been decided in Purchaser's favor, and all terms and conditions contained in the Approval are acceptable to the Purchaser in its reasonable discretion.

- ii. **"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.
- jj. **"Personal Property"** means property that is movable and is not affixed to or associated with the land.
- kk. **"Project"** the Project is as described herein at Subsection 7(b) and depicted in the conceptual site plan attached hereto as **Exhibit A** ("**Conceptual Site Plan**").
- ll. **"Property"** shall mean the land as described and defined in Section 4 of this Agreement and as depicted and described in the Boundary Survey by metes and bounds description located in **Exhibit B**.
- mm. **"Purchaser"** shall mean NJAW or its authorized assigns or successors pursuant to Section 27.
- nn. **"Purchase Price"** is the price that the Purchaser shall pay the Seller for the Property. The Purchase Price shall be paid as described in Section 5.
- oo. **"Purchaser's Utility Obligation"** shall mean the Purchaser's obligation to undertake infrastructure improvements as defined in Section 47.
- pp. **"Reuse Plan Amendment"** means a final and unappealable amendment to the Fort Monmouth Reuse and Redevelopment Plan adopted by FMERA pursuant to N.J.A.C. 19:31C-3.27(c).
- qq. **"Reversion Cure Period"** shall mean ninety (90) days after Seller's written notice of Seller's intent to exercise its right of reversion during which the Purchaser and/or Interested Parties shall have the opportunity to cure, or as such period may be extended pursuant to Section 9.
- rr. **"Reversion Purchase Price"** shall mean the (i) cash to Seller amount on the HUD-1 Settlement Statement/Closing Statement executed at closing; and (ii) fifty (50) percent of the actual building demolition, asbestos abatement, environmental remediation and associated costs incurred by Purchaser for an amount not to exceed Six Hundred Thirty Seven Thousand and Five Hundred Dollars (\$637,500.00).

- ss. **“Seller’s Net Sale Proceeds”** shall mean the entirety of sales proceeds net of real estate commissions, NJEDA working capital loan payoff, if applicable, and homeless trust fund payments.
- tt. **“Seller’s Utility Obligation”** shall mean the Seller’s obligation to undertake infrastructure improvements as defined in Section 47.
- uu. **“Toll”, “Tolled” or “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 reasonable satisfaction of the Party seeking the benefit of a Tolling period.

### **3. 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 all the buildings, Fixtures and other improvements on the land; (b) all of the Seller’s rights relating to the Property; and (c) all Personal Property specifically included in this Agreement.

### **4. The Property.**

The approximately 3.945± acre parcel that is formally identified as a portion of Block 601, Lot 1, that is located along Pinebrook Road in the Eatontown Reuse Area of the Charles Wood Area of the Fort, and that is depicted in greater detail on the Boundary Survey prepared by \_\_\_\_\_, dated \_\_\_\_\_, attached as **Exhibit B**. The Property is improved with four buildings, Buildings 3034, 3035, 3036 & 3037 totaling approximately 23,596 gsf, and may be subject to freshwater wetlands and flood hazard zone restrictions. The redevelopment and use of the Property by Seller is subject to N.J.A.C. 19:31C-3.1 et seq. and any other applicable governmental regulations, easements or other encumbrances.

**5. The Purchase Price.**

The price that the Purchaser will pay the Seller as consideration for the Property is **Eighty Thousand and Two Hundred and Twenty Dollars (\$80,220)** as follows:

The <b>Deposit</b> shall be deposited and held in escrow by Purchaser upon the execution of this Agreement by the Parties, in the amount of:	\$12,033
Balance to be paid at closing of title, by wire transfer, in cash or by certified check	\$68,187

It is understood by the Parties that the Purchase Price of \$80,220 Dollars is a contribution to the Seller's Homeless Trust Fund. Further, the Parties agree that part of the consideration for the Property is the Purchaser's installation of the Water Main Extension as depicted Exhibit C by no later than December 31, 2021, and the Purchaser's building demolition, asbestos abatement, infrastructure installation, environmental remediation and associated costs on the Property.

**6. 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.

7. **Capital Investment, Redevelopment Project, Project Approvals, Completion Bond, Job Creation; Security, and Reuse Plan Amendment.**

a. **Capital Investment.** Purchaser's Capital Investment shall be the aggregate of (1) the cost to demolish the existing buildings and construct a two (2) million gallon water storage tank on the property, and (3) the installation of the Water Main Extension.

b. **Redevelopment Project.**

i. Purchaser represents that it is purchasing the Property with the intent to construct the Project, which consists of:

- 1) the demolition of the Buildings 3034, 3035, 3036 and 3037, including any all asbestos abatement work; the Purchaser will follow standard demolition procedures and ensure any subsurface spaces are removed and soil is graded after demolition ("**Phase I**");
- 2) construction of the two million gallon water tank, of a height not to exceed 35 feet, including any required remediation, which water tank project shall include other site improvements necessary to operate the tank and support water utility operations (e.g. booster pump station and generator) and a mature foliage buffer and/or berm shall be installed on the western boundary of the Property and, at Purchaser's discretion, Purchaser may seek to create a paved area of approximately 3,250 square feet, and storage facilities for limited utility equipment storage to support Purchaser's water utility operations, ("**Phase II**"); and

The Purchaser's Conceptual Site Plan for the Project is attached hereto as **Exhibit A.** The Purchaser's site plan and subdivision plan, if any, are subject to (i) Seller's Mandatory Conceptual Review and (ii) the planning board review process of the Borough of Eatontown. The Project may be amended (which may include other water utility improvements) upon mutual agreement of Seller and Purchaser if Purchaser is unable to obtain the same, subject to FMERA Board approval and Reuse Plan Amendment, as applicable. If Seller or Purchaser is unable to obtain the Approvals, as the case may be, Seller will cooperate in

good faith with Purchaser to obtain the required governmental approvals for a replacement water utility project on the Water Tank Parcel.

- ii. Purchaser shall comply with the following Project schedule in Phases, except as otherwise provided herein:
  - 1. Phase I - Purchaser will commence demolition of Phase I of Project no later than ninety (90) days after Closing. Purchaser will Complete Phase I of the Project no later than March 31, 2022.
  - 2. Phase II – Purchaser Commence Construction of Phase II of the Project no later than twenty-four months days after Board approval of the Reuse Plan Amendment. Purchaser will Complete Phase II of the Project no later than December 31, 2025.
- iii. It shall be a default under this Agreement for Purchaser to fail to Commence the Construction or Complete the Project timely, as required herein.
- iv. The provisions of this Subsection 7(b) shall survive Closing and run with the land.

c. **Project Approvals.**

- i. Purchaser shall obtain All Approvals within the Approval Period, subject to extensions as provided herein and Tolling as a result of any Force Majeure event. In the event that Purchaser is unable to obtain All Approvals within the Approval Period, Seller may grant, at its sole discretion, an extension of the Approval Period for an additional six (6) month period(s) (“**Approval Extension Period**”) which shall be granted if Seller determines that the Purchaser is diligently and in good faith pursuing All Approvals. Any additional Approval Extension Period shall run from the expiration of the Approval Period. Despite anything to the contrary herein, Purchaser may elect to waive receipt of All Approvals within the Approval Period or Approval Extension Period and close on the Property without said Approvals as further described in Subsection 13(a)(ii).
- ii. Seller agrees to reasonably cooperate with Purchaser in obtaining any required FMERA signatures or consents in connection with Purchaser’s efforts to obtain the Approvals for the development of the Project on the Property and shall

endeavor to obtain same from its Executive Director, within one (1) week of presentment; 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 any permits or approvals related to the Project to the Purchaser.

**d. Financial Assurances and Guarantees.**

- i. Prior to the Commencement of the Construction, Purchaser shall post all financial assurances and guarantees required pursuant to municipal ordinances for performance, maintenance and site restoration with the municipality and name FMERA as a beneficiary.
- ii. The provisions of this Subsection 7(d) shall survive Closing.

**e. Reuse Plan Amendment**

- i. Purchaser shall provide a refined version of the Conceptual Site Plan attached hereto as **Exhibit A** along with a detailed memo outlining the proposed changes to the Reuse Plan required to permit the development of the Project as proposed by the Purchaser (together, the refined Conceptual Site Plan and memo are hereinafter referred to as the "Final Conceptual Site Plan") no later than forty-five (45) days of the expiration of the Due Diligence Period. FMERA shall provide to Purchaser a draft Reuse Plan Amendment based upon Purchaser's Final Conceptual Site Plan within thirty (30) days of receipt of Purchaser's Final Conceptual Site Plan. Purchaser shall provide comments to FMERA on the draft Reuse Plan Amendment within seven (7) days of receipt of same. FMERA's planner shall provide a final draft Reuse Plan Amendment to FMERA and Purchaser incorporating Purchaser's comments to the extent accepted by FMERA within seven (7) days of receiving Purchaser's comments. Purchaser shall have seven (7) days from receipt of the final draft Reuse Plan Amendment to advise FMERA if the final draft is acceptable. In the event that



Purchaser does not accept the final draft Reuse Plan Amendment, Purchaser shall provide notice in writing to FMERA of the reasons the final draft Reuse Plan Amendment is unacceptable to Purchaser and of Purchaser's intent to terminate this Agreement if the issues go unresolved. FMERA shall have seven (7) days from receipt of same to enter into discussions with Purchaser regarding the unresolved issues, and either revise or refuse to revise the final draft Reuse Plan Amendment. Upon Purchaser's approval of the final draft Reuse Plan Amendment, FMERA's Board shall have thirty (30) days to introduce the final draft Reuse Plan Amendment. After the Board's introduction of the final draft Reuse Plan Amendment and at the end of the Governor's veto period, the host municipalities shall have forty-five (45) days to review and comment on the final draft Reuse Plan Amendment. FMERA shall have forty-five (45) days to adopt the Reuse Plan Amendment after the end of the municipal comment period. Notwithstanding anything in this paragraph, any time Purchaser submits a revised version of the Final Conceptual Site Plan (whether a revised site plan or a revised detailed memo), the timeline provided in this paragraph shall start as if no Final Conceptual Site Plan had been provided previously.

**8. Declaration of Covenants.**

The quitclaim deed from Seller to Purchaser shall include a declaration of covenants and restrictions upon the Property, which shall run with the land and shall be released upon the issuance of a Certificate of Completion issued by Seller. The Declaration shall indicate or otherwise contain:

- i. The uses of the Property shall be limited to those uses permitted pursuant to the Reuse Plan, as amended.
- ii. Purchaser, as the approved redeveloper, will Commence the Construction and Complete the Project within the period of time established in Subsections 7(b)(ii) of this Agreement; and
- iii. 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 27 of this Agreement.

**9. Reversion to Seller.**

The quitclaim deed from Seller to Purchaser shall provide that if the timeframes set forth in Subsections 7(b)(ii) have not been met, then Seller, at its sole option and discretion, shall have the right of reversion of title to the Property. 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. 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.

- a. Seller agrees to provide Purchaser and Interested Parties with a Reversion Cure Period. During the Reversion Cure Period, which may be extended by mutual agreement, any of the Interested Parties may either (a) cure the default identified by the Seller in their default notice or (b) 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.
- b. Should Seller exercise its right of reversion, with any applicable Reversion Cure Period having expired, Seller shall pay Purchaser a reversion purchase price (the "**Reversion Purchase Price**"). Any amount of the 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. Purchaser shall, at no additional cost to Seller, convey ownership of all plans, studies, approvals, etc., along with its rights to the Property.
- c. Purchaser or its successors and assigns may request that the Seller execute a release evidencing the termination of Seller's right of reversion on any portion of the Property that has been Completed upon the presentation of (i) a valid Certificate 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.
- d. The provisions of this Section 9 shall survive Closing and/or termination of this Agreement and run with the land.

**10. Prevailing Wage.**

Prevailing wage will apply only to the extent that the Project 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. The provisions of this Section 10 shall survive Closing.

**11. Title and Survey Investigation.**

- a. As of the Effective Date, Seller has provided Purchaser with the Boundary Survey. Prior to Closing, Seller will cause the Boundary Survey to be certified to Purchaser, Purchaser’s attorney, the title company and such additional parties as may be reasonably requested by Purchaser, unless Purchaser elects to obtain an ALTA Survey as described in Subsection 11(c).
- b. Seller agrees to deliver title to the Property that is good, marketable, fee simple title, valid of record and insurable at regular rates.
- c. Purchaser shall obtain and deliver a title commitment from the title company along with a list of title objections identified by Purchaser to Seller (“**Title Objections**”) and may obtain an ALTA Survey no later than thirty (30) days from the Effective Date. Not later than ten (10) days after Seller receives the Title Objections, Seller shall notify Purchaser which of the objections, if any, Seller shall cure prior to or at 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 (i) 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 (ii) proceed under this Agreement. If Purchaser elects to proceed under this Agreement after Seller supplies an unsatisfactory response or no response, then Purchaser’s election is deemed an acceptance of the Title Objections by the Purchaser and the Seller shall have no further obligation to cure the Title Objections either prior to or at Closing.
- d. 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 new objections to matters which may have arisen since Purchaser’s initial title and survey examination (“**New Objections**”) no later than ten (10) days after Purchaser receives the

New Objections. Not later than ten (10) days after Seller receives the New Objections, Seller shall notify Purchaser which of the New Objections, if any, Seller shall cure prior to or at 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 (i) 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 (ii) proceed under this Agreement. If Purchaser elects to proceed under this Agreement after Seller supplies an unsatisfactory response or no response, then Purchaser's election is deemed an acceptance of the New Objections by the Purchaser and the Seller shall have no further obligation to cure the New Objections either prior to or at Closing.

- e. If Seller fails to meet the requirements of Subsection 11(b), or if Seller has agreed to cure a title objection pursuant to Subsection 11(c) and fails to do so, or if Purchaser has New Objections and/or survey objections as a result of its run-down title examination pursuant to Subsection 11(d) and Seller fails to cure such objections, then the Parties may:
  - i. delay Closing to a date mutually agreed upon by the Parties until such time that the Seller or Purchaser removes or cures such non-permitted exception(s) at Seller's expense;
  - ii. proceed to Closing with sufficient sums from the Purchase Price (as determined by the title company as being necessary to cure or clear such non-permitted exception(s)) being placed into escrow with the title company to be used by Purchaser to cure or clear such non-permitted exception(s), provided that the amount to be placed into escrow (which shall include any funds to address any environmental remediation obligations as further described in Subsection 20(c)) shall not exceed Seller's Net Share of the Purchase Price; or
  - iii. terminate this Agreement, whereupon the Deposit and all interest accrued thereon shall be promptly returned to Purchaser by the Seller.
- f. From the date of this Agreement, Seller shall not permit any further encumbrance on the Property other than with respect to any working capital loan(s) Seller may receive from NJEDA without Purchaser's prior written consent, which consent may be withheld in Purchaser's sole discretion.

**12. Due Diligence Period.**

- a. Purchaser and its officers, employees, agents, contractors, or licensees 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 by delivering written notice of such termination to the Seller prior to five o'clock (5:00) P.M. on the last day of the Due Diligence Period without penalty, and receive a full refund of the Deposit, and all interest accrued thereon.
- c. Purchaser and its officers, employees, agents, contractors, or licensees 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 shall be maintained at the level of Five Million Dollars (\$5,000,000.00) per occurrence of bodily injury, death and property damage liability except that automobile liability may be at a minimum of One Million Dollars (\$1,000,000.00) per occurrence of bodily injury, death and property damage liability. Seller shall be named an additional insured on this policy; and
  - ii. **Worker's Compensation and Employer's Liability Insurance** applicable to the Laws of the State of New Jersey with limits of not less than One Hundred Thousand Dollars (\$100,000.00) per occurrence for bodily injury liability and One Hundred Thousand Dollars (\$100,000.00) occupational disease per employee with an aggregate limit of Five Hundred Thousand Dollars (\$500,000.00) occupational disease.

- d. If, at or before Closing, Purchaser elects to terminate this Agreement and not purchase the Property, 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 officers, employees, agents, contractors, or licensees 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 gross negligence or intentional acts or omissions.

**13. Conditions Precedent to Closing.**

- a. Closing is subject to and conditioned upon the following conditions, which are agreed by the Parties to be included for the protection of the Parties:
  - i. Approval of Purchaser as redeveloper of the Property by the NJEDA Board;
  - ii. The receipt by Purchaser of All Approvals within the timeframes set forth in Subsection 7(c). Despite anything to the contrary herein, Purchaser may elect to waive All Approvals and close on the Property without said Approvals (provided that Purchaser will still be required to obtain a Mandatory Conceptual Review approval of the Project by FMERA prior to seeking preliminary and final site plan approval from the Borough) with the understanding that any such waiver will not Toll or delay in any way the Purchaser's obligation to comply with the Project Schedule set forth in Section 7 herein;
  - 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 11; and
  - v. Seller shall have obtained a Reuse Plan Amendment for the Property pursuant to Subsection 7(e) hereof.
- b. The Parties 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 any Conditions Precedent to Closing that is specifically for such Party's benefit or may waive the cure of the other Party's default at any time prior to Closing or at Closing, subject to the terms of Subsection 13(a)(ii). Such waiver shall be in writing and acknowledged by both Seller and Purchaser.

**14. Time and Place of Closing.**

- a. The Closing shall occur no later than thirty (30) days after satisfaction or waiver of the Conditions Precedent to Closing as detailed in Section 13 ("**Closing Date**").
- b. Seller shall deliver the following documents at Closing in form and substance satisfactory to Purchaser and the title company:
  - i. quitclaim deed;
  - ii. entity resolution;
  - iii. tax and utility bill adjustments, if any;
  - iv. Certificate of Compliance with Section 1445 of the Internal Revenue code (FIRPTA);
  - v. Bill of Sale for any Personalty;
  - vi. IRS Form 1099;
  - vii. 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;
  - viii. Mortgage releases from the NJEDA; and
  - ix. such other documentation as reasonably requested by the Title Company to complete Closing.
- c. At Closing, Purchaser shall deliver the Purchase Price and a title closing statement.
- d. At Closing, Purchaser shall pay to Seller the balance of the Purchase Price due at Closing in accordance with Section 5. 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.

**15. Transfer of Ownership.**

Upon receipt of payment of the balance of the Purchase Price 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 being transferred that shall be based upon the Boundary Survey. The quitclaim deed between the Purchaser and Seller shall be 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, and any covenants and restrictions that must be recorded pursuant to the requirements of N.J.A.C. 19:31C-3.24.

**16. Personal Property and Fixtures.**

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**.

**17. Physical Condition of the Property.**

This Property is being sold “AS IS,” if applicable. 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 buildings and improvements.

**18. 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 acknowledges that Seller has provided Purchaser with a link to the FOST on Seller’s



website and Purchaser has had the opportunity to download a copy of 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.

**19. 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, or licensees) 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 which is intended to be demolished by Purchaser. Seller shall take reasonably appropriate measures to ensure that the Property is secure Prior to Closing. 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.

**20. Environmental Matters.**

- a. Purchaser and Seller acknowledge that pursuant to 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 the CERCLA Covenants contained in the Army Quitclaim Deed and the FOST for the Property. 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(s) and improvements on the Property, if applicable.

- 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 Seller receiving notice of the Discharge. Seller shall also 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 elect to either (i) terminate this Agreement and receive a full refund of the Deposit, and all interest accrued thereon, or (ii) proceed to Closing under this Agreement. If Purchaser fails to notify Seller by written notice of its election under the preceding sentence 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 receive a refund of the Deposit, and all interest accrued thereon, (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, or (iii) proceed to Closing with sufficient sums from the Purchase Price (as reasonably determined by agreement between Purchaser's and Seller's respective environmental consultants), being placed into escrow with the title company to be used by Purchaser to address or remediate such Discharge and obtain a Final Remediation Document provided that the total amount placed into escrow (which shall include any funds to cure or clear non-permitted title exceptions pursuant to Subsection 11(e)(ii)) shall not exceed Seller's Net Sale Proceeds of the Purchase Price.

## **21. Termination of Agreement.**

If this Agreement is legally and rightfully terminated in accord with any provision herein (excluding termination resulting from a default by either Party as specified in Sections 22 and 23) or by mutual agreement of the Parties, the Parties shall be released from any liability to each other, except that Seller shall return

the Deposit except as otherwise provided herein, and all interest accrued thereon, to the Purchaser and that the Parties shall remain responsible for any other obligations that specifically survive termination of the Agreement.

## **22. Default by Seller.**

- a. The following occurrences shall be a default by Seller of the terms of this Agreement:
  - i. Failure to convey the Property in accordance with the terms of this Agreement.
- b. The Purchaser agrees that prior to declaring the Seller in default as described in Subsection 22(a), Purchaser shall provide Seller with sixty (60) days advance written

notice of such default and Seller shall have the right to cure such default within said sixty (60) day period.

- c. In the event that Seller does not cure said default in said sixty (60) day period then the Purchaser may terminate this Agreement at which time the Seller shall return the Purchaser's Deposit and all interest accrued thereon. Purchaser acknowledges that the remedies set forth in this Subsection 22(c) are Purchaser's sole and 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 and the Parties shall be free of liability to each other, except that the Parties shall remain responsible for any other obligations that specifically survive termination of the Agreement.
- d. The terms of this Section 22 shall survive the Closing and/or any termination of this Agreement for ninety (90) days.

**23. Default by Purchaser.**

- a. The following occurrences shall be a default by Purchaser of the terms of this Agreement prior to Closing:
  - i. Failure of Purchaser to observe and perform any covenant, condition, representation, warranty or agreement as set forth in this Agreement.
  - ii. Purchaser has:
    - 1. applied for or consented to the appointment of a custodian, receiver, trustee or liquidator of all or a substantial part of its assets or if a custodian is legally appointed with or without consent of Purchaser; or
    - 2. made a general assignment for the benefit of creditors or 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
    - 3. filed an answer admitting the material allegations of a petition in any bankruptcy or insolvency proceeding or 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

4. suspended the transaction of its usual business.
- iii. If:
    1. an Order for Relief is entered with respect to or for the benefit of Purchaser, under the Bankruptcy Code;
    2. an Order, judgment or decree is entered, without the application, approval or consent of Purchaser, 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.
  - iv. Purchaser has abandoned or substantially suspended any pursuit of All Approvals. If Purchaser fails to obtain All Approvals for the Project, as set forth in Section 6 herein, Seller shall be entitled to terminate this Agreement and shall be entitled to receive the Deposit and all interest accrued thereon. However, if Seller determines that the Purchaser has pursued All Approvals diligently and in good faith but fails to obtain them, FMERA shall refund Purchaser's Deposit. Notwithstanding anything in this Section to the contrary, this Subsection 23(a)(iv) shall survive Closing in the event that receipt of All Approvals is waived as a Condition Precedent to Closing as detailed in Section 13.
  - v. The Purchaser places 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.
  - vi. 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 or waived as detailed in Section 13).
- b. The Seller agrees that prior to declaring the Purchaser in default as described in Subsection 23(a), Seller shall provide Purchaser with sixty (60) days advance written notice of such default and Purchaser shall have the right to cure such default within said sixty (60) day period. In the event that Purchaser does not cure said default in said sixty (60) day period then the Seller may terminate this Agreement at which time the

Deposit and all interest accrued thereon shall be released to Seller as liquidated damages. Seller acknowledges that the remedies set forth in this Subsection 23(b) are Seller's sole and exclusive remedies (except as provided for in Section 9 herein) in the event of any breach of or default under this Agreement by Purchaser prior to Closing or the inability or unwillingness of Purchaser to consummate the Closing as provided in this Agreement.

- c. Notwithstanding anything in this Section 23 to the contrary, 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 to terminate this Agreement and shall be entitled to receive the Deposit and all interest accrued thereon as liquidated damages.
- d. The terms of this Section 23 shall survive the Closing and/or any termination of this Agreement.

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

- a. Purchaser and Seller agree to adjust the following expenses as of the Closing Date:
  - i. water charges and sewer charges, if any.
- b. Purchaser or Seller may require that any person with a valid claim or right affecting the Property be paid from the proceeds of this sale.
- c. The Parties acknowledge that certain municipal improvements, including, but not limited to, sidewalks and sewers, may result in the Municipality charging property owners to pay for the improvement. Accordingly, the Parties agree that:
  - i. 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).
  - ii. If the improvement is not completed before the date of Closing then only the Purchaser will be responsible.
  - iii. 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).

**25. 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.

**26. 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.

**27. Assignment; Assignment of Interest.**

- a. Seller shall have the right to assign this Agreement without the consent of Purchaser to the State of New Jersey or any division or instrumentality thereof.
- b. Purchaser shall not have the right to assign this Agreement, or any part thereof, prior to the Completion of the Project 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 any and all redevelopment obligations;
  - v. the assignment will not delay the Completion of the Project; and
  - 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. Notwithstanding the foregoing, Purchaser shall have the right to assign this Agreement, or any part thereof to an Affiliate Urban Renewal Entity created to undertake the Purchaser's Project without first obtaining the Seller's consent provided that the Affiliate Urban Renewal Entity:
  - i. 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
  - ii. provides the Seller with an unqualified and unconditional acceptance of the terms and conditions of this Agreement, including but not limited to any and all redevelopment obligations.
- d. Except as provided in Section 27(c), prior to the Completion of the Project, any stockholder, partner or member holding a controlling interest in Purchaser at the time of the Effective Date shall not, without the express written consent of the Seller, be permitted to transfer an interest in Purchaser that would result in such stockholder, partner or member no longer having Control over Purchaser. Seller shall not unreasonably withhold its consent to such a transfer provided that the assignee or transferee, as applicable, provides the materials, to Seller's satisfaction, within Subsection 27(b)(ii)-(vi). The foregoing restriction on transfers shall not, however, apply to any publicly traded company.
- e. 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 to the extent that they relate to the portion of the Property and Project being assigned.

**28. Successors and Assigns.**

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

**29. 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.

**30. 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 Parties agree that any and all claims made or to be made against the Seller based in contract law 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. The Parties also agree that any and all claims for damages made or to be made against the Seller based in tort law, including but not limited to, costs and expenses, shall be governed by and subject to the provisions of the New Jersey Tort Claims Act, N.J.S.A. 59:1-1 et seq.

**31. 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.

**32. 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.

**33. 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.

**34. 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).

**35. 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.

**36. 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.

**37. Force Majeure.**

Neither the Seller nor Purchaser shall be in default of this Agreement if the delay or failure to perform is by reason of a Force Majeure event or condition. 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.

**38. Publication.**

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

**39. Recording.**

- 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. This Section shall survive the termination of the Agreement.

**40. 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.

**41. 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 date 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.

**42. Political Campaign Contributions.**

a. For the purpose of this Section, these terms shall be defined as follows:

i. **“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 Three Hundred Dollars (\$300.00) during a reporting period are deemed “reportable” under these laws.

ii. **“Business Entity”** means:

1. 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 ten percent (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 partner and any partner;
- d. In the case of a professional corporation: the professional corporation and any shareholder or officer;
- e. In the case of any 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;
  2. Any subsidiary directly or indirectly controlled by the Business Entity;
  3. 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 committee;
  4. Principals who own or control more than ten percent (10%) of the profits or assets of a Business Entity or ten percent (10%) of the stock in the case of a Business Entity that is a corporation for profit (“**Principals**”); and
  5. 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**”)
- iii. 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).
- b. 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 in its entirety. Compliance with P.L. 2005, c. 51 by Purchaser shall be a material term of this Agreement.

- c. Purchaser hereby certifies to FMERA 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 Seller pursuant to P.L. 2005, c. 51. Purchaser hereby further certifies to the Seller that any and all certifications and disclosures delivered to the Seller by Purchaser (and each of its Principals, subsidiaries and political organization 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 Seller shall have the right to declare this Agreement to be in default.
- d. 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 42 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 Seller shall have the right to declare this Agreement to be in default.
- e. In addition to any other event of default specified in this Agreement, the Seller shall have the right to declare an event of default under this Agreement if: (i) Purchaser (or any of its Principals, subsidiaries and political organization 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 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 misrepresentations exists in any Political Campaign Contribution Certification and Disclosure which was delivered by Purchaser to the Seller in connection with this Agreement.

- f. The Parties agree that on \_\_\_\_\_ FMERA received confirmation from the Department of Treasury's Chapter 51 Review Unit that Purchaser was approved for two (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



FMERA, 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, FMERA shall have the right to declare this Agreement to be in default.

**43. Notices.**

- a.** 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

CC: Richard J. Hughes Justice Complex  
25 Market Street  
P.O. Box 106  
Trenton, NJ 08625  
Attention: Laura Drahushak, Esq.

AND

TO: New Jersey-American Water, Inc.  
1 Water Street  
Camden, NJ 08102  
Attention: Stephen R. Bishop, Esq.

CC: Archer & Greiner, P.C.  
21 Main Street, Suite 353  
Hackensack, NJ 07677  
Attention: Nilufer O. DeScherer, Esq.

- b.** 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); and
  - iv.** with a copy by facsimile and/or electronic mail.

- c. 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.
- d. 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.

**44. Brokerage Commissions.**

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 a commission to any broker. The provisions of this Section shall survive Closing and/or any termination of this Agreement.

**45. 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.

**46. Exhibits.**

By execution of this Agreement, Purchaser acknowledges receipt of all Exhibits described in and attached to this Agreement.

**47. Utilities.**

- a. The Purchaser, at its sole cost and expense, will be required to relocate laterals and to reconnect utilities as necessary as new trunk infrastructure are installed and will be responsible for establishing service connections and accounts at Purchaser's cost with Jersey Central Power and Light, New Jersey Natural Gas Company, New Jersey

American Water Company and the Borough of Eatontown Sewer Authority as required for the Project.

- b. Purchaser shall, at its sole cost and expense, be required to establish metered electric service directly with Jersey Central Power & Light Company (“JCP&L”) at the earliest possible date. Any existing transformers and electric distribution lines on the Property that are not needed by JCP&L will become the property of the Purchaser.
- c. Purchaser responsible for replacement, repair, maintenance and/or relocation of utilities within the Property, subject to Seller’s review and approval, as required for the Project.
- d. Beginning three (3) months after the Effective Date of this Agreement, Purchaser shall be responsible for utility costs and property maintenance expenses associated with the Property regardless of whether the Purchaser has closed on the Property. At Purchaser’s election, Purchaser shall either install electric and water meters or disconnect these services within three (3) months of PSARA execution.
- e. During the Due Diligence Period, the Purchaser shall make every effort to ensure that all utilities serving and/or traversing the Property are accounted for in its conceptual development plan.
- f. Purchaser shall be responsible for constructing and maintaining sidewalk along the entire length of the site fronting Pinebrook Road pursuant to N.J.A.C.19:31C-3.14 9(c).

**48. Right of Entry; Howards Common Parcel.**

- a. Provided that Purchaser has not terminated this Agreement or is in default hereunder, Purchaser shall be granted a temporary right of entry for the purposes of demolition and remediation of the portions of Building 3034 which are located on the Howard Commons Parcel, until such time as Phase I has been completed or March 31, 2022, whichever occurs sooner. Purchaser shall limit temporary right of entry to the area in and around Building 3034. The right of entry will be for the consideration as discussed herein.

**b.** 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, including but not limited to prevailing wage obligations.

**c.** 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 (“Claims”), which FMERA may directly or indirectly suffer, sustain or be subject to by reason or on account of Seller’s entry upon the Howard Commons Parcel or the conduction of the activities by Purchaser, its contractors, subcontractors, agents, officers, employees or invitees, except Claims that arise from FMERA’s or its agents’ gross negligence, intentional acts or willful misconduct. 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 reasonable 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 Howard Commons Parcel, unless same arise from FMERA’s, or its agents’, gross negligence, intention acts, or willful misconduct.

**d.** All consultants, agents, assignees, contractors, subcontractors, officers, or employees of Purchaser shall be covered by adequate Workers’ Compensation.

**e.** 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.

**f.** Purchaser agrees that it:

- i.** will not create any condition during its use and occupancy of the Howard Commons Parcel, which violates any municipal, state or other regulatory agency or is dangerous, subject to those risks inherent with the nature of the Phase I activities.
- ii.** will not permit the creation of any liens affecting the Howard Commons Parcel 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 FMERA as an additional insured and provide proof of same to FMERA prior to entry on the Howard Commons Parcel.
- v.** will comply with current Covid-19 guidelines, including N.J. Executive Order 122, and ensure all persons have required personal protective equipment.

**g.** The provisions of this Section 48 shall survive Closing.

**49. Miscellaneous.**

- a.** In addition to the redevelopment of the Property, the Potential Purchaser will be required to design, fund, and construct a 24" water main along the Avenue of Memories

from Hwy 35 in Eatontown to Irwin Avenue on Fort Monmouth at a length of approximately 5,500 linear feet to provide water service to development in Fort Monmouth by December 2021. The design of the 24" water main will be at the Purchaser's reasonable discretion.

- b. If required to perform remediation work, Purchaser is required to secure the services of a Licensed Site Remediation Professional (LSRP) that is in good standing with the NJDEP and comply with all applicable N.J.A.C. Title 7 Environmental Regulations.

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:

NEW JERSEY-AMERICAN WATER,  
INC., Purchaser

\_\_\_\_\_

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

[illegible]

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, by New Jersey-American Water, Inc., on behalf of the Purchaser.

Attorney



STATE OF NEW JERSEY )

)

COUNTY OF MONMOUTH )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_ 2021, by Fort Monmouth Economic Revitalization Authority, a public body corporate and politic constituted as an independent authority and instrumentality of the State of New Jersey (the “Seller”), pursuant to P.L. 2010, c. 51, by Bruce Steadman, its Executive Director, on behalf of the Company.

Attorney



## MEMORANDUM

**TO:** Members of the Authority

**FROM:** Tim Sullivan  
Chief Executive Officer

**RE:** FMERA Purchase and Sale & Redevelopment Agreement with the Borough of Eatontown for a Parks & Recreation Complex on the Nicodemus Park Parcel in Eatontown

**DATE:** March 10, 2021

### **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, as amended ("PSARA") with the Borough of Eatontown ("Borough" or "Purchaser") for the sale and redevelopment of the Nicodemus Park Parcel along Nicodemus Avenue (the "Project") in the Fort's Eatontown Reuse Area.

### **Background**

FMERA was created by P.L. 2010, c. 51 ("the Act") to carry out the coordinated and comprehensive redevelopment and revitalization of Fort Monmouth. The Act designates the New Jersey Economic Development Authority ("NJEDA") as a designated redeveloper for any property acquired by or conveyed to FMERA and authorizes FMERA to enter into redeveloper agreements with NJEDA for the redevelopment of the Fort, while also allowing FMERA to enter into redevelopment agreements directly with private developers.

In October 2016, FMERA and the Army entered into an Economic Development Conveyance Agreement ("EDC Agreement") for the Phase 2 portion of the Fort, and title to the property was transferred to FMERA in November 2016. The Nicodemus Park Parcel is located in the Eatontown section of the Phase 2 property.

The approximately 3.82-acre tract known as the Nicodemus Park Parcel ("the Property") includes Buildings 787, 788, 789, and 770 and land located along Nicodemus Avenue in Eatontown.

On May 18, 2016, the FMERA Board approved Evaluation Scoring for Local Beneficial Use Requests. The Borough requested that this conveyance be administered as a Local Beneficial Use ("LBU") transaction. Accordingly, the Borough's proposed use of the Property was reviewed and scored by FMERA staff utilizing the Board approved LBU criteria. This scoring is used to determine the discounted purchase price of the Property. Using the Fort's appraisal for the land area in the Main Post, the fair market value of 3.82 acres for open space recreation use, net of the demolition costs, results in an estimated value of \$198,565 for the Property. The scoring of the Borough's proposed use of the Property was 807, which entitled the Borough to the maximum discount of 40% and resulted in a purchase price of \$119,139.

The project includes the development of an Eatontown Borough park for active recreation uses and will consist of the demolition of Buildings 787, 788, and 790 and the renovation or demolition of Building 770 within the timelines set forth under the PSARA as well as upgrading the existing outdoor area to a standard suitable for public use as a municipal park.

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

The PSARA was approved by the FMERA Board, and following the Governor's 10-day veto period, the PSARA was executed on November 30, 2020. The Borough will pay \$119,139 for the approximately 3.82-acre property for recreation uses associated with Eatontown's Recreation Department. Per the PSARA, Purchaser will have a sixty (60) day Due Diligence Period commencing on the Effective Date of the PSARA with an option to extend Due Diligence for one (1) additional sixty (60) day period; an Initial Approval Period of twelve (12) months commencing at the end of the Due Diligence period; and a six (6) month Approval Extension Period, subject to FMERA approval. Closing will occur within thirty (30) days satisfaction or waiver of the Conditions Precedent to Closing. FMERA will convey the Property to the Borough in as-is condition, but with clear title and subject to the Army's on-going obligations under CERCLA to address any pre-existing contamination that may exist on the Property. In addition, Purchaser will create approximately two (2) construction related, temporary part-time and/or full-time jobs at the Property by project completion or pay a penalty of \$1,500 per job not created.

The Borough will expend a minimum amount of \$250,000 to complete its reuse and redevelopment project. At a later date, the Borough may approach FMERA to complete an optional Phase Two of the project which may consist of the construction of an administrative building of up to 20,000 SF to be used for related administrative and/or active recreation purposes. A Phase Two project would require a separate redeveloper's agreement and FMERA Board approval. Purchaser shall be responsible for commencing demolition of Buildings 787, 788, and 789, and remove the debris from the Parcel within ninety (90) days of Closing. Purchaser may reuse Building 770 (shed), provided it is painted, repaired, and landscaped appropriately within thirty (30) days of closing, but must otherwise be demolished along with all other existing improvements within ninety (90) days of Closing and shall complete the Project within eighteen (18) months from Commencement of the Construction of the Project, or twenty-one (21) months after Closing. Purchaser shall be responsible for all demolition and related costs including but not limited to the costs of any required asbestos and lead-based paint remediation and disposal.

There is one (1) environmental carve-out parcel ("ECP") located within the Property. ECP Parcel 98 consists of an area where former Army housing existed and Buildings 787, 788, and 789 are currently located. PCBs were identified and removed by the Army. FMERA has received an "Unrestricted Use" No Further Action determination from the NJDEP in a letter dated May 21, 2018 and a Finding of Suitability to Transfer from the Army in May 2020. ECP 98 was transferred to FMERA as a part of the Group 3 deed, dated December 22, 2020. As a result, the ECP will be transferred to the Borough at the time of the Initial Closing.

Regarding infrastructure and utility improvements, the Borough has agreed to the following: 1) Purchaser responsible for establishing service and accounts with FMERA [for electric], New Jersey American Water ("NJAW"), New Jersey Natural Gas ("NJNG") and Eatontown Sewerage Authority ("ESA"); and installing a new sewer main and locating an off-site sanitary outfall to serve the Property. A sanitary outfall

is not available within or adjacent to the subject parcel on FMERA-owned property. However, FMERA believes that there is an available sewer connection on College Avenue in the Borough of Eatontown. Purchaser agrees to confirm with the ESA. Alternatively, a sanitary manhole will be installed on the Eatontown DPW Property and Purchaser may connect to that manhole by running a sewer main to the site. There are no utilities serving the Property at this time. At such time as the electric system is transferred from FMERA to Jersey Central Power & Light Company ("JCP&L"), Purchaser is responsible for establishing service and accounts with JCP&L; 2) Electric service will be provided by FMERA until another provider is available. FMERA intends to convey the former Army electric substation to JCP&L within five (5) years. At that time, Purchaser shall be responsible for the connection from the transformer to new distribution lines that JCP&L/FMERA will run adjacent to the Property; 3) Purchaser responsible for replacement, repair, maintenance and/or relocation of utilities within the Property to serve the Project, subject to Seller's review and approval; 4) Purchaser is responsible for coordinating communication services to the Property through a provider of its choosing; and 5) Seller is responsible for providing access to a new water line at the parcel boundary in the vicinity of College Avenue, or as otherwise directed by FMERA. Seller to obtain all necessary easements for the installation of the new water line. Purchaser responsible for installation of a lateral within the Property bounds to the water main.

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 the Borough of Eatontown, staff concludes that the essential elements of a redevelopment agreement between FMERA and the Borough are sufficiently addressed and that it is not necessary for FMERA to enter into a separate redevelopment agreement with the Borough for its redevelopment of the Nicodemus Park Parcel.

Attached is the FMERA Board-approved PSARA between FMERA and the Borough of Eatontown. The PSARA specifies that the Borough of Eatontown will be confirmed as designated redeveloper of the Property upon NJEDA approval of the PSARA in accordance with N.J.S.A. 52:27I-38.

### **Recommendation**

In summary, I am requesting that the Members consent to FMERA entering into the redevelopment agreement contained within the Purchase and Sale Agreement & Redevelopment Agreement with the Borough of Eatontown for the sale and redevelopment of the Nicodemus Park Parcel in the Fort's Eatontown Reuse Area.



---

Tim Sullivan  
Chief Executive Officer

Attachments: Purchase and Sale & Redevelopment Agreement  
Parcel Map

Prepared by: Sarah Giberson & David E. Nuse





**FORT MONMOUTH ECONOMIC  
REVITALIZATION AUTHORITY**  
PO Box 287  
Oceanport, NJ 07757  
(732) 720-6350  
www.fortmonmouthnj.com



**Eatontown Parks Parcel  
Borough of Eatontown  
Fort Monmouth  
Monmouth County, NJ**

*For conceptual purposes only.  
Acreages subject to formal survey.  
Concept parcel lines might not  
account for all existing or future  
rights-of-way, easements or  
potential environmental carve-outs.*

Prepared By: KED  
Date: 2/25/2021



**PURCHASE AND SALE AGREEMENT  
AND REDEVELOPMENT AGREEMENT**

**BETWEEN**

**FORT MONMOUTH ECONOMIC REVITALIZATION AUTHORITY**

**As Seller,**

**AND**

**THE BOROUGH OF EATONTOWN,**

**As Purchaser**

**As of November 30, 2020**

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## **EXHIBIT LIST**

**A – Conceptual Site Plan**

**B – Boundary Survey & Description of Property (to be provided at a later date)**

**C – Job Creation Promissory Note (to be provided at execution)**

**D – Quitclaim Deed from Army to FMERA**

**PURCHASE AND SALE AGREEMENT AND  
REDEVELOPMENT AGREEMENT**

This **PURCHASE AND SALE AGREEMENT AND REDEVELOPMENT AGREEMENT** (this “**Agreement**”) is made as of November 30 2020 (the “**Effective Date**”) between **Fort Monmouth Economic Revitalization Authority** (“**FMERA**” or “**Seller**”), a public body corporate and politic 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, and **the Borough of Eatontown** (“**Borough**” or “**Purchaser**”), a municipal corporation of the State of New Jersey, whose address is 47 Broad Street, Eatontown, New Jersey 07724. Seller and Purchaser are collectively referred to herein as the “**Parties**”.

**WITNESSETH:**

**WHEREAS**, pursuant to the Defense Base Closure and Realignment Act of 1990, Pub.L.101-510 (10 U.S.C. § 2687), 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 Tinton Falls, Eatontown and Oceanport, New Jersey; and

**WHEREAS**, FMERA has adopted the Fort Monmouth Reuse and Redevelopment Plan, as same may be amended from time to time (the “**Reuse Plan**”) which governs land use at the Property in conjunction with the land use regulations set forth at N.J.A.C. 19:31C-3.1 et seq. (the “**Land Use Regulations**”); and

**WHEREAS**, the United States Department of the Army (the “**Army**”) and Seller executed an Economic Development Conveyance Agreement (“**EDC Agreement**”) dated October 25, 2016 outlining the terms and conditions of the transfer of certain portions of Fort Monmouth, which includes the transfer of the “**Property**” (hereinafter defined) from the Army to Seller; and

**WHEREAS**, Seller acquired title to certain property identified on the official tax map of the Borough of Eatontown as a portion of Block 301, Lot 1, and more commonly known as a portion of the Eatontown Park Area of Fort Monmouth (the “**Park Parcel**”), excluding the

**“Environmental Carve-Out Parcel”** (hereinafter defined), from the Army via a quitclaim deed recorded with the Monmouth County Clerk on November 28, 2016 in Book OR 9199 at Pages 6736 et seq. (dated November 17, 2016), incorporated herein by reference (the **“Army Quitclaim Deed”**) along with sufficient adjoining property in order to provide for free and unencumbered ingress and egress to and from the Property to and from adjoining dedicated and proposed public streets so that Seller is able to convey the Property to Purchaser, in accordance with the terms, conditions, covenants and restrictions as set forth in the Army Quitclaim Deed; and

**WHEREAS**, the Army has issued a Subsequent Finding of Suitability to Transfer (**“FOST”**) (hereinafter defined) allowing for the Army’s subsequent conveyance to Seller of a 1.253 acre parcel of land, designated by the Army as ECP 98 (the **“Environmental Carve-Out Parcel”**); and

**WHEREAS**, the Park Parcel consists of Buildings 787, 788, 789, and 770 as well as ECP 98 and land located along Nicodemus Avenue in the Eatontown Section of Fort Monmouth and is situated on approximately 3.82 acres (the **“Property”** as further identified, described and defined herein), and will be transmitted in accordance with FMERA’s Rules for the Sale of Real and Personal Property, N.J.A.C. 19:31C-2.1 et seq.; and

**WHEREAS**, the Borough has requested that the Parks Parcel be administered as a Local Beneficial Use (**“LBU”**) transaction in accordance the Evaluation Scoring for Local Beneficial Use Requests as approved by the FMERA Board on May 18, 2016; and

**WHEREAS**, FMERA employs seven (7) criteria to determine an LBU’s potential impact on the overall redevelopment effort: i) surrounding area continuity; ii) creation of jobs for municipality/county; iii) enhancement of services to municipality/county; iv) regional fiscal impact; v) enhancement to adjacent tracts; vi) public good, public safety or public education; vii) reduction in FMERA infrastructure or demolition costs; and

**WHEREAS**, the Borough proposes to develop the Property into a public park and may, subject to a later Redeveloper Agreement with Seller, seek to build a municipal building of up to 20,000 s.f. to be used for active recreation purposes and/or ancillary administrative purposes to

support the active recreation; and

**WHEREAS**, subject to the FMERA Board's approval, staff reviewed the above criteria and determined the Borough's use of the Property could receive the maximum discount of 40%; and

**WHEREAS**, as of the Effective Date or upon New Jersey Economic Development Authority's ("NJEDA") approval of this Agreement (whichever occurs later), Purchaser is the designated redeveloper of the Property pursuant to N.J.S.A. 52:271-38; and

**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:

**1. Recitals.**

The Recitals are imported by reference into this Agreement as if set out and repeated in full herein.

**2. Definitions.**

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

- a. **"Affiliate"** means with respect to Purchaser, any other Person directly controlling or controlled by, or under direct common Control with the Borough. 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, 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. **"Affiliate Urban Renewal Entity"** means an entity meeting the requirements of Section 27 and qualifying under the Long Term Tax Exemption Law, N.J.S.A. 40A:20-1 et seq.
- c. **"Agreement"** means this Purchase and Sale Agreement and Redevelopment Agreement dated as of the Effective Date, as same may be amended, modified or supplemented from time to time by written instrument signed by the Parties.
- d. **"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 commercial and other 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) (**"Mandatory Conceptual Review"**);
  - ii. preliminary and final subdivision approval, if applicable;
  - iii. preliminary and final site plan approval, if applicable, including the required review by FMERA in connection with "use-type" variances;
  - iv. a confirmation that there is no evidence of areas of concern (**"AOC"**) or a Final Remediation Document issued to Purchaser by either the New Jersey Department of Environmental Protection (**"NJDEP"**) or Purchaser'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;
  - v. such permits or approvals as may be needed from the NJDEP which may include, but are not limited to, a sewer extension permit, stream encroachment permit, and fresh water wetlands permit, and any approvals or permits required pursuant to the Coastal Area Facilities Review Act (**"CAFRA"**) N.J.S.A. 13:19-1 et seq.

Each such approval shall be referred to herein as an “**Approval**” or collectively as the “**Approvals**”.

- e. “**ALTA Survey**” shall mean a comprehensive boundary survey that adheres to the national standards adopted by the American Land Title Association and National Society of Professional Surveyors.
- f. “**Approval Costs**” shall mean all costs and expenses including, without limitation, attorneys’, consulting, engineering, and application fees associated with obtaining All Approvals.
- g. “**Approval Period**” shall be twelve (12) months commencing upon the completion of the Due Diligence Period in which Purchaser will diligently seek to obtain All Approvals.
- h. “**Approval Extension Period**” shall be as defined in Subsection 7(c)(i).
- i. “**Army**” means the United States of America, acting by and through the Secretary of the Army and any division, department or agency thereof.
- j. “**Army Quitclaim Deed**” means the quitclaim deed that FMERA received from the Army and recorded with the Monmouth County Clerk on November 28, 2016 in Book OR 9199 at Pages 6736 et seq. (dated November 17, 2016), attached hereto as **Exhibit D**, whereby the Army conveyed all right, title and interest to the Property to FMERA, subject to the terms, conditions, covenants and restrictions set forth in the Army Quitclaim Deed.
- k. “**Boundary Survey**” is a means to formally define the boundaries of a property, showing the corners of a parcel of land described in a deed, attached hereto as **Exhibit B**.
- l. “**Capital Investment**” means demolition & site work, off-site improvement costs, construction costs, labor, and all other costs included in construction of the Project, exclusive of Property acquisition and the costs of obtaining All Approvals.
- m. “**Certificate of Completion**” means a document issued by FMERA constituting a recordable, conclusive determination of the Completion of the Project and satisfaction and termination of this Agreement and the Declaration of Covenants with respect to the Project pursuant to N.J.A.C. 19:31C-3.24(f).

- n. **“Certificate of Occupancy”** means a document issued by a governmental authority allowing the occupancy or use of a building and certifying that the structure or use has been constructed and will be used in compliance with all applicable municipal codes and ordinances.
- o. **“CERCLA”** means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (P.L. 96-510), as amended.
- p. **“CERCLA Covenants”** means those certain covenants required by CERCLA which are contained in the Army Quitclaim Deed.
- q. **“Closing”** shall mean the transfer of the Property or portion thereof in accordance with this Agreement,) from the Seller to the Purchaser and the transfer of the Purchase Price or portion thereof in accordance with this Agreement, from the Purchaser to the Seller which shall occur after the satisfaction or the waiver of the Conditions Precedent to Closing set forth in Section 13.
- r. **“Commence Construction”, “Commenced Construction”, “Commence the Construction”** or **“Commencement of the Construction”** shall mean the receipt of building permits by the Purchaser and any two of the following items (i.) mobilization of contractors on site, (ii.) demolition of existing structures, if applicable, (iii.) installation of infrastructure on site, (iv.) site work, or (v.) building renovation work.
- s. **“Complete”, “Completed”** or **“Completion”** means the issuance of a Certificate of Occupancy by the Municipality for a building to be occupied for the intended commercial use as part of the Project. Thereafter, Purchaser may apply to Seller for a Certificate of Completion subject to the requirements of N.J.A.C. 19:31C-3.24(f), if all other requirements of this Agreement have been satisfied.
- t. **“Conditions Precedent to Closing”** shall mean the obligations of the Purchaser and Seller which are set forth in Section 13.
- u. **“Deposit”** shall be described in Section 5 herein.
- v. **“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.

- w. **“Due Diligence Period”** means the sixty (60) day period commencing on the Effective Date of this Agreement and ending at five o’clock (5:00) p.m. on the \_\_\_\_\_ (\_\_\_\_) day thereafter, 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 Due Diligence Period may be extended for one (1) additional sixty (60) day period, with FMERA’s approval, to complete any environmental investigations.
- x. **“EDC Agreement”** shall mean the Agreement between the Army and FMERA, dated October 25, 2016, 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.
- y. **“Effective Date”** shall mean the date set forth in the introductory paragraph of this Agreement, if no date is set forth in the introductory paragraph, the Effective Date shall mean the date upon which the last party to sign this Agreement executes this Agreement.
- z. **“Environmental Carve-out Parcel 98”** or **“ECP 98”** shall mean the portion of the Property (as depicted on **Exhibit B**) that the Army will convey to Seller upon its receipt of Final Remediation Documents from the New Jersey Department of Environmental Protection and Army’s issuance of a Finding of Suitability to Transfer. The Seller will convey the Environmental Carveout to Purchaser for no additional consideration at closing or within forty-five (45) days of Seller’s receipt of title from the Army.
- aa. **“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.
- bb. **“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 seq., or a response action outcome (“RAO”) issued by a licensed site remediation professional pursuant to N.J.S.A. 58:10C-14.

- cc. **“Finding of Suitability to Transfer”** or **“FOST”** means the document issued by the Army, dated August 11, 2016 and dated May 2020, respectively. The purpose of the FOST is to document the environmental suitability of the Property for transfer to FMERA consistent with CERCLA Section 120(h) and Department of Defense Policy. In addition, the FOST includes the 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 the Property from the Army to FMERA.
- dd. **“Fixtures”** means items of property that become so attached to a building or other real property that they become a part of it. They include such items as fireplaces, patios and built-in shelving.
- ee. **“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, or acts of God.
- ff. **“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.
- gg. **“Improvements”** shall mean the buildings, fixtures and structures located on the Property.
- hh. **“Interested Parties”** means Purchaser’s Mortgagee, Purchaser’s Lender and/or Purchaser’s Tax Credit Investor.
- ii. **“Jobs Report”** means the periodic reports to be provided by the Purchaser to the Seller as required by Subsection 7(e)(i) herein that provides the Seller with information concerning the number of temporary and permanent jobs created by the Purchaser during the construction of the Project and within a certain time period after Completion of the Project as further described in Subsection 7(e)(i).
- jj. **“Municipality”** shall mean the Borough of Eatontown, in the County of Monmouth, State of New Jersey.
- kk. **“Non-Appealable Final Approval”** shall mean an Approval where the time to challenge or appeal the grant or denial of the Approval or a term or condition of the

Approval that is before any administrative body or court of law has expired, and no challenge or appeal is pending. The term shall also mean an Approval decided after a challenge or appeal has been filed where the challenge or appeal has been decided in Purchaser's favor, and all terms and conditions contained in the Approval are acceptable to the Purchaser in its reasonable discretion.

- ll. **"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.
- mm. **"Personal Property"** means property that is movable and is not affixed to or associated with the land.
- nn. **"Project"** the Project is as described herein at Subsection 7(b) and depicted in the conceptual site plan attached hereto as **Exhibit A** ("**Conceptual Site Plan**").
- oo. **"Property"** shall mean the land as described and defined in Section 4.
- pp. **"Purchaser"** shall mean the Borough of Eatontown or its authorized assigns or successors pursuant to Section 27.
- qq. **"Purchase Price"** is the price that the Purchaser shall pay the Seller for the Property. The Purchase Price shall be paid as described in Section 5.
- rr. **"Purchaser's Utility Obligation"** shall mean the Purchaser's obligation to undertake infrastructure improvements as defined in Section 47.
- ss. **"Reversion Cure Period"** shall mean ninety (90) days after Seller's written notice of Seller's intent to exercise its right of reversion during which the Purchaser and/or Interested Parties shall have the opportunity to cure.
- tt. **"Reversion Purchase Price"** shall mean the cash to Seller amount on the HUD-1 Settlement Statement/Closing Statement executed at closing.
- uu. **"Seller's Net Sale Proceeds"** shall mean the entirety of sales proceeds net of real estate commissions, Monmouth County Improvement Authority mortgage payoff, NJEDA working capital loan payoff, if applicable, and homeless trust fund payments.
- vv. **"Seller's Utility Obligation"** shall mean the Seller's obligation to undertake infrastructure improvements as defined in Section 47.
- ww. **"Toll"**, **"Tolled"** or **"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 reasonable satisfaction of the Party seeking the benefit of a Tolling period.

**3. 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 all the buildings, Fixtures and other improvements on the land; (b) all of the Seller's rights relating to the Property; and (c) all Personal Property specifically included in this Agreement.

**4. The Property.**

The approximately 3.82 acre parcel that is formally identified as a portion of Block 301, Lot 1, that is located along Nicodemus Avenue in the Eatontown section for Fort Monmouth, and that is depicted in greater detail on the Boundary Survey prepared by \_\_\_\_\_, dated \_\_\_\_\_, attached as **Exhibit B**. The Property is improved with Building 787, 788, 789, and 770 (shed) as well as Environmental Carve-Out Parcel 98. The redevelopment and use of the Property by Seller is subject to N.J.A.C. 19:31C-3.1 et seq.

**5. The Purchase Price.**

Subject to any adjustments as called for in Section 24, the price that the Purchaser will pay the Seller as consideration for the Property is **One Hundred and Nineteen Thousand One Hundred and Thirty-Nine (\$119,139) Dollars** as follows:

The **Deposit** shall be deposited with FMERA by Purchaser upon the execution of this Agreement by the Parties, and shall be transferred, with interest, to FMERA, in the amount of:

\$17,871

Balance to be paid at closing of title, by wire transfer, in cash or by certified check	\$101,268
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Purchaser shall be responsible for all building demolition and associated costs including, but not limited to, asbestos abatement related costs.

**6. 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.

**7. Capital Investment, Redevelopment Project, Project Approvals, Completion Bond, Job Creation; and Security.**

a. **Capital Investment.** Purchaser's total Capital Investment is estimated at Two Hundred and Fifty Thousand (\$250,000) Dollars. Purchaser shall render progress reports annually to FMERA following Commencement of Construction as to its cumulative Capital Investment expenditures.

b. **Redevelopment Project.**

i. Purchaser represents that it is purchasing the Property with the intent to construct the Project, which consists of development of the parcel as an Eatontown Borough Park for active recreation uses. Purchaser will demolish Building 787, 788 and 789. Purchaser has the option to either 1) demolish Building 770 or 2) upgrade Building 770 and the existing outdoor area to a standard suitable for public use in a municipal park. If Purchaser chooses to upgrade Building 770 (through paint, repair and landscaping) it shall do so within thirty (30) days of Closing. The Purchaser's Conceptual Site Plan for the Project is attached hereto as **Exhibit A.** The Purchaser's site plan and subdivision plan are subject to (i) Seller's Mandatory Conceptual Review; (ii) the planning board review process of the Borough of Eatontown; and (iii) a potential review by the Monmouth County Planning Board. The Project may be

amended upon mutual agreement of Seller and Purchaser if Purchaser is unable to obtain the same, subject to FMERA Board approval and Reuse Plan Amendment, as applicable.

- ii. Purchaser shall comply with the following Project schedule:
  - 1. Purchaser will Commence the Project no later than ninety (90) days after Closing.
  - 2. Purchaser will Complete the Project no later than eighteen months (18) months from Commencement of the Construction of the Project, or twenty-one (21) months after Closing.
- iii. It shall be a default under this Agreement for Purchaser to fail to Commence the Construction or Complete the Project timely, as required herein.
- iv. The provisions of this Subsection 7(b) shall survive Closing and run with the land.

c. **Project Approvals.**

- i. Purchaser shall obtain All Approvals within the Approval Period. In the event that Purchaser is unable to obtain All Approvals within the Approval Period, Seller may grant, at its sole discretion, an extension of the Approval Period for an additional six (6) month period(s) (“**Approval Extension Period**”) which shall be granted if Seller determines that the Purchaser is diligently and in good faith pursuing All Approvals. Any additional Approval Extension Period shall run from the expiration of the Approval Period. Despite anything to the contrary herein, Purchaser may elect to waive receipt of All Approvals within the Approval Period or Approval Extension Period and close on the Property without said Approvals as further described in Subsection 13(a)(ii).
- ii. Seller agrees to reasonably cooperate with Purchaser in obtaining any required FMERA signatures or consents in connection with Purchaser’s efforts to obtain the Approvals for the development of the Project on the Property and shall endeavor to obtain same from its Executive Director, within one (1) week of presentment; 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 any permits or approvals related to the Project to the Purchaser.

**d. Financial Assurances and Guarantees.**

- i. Prior to the Commencement of the Construction, Purchaser shall post all financial assurances and guarantees required pursuant to municipal ordinances for performance, maintenance and site restoration with the municipality and name FMERA as a beneficiary.
- ii. The provisions of this Subsection 7(d) shall survive Closing.

**e. Job Creation; Security.**

- i. Purchaser shall create a total of two (2) construction related, temporary part-time and/or full-time jobs at the Property, within twelve (12) months of the Completion of the Project. The Purchaser shall be obligated to provide the Seller with a Jobs Report within twelve (12) months after Completion of the Project. To the extent the Purchaser fails to achieve the required creation of full-time equivalent permanent jobs at the Property within the required time period after the Completion of Project, then on that date it shall be liable to pay to the Seller One Thousand Five Hundred (\$1,500) Dollars for each part-time/full-time equivalent permanent job not created. Payment shall be due to Seller within thirty (30) days of Seller's delivery of notice to Purchaser of failure to achieve the required creation of jobs pursuant to this Section. Purchaser's total obligation shall not exceed Three Thousand (\$3,000) total.
- ii. Prior to Closing, Purchaser shall secure its obligation to create the required number of full-time equivalent permanent jobs at the Property, or pay Seller the amount per job not created, through the granting of the Job Creation Promissory Note in a form substantially similar to **Exhibit C**. It is agreed and understood that upon receipt of notice of creation of the required full-time equivalent permanent jobs as set forth above or receipt of the payment of any monies for jobs not created, then Seller shall, within thirty (30) days of notice of creation

or payment, release the bond, return the deposit or cancel or otherwise discharge the Job Creation Promissory Note which shall thereafter be null and void.

- iii. The provisions of this Subsection 7(e) shall survive Closing.

#### **8. Declaration of Covenants.**

The quitclaim deed from Seller to Purchaser shall include a declaration of covenants and restrictions upon the Property, which shall run with the land and shall be released upon the issuance of a Certificate of Completion issued by Seller. The Declaration shall indicate or otherwise contain:

- i. The uses of the Property shall be limited to those uses permitted pursuant to the Reuse Plan, as amended.
- ii. Purchaser, as the approved redeveloper, will Commence the Construction and Complete the Project within the period of time established in Subsections 7(b)(ii)(1) and (2) of this Agreement; and
- iii. 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 27 of this Agreement.

#### **9. Reversion to Seller.**

The quitclaim deed from Seller to Purchaser shall provide that if the timeframes set forth in Subsections 7(b)(ii)(1) and (2) have not been met, then Seller, at its sole option and discretion, shall have the right of reversion of title to the Property. 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. 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.

- a. Seller agrees to provide Purchaser and Interested Parties with a Reversion Cure Period. During the Reversion Cure Period, any of the Interested Parties may either (a) cure the default identified by the Seller in their default notice or (b) 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.

- b. Should Seller exercise its right of reversion, Seller shall pay Purchaser a reversion purchase price (the "**Reversion Purchase Price**"). Any amount of the 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. Purchaser shall, at no additional cost to Seller, convey ownership of all plans, studies, approvals, etc., along with its rights to the Property.
- c. Purchaser or its successors and assigns may request that the Seller execute a release evidencing the termination of Seller's right of reversion on any portion of the Property that has been Completed upon the presentation of (i) a valid Certificate 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.
- d. The provisions of this Section 9 shall survive Closing and/or termination of this Agreement and run with the land.

#### **10. Prevailing Wage.**

Prevailing wage will apply only to the extent that the Project 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. The provisions of this Section 10 shall survive Closing.

#### **11. Title and Survey Investigation.**

- a. Within thirty (45) days of the Effective Date, Seller will cause the Boundary Survey to be certified to Purchaser, Purchaser's attorney, the title company and such additional

parties as may be reasonably requested by Purchaser, unless Purchaser elects to obtain an ALTA Survey as described in Subsection 11(c).

- b. Seller agrees to deliver title to the Property that is good, marketable, fee simple title, valid of record and insurable at regular rates.
- c. Purchaser shall obtain and deliver a title commitment from the title company along with a list of title objections identified by Purchaser to Seller ("**Title Objections**") and may obtain an ALTA Survey no later than thirty (30) days from the Effective Date. Not later than ten (10) days after Seller receives the Title Objections, Seller shall notify Purchaser which of the objections, if any, Seller shall cure prior to or at 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 (i) 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 (ii) proceed under this Agreement. If Purchaser elects to proceed under this Agreement after Seller supplies an unsatisfactory response or no response, then Purchaser's election is deemed an acceptance of the Title Objections by the Purchaser and the Seller shall have no further obligation to cure the Title Objections either prior to or at Closing.
- d. 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 new objections to matters which may have arisen since Purchaser's initial title and survey examination ("**New Objections**") no later than ten (10) days after Purchaser receives the New Objections. Not later than ten (10) days after Seller receives the New Objections, Seller shall notify Purchaser which of the New Objections, if any, Seller shall cure prior to or at 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 (i) 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 (ii) proceed under this Agreement. If Purchaser elects to proceed under this Agreement after Seller supplies an unsatisfactory response or no response, then Purchaser's election is deemed an acceptance of the New Objections by the Purchaser and the Seller shall have no further obligation to cure the New Objections either prior to or at Closing.

- e. If Seller fails to meet the requirements of Subsection 11(b), or if Seller has agreed to cure a title objection pursuant to Subsection 11(c) and fails to do so, or if Purchaser has New Objections and/or survey objections as a result of its run-down title examination pursuant to Subsection 11(d) and Seller fails to cure such objections, then the Parties may:
  - i. delay Closing to a date mutually agreed upon by the Parties until such time that the Seller or Purchaser removes or cures such non-permitted exception(s) at Seller's expense;
  - ii. proceed to Closing with sufficient sums from the Purchase Price (as determined by the title company as being necessary to cure or clear such non-permitted exception(s)) being placed into escrow with the title company to be used by Purchaser to cure or clear such non-permitted exception(s), provided that the amount to be placed into escrow (which shall include any funds to address any environmental remediation obligations as further described in Subsection 20(c)) shall not exceed Seller's Net Share of the Purchase Price; or
  - iii. terminate this Agreement, whereupon the Deposit and all interest accrued thereon shall be promptly returned to Purchaser by FMERA.
- f. From the date of this Agreement, Seller shall not permit any further encumbrance on the Property other than with respect to any working capital loan(s) Seller may receive from NJEDA without Purchaser's prior written consent, which consent may be withheld in Purchaser's sole discretion.

**12. Due Diligence Period.**

- a. Purchaser and its officers, employees, agents, contractors, or licensees 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 by delivering written notice of such termination to the Seller prior to five o'clock (5:00)

P.M. on the last day of the Due Diligence Period without penalty, and receive a full refund of the Deposit, and all interest accrued thereon.

- c. Purchaser and its officers, employees, agents, contractors, or licensees 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 shall be maintained at the level of Five Million Dollars (\$5,000,000.00) per occurrence of bodily injury, death and property damage liability except that automobile liability may be at a minimum of One Million Dollars (\$1,000,000.00) per occurrence of bodily injury, death and property damage liability. Seller shall be named an additional insured on this policy; and

ii. **Worker's Compensation and Employer's Liability Insurance** applicable to the Laws of the State of New Jersey with limits of not less than One Hundred Thousand Dollars (\$100,000.00) per occurrence for bodily injury liability and One Hundred Thousand Dollars (\$100,000.00) occupational disease per employee with an aggregate limit of Five Hundred Thousand Dollars (\$500,000.00) occupational disease.

- d. If, at or before Closing, Purchaser elects to terminate this Agreement and not purchase the Property, 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 officers, employees, agents, contractors, or licensees 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 gross negligence or intentional acts or omissions.

**13. Conditions Precedent to Closing.**

- a.** Closing is subject to and conditioned upon the following conditions, which are agreed by the Parties to be included for the protection of the Parties:
  - i.** Approval of Purchaser as redeveloper of the Property by the NJEDA Board;
  - ii.** The receipt by Purchaser of All Approvals within the timeframes set forth in Subsection 7(c). Despite anything to the contrary herein, Purchaser may elect to waive All Approvals and close on the Property without said Approvals (provided that Purchaser will still be required to obtain Mandatory Conceptual Review approval of the Project by FMERA prior to seeking preliminary and final site plan approval from the Borough) with the understanding that any such waiver will not Toll or delay in any way the Purchaser's obligation to comply with the Project Schedule set forth in Section 7 herein;
  - 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 11; and
- b.** Seller shall have obtained title from the Army to ECP 98. In the event that FMERA has not obtained title to ECP 98 prior to all other conditions precedent having been met, FMERA will convey this portion of the Property at a subsequent closing. Title to ECP 98 is expected as a part of the Group 3 FOST, anticipated in September of 2020. The Parties 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 any Conditions Precedent to Closing that is specifically for such Party's benefit or may waive the cure of the other Party's default at any time prior to Closing or at Closing, subject to the terms of Subsection 13(a)(ii). Such waiver shall be in writing and acknowledged by both Seller and Purchaser.

**14. Time and Place of Closing.**

- a. The Closing may occur in phases and shall occur no later than thirty (30) days after satisfaction or waiver of the Conditions Precedent to Closing as detailed in Section 13 or (“**Closing Date**”) or ten (10) days after all title and environmental obligations are satisfied, whichever is later.
- b. Seller shall deliver the following documents at Closing in form and substance satisfactory to Purchaser and the title company:
  - i. quitclaim deed;
  - ii. entity resolution;
  - iii. tax and utility bill adjustments, if any;
  - iv. Certificate of Compliance with Section 1445 of the Internal Revenue code (FIRPTA);
  - v. Bill of Sale for any Personalty;
  - vi. IRS Form 1099;
  - vii. 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;
  - viii. Monmouth County Improvement Authority mortgage release, New Jersey Economic Development Authority working capital loan release and payment of all applicable Homeless Trust Fund Contributions; and
  - i. such other documentation as reasonably requested by the Title Company to complete Closing.
- c. At Closing, Purchaser shall deliver the Purchase Price and a title closing statement.
- d. At Closing, Purchaser shall pay to Seller the balance of the Purchase Price due at Closing in accordance with Section 5. 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.

**15. Transfer of Ownership.**

Upon receipt of payment of the balance of the Purchase Price 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 being transferred that shall be based upon the Boundary Survey. The quitclaim deed between the Purchaser and Seller shall be 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, and any covenants and restrictions that must be recorded pursuant to the requirements of N.J.A.C. 19:31C-3.24

**16. Personal Property and Fixtures.**

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**.

**17. 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 buildings and improvements.

**18. 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 acknowledges that Seller has provided Purchaser with a link to the FOST on Seller’s website and Purchaser has had the opportunity to download a copy of 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.

**19. 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, or licensees) 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 which is intended to be demolished by Purchaser. Seller shall take reasonably appropriate measures to ensure that the Property is secure Prior to Closing. 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.

**20. Environmental Matters.**

- a. Purchaser and Seller acknowledge that pursuant to 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 the CERCLA Covenants contained in the Army Quitclaim Deed and the FOST for the Property. 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(s) and improvements on the Property, if applicable.

- 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 Seller receiving notice of the Discharge. Seller shall also 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 elect to either (i) terminate this Agreement and receive a full refund of the Deposit, and all interest accrued thereon, or (ii) proceed to Closing under this Agreement. If Purchaser fails to notify Seller by written notice of its election under the preceding sentence 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 receive a refund of the Deposit, and all interest accrued thereon, (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, or (iii) proceed to Closing with sufficient sums from the Purchase Price (as reasonably determined by agreement between Purchaser's and Seller's respective environmental consultants), being placed into escrow with the title company to be used by Purchaser to address or remediate such Discharge and obtain a Final Remediation Document provided that the total amount placed into escrow (which shall include any funds to cure or clear non-permitted title exceptions pursuant to Subsection 11(e)(ii)) shall not exceed Seller's Net Sale Proceeds of the Purchase Price.

**21. Termination of Agreement.**

If this Agreement is legally and rightfully terminated in accord with any provision herein (excluding termination resulting from a default by either Party as specified in Sections 22 and 23) or by mutual agreement of the Parties, the Parties shall be released from any liability to each other, except that Seller shall direct the return of the Deposit except as otherwise provided herein, and all interest accrued thereon, to the Purchaser and that the Parties shall remain responsible for any other obligations that specifically survive termination of the Agreement.

**22. Default by Seller.**

- a. The following occurrences shall be a default by Seller of the terms of this Agreement:
  - i. Failure to convey the Property in accordance with the terms of this Agreement.
- b. The Purchaser agrees that prior to declaring the Seller in default as described in Subsection 22(a), Purchaser shall provide Seller with sixty (60) days advance written notice of such default and Seller shall have the right to cure such default within said sixty (60) day period.
- c. In the event that Seller does not cure said default in said sixty (60) day period then the Purchaser may terminate this Agreement at which time FMERA shall return the Purchaser's Deposit and all interest accrued thereon. Purchaser acknowledges that the remedies set forth in this Subsection 22(c) are Purchaser's sole and 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

and the Parties shall be free of liability to each other, except that the Parties shall remain responsible for any other obligations that specifically survive termination of the Agreement.

- d. The terms of this Section 22 shall survive the Closing and/or any termination of this Agreement for ninety (90) days.

**23. Default by Purchaser.**

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

- i. Failure of Purchaser to observe and perform any covenant, condition, representation, warranty or agreement as set forth in this Agreement.

- ii. Purchaser has:

- 1. applied for or consented to the appointment of a custodian, receiver, trustee or liquidator of all or a substantial part of its assets or if a custodian is legally appointed with or without consent of Purchaser; or
    - 2. made a general assignment for the benefit of creditors or 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
    - 3. filed an answer admitting the material allegations of a petition in any bankruptcy or insolvency proceeding or 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
    - 4. suspended the transaction of its usual business.

- iii. If:

- 1. an Order for Relief is entered with respect to or for the benefit of Purchaser, under the Bankruptcy Code;
    - 2. an Order, judgment or decree is entered, without the application, approval or consent of Purchaser, 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.

- iv. Purchaser has abandoned or substantially suspended any pursuit of All Approvals. If Purchaser fails to obtain All Approvals, Seller shall be entitled to terminate this Agreement and shall be entitled to receive the Deposit and all interest accrued thereon. However, if Seller determines that the Purchaser has pursued All Approvals diligently and in good faith but fails to obtain them, FMERA shall refund Purchaser's Deposit. Notwithstanding anything in this Section to the contrary, this Subsection 23(a)(iv) shall survive Closing in the event that receipt of All Approvals is waived as a Condition Precedent to Closing as detailed in Section 13.
  - v. The Purchaser places 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.
  - vi. 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 or waived as detailed in Section 13).
- b. The Seller agrees that prior to declaring the Purchaser in default as described in Subsection 23(a), Seller shall provide Purchaser with sixty (60) days advance written notice of such default and Purchaser shall have the right to cure such default within said sixty (60) day period. In the event that Purchaser does not cure said default in said sixty (60) day period then the Seller may terminate this Agreement at which time FMERA shall pay the Seller the Deposit and all interest accrued thereon. Seller acknowledges that the remedies set forth in this Subsection 23(b) are Seller's sole and exclusive remedies (except as provided for in Section 9 herein) in the event of any breach of or default under this Agreement by Purchaser prior to Closing or the inability or unwillingness of Purchaser to consummate the Closing as provided in this Agreement.
- c. Notwithstanding anything in this Section 23 to the contrary, 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 to terminate this Agreement and shall be entitled to receive the Deposit and all interest accrued thereon as liquidated damages.

- d. The terms of this Section 23 shall survive the Closing and/or any termination of this Agreement.

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

- a. Purchaser and Seller agree to adjust the following expenses as of the Closing Date:
  - i. water charges and sewer charges, if any.
- b. Purchaser or Seller may require that any person with a valid claim or right affecting the Property be paid from the proceeds of this sale.
- c. The Parties acknowledge that certain municipal improvements, including, but not limited to, sidewalks and sewers, may result in the Municipality charging property owners to pay for the improvement. Accordingly, the Parties agree that:
  - i. 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).
  - ii. If the improvement is not completed before the date of Closing then only the Purchaser will be responsible.
  - iii. 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).

**25. 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.

**26. 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.

**27. Assignment; Assignment of Interest.**

- a. Seller shall have the right to assign this Agreement without the consent of Purchaser to the State of New Jersey or any division or instrumentality thereof.
- b. Purchaser shall not have the right to assign this Agreement, or any part thereof, prior to the Completion of the Project 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 any and all redevelopment obligations;
  - v. the assignment will not delay the Completion of the Project; and

- 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. Notwithstanding the foregoing, Purchaser shall have the right to assign this Agreement, or any part thereof to an Affiliate Urban Renewal Entity created to undertake the Purchaser's Project without first obtaining the Seller's consent provided that the Affiliate Urban Renewal Entity:
  - i. 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
  - ii. provides the Seller with an unqualified and unconditional acceptance of the terms and conditions of this Agreement, including but not limited to any and all redevelopment obligations.
- d. 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 to the extent that they relate to the portion of the Property and Project being assigned.

**28. Successors and Assigns.**

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

**29. 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.

**30. 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 Parties agree that any and all claims made or to be made against the Seller based in contract law 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. The Parties also agree that any and all claims for damages made or to be made against the Seller based in tort law, including but not limited to, costs and expenses, shall be governed by and subject to the provisions of the New Jersey Tort Claims Act, N.J.S.A. 59:1-1 et seq.

**31. 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.

**32. 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.

**33. 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.

**34. 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).

**35. 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.

**36. 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.

**37. Force Majeure.**

Neither the Seller nor Purchaser shall be in default of this Agreement if the delay or failure to perform is by reason of a Force Majeure event or condition. 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.

**38. Publication.**

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

**39. Recording.**

- 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. This Section shall survive the termination of the Agreement.

**40. 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.

**41. 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 date 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.

**42. Intentionally Omitted.**

**43. Notices.**

- a. 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

CC:

Richard J. Hughes Justice Complex  
25 Market Street  
P.O. Box 106  
Trenton, NJ 08625

Attention: Laura Drahushak

AND

TO: ^ (Purchaser)  
Attention:

CC: ^ (Purchaser's Counsel)  
Attention:

- b.** 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); and
  - iv.** with a copy by facsimile and/or electronic mail.
- c.** 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.
- d.** 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.

**44. Brokerage Commissions.**

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 a commission to any broker. The provisions of this Section shall survive Closing and/or any termination of this Agreement.

**45. 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.

**46. Exhibits.**

By execution of this Agreement, Purchaser acknowledges receipt of all Exhibits described in and attached to this Agreement.

**47. Utilities.**

- a. Purchaser responsible for establishing service and accounts with FMERA [for electric], New Jersey American Water (NJAW), New Jersey Natural Gas (NJNG) and Eatontown Sewerage Authority ("ESA"); and installing a new sewer lateral to the Parcel from College Avenue or at a location otherwise directed by FMERA or the ESA. There are no utilities serving the Property at this time. At such time as the electric system is transferred, Purchaser responsible for establishing service and accounts with Jersey Central Power & Light (JCP&L).
- b. Electric services will be provided by FMERA until another provider is available. FMERA intends to convey the former Army electric substation to JCP&L within five (5) years. At that time, Purchaser shall be responsible for the connection from the transformer to new distribution lines that JCP&L/FMERA will run adjacent to the Property.

- c. Purchaser responsible for replacement, repair, maintenance and/or relocation of utilities within the Property to serve the Project, subject to Seller's review and approval.
- d. Purchaser is responsible for coordinating communication services to the Property through a provider of its choosing.
- e. Seller is responsible for providing access to a new water line at the parcel boundary in the vicinity of College Avenue, or as otherwise directed by FMERA. Seller to obtain all necessary easements for the installation of the new water line.
- f. Purchaser is responsible for coordinating sanitary sewer service with the Eatontown Sewerage Authority and locating an off-site sanitary outfall to serve the Property. A sanitary outfall is not available within or adjacent to the subject parcel on FMERA-owned property. However, FMERA believes that there is an available sewer connection on College Avenue in the Borough of Eatontown. Purchaser should confirm with the ESA. Alternatively, a sanitary manhole will be installed on the DPW Property and Purchaser may connect to that manhole by running a sewer main to the site.
- g. Purchaser understands and agrees that future utility easements may be required on the Property that may not be represented in the Boundary Survey.. It is understood that an easement will encumber the eastern boundary of Property along Wilson Avenue, and that additional easements may be required along Tiros Avenue and along the boundary with the Motor Pool Parcel. FMERA agrees to notify Purchaser prior to recording easements on the Property after the Effective Date.

**48. Miscellaneous.**

- a. Deed Restriction – As requested by Purchaser the following Deed of Open Space Easement shall be recorded, and will not be released upon the issuance of a Certificate of Completion. The easement shall include the following language.
  - i. It is the purpose of this Easement to guarantee that the Property will be retained forever for public park, recreation and open space uses and to prevent any use of the Property that will significantly impair or interfere with the park and open space values of the Property.
  - ii. The property shall be held in trust in perpetuity and used exclusively for the purposes authorized by the Open Space and Farmland Preservation, Recreation

and Conservation and Historic Preservation Act, as may be amended from time to time (N.J.S.A. 40:12-15.6b).

- iii. The Borough of Eatontown agrees to make and keep the open space accessible to the public, unless the municipality and County determines that public accessibility would be detrimental to the lands, waters or improvements thereon, or to any natural resources associated therewith (N.J.S.A. 40:12-15.6d(3)).
- iv. The Borough of Eatontown agrees not to lease, sell, exchange or donate the property described herein which is being acquired pursuant to P.L. 1997 c. 24, NJSA 40:12-15.6(A) except upon approval of the Monmouth County Board of Chosen Freeholders and upon such conditions as the Monmouth County Board of Chosen Freeholders may establish (N.J.S.A. 40:12-15.6d(4)), including but not limited to replacement with land of no less or greater utility , acreage, and value.

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

ATTEST:

Regina M'Grade

FORT MONMOUTH ECONOMIC  
REVITALIZATION AUTHORITY, Seller

By: Bruce Steadman  
Bruce Steadman  
Executive Director

ATTEST:

Mike Hauer

THE BOROUGH OF EATONTOWN, Purchaser

By: Anthony T. [Signature]



[illegible]

The foregoing instrument was acknowledged before me this 29<sup>th</sup> day of Nov. 2020, by Fort Monmouth Economic Revitalization Authority, a public body corporate and politic constituted as an independent authority and instrumentality of the State of New Jersey (the "Seller"), pursuant to P.L. 2010, c. 51, by Bruce Steadman, its Executive Director, on behalf of the Company.

Regina M'Grade

**Regina McGrade**  
**Notary Public**  
**New Jersey**  
**My Commission Expires March 8, 2023**  
**No. 2430957**

[illegible]

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2020 by \_\_\_\_\_, on behalf of the Purchaser.

Attorney



## **MEMORANDUM**

**TO:** Members of the Authority

**FROM:** Tim Sullivan  
Chief Executive Officer

**DATE:** March 10, 2021

**RE:** Parking Management Agreement with New Jersey Aquarium for the Camden Waterfront

### **Summary**

I request that the Members consent to the execution of a Parking Management Agreement (Agreement) between the New Jersey Aquarium, LLC (NJA) and the Authority for a one (1) year term retroactive to September 16, 2020 on terms generally consistent with the attached agreement, and a delegation of authority to the Chief Executive Officer to enter into similar agreements, annually, for ten (10) years.

### **Background**

In 2003, the Treasurer requested that the Authority administer the real estate development component of a complex series of transactions to modernize and expand the New Jersey State Aquarium and spur development of 30 acres of land adjacent to the Aquarium along the Camden Waterfront. This endeavor resulted in NJEDA's acquisition and sale of properties, the design and construction of two parking lots, and its administration of several legal agreements, including a fifty (50) year ground lease for the parking lots between NJEDA and Treasury.

The Adventure Aquarium is currently operated by NJA, the managing member of Camden Aquarium, LLC, which leases the Adventure Aquarium from the State of New Jersey. As outlined in their Operating Agreement dated October 29, 2003, the members of Camden Aquarium LLC are NJA and the New Jersey Sports and Exposition Authority (NJSEA). Pursuant to the Operating Agreement, NJA has the right to operate the parking lots surrounding the Aquarium and is entitled to a reasonable management fee to be negotiated between NJSEA or its designee and NJA. Since the end of the completion loan period in August 2012, NJEDA has been entitled to receive net parking revenues after deducting costs of operating the parking lots and a reasonable management fee to NJA.

In August 2015, the Members approved execution of a Parking Management Agreement (2015 Agreement) with NJA for a one-year term with three one-year renewal options. The last renewal term under 2015 Agreement expired in September 2018.

In October 2018, the Members approved execution of a successor Parking Management

Agreement (2018 Agreement) with NJA for a term of one year, with a one-year renewal option. The last term expired in September 2019.

The Parties have determined that each has a joint and mutual interest in continuing the public/private venture that has led to the overall success of Adventure Aquarium and to continue to promote visitorship to the Camden Waterfront, which will also have the effect of increasing parking revenues retroactive to September 16, 2020 as the parties continued to operate under the terms of the 2018 Agreement. This growth, along with the additional promotions, events and marketing of Camden Waterfront destinations, is expected to materially increase parking revenues.

In furtherance of the Parties' objective to ensure the overall success of the Camden Waterfront, NJA has (i) expanded and enhanced security, clean-up, and programming for special events on the Camden Waterfront including the annual New Year's and July 4<sup>th</sup> celebrations, as well as other seasonal festivities and events; and (ii) undertaken a targeted marketing program to promote visitorship to the Camden Waterfront. In addition to their 10% management fee, as consideration for NJA providing these promotional activities, for the 2021-2022 season, the Authority will allow NJA to receive and use the lesser of six and one-half percent (6.5%) of the total parking revenues or up to One Hundred Twenty Six Thousand Five Hundred Dollars (\$126,500.00) to pay a portion of the costs for these activities. The extension of the marketing contribution will assist in increasing visitorship as the State relaxes the restrictions that were in place as a result of the pandemic.

NJA also agrees to seek contributions from other parties to provide additional funding for Camden Waterfront Promotional Activities. As outlined in the Agreement, within thirty days of the date of the agreement, NJA is required to submit the proposed budget for 2021, which is to be paid from the parking revenue. In anticipation of the participation and contribution from other parties, it is the Authority's intent to support other initiatives in Camden with NJEDA's share of parking revenue. Accordingly, the Authority's contribution for funding of Camden Waterfront Promotional Activities will end with the expiration of the term of the 2021-2022 Parking Management Agreement, should the Agreement be thereafter extended.

Staff also recommends the Members delegate to the Chief Executive Officer the authority to enter into similar Parking Management Agreements, annually, for ten (10) years. Any change that has a material impact on the terms and conditions of the Agreement or the anticipated compensation to the Authority will require Board approval.

NJA will be required to prepare and the Authority will have the right to approve an annual budget for the promotional activities, an annual marketing plan and budget, and an annual promotional events plan. Each quarter, NJA will be required to submit an operating statement showing expenses incurred and paid by NJA, a report of promotional events that occurred, a report of marketing efforts accomplished and an accounting of total parking revenues and aggregate revenues.

Execution and delivery of the Parking Management Agreement by the Authority will be contingent upon NJSEA or its designee approving the amount of the parking lot management fee to be paid to NJA pursuant to the existing Aquarium project documents.

Attached is the Parking Management Agreement in substantially final form. The final form of the Agreement will be subject to the approval of the Chief Executive Officer and the Attorney General's Office.

**Recommendation**

In summary, I request that the Members consent to the execution of a Parking Management Agreement between the New Jersey Aquarium, LLC and the Authority for a one (1) year term retroactive to September 16, 2020 on terms generally consistent with the attached agreement, subject to the approval of the Chief Executive Officer and the Attorney General's Office and a delegation of authority to the Chief Executive Officer to enter into similar agreements, annually, for ten (10) years, as stated above.

A handwritten signature in blue ink, appearing to read 'T. Sullivan', is positioned above a horizontal line.

Tim Sullivan  
Chief Executive Officer

Attachment: Parking Management Agreement & Map  
Prepared by: Bonny Serratelli



## **PARKING MANAGEMENT AGREEMENT**

**THIS PARKING MANAGEMENT AGREEMENT** (the “Agreement”) is made as of the \_\_\_\_ day of \_\_\_\_\_, 2021 (the “Effective Date”) between the **NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY** (“NJEDA”), having its address at 36 West State Street, P.O. Box 990, Trenton, New Jersey 08625-0990 and **NEW JERSEY AQUARIUM, L.L.C.** (“NJ”), having an address at 1 Aquarium Drive, Camden NJ 08103 (collectively the “Parties”).

### **WITNESSETH:**

**WHEREAS**, Adventure Aquarium, located on the Camden Waterfront in the City of Camden, New Jersey (the “Aquarium”), is operated by NJA, which is the managing member of Camden Aquarium, LLC, which leases the Adventure Aquarium from the State of New Jersey pursuant to a lease dated October 29, 2003;

**WHEREAS**, pursuant to an Operating Agreement dated October 29, 2003, the members of Camden Aquarium L.L.C. are NJA and the New Jersey Sports and Exposition Authority (“NJSEA”);

**WHEREAS**, pursuant to Section 6.3.7 of the First Amendment to Operating Agreement dated May 25, 2005 (“First Amendment”), NJA has duly notified NJSEA or its designee of its intent to continue to operate the Aggregate Parking Spaces, as defined in the First Amendment, in accordance with the terms of the First Amendment;

**WHEREAS**, in accordance with Section 6.3.7 of the First Amendment, NJA is entitled to a reasonable management fee to be negotiated between NJSEA or its designee and NJA;

**WHEREAS**, pursuant to Section 6.3.1 of the First Amendment, at the end of the Completion Loan Period, NJEDA is entitled, subject to a reasonable management fee to NJA pursuant to Section 6.3.7, to Aggregate Revenues, which is defined in the First Amendment as 100% of revenues from the Parking Lots after costs of operating the Parking Lots are paid plus the Additional Revenues, all terms as are defined in the First Amendment;

**WHEREAS**, as used in this Agreement, the term “Total Parking Revenues” refers to the cost of operating (“COO”) the Parking Lots plus the Aggregate Revenues;

**WHEREAS**, NJA has entered into an Operator Agreement for the management and operation of the Parking Lots in the manner described in Section 3 of the First Amendment which Operator Agreement allows the Parking Operator to be paid a portion of the revenue generated by the Parking Lots to cover cost of operating the Parking Lots;

**WHEREAS**, the Parties have determined that each has a joint and mutual interest in continuing the public/private venture that has led to the overall success of Adventure Aquarium and to continue to promote visitorship to the Camden Waterfront, which will also have the effect of increasing parking revenues; and

**WHEREAS**, the Parties are desirous of entering into this Agreement to replace the prior Parking Management Agreement that expired on September 15, 2019 retroactive to September 16, 2019

**NOW, THEREFORE**, for and in consideration of the mutual covenants and conditions herein contained, and for other good and valuable consideration, the Parties do hereby agree as follows:

## **ARTICLE 1**

### **1.1 Term/Automatic Termination.**

1.01(a) The term of this Agreement shall commence retroactive to September 16, 2019 and will expire on September 15, 2021 (the “Term”).

1.01(b) Notwithstanding the foregoing, this Agreement shall automatically be terminated if any or all of the following agreements, upon which the ability of the Parties hereto to perform is contingent, terminates: (1) the ground lease between NJEDA and the State for the Parking Lots, (2) the Lease between the State and Camden Aquarium L.L.C. for Adventure Aquarium, (3) the Operating Agreement, or (4) the Management Agreement.

### **1.2 Operation of the Aggregate Parking Spaces.**

1.02(a) In accordance with the First Amendment, NJA has notified NJSEA and/or its designee of its election to continue managing the Aggregate Parking Spaces. NJSEA or its designee and NJA have agreed, and NJEDA concurs, that a reasonable management fee to NJA for managing the Aggregate Parking Spaces shall be 10% of Total Parking Revenues.

1.02(b) The Parties acknowledge that the current schedule of parking rates is as set forth on Schedule 1 attached hereto and made a part hereof (the “Parking Rates”). The Parties hereby agree that any change to the Parking Rates must be approved by all Parties, and the NJSEA or its designee.

1.02(c) The Parties acknowledge that for the past several years the fee paid to the Parking Operator for operating the Parking Lots (the “Parking Operator’s Fee”) has been thirty (30%) percent of revenue from the Parking Lots and that said Parking Operator’s Fee has been sufficient to enable the Parking Operator to satisfactorily operate the Parking Lots. For purposes of this Agreement, this fee represents the costs of operating the Parking Lots. The Parties hereby agree that the rate of the Parking Operator’s Fee shall continue to be thirty (30%) percent of revenue from the Parking Lots and that any change to the rate of the Parking Operator’s Fee must be approved by all Parties, and the NJSEA or its designee.

1.02(d) The Parties also acknowledge that nothing herein is intended to modify or amend the First Amendment, and NJA’s responsibilities thereunder.

### **1.3 Obligations of NJA.**

1.03(a) In furtherance of the Parties’ objective to ensure the overall success of the Camden Waterfront, including, but not limited the continued success of the Adventure Aquarium, and as generally



outlined in the Camden City Marketing & Events Proposal dated November, 2019 and as further agreed to between the Parties, NJA shall continue to: (i) work with the Camden Special Services District (“CSSD”) a 501(c)(3) not for profit corporation; and (ii) undertake a marketing program to promote visitorship to the Camden Waterfront, which will also have the effect of increasing parking revenues (i and ii collectively referred to as the “Camden Waterfront Promotional Activities”). Subject to NJA satisfying the conditions set forth in Paragraphs 1.03(b) and 1.03(c) below, NJEDA agrees to allow NJA to receive and use six and one half percent (6.5%) of Total Parking Revenues up to One Hundred and Twenty-Six Thousand Five Hundred Dollars (\$126,500.00) (the “NJEDA Contribution”) to pay a portion of the costs of Camden Waterfront Promotional Activities. NJA agrees that no more than twenty percent (20%) of the NJEDA Contribution for Camden Waterfront Promotional Activities will be allocated as payment for staff, legal, insurance or administrative costs of the budget for Camden Waterfront Promotional Activities.

1.03(b) Within thirty (30) days of the date of this Agreement, NJA shall submit the following final documents for approval to NJEDA’s Real Estate Division, which approval shall not be unreasonably withheld:

- (i) 2021 final budget for Camden Waterfront Promotional Activities;
- (ii) 2021 final operating statement showing expenses incurred and paid by NJA;
- (iii) final report of promotional events that occurred; and
- (iv) final report of marketing efforts accomplished.

1.03(c) Within 30 days after the end of each 3-month period of the Term, NJA shall submit the following items to NJEDA’s Real Estate Division:

- (i) a satisfactory operating statement showing expenses incurred and paid by NJA for the Camden Waterfront Promotional Activities during the past 3 months;
- (ii) a satisfactory report of promotional events that occurred during the past 3 months; and
- (iii) a satisfactory report of marketing efforts accomplished during the past 3 months.

1.03(d)(i) NJA shall seek contributions from NJA and contributions from other parties to providing funding for Camden Waterfront Promotional Activities in addition to the NJEDA Contribution. In the event NJA is not able to generate sufficient funds other than the NJEDA Contribution to fully fund the annual budget, marketing plan and promotional events approved by NJEDA Real Estate Division, NJA may request NJEDA’s permission to cancel or limit the scope of any such event. In anticipation of the participation and contribution from other parties, it is NJEDA’s intent to support other initiatives in Camden with NJEDA’s share of Parking Revenue.

1.03 (d)(ii) Based on the foregoing, NJA and NJEDA further expressly acknowledge and agree that the NJEDA Contribution for funding of Camden Waterfront Promotional Activities will end with the expiration of the 2020-2021 Parking Management Agreement, unless NJEDA expressly agrees to further extend.

1.03(e) During the term of this Agreement, NJA will cause the Parking Operator to deliver to NJEDA a satisfactory account of Total Parking Revenues and Aggregate Revenues within thirty (30) days of the close of the previous quarter.

## **ARTICLE 2**

### **FINANCIAL COVENANTS**

2.1 Distribution of Parking Revenues. In consideration of the foregoing, the Parties agree that, during the Term, revenue from Aggregate Parking Spaces shall be distributed as follows:

- (a) the Parking Operator shall receive a Parking Operator's Fee of 30% of revenue from the Parking Lots; and
- (b) NJA shall receive a management fee of 10% of Total Parking Revenues; and
- (c) NJA shall receive 6.5% of Total Parking Revenues to pay a portion of costs for Camden Waterfront Promotional Activities until the NJEDA Contribution has been reached;
- (d) NJEDA shall receive the balance of parking revenues, which in any event shall not be less than 53.5% of Total Parking Revenues.

Once the NJEDA Contribution has been reached, NJEDA shall receive the balance of parking revenues, which in any event shall not be less than 60% of Total Parking Revenues.

2.2 Manner of Payment. NJA shall cause parking revenues to be distributed to each Party within thirty (30) days after the completion of each calendar quarter.

2.3 Unused Funds. Any NJEDA Contribution received by NJA but not used by NJA to pay costs of the Camden Waterfront Promotional Activities in that year will be returned to NJEDA within 30 days of the end of the Term.

## **ARTICLE 3**

### **REPRESENTATIONS AND WARRANTIES OF THE PARTIES**

3.1. Each Party hereby represents and warrants to each other Party, to the best of their knowledge, information and belief, that:

- (1) Such Party has the legal capacity to enter into this Agreement and perform each of the

undertakings set forth herein as of the date of this Agreement.

(2) Such Party is duly organized and a validly existing legal entity under the laws of the State of New Jersey and all necessary resolutions or authorizations have been duly adopted to authorize the execution and delivery of this Agreement and to authorize and direct the persons executing this Agreement to do so for and on its behalf.

(3) No receiver, liquidator, custodian or trustee of such Party, or any affiliate thereof, has been appointed or is contemplated as of the date of this Agreement, and no petition to reorganize it pursuant to the United States Bankruptcy Code or any similar statute that is applicable to it has been filed or is contemplated as of the Effective Date.

(4) To the best of such Party's knowledge and belief after diligent inquiry, there is no action, proceeding or investigation now pending, nor any basis therefore, known or believed to exist which (i) questions the validity of this Agreement, such Party's execution hereof, or any action or act taken or to be taken by such Party pursuant to this Agreement; or (ii) is likely to result in a material adverse change in the such Party's property, assets, liabilities or condition which will materially and substantially impair such Party's ability to perform under this Agreement.

(5) Such Party's execution and delivery of this Agreement and its performance hereunder will not constitute a violation of any other agreement, indenture, instrument or judgment to which it is a party.

(6) Each of the agreements referenced in the recitals hereto, or upon which the Parties obligations are condition, and to which such Party is a party thereto, remains in full force and effect, and no default which remains uncured has been noticed by any other party thereto.

#### **ARTICLE 4** **MISCELLANEOUS**

##### **4.1 Default/Dispute Resolution/Remedies.**

4.01(a) If a Party defaults in the performance of any of its obligations hereunder and such default is not cured within thirty (30) calendar days after receipt of written notice of such default from any of the non-defaulting parties, such default shall be deemed an "Event of Default".

4.01(b) If an Event of Default occurs, such Event of Default shall be submitted to the highest in command in each of the Party's organization for their review and decision. Such highest in command shall issue a written decision on the alleged Event of Default within thirty days of referral thereto. In the event that the highest in command in each of the Party's organization disagree (a "Non-Resolved Event of Default"), then each Party may seek any and all legal or equitable remedies permitted by applicable law.

4.01(c) If NJA commits a Non-Resolved Event of Default under this Agreement, NJEDA may terminate this Agreement.

4.2 Assignment. This Agreement shall not be construed to create any rights on behalf of any person or entity other than the Parties. Neither this Agreement nor any rights or duties hereunder may be assigned or delegated by Parties hereto, except as expressly contemplated or authorized hereby, without the written consent of each the other Parties and any such purported assignment or delegation shall be null and void and of no force or effect.

4.3 Notices. All notices required to be served or given hereunder shall be in writing and will be deemed given when received by personal delivery, fax or by an overnight delivery service which issues a receipt from delivery, or two business days after having been mailed by certified mail, return receipt requested, and addressed as follows:

If to NJEDA: New Jersey Economic Development Authority  
36 West State Street  
P.O. Box 990  
Trenton, New Jersey  
08625-0990  
Attention: David E. Nuse, Executive Vice President –  
Real Estate and Community Development  
Phone: 609-858-6678

With a copy to: New Jersey Division of Law  
Treasury-Finance & Benefits Section  
Hughes Justice Complex  
PO Box 106  
Trenton, NJ 08625  
Attention: Gary A. Kotler, DAG

If to NJA: New Jersey Aquarium, LLC  
1 Riverside Drive  
Camden, New Jersey 08103  
Attention: Molly Deese, Executive Director Phone: (856) 831-4102

With a copy to: Herschend Entertainment Company, LLC  
5445 Triangle Parkway, Suite 300  
Peachtree Corners, Georgia 30092  
Attention: Steve Earnest, Esq.  
Phone: 678-993-1941

4.4 Modifications. The entire agreement between the Parties is contained herein and no change, modification, termination, or discharge of this Agreement shall be effective unless in writing and signed by the Parties.

4.5 Severability. The validity of any Articles and Sections, clauses or provisions of this Agreement shall not affect the validity of the remaining Articles and Sections, clauses or provisions hereof.

4.6 Governing Law; Jurisdiction and Venue, Waiver of Trial by Jury. This Agreement shall be governed by and construed and enforced pursuant to the laws of the State of New Jersey, without regard to its conflict of laws principles. Any action hereunder shall be brought exclusively in a court of the State of New Jersey or in a United States Court having jurisdiction in the District of New Jersey. Additionally, any claims asserted against NJEDA based in contract law in connection with this Agreement shall be subject to the provisions of the New Jersey Contractual Liability Act, N.J.S.A. 59:13- 1, et seq. and that any claims asserted against NJEDA based in tort law in connection with this Agreement shall be subject to the New Jersey Tort Claims Act, N.J.S.A. 59:1-1, et seq.

4.7 No Individual Liability. No Commissioner, member, director, officer, agent, or employee of each Party shall be held personally liable under any provision of this Agreement or because of its execution or attempted execution or because of any breach or alleged breach hereof.

4.8 Counterparts. This Agreement may be executed in counterparts, each of which will be deemed to be an original, and such counterparts will constitute one and the same instrument.

4.9 Titles of Articles and Sections. The titles of the several Articles and Sections of this Agreement, as set forth at the heads of said Articles and Sections, are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

4.10 Successors Bound. This Agreement shall be binding upon the respective Parties hereto and their permitted successors and assigns.

4.11 Entire Agreement. This Agreement constitutes the entire agreement between the Parties hereto and supersedes all prior oral and written agreements between the Parties with respect to the subject matter hereof.

4.12 Waiver. No waiver made by any party with respect to any obligation of any other party under this Agreement shall be considered a waiver of any other rights of the party making the waiver beyond those expressly waived in writing and to the extent thereof.

4.13 Capitalized Terms. Capitalized terms used in this Agreement but not otherwise defined herein shall have the meaning ascribed to them in the First Amendment.

4.14 Electronic Signatures. Pursuant to written policy, NJEDA allows documents to be signed electronically and hereby agrees to be bound by such electronic signatures. NJA also agrees to be bound by electronic signatures as a signatory to this Agreement.

*[Signature Page Follows]*

IN WITNESS WHEREOF, the Parties have caused this Parking Management Agreement to be duly executed and delivered as of the date and year first above written and by so executing, represent and warrant they have the authority to do so.

**Attest:**

**NEW JERSEY ECONOMIC  
DEVELOPMENT AUTHORITY**

---

David E. Nuse,  
Executive Vice President  
Real Estate and Community Development

---

Brian Sabina,  
Chief Economic Growth Officer

**Attest:**

**NEW JERSEY AQUARIUM, L.L.C.**

---

Name:  
Title:

---

John Fitzgibbons  
Vice President of NJA

## EXHIBIT A

### Adventure Aquarium Public Parking Rates:

#### Passenger Vehicles

General Public	\$10.00 per vehicle, per day
Annual Passholder	\$ 5.00 per vehicle, per day
Private Events	\$ 5.00 per vehicle, per day

#### Commercial Vehicles

School or Tour Bus	\$10.00 per vehicle, per day
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**MEMORANDUM**

**TO:** Members of the Authority

**FROM:** Tim Sullivan, Chief Executive Officer

**DATE:** March 10, 2021

**RE:** New Jersey Bioscience Center  
Eighth Amendment to the Payment in-Lieu of Taxes Agreement and Other  
Matters with North Brunswick Township

**Summary**

I ask the Members to approve the Eighth Amendment ("Eighth Amendment") to the Agreement Concerning Payment in Lieu of Taxes and Other Matters dated June 3, 1996 ("PILOT Agreement") between the Authority and the Township of North Brunswick ("Township") for the New Jersey Bioscience Center ("NJBC"). The Eighth Amendment will:

- Establish the tax assessment for buildings 1 through 4
- Establish a uniform PILOT rate for NJBC tenants of \$5.513 per square foot for the calendar year 2021
- Cap the annual increase in PILOT for the following four calendar years (January 1, 2022 through December 31, 2025) at the lesser of the increase in the applicable Township tax rate or two percent (2%) of the prior year's rate

**Background**

In April 1996, the Members approved the initial PILOT Agreement for NJBC (formerly known as the Technology Centre of New Jersey) with the Township of North Brunswick. Since 1996, the Members have approved seven amendments to the PILOT Agreement.

In the Fall of 2020, the Real Estate Division engaged outside counsel through the Attorney General's Office and an appraiser to assist in negotiating the terms of the Eighth Amendment to the PILOT Agreement. Staff, through its counsel, communicated with the Township's tax assessor and attorney on several occasions, which resulted in the following proposed Eighth Amendment to the PILOT Agreement commencing January 1, 2021 and ending December 31, 2025:



- The annual PILOT per square foot that will be charged the tenants will be based on the assessment of the existing buildings (Buildings 1-4). Building 5 is excluded because it is vacant unfinished shell. In the future, any new building developed at the NJBC will be assessed consistent with current real estate tax law. In such event, NJBC's assessment and PILOT will be adjusted accordingly.
- The annual PILOT increase will be capped at the lesser of: two percent (2%) of the prior year's square foot rate, or the Township's actual tax rate applied to the assessment and divided by the NJBC's rentable square feet.
- Commencing in 2022, the annual tax rate will change mid-year, consistent with when the real estate tax rate is updated by the Township.

The proposed Eighth Amendment will yield the following positive results:

- The PILOT Agreement dollar per square foot rate will be based on the tax assessment for Buildings 1 through 4, which is consistent with the requirement of EDA's enabling act which provides that an Authority tenant must pay a PILOT that is equivalent to "taxes on real and personal property. . . which [tenant] would have been required to pay had it been the owner of such property." N.J.S.A. 34:1B-15.
- All current and future tenants will pay a uniform rate irrespective of which building is currently occupied or will be occupied. The proposed uniform rate will yield a reduction for all current NJBC tenants of approximately \$0.13 per square foot.

It is a requirement of each tenant lease and an obligation of the tenants to pay the PILOT except as set forth below. The Authority will not execute the Eighth Amendment until it receives written consent from the applicable tenants.

The following tenants will not be required to approve the Eighth Amendment: tenants within the Incubator at North Brunswick ("Incubator") and the Step-Out Labs at North Brunswick in Building 4 second floor ("Step-Out"), all of which have executed or will execute gross leases which include PILOT payments. Accordingly, the cost of any annual increase in PILOT payments for these tenants will be borne by the Authority as the landlord.

The PILOT for the Incubator and Step-Out space will be calculated based on the rentable square feet using the actual common area factor.

Attached as Exhibit A to this memo is the proposed Eighth Amendment to the PILOT Agreement which is in substantially final form. The final terms of the Eighth Amendment may be subject to revisions, although the basic terms and conditions will remain consistent with those in the attachment. The final terms of the Eighth Amendment will be subject to the approval of the Chief Executive Officer, the Attorney General's Office, the Township, and the applicable NJBC tenants.

**Recommendation**

I request the Members approve the Eighth Amendment to the PILOT Agreement with the Township as described above and the attached Exhibits, and to make all other changes necessary to carry out this transaction on terms acceptable to the Chief Executive Officer and the Attorney General's Office.



---

Tim Sullivan  
Chief Executive Officer

Att:

Exhibit A: DRAFT Eighth Amendment to Agreement Concerning Payment In Lieu of Taxes and Other Matters

Prepared by: Juan Burgos

**Exhibit A**

**EIGHTH AMENDMENT TO  
AGREEMENT CONCERNING PAYMENT IN LIEU OF  
TAXES AND OTHER MATTERS**

This Eighth Amendment to Agreement Concerning Payment in lieu of Taxes (this “**Eighth Amendment**”) made as of this 31<sup>st</sup> day of December, 2020, by and between the Township of North Brunswick (the “**Township**”), a municipality of the State of New Jersey, with offices at 710 Hermann Road, North Brunswick, New Jersey 08902, and the New Jersey Economic Development Authority (the “**EDA**”), an instrumentality of the State of New Jersey, with offices at 36 West State Street, Post Office Box 990, Trenton, New Jersey 08625 (being hereafter collectively referred to as the “**Parties**”).

**WITNESSETH**

**WHEREAS**, the EDA is the owner of the New Jersey Bioscience Center (formerly known as the Technology Centre of New Jersey) (the “**Center**”), which is located in North Brunswick Township and is designated as Block 194, Lot 28.01 on the North Brunswick Tax Map; and

**WHEREAS**, the EDA continues to develop the Center as an economic development project by leasing space at the Center. Private sector tenants (“**Tenants**”) who lease space at the Center are required by New Jersey statute to make payments in lieu of taxes (“**P.I.L.O.T.**”); and

**WHEREAS**, the Parties entered into an Agreement Concerning Payment in Lieu of Taxes (the “**P.I.L.O.T. Agreement**”) dated June 3, 1996, which establishes a method for calculating P.I.L.O.T. owed by Tenants in connection with their occupancy of leased space at the Center: and

**WHEREAS**, the Parties entered into an Amendment to Agreement for the calendar years 2000 to 2002, inclusive; and

**WHEREAS**, the Parties entered into a Second Amendment to Agreement for the calendar years 2003 to 2005, inclusive; and

**WHEREAS**, the Parties entered into a Third Amendment to Agreement for the calendar years 2006 to 2008, inclusive; and

**WHEREAS**, the Parties entered into a Fourth Amendment to Agreement for the calendar years 2009 to 2011 inclusive; and

**WHEREAS**, the Parties entered into a Fifth Amendment to Agreement for the calendar years 2012 to 2014, inclusive; and

**WHEREAS**, the Parties entered into a Sixth Amendment to Agreement for the

calendar years 2015 to 2017, inclusive; and

**WHEREAS**, the parties entered into a Seventh Amendment to Agreement for the calendar years 2018, 2019 and 2020, inclusive; and

**WHEREAS**, the Seventh Amendment to Agreement requires the Parties to renegotiate and enter into a revised agreement for the calendar years 2021 and thereafter; and

**WHEREAS**, the Parties, with the consent of each of the Tenants who pay P.I.L.O.T., have agreed upon a revised method for calculating P.I.L.O.T.;

**NOW, THEREFORE**, the Parties agree to amend, reaffirm and continue the P.I.L.O.T. Agreement as follows:

1. Paragraph 2 of the P.I.L.O.T. Agreement shall be amended by incorporating Exhibit A attached hereto and made a part hereof with the Tenants and P.I.L.O.T. rates for calendar years 2021, 2022, 2023, 2024 and 2025, subject to adjustment as provided therein.

2. P.I.L.O.T. are to be made by the Tenants, and the EDA will act as a collection agency transferring the P.I.L.O.T. monies from Tenants to the Township of North Brunswick. Payments are to be remitted to the Township in four (4) quarterly installments to be paid on or before April 10th, July 10th, October 10th and January 10th. Notwithstanding the foregoing, if a Tenant vacates any space during the term of this Agreement, then the P.I.L.O.T. for such Tenant shall be prorated to the date such Tenant vacates and until such space, or any part thereof, is leased to a taxable Tenant, no P.I.L.O.T. will be due.

3. The Township reserves the right to assess Tenants' interest at the statutory rate (N.J.S.A. 54:4-67) for late payment of the P.I.L.O.T. EDA agrees to cooperate with the Township in identifying any Tenant who does not make timely P.I.L.O.T. payments.

4. For calendar year 2026 and subsequent years, assessment of P.I.L.O.T. for the buildings listed in Exhibit A will be set at mutually agreed upon amounts.

5. For new Tenants who occupy space in any of the existing buildings at the Center, the P.I.L.O.T. amounts for such Tenants will be based on the applicable P.I.L.O.T. rates determined in accordance with Exhibit A commencing on the date of occupancy of any such space.

6. EDA will make diligent efforts to collect the payments mentioned in Paragraph 1 above from Tenants and forward such payments to North Brunswick Township by the due dates in Paragraph 2. As used in this paragraph "diligent efforts to collect" does not mean declaring a Tenant to be in default under its lease or initiating legal action.

7. P.I.L.O.T. assessed under the P.I.L.O.T. Agreement (including the

provisions of this Eighth Amendment) shall satisfy all of the ad valorem property tax obligations imposed upon the Center and shall be consistent with all applicable statutory standards. The Township shall share P.I.L.O.T. received under the P.I.L.O.T. Agreement (including the provisions of this Eighth Amendment) with the County of Middlesex and the North Brunswick Township Board of Education only if and to the extent so required under applicable state statutes.

8. The Township acknowledges receipt of payment of all P.I.L.O.T. due under the P.I.L.O.T. Agreement, as amended, as of January 20, 2021. The first payment under this Eighth Amendment is due on April 10, 2021.

9. If there is an approved reassessment or revaluation in the Township that becomes effective during the term of this Eighth Amendment, then the Parties agree that they will negotiate a revised P.I.L.O.T. that will be uniform, on a per square foot basis, for the buildings at the Center and based on an agreed upon overall assessment.

10. Except as expressly amended herein, all of the provisions of the P.I.L.O.T. Agreement shall remain in full force and effect and are hereby ratified, renewed, confirmed and continued in their entirety. Terms used in this Eighth Amendment shall have the same meaning given to them in the P.I.L.O.T. Agreement.

IN WITNESS WHEREOF, the Township of North Brunswick and the New Jersey Economic Development Authority have each caused this Eighth Amendment to be duly executed in its name and behalf as of the date first above written.

ATTEST:

TOWNSHIP OF NORTH BRUNSWICK

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

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

ATTEST:

NEW JERSEY ECONOMIC  
DEVELOPMENT AUTHORITY

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

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

**Exhibit A**  
**P.I.L.O.T. Agreement 2021 - 2025**  
**New Jersey Bioscience Center – North Brunswick, New Jersey**

Building <sup>1</sup>	Tenant <sup>2</sup>	Rentable Square Feet	2021 PILOT/s.f. <sup>3</sup>	Annual Amount	Monthly Amount	2022 PILOT/s.f. <sup>4</sup>	Annual Amount	Monthly Amount	2023 PILOT/s.f. <sup>5</sup>	Annual Amount	Monthly Amount	2024 PILOT/s.f. <sup>5</sup>	Annual Amount	Monthly Amount	2025 PILOT/s.f. <sup>5</sup>	Annual Amount	Monthly Amount
Bldg I	Boehringer Ingelheim	75,674	\$ 5.513	\$ 417,190.76	\$ 34,765.90	\$ 5.595	\$ 423,396.03	\$ 35,283.00	\$ 5.679	\$ 429,752.65	\$ 35,812.72	\$ 5.764	\$ 436,184.94	\$ 36,348.74	\$ 5.850	\$ 442,692.90	\$ 36,891.08
Bldg II	Abb Vie (Allergan / Actavis/Watson)	32,341	\$ 5.513	\$ 178,295.93	\$ 14,857.99	\$ 5.595	\$ 180,947.90	\$ 15,078.99	\$ 5.679	\$ 183,664.54	\$ 15,305.38	\$ 5.764	\$ 186,413.52	\$ 15,534.46	\$ 5.850	\$ 189,194.85	\$ 15,766.24
Bldg II	Ascendia	15,290	\$ 5.513	\$ 84,293.77	\$ 7,024.48	\$ 5.595	\$ 85,547.55	\$ 7,128.96	\$ 5.679	\$ 86,831.91	\$ 7,235.99	\$ 5.764	\$ 88,131.56	\$ 7,344.30	\$ 5.850	\$ 89,446.50	\$ 7,453.88
Bldg II	Vacant	12,485	\$ 5.513	\$ 0	\$ 0	\$ 5.595	\$ 0	\$ 0	\$ 5.679	\$ 0	\$ 0	\$ 5.764	\$ 0	\$ 0	\$ 5.850	\$ 0	\$ 0
Bldg III	Rutgers (exempt)	26,975	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0
Bldg III	Vacant	5,241	\$ 5.513	\$ 0	\$ 0	\$ 5.595	\$ 0	\$ 0	\$ 5.679	\$ 0	\$ 0	\$ 5.764	\$ 0	\$ 0	\$ 5.850	\$ 0	\$ 0
Bldg III	miR Scientific	7,066	\$ 5.513	\$ 38,954.86	\$ 3,246.24	\$ 5.595	\$ 39,534.27	\$ 3,294.52	\$ 5.679	\$ 40,127.81	\$ 3,343.98	\$ 5.764	\$ 40,728.42	\$ 3,394.04	\$ 5.850	\$ 41,336.10	\$ 3,444.68
Bldg III	Incubator	40,382 <sup>6</sup>	\$ 5.513	\$ 222,625.97	\$ 18,552.16	\$ 5.595	\$ 225,937.29	\$ 18,828.11	\$ 5.679	\$ 229,329.38	\$ 19,110.78	\$ 5.764	\$ 232,761.85	\$ 19,396.82	\$ 5.850	\$ 236,234.70	\$ 19,686.23
Bldg III	NJEDA staff (2 <sup>nd</sup> floor – exempt)	7,672 <sup>6</sup>	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0
Bldg IV	Vacant	14,662	\$ 5.513	\$ 0	\$ 0	\$ 5.595	\$ 0	\$ 0	\$ 5.679	\$ 0	\$ 0	\$ 5.764	\$ 0	\$ 0	\$ 5.850	\$ 0	\$ 0
Bldg IV	Apicore	11,522	\$ 5.513	\$ 63,520.79	\$ 5,293.40	\$ 5.595	\$ 64,465.59	\$ 5,372.13	\$ 5.679	\$ 65,433.44	\$ 5,452.79	\$ 5.764	\$ 66,412.81	\$ 5,534.40	\$ 5.850	\$ 67,403.70	\$ 5,616.98
Bldg IV	Step Out Labs	32,626 <sup>7</sup>	\$ 5.513	\$ 179,867.14	\$ 14,988.93	\$ 5.595	\$ 182,542.47	\$ 15,211.87	\$ 5.679	\$ 185,283.05	\$ 15,440.25	\$ 5.764	\$ 188,056.26	\$ 15,671.36	\$ 5.850	\$ 190,862.10	\$ 15,905.18
<b>TOTAL</b>		<b>281,936<sup>8</sup></b>		<b>\$1,184,749.22</b>	<b>\$98,729.10</b>		<b>\$1,202,371.10</b>	<b>\$100,197.58</b>		<b>\$1,220,422.78</b>	<b>\$101,701.89</b>		<b>\$1,238,689.36</b>	<b>\$93,224.12</b>		<b>\$1,257,170.85</b>	<b>\$104,764.27</b>

<sup>1</sup> Bldg V is vacant; therefore, no tax assessment and no P.I.L.O.T. were assigned to Bldg V.

<sup>2</sup> List of tenants is as of January 1, 2021.

<sup>3</sup> The 2021 PILOT/sf was calculated by multiplying the 2020 tax rate of \$5.786 per \$100 of assessed value and the assessment of Bldg I – IV for 2021 of \$26,863,400 and then dividing the product thereof (\$1,554,316) by the total rentable area of 281,936 sf. The 2021 PILOT/sf, shall remain in effect until the 2022 PILOT/sf is determined.

<sup>4</sup> Estimate only, calculated by increasing the 2021 PILOT/sf by 1.5%. When the tax rate is fixed in 2022, the PILOT/sf, annual amount and monthly amount shall be recalculated in accordance with the formula in footnote (3) and will remain in effect until the 2023 tax rate is determined. The monthly amount would also be revised accordingly commencing as of July 1, 2022. For example, if the 2022 tax rate is determined to be \$5.80 per \$100 of assessed value, then the 2022 PILOT/sf would be increased to \$5.526/sf ( $\$0.058 \times \$26,863,400 = \$1,558,077.20 \div 281,936$  sf). The monthly amount would also be revised accordingly, commencing as of July 1, 2022. Anything to the contrary notwithstanding, the increase, if any, in the PILOT/sf over the prior year shall not exceed two (2%) percent. Thus, the maximum increase in the PILOT/sf will be (\$0.11), for a maximum total PILOT/sf of \$5.623.

<sup>5</sup> Estimate only, calculated by increasing the estimated prior year's PILOT/sf by 1.5%. When the tax rate is fixed in 2023 and subsequent years, the PILOT/sf, annual amount and monthly amount shall be recalculated in accordance with the formula in footnote (3) and will remain in effect until the tax rate for the subsequent year is determined. The monthly amount would also be revised accordingly commencing as of July 1, in each year. Anything to the contrary notwithstanding, the increase, if any, in the PILOT/sf over the prior year shall not exceed two (2%) percent.

<sup>6</sup> Estimate of rentable area only. Therefore, the actual P.I.L.O.T. for these spaces may vary.

<sup>7</sup> Estimate of rentable area for Step Out Labs in 2021. Therefore, the actual P.I.L.O.T. for this space may vary.

<sup>8</sup> Total rentable square feet includes occupied space subject to P.I.L.O.T. payments and vacant/exempt space not currently subject to P.I.L.O.T. payments.

## **BOARD MEMORANDUM**



**MEMORANDUM**

**TO:** Members of the Authority

**FROM:** Tim Sullivan, Chief Executive Officer

**DATE:** March 10, 2021

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

The following projects were approved under Delegated Authority in February 2021:

**Premier Lender Program:**

- 1) Milleville Properties, LLC (PROD-00257826), located in Millville City, Cumberland County, is a real estate holding company formed to purchase the project property. The operating company, Uniform Warehouse Inc. (“Uniform”), was founded in 2001. Uniform DBA Uniform & Accessories Warehouse purchases apparel abroad and customizes by sewing or screening company name, emblem/patches on products such as jackets, pants, leather gear, footwear and badges for law enforcement and security companies. M&T Bank approved a \$1,260,000 bank loan with a 28.57% (\$360,000) Authority participation. Proceeds will be used to purchase the project property for company expansion. The Company currently has six employees and plans to create ten new jobs within the next two years.
- 2) St. Rita’s Estate LLC (PROD-00257817), located in South Plainfield Borough, Middlesex County, is a real estate holding company that was formed in 2020 to purchase the project property. The operating company, Babco Foods International, LLC, was formed in 2003 as an importer/wholesaler distributor of specialty foods and snacks. Bank of America approved a \$4,896,000 bank loan with an 11% (\$546,000) Authority participation. Proceeds will be used to relocate operations from a leased space in Piscataway, NJ. The Company currently has thirty employees and plans to create forty additional positions over the next two years.

**Micro Business Loan Program:**

- 1) Animal Bikes, Inc. (PROD-00224471 & 00258182), located in Jersey City, Hudson County, was formed in 2000 as a wholesale distributor of BMX bicycle parts that primarily focus on street riding. The NJEDA approved a \$22,500 working capital loan and a \$2,500 forgivable working capital loan. Proceeds will be used to supplement existing cash from operations to cover shipping costs. Currently, the Company has two employees.
- 2) BeLo Cryotherapy LLC (PROD-00224545 & 258196), located in Livingston Township, Essex County, was formed in 2017 as a mobile business that provides in-home cryotherapy services, such as cryofacials and localized spot treatments, for both therapeutic and cosmetic reasons. The NJEDA approved an \$17,100 working capital loan and a \$1,900 forgivable working capital loan. Proceeds will be used to purchase equipment to expand services they offer. Currently, the Company has one employee.



- 3) Bijou Amore Inc. (“Bijou”) (PROD-00224559 & 00258160), located in Englewood Cliffs Borough, Bergen County, was established in 1999. Bijou caters to retailers and wholesalers in the Caribbean, assisting them in procuring custom made T-shirts from the US, and provides after sales services and support to US customers who purchase fine jewelry from the Caribbean. The NJEDA approved a \$22,500 working capital loan and a \$2,500 forgivable working capital loan. Proceeds will be used to supplement lease and payroll expenses. Currently, the Company has three employees.
- 4) Brigid Callahan Harrison Limited Liability Company (PROD-00224422 & 00258161), located in Longport City, Atlantic County, was established in 2015 as a writing and communications company. The NJEDA approved a \$22,500 working capital loan and a \$2,500 forgivable working capital loan. Proceeds will be used to purchase a new computer and cover business operating expenses. Currently, the Company has one employee.
- 5) Chtham School House LLC (PROD-00224529 & 00258197), located in Chatham Township, Morris County, was established in 2015 as a day care center. The NJEDA approved a \$22,500 working capital loan and a \$2,500 forgivable working capital loan. Proceeds will be used to cover business operating expenses. Currently, the Company has eight employees.
- 6) Down Town Nails & Spa LLC (PROD-00224340 & 00258082), located in Clayton Borough, Gloucester County, was established in 2016 as a nail and spa business offering manicure, pedicure and body waxing services. The NJEDA approved a \$45,000 working capital loan and a \$5,000 forgivable working capital loan. Proceeds will be used to purchase new equipment and support payroll and utilities. Currently, the Company has six employees.
- 7) Friday Films LLC (PROD-00224256 & 00258094), located in Edison Township, Middlesex County, was formed in 2016 as a video and photography home-based business specializing in professional photos and videos for special occasions. The NJEDA approved an \$18,000 working capital loan and a \$2,000 forgivable working capital loan to cover business operating expenses. Currently, the Company has one employee.
- 8) Global Producers Services, Inc. (“GPS”) (PROD-00224232 & 00258102), located in Plumsted Township, Ocean County, was formed in 2002. GPS is a full-service event and production management company specializing in the development of live show projects. GPS organizes, designs, manages and produces outdoor concerts, fundraising galas, championship parades, and music festivals. The NJEDA approved a \$22,500 working capital loan and a \$2,500 forgivable working capital loan. Currently, the Company has two employees.
- 9) Hands to Feet Therapy LLC DBA Whole Team Therapy (PROD-00224449 & 00258192), located in Lakewood Township, Ocean County, was established in 2009 as a therapy and rehab facility for patients of all ages. The NJEDA approved a \$45,000 working capital loan and a \$5,000 forgivable working capital loan. Proceeds will be used to maintain payroll costs. Currently, the Company has two employees.
- 10) Inspire Investments LLC DBA Heavenly Chicken and Ribs (PROD-00224561 & 00258176), located in Jersey City, Hudson County, was formed in 2017 as a restaurant specializing in pork ribs, fried chicken, honey BBQ wings and grilled meats. The NJEDA approved a \$22,500 working capital loan and a \$2,500 forgivable working capital loan. Proceeds will be used to supplement existing cash from operations to cover payroll, rent and inventory. Currently, the Company has seven employees.

- 11) JTS (New Jersey) Inc. (PROD-00224564 & 00258167), located in Hackensack City, Bergen County, was formed in 2008 as a manufacturer and wholesaler of fine jewelry. The NJEDA approved a \$22,500 working capital loan and a \$2,500 forgivable working capital loan. Proceeds will be used to cover payroll and business rent. Currently, the Company has two employees.
- 12) Legacy Coffee LLC (PROD-00224520 & 00258081), located in Montclair Township, Essex County, was established in 2019 as a family-owned specialty coffee shop. The NJEDA approved a \$22,500 loan and a \$2,250 forgivable working capital loan. Proceeds will be used to purchase and fit out a trailer to be used in the business. Currently, the Company has one employee.
- 13) Micro Enterprises LLC DBA Uniq Electronics (“Uniq”) (PROD-00224436 & 00258098), located in Pennsville Township, Salem County, was incorporated in 2005. Uniq sells electronics such as laptops, monitors and iPads and provides computer repair solutions for commercial and residential customers. The NJEDA approved a \$45,000 working capital loan and a \$5,000 forgivable working capital loan. Proceeds will be used to purchase inventory and support payroll and lease payments. The Company currently has five employees and plans to create one additional job over the next two years.
- 14) Mill Hill Saloon, LLC (PROD-00224479 & 00258195), located in Trenton City, Mercer County, is a restaurant and bar that operates out of an historic building constructed in the 1850s. The NJEDA approved a \$45,000 working capital loan and a \$5,000 forgivable working capital loan. Proceeds will be used to fund lease, payroll, inventory and utility expenses. Currently, the Company has two employees.
- 15) MST Tutoring, LLC (PROD-00224229 & 00258199), located in Manasquan Borough, Monmouth County, was formed in 2016 to provide academic tutoring and educational consulting services. The Company helps students from middle school through college undergraduates with specific subject coursework and prep for standardized testing. The NJEDA approved a \$22,500 working capital loan and a \$2,500 forgivable working capital loan. Proceeds will be used for operating expenses. The Company currently has one employee.
- 16) Neaha Sub, Inc. DBA Subway (PROD-00224261 & 00258056), located in Parsippany-Troy Hills Township, Morris County, was formed in 1999 as a Subway restaurant franchise that primarily sells submarine sandwiches, salads and beverages. The NJEDA approved a \$45,000 working capital loan and a \$5,000 forgivable working capital loan to assist with inventory, payroll and rent. Currently, the Company has two employees.
- 17) Neaha Sub 2 LLC DBA Subway (PROD-00224254 & 00258059), located in Jersey City, Hudson County, was formed in 2016 as a Subway restaurant franchise that primarily sells submarine sandwiches, salads and beverages. The NJEDA approved a \$45,000 working capital loan and a \$5,000 forgivable working capital loan to assist with inventory, payroll and rent. Currently, the Company has four employees.
- 18) Neaha Sub and Salad LLC DBA Subway (PROD-00224274 & 00258057), located in Wayne Township, Passaic County, was formed in 2014 as a Subway restaurant franchise that primarily sells submarine sandwiches, salads and beverages. NJEDA approved a \$45,000 working capital loan and a \$5,000 forgivable working capital loan to cover inventory, payroll and rent. Currently, the Company has two employees.

- 19) Sung Hee Lee (PROD-00224503 & 00258090), located in Harrison Township, Gloucester County, was established in 2001 as a dry-cleaning service. The NJEDA approved a \$45,000 working capital loan and a \$5,000 forgivable working capital loan. Proceeds will be used to cover payroll, rent, and utilities. Currently, the Company has two employees.
- 20) TCH at Culver Lake LLC (PROD-00224389 & 002258151), located in Branchville Borough, Sussex County, was formed in 2016 as a full-service family restaurant specializing in serving fresh house food with lots of ingredients at an affordable price. The NJEDA approved a \$22,500 working capital loan and a \$2,500 forgivable working capital loan. Proceeds will be used to supplement existing cash from operations to cover payroll and rent. Currently, the Company has one employee.
- 21) The Center for Sports Medicine, LLC DBA Masri Sports medicine & Wellness (PROD-00224316 & 00258200), located in Clifton City, Passaic County, was established in 2005 as a medical clinic that treats musculoskeletal injuries. The business owner specializes in diagnosis and treatment of non-surgical sports injuries in adults and children. The NJEDA approved a \$45,000 working capital loan and a \$5,000 forgivable working capital loan. Proceeds will be used to support lease payments, payroll, utilities, medical billing and transcription services. Currently, the Company has two employees.



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Tim Sullivan, CEO

**Prepared by:** G. Robins



**MEMORANDUM**

**TO:** Members of the Authority

**FROM:** Tim Sullivan, Chief Executive Officer

**DATE:** March 10, 2021

**SUBJECT:** New Jersey Small and Micro Business PPE Access Program – Designated Vendor Delegated Authority Approvals and Phase 2 Program Usage Updates

**For Informational Purposes Only – New Jersey Small and Micro Business PPE Access Program**

On August 11<sup>th</sup>, 2020, the Members of the Board approved Phase 1 of the Small and Micro Business PPE Access Program. The focus of Phase 1 has been to identify and designate qualified vendors (“designated vendors” hereafter) to launch online platforms where NJ companies can buy PPE at fair prices from reliable vendors offering a curated array of quality products all at a discount to normal market prices. The Members of the Board granted delegated approval for Authority SVP’s to approve or decline for the program designated vendors based off their adherence to program requirements as stated in their online program application.

**New Jersey Small and Micro Business PPE Access Program – Designated Vendor Application Review**

The deadline for Designated Vendor applications passed on November 12<sup>th</sup>, 2020. NJEDA received **20** designated vendor applications by the deadline. Of these 20 applications:

- **3** have been approved,
- **13** have been declined,
- **4** have been withdrawn at the request of the applicants,

The following three companies have been approved as NJ Small and Micro Business PPE Access Program designated vendors:

- **Boxed** Boxed is a national online wholesale retailer founded in Edison, NJ in 2013. It employs 130 people at its main fulfillment center in Union, NJ.
- **Office Depot** Office Depot is a global retailer and provider of business services, supplies, products, and technology solutions. They have 84 New Jersey employees located at a sales office in Clifton, NJ as well as retail locations in Union, NJ and Edison, NJ.
- **Staples** Staples is a global retailer and provider of business supplies and business services. They have 6,000 New Jersey employees and extensive retail, corporate, and fulfillment hubs in New Jersey.

***For Informational Purposes Only - PPE Access Program Phase 2 Usage Updates***

On October 14<sup>th</sup>, 2020, the Members of the Board approved Phase 2 of the Small and Micro Business PPE Access Program. In Phase 2, participating Designated Vendors offered discounts for PPE purchased from each Designated Vendor's program site to eligible small and micro business program participants. The authority subsequently reimbursed Designated Vendors for these discounts that were passed through to program participants. Phase 2 discounts began at 25% of the total PPE order for program participants, up to a maximum program cap of \$400 (\$500 if the program participant was located in an Opportunity Zone Eligible Census Tract). After two weeks, the discount amount was raised to 65% of the total PPE order, with the program caps being raised to \$800 and \$1,000 respectively. To effectively manage the large amount of expected program applications, NJEDA partnered with the Office of Innovation to develop an application process with real-time eligibility determinations. The initial round of Phase 2 closed on December 17<sup>th</sup>, 2020 and reopened on February 16<sup>th</sup>, 2021 with an expected closure on March 24<sup>th</sup>, 2021. Key Phase 2 program statistics (through February 28<sup>th</sup>, 2021) are listed below:

- **10,275** businesses submitted an application
  - **10,115** applications were approved (**98.44%**)
  - **160** applications were declined (**1.56%**)
- **\$8,651,600** worth of discounts were approved for program participants
- **28%** of approved applicants were located in an Opportunity Zone Eligible Census Tract (**\$2,801,800** worth of discount value)
- **26%** of approved applicants were minority-owned businesses (**\$2,314,200** of discount value)
  - **41%** of which were Asian-owned businesses
  - **27%** of which were Hispanic-owned business
  - **25%** of which were African American-owned businesses
- **35%** of approved applicants were woman-owned businesses (**\$2,772,000** worth of discount value)
- **85%** of approved applicants had 5 or less Full Time Equivalent employees.



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Tim Sullivan, CEO

**Memo Prepared by:** Eric Solomon